COURT OF APPEAL OF ALBERTA

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COURT OF APPEAL FILE NUMBER:	2501-0282AC
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APPLICANTS:	YUE SONG
STATUS ON APPEAL:	APPELLANT
RESPONDENTS:	THE LAW SOCIETY OF ALBERTA
STATUS ON APPEAL:	RESPONDENT
DOCUMENT:	**EXTRACTS OF KEY EVIDENCE**

Appeal from the Decision of
The Honourable Justice S.L. Kachur
dated the 12th day of September 2025

EXTRACTS OF KEY EVIDENCE OF THE APPELLANT

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COURT FILE NUMBER	2301-14224
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JUDICIAL CENTRE	Calgary
APPLICANT	Yue Song
RESPONDENT	The Law Society of Alberta
DOCUMENT	**AFFIDAVIT**
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Affidavit of Joanna Williams
Sworn (~~or Affirmed~~) on
23 OCTOBER, 2023

I, Joanna Williams of the United Kingdom, SWEAR/~~AFFIRM~~ AND SAY THAT:

1. I have personal knowledge of the facts and matters hereinafter deposed to by me, except where same are stated to be based upon information and belief, and those I do verily believe to be true.

2. Applicant's counsel, Glenn Blackett, requested I provide an expert opinion in my area of expertise, being contemporary social justice movement including critical race theory, postcolonialism, and gender theory.

3. I was asked questions in my area of expertise and prepared a report providing my fair, objective and non-partisan answers, a copy of which report is attached hereto and marked as **Exhibit "A"** to this my affidavit (the "**Report**").

4. The Report contains the information and assumptions on which my opinion is based, as well as my qualifications, including an attached *curriculum vitae*.

5. I make this affidavit in support of Mr. Song's originating application for judicial review and for no improper purpose.

SWORN BEFORE ME at CITY OF BRISBANE
AUSTRALIA, this 23 day
of October 2023.

Joanna Williams

GUY DAVID DUNSTAN
NOTARY PUBLIC - STATE OF QUEENSLAND
1 PARK ROAD MILTON, CITY OF BRISBANE
QUEENSLAND AUSTRALIA
(My commission is not limited by time)

GUY DAVID DUNSTAN
NOTARY PUBLIC AUSTRALIA
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GUY DAVID DUNSTAN
AUSTRALIA
NOTARY PUBLIC

This is Exhibit "A"
referred to in the affidavit of
Joanna Williams
sworn before me this
23 day of OCTOBER, 2023

GUY DAVID DUNSTAN
NOTARY PUBLIC-AT-LAW
BRISBANE AUSTRALIA

Expert opinion of Dr Joanna Williams
Director, Cieo
https://www.cieo.org.uk

October 17, 2023

Re: Yue Song v. The Law Society of Alberta

A. INTRODUCTION

I was asked by Glenn Blackett, counsel to Yue (Roger) Song, to provide an expert opinion in connection with a pending application for judicial review relating to the Law Society of Alberta (the "**LSA**").

I understand that, under the *Alberta Rules of Court*, I am only to answer questions which are within my area of expertise. I view all questions asked and answered herein as being within my area of expertise.

I confirm that, notwithstanding having been retained on behalf of Mr. Song, I have and will continue to provide an independent opinion for the benefit of the Court which is fair, objective and non-partisan.

B. QUALIFICATIONS

I have researched the academic development and practical impact of contemporary social justice movements - most specifically feminism, gender theory, critical race theory and postcolonialism - for over two decades. This research comprises the basis of my:

1. academic qualifications: 2009, PhD: "The political construction of social inclusion through Further Education policy";
2. professional employment: lecturer, University of Kent, 2007 - 2018;
3. leadership positions in national think tanks: 2018 - present;
4. work as an author: *How Woke Won*, 2022; *Women vs Feminism*, 2017; *Academic Freedom in an Age of Conformity*, 2016; and
5. work as a journalist: *The Times, The Spectator, The Telegraph, Daily Mail, The Sun, City Journal.*

I am recognised internationally as an expert on social justice ideologies. In 2023 I addressed conferences in the UK (Various, London and University of Buckingham), Belgium (Mathias Corvinus Collegium, Brussels), Hungary (The Danube Institute, Budapest), Canada (Society for Academic Freedom and Scholarship, London, Ontario) and Australia (Center for Independent Studies, Gold Coast).

My CV is included as Appendix "A" to this report.

C. INFORMATION AND ASSUMPTIONS ON WHICH MY OPINION IS BASED

In preparing my report I reviewed and base my opinion on:

1. The LSA's Regulatory Objectives of the Law Society of Alberta (December 2019);
2. The LSA's Acknowledgment of Systemic Discrimination (April 2022);
3. The LSA's Professional Development Profile for Alberta Lawyers (June 2022);
4. The Calgary Anti-Racism Education Collective Glossary, designated by the LSA as a "key resource" on its website in the area of "Cultural Competence & Equity, Diversity and Inclusion" (undated); and
5. The NVision Insight Group Inc., The Path, Your Journey Through Indigenous Canada assigned by the LSA as mandatory cultural competency education for Alberta lawyers to be completed before November 1, 2022.

I also reviewed and base my opinion on the secondary sources listed as footnotes to this report.

D. SUMMARY OF MY OPINION

Question 1. Briefly describe critical race theory ("CRT"), postcolonialism, and gender theory (collectively, the "Subject Theories").

CRT

Derrick Bell is the founding father of CRT and critical legal studies.[1] CRT is an ideology which understands race not as a biological or scientific category-type but as a socially constructed concept, ie: race is created and made meaningful by people collectively, over time and place. Today, this view is generally accepted and the so-called "scientific racism" prevalent in the first decades of the 20th Century has been widely discredited.

This is not to argue that there are no physical differences between people (ie: skin color) but that the process of classifying people into distinct groups on the basis of such characteristics is an arbitrary exercise. For example, there may be as many physical differences within groups as between groups and the characteristics people choose to emphasize for the purposes of classification (most often skin color) have no inherent impact upon a person's character.

[1] Bell, D. (1980) *Race, Racism and American Law*, Little Brown & Co

However, whereas civil-rights era anti-racists challenged the arbitrary classification of humanity and emphasized universal human traits, CRT suggests that, once constructed by society as a whole, race becomes real and meaningful. The group we are "racialized as" (to use an expression from CRT) will have a significant impact upon our life chances. Robin Di Angelo notes:

> *While there is no biological race as we understand it, race as a social construct has profound significance and shapes every aspect of our lives.*[2]

CRT understands racism as systemic; that is, built into the fabric of societies designed by white people, for the benefit of white people. This posits white superiority and black inferiority as intrinsic to our language, culture and interpretations of history. Critical race theorists argue that every aspect of our daily lives – for example, housing, schooling, policing, the health service and the legal system - assumes a white norm. As a result, liberal attempts to adopt a "color blind" approach, or to advocate for equality before the law, or equality of opportunity, are not considered progressive but, rather, a cover for white supremacy. Reni Eddo-Lodge explains:

> *If you're white, your race will almost certainly positively impact your life's trajectory in some way. And you probably won't even notice it.*[3]

CRT is contested: it is a set of ideas, beliefs and opinions, not empirical facts. Although accepted by some, especially in academia and the professions, the beliefs underpinning CRT are not accepted by all. Some have firmly held and morally valid reasons to challenge the legitimacy of CRT. One criticism of CRT is that, in emphasizing arbitrary racial categories, it rehabilitates racial thinking (most often under the label "culture"). CRT encourages people to judge one another by the color of their skin. Furthermore, assumptions of white privilege and black oppression overlook social class differences which may have a more profound impact on people's life chances.[4]

Postcolonialism

Postcolonialism indicates the ways in which the political, moral and cultural legacy of colonialism is thought to impact upon all aspects of society today. It represents a move away from an older understanding of postcolonialism as the historical period when once-colonized

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[2] DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism.* Beacon Press. Ch. 6.
[3] Eddo-Lodge, R. (2018) *Why I'm No Longer Talking to White People About Race.* Bloomsbury P. 87.
[4] For a fuller account, see Williams, J. (2021) *Rethinking Race: A critique of contemporary anti-racism programmes*, Civitas.

countries gained independence. It shifts attention away from nation states and historical treaties towards what postcolonial theorists refer to as the "discourses of colonialism" which, they argue, continue to be reflected in values, language and social practices.[5] Such practices would include the law, politics and economics. According to this understanding, even though colonialism as direct geopolitical rule has ended, the belief that the world can be divided between a "civilized" West and a "barbaric" other endures in a colonialist mind-set. This speaks to a postmodern idea of power perpetuated through discourse and emerging in people's attitudes and biases.[6] It becomes prejudice in former-oppressors and trauma in the formerly-oppressed.

The process of disrupting and reversing this colonial belief-system is known as "decolonization". Decolonize movements aim to ameliorate the structural and epistemological legacy of colonialism through the removal of cultural assumptions of western superiority as manifest in statues and the names of streets and buildings; school and university curricula that privilege "western" knowledge; social and institutional practices that privilege "western" values; and legal systems that privilege "western" notions of justice.

Postcolonialism is contested. While almost everyone agrees that colonialism has left a political and economic legacy upon formerly-colonized countries, not everyone agrees that colonial oppression continues today in language, knowledge and social and cultural practices. Attempts to label knowledge and values as "western" or "indigenous" can rehabilitate outdated prejudices. The notion of "difference" becomes re-entrenched.

Gender Theory

Gender theory refers to the belief that, as well as having a biological sex evident in primary and secondary anatomical sex characteristics, chromosomes and hormones, all people have an innate sense of gender identity - a deep-rooted "feeling" that:

1. they are a man;
2. they are a woman; or
3. both or neither category applies to them and their identity lies at a mid-point on a spectrum between "male" and "female".

[5] For a fuller account see, Loomba, A. (1998) *Colonialism/Postcolonialism*. Routledge.
[6] For a fuller account see Pluckrose, H. and Lindsay, J. (2020) Cynical Theories. Pitchstone.

Gender theorists argue that, while sex and gender are aligned in most people (labeled "cis"), this is not the case for everyone. Transgender people experience a mismatch between their sex and gender, or between their body and mind. Because of this, gender theorists argue that biological sex markers are an unreliable means of ascertaining whether someone is a man or woman. They refer to sex being "assigned at birth" to highlight a seemingly arbitrary (and symbolically violent) act of binary categorisation. Rather than dividing people into just two groups at birth, they argue for allowing people to express their "true" gender identity which could be multiple and fluid - different at different times.[7]

Gender theorists argue that gender identity is a more authentic indicator of a person's "true" self than their biological sex and are therefore critical of the social and cultural practices that privilege sex over gender. They argue that sports, prisons, hospital wards, public restrooms, domestic violence shelters etc. should be accessible on the basis of self-declared gender identity rather than sex. They believe the law should recognise gender on the basis of self-identification rather than biology.

Gender theory is contested, most notably by gender critical feminists who argue that sex is real and should take precedence over innate feelings about identity. They argue that men are, on average, taller, stronger and heavier than women. For this reason, opening up female-only spaces on the basis of gender self-identification poses a threat to women's safety.

2A. Are the Subject Theories related?

Yes.

2B. Are there other related theories?

Yes.

2C. If so, which related theories exist (the "Related Theories", the Subject Theories and the Related Theories being referred to collectively as the "Theories")?

The Subject Theories are related to each other and also to several Related Theories. They are connected through postmodernism, a movement which emerged in academia from the 1960s onwards. It has its intellectual roots in French philosophy, sociology and literary criticism but it rapidly spread to universities in the UK and US where it took on more applied forms.[8] At its

[7] For a fuller account see Williams, J. (2020) The Corrosive Impact of Transgender Ideology. Civitas.
[8] For a fuller account see Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone.

core, postmodernism represents a rejection of grand narratives - broad, universal theories for making sense of the world and society. Postmodernism rejects Christianity and Marxism but also, most fundamentally, the Enlightenment values of reason and rationality associated with the scientific method. In place of grand narratives, postmodernists consider "power" crucial to understanding the workings of society. Power, it is argued, is only rarely exercised explicitly. Rather, it is expressed through language and, most especially, "discourse" which shapes thought and frames how people make sense of the world and their place in it. As people communicate through language, we reproduce a dominant discourse and become complicit in the exercise of power, including in our own oppression. Challenging dominant narratives and traditional power relations requires giving voice to multiple, subjective, fluid understandings. This is the goal of the Theories including: queer theory, critical disability theory, critical legal theory, critical weight studies, feminism and intersectionality.

3A. Are the Theories apparent in the Materials (yes or no)?

Yes.

3B. If so, please identify each instance in which the Theories are apparent.

CRT

CRT in the Regulatory Objectives of the Law Society of Alberta, 2019 (the "**Regulatory Objectives**")

At page 4, e:

> *Promoting equity, diversity and inclusion in the legal profession and in the delivery of legal services.*

As noted in response to question 4 (below), "equity" is not the same as equality. It is a call for positive discrimination to counteract what is perceived to be systemic racism.

At page 4, e)17:

> *The Law Society believes it is in the public interest for the legal profession to be representative of the population it serves. ... the public should have a meaningful choice in who represents them. This is particularly true in the case of groups who might be underrepresented in society, have cultural or language barriers to working with certain lawyers or firms, or simply feel more comfortable having someone who understands their culture representing them.*

The significance given to representation and particularly the phrase, "someone who understands their culture," speaks to a CRT-inspired view that cultural differences are real and can act as a barrier to communication and understanding.

CRT in the Acknowledgement of Systemic Discrimination (the "**Acknowledgment**")

At page 1:

> *The Law Society of Alberta acknowledges the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession. When we use the term systemic discrimination, we mean policies, procedures and practices within systems and institutions that result in disproportionate opportunities or disadvantages for people with a common set of characteristics such as age, culture, disability, gender, race, religion, sexual orientation and/or socio-economic status. Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behavior, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.*

The focus on "systemic discrimination" (as opposed to just "racism") and "inequity" (rather than inequality) point to the influence of CRT.

At page 2:

> *We recognize that systemic discrimination goes against the principles of fairness that the legal profession values and upholds. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal system more equitable, increasing diversity and promoting inclusion. Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it. The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture.*

Once, fairness would have been assumed to mean "equality" before the law, now it is redefined as "increasing diversity and promoting inclusion." A commitment to reducing barriers puts the existence of such barriers beyond question. The goal of "*affect[ing] long-term systems changes*" contradicts a commitment to the law as it currently stands. All of these are hallmarks of CRT.

At page 2:

> *To take further steps to address systemic discrimination... Ensuring that our Benchers participated in training focused on unconscious bias and centering equity in their governance and decision-making roles.*

The notion of "unconscious bias" rather than overt racism speaks to CRT-influenced understanding of racism as not just systemic but inherent within the minds of individuals.[9]

CRT in the Professional Development Profile (the "**Profile**")

At 3.1:

> *Build intelligence related to cultural competence, equity, diversity and inclusion.*
>
> *Develop self-awareness of how one's own conscious and unconscious biases affect perspectives and actions. Reduce one's own biases through continual education, self-reflection and inquiry.*

The assumption that racism manifests itself in individual biases that can only be "reduced" not overcome is a hallmark of CRT.

At 3.2:

> *Incorporate equity, diversity and inclusion in practice. Practise anti-discrimination and anti-racism.*

The instruction to "practise anti-racism" is not the same as simply not being racist. The demand that people are actively anti-racist stems from CRT.[10]

At 3.3:

> *Champion enumerated groups in professional activities. Advance inclusion through intentional, positive and conscious efforts. Respect the diverse cultures, perspectives, backgrounds, interests and goals of clients, co-workers and colleagues.*

---

[9] See for example, DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism.* Beacon Press.
[10] Kendi, Ibram X. (2019) *How To Be An Antiracist.* Penguin.

The demand to champion "enumerated groups" is a call for affirmative action, or positive discrimination which is advocated by proponents of CRT.[11] The call for "intentional, positive and conscious efforts" suggests being actively antiracist, not simply not racist.

At 3.3:

> *Advocate for those facing systemic barriers to accessing what they need or deserve*
>
> *Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion.*

Again, this is a call for positive discrimination grounded in CRT.

At 7 (Professional Contributions), 7.3:

> *Collaborate with others to make systemic improvements to increase access to justice.*

Assumptions that racism is "systemic" come from CRT.

CRT in the CARED Collective "Our Glossary" (the "**Glossary**")

Every definition provided in this document stems from one of the Theories. Indeed, the very fact that a glossary is needed speaks to a project of either introducing new theory-inspired terminology or redefining existing terms. We could, for example, assume that lawyers share a society-wide, common-sense understanding of the word "racism". The need to specify definitions beyond this emerges when it is not "common-sense" understandings that are being advocated, but critical race theory-derived terms. For example:

> *Anti-Black Racism - Anti-Black Racism is deeply entrenched in Canadian Institutions, policies and practices, to the extent that Anti-Black Racism is either functionally normalized or rendered invisible to the larger white society.*

The notion that anti-black racism is distinct from other types of racism emerges from a CRT-led view that not all racism is equally bad. Being prejudiced against people on the basis of their skin color can be acceptable if they are from an historically privileged community. Furthermore, the assumption that anti-black racism is "deeply entrenched", "functionally normalized" and "rendered invisible" all stem from CRT. The final point is particularly worth

[11] Eddo-Lodge, R. (2018) *Why I'm No Longer Talking to White People About Race*. Bloomsbury. Page 79.

noting: CRT has it that even though we cannot see racism, it is not just still there, but all the worse for being "rendered invisible".

The following terms included in the Glossary are further examples of new phrases or new definitions of existing words derived from CRT: Anti-racism; Anti-racist education; Denial; Discrimination; Environmental Racism; Implicit Bias; Individual Racism; Internalized Racism; Intersectionality; Melting Pot; Multiculturalism; Power; Position Power; Race; Racialization; Racial Microaggressions; Racial Profiling; White fragility and White privilege.

CRT in the Path, Your Journey Through Indigenous Canada (the "**Path**")

As with The Glossary, *all* of this document stems from one of the Theories. It draws most heavily upon postcolonialism (see below) but has also been inspired by CRT. Some examples:

Module 1:

> *The idea that a government could decide whether you were Indian or not underscores the racist, discriminatory and patriarchal nature of Canadian law and policies towards First Nations, Inuit and Métis.*

This is not an argument for universalism (one nation, Canada; one race, the human race) but a statement affirming the fundamental importance of self-defined group identity. CRT insists that race is socially constructed, which - as noted earlier - is now generally accepted and uncontroversial. However, the argument that physical differences between people are arbitrary could be used to unite people under one, new, national identity. Instead, CRT insists that differences are meaningful but, rather than being dictated by a government, should be a matter of self-definition.

Module 5, Topic One:

> *That cultural context will help you grasp some basic elements of verbal and non-verbal communications, and help you in your interactions with indigenous peoples. ... Cultural differences are just that; different, not better or worse but just another way of seeing the world.*

The idea that cultural differences are real, deeply entrenched and often insurmountable stems from CRT. The relativist notion that all differences are equally valid comes with postmodernism more broadly. Many would argue that some cultural differences, such as female genital mutilation, are indeed worse than others.

Module 5, Topic Two:

> *... those twenty thousand years of history and culture define the way that First Nations, Inuit and Métis think, feel and act today.*

This sets up two distinct groups of people: those whose actions in the present are defined by "twenty thousand years of history" and those whose actions are driven by more immediate concerns. It both creates and entrenches divisions.

Postcolonialism

Postcolonialism in the Profile

At 3 (Cultural Competence, Equity, Diversity and Inclusion):

> *Lawyers have an awareness of the unique experiences of the enumerated groups set out in the Alberta Human Rights Act. They implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-appropriate services and outcomes.*

This establishes the view that there are distinct cultures each with an historically distinct experience that requires differential treatment in the present. It also suggests that lawyers should aim not for an objectively "best" outcome, or equal outcomes, but "appropriate" outcomes. These views emerge from postcolonial theory.

At 3.1:

> *Recognise how systemic inequalities and barriers affect individuals and groups. Develop an awareness of the effects of individual and systemic trauma. Consider how multiple points of discrimination interact to create barriers for individuals.*

Frequent references to "trauma" are made in this and other documents discussed in this paper. The notion of trauma speaks to a psychological understanding of racism prevalent in postcolonialism. The suggestion that trauma can be inherited suggests that young people today still suffer from the mistreatment experienced by their ancestors. The idea that the legacy of colonialism lives on in the public mind-set even after colonial institutions have been dismantled emerges from postcolonialism.

At 8 (Truth and Reconciliation):

> *Alberta lawyers understand the historical and cultural impacts that Canadian law has on Indigenous Peoples in Canada [...] and participate in reconciliation.*

Again, there is an assumption that historical injustices carry an ongoing cultural legacy.

At 8.1:

> *Strengthening understanding of the truth regarding the experience of Indigenous Peoples in Alberta and Canada. Acknowledge the impacts of colonization and systemic discrimination. Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada. Understand the history of the Indian Residential Schools and day schools and their impact on the well-being of Indigenous Peoples. Recognize the historical and ongoing impacts of Canadian and Alberta Law on Indigenous Peoples.*

References to "the truth" suggest only one account of the past is accurate and there is no room for alternative interpretations of history. Calls to "acknowledge the impact" again suggest that the ongoing legacy of colonialism cannot be disputed, simply recognized.

> *8.2 Demonstrate support for reconciliation with the Indigenous Peoples of Canada*
>
> *Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients. Recognize that Indigenous Peoples have their own restorative justice systems and use them where appropriate.*

This suggests that lawyers should not strive for equality before the law but for multiple laws for multiple communities. Inequality becomes formalized.

Postcolonialism in the Glossary

See above re: entirety of glossary. Specific examples include:

> *Anti-Indigenous Racism: ongoing race based discrimination, negative stereotyping and injustice. Includes ideas and practices that establish, maintain and perpetuate power imbalances, systemic barriers and inequitable outcomes that stem from the legacy of colonial policies and practices in Canada.*

Here we see explicit reference made to "the legacy of colonial policies", a hallmark of postcolonialism.

> *Dominant Culture: patterns of learned behaviors and values that are shared among members of a group, and are transmitted to group members over time. Even with the extent of racial and ethnic diversity in Canada, the prevailing cultural values are of European (Western) origin and are perceived as the norm.*

The assumption that colonial domination continues into the present and is transmitted through cultural values is grounded in postcolonialism.

> *Ethnocentrism: The tendency to view others through the filters and assumptions of one's own group/practices and to see one's own group as the "the norm", the best or the ideal to which others should conform.*

The idea that there is a socially and culturally dominant "norm" and an "other" which the dominant group defines itself against comes directly from postcolonialism.

The following terms included in the Glossary are further examples of new phrases or new definitions of existing words derived from postcolonialism: Aboriginal Peoples; Acceptance; Anglocentrism; Appropriation; Assimilation; BIPOC; Colonialism/Colonization; Culture; Cultural Racism; Cultural Sensitivity; Cultural Values; Decolonization; Denial; Ethnicity; Eurocentrism; First Nations; Intergenerational Trauma; Imperialism; Neocolonialism and Privilege.

Postcolonialism in the Path

As stated above, all of this document draws upon postcolonialism. As with the provision of a glossary, the very fact of providing lessons in history suggests that "mainstream", "common sense" or "school curriculum" history is not considered appropriate as a basis for the ideas and values expounded by a professional development framework. Participants do not simply need educating; crucially, they need re-educating. The premise of this entire framework is that history must be re-written to center the experiences of indigenous people and their treatment at the hands of European colonizers. The history participants are taught is a story of colonization and oppression waged through land-grabs, genocide, and economic exploitation that continues in social, cultural and political discrimination in the present. This is an approach to history entirely derived from postcolonialism. Furthermore, there are no opportunities for participants to challenge the facts presented. The lessons to be learnt are not about history but about morality in the present. Successful completion of The Path involves demonstrating acquisition of approved attitudes and values. Some examples:

At Module 1, Topic 1:

> *Welcome on this path of Indigenous cultural awareness. This course is intended to be a broad overview of First Nations, Inuit and Métis history across this land now called Canada. You will listen to stories and hear perspectives that we all should have learned in history class but never did. Cultural awareness is the first step on this journey of reconciliation...*

The phrase "this land now called Canada" appears repeatedly throughout The Path. It calls into question the legitimacy of the nation state by indicating an impermanence. Participants are meant to recall that the land and people existed before the label "Canada" was applied and that "Canada" itself is an invention that may one day be overturned. This overlooks what may be considered progressive about the nation state: its capacity to unite a diverse population and provide a practical means for enacting the democratic will of the majority. Questioning the value of nationhood and the contents of the school history curriculum are hallmarks of postcolonialism. Imposing an outcome, "reconciliation", excludes the potential for criticism.

Module 2, Topic 1:

> *Indigenous accounts of creation are expressions of spiritual and cultural truth. They reflect a way of looking at the world. Science and history tell the story from another perspective. We can look at science and origin stories as simply different ways to describe where we've come from.*

Creation myths are a "cultural truth" only in the sense that anything that any group of people believe can be said to be a "cultural truth". The suggestion that science is just "another perspective" introduces anti-Enlightenment cultural relativism into The Path. The notion that truth is multiple and perspectival, and that science is just a western perspective, is taken from postcolonialism.

Module 5, Topic 3:

> *What I hope The Path and your personal educational journey shows you is that Indigenous people, clients, also come with the weight of colonialism and there's no escaping that however accomplished you are as an individual, the cultural way of colonialism is inescapable. ... for non-Indigenous lawyers, it's incumbent upon you to educate yourself on what colonialism has done to our society and Indigenous people.*

This makes clear that lawyers are expected to view not just the past, but people in the present, through the lens of colonialism. The legacy of colonialism can never be overcome: it is inescapable. This sets up a barrier between two distinct groups - Indigenous and Non-Indigenous people, ascribing ignorance to the latter and passivity to the former. Indigenous people are destined to suffer from the legacy of a past where they were "done to" rather than being agents of change. Again, such tropes emerge directly from postcolonialism.

Gender Theory

Gender Theory in the Profile

At 3.2:

> *Develop and promote a deeper understanding of sexual orientation and gender identity.*

The expectation that lawyers will not just develop but *promote* a deeper understanding of sexual orientation and gender identity speaks to the influence of queer theory and gender theory. Participants are not expected to question or challenge notions of gender identity but to deepen their understanding. The word "promotion" suggests personal knowledge is insufficient; lawyers must display their awareness to others. The use of the phrase "gender identity", as opposed to sex, suggests a privileging of gender identity over sex-based rights. The omission of sex to refer to male or female indicates the influence of gender theory.

Gender Theory in the Glossary

The glossary contains numerous terms that are derived from gender theory. See especially: Binary Thinking; Queer; Transgender; Two-Spirited People; LGBTQIA2S and Heterosexism.

4. What does "equity" mean in CRT?

Equity means "fairness" and "justice". It does not mean equality. CRT understands "fairness" and, most especially, "justice" as compensating for historical wrongs that are perceived to burden some communities with an ongoing disadvantage. A metaphor commonly employed is that of a race. "Equality" would suggest that all participants should set off at the same time and run the same distance. According to CRT, not everyone starts the race as equals. Some are held back by historic disadvantage and current prejudice. In order for the race to be "fair" and "just," it is necessary to adjust the distances and starting times in proportion to each participant's identity. Put crudely, for a race to be "fair" and "just" able-bodied white men should run longer and set off later than black women with disabilities. The aim is not necessarily equality of outcome (not everyone will come first) or equality of opportunity (not everyone starts at the same point) but the promotion of a moral and political framework that forces acknowledgment of systemic inequality and the perceived lack of fairness and justice in society.

Civil rights era anti-racism campaigns focused on equality of opportunity - improving schools, housing, access to transport and health care - so that all children could benefit from an equally

advantageous start in life. However, Derrick Bell, the founding father of critical legal studies and critical race theory, noted that "civil rights advances for blacks always seemed to coincide with changing economic conditions and the self-interest of elite whites."[12] He argued that legal equality was a necessary but insufficient basis for social, political and economic equality.

The focus on "equity" reflects a political shift towards *in*equality and actively discriminating in favor of certain groups in order to compensate for historical disadvantages. A focus on equity, rather than equality, leads Ibram X. Kendi to argue in favor of racial discrimination:

> *... if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person's race, then racial discrimination is not inherently racist. If discrimination is creating equity, then it is antiracist.*[13]

The need for discrimination - and the shift to a focus on equity rather than equality - emerges because, crucially, proponents of CRT assume that all racial disparities (inequalities of outcome) are the sole result of deeply-entrenched systemic racism rather than, for example, social class, poverty, family structure or attitudes towards education.

5. What do "cultural competence" and "decolonize" mean in postcolonialism?

Both cultural competence and decolonization emerge from postcolonial theory. Postcolonial theorists assume that the end of direct rule of western governments over colonized nations did not, in fact, mark the end of colonialism. To suggest it did, they argue, is to misunderstand the way power operates. Postcolonial theorists adopt Foucault's claim that, "Power is everywhere; not because it embraces everything, but because it comes from everywhere".[14] According to this understanding, power operates through culture, where culture is understood not just as art, music and drama but the daily reality of people's lived experiences and the multiple interactions they have with others. When power is located in culture, it becomes internalized in people's ways of understanding the world: "Human beings internalize the systems of repression and reproduce them by conforming to certain ideas."[15] Postcolonial theorists argue that colonialism endures through ideology or "mental frameworks"; in other words, through the beliefs, concepts and language people use to express their relationship to the world.

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[12] Delgado, R. and Stefancic, J. (2017) *Critical Race Theory* (3rd Edition) NYU Press.
[13] Kendi, Ibram X. (2019) How To Be An Antiracist. Penguin.
[14] Foucault, M. (1990) The History of Sexuality, trans. R. Hurley. Vintage Books. Page 3.
[15] Loomba, A. (1998) *Colonialism/Postcolonialism.* Routledge. Page 40.

Postcolonial theory suggests that one legacy of colonialism is that the "norm" for human experience is white, male, middle class, cis-gendered, heteronormative. This norm is reflected in art and literature, popular culture, social expectations (eg. working hours, punctuality, dress codes) and language (eg. use of male pronouns to symbolize a generic person). In this way, formerly colonized people continue to be oppressed, not by direct rule and a denial of democracy, but through their own mental processes. Fanon defines colonized people as those "in whose soul an inferiority complex has been created by the death and burial of its local cultural originality."[16]

Postcolonialists emphasize culture as a site of conflict between the oppressors and the oppressed. They argue that there are entrenched and enduring differences between socially dominant and oppressed groups that appear in language, behavior, personal interactions and ways of understanding as well as, more straightforwardly, in food, media, dress etc. For members of a culturally dominant group to assume that their ways of acting and thinking are the norm is to reinforce the legacy of colonialism.

Cultural competency is mastery of the skills required to relate to people from different communities in a way that respects their outlook and traditions and does not further exacerbate presumed power imbalances. Cultural competency assumes people from dominant groups can be trained to speak and behave in new, more sensitive and appropriate ways. The first part of this training often involves making people sensitive to cross-cultural differences. Cultural competence has been described as "the appropriateness and effectiveness of one's behavior in an alien cultural environment,"[17] and "the acquisition and maintenance of culture-specific skills".[18]

Cultural competence is contested because it entrenches differences between people rather than focusing on what people have in common. When taught as a set of skills, cultural competence can reinforce crude and outdated stereotypes that all members of a particular community behave in a particular way. Cultural competence can also apportion knowledge, artifacts or ways of behaving to different communities in a way that reinforces prejudice. An instruction to avoid "cultural appropriation", for example, can hinder appreciation and, again, reinforces boundaries between people. Many people from formerly colonized nations take great delight

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[16] Fanon, F. (1967) *Black Skin, White Masks*. Grove Press. Page 18.
[17] Muzychenko, O. (2008). 'Cross-cultural entrepreneurial competence in identifying international business opportunities.' in *European Management Journal*, 26(6), 366-377.
[18] Wilson, J., Ward, C., & Fischer, R. (2013). 'Beyond culture learning theory: What can personality tell us about cultural competence?' in *Journal of Cross-Cultural Psychology*, 44(6), 900-927.

in Shakespeare's plays, for example, seeing his work as of universal value and not just for white men.

Decolonization also builds on the idea that the legacy of colonialism endures in culture. But it goes further than advocating cultural competence to suggest that the lasting impacts of colonialism should be exposed and removed from all aspects of society. There is a particular concern with "western knowledge" and "western ways of thinking" that shape school and university curricula and the law. Decolonization campaigns aim to expose western understandings that, they argue, are often disguised as politically and culturally neutral. They then seek to substitute, or add alongside, alternative beliefs and practices from non-western cultures.

6. According to postcolonialism, does "cultural competence" mean "how we connect with people who are different from us ... a skill that makes us able to relate to others comfortably, respectfully and productively"?

Yes, see answer above.

The assumptions that people are fundamentally different from one another, that these differences should be respected rather than challenged, and that cultural understandings can be taught as a skill, all stem from postcolonial theory. Variations of the definition of cultural competence provided here are widely used across higher education and professional development training.[19]

7. According to CRT and postcolonialism, does the legitimacy of law depend on whether or not it:

A. advances equity or decolonization; or

B. is passed by a democratically elected legislature and is constitutional?

The answer is A.

According to CRT and postcolonialism, the legitimacy of the law depends upon whether it advances equity and decolonization.

CRT began with legal scholars merging critical legal studies and radical feminism, with work by philosophers and theorists associated with Critical Theory more broadly, such as Foucault

[19] See, for example, Bhasin, R. (2014). *Cultural competence: An essential skill in an increasingly diverse world.* Practice Pro. Available at: https://www.practicepro.ca/2014/09/cultural-competence-an-essential-skill-in-an-increasingly-diverse-world/ (Accessed 10/10/23).

and Derrida. They combined this with a psychological understanding of race and a therapeutic and behaviouristic approach to race relations that had emerged in the 1960s alongside the civil rights movement.[20] A key initial text was Derrick Bell's *Race, Racism and American Law*, published in 1970. In it, Bell argued white people only concede rights when it is their interests to do so, a notion he labeled "interest convergence". He argued that, "Because racism advances the interests of both white elites (materially) and working-class whites (psychically), large segments of society have little incentive to eradicate it."[21] Bell and his colleagues understood the law as primarily reflecting the interests of white people and only changing as the interests of white people converged with black people.

In a 1993 article for the Harvard Law Review, *Whiteness as Property*, Cheryl I. Harris argues that, "whiteness," as the basis of racialized privilege, "provided the basis for allocating societal benefits both private and public in character." She notes that, "These arrangements were ratified and legitimated in law as a type of status property." Consequently,

> *Even as legal segregation was overturned, whiteness as property continued to serve as a barrier to effective change as the system of racial classification operated to protect entrenched power.*[22]

The argument that the law reflects the interests of white people suggests that - even if equality before the law were possible - it would not promote racial justice. In other words, if people are treated equally by a systemically biased legal system, then the outcome will be unequal. Racial justice would demand taking biases inherent to the legal system into account in order to create more equal outcomes. Writing for the International Bar Association, Jennifer Venis notes:

> *The uncomfortable truth is that most legal and justice systems were established with one race, one gender, one class in mind, and have served to ensure the longevity of that power structure. So, to address these problems, we must acknowledge the way our laws and societies were established and therefore perpetuate cycles of oppression and discrimination.*[23]

According to this argument, attempts to promote equality before the law are destined to fail. Laws can only be considered morally legitimate if they focus on equity rather than equality. As noted above, equity and equality have fundamentally different meanings.

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[20] Delgado, R. and Stefancic, J. (2017) *Critical Race Theory* (3rd Edition) NYU Press.
[21] Delgado, R. and Stefancic, J. (2017) *Critical Race Theory* (3rd Edition) NYU Press.
[22] Harris, C. I. (1993) 'Whiteness as Property' in *Harvard Law Review* (106) 8. Pp. 1707-1791
[23] Venis, J. (2020) 'Inequality before the law' at the *International Bar Association*. Available at: https://www.ibanet.org/article/53fcff50-4a76-4c1c-ab03-5f432378a3f7. Accessed: 10/10/23.

The Law Society of Alberta has as one of its regulatory objectives: "Promote *equity*, diversity and inclusion in the legal profession in the delivery of legal services [emphasis mine]."[24] It later specifies:

> *It is in the public interest to have an effective legal and court system that supports the concept of* equal *justice for all within an open, ordered and impartial system.* [emphasis mine][25]

As noted previously, "equity" and "equality" have different meanings. Equity can mean *in*equality in order to create fairness. As noted previously, "fairness" is used to indicate compensating for historical wrongs that are perceived to burden some communities with an ongoing disadvantage.

It appears as if LSA's regulatory objectives contradict, a point it acknowledges:

> *There may be times when two or more of the regulatory objectives conflict with one another. In these cases, the Law Society will weigh the costs and benefits of aligning with each objective.*[26]

The premise that the legitimacy of law rests upon its capacity to promote equity is reflected in the Acknowledgement which notes that:

> *Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions [...] and results in disproportionate harmful impacts to those who are marginalized.*[27]

It continues:

> *Acknowledging that systemic discrimination exists within the Law Society, the legal profession and the justice system is a step towards improving how we protect the public interest and fulfill our regulatory objectives. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal profession more equitable, increasing diversity and promoting inclusion.*[28]

According to the Subject Theories, democratically-passed and constitutional law is not inherently legitimate because, as *per* the Venis quote above:

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[24] The Regulatory Objectives, page 1.
[25] The Regulatory Objectives, page 3.
[26] The Regulatory Objectives, page 2.
[27] The Acknowledgment, page 1.
[28] The Acknowledgment, page 2.

> *"... most legal and justice systems were established with one race, one gender, one class in mind, and have served to ensure the longevity of that power structure."*

In other words, democratically-passed and constitutional law that was enacted when not all people had the right to vote, or equal access to participate in democratic structures, or equal opportunities to have their views heard, would be considered illegitimate.

8. Are the Subject Theories "political" in the sense of having an objective to change, influence, or affect laws, regulations, administrative actions, or other allocations of or exercises of power?

The Subject Theories are political in the sense of wanting to influence or affect laws, regulations, administrative actions and the allocation and exercise of power.

CRT, Postcolonialism and Gender Theory share a foundational understanding of, firstly, the importance of power and, secondly, the way that power operates through ideology, discourse and, ultimately, people's mental states. For example, gender theorists argue that the naming of a gender binary (the apparently arbitrary separation of people into two distinct categories: male and female) allows "woman" to be defined as "other" to a male norm. This reinforces gender hierarchies and, by proxy, the power of men in a patriarchal social order.

The Subject Theories move beyond analysis, and become more explicitly political when they are applied to real-world social contexts. Academics Helen Pluckrose and James Lindsay describe "postmodernism's applied turn" in which theorists applied themselves to the problem they saw "at the core of society: unjust access to power."[29] They note that "new strains" of "Theory" (i.e. the Theories) "are centred on a practical aim that was absent before: to reconstruct society in the image of an ideology which came to refer to itself as 'Social Justice'"[30] A new phenomenon emerged: the scholar activist. Scholar activists apply Subject Theories to real world problems but, importantly, with predetermined goals: to upend dominant power relations and bring about equity and social justice for oppressed groups. It is this predetermined goal that transforms academics into political agents.

Harvard's Derrick Bell and his colleague, the coiner of intersectionality, Kimberlé Crenshaw helped take CRT from a scholarly pursuit to a tool for activists. Bell argued activism was necessary because "majoritarian self-interest" was "a critical factor in the ebb and flow of civil

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[29] Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone. Page 46.
[30] *Ibid.*

rights doctrine"; in other words, a white-majority society would be unlikely to cede its power voluntarily.[31] The goal of CRT, along with other Subject Theories, became not simply to analyze laws, regulations and administrative actions but to advocate for specific changes such as the implementation of affirmative action or positive discrimination programs. Academics who promote Subject Theories are not only pursuing political goals themselves but, crucially, they are educating the next generation of teachers, lawyers, journalists, social workers and managers. Over the course of several decades, scholar activists have been able to wield considerable influence within public institutions.

We see an example of how this influence plays out in Acknowledgement:

> *Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it. The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture.*[32]

The commitment to "long-term systems changes" to overcome "systemic discrimination" speaks to not just one interpretation of the role of the LSA but a political commitment to bring about change in policies and procedures.

9. According to CRT and postcolonialism, does "practising anti-discrimination and antiracism" mean to not be prejudiced towards people based on their race and to actively oppose such prejudice? If not, what does it mean?

No.

Practising antiracism, in CRT and postcolonialism, often means the opposite of not being prejudiced towards people according to their race.

See question 1 above:

> *CRT understands racism as systemic; that is, built into the fabric of societies designed by white people, for the benefit of white people.*

This removes racism from the sphere of individual actions. A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context

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[31] Matsuda, M.J., Lawrence III, C.R., Delgado, R., Williams Crenshaw, K. (1993) *Words That Wound, Critical Race Theory, Assaultive Speech, and the First Amendment*, Westview Press.
[32] The Acknowledgment, page 2.

of a systemically racist society, this is not enough: they will still uphold a racist *status quo*. As Robin DiAngelo explains:

> *Individual whites may be "against" racism, but they still benefit from a system that privileges whites as a group.*[33]

Simply not being racist is therefore deemed insufficient to counteract entrenched racial inequalities. Anti-racism, according to CRT, requires the opposite of not being racist. DiAngelo notes that:

> *If we become adults who explicitly oppose racism, as do many, we often organize our identity around a denial of our racially based privileges that reinforce racist disadvantage for others.*[34]

In other words, rather than declaring opposition to racism, white people should overcome their "fragility" and acknowledge their complicity in upholding systemic racism. We see an example of this with the LSA's Acknowledgment.

It is logical that after acknowledging complicity with racism, amends should be made. See question 4 above: Ibram X. Kendi argues in favor of racial discrimination:

> *...if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person's race, then racial discrimination is not inherently racist. If discrimination is creating equity, then it is antiracist.*[35]

More bluntly, Kendi explains:

> *The only remedy to racist discrimination is antiracist discrimination.*

This is an argument to see race and to treat people differently according to the color of their skin, affording privilege to some while penalizing others.

For this reason, CRT is particularly hostile to "color blind" anti-racism. Eddo-Lodge explains: "seeing race is essential to changing the system."[36] But CRT posits that rather than black people being disadvantaged, they are to be the beneficiaries of positive discrimination through

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[33] DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism.* Beacon Press. Page 24.
[34] DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism.* Beacon Press. Page 108.
[35] Kendi, Ibram X. (2019) How To Be An Antiracist. Penguin.
[36] Eddo-Lodge, R. (2018) *Why I'm No Longer Talking to White People About Race*. Bloomsbury P. 84.

opportunities denied to white people from similar socio-economic backgrounds. That the LSA supports this approach is evident in The Profile, most notably:

> *Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion.*

10. How do the Subject Theories understand impediments to achieving any political objectives including legal impediments, conventions, moral and religious objections, and inaction?

In response to question 8 (above) it was noted that the political objective of Subject Theories was "to upend dominant power relations and bring about equity and social justice for oppressed groups."

More concretely, in relation to CRT and postcolonialism, this can be understood as actions to ameliorate the impact of what is understood to be historical and current systemic racism through, for example, affirmative action or positive discrimination. In relation to gender theory, this may mean subverting traditional assumptions of a binary sex category being reflected in a person's gender presentation through, for example, practices such as declaring pronouns, wearing pronoun badges, having "all gender" bathrooms, and defining "woman" as an identity rather than a biological reality.

Impediments to such objectives might include legal frameworks that adopt a color blind approach to justice or assume citizens meet the law as equals. They might also include a range of social, moral and religious conventions, such as dress codes; merit-based recruitment and promotion practices that take no account of an applicant's lived experiences; leisure activities that are assumed to be sex-segregated (eg. sport) or religious objections to same sex marriage or gender transition. Inaction is also considered an impediment because it allows an historically discriminatory status quo to continue unchallenged.

Subject Theories consider impediments to achieving political objectives as evidence of continued systemic discrimination (see especially Source Two). In this way, impediments are obstacles to be overcome in the interests of equity and social justice. Impediments can be overcome through political advocacy, changing the law, or enacting practices that overrule perceived obstacles.

The LSA adopts all three of these approaches. See, for example, the Acknowledgment which points to a Fall 2020 LSA survey in which members were invited to "share their experiences of racial discrimination and stereotyping". The premise of the research, that racial

discrimination and stereotyping take place, introduces bias. Members who had not experienced discrimination were unlikely to respond to such a call. In this way, research becomes political advocacy. The acknowledgment of systemic discrimination, along with a commitment to promoting "equity, diversity and inclusion in the legal profession," is a means of over-ruling a perceived obstacle - in this case, the discrimination perceived to be systemic in the legal system - through practice. The impediment of "inaction" is tackled through the regulatory objectives of the LSA, the Professional Development Profile that incorporates commitments to Cultural Competence and Truth and Reconciliation, as well as in The Path training materials. Not accepting the fundamental political assumptions and objectives of Subject Theories does not appear to be an option for Alberta Lawyers.

11. Do the Subject Theories view objectivity, science, and reason as legitimate and universal?

No.

As noted in response to question 2 (above) the Subject Theories share a common root in postmodernism and:

> *At its core, postmodernism represents a rejection of grand narratives - broad, universal theories for making sense of the world and society. Postmodernism rejects Christianity and Marxism but also, most fundamentally, the Enlightenment values of reason and rationality associated with the scientific method.*

It is this connection with the Enlightenment that makes Subject Theorists question the value of objectivity, science and reason. As the philosopher Susan Neiman notes, recent decades have witnessed a turn against the Enlightenment on the erroneous grounds that it

> *... is a sham that was invented to disguise Eurocentric views.*[37]

According to this (false) critique, values that were promoted by Enlightenment philosophers - reason, rationality, objectivity and the scientific method - emerged from the "lived experiences" of thinkers such as Kant, Hume and Locke and are, therefore, a product of their specific view of the world. Far from being universal, then, such values represent only a white, Eurocentric, male, cis-gendered, heteronormative perspective. The enduring status of Enlightenment values stems, the theorists in the Subject Theories (the "**Subject Theorists**") argue, from the fact that this identity-specific perspective has been accepted as being of

[37] Neiman, S. (2023) *Left Is Not Woke*. Polity. Page 36.

universal relevance. Claims to universality are, as Neiman notes, considered to be a disguise for Eurocentric views. Subject Theorists argue that this duplicity renders Enlightenment values illegitimate.

Proponents of CRT reject Enlightenment-derived values of objectivity, neutrality, equality and meritocracy as a particular perspective imposed on others under the guise of universalism. Instead of universal values, they argue people understand the world from the standpoint of their own identity group. Personal, or lived experience becomes all important.[38] Evidence of this rejection of objectivity and reason as universal values, in favour of assigning pre-Enlightenment beliefs to Indigenous communities is prevalent throughout The Path. For example, participants in The Path are informed, that there is a "common thread" that binds peoples from Indigenous nations:

> *Viewed through the lens of Indigenous language, the world is not hierarchical, or linear, or divided into multiple, rigid categories. The Indigenous world view, and thus Indigenous languages, interpret experience in a holistic way. Its most powerful image is the circle, which reflects and contains all things, links back to itself. You see this image in the teaching of the medicine wheel, or in the circle of life itself.*[39]

This sets up two distinct communities: white colonizers who imposed rationality, reason, objectivity and science upon Indigenous peoples who had their own beliefs and values. The endpoint of accepting separate but equally valid belief systems is that it is no longer possible to advocate for equality under the rule of law. This point is made explicit:

> *Canada is multi-juridicial. And right now the only law that people are familiar with is civil law and common law. And there's a richness of legal history and ways of managing that are thousands of years old that can help not only just indigenous peoples today insofar as managing ourselves, but also our relationship with Canada.*[40]

12. According to the Subject Theories, are words capable of having a universal meaning regardless of race?

To postmodernists, words do not have an intrinsic relationship to objects. There is nothing inherent in the word "chair" that organically connects it to a piece of furniture for sitting on. Instead, words are socially constructed, or created by people. As people create language, they

[38] For a fuller account see Williams, J. (2022) *How Woke Won*. Spiked.
[39] The Path, Module Five, Topic 1.
[40] The Path, Module Five, Topic 3.

also shape the way the world is seen. For example, it is language that differentiates a chair from a throne. Following this argument, some argue that words do not just shape perceptions of the world but create reality itself. Stuart Hall, the founding father of the academic discipline Cultural Studies, argues that the representation of reality through language is important for being "one of the central practices that *produces* culture" (my emphasis). Language is central to the way that meaning is produced and, in turn, cultural meanings, "organize and regulate social practices, influence our conduct and consequently have real, practical effects." [41] In this way, language comes to be seen as powerful: its use reflects the interests of those who create it and it has a practical impact on the reality of people's lives. Each Subject Theory considers language to be of fundamental importance because of its relationship to power.

Gender theorists note that it is through language that we recognise someone as male or female and, in so doing, confer a particular gender identity upon them. Judith Butler argues that, through repetition, such speech acts "accumulate the force of authority."[42] Referring to someone as female, by this argument, "is not to describe an objective, value free fact" but to assign them a normative role to play.[43] As another gender theorist notes: "agents bring a new fact into being with their speech: their saying so makes it so."[44]

For Critical Race Theorists and Postcolonialists, western languages, and English in particular, have been used to oppress colonized communities. The imposition of one language, and the outlawing of others, became a means of imposing one perception of reality and outlawing others. Language both reflects and creates the prejudices of the oppressor. Ideas of white superiority and black inferiority are inscribed into the words we use and become central to culture and interpretations of history. This language shapes our very thoughts and, in this way, racial differences become deeply psychologically entrenched. Pluckrose and Lindsay argue that it is when power is separated from politics and the workings of institutions and is relocated in language and knowledge itself, that racism can be identified everywhere: it exists within our unconscious mind and becomes real with our every utterance.

This view is evident in The Path:

> *Every human language embodies a specific cultural approach to communication and understanding, and Indigenous languages are no exception. There are more than 70 different languages and dialects spoken*

[41] Hall, S. *et al.* (2013) *Representation.* Sage Publications.
[42] Butler, J. (2006 [1998]) *Gender Trouble*, p. 227
[43] Asta, S. (2018) *Categories We Live By,* p. 59
[44] Asta, S. (2018) *Categories We Live By,* p. 13

> *by Indigenous peoples across Canada. [...] Each of these languages encapsulates a unique culture and a specific way of looking at the world.*[45]

The argument that language "*encapsulates a unique culture and a specific way of looking at the world*" suggests that words do not necessarily have a universal meaning regardless of race but are instead an expression of culture and identity. This assumption can be challenged: people clearly learn new languages and, in so doing, gain insight into new cultures. To Subject Theorists however, the "specific ways of looking at the world" created through language appear as an insurmountable barrier to cross-cultural communication that can only be overcome through competence training.

Elsewhere, The Path notes that:

> *For most young Aboriginal people, culture and language have been separated. As a result, most of these young people are trying to walk in two worlds with one language."*[46]

Their lives are assumed to have been made more difficult by the imposition of a dominant language distinct from their indigenous culture. They have to make sense of a world through the wrong frame of reference.

Another witness is quoted in The Path as saying:

> *English is so hierarchical. In Cree, we don't have animate-inanimate comparisons between things. Animals have souls that are equal to ours. Rocks have souls. Trees have souls. Trees are "who" not "what".*[47]

This highlights the postmodernist view that language use reflects not universal meanings but different perceptions of reality. This suggests that different linguistic communities (or "cultures", or "races") can use the same word, for example "tree", and refer to the same object (a large, woody plant with a single trunk) but understand quite different things - to one group it is a conscious, living being; to another group it is an inanimate resource. Similar logic applies with the word "contract". Two communities may use the same word and refer to the same object (a written document, a formal treatise) but understand quite different things. To one group this may signify a legally binding, permanent statement of obligation or ownership. To another group it may signify just one person's view at one point in time.

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[45] The Path, Module Five, Topic 1.
[46] The Path, '*R. Henze*' Module Five, Topic 1.
[47] The Path, '*Tomson Highway*' Module Five, Topic 1.

13. Are the Subject Theories tolerant of:

A. neutrality; or

B. holding and expressing contrary ideas?

The Subject Theories are inherently hostile to the notion of "neutrality". See question 12 above. As with reason, rationality, and universalism, neutrality is considered not just impossible to achieve (people can never be freed from viewing the world from the perspective of their own identity group) but, worse, claims to neutrality present one perspective (white, western, male) as a norm.

For Michel Foucault, truth exists not as neutral, objective facts but only in "circular relation with systems of power which produce and sustain it."[48] This view soon became widely accepted by postmodernists and, later, Subject Theorists. A rejection of universal truth gave way to a belief in "many truths", each reflecting different "systems of power" or "interests". When this argument is accepted, the veracity of claims cannot be judged objectively but only by reference to the identity of the speaker. We need to know the speaker's interests, or his relationship to power, in order to be able to assess the truth of his claims. In practice, this means that before judging the truth of a statement we need to know whether the speaker is white, black or indigenous, a man or a woman, or rich or poor. Truth cannot be measured objectively but only in relation to the identity of the speaker. To return to a previous example, an indigenous person who claims that a tree is a conscious being with a soul is speaking the truth according to their community, even though scientific tests may provide no objective evidence in support of the claim.

This sets up two competing notions: "truth" which can be objectively tested and exists independent of the identity of the knower; and "truth" which is subjective and dependent upon the identity of the knower. This latter form of "truth" has entered popular discourse in the phrase "*my* truth". The addition of the word "my" places us in the realm of subjectivity and individual perspective. It takes us away from objectivity. Inherent in the notion of multiple, perspectival truths, or "my truth" is scepticism about the notion of neutral, objective truth. The educational sociologists Michael Young and Johan Muller make clear the consequences of this when they note that, "when a commitment to truth is paired with scepticism about truth, the latter inevitably erodes the former."[49]

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[48] Foucault, M. (1975) *Discipline and Punish*. p. 30.
[49] Young, M. and Muller, J. (2016) *Curriculum and the Specialization of Knowledge*. Routledge.

The emergence of "standpoint theories" within the social sciences spoke to a rejection of universal truth, objectivity and neutrality. Young and Muller note that, "the idea of objectivity in the social sciences seemed to be aligned with oppression." In a bid to reveal a bigger truth about the workings of power, actual truth was jettisoned, along with objectivity and neutrality, and in its place came new definitions of multiple truths. The Path, for example, tells us that "Indigenous accounts of creation are expressions of spiritual and cultural truth."

Ironically, the notion of truth as multiple and subjective does not mean that Subject Theories are open to political and intellectual challenge. They are hostile to the expression of alternative viewpoints. Pluckrose and Lindsay note that,

> *Postmodernism is no longer characterized by radical skepticism, epistemic despair, nihilism, and a playful, though pessimistic, tendency to pick apart and deconstruct everything we think we know. [...] In the guise of Social Justice scholarship, postmodernism has become a grand, sweeping explanation for society - a metanarrative - of its own.*[50]

In moving from understanding truth as neutral and objective, to seeing it as a matter of identity-based standpoint, "truth" has been reified, that is, made real and put beyond possible contestation. Put simply: when truth claims (for example, the theory of evolution) are premised upon assumptions of objectivity and neutrality, they can be tested and challenged (we can test the theory of evolution through evidence and argument). When truth claims are premised upon assumptions of identity and standpoint, they cannot be objectively tested. When I speak "my truth" I utter something that no one else can challenge, only I can confirm or deny the veracity of my claim. In the same way, we cannot question the "spiritual truth" of creationism: it is true because people hold it to be true. When truth is linked to identity and power, a white man cannot challenge the claims of a black woman: to do so would be to call into question the veracity of her lived experience. Expressing contrary ideas is to side with the oppressor over the oppressed, an act some would describe as "violence".

Rather than challenging truth claims, the Subject Theories call on people to "acknowledge" or "recognize". Both words appear throughout the LSA documents reviewed but see especially the Profile, Section 8 (Truth and Reconciliation). Lawyers are asked to:

> *Acknowledge the impacts of colonization and systemic discrimination.*

[50] Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone. P. 209.

> *Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada.*
>
> *Recognize the historical and ongoing impacts of Canadian and Alberta law on Indigenous Peoples.*
>
> *Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients.*[51]

The imperative to "acknowledge" "recognize" and "incorporate" puts ideas beyond emprical contestation.

14. Do the Subject Theories attribute psychological or social characteristics to people on the basis of race, sex, sexuality, and other identity characteristics?

Subject Theories do attribute psychological and social characteristics to people on the basis of their identity.

In relation to gender theory, the idea that people have a "gender identity" or "gendered essence" that floats free from biological sex can only be understood by reference to commonly accepted stereotypes. It is because people express a preference for the toys or clothing commonly associated with the opposite sex, or because they demonstrate behaviours or mannerisms associated with the opposite sex, that they are assumed to be transgender. Rather than challenging stereotypes - for example, arguing that women can be assertive and still be women, or boys can play with dolls and still be boys - gender theory reinforces these outdated notions. People are still expected to conform to gender stereotypes, it's just that they can change their body to reflect their innate preferences. Rigid psychological and social characteristics are attributed differentially to men and women.

In relation to CRT and postcolonialism racism is built into the fabric of societies designed by white people, for the benefit of white people. This removes racism from the sphere of individual actions. A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context of a systemically racist society, this is not enough: they will still uphold a racist status quoism. In claiming the Enlightenment values of reason, rationality, objectivity and universalism as specifically white, western beliefs; Subject Theorists ascribe the opposite social and psychological characteristics to black and indigenous communities. In place of reason comes superstition and in place of rationality comes

[51] Profile, Section 8 (Truth and Reconciliation).

primitivism. Whereas these characteristics were once derided, they are now celebrated as encapsulating a greater truth and a better, less oppressive way of being.

The bind for black and indigenous communities is that this celebration is linked to a perception of them as oppressed, or victims of intergenerational trauma. Attempts by black and indigenous people to challenge this perception of being traumatized, and therefore emotionally fragile and mentally vulnerable, are written off as "internalized racism". According to the Glossary, internalized racism occurs when:

> *A racial group oppressed by racism supports the supremacy and dominance of the dominating group by maintaining or participating in the set of attitudes, behaviors, social structures and ideologies that undergird the dominating group's power.*[52]

This view makes it more difficult for members of black or indigenous communities to comply with dominant social and cultural conventions or to emerge as robust, rational individuals in control of their own lives. Doing so is presented as a betrayal of your people.

The Path includes numerous examples of attributing social or psychological characteristics to people on the basis of their race. For example, participants are instructed that:

> *Indigenous people speak so strongly about the protection of the environment [because] their perspective stretches beyond short term profit from development, and focuses on the need to preserve what we have for future generations.*
>
> [and]
>
> *The Indigenous world view [...] interprets experience in a holistic way.*[53]

Such statements may hold true for some Indigenous people but to suggest that *all* hold these beliefs is a gross generalization.

Likewise, the Path informs participants that:

> *Twenty thousand years of history and culture define the way that First Nations, Inuit and Métis think, feel and act today.*[54]
>
> [and]

[52] The Glossary, page 19.
[53] Specifically, Module Five, Topic 1.
[54] The Path, Module 5, Topic 2.

> *Indigenous people are where we are today because of what has been done to us by the non-Indigenous people using their system to directly try to destroy our people.*

Such statements, along with repeated references to "trauma" portray Indigenous people as having distinct psychological characteristics.

15. According to gender theory, are people identifiable at birth as either male or female?

Views on this question vary. Some extreme gender theorists believe that people are not identifiable at birth as either male or female and that people are born "sexless" (see, for example, UK Labour MP Dawn Butler's statement that babies are born without sex.[55]) Although rarely stated so baldly, the frequently-used phrase "sex assigned at birth" suggests that sex is not intrinsic to a baby's chromosomes, hormones and anatomy but is somehow "assigned" in a random declaration by a medical professional.

Less extreme gender theorists accept the reality of biological sex identifiable at birth but assume that an innate sense of gender identity takes precedence in determining whether someone will grow up to be a man or a woman. This gendered essence is not visible and can only be revealed to the world as the child grows up.

16. According to CRT and postcolonialism, what is "systemic discrimination" and "systemic inequality?"

"Systemic inequality" refers to the statistical disparities that can be identified between members of different racial and ethnic communities. For example, the Path notes that:

> *While Indigenous people make up about 5% of Canada's population, they represent 27% of its prison population.*

[and]

> *Rates of self-reported sexual assault is 3x higher in the Indigenous population, High school diploma rate non-Indigenous people 89%, Indigenous people 68%. First Nations youth, age 15 - 24 are 3 times more likely to commit suicide, childhood poverty: general population, 19%. First generation immigrants and refugess children 33%, Métis, Inuit, off-reserve First Nations children, 27%, On reserve First Nations Children, 62%.*

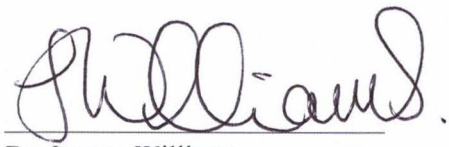
The notion of "systemic" inequality suggests that these disparities are deep-rooted, being replicated and exacerbated over several generations, and are integral to the "system" of

[55] O'Neill, B. (2020) 'Dawn Butler's Transgender Madness' in *The Spectator* (18/02/20).

Canadian society. That is, a society which has a legacy of colonialism has racial inequality built into its customs and practices, and formalized through its education and legal systems. To support this argument, it tends to be only disparities that are unfavorable to indigenous communities that are highlighted in research and reports. Disparities are used to support the existence of discrimination. It is assumed that statistical disparities between different communities have been caused by discrimination.

In this way "systemic inequality" is a result of "systemic racism". As previously defined, that racism is "built into the fabric of societies designed by white people, for the benefit of white people." This removes racism from the sphere of individual actions. A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context of a systemically racist society, this is not enough: they will still uphold a racist *status quo*.

Systemic racism presents racial disparities as an inevitable consequence of historic and continued oppression. It ignores the fact that other factors such as wealth, social class, sex, occupation, area of residence, educational level, family structure and parental educational level may also contribute to a person's life chances. When these factors are taken into consideration the gap between outcomes for black and indigenous communities and white communities lessens. This suggests that racial prejudice may not be the only reason, or even the most important explanation, for racial disparities. Race may correlate with poor health outcomes, for example, rather than causing such inequalities. This matters because it can lead to policy initiatives that focus on the wrong areas - trying to tackle racism, for example, rather than improving education. What's more, discussion of racism and inequality as "systemic" also overlooks progress that has been made. This can send a message to indigenous children that the odds of success are more stacked against them than they really are, with negative psychological consequences.



Dr. Joanna Williams

APPENDIX "A"

Curriculum Vitae

Dr. Joanna Williams
Director, Cieo
https://www.cieo.org.uk

Contact details:
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T: 07950686211
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Employment:
2020: Director of the Freedom, Democracy and Victimhood Project, Civitas
2018: Head of Education and Culture, Policy Exchange
2014: Director of the Centre for the Study of Higher Education, University of Kent
2007: Lecturer in Higher Education and Academic Practice, University of Kent
2004: Lecturer in Post-Compulsory Education, Canterbury Christ Church University

Qualifications:
2009: PhD, University of Kent
'The political construction of social inclusion through Further Education policy'
2009: PGCHE, University of Kent
2006: MA in Educational Studies, Canterbury Christ Church University (Distinction)
1996: PGCE, English and Drama, University of Warwick
1995: BA, English (hons), University of Birmingham

Books:
2022: How Woke Won (Spiked/John Wilkes)
2017: Women vs Feminism, why we all need liberating from the gender wars (Emerald)
2016: Academic Freedom in an Age of Conformity, confronting the fear of knowledge (Palgrave Macmillan)
2016: Why Academic Freedom Matters (co-editor and contributor, Civitas)
2012: Consuming Higher Education: why learning can't be bought (Bloomsbury)

Think Tank Reports:
2023: The Politicisation of History Teaching in the EU (MCC Brussels)
2022: Teaching National Shame: History and Citizenship in the School Curriculum (CIS Australia)
2020: The corrosive impact of transgender ideology (Civitas)
2020: Policing Hate (Civitas)
2019: Sins of Admission, How university application processes impact upon schools and colleges. (Policy Exchange)
2018: 'It just grinds you down' Persistent disruptive behaviour in schools and what can be done about it. (Policy Exchange)

Selected book chapters

2016: 'Why Academic Freedom Matters' in C. Hudson and J. Williams (eds) *Why Academic Freedom Matters*, Civitas: London.
2016: 'Teaching Students to Censor: How academics betrayed free speech' in T. Slater (ed.) *Unsafe Space – The Crisis of Free Speech on Campus.* Palgrave Macmillan: London.
2015: 'Contractualising the student experience through university charters' in J. Fanghanel (ed.) *Dimensions of Marketisation in Higher Education*, Routledge: London.
2015: 'Free to Pursue an Academic Education' in *The Ins and Outs of Selective Secondary Schools*, Civitas: London.

Journalism:

Spiked: weekly columnist since 2014

Also written for: The Times, The Daily Mail; The Sun, New York Daily News; The Spectator; The Telegraph; American Conservative; The Evening Standard; Times Higher Education; James G. Martin Center; Huffington Post; Areo; Open Democracy; Times Educational Supplement; Quillette.

Media: regular contributor to GB News and Sky News

Also appeared on: Sky News Australia; ITV Good Morning Britain; Channel 4 News; BBC 1 The Daily Politics; Radio 4: Broadcasting House, The Moral Maze; Radio 3 Nightwaves; Minneapolis Public Radio; Canadian CBC; Toronto 604.

Selected Guest Lectures:

2023: Society for Academic Freedom, Canada. Academics for Academic Freedom, University of Buckingham.
2019: University of Bath, University of Oxford, University of Hull
2018: University of Bonn, University of Cologne, Berlin Free University, University of Leiden, University of Buckingham.
2017: St Olaf College; North Dakota State University; University of Bath; Newcastle College; Haberdasher Aske School; LAMDA; Wellington College; Bath Spa University; Radley College
2016: University of San Diego; California State University, Fullerton; University of Bath; Oxford Arts Festival; University of Brighton; Newcastle Literary and Philosophical Society; University of Kent- Vice Chancellor's Esteem Lecture

Form 49



C121659

COURT FILE NUMBER	2301-14224
COURT	Court of King's Bench of Alberta
JUDICIAL CENTRE	Calgary
APPLICANT	Yue Song
RESPONDENT	The Law Society of Alberta
DOCUMENT	**AFFIDAVIT of YUE (ROGER) SONG**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Glenn Blackett Law PO Box 99900 EB 051 272 RPO Thorncliffe Calgary, Alberta, T2K 1P6 Phone: 587-674-3445 Email: glennblackett@outlook.com

Affidavit of Yue (Roger) Song

Sworn on

December 6, 2023

I, Yue (Roger) Song, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I have personal knowledge of the facts and matters hereinafter deposed to by me, except where stated to be based upon information, in which case I verily believe such information to be true.

I. INTRODUCTION

2. I have been an active member in good standing with the Law Society of Alberta (the "**LSA**") since 2014.

3. My legal background is as follows:

   a. I graduated from:

      i. Peking University Law School with a Bachelor of Law in 1985; and

      ii. Peking University Law School with Master of Law in 1988;

   b. I taught international law at the Peking University Law School for 5 years and acted as in-house legal counsel to major international energy corporations in Hong Kong and China for more than a decade;

   c. I graduated from New York University School of Law with a Masters in International Legal Studies in 1994;

   d. I passed the New York Bar Examination in 1996;

e. I graduated from the University of Calgary School of Law with a J.D. degree in 2013;

f. From 2013 to 2014 I articled with Blake, Cassels & Graydon LLP ("**Blakes**") in Calgary, Alberta;

g. I worked at Blakes as an associate until 2018; and

h. Since 2019, I have been a sole practitioner.

4. I bring this application because I have a professional responsibility to uphold and improve the administration of justice in Canada and the public's confidence therein. Most especially, I bring this application in the public interest to defend the rule of law and public access to loyal legal counsel in Alberta.

5. As an immigrant to Canada who grew-up, taught law in, and escaped socialist China, I believe Canada's liberal democratic constitutional order is fundamentally good and just and that it promotes and sustains personal and social outcomes including individual dignity, individual spiritual fulfilment, freedom, democracy, health, wealth, happiness, social harmony, peace, order, and progress.

6. I believe that constitutional order is delicate and vulnerable to being undermined, especially, by those entrusted to protect it.

7. I bring this application, then, to defend that constitutional order and to protect the freedom of lawyers to openly defend it, without fear of hindrance or reprisal.

8. I also bring this application as a Christian, commanded by God to love my neighbor as I love myself, meaning "without discrimination", and to seek and speak the truth.

9. Among my neighbours are indigenous Canadians, too many of whom suffer from poverty, sickness, and personal, family, and community dislocation and turmoil.

10. I believe that many Canadians believe the resolution to these problems will be found in the revolutionary prescriptions of modern social justice. However, my love for indigenous Canadians and my love for truth compel me to disagree and to express my firm belief, rooted in my experience in socialist China, that this is profoundly and dangerously wrong.

11. However, I believe that in a democratic society, whether I am right or wrong about this and other such policy questions, such questions are entirely to be resolved by the people, through their democratically elected legislatures and councils – not by people in their capacities as lawyers, judges, or regulators.

12. The LSA has embraced modern social justice ideologies. I believe that, in a pluralistic society, the Benchers in their individual capacity and not in their capacity as Benchers, may adopt these ideologies and may, therefore, disagree with me in matters of epistemology, politics, economics, history, race, spirituality, and the like, however:

a. such matters fall far outside the LSA's statutory mandate; and

b. the LSA adopting and promoting a political objective is a direct violation of the LSA's most important function: insulating the Alberta bar from political influence.

13. At issue in this application is:

a. the jurisdiction of the LSA to compel lawyers to believe in, express affirmation of, and actively promote any political objective including the "**Political Ideologies**"

(being the "Anti-Constitutional Ideologies, as defined in the originating application herein; the materials attached to this affidavit and all other LSA materials incorporating the Political Ideologies being referred to herein as the "**Political Materials**") which include critical race theory, postcolonialism, and gender theory, which Political Ideologies I do not believe, do not wish to affirm, and do not wish to advance;

b. a lawyer's freedom to believe, express the belief, and promote the belief that:

   i. the Political Ideologies, and the manner the LSA is advancing such ideologies

      1. are false, immoral, unjust, and destructive to Canadian society, including to the interests of the minorities such ideologies ostensibly benefit

      2. are contrary to the **Canadian Constitution** (as defined in the within originating application);

      3. undermine the rule of law in Canada and the Canadian Constitution;

      4. harm the reputation of the profession as competent and loyal to the client's legitimate interests; and

      5. impair the ability of lawyers to fulfill their professional duties;

   ii. the Canadian Constitution is a social good and is just;

   iii. neither the Canadian Constitution nor the laws promulgated under it are a system of "colonialism", "whiteness", "privilege", "systemic discrimination", "racism", "liberal racism", "ignorance", "hate', "violence" or other such system of oppression;

   iv. the Political Ideologies are wrong and destructive, do not reasonably describe reality, and do not represent a morality valuable to Canadian society,

   which are my beliefs and desired expression;

c. my freedom to believe, express belief in, and to not express disbelief in or hostility towards my personal and religious beliefs; and

d. a lawyer's freedom not to believe in, expressly affirm, or actively promote the Political Ideologies, which ideologies I do not believe or wish to expressly affirm or promote.

II. THE CHARTER OF RIGHTS AND FREEDOMS

14. The following forms part of my personal and religious beliefs and desired expression and conduct.

A. PERSONAL BELIEFS

15. I was born in the People's Republic of China under the regime of the Communist Party of China (the "**CCP**") in 1964.

16. Throughout my time in China, I was formally indoctrinated in socialist ideology.

1. Beliefs Regarding Political Education

17. In primary school and high school (from 1971 to 1981) my classmates and I were required to attend classes in "**Political Education**" where we were taught to believe in and advance the CCP's socialist ideology including dogmas relating to legal, historical, political, social, economic, moral, spiritual, and cultural issues.

18. In Political Education we were indoctrinated to become the "politically qualified" successors of the communist cause. We were told to be ready to save much of the world's population which, we were taught, were barely surviving "the depth of water and the heat of fire" (meaning, misery) in their own countries. At this time, China was a desperately poor nation, near starvation in many areas, while the West was, by comparison, fabulously prosperous and well fed. Even when I was teaching at Peking University in the late 1980's I was not making nearly enough money to support myself. I had to live with my parents even after I was married.

19. CCP indoctrination, including Political Education, taught me there was no God. Rather, I was taught that Mao Zedong was the savior of China and of the people of the world. Mao is the figurehead of the CCP and a nearly god-like figure to Chinese socialists. The CCP was, and remains, the highest and overriding value in all aspects of Chinese life including in politics, military, government, economics, law, business, education, arts, society, personal conscience, and even the family. The CCP was and remains the sole source of truth and morality in China. In the words of the CCP, the CCP is the leader of every area of Chinese life.

20. I believe the kind of political order outlined in paragraphs 17, 18, and 19 is destructive to society by which I mean, herein, destructive to personal and social outcomes including individual dignity, spiritual fulfilment, freedom, democracy, health, wealth, happiness, social harmony, peace, order, and progress.

2. Beliefs Regarding State Invasion of Conscience

21. As a part of CCP indoctrination, I was taught to consistently engage in self-reflection and self-examination and to acknowledge and cleanse from my mind the "spiritual pollution" of corrupt (i.e. Western) worldviews and ideas. By "Western" and "West", the CCP meant, *inter alia*, the principles of the Canadian Constitution and Christianity. Such corrupting worldviews and ideas, I was taught, originated from the "corrupt cultures of Western countries and the bourgeoisie." I believe a commandment from the state to rid one's conscience of impugned thoughts is a profound invasion of conscience which is destructive to society. I also believe that it is a social good (by which I mean, herein, it promotes personal and social outcomes including individual dignity, spiritual fulfilment, freedom, democracy, health, wealth, happiness, social harmony, peace, order, and progress) to have "Western" worldviews and ideas.

3. Beliefs Regarding State-Imposed Dogma

22. All the ideological indoctrination I was subjected to in China had, at least, five distinct features:

    a. First, the substantive content was the socialist ideology of the CCP including:

        i. Marxism, Leninism, and Maoism;

        ii. that there is no God;

iii. dogmas including that

1. the Chinese socialist system was superior to the liberal democratic systems of western countries[1]; and
2. that the socialist (or proletarian) culture of China was superior to the capitalist (or bourgeois) culture of western countries.

b. Second, the ideological indoctrination, including dogmas, was unchallengeable truth, beyond discussion or doubt.

c. Third, the ideological indoctrination was always presented as the highest order of morality or social justice to protect the interests of oppressed peoples, to liberate the "poor people exploited by rich people." The objective is to "destroy an old corrupt world", and to "create a new world where there is no inequality, oppression, or exploitation." In other words, the indoctrination I received was utopian.

d. Fourth, the ideological indoctrination was imposed under coercion without any exceptions or exemptions. If I refused or failed to take Political Education, or if I even raised any question or doubted the dogmas, I would be considered politically or ideologically incompetent for higher education, including universities or law schools, for being a professional such as a doctor or a lawyer, or for being employed in any state-owned enterprise or governmental department.

a. Fifth, the ideological indoctrination was not about loyalty to any fixed theories. The theories in which I was indoctrinated in China were all very confusing, vague, uncertain, and subject to consistent changes over the time according to the needs of the CCP. Indoctrination was really about power: to dictate what to think and not think; what to do and not do; to create divisions among people who "struggle against each other" about their ideological differences; and to be the final arbitrator of the "correct" theories from day to day. Ultimately, indoctrination is about obtaining and keeping power, not ideological purity. This is why, in China, the power of the Department of Propaganda of the CCP's Central Committee was, in practice, higher than the head of government.

23. I believe that:

a. Imposed dogma is destructive to society:

i. It is often false or misleading and is inculcated into a population to achieve a political objective, not to discover the truth;

ii. It elevates state-mandated morality above all competing authorities including the transcendent authority of one's faith, and is thereby idolatry which I believe undermines individual dignity; and

iii. The entity which imposes the dogma becomes the law-maker, regardless of the entity designated by the constitution as the "official" law-maker. In fact, the official law-maker is subordinate to the indoctrination. I believe the effect of this is to destroy the rule of law.

---

[1] "Socialism" is the ideology, whereas "communism" relates to the end-goal of socialism, a worldwide utopia.

b. Western institutions like freedom of thought, freedom of speech, and science have proven excellent systems for discovering truth and moving away from error; and

c. Freedom of thought and speech are necessary aspects of genuine democracy.

4. Beliefs Regarding Socialism

24. I believe that socialism is destructive to society. I also believe there is a significant overlap between socialism and "equity" as that term is used by modern social justice movements.

5. Beliefs Regarding Western or "Colonial" Constitutional Orders

25. I believe the CCP's dogmas are false. I believe the liberal democratic systems of Western countries are superior to the CCP's socialist system – if the goal is personal and social outcomes including individual dignity, spiritual fulfilment, freedom, democracy, health, wealth, happiness, social harmony, peace, order, and progress.

6. Beliefs Regarding Tribalism or Collectivism

26. In the Chinese socialist regime people are divided into two tribes:

a. "people of the working class" or "our friends" (categorized as the "red" identity group during the Cultural Revolution of China from 1966 to 1976); and

b. "people of the capitalist class" or "our enemies" (categorized as the "black" identity group during the Cultural Revolution period) of the working class people.

27. In CCP ideology, a person is either "our friend" or "our enemy" – there is no in-between. The "people of the working class" originally consisted primarily of people who were, in fact, working class. But it was really a term to describe people, working class or otherwise, who were totally loyal to the CCP and its ideology.

28. Through an ideology that explained the evils perpetrated by and inherent to "our enemies," CCP indoctrination and guidance validated, mandated, and promoted the social and professional vilification and marginalization of the "class enemies" bringing about what was called "social death."

29. "Chairman Mao," as everyone used to always call him in China, used to "teach us", "Who are our friends? Who are our enemies? This is the priority question of the revolution."

30. This kind of tribalization, vilification, and marginalization was a central tool of Mao's Cultural Revolution from 1966 to 1976 which destroyed civil society in China, killing hundreds of thousands of Chinese people.

31. I believe this kind of tribalized division of society between "good" identity groups, being ideological loyalists, and "bad" identity groups, being those without total ideological loyalty, is destructive to society. As a Christian I believe that we should love our enemies, respond to evil with good, and forgive the sins of those who trespass against us.

32. Further, I believe the Canadian system, pluralism, is far superior to this system of tribalization because pluralism acts as a unifying, rather than dividing, order which

accepts and absorbs conflicting opinions through equal freedom of thought and expression.

7. Beliefs Regarding the Rule of Law

33. Like Canada, China has a constitution which guarantees fundamental rights to its citizens including equality before the law, freedom of speech, and democracy. However, in China, all of this is illusory because there is no rule of law.

34. Throughout all aspects of Chinese society under the CCP's regime there is only one supreme law: the CCP's socialism. Everything, including "fundamental" constitutional rights are subordinate to the will of the CCP. The effect is that, whatever rights the constitution or laws may ostensibly secure to the people, nothing which interferes with socialism and the leadership of the CCP is legitimate or allowed to continue.

35. This is reflected in Article 1 of China's constitution which states: "… China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the People's Republic of China. Disruption of the socialist system by any organization or individual is prohibited."

36. According to CCP indoctrination, the law is inherently a tool that the people of the ruling class use to rule over the class of people being ruled. I believe this view is similar to the concept of "systemic discrimination" and "colonialism" as understood by the Political Ideologies.

37. Notwithstanding that China has many laws and a constitution, rather than being a "rule of law" system, China's socialism is really the "rule of the party" in which the CCP dictates absolute truth and morality and any conduct which advances the CCP's interest or the "party line" (i.e. consistency with the CCP's dictates) is good, and anyone or anything which interferes with or opposes the party line is the "enemy of the people."

38. I believe that elevating ideology over the rule of law effectively dissolves the rule of law.

39. In China, the "red" identity group was entitled to enjoy the express rights and freedom of law, while the "black" identity group was entitled to no such rights and freedoms. Likewise, for the "enemy of the people," the CCP will always find a tool to persecute its enemies, the law being just one such tool.

40. I believe that a state which elevates ideology over the rule of law is destructive to society.

41. I believe the effect of the "party line" on what might appear to be the "rule of law" in China is illustrated in the example of my father. My father, Mr. Ke Song aka Ziling Xin, used to be a professor at the National University of Defense of the People's Liberation Army of China. He published "*The Complete Biography of Mao Zedong*" in 5 volumes (the "**Mao Biography**") in Hong Kong and Taiwan in 1993. My father wrote, in a chapter titled "the Communist Hell":

> "According to expert statistics, in the 2,129 years before the Chinese Communist Party came to power in 1949, there were a total of 203 major climate disasters that killed more than 10,000 people, killing more than 29,910,000 people. The total number of people who starved to death during Mao Zedong's three-year Great Leap Forward period (i.e.1959 to 1962) was 37,558,000, which was 7.64

> million more than the entire population that died of natural disasters in China over the past 2,000 years.
>
> This is not a mistake in individual policies, but a mistake in the fundamental theory, a mistake in the fundamental line, and a mistake in the fundamental path. The so-called theory, line, and path of "conversion of private agriculture economy into "agricultural co-operatives" or "agricultural communes" is utopian socialism, which can neither bring prosperity nor equality. They are the main source of great disasters and should be completely rejected."
>
> [my translation from the original Chinese]

42. I believe my father was correct.

43. Not surprisingly, his Mao Biography was banned in mainland China.

44. My father also wrote a petition letter to the Standing Committee of the National People's Congress of China in 2010 calling upon the CCP government to abolish press censorship and effectively respect the freedom of speech of citizens under Article 35 of the Constitution of China. Hundreds of "intellectuals and veteran revolutionary cadres" signed the petition letter. I also signed the petition.

45. My father also publicly wrote articles criticizing the corruption of the CCP.

46. Theoretically, according to Chinese law, my father was entitled to enjoy all the rights of citizenship including freedom of movement. However, to the CCP, and, therefore, to all party loyalists, my father was not "our friend"; he was "our enemy." As a result, he was placed under house arrest for 5 years on the campus of the National University of Defense of the People's Liberation Army of China.

47. During one trip back to China, I went with my father to sweep the tomb of my mother according to Chinese tradition. However, my father was stopped by the military guards at the campus gate and was told, on the authority of the "superior department", that he was not allowed to step off campus to pay tribute to his late wife. Similarly, when I invited my father to my bar call ceremony in Canada in 2014, the CCP denied my father the right to visit Canada.

48. There was no court order or other legal instrument that restricted the freedom of my father in any way. Whatever the law had to say, though, his ideological dissent against the "party line" meant that he did not enjoy full legal rights as other citizens.

49. I believe that when the rule of law is subordinated to ideology, it functionally ceases to exist.

8. Beliefs Regarding the Ideological Filtering of Professions

50. While studying at Peking University from 1981 to 1988 I was required to continue my Political Education. In order to be admitted to university and to graduate, I had to demonstrate my political "competence" by passing political examinations. These exams were a tool used by CCP to ensure universities and the professions were populated, solely, with people loyal to the CCP. I believe this kind of ideological filtering is destructive to society because it:

a. reduces genuine diversity, as understood in liberal democracies;

b. eliminates any "marketplace of ideas" thereby frustrating the search for truth, democracy, self-actualization, and the value of professions;

c. distorts the role of professionals - from "servant of the client" to "servant of ideology;" and

d. promotes to positions of power and influence people loyal to ideology.

9. Beliefs Regarding the Political Ideologies in Canadian law

51. Living and growing-up in China, I became more and more uncomfortable and frustrated with CCP indoctrination including Political Education. In Political Education my duty was to passively receive, accept, memorize, and expressly affirm the truth of prescribed dogmas. I received no training in independent thinking or the ability to seek truth or to distinguish truth from propaganda. I believe Political Education is destructive to society.

52. In 1992 I applied to become a visiting scholar to Korea University for a period of 5 months. In order to qualify, I was required to complete a 6-month "political qualification assessment" process. This cleared me as "politically qualified" to go abroad for study and research.

53. I was deemed "politically qualified" and permitted to travel to South Korea. From there I applied for and received a scholarship to study at the New York University School of Law.

54. It was in New York's Chinatown, that I first saw my father's book for sale in a bookstore.

55. I immigrated to Canada from China together with my wife and son in 2000 and proudly became a Canadian citizen in 2015.

56. I articled with Blakes under Michael Laffin, KC, who was my principal. I fondly remember being admitted to the Alberta bar, at the age of 50, by the Honourable Madam Justice C. S. Anderson on July 28, 2014, and being able to take my oath on the Holy Bible.

57. The oath that I and, so far as I am aware, all other practicing Alberta lawyers swore was:

> "I will, as a Barrister and Solicitor, conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice anyone, but in all things will conduct myself truly and with integrity. I will uphold and maintain the Sovereign's interest and that of the public according to the law in force in Alberta."

58. I believe this oath compels lawyers to be:

    a. neutral towards the Canadian Constitution and the laws promulgated thereunder; and

    b. loyal to the client's legitimate interests.

59. I immigrated to Canada, in part, because I read the preamble to the *Canadian Charter of Rights and Freedoms* which states, "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." To me this meant that the source of Canadian truth and morality was not the state but an authority that transcended the state. It also told me that Canadian law was supreme and not subordinate to any ideology or to the dictatorship of any person or party. I believe this preamble is profoundly wise. It reassured me that Canada was, indeed, a free country and would remain so. I believe the Canadian Constitution is a social good.

60. I first became alarmed about the sanctity of the rule of law in Canada in 2021 when the LSA forced me to undergo "cultural competency" training called The Path (as defined at paragraph 107, below). The training included, for each module, a test section where lawyers were required to "correctly" answer questions from the *curriculum*. If an answer was "wrong", lawyers were required to retry that question until they got enough answers "right".

61. I was shocked that, in order to practice law in Canada I was, just as in China, being compelled to submit to reeducation in matters of law, history, politics, society, economics, morality, spirituality, and culture.

62. Further, the format compelled me, effectively, to expressly affirm belief in the truth of the *curriculum*, failing which I would be deemed "culturally incompetent" and my permission to practice law would be immediately suspended. For a lawyer who does not believe the "right" answer to be true, they are forced into an ethical dilemma: maintain your right to practice or maintain your conscience and professional ethics. I believe this is a profound assault on a lawyer's dignity.

63. I found myself captured in the jaws from which I had escaped.

64. I do not admit that the facts asserted in The Path were accurate, balanced, or appropriate content for professional development.

65. Just as I was taught in China, The Path told me the West was corrupt and that the law was a system to oppress racial minorities. As in China, The Path taught me that the West was corrupted by "colonialism" and "racism … discrimination … [and] unfair treatment and … inequality [was] built into Canadian law, policies, and structures."[2]

66. For the reasons outlined above, I believe the way the LSA's has implemented The Path, and its substantive content, to be destructive to society and false.

67. I believe:

    a. The Path is, essentially, the same as Political Education;

    b. the Chinese concept of "politically qualified" is similar in content and use to the concept of "cultural competence;"

[2] See The Path.

c. The Path contains dogma, being assertions of fact and value in matters of law, history, politics, race, society, economics, morality, spirituality, and culture which may not be questioned and which I believe to be false or misleading, which I do not know to be true, and which I was forced to expressly affirm to be true;

d. the dogmas in The Path include the assertion that Canada's legal system is one of "systemic discrimination" and "colonialism" which, as such terms are understood by the Political Ideologies, I believe to be false;

e. The Path thereby vilifies Canada's legal system and promotes, to some unspecified extent, its destruction;

f. The Path incorporates the Political Ideologies, which conflict with my religious beliefs and personal beliefs;

g. The Path promotes harmful racial stereotypes;

h. The Path promotes racial tribalization including expressly supporting the racial segregation of indigenous Canadians, which I believe to be destructive to society, including indigenous society; and

i. elevates ideology over the rule of law.

68. More broadly, I believe the LSA's Political Materials and Political Ideologies and the way the LSA is implementing them, is destructive to society for the same reasons.

69. I also believe the LSA's Political Materials and Political Ideologies and the way the LSA is implementing them are destructive to society because:

a. the obligation to become "self-[aware] of … one's own conscious and unconscious biases" is essentially the same as the CCP commandment to search one's conscience for corrupt thoughts;

b. they are hostile to the liberal democratic principles in the Canadian Constitution including objectivity, reason, and science;

c. they are a use of state power to ensure, *inter alia*, professions are populated with ideological loyalists (or, in modern social justice parlance, "allies") and to promote the vilification and marginalization of dissidents;

d. they are a use of state power to impose morality and truth;

e. they promote racial segregation; and

f. such further reasons set-out below.

B. RELIGIOUS BELIEFS

70. I am a practicing Christian. I believe in God, the Father almighty, creator of heaven and earth. I believe in Jesus Christ, his only Son, our Lord, who was conceived by the Holy Spirit and born of the virgin Mary. He suffered under Pontius Pilate, was crucified, died, was buried, and descended to hell. On the third day he rose again from the dead. He ascended to heaven and is seated at the right hand of God the Father almighty. From there he will come to judge the living and the dead. I believe in the Holy Spirit, the holy catholic church (i.e. the universal Christian church), the communion of saints, the forgiveness of sins, the resurrection of the body, and the life everlasting.

71. As a Christian, my sincerely held religious beliefs include:

a. I should love God with my whole heart, mind and soul, love my neighbor as I love myself, and follow the morality and spirit of the Ten Commandments and must not bear false witness. I must be honest, tell what I know to be the truth, and not say what I believe to be false;[3]

b. God is, and is the only source of, truth and morality and it is sin to worship false idols. To worship anything other than God includes accepting any other source of morality or accepting any truth that conflicts with my religious beliefs or which I believe to be false;[4]

c. The rule of law, including equality before the law, is God's justice and equity;[5]

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[3] Mark 12:28-29: 28 One of the teachers of the law came and heard them debating. Noticing that Jesus had given them a good answer, he asked him, "Of all the commandments, which is the most important?" 29 "The most important one," answered Jesus, "is this: 'Hear, O Israel: The Lord our God, the Lord is one.[e] 30 Love the Lord your God with all your heart and with all your soul and with all your mind and with all your strength.'[f] 31 The second is this: 'Love your neighbor as yourself.'[g] There is no commandment greater than these.
Exodus 20

[4] John 14:6-7: Jesus answered, "I am the way and the truth and the life. No one comes to the Father except through me. 7 If you really know me, you will know[b] my Father as well. From now on, you do know him and have seen him."
Exodus 20: 1-4: And God spoke all these words: 2 "I am the Lord your God, who brought you out of Egypt, out of the land of slavery. 3 "You shall have no other gods before[a] me. 4 "You shall not make for yourself an image in the form of anything in heaven above or on the earth beneath or in the waters below. 5 You shall not bow down to them or worship them; for I, the Lord your God, am a jealous God, punishing the children for the sin of the parents to the third and fourth generation of those who hate me, 6 but showing love to a thousand generations of those who love me and keep my commandments. 7 "You shall not misuse the name of the Lord your God, for the Lord will not hold anyone guiltless who misuses his name. 8 "Remember the Sabbath day by keeping it holy. 9 Six days you shall labor and do all your work, 10 but the seventh day is a sabbath to the Lord your God. On it you shall not do any work, neither you, nor your son or daughter, nor your male or female servant, nor your animals, nor any foreigner residing in your towns. 11 For in six days the Lord made the heavens and the earth, the sea, and all that is in them, but he rested on the seventh day. Therefore the Lord blessed the Sabbath day and made it holy. 12 "Honor your father and your mother, so that you may live long in the land the Lord your God is giving you. 13 "You shall not murder. 14 "You shall not commit adultery. 15 "You shall not steal. 16 "You shall not give false testimony against your neighbor. 17 "You shall not covet your neighbor's house. You shall not covet your neighbor's wife, or his male or female servant, his ox or donkey, or anything that belongs to your neighbor."

[5] Leviticus 19:15: Do not pervert justice; do not show partiality to the poor or favoritism to the great but judge your neighbor fairly.

d. God created all humans in his own image and likeness and all humans are, therefore, fundamentally the same and have inherent and equal dignity; God created only man and woman; and sex is a biological and objective fact and is not dependent on subjective experience;[6]

e. God created an ordered and comprehensible universe and granted to humans, without discrimination by race, sex, gender, culture or other identity characteristic, the capacities (including humility, curiosity, wisdom, the senses, and reason) to search for and discover universal truth. Science is a manifestation of this ordered universe;[7]

f. God created universal morality applicable to all humans, at all times, and in all places, equally;[8]

g. God gave humans free will. We are all born with same inherent capacity for sin, God will hold each person accountable for his or her own sin – not for the sins of one's ancestors or for the sins of the members of one's race, sex, gender, culture or other group or groups defined by similar identity characteristics (referred to herein as one's "**Collectivist Identity**" as opposed to one's individual identity). I am called to follow the moral lessons of God, so I do not believe it is right to hold people accountable for the wrongs of their ancestors or members of their race, sex, gender, culture or other group or groups defined by similar identity characteristics;[9]

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[6] Genisis 1:27: So God created mankind in his own image, in the image of God he created them; male and female he created them

[7] Genesis 1:1: In the beginning God created the heavens and the earth.
Ephesians 1:16-19: 16 I have not stopped giving thanks for you, remembering you in my prayers. 17 I keep asking that the God of our Lord Jesus Christ, the glorious Father, may give you the Spirit of wisdom and revelation, so that you may know him better. 18 I pray that the eyes of your heart may be enlightened in order that you may know the hope to which he has called you, the riches of his glorious inheritance in his holy people, 19 and his incomparably great power for us who believe.
Genesis 2:15: The Lord God took the man and put him in the Garden of Eden to work it and take care of it.
Genesis 1: 26: Then God said, "Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground."

[8] John 3:16-21: 16 For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life. 17 For God did not send his Son into the world to condemn the world, but to save the world through him. 18 Whoever believes in him is not condemned, but whoever does not believe stands condemned already because they have not believed in the name of God's one and only Son. 19 This is the verdict: Light has come into the world, but people loved darkness instead of light because their deeds were evil. 20 Everyone who does evil hates the light, and will not come into the light for fear that their deeds will be exposed. 21 But whoever lives by the truth comes into the light, so that it may be seen plainly that what they have done has been done in the sight of God.

[9] Roman 3:23: for all have sinned and fall short of the glory of God.
Roman 2:6-9: God "will repay each person according to what they have done." To those who by persistence in doing good seek glory, honor and immortality, he will give eternal life. But for those who are self-seeking and who reject the truth and follow evil, there will be wrath and anger. 9 There will be trouble and distress for every human being who does evil: first for the Jew, then for the Gentile; Ezekiel 18: 14-18: 14 "But suppose this son has a son who sees all the sins his father commits, and though he sees them, he does not do such things: 15 "He does not eat at the mountain shrines or look to the idols of Israel.

h. God is ultimately the true Lord and master of the land. All humans are just strangers and foreigners of the land in His eyes. We are all visitors on God's earth and, as trustees, are to care for earth;[10]

i. It is the lie of Satan that one is forever bound by sin and that all is hopeless;[11]

j. God's commandment is to forgive everyone always;[12]

k. God's commandment is not to repay anyone evil for evil, but to overcome evil with good;[13]

l. All Christians should spread the gospel, including associated facts and values, to all people of all races, nations and cultures;[14] and

m. My most important identity is defined by my relationship with and my faith in God and God's only Son, Jesus Christ, not by my Collectivist Identity.[15]

72. The LSA's Political Ideologies, and the way the LSA is implementing them, significantly interfere with my personal and religious beliefs for reasons including:

a. They attack my faith;

He does not defile his neighbor's wife. 16 He does not oppress anyone or require a pledge for a loan. He does not commit robbery but gives his food to the hungry and provides clothing for the naked. He withholds his hand from mistreating the poor and takes no interest or profit from them. He keeps my laws and follows my decrees.
He will not die for his father's sin; he will surely live. 18 But his father will die for his own sin, because he practiced extortion, robbed his brother and did what was wrong among his people.

[10] Chronicles 29: 11 Yours, Lord, is the greatness and the power and the glory and the majesty and the splendor, for everything in heaven and earth is yours.
Chronicles 29: 15 We are foreigners and strangers in your sight, as were all our ancestors. Our days on earth are like a shadow, without hope.

[11] John 3:16.

[12] Matthew 6:14-15: 14 For if you forgive other people when they sin against you, your heavenly Father will also forgive you. 15 But if you do not forgive others their sins, your Father will not forgive your sins.

[13] Romans 12:17-21: 17 Do not repay anyone evil for evil. Be careful to do what is right in the eyes of everyone. 18 If it is possible, as far as it depends on you, live at peace with everyone. 19 Do not take revenge, my dear friends, but leave room for God's wrath, for it is written: "It is mine to avenge; I will repay,"[d] says the Lord. 20 On the contrary: "If your enemy is hungry, feed him; if he is thirsty, give him something to drink. In doing this, you will heap burning coals on his head."[e] 21 Do not be overcome by evil, but overcome evil with good.

[14] Matthew 28:16-20 "Then the eleven disciples went to Galilee, to the mountain where Jesus had told them to go. 17 When they saw him, they worshiped him; but some doubted. 18 Then Jesus came to them and said, "All authority in heaven and on earth has been given to me. 19 Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, 20 and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age."

[15] John 3:16-21 16 For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life. 17 For God did not send his Son into the world to condemn the world, but to save the world through him. 18 Whoever believes in him is not condemned, but whoever does not believe stands condemned already because they have not believed in the name of God's one and only Son. 19 This is the verdict: Light has come into the world, but people loved darkness instead of light because their deeds were evil. 20 Everyone who does evil hates the light, and will not come into the light for fear that their deeds will be exposed. 21 But whoever lives by the truth comes into the light, so that it may be seen plainly that what they have done has been done in the sight of God.

b. They attack and mischaracterize my religious devotion by claiming that, because I reject the Political Ideologies, I do not love my neighbour as I love myself;

c. They interfere with my ability to tell the truth and spread the gospel, and they compel me to say things I believe to be false;

d. They claim to be a source of morality and a source of truths which conflict with my religious beliefs;

e. They claim that truth is relative not objective;

f. They require that I place faith in people rather than God;

g. They are hostile to the rule of law and equality before the law;

h. They claim the identity of a person is defined primarily with reference to their Collectivist Identity rather than, primarily, with reference to their individual character;

i. They claim that a sexual binary is false and oppressive, and that sex cannot be determined objectively but only subjectively;

j. They claim that Collectivist Identities each have different "ways of knowing" (a racial stereotype);

k. They claim that indigenous people have a unique interest and ability in the preservation of the environment (a racial stereotype);

l. They attribute collective and ancestral guilt;

m. They are unforgiving;

n. They reject the concept of personal responsibility; and

o. They advocate for discrimination to remedy historic discrimination.

C. CONCLUSION REGARDING PERSONAL AND RELIGIOUS BELIEFS

73. As explained above, the LSA's Political Ideologies and Political Materials and the way the LSA is implementing them conflict significantly with my personal and religious beliefs.

74. My objections to the Political Ideologies are explained by them, at base, as a failure to love people who aren't like me. While I know this is false, it is a fundamental and profoundly insulting attack on me as a human and Christian. My most sacred belief and value is that I should love God with my whole heart, mind and soul, love my neighbor as I love myself, and follow the morality of the Ten Commandments.

75. Because the LSA's Political Ideologies and Political Materials and the way the LSA is implementing them categorize my beliefs and desired expression as conduct deserving of sanction I fear hindrance and reprisals for my beliefs and expression of same.

II. LSA's POLITICAL IDEOLOGY AND POLITICAL MATERIALS

76. I have attached to my affidavit only a sample of the LSA's records to evidence the nature and extent of LSA's political activities. The LSA's website has far more information and records than what I attach hereto. I obtained all LSA records herein from the LSA's website, unless otherwise indicated.

77. Attached hereto and marked as **Exhibit "A"** to this my affidavit is a true copy of the LSA's 2010 annual report.

A. STRATEGIC PLAN AND REGULATORY OBJECTIVES

78. On December 5, 2019, the Benchers of the LSA passed a resolution to approve its 2020-2023 Strategic Plan and Regulatory Objectives.

79. Attached hereto and marked as **Exhibit "B"** to this my affidavit is a true copy of the minutes of the December 5, 2019, Benchers meeting.

80. Attached hereto and marked as **Exhibit "C"** to this my affidavit is a true copy of the LSA's Strategic Plan 2020 – 2023 (the "**Plan**").

81. The Plan references the "Truth and Reconciliation Commission's Calls to Action." Attached hereto and marked as **Exhibit "D"** to this my affidavit is a true copy of an excerpt of from the Truth and Reconciliation Commission's (the "**TRC**") Final Report, being the relevant 94 "calls to action" which, I am advised by Ashley Sexton, legal assistant to my counsel, Glenn Blackett, she obtained from the website of the Truth and Reconciliation Commission.

82. Attached hereto and marked as **Exhibit "E"** to this my affidavit is a true copy of the Regulatory Objectives of the LSA, "Executive Summary" dated December 9, 2019 (the "**Regulatory Objectives**").

83. Attached hereto and marked as **Exhibit "F"** to this my affidavit is a true copy of the LSA's 2019 annual report.

B. CODE OF CONDUCT

84. Attached hereto and marked as **Exhibit "G"** to this my affidavit is a true copy of the LSA's Code of Conduct, revised October 5, 2023 (the "**Code**") and the LSA's webpage commenting on these amendments.

C. MY EXPERIENCE

85. In the fall of 2020, the LSA launched the "'My Experience' Project." Attached hereto and marked as **Exhibit "H"** to this my affidavit is a true copy of the LSA's "'My Experience' Project" webpage.

86. Attached hereto and marked as **Exhibit "I"** to this my affidavit is a true copy of a sample of the experiences of racial discrimination and stereotyping shared by an anonymous lawyer, which I downloaded from the LSA website.

87. Attached hereto and marked as **Exhibit "J"** to this my affidavit is a true copy of the LSA's "'My Experience' Project Submissions Shared" webpage. Attached hereto and marked as Exhibit "K" to this my affidavit is a true copy of the "qualitative analysis" referenced on that page.

88. Attached hereto and marked as **Exhibit "L"** to this my affidavit is a true copy of a notice posted on the LSA's website from the Chief Justices of the Court of Justice of Alberta, Court of King's Bench of Alberta, and Court of Appeal of Alberta referencing

the "My Experience" project which, I am advised by Ms. Sexton, she obtained from the LSA website.

89. I do not believe that the "My Experience" Project was rigorous research or that it proved, or was material evidence of, the existence or impact of systemic discrimination in the legal system. I believe the LSA's "My Experience" Project was an exercise in deductive reasoning: the LSA started with a conclusion (there is systemic discrimination in the legal profession); sought only evidence to support the conclusion; and then purported to prove the conclusion with that evidence.

90. I believe in the existence of discrimination and its harmful effects.

91. I think that the racial segregation of indigenous people from other Canadians harms them and could be described as "systemic discrimination" according to the LSA's definition in the Acknowledgment of Systemic Discrimination at paragraph 96 . I am not an expert, but I understand that treaty rights, the Canadian Constitution, the *Indian Act*, and other instruments formalize this segregation. In addition, I am aware of the *R.* v. *Gladue* [1999] 1 SCR 688 decision and of various indigenous justice strategies in Alberta which, I believe, further promote the segregation of indigenous people. According to The Path, this system of formalized and increasing segregation is promoted by the LSA and is promoted by and on behalf of indigenous people. In fact, it quotes Harold Cardinal comparing the White Paper which proposed to revoke the *Indian Act* and other aspects of this system of racial segregation to "cultural genocide." I note that the Acknowledgment of Systemic Discrimination (see below) does not reference *The Indian Act* as evidence of systemic discrimination. It is my understanding that this system of racial segregation is not considered "systemic discrimination" by the LSA. This contradiction confuses me.

92. I do not believe in the existence of invisible or unconscious discrimination and do not believe that unfavourable socioeconomic disparities between Canadians of different Collectivist Identities are materially caused by discrimination, whether conscious, unconscious, individual or (subject to paragraph 91) systemic.

93. Subject to paragraph 91, I am not aware of and, therefore, do not believe there is systemic discrimination in the Canadian legal system or in Canada. In fact, my own experiences are evidence to me that no such systemic discrimination exists.

94. I immigrated to Canada in 2000 at 36 years old, with little money, without any qualification to practice law in Canada, with few contacts in Canada, without any experience of Canadian society, and as a "racialized" person (as the Political Ideologies would label me). And yet, by 2014 I had obtained a J.D. in law, had completed articles at one of Canada's most prestigious law firms, and had been called to the Alberta Bar. It was difficult and at times lonely, but through work ethic and the grace of God I succeeded. I now have an annual income that exceeds the Canadian average and am a member of a profession. According to the Political Ideologies, my belief in an individual's power, through work and God's grace, to obtain personal objectives, is "whiteness", etc. I believe such apathy is destructive to society and sin.

95. Attached hereto and marked as **Exhibit "M"** to this my affidavit is a true copy of the LSA's 2021 annual report.

D. ACKNOWLEDGMENT OF SYSTEMIC DISCRIMINATION

96. In about April 2022 the LSA posted an "Acknowledgment of Systemic Discrimination" to its website, a true copy of which is attached hereto and marked as **Exhibit "N"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the LSA website.

97. Attached hereto and marked as **Exhibit "O"** to this my affidavit is a true copy of a similar newsletter posted to the LSA website on April 25, 2022.

98. Attached hereto and marked as **Exhibit "P"** to this my affidavit is a true copy of the minutes of the April 21, 2022, Benchers meeting.

99. I am advised by Mr. Leighton B.U. Grey, K.C. that he send a "testimonial" to the LSA regarding the Acknowledgment of Systemic Discrimination and the LSA never responded or posted his testimonial. Attached hereto and marked as **Exhibit "Q"** to this my affidavit is a true copy of Mr. Grey's testimonial.

100. I believe that what Mr. Grey says in his testimonial is true.

E. CONTINUING PROFESSIONAL DEVELOPMENT HISTORY

101. I am advised by Katherine Kowalchuk, member of the LSA since 2003 that, prior to 2008, the LSA imposed no continuing professional development ("**CPD**") requirements on members apart from the general obligation on members to practice competently as reflected, for example, in the Code.

102. Attached hereto and marked as **Exhibit "R"** to this my affidavit is a true copy of the LSA's "Rules Amendment History".

103. According to the Rules Amendment History, on November 29, 2008, the LSA amended the Rules to require members complete CPD plans annually by October 1 of each year.

104. According to the Rules Amendment History, on September 29, 2016, the LSA amended the Rules to add Rule 67.3 which introduced automatic suspension for non-compliance with CPD requirements.

105. Attached hereto and marked as **Exhibit "S"** to this my affidavit is a true copy of the minutes of the Benchers meeting of May 14, 2020. According to the minutes, on May 14, 2020, the LSA decided to suspend all CPD requirements.

106. Attached hereto and marked as **Exhibit "T"** to this my affidavit is a true copy of the minutes of the Benchers meeting of October 1, 2021. According to the minutes, on October 1, 2021, the LSA extended the suspension of the CPD requirements until May 1, 2023.

F. THE PATH

107. On October 1, 2020, the Benchers carried a motion by a 2/3 majority to mandate "Indigenous Cultural Competency Education" called "The Path, Your Journey Through Indigenous Canada (Law Society of Alberta)" ("**The Path**") for all active LSA members. Attached hereto and marked as **Exhibit "U"** to this my affidavit is a true copy of the public minutes of the LSA Benchers' meeting of October 1, 2020.

108. On October 6, 2020, the LSA President announced that The Path was mandatory for all active members. The President stated:

> "… there are some competencies where it is appropriate that the Law Society mandate training. Indigenous Cultural Competency is one of those unique areas where mandatory training is important."

109. Attached hereto and marked as **Exhibit "DDDD"** to this my affidavit is a true copy of the above October 6, 2020, notice.

110. However, at this time, even if the LSA had authority under statute to impose such training, which I deny, they had no authority even under their own Rules. According to the Rules Amendment History, on December 3, 2020, almost two months after the President's public announcement, the LSA amended the Rules to purportedly authorize that mandate (by adding Rule 67.4).

111. I believe this demonstrates the subordination of rule of law to ideological interests.

112. On April 19, 2021, the LSA announced that members were required within 18 months (by October 20, 2022) to complete The Path. According to the LSA's website, this was partial satisfaction of TRC Call to Action #27. Attached hereto and marked as Exhibit "V" to this my affidavit is a true copy of the LSA's April 19, 2021, announcement discussing The Path mandatory education.

113. Attached hereto and marked as **Exhibit "W"** to this my affidavit is a true copy of a page from the LSA website describing The Path.

114. Attached hereto and marked as **Exhibit "X"** to this my affidavit is a true copy of The Path which I obtained from the website of NVision Insight Group Inc. which I understand was the developer of The Path. A version of The Path was provided to Dr. Joanna Williams for her expert opinion which was substantively identical to this exhibit.

115. I completed The Path "cultural competency" training as required.

116. According to an LSA notice, pursuant to Rule 67.4, 30 Alberta lawyers were automatically suspended for failure to complete The Path by the prescribed deadline. Attached hereto and marked as **Exhibit "Y"** to this my affidavit is a true copy of that LSA notice.

117. I objected to the LSA's Rule 67.4 because I thought it was *ultra* vires on its face but, also, because The Path demonstrated that Rule 67.4 was not a tool to enforce professional competence but to enforce "cultural competence" which, as explained above, I believe to be simply ideological indoctrination. Attached hereto and marked as **Exhibit "Z"** to this my affidavit is a true copy of my "course survey" answer provided during The Path. I believe what I said in the survey except:

    a. Subject to paragraph 91, I no longer believe it would assist lawyers to understand the present and material issues facing indigenous people; and

    b. I believe it tends to cause lawyers to misunderstand the issues facing indigenous people by not focusing on pragmatic solutions.

118. Other lawyers in Alberta objected to Rule 67.4 for the same or other reasons.

119. I spearheaded an effort to revoke Rule 67.4 by a special meeting of the LSA's members.

120. Attached hereto and marked as **Exhibit "AA"** to this my affidavit is a true copy of letter I sent to the LSA on January 13, 2023, enclosing my statutory declaration and

a petition signed by 51 members which forced a special meeting of the members to consider a resolution.

121. On January 25, 2023, I emailed Ms. Osler to suggest procedures to ensure the vote on the motion was fair and informed. Attached hereto and marked as **Exhibit "BB"** to this my affidavit is a true copy of that email.

122. On January 26, 2023, Ms. Osler responded, refusing all of my requests including that the meeting last longer than 20 minutes. Attached hereto and marked as **Exhibit "CC"** to this my affidavit is a true copy of that email. When the meeting began the chair advised that the meeting would not be limited to 20 minutes, as this email suggested.

123. Attached hereto and marked as **Exhibit "DD"** to this my affidavit is a true copy of a notice I received from the LSA on January 26, 2023.

124. I attended the LSA's annual general meeting on December 1, 2022. At that meeting Ken Warren K.C., President, advised members that the LSA had obtained an opinion that Rule 67.4 was *intra vires* (the "**Opinion**").

125. Attached hereto and marked as **Exhibit "EE"** to this my affidavit is a true copy of a letter dated January 30, 2023, from Mr Blackett (not my counsel at the time) which, I am advised by Ms. Sexton, was sent to, *inter alia,* the LSA.

126. I am advised by Ms. Sexton that, attached to that letter is a December 6, 2022, letter which Mr. Blackett received from Ms. Osler. In that letter Ms. Osler refuses to produce the Opinion. To date, the LSA has, so far as I am aware, refused to release the Opinion publicly.

127. I wrote to Ms. Osler and the Benchers on January 31, 2023, setting out in detail my reasons for supporting the motion. I believe what I said in that letter, except I no longer agree the LSA should be involved in matters of social or political education of any sort and do not agree that "cultural competence" as understood by the LSA is valuable. Attached hereto and marked as **Exhibit "FF"** to this my affidavit is a true copy of that letter. In Mr. Blackett's letter of January 30, 2023, he requested that this January 31, 2023,[16] letter be provided by the LSA to all members in advance of the meeting.

128. Contrary to Mr. Blackett's request, my January 31, 2023, letter was not circulated, However, the Benchers did circulate their own submissions on the resolution to (so far as I am aware) the entire Alberta bar. Attached hereto and marked as **Exhibit "GG"** to this my affidavit is a true copy of a notice I received from the LSA on January 31, 2023, regarding a letter from the Benchers to the profession regarding their position on the motion (the "**Position Letter**").

129. Attached hereto and marked as **Exhibit "HH"** to this my affidavit is a true copy of the Position Letter.

130. On February 1, 2023, I wrote to Ms. Osler requesting that, having circulated its own Position Letter by use of its regulatory power (i.e., its member database and administrative resources), it likewise circulate my January 31, 2023, letter. Ms. Osler responded on February 1, 2023, saying the LSA had circulated my January 13, 2023, letter (which provided little explanation of my position), and that I was "free to

[16] Mr. Blackett's letter refers to my January 30, 2023, letter, but my letter was not finalized and sent until the next day.

distribute [my] letters and that of the other petitioners through your personal and professional channels." Attached hereto and marked as **Exhibit "II"** to this my affidavit is a true copy of that email exchange.

131. The publicly available member information on the LSA's website does not contain any contact information for most of the lawyers in Alberta. To recreate the LSA's member database would be an enormous task, if even possible, especially for a sole practitioner such as myself.

132. I believe the foregoing demonstrates one type of damage to society the LSA's Political Ideologies perpetuate: the subordination of procedural fairness and democratic discourse to ideological interests.

133. Attached hereto and marked as **Exhibit "JJ"** to this my affidavit is a true copy of an email I received from Mr. Grey to me and other lawyers on the subject of The Path and reconciliation generally. I believe Mr. Grey expresses valid reasons to object to The Path and I agree with much of what he says.

134. Attached hereto and marked as **Exhibit "KK"** to this my affidavit is a true copy of an email I was copied on from Mr. Charles H. McKee, a retired lawyer of British Columbia, to Mr. Ken Warren, KC, President of LSA, as he then was, dated February 5, 2023. I believe Mr. McKee expresses valid reasons to object to The Path.

135. So far as I am aware, the LSA did not circulate to members any position statement supporting the resolution, including mine, Mr. Blackett's, Mr. Grey's, or Mr. McKee's.

136. For the reasons expressed by Mr. Grey, Mr. McKee, by me in the foregoing testimony, and for other reasons, I dispute the accuracy, balance, and propriety of The Path.

137. The group of lawyers who supported the motion to repeal Rule 67.4, including myself, were pilloried, privately and publicly, as, *inter alia*, ignorant and racist. For example, the Canadian Broadcasting Corporation carried a column, in which the author (an Alberta lawyer, according to his CBC bio) claimed that denial of the existence of systemic discrimination is "embarrassingly irresponsible and inexcusably ignorant," and even a breach of the rule of law. Attached hereto and marked as **Exhibit "LL"** to this my affidavit is a true copy of that column which, I am advised by Ms. Sexton, she obtained from the CBC website.

138. Similar assaults on the character and intelligence of supporters, including me, are below:

a. attached hereto and marked as **Exhibit "MM"** to this my affidavit is a true copy of an article run by Raven, "a registered charity with a mission to raise funds for Indigenous People's access to justice," which, I am advised by Ms. Sexton, she obtained from the Raven website;

b. attached hereto and marked as **Exhibit "NN"** to this my affidavit is a true copy of a column in Ricochet, "public interest journalism" which, I am advised by Ms. Sexton, she obtained from the Ricochet website;

c. attached hereto and marked as **Exhibit "OO"** to this my affidavit is a true copy of an article which ran in the St. Albert Gazette which, I am advised by Ms. Sexton, she obtained from the Gazette website;

d. attached hereto and marked as **Exhibit "PP"** to this my affidavit is a true copy of an article which ran in Canadian Lawyer Magazine which, I am advised by Ms. Sexton, she obtained from the Canadian Lawyer Magazine website;

e. attached hereto and marked as **Exhibit "QQ"** to this my affidavit is a true copy of an article which ran in the Toronto Star which, I am advised by Ms. Sexton, she obtained from the Toronto Star website;

f. attached hereto as marked as **Exhibit "RR"** to this my affidavit is a true copy of an email I received on February 7, 2023, from Anita Simaganis, who I don't know;

g. attached hereto as marked as **Exhibit "SS"** to this my affidavit is a true copy of an email I received on February 7, 2023, from Eunice Roulette, who I don't know;

h. attached hereto as marked as **Exhibit "TT"** to this my affidavit is a true copy of an email I received on February 5, 2023, from "Tim", who I don't know;

i. attached hereto as marked as **Exhibit "UU"** to this my affidavit is a true copy of an email I received on February 3, 2023, from Robert McCrank, a member of the LSA; and

j. during the special meeting, one member described the comments in support of the motion as "violence."

139. I believe this demonstrates another type of damage to society the LSA's Political Ideologies cause. They promote the division of lawyers across ideological lines and encourage the self-righteous to impugn the morality and intelligence of ideological opponents. In China this kind of social opprobrium to enforce ideological compliance is called "struggle session" and "social death."

140. Attached hereto and marked as **Exhibit "VV"** to this my affidavit is a true copy of an LSA announcement on the result of the Special Meeting on R 67.4.

141. Attached hereto and marked as **Exhibit "WW"** to this my affidavit is a true copy of a copy of the minutes of the LSA Special Meeting of February 6, 2023.

G. NEW PROFESSIONAL DEVELOPMENT PROFILE and CPD TOOL

142. From late 2020 to May of 2023 the LSA imposed no CPD requirement on members except The Path.

143. Attached hereto and marked as **Exhibit "XX"** to this my affidavit is a true copy of the minutes of the Benchers meeting of April 27, 2023. According to the minutes, LSA amended Rules 67.2 and 67.3 effective April 27, 2023.

144. Attached hereto and marked as **Exhibit "YY"** to this my affidavit is a true copy of an excerpt of the Rules following this amendment.

145. I created and attach hereto as **Exhibit "ZZ"** to this my affidavit a true copy of a blackline comparison showing the changes made to the Rules on April 27, 2023.

146. Attached hereto and marked as **Exhibit "AAA"** to this my affidavit is a true copy of a notice to the bar from the LSA dated May 2, 2023, regarding the April 27, 2023, amendment to the Rules.

147. Attached hereto and marked as **Exhibit "BBB"** to this my affidavit is a true copy of the LSA's website explaining the new CPD requirements, including the "CPD Tool" which, I am advised by Ms. Sexton, she obtained from the LSA website. Referenced on that page are the following:

a. CPD Tool User Guide, a true copy of which is attached hereto and marked as **Exhibit "CCC"** to this my affidavit;

b. CPD Frequently Asked Questions, a true copy of which is attached hereto and marked as **Exhibit "DDD"** to this my affidavit;

c. CPD Resources, a true copy of which is attached hereto and marked as **Exhibit "EEE"** to this my affidavit;

d. CPD Plan Review Process, a true copy of which is attached hereto and marked as **Exhibit "FFF"** to this my affidavit; and

e. CPD Program Guidelines, a true copy of which is attached hereto and marked as **Exhibit "GGG"** to this my affidavit,

each of which, I am advised by Ms. Sexton, she obtained from the LSA website.

148. Attached hereto and marked as **Exhibit "HHH"** to this my affidavit is a true copy of the LSA's June 2022 "Professional Development Profile for Alberta Lawyers" (the "**Profile**"). I believe that many components of the Profile, as understood by the Political Ideologies, are:

a. untrue;

b. destructive to society;

c. contrary to the Canadian Constitution;

d. *ultra vires* the LSA; or

e. one or more of the foregoing,

including, especially:

f. 1.2 "Adapt communications appropriately to … enumerated groups…;"

g. 2.2 "Engage in intentional self-reflection …";

h. 3 "Cultural Competence, Equity, Diversity and Inclusion";

i. 7.3 "Advance access to legal services and access to justice" (according to the Regulatory Objectives this requires cultural competency and some measure of racial segregation);

j. 8 "Truth and Reconciliation"; and

k. 9.3 "Recognize impact of one's own behaviours on others' well-being."

149. Under express protest, on September 29, 2023, I complied with the above CPD requirement and assessed my "competence" against the Profile using the CPD Tool. Attached hereto and marked as **Exhibit "III"** to this my affidavit is a true copy of the protest I delivered to the LSA prior to completing such CPD planning.

150. The CPD Tool was so simplistic that completing a plan by use of the CPD Tool alone seemed to be of no value whatsoever. The CPD Tool only has value to the extent a lawyer independently creates a plan on his or her own and inserts the details of that plan into the CPD Tool. I do not, therefore, know what "value" the CPD Tool adds, *per*

se, except that it requires the creation of a CPD Plan with reference only to the competencies in the Profile and it requires that lawyers submit their plans to the LSA.

151. Without a lawyer independently creating a plan on his or her own and inserting the details of the plan into the CPD Tool, a CPD plan could be easily prepared by lawyers using the CPD Tool with the perfunctory push of a few buttons.

152. The CPD Tool works as follows.

153. It required that I choose two competency from the nine "domains" in the Profile.

154. I was then required to assess each of two competencies on a scale of:

a. pre-discovery;

b. discover;

c. attempt;

d. do;

e. excel; and

f. lead.

155. It then asked me what activities I planned to help develop each of two competencies from a list:

g. attend a conference – in person;

h. attend a conference– online;

i. attend organization or association meetings or events;

j. be a mentor or mentee;

k. create and publish/share a resource;

l. implement a new process to improve your practice;

m. implement a new routine or habit (practice or personal);

n. join an online forum;

o. learn on the job;

p. listen to a podcast;

q. plan and host a learning event for your firm or organization;

r. read a book;

s. review a written resource;

t. take a course or seminar – in person;

u. take a course or seminar – online;

v. teach a conference, course or seminar;

w. volunteer;

x. watch a video;

y. other.

156. The tool did not recommend to me any specific activities like, for example, particular upcoming conferences in my chosen domain, or books or other recommended written resources that dealt with the domain I had chosen.

157. I was then asked, for the two competencies, to complete a blank space with, "… further details about your chosen activities, reasons for picking them, and/or how you hope these activities will help you enhance or develop this competency." This was the only space in the CPD Tool in which a lawyer could actually record any substantive plan which plan the CPD Tool provided no meaningful assistance in preparing.

158. The CPD Tool required that I "submit" my plan to the LSA before the plan was complete.

159. Given the foregoing, I am aware of no purpose the CPD Tool serves except to:

a. focus CPD plans on the "competencies" outlines in the Profile; and

b. force the communication of the CPD plans to the LSA.

160. Attached hereto and marked as **Exhibit "JJJ"** to this my affidavit is a true copy of a notification circulated by the LSA on October 23, 2023, advising that 68 Alberta Lawyers had been suspended effective October 2, 2023, for failure to comply with Rule 67.2 and 67.3.

H. OTHER LSA RESOURCES AND INITIATIVES

161. Attached hereto and marked as **Exhibit "KKK"** to this my affidavit is a true copy of the LSA's webpage called "Key Resources > Cultural Competence & Equity, Diversity and Inclusion," which, I am advised by Ms. Sexton, she obtained from the LSA website.

162. That page links to a number of resources including:

j. The Calgary Anti-Racism Education website which includes a:

i. glossary, a true copy of which attached hereto and marked as **Exhibit "LLL"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the Calgary Anti-Racism Education website;

ii. an article titled "Strategies of Liberal Racism" a true copy of which is attached hereto and marked as **Exhibit "MMM"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the Calgary Anti-Racism Education website;

iii. an article titled "Whiteness" a true copy of which attached hereto and marked as **Exhibit "NNN"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the Calgary Anti-Racism Education website;

k. the Canadian Bar Association website including:

i. a page titled "How Lawyers Can be Good Allies – The Principles of Allyship" a true copy of which attached hereto and marked as **Exhibit "OOO"** to this my affidavit;

ii. a link in the preceding resource directs to an "Ally Bill of Responsibilities" a true copy of which attached hereto and marked as **Exhibit "PPP"** to this my affidavit;

iii. a page titled "Increasing your IQ (Your Indigenous Quotient)" a true copy of which attached hereto and marked as **Exhibit "QQQ"** to this my affidavit,

each of which, I am advised by Ms. Sexton, she obtained from the Canadian Bar Association website;

l. an article titled "Cultural Competency: A Necessary Skill for the 21st Century Attorney" a true copy of which attached hereto and marked as **Exhibit "RRR"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the link on the LSA's website;

m. an article titled "From Discrimination to Systemic Racism: Understanding Social Construction" a true copy of which attached hereto and marked as **Exhibit "SSS"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the link on the LSA's website.

163. Ms. Osler made public statements with respect to these resources and in regard to the features of the CPD Tool, according to an Epoch Times article dated July 19, 2023, a true copy of which is attached hereto and marked as **Exhibit "TTT"** to this my affidavit which, I am advised by Ms. Sexton, she obtained from the Epoch Times website.

164. Attached hereto and marked as **Exhibit "UUU"** to this my affidavit is a true copy of the LSA's website description of the mandate of its Equity, Diversity, and Inclusion Committee which, I am advised by Ms. Sexton, she obtained from the LSA website.

165. Attached hereto and marked as **Exhibit "VVV"** to this my affidavit is a true copy of the LSA's webpage titled, "Indigenous Land Acknowledgements" which, I am advised by Ms. Sexton, she obtained from the LSA website.

166. Attached hereto and marked as **Exhibit "WWW"** to this my affidavit is a true copy of the LSA's webpage titled, "Articling Placement Program," which, I am advised by Ms. Sexton, she obtained from the LSA website.

167. On that page the LSA references the concepts of harassment and discrimination as being defined in the Federation of Law Societies of Canada "Model Code of Professional Conduct". Attached hereto and marked as **Exhibit "XXX"** to this my affidavit is a true copy of the Model Code of Professional Conduct which, I am advised by Ms. Sexton, she obtained from the LSA link.

168. Attached hereto and marked as **Exhibit "YYY"** to this my affidavit is a true copy of the LSA's webpage titled, "Complaints About Discrimination or Harassment in the Profession" which, I am advised by Ms. Sexton, she obtained from the LSA website.

169. Attached hereto and marked as **Exhibit "ZZZ"** to this my affidavit is a true copy of the minutes of a meeting of the Benchers on February 24, 2022.

III. OBJECTION TO LSA'S POLITICAL IDEOLOGIES

170. Attached hereto and marked as Exhibit **"AAAA"** to this my affidavit is a true copy of a letter dated July 17, 2023, that I delivered to Mr. Bill Hendsbee, KC, President, Ms. Osler, the Honourable Premier Danielle Smith, the Honourable Minister Mickey Amery and the Honourable Members of Provincial Caucus signed by 30 Alberta lawyers including myself, 16 lawyers of other provinces of Canada, and 24 other Canadian professionals and citizens objecting to the LSA's political objective.

171. I believe the facts and arguments expressed in the letter are good and correct.

172. Attached hereto and marked as **Exhibit "BBBB"** to this my affidavit is a true copy of a July 27, 2023, letter I received from Mr. Hendsbee in response to the above letter.

173. Attached hereto and marked as **Exhibit "CCCC"** to this my affidavit is a true copy of a September 19, 2023, letter I received from Mr. Mickey Amery, Minister of Justice of Alberta in response to the above letter.

IV. CONCLUSION

174. I make this Affidavit in support of my application for judicial review and for declarations and an injunction and for no improper purpose.

SWORN BEFORE ME AT)
)
Calgary, Alberta,)
)
this 6th day of December, 2023)
)
)
)

Glenn Blackett
Barrister & Solicitor

Yue (Roger) Song



LAW SOCIETY of ALBERTA

STRATEGIC PLAN

2020-2023



EQUITY, DIVERSITY & INCLUSION

The Law Society leads the profession to increase cultural competency and promotes a profession that is representative of the public it serves.

1. Increase cultural competency of the organization and the profession.
2. Increase diversity and inclusion in the delivery, development and engagement of Law Society programs and services.
3. Increase diversity and inclusion on the Law Society Board.
4. Increase retention of lawyers from diverse communities in the profession.
5. Remove barriers to accessing Law Society resources, programs and services.
6. Increase collaboration with stakeholders to respond to the Truth and Reconciliation Commission’s Calls to Action.

CORE IDEOLOGY

Core ideology describes an organization's consistent identity that transcends all changes related to its relevant environment. Core ideology consists of three notions: **core purpose, mission and core values**.

Core purpose describes the organization's reason for being.

The mission describes who we are, what we do and how we do it.

Our **core values** are the enduring principles that guide the behaviour of the organization.

CORE PURPOSE

Regulate the legal profession in the public interest.

MISSION STATEMENT

Ensure high standards of professional conduct and competency through the governance and independent regulation of the legal profession.

CORE VALUES

The Law Society of Alberta values:

- **Integrity** – Honest and ethical behaviour.
- **Transparency** – Open, timely and clear processes.
- **Fairness** – Equitable treatment of people interacting with the Law Society and the profession we govern.
- **Respect** – Equity, diversity and inclusion in the profession, the Law Society and our interactions with the public.
- **Independence** – Autonomous regulation of an independent legal profession and commitment to the rule of law.
- **Visionary Leadership** – Innovation in regulation, governance and business operations.

LAW SOCIETY of ALBERTA

Regulatory Objectives of the Law Society of Alberta

Executive Summary

December 5, 2019

LAW SOCIETY of ALBERTA

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Regulatory Objectives of the Law Society of Alberta

Statement of Regulatory Objectives

The core purpose of the Law Society of Alberta ("Law Society") is to regulate the legal profession in the public interest.

The Law Society views its core purpose as an active obligation and duty to uphold and protect the public interest in the delivery of legal services. The public interest, as it applies to the work of the Law Society, will be upheld and protected through the following regulatory objectives:

a) Protect those who use legal services;
b) Promote the independence of the legal profession, the administration of justice and the rule of law;
c) Create and promote required standards for the ethical and competent delivery of legal services and enforce compliance with those standards in a manner that is fair, transparent, efficient, proactive, proportionate and principled;
d) Promote access to legal services; and
e) Promote equity, diversity and inclusion in the legal profession in the delivery of legal services.

The Law Society will have regard for these regulatory objectives when discharging its regulatory functions.

Regulatory Purpose of the Law Society – Regulate in the Public Interest

1. In Alberta, the legal profession is self-regulating, meaning a board (called the Benchers) consisting of 20 lawyers elected by the legal profession and four appointed members of the public governs the affairs of the Law Society. The Benchers establish the *Rules of the Law Society of Alberta* (the "Rules") that regulate lawyers in the province. The Law Society receives the authority to regulate the legal profession through legislation called the *Legal Profession Act*[1] (the "*Act*"), but otherwise the Law Society regulates the profession independently of the government.

2. The core purpose of the Law Society is to regulate the legal profession in the public interest. The Law Society sees this as an active duty to uphold and protect the public interest in the delivery of legal services. This requires the Law Society to put the interests of the public ahead of the interests of the lawyers it regulates.

3. The "public interest" refers to society at large. The actions that lawyers take have the potential to affect not only the clients they represent, but also society as a whole. Likewise, many decisions and actions taken by the Law Society have the potential to impact the societal view of the legal profession and the profession's role in the legal system.

[1] Revised Statutes of Alberta 2000 Chapter L-8.

What are Regulatory Objectives?

4. In order to better articulate how it will regulate the legal profession in a manner that upholds and protects the public interest, the Law Society has developed a set of regulatory objectives that it will use as a guide for all of its activities. In other words, the regulatory objectives of the Law Society set out the purpose and parameters of lawyer regulation.

5. This executive summary is intended to assist both those regulating the legal profession and those being regulated to better understand the relationship between the regulator and the profession and its importance to the public interest. It is also intended to provide clarity to the public to understand the role of the Law Society, the purpose of lawyer regulation, and how that regulation relates to them.

6. The Law Society will use these regulatory objectives as a guide when making regulatory, governance and operational decisions. However, these regulatory objectives will not serve as a checklist of objectives that each decision or initiative of the Law Society must achieve. That will not be possible in every case, given limitations imposed by resources, time, the mandate of the Law Society and other factors outside of the Law Society's control. In fact, there may be times when two or more of the regulatory objectives conflict with one another. In these cases, the Law Society will weigh the costs and benefits of aligning with each objective.

7. The regulatory objectives have not been ranked and appear in no particular order. There is a great deal of overlap between the objectives, and they should be read as a collective whole rather than as separate objectives. Together, they illustrate the Law Society's understanding of its mandate to regulate the legal profession in the public interest.

Regulatory Objectives of the Law Society

a) Protect those who use legal services

8. People often seek legal services in times of distress, making them vulnerable and sometimes unable to discern whether they are receiving quality services. To protect those accessing the services of a lawyer, the Law Society has put several proactive measures in place through standards and programs for lawyers to promote ethical and competent practice. The Law Society will strive to ensure its standards for legal service providers continue to be appropriate and effective, through an understanding of the current legal services marketplace and the risks to those who use legal services.

9. Legal services are increasingly being delivered by different types of providers, and through an array of different means, and the Law Society recognizes that it has a role to play in ensuring that the public understands the differences in the options available to them, and the protections or risks that come with accessing legal services in different ways. Where the Law Society believes it is in the public interest to do so (meaning, it would not cause harm) it will work with non-traditional providers to ensure the services they provide to the public are safe.

b) Promote independence of the legal profession, the administration of justice and the rule of law

10. The existence of an independent legal profession, free from government influence, supports a rule of law culture which in turn supports the proper administration of justice.[2] These are crucial elements of a free and democratic society. The rule of law requires that both government officials and citizens be bound by the law and act consistently with the law.[3] The administration of justice refers to the public's confidence in the laws, legal institutions and public authorities of society. It is in the public interest to have an effective legal and court system, that supports the concept of equal justice for all within an open, ordered and impartial system.

11. The Law Society's independence from the government provides a check and balance in the legal system to ensure that transparency, accountability and the rule of law are upheld, including in instances where citizens find themselves in opposition to the government. There can be no functional judiciary without an independent arm of lawyers who act free of political pressure and motivations.[4]

12. Lawyers and legal regulators have an ethical duty to make efforts to improve the administration of justice and to maintain public confidence in the overall effectiveness of the legal system.[5] The Law Society carries out its regulatory duties in a manner consistent with the rule of law. It takes opportunities to support the rule of law and improve the administration of justice when they arise.

c) Create and promote required standards for the ethical and competent delivery of legal services and enforce compliance with those standards in a manner that is fair, transparent, efficient, proportionate, proactive and principled

13. One of the primary roles of the Law Society is to ensure that the legal services provided by lawyers in Alberta are ethical and competent. The *Act* provides that the Benchers may make Rules to set requirements and standards for the profession and that the Law Society may impose a sanction on a lawyer for failing to meet those standards. The Law Society takes proactive steps to educate and assist lawyers in achieving the goals of competent and ethical practice and the vast majority of lawyers comply with these standards. In instances where lawyers fall short, the Law Society has mechanisms to impose sanctions and to demonstrate to the profession the importance of adhering to their professional requirements.

14. The Law Society aims to enforce these standards in a manner that is fair, proportionate, efficient, transparent, principled and proactive. The purpose of disciplining lawyers is to protect the public, the legal profession, and legal institutions against lawyers who have

[2] Terry et al., supra note 2 at pp. 2735-2736.
[3] Brian Tamanaha, *A Concise Guide to the Rule of Law*, (St. John's University School of Law: 2007) at p. 3.
[4] *R v Sussex Justices,* [1924] 1 KB 256.
[5] Law Society of Alberta, *Code of Conduct* (Calgary: April, 2018) at s. 5.6. See also Solicitor's Regulation Authority, *Approach to regulation and its reform: Policy statement,* (Solicitor's Regulation Authority: 2015) at pp. 2-3.

demonstrated an unwillingness or an inability to comply with professional standards.[6] This is another tool to support the rule of law, the proper administration of justice and the independence of the legal profession, while also protecting members of the public who might be harmed by incompetent legal services or conduct unbecoming of a lawyer.

d) Promoting access to legal services

15. Another important aspect of upholding the rule of law and the proper administration of justice is the availability and accessibility of legal services. It is in the public interest for all people to have access to the legal services they require.[7] If the public does not have access to legal services or to comprehensible and reliable information about the legal system, their confidence in the system will be eroded. Access to legal services is most commonly related to the cost of legal services, but involves many other issues relating to availability, quality, and barriers caused by factors such as geography, language, literacy, disability and cultural differences.

16. The Law Society supports non-profit organizations and lawyers who facilitate access to legal services and public legal information and education initiatives. It collaborates with other stakeholders to look for ways to improve access to the legal system overall and encourages innovative and proportionate approaches to the delivery of legal services. The Law Society works to make its own processes accessible and easy to comprehend. Finally, the Law Society strives to maintain an understanding of the changing legal services market, from the perspective of both those providing and using legal services, to better understand whether its regulatory requirements are creating unnecessary barriers to legal services.

e) Promoting equity, diversity and inclusion in the legal profession and in the delivery of legal services

17. The Law Society believes it is in the public interest for the legal profession to be representative of the population it serves. This is connected to accessibility of legal services, in that the public should have a meaningful choice in who represents them. This is particularly true in the case of groups who might be underrepresented in society, have cultural or language barriers to working with certain lawyers or firms, or simply feel more comfortable having someone who understands their culture representing them, particularly in cases where that person might be in a vulnerable legal situation.

18. The Law Society will look for ways to remove regulatory barriers to entry, retention and advancement in the legal profession and ensure a level playing field for all who seek to serve the public as part of the legal profession. The Law Society will also consider ways to be more inclusive in its own processes, consulting with underrepresented or vulnerable groups in the public and the profession to better understand how cultural differences may have an impact on interactions with the Law Society. The Law Society will promote cultural competence both within the organization and in the profession.

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[6] Charles Wolfram, *Modern Legal Ethics* (West Publishing: 1986) at p. 79.
[7] See Brent Cotter, *Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada*, (2012) 63 U.N.B.L.J. 54 at p. 67; and Lucinda Vandervort, *Access to Justice and the Public Interest in the Administration of Justice*, 63 U.N.B.L.J. 125 at p. 125.

LAW SOCIETY of ALBERTA

Law Society of Alberta

Code of Conduct

October 5, 2023

6.3 Discrimination and Harassment

Discrimination

6.3-1 A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely

on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

(a) harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);

(b) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;

(c) charging higher fees on the basis of any personal characteristic protected by applicable law;

(d) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;

(e) using derogatory racial, gendered, or religious language to describe a person or group of persons;

(f) failing to provide reasonable accommodation to the point of undue hardship;

(g) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;

(h) providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;

(i) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

(j) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(k) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics protected by applicable law; or

(l) any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

6.3-2 A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

(a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

(b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

(c) bullying;

(d) verbal abuse;

(e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

(f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(g) assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

(a) unfair or excessive criticism;

(b) ridicule;

(c) humiliation;

(d) exclusion or isolation;

(e) constantly changing or setting unrealistic work targets; or

(f) threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

(a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;

(b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;

(c) when submission to such conduct is implicitly or explicitly made a condition of employment;

(d) when submission to or rejection of such conduct is used as a basis for any employment decision, including;

i. Loss of opportunity;

ii. The allocation of work;

iii. Promotion or demotion;

iv. Remuneration or loss of remuneration;

v. Job security; or

vi. Benefits affecting the employee;

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;

(f) when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or

(g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

(a) displaying sexualized or other demeaning or derogatory images;

(b) sexually suggestive or intimidating comments, gestures or threats;

(c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(d) innuendoes, leering or comments about a person's dress or appearance;

(e) gender-based insults or sexist remarks;

(f) communications with sexual overtones;

(g) inquiries or comments about a person's sex life;

(h) sexual flirtations, advances, propositions, invitations or requests;

(i) unsolicited or unwelcome physical contact or touching;

(j) sexual violence; or

(k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal

6.3-4 A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

(a) inquired about their rights or the rights of others;

Law Society of Alberta Benchers Approve Acknowledgment of Systemic Discrimination

Acknowledgment of Systemic Discrimination

In the Fall of 2020, the Law Society of Alberta invited lawyers, articling students, law students and internationally trained lawyers (including those not yet called to the bar) to share their experiences of racial discrimination and stereotyping with us. Those who bravely shared their stories were also a voice for some who could not speak. Each submission impacted our organization and the legal profession more broadly.

The Law Society of Alberta acknowledges the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession. The Law Society views its core purpose as an active obligation and duty to uphold and protect the public interest in the delivery of legal services. We do this through our regulatory objectives, one of which is to **promote equity, diversity and inclusion in the legal profession and in the delivery of legal services (https://documents.lawsociety.ab.ca/wp-content/uploads/2020/01/Executive-Summary-Regulatory-Objectives-of-the-Law-Society-of-Alberta.pdf#page=6)**.

When we use the term systemic discrimination, we mean policies, procedures and practices within systems and institutions that result in disproportionate opportunities or disadvantages for people with a common set of characteristics such as age, culture, disability, gender, race, religion, sexual orientation, and/or socio-economic status. Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behaviour, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.

We recognize that systemic discrimination goes against principles of fairness that the legal profession values and upholds. Acknowledging that systemic discrimination exists within the Law Society, the legal profession and the justice system is a step towards improving how we protect the public interest and fulfill our regulatory objectives. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal profession more equitable, increasing diversity and promoting inclusion. Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it.

The Law Society has made efforts to address issues in the legal profession and the justice system arising from historical, deep-rooted inequities. We know that many lawyers are committed to equity, diversity and inclusion in the legal profession and are taking active steps to promote those ideals. However, through initiatives such as our Exit Surveys (2005–2010), the **Articling Program Assessment Survey (https://www.lawsociety.ab.ca/2019-articling-survey-results/)** (2019), and the **"My Experience" Project (https://www.lawsocietylistens.ca/my-experience-project)** (2020–2021), we have heard the voices of those in the legal profession suffering from the disproportionate harmful impacts of systemic discrimination. We recognize and accept the need to take **further steps (#resources)** to address systemic discrimination within the Law Society, the legal profession and the justice system.

The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture. We are committed to continuing our efforts to learn, to listen, to act and to lead Alberta's legal profession by example. In collaboration with the legal profession, stakeholders and justice system partners, the Law Society will continue to work diligently towards building a more diverse, equitable and inclusive legal profession for all.

^ Moving Forward (#accordion_1_collapse_1

As part of our commitment to take further steps to address systemic discrimination, the Law Society will lead by example. We have already started this work by ensuring that our Benchers participated in training focused on unconscious bias and centering equity in their governance and decision-making roles, and by mandating that lawyers complete **Indigenous Cultural Competency Education (https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/indigenous-cultural-competency-education/)** through The Path (Alberta).

In 2022, everyone within the Law Society, Canadian Centre for Professional Legal Education (CPLED) and Alberta Lawyers Indemnity Association (ALIA) will also participate in similar training

that will be tailored to incorporate department-specific material. 087

The Law Society will continue to work on a variety of projects around gathering equity, diversity and inclusion data, supporting vulnerable members of the profession, making our conduct proceedings more inclusive and collaborating with stakeholders to tackle systemic barriers to inclusion and respond to the **Truth and Reconciliation Commission's Call for law societies (https://www.lawsociety.ab.ca/about-us/key-initiatives/indigenous-initiatives/truth-and-reconciliation-commission-call-to-action-27/)**. The Law Society will also continue to offer complimentary workshops on discrete issues, such as cultural competence, to the profession. The Law Society will also continue to offer resources and updates on new projects.

Through ongoing actionable work in this area, **the Law Society will continue to lead a profession that is representative of the public it serves (https://documents.lawsociety.ab.ca/wp-content/uploads/2020/01/LSA-Strategic-Plan-2020-2023.pdf#page=13)**.

Learn More (#accordion_1_collapse_2

The following initiatives highlight some stories and experiences shared by members of the legal profession in Alberta and throughout Canada.

"My Experience" Project – Law Society of Alberta

"But I Look Like a Lawyer" – Federation of Asian Canadian Lawyers (FACL) – BC

"But I Was Wearing a Suit" – Grassroots project of a group of Indigenous lawyers, with the support of the Continuing Legal Education Society of BC and the Law Society of BC

"In Their Shoes" – CBA National

We are in the process of gathering resources to assist the profession in understanding systemic discrimination, its various forms, its impact on different communities and how lawyers can combat its harmful impacts. These resources will be shared with the profession in the coming months.

The work of building a more inclusive profession is collective and as part of working together toward that goal, we invite lawyers and students-at-law to share resources that they have found helpful by sending them to our **Equity, Diversity and Inclusion (EDI) Counsel**.

Questions?

(#accordion_1_collapse_3

If you have questions about our work in this area, please contact our **Equity, Diversity and Inclusion (EDI) Counsel**.

If you are a lawyer, articling student, law student or legal staff and you have questions about discrimination and harassment in the workplace, please contact our **Equity Ombudsperson**.

If you need to talk to someone or need support, we encourage you to reach out to the **Alberta Lawyers' Assistance Society (https://lawyersassist.ca/)** (Assist).

Media contact: **Communications department**

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LSA-VERSION MASTER SCRIPT

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Module 2 Defining Moments in History

Module 2 Topic 1 History: Pre-Contact to the Mid Nineteenth Century

[black screen with the following disclaimer text: This video is for instructional purposes only. This video is not intended to provide a full, in-depth historical overview of Indigenous peoples in Alberta, nor a full, in-depth overview of provincial and Canadian legislation, policy and laws that have occurred over time. This video briefly summarizes history and law and is only to be used as general background knowledge to begin your journey towards Indigenous cultural competencies in Alberta.]

[music]

[The Path: Your Journey Through Indigenous Canada]

[NVision Insight Group Inc.]

[Module 2, Topic 1 History: Pre-Contact to the Mid-Nineteenth Century]

We all tell stories about where we came from.

[music]

Some are creation stories from our own particular cultural traditions; some are the stories we call “science”, or “evolution”, or “immigration”. They all answer the same question – where does the story of our people begin?

[Quote on screen: “When we were created, we were given our ground to live on and from this time, these were our rights. This is all true. We were put here by the Creator – I was not brought from a foreign country and did not come here. I was put here by the Creator.” Chief Weninock, Yakima, 1915.]

As a Tshimshian elder once explained, “I have lived here since the world began.” The phrase usually translated into English as since time immemorial’ reflects the idea that Indigenous peoples have no stories, no memories of journeying to this place called Canada from another place.

And so origin stories are the starting point for the beliefs that Indigenous peoples have about home, about who they are, where they came from and how to live. For First Nations, Inuit and Métis, Canada IS home. There’s no ‘mother country’ or “land of the ancestors” across the sea somewhere. Their past, their history, their connections are all here, in Canada.

Indigenous peoples tell many creation stories, all rooted in a particular place and territory. The Mi’kmaq tell the tale of the Great Spirit or Gee-soolg who made everything, including Glooscap, the first human, who brought fire to his people.

The Haida creation story starts with Raven, who released humans from a giant clamshell.

For Inuit, it all began with Sedna, whose fingers were chopped off by her angry father. As they floated to the bottom of the ocean, they became sea animals and fish.

Listen to this Mohawk creation story about Skywoman. Have you ever heard the term ‘turtle island’? It came from this story.

In our creation story, there was a woman that came from another world. And at one time that world came close to this planet, and that woman came here during that time. She is our great-great-grandmother for humans. She had different names, one was “Ajinjagaayonh” which means a matured flower, sometimes we call her Sky Woman. When Sky Woman came here this planet had no land. It was a planet of water and she was aided by the birds to get here safely. And the turtle came up and they put the woman on that turtle’s back. And she brought things from that other world when she came here. Strawberries and raspberries and peaches. So,

when she was on the turtle, the animals went after the dirt that's under the water and they all died except one. But they brought that dirt up and they put it on the turtle. And Sky Woman walked counter clockwise around that turtle's back. And that's what made the miracle of birth happen. That's what made seeds turn into humans and what made a little tiny corn get to be a tall corn stalk. And as she went around counter clockwise she chanted songs that came from that other world. Some people say that's where our feather dance came from. That's what she was doing. And as she went further, that miracle of birth was multiplied, and the turtle turned into the earth, this continent and the ground multiplied and grew. So that's why in all our longhouse ceremonies we keep going in our circle that way, so the corn and beans will keep growing and the trees will keep growing because she made it grow. And she told us, that's the way it's done where she came from. Since that time, we never stop going around in a sacred circle, counter clockwise following our grandmother. In Ojibway or Lakota country they go the other way, clockwise. But my Elders taught me to respect that, because when the Creator talked to the Ojibway and Lakota he told them what to do and I cannot question that. So, when I go to Ojibway or Lakota country I follow how they go with no questions, with complete respect. They dance clockwise and if they ask me to dance I go right with them. And when the real Ojibway or Lakota come here, they're the same. They dance our way with us, no hesitation. This is the way we were told to do it by our Elders. With respect.

Like the story of Adam and Eve, Indigenous accounts of creation are expressions of spiritual and cultural truth. They reflect a way of looking at the world.

Science and history tell the human story from another perspective. So what does science say about the arrival of Indigenous peoples in North America?

Evidence from sites like the Yukon's Bluefish caves suggest that the ancestors of some of today's Indigenous peoples crossed the Bering land bridge more than 20,000 years ago as the glaciers retreated. Then, over time, they moved south and east. The ancestors of the Inuit crossed the Bering land bridge about 3 or 4,000 years ago, they stayed in the north and moved east.

[map of North America with arrows from north to south: Inland Migration route through the ice-free corridor. Pacific coast migration route (on foot or by watercraft)].

But there's a growing school of thought that believes some parts of North America have been inhabited for longer than the current theory suggests. New discoveries, theories and evidence lend credence to multiple possible points of origin.

We can look at science and at origin stories as simply different ways to describe where we've come from.

Now, let's fast forward a few thousand years. We'll talk in another module about how Inuit were the first to encounter Europeans in the 10th century but other Indigenous peoples on the east coast of Canada first saw Europeans in the 15th century. What was it like on this continent, just before those encounters? Charles C. Mann's book 1491 provides a fascinating glimpse of pre-contact life in the western hemisphere.

We've been using the word 'Canada' to describe the land we know today. But of course, prior to European contact, First Nations and Inuit had their own words for their territories. The word "Canada" is actually derived from a Haudenosaunee word Kanata (Ga-NAW-ga) meaning settlement or village.

Canada was not 'terra nullius', a land occupied by no one. There were thriving Indigenous societies and communities here, with hundreds of languages and distinct cultures.

While there have always been skirmishes, battles and hostilities between and among Indigenous peoples, there were also many alliances, trade agreements and treaties. One such treaty between Anishnaabe and Haudenosaunee is called the "Dish with One Spoon".

This wampum belt depicts a 'dish' which represents shared territories and hunting grounds. The spoon symbolizes the need for all parties to respect the territory and take on the responsibility of caring for the land and animals in order to live in peace and harmony.

Module 3 More Defining Moments in History

Module 3 Topic 1 A Colonial History

[music]

[The Path: Your Journey Through Indigenous Canada]

[NVision Insight Group Inc.]

[Module 3, Topic 1 A Colonial History]

In this module, you'll learn about some of the defining moments that shaped the relationship between Indigenous peoples and Canada today.

John A, Macdonald, as Canada's First Prime Minister, has many progressive achievements to his credit but his policies and stance regarding Indians and Métis is not one of them.

In 1876, the new Canadian government consolidated all existing legislation regarding Indians into the *Indian Act*, which had an immediate impact on every Indian living on a reserve in Canada. It set out restrictive and repressive regulations that dictated all the ways in which Indians on reserve were expected to live.

[Words on screen: Indian Act 1876

- Defined who is a Status Indian
- Forced people to give up status of they wanted to attend university or vote
- Banned cultural practices like the potlatch
- Forbade Indians from hiring lawyers
- Took control of reserve lands
- Set up Indian Agents
- Denied some women status]

Indians were seen as wards of the Crown, and the government's goal was to "civilize" them, and eventually to assimilate them. Sir John A. and his colleagues felt that Indians couldn't fend for themselves; so they needed help from the government.

Those attitudes persisted into the twentieth century.

This is from a 1921 letter sent from the federal department of Indian Affairs to a local Indian agent.

I have therefore to direct you to use your utmost endeavours to dissuade the Indians from excessive indulgence in the practice of dancing. You should suppress any dance which causes waste of time, interferes with the occupations of the Indians, unsettles them for serious work, injures their health or encourages them in sloth and idleness. You should also dissuade and if possible, prevent them from leaving their reserves for the purpose of attending fairs, exhibitions et cetera when their absence would result in their own farming and other interests being neglected.

The Indian Act was implemented by Indian Agents from the federal Department of Indian Affairs. Other systems of control included the Pass System, which restricted the movements of people on and off their reserve. A permit system limited anyone on reserve who sought to sell goods, food or livestock. This protected the market share for British colonists (and later for Canadians), while limiting the economic opportunity for First Nations to become self-sufficient through entrepreneurship.

During the 1870s, another government policy dealt a severe blow to Indigenous peoples, through the creation of the Indian Residential school system. Here's what John A. MacDonald had to say in 1879 when he was also the head of the department of Indian Affairs.

1989. Mayor of Oka announces that 'The Pines' would be cleared to expand the golf course and build luxury condos. There was no consultation with the Mohawks, no environmental review, no consideration for historical preservation or the desecration of a burial ground in that location. So, once again, the Mohawks protested. But this time, their actions caught the attention of all of Canada. But Canadians watching the nightly news saw only the stereotype of the angry Indians wearing bandanas and burning cars. Very few actually knew what the protest was about or bothered to understand the history or listen to the stories of the people of Kahnasetake. Ultimately, the golf course expansion was halted, and the community got some of its land back. But now, 30 years later, there's still unsettled land claims and tensions in the region.

There have been many other protests. You may remember Ipperwash Provincial Park in Ontario when Dudley George died. Or the logging protests in Clayquot Sound in BC. Or the James Bay Cree protests against a massive hydroelectric project. Or the land disputes in Caledonia, Ontario, or the fishing crisis in Burnt Church, or the current Unist'o'ten camp in British Columbia. And many of the other road and rail closures and blockades.

And so Indigenous peoples continue to resist and protest and assert rights and seek self-determination. Canada's colonial legacy is still alive. And nowhere is that clearer than in the treatment of Indigenous people within the Canadian Justice system.

It's clear when you look at the overall numbers. While Indigenous people make up about 5% of Canada's population, they represent 27% of its prison population[1]. The number of incarcerated Indigenous women in federal custody increased more than 75% in the past decade.[2]

[graphic on screen with other statistics: Rate of self-reported sexual assault is 3x higher in Indigenous population, High school diploma rate non-Indigenous people 89%, Indigenous people 68%, First Nation youth, age 15 to 24 are 3 times more likely to commit suicide, childhood poverty: general population, 19%, First Generation immigrants and refugee children 33%, Métis, Inuit, off-reserve First Nations children, 27%, On reserve First Nations children, 62%]

But the challenging intersection of the justice system with Indigenous peoples is seen in close up, in stories like that of Tina Fontaine, whose body was found in the Red River in Winnipeg, which exposed the tragedies of the child welfare system and whose killer has never been brought to justice.

Or in the death of Colton Boushie in Saskatchewan, and the not guilty verdict for his killer Gerald Stanley that sparked fury and unrest across Canada.

Or the decade long series of unexplained murders, disappearances and deaths, particularly of First Nations youth, that finally led to two public inquiries and the replacement of the Thunder Bay police services Board for systemic racism.

Or the years of inadequate and discriminatory child welfare services provided to First Nations children, a gap that led to a Human Rights tribunal ruling against the Canadian government – a ruling that the government challenged.

These and other events have exposed the racism, the discrimination, the unfair treatment and the inequality built into Canadian law, policies, and structures.

It's no wonder that many Indigenous peoples wonder when Canada will listen to them.

Jacob Dayfox

"It's hard to say how we can fix something like this because the world is so it's one sided.

---

[1] https://www.washingtonpost.com/news/worldviews/wp/2018/07/01/canadas-indigenous-population-is-over-represented-in-federal-prisons-and-its-only-getting-worse/

[2] https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2018/march01.html

Module 3 Topic 3 Milestones Along the Path

[music]

[The Path: Your Journey Through Indigenous Canada]

[NVision Insight Group Inc.]

[Module 3, Topic 3 Milestones Along the Path]

Successive colonial and Canadian governments have not been able to conquer, assimilate or annihilate Indigenous peoples. But their laws, policies and regulations have left deep and lasting scars. It’s no surprise that there are clear links between our colonial history and the poor health and well-being of First Nations, Inuit and Métis individuals, families and communities.

This post-colonial legacy can be seen in:

lower life expectancy,
higher rates of childhood poverty,
a much higher likelihood of committing suicide,
sky-high rates of diabetes,
an active tuberculosis rate among Inuit that's 400 x higher than the Canadian population,
Disproportionate numbers of Indigenous peoples who are victims of violence, who are murdered or go missing.
High rates of substance abuse.
Poorer education.
Lower levels of employment outcomes.
And the list goes on.

Yet Indigenous people have shown incredible resilience for centuries. And while much remains to be done, there are signs over the past 40 years that point to a new era of healing and reconciliation. Let’s talk about a few examples.

As a result of the Oka Crisis, in 1992, the Federal government launched the Royal Commission on Aboriginal Peoples to improve the relationship between Indigenous and non-Indigenous people. Commissioners set off for meetings across the country to document the realities of Indigenous life.

The Commission's final report in 1996 took up five volumes and more than 4,000 pages. It began with a simple and eloquent declaration: the Commissioners stated that there can be no peace or harmony unless there is justice.

In order to achieve that justice, the Commission made 440 recommendations in areas that included self-governance, treaties, health, housing, the north, economic development and education.

Ten years after the Report was tabled, the Assembly of First Nations took the government to task for failing to implement even a fraction of those recommendations.

And now, twenty years later, the promise of Canada’s longest and most expensive Royal Commission remains unfulfilled.

But the Commission brought Indigenous issues to the foreground of Canadian political awareness, and galvanized a new generation of Indigenous groups and communities working towards recognition, justice and reconciliation.

In 2012, then Prime Minister Stephen Harper introduced a number of bills that proposed sweeping changes, including deregulation of Canada's waterways and changes in rules about protection of land and forests. Indigenous peoples saw these as a violation of their rights and sovereignty. Three Indigenous women created a grassroots movement called Idle No More. While the movement was created to protest specific bills, it gained momentum across the country as Indigenous people held rallies, protests, sit-ins and round dances against pipelines, against the lack of funding for education, the unfair treatment of Indigenous children, and

against other laws and regulations that infringed on treaty and Indigenous rights. The movement drew national attention to First Nations, Inuit and Métis issues. Attawapiskat First Nation Chief Theresa Spence went on a hunger strike in 2012 in protest. Here's what she had to say about it.

"It is the leadership's responsibility to plan for the children's future. Not the Prime Minister, not even the crown. You know like, we have our ways, we had our ways, we had our own laws, we had our own laws for the land, we had our own laws for justice, we even had our own ways teaching our children. You know, we need to maintain our cultural way to survive, so that was the purpose of the treaty, you know, to be partners, but the way it is right now, we feel like we are more like a slave to the Minister, not a partner."

In module 4, we'll talk more about legal issues. But there's good news. In recent years, Indigenous peoples have seen major victories in the Canadian courts. Métis are now under federal jurisdiction, and have had their constitutional rights acknowledged; important powers and authorities are being transferred from Canada to Indigenous governments through land claims and self-government agreements; the federal government has introduced principles to improve its relationship with Indigenous Peoples; and there are now more legal requirements for industry and governments to consult and accommodate Indigenous peoples regarding resource development projects on their territories.

The Truth and Reconciliation Commission is another milestone in Canadian history. The TRC was created as a requirement out of the Indian Residential Schools Settlement Agreement. Led by now Senator Murray Sinclair, the TRC travelled the country, collecting testimony from people who attended the schools, and talking to the churches and individuals who worked at or managed them. Commissioner Marie Wilson, talks about how all Canadians can be part of reconciliation.

"I think that the more we know about what has happened, and indeed what we as a society have done, in order to get the advantage over Indigenous peoples, to get the advantage in rounding up children so that we could manoeuvre to have access to more lands and more resources, the more we understand how those things fit together, the more I think we can start to be noble in our response to some of the very contemporary issues that we have. About a fair share of resources, about equitable funding for education, about equitable funding for child welfare services. None of which are in fact realities in Canada right now. And uh, at what point do we stand up and speak up to our own values which says, "that's not right" It wasn't right in the past and it's certainly not right in the present."

A National Centre for Truth and Reconciliation was set up in Winnipeg. Their web site provides a vast collection of documents, oral history and other records on this dark chapter in our history.

The TRC issued 94 Calls to Action to redress the legacy of residential schools in areas such child welfare, health and justice. The federal government has established the National Council for Reconciliation to ensure the Calls to Action are being implemented.

[Scrolling text on screen: Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal Rights, Indigenous law and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.]

The fact that you're taking this course today is a response to several Calls to Action that urge employers in various sectors including the corporate sector, the legal profession, health care professionals and all levels of government, to provide cultural competency training to employees.

The murder of Tina Fontaine and subsequent court case was a catalyst that prompted calls for a National Inquiry into Missing and Murdered Indigenous Women and Girls. The intergenerational trauma caused by colonial policies such as residential schools has led to a crisis of violence against Indigenous women and girls, which is 3 and a half times higher than for non-Indigenous women. The National Inquiry was launched in 2017 to address these high numbers. The Inquiry

has three goals: Finding the truth, Honouring the truth and giving life to the truth as a path to healing. The Commission held more than 20 hearings and statement gathering events across Canada and issued its report in 2019 with 231 Calls for Justice directed at governments, institutions, social services providers, industries and all Canadians.

There is some movement in Canada's justice system as well. The 1989 Royal Commission on the Wrongful Conviction of Donald Marshall Jr, Manitoba's 1991 Aboriginal Justice Inquiry, and the review of Ontario's jury system in 2013 all recommended systemic changes to better support Indigenous peoples.

The inquiries into the police in Thunder Bay after multiple deaths and disappearances of First Nations youth led to an overhaul of police procedures and oversight and a replacement of their police services Board. Oher cities are now considering similar changes.

The Supreme Court has ordered a new trial for the man accused of killing Cindy Gladue.

Changes are underway in the area of jury selection and increasing the number of Indigenous judges in Canadian courts, after the Gerald Stanley verdict.

The Canadian government has finally agreed to compensate First Nations children for inadequate child welfare services.

Some Sixties Scoop survivors and Indian Day School survivors have received or are in the process of applying for compensation. In 2018, the Federal government adopted 10 Principles Respecting the Government of Canada's Relationship With Indigenous Peoples, and the Department of Justice now advises its lawyers to move from a denial of rights to a recognition of rights.

It's sometimes a case of two steps forward, one step back. But Indigenous peoples are commanding attention and seeking redress for historical and ongoing injustices. And in some cases, Canada is listening and willing to work together with Indigenous peoples.

We are also seeing real progress on the economic front as well. In fact, the Indigenous segment of the economy represents a rapidly growing and increasingly lucrative consumer market for all Canadian businesses.

There's the Osoyoos Indian Band in BC that rose from poverty and poor management into a prosperous community with multi-million-dollar businesses including a resort, a winery and a golf course.

Or Membertou First Nation, in Nova Scotia, with a population of around 800 people on reserve. Membertou has become a business powerhouse in the region with a gaming centre, an international convention centre, a data centre and extensive real estate holdings.

Then there's the Grand Council of the Crees in northern Quebec, a thriving group of communities that jointly own an airline, a construction company, and food distribution companies among others.

In fact, Indigenous people have been and are winning awards and accolades in all spheres of Canadian life. Can you name any of these people?

In politics, there's Jody Wilson-Raybould, Elijah Harper, Romeo Saganash and others. There's Mary Simon, Sheila Watt-Cloutier raising the profile of Inuit issues on the international stage,

In hockey, look at Carey Price, Ted Nolan, Jordin Tootoo and others

Artists such as Alex Janvier, Bill Reid, Norval Morriseau and Christi Belcourt are well-known across Canada and internationally.

There's world-renowned architect Douglas Cardinal.

In film and television: Adam Beach, Zacharias Kunuk, Tantoo Cardinal

Former Mrs. Universe, Ashley Callingbull

Musicians Buffy Ste. Marie, Tanya Tagaq, Robbie Robertson, Jeremy Dutcher.

And award-winning authors Richard Wagamese, Thomas King and others.

And the lists keep growing.

There's still a big gap in Canada between Indigenous and and non-Indigenous peoples in areas like income, education and health.

[graphic on screen: First Nations people with a certificate, diploma or degree-2001 24%, 2011-44%. Aboriginal population with a post secondary qualification: 1996-5%, 2011 40%. Youth as a representative of the total population: Aboriginal 18.2% Non-Aboriginal, 12.9%, median age Inuit 23 years, First Nations, 26 years, Métis 31 years, Non-Aboriginal 41 years]

But today we're seeing greater life expectancy, lower infant mortality, better access to clean water and housing, more people with higher levels of education, more and more successful Indigenous businesses and employment outcomes. There is definitely hope for the future.

There is also a growing recognition of Indigenous rights. In the next topic, you'll learn what these rights are, how they were won through treaties and through the courts, and why recognizing and affirming these rights is critical to moving forward as a country. You'll see that land claims and treaties are not modern inventions. In fact, it all began more than three centuries ago, when a British king signed a Royal Proclamation.

[Credit roll for Module 3, Topic 3

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Module 5 Topic 3 Reconciliation and The Way Forward

[black screen with the following disclaimer text: This video is for instructional purposes only. This video is not intended to provide a full, in-depth historical overview of Indigenous peoples in Alberta, nor a full, in-depth overview of provincial and Canadian legislation, policy and laws that have occurred over time. This video briefly summarizes history and law and is only to be used as general background knowledge to begin your journey towards Indigenous cultural competencies in Alberta.]

[music]

[The Path: Your Journey Through Indigenous Canada]

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[Module 5, Topic 3 Reconciliation and the Way Forward]

We are now on the last video in this final module of *The Path.* You will hear from Alberta lawyers, judges and community members about Indigenous restorative justice practises, specialized Indigenous courts, as well as other legal initiatives in Alberta.

We also cover UNDRIP and Bill C-15.

And finally we will outline Bill C-92, *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*.

[Subject Heading: The Overrepresentation of Indigenous Peoples in the Criminal Justice System]

It’s been over 20 years since the Supreme Court of Canada decided on matters in *R* and *Gladue* stating that judges should consider the systemic factors the Indigenous offender has experienced when determining an appropriate sentence.

Numerous reports on the criminal justice system over the years including the TRC, the Missing and Murdered Indigenous Women and Girls Inquiry, and several other Supreme Court cases including *Williams, Ewert*, *Ipeelee and Barton* cite systemic racism as the factor for the rise in incarceration rates of Indigenous peoples.

Reviewing the existing bail jurisprudence involving Indigenous accused persons, *Gladue* is being misapplied across the country and there remains a current crisis in the bail system in Canada that disproportionately impacts Indigenous peoples.

Here is Adam Drew, Crown prosecutor for the Calgary Indigenous Court, discussing next steps that legal professionals can consider taking in their practise towards reconciliation.

We're living now in a Post Truth and Reconciliation Commission environment. I think we've reached a point in Canadian history where there's no longer any excuse for Canadian professionals working in government, working in law enforcement, working in prosecutions and courts generally, in the legal profession. There's no excuse for any of us to be ignorant of the recommendations of the Truth and Reconciliation Commission in with relation to culture, to health and to justice.

Together, Indigenous men and women represent only about 3% of the adult population in Canada, but they are overrepresented in admissions to provincial and territorial correctional services.

In 2015-16, 38% of women admitted to provincial and territorial sentenced custody were Indigenous, and 26% of men admitted were Indigenous.

Compared to all other categories of accused persons, Indigenous people continue to be jailed younger, denied bail more frequently, granted parole less often and released later in their sentence.

They are over-represented in segregation, overrepresented in remand custody, and more likely to be classified as “higher risk offenders”.

The situation is not very different for Indigenous youth. Although Indigenous youth between the ages of 12-17 comprise only 7% of all adolescents in Canada, in 2014-15, about 35% of youth admitted to correctional services were Indigenous.

The proportion of Indigenous youth admissions to custody has grown over time, especially for girls. In 2011-12, 48% of Indigenous female youth involved in the correctional system were admitted to custody; in 2014-15, that number had grown to 52%.

[The Honourable Judge Evan M.L. Ladouceur, Provincial Court of Alberta]

It's time for the court to take a real drastic transformative change to try to help people and change their objective from punishment to a healing court, because you know, we are, we as Indigenous people are where we are today because of what has been done to us by the non-Indigenous people using their system to directly try to destroy our people, and we need to use the system to try to change it in a positive way.

The principles articulated by the Supreme Court of Canada in *Gladue* and re-iterated in *Ipeelee* are being interpreted and implemented at the bail phase in a manner that exacerbates, rather than ameliorates the systemic failures of the criminal justice system in its dealings with Indigenous peoples.

Judicial consideration of *Gladue* and bail has not alleviated this crisis. There must be a more robust framework for the interpretation of *Gladue* in judicial interim release proceedings as well as in sentencing.

The focus on *Gladue* and how the courts interpret their obligations under this regime is a means of uncovering bias and a means of moving forward to ensure the criminal justice system minimizes the harm to Indigenous peoples in Canada.

[Subject Heading: Indigenous Courts in Alberta]

Indigenous Courts have been operating across Canada for the last 20 years since *Gladue*. There are several in Alberta.

The first urban Indigenous Court in Alberta was established in 2019 based in downtown Calgary. This Court provides a culturally relevant, restorative, and holistic approach to bail and sentencing by incorporating *Gladue* factors, as well as prioritizing traditional Indigenous ways of addressing the crime and healing.

The Judge, Crown, Duty Counsel, Police, Probation Officers and support workers are either Indigenous, or have taken extensive Indigenous cultural competency training and understand the trauma-informed therapeutic model.

[text on screen from the film Homefire: Ending the Cycle of Family Violence, March 2015, Native Counselling Services of Alberta]

So when we talk about implementing restorative practices from a traditional perspective in Canada today, there's this view that it's almost a get out of jail free card.

[Allen Benson, CEO, Native Counselling Services of Alberta]

That there's an easy way, if you go the Aboriginal way to dealing with crime. The easy way is to take someone out of the community and put them in a Federal Correctional system. If we look at a restorative process, that's harder than any jail time. It's hard when you have to look back at your life all the way to childhood and say ‘what happened to me?’. That's hard work emotionally, spiritually, mentally, when you have to sit with your victim, your family, your community, your elders, and talk about what happened to you. That's a tough journey.

In the Calgary Indigenous Court, there is a special ventilation system to allow for the burning of sweetgrass. Sweetgrass is sometimes used in Indigenous prayer, smudging and purifying ceremonies, but it is entirely dependent upon each Indigenous Nation’s laws and customary

practises whether this sacred practise occurs. On the Prairies it is usually used, and in Calgary Indigenous Court, it is burned at the beginning of the court day to cleanse the room and prepare the participants in a good way.

A Blanket Ceremony is held for the Indigenous person when they've completed their Healing Plan. Their Elder and supporters offer a blanket as a symbol of protection which the person carries with them into their new life.

The Tsuu'tina Peacemaking Court and the Sisksika Court in Treaty 7 territory were established and presided over by then-provincial court judge Tony Mandamin from 1999 to 2007. The Tsuu T'ina Peacemaking Court was the first Indigenous Court of its kind in Canada and is a marriage of two separate systems: the Alberta Provincial Court and the Peacemaker process, which work together in a unique way.

At the Siksika Nation, the Provincial Court of Alberta sits on the reserve and has been served since 1998. This arrangement permits the Crown prosecutor to form a close working relationship with the Nation and supports the provision of culturally sensitive prosecution services.

These courts are still going strong today, as is Justice Mandamin's return back to Alberta after presiding as a federal court judge for the past 12 years. Now, he is helping Indigenous courts across the province by consulting with communities and building more robust ways to instill Indigenous restorative justice measures and practises in court.

[The Honourable Leonard S. Mandamin]

It seems to me that you need the Indigenous community to be involved in this process for it to work. It can't be delivered by the justice system itself…If I could characterize my role as a judge working with Tsuu' tina and Siksika, it was more a process of making room for them to become involved and deliver restorative justice, than controlling the situation.

Examples of Indigenous restorative justice services that are connected to provincial courts in Alberta are:

- the Kainai Peacemaking Program in Treaty 7
- Saddle Lake Restorative Justice in Treaty 6
- Yellowhead Tribal Community Corrections Society in Treaties 6 &7
- Big Stone Cree Nation Restorative Justice in Treaties 6 & 8
- Native Counselling Services Association of Alberta
- And Calgary Legal Guidance

These court-connected services are vital for Indigenous peoples as they try and navigate their way through the complicated and often trauma-inducing court processes.

In Treaty 8 territory in northern Alberta, **Bigstone Cree Nation** has developed their own Restorative Justice program that also serves their three communities of Wabasca, Calling Lake and Chipewyan Lake.

Justice Technician, Helen Flamand, comments on how being trauma-informed is vital to the legal profession and to her practise of guiding a person to recovery.

[Helen Flamand, Bigstone Restorative Justice]

We deal with the problem behind the problem. Alcohol and drugs are the symptoms. We know that probably 95 percent of crimes that are on our weekly docket are alcohol or drug related. We know that our people are hurting. We know that our people are in a state of constant trauma. And with that in mind, we deal with that trauma. We deal with the people, as a person who's in conflict with themselves who are out of balance, as we say, and move forward from a trauma informed perspective.

Sandra Christiansen-Moore who is the Crown Prosecutor for the region, connected with the Bigstone Cree Nation's Restorative Justice program and now advocates for more Indigenous-informed, restorative justice processes in the court.

[Sandra Christiansen-Moore, Crown Prosecutor, Fort Saskatchewan Office]

And it can have an impact with how a file is resolved, whether it be whether it can have an impact on sentencing, or it can impact how the Crown operates with certain types of elections or on some of the lot more, or pardon me some of the less serious files. It can be a full diversion program, but ultimately, it's assisted the Crown Prosecution Service in getting to know the community to understanding Indigenous culture and heritage and also just to provide better, more local service to individuals.

Here is Judge Ladouceur also discussing the merits of incorporating restorative justice.

[The Honourable Judge Ivan M.L. Ladouceur, Provincial Court of Alberta]

You know, it's very simple for the person to come to court before me and enter a guilty plea. I give them 30 days jail. And he goes away for 21 and comes back and the nothing has been done. It's just a repetitive cycle. But once you put them through the restorative justice program, you can really see what's going on with the family, you can see the pain, you can see the suffering, you can see the trauma that they've suffered all their lives. And that's what we're trying to do. We're trying to heal that. And if we can heal one family and stop that behavior, their children will then start to have a different behavior and a positive way instead of following the same old destructive cycle that their parents have followed for years, and that's what we're trying to do so and it's slowly working.

[Image of a brick wall with words from bottom up: Assumptions, savage, heathen, uncivilized, royal proclamation, Indian Act, Canadian Constitution, Gradual civilization act, assimilation. Voice of Allen Benson, CEO, Alberta Counselling Services of Alberta. This next segment is from the Homefire video].

The challenge that we've been under, is that we actually through the (our) justice system, encourage conflict, through divorce, separation, restraining orders, peace bonds.
So, we have all of these laws and processes in place to separate people. What we don't have is a full understanding of who we're dealing with.

[Rachelle MacDonald, Executive Director, Aseniwuche Winewak Nation]

We recently did a research project in our community, it was looking at traditional legal principles in our elders identified over and over again, that people that hurt other members of our community need to be held accountable for what they've done. But just as important, they need the opportunity to reconcile what they've done.

Here, the elders always saying, 'we're gonna deal with this in a good way, without the ridicule without the ostracization, because they're still family. You don't leave them out in the cold or you don't let them go hungry.'

[Subject Heading: United Nations Declaration on the Rights of Indigenous Peoples]

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations in 2007 and endorsed in Canada in 2016.

The UN Declaration or 'UNDRIP' forms a part of cultural competency education outlined in TRC Call to Action #27. Here is international human rights lawyer, advocate and educator, James Sakej Youngblood Henderson explaining why UNDRIP was initially created:

What we encountered in the constitutional battles in Canada, is that when we wanted to apply human rights to Indigenous people, the government said, 'you don't have human rights because you're the wrong kind of people'. And that stood us as a shock, but it's part of the discrimination that we've had to endure. So we had to go to the General Assembly. And what we had to do was get a declaration that basically said that Indigenous people have the same human rights as any other people.

UNDRIP confirms that Indigenous peoples are “peoples” in international law, and entitled to the same human rights as everyone else.

[Cover of Special Report: UNDRIP Implementation Braiding International Domestic and Indigenous Laws]

[Cover of Special Report: UNDRIP Implementation More Reflections on the Braiding of International, Domestic and Indigenous Laws]

The UN Declaration does not create new or special rights just for Indigenous peoples. Rather, the UN Declaration is necessary to rectify the ongoing denial and violation of Indigenous peoples’ existing and inherent human rights.

In the past, Canadian courts have repeatedly affirmed the duty of governments to consult with First Nations before making decisions, however it has been a narrow interpretation. Larry Chartrand, professor emeritus of law at the University of Ottawa and the author of ***Métis Treaties in Canada: Past Realities and Present Promise*** explains this in more detail:

[Larry Chartrand, Academic Director, Native Law Centre of Canada, University of Saskatchewan College of Law].

Canada has never yet recognized an Aboriginal right to self-government, unlike, for example, in the United States.

And the reason is because the court has interpreted Aboriginal rights so narrowly -has to be a custom, tradition or practice - and that an argument that you have an Aboriginal right to self-government is seen as too broad in scope for the court to be prepared to recognize because they've defined the rights so narrowly.”

In December, 2020 David Lametti, Federal Justice Minister and Canada’s Attorney General, introduced Bill C-15 which sets out a framework for the federal government’s possible interpretation of UNDRIP.

Bill C-15 represents an important step forward in our collective reconciliation journey- rooted in the recognition of Indigenous rights, respect, cooperation and partnership. [David Lametti, Attorney General, Canada]

Dr. John Borrows – Professor and Canada Research Chair in Indigenous Law at the University of Victoria, Faculty of Law comments on the benefits of incorporating UNDRIP into Canadian federal laws and policies.

As with any law, there are unknowns, there’s unknowns with our Constitution. There’s unknowns with UNDRIP. But the fact that this has got a process to work through those unknowns is better than the free-for-all we have right now.

The federal government has already taken action to reflect UNDRIP in other legislation; including *An Act Respecting First Nations, Inuit and Métis children, Youth and Families* which we will cover next.

[Subject Heading: Child Welfare Law in Canada and Alberta]

The first five Calls to Action by the TRC relate to child welfare, including Call to Action #4 which calls upon the federal government to enact Aboriginal child-welfare legislation.

{Image of Dr. Cindy Blackstock and her title Executive Director, First Nations Child and Family Caring Society of Canada].

According to the 2016 Census, Indigenous children represented 52% of children in foster care in private homes in Canada, despite accounting for only around 8% of the overall population of children under 15. This is a crisis in Canada.

In June 2019, the recognition that Indigenous peoples have inherent self-governing rights in relation to law-making for Indigenous children and families, became a reality when Bill C-92 became law.

First Nations and other Indigenous governing bodies can take steps to enact their own Indigenous laws regarding Child and Family Services. The law sets out national minimum standards for Child and Family Services Delivery as called for by the TRC. This includes First Nations living on and off reserve, non status Indians, Inuit and Métis children. These minimum standards introduce the concept of the Best Interest of the Indigenous Child.

Samson Cree member, Koren Lightning-Earle, founder of Thunderbird Law, is a lawyer at the Wahkohtowin Law and Governance Lodge at the University of Alberta. She was part of the Bill C-92 initiative:

So this legislation creates a process for Indigenous communities to create their own child welfare law. And if they follow the proper process, and provided in the law, their law will supersede provincial law and federal law. But they still have to keep the national standards. But they can their law, they can have a law that would supersede provincial law.

So there's the possibility for lots of various legislation in Canada regarding child welfare, but very unique to the specific needs of the child.

[Subject Heading: The Trauma-Informed Lawyer]

Myrna McCallum is a Métis Cree lawyer from Treaty 6 territory, and the host of the podcast, “The Trauma Informed Lawyer” that’s developed with the Canadian Bar Association. This podcast serves to educate listeners on trauma-informed lawyering and cultural humility in Canada and why it is important to transform your practise in order to avoid doing further harm to Indigenous peoples.

A trauma-informed lawyer connects a person’s behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw.

A trauma-informed system also focuses on how services are delivered, and how service-systems are organized. These approaches in the therapeutic context have begun to profoundly inform the delivery of other types of human and social services, such as child welfare, law enforcement, and the courts as we demonstrated earlier with examples of restorative justice projects and specialized courts.

We can say that Indigenous court, court connected Indigenous services and the recent *Act Respecting First Nations, Inuit and Métis children, Youth and Families* all come from a trauma-informed perspective.

Teaching trauma-informed practice as part of client-centered lawyering improves the client’s experience of representation, by encouraging lawyers to consider the non-legal aspects of a client’s situation (like colonialism, systemic discrimination, historic trauma, loss of culture, poverty, and a mistrust of government systems), as well as place a higher value on the lawyer’s understanding of a client’s perspectives, emotions, and values. It can also reduce recidivism.

[Wahkotowin Law and Governance Lodge]

The Wahkohtowin Lodge is located at the University of Alberta, Faculty of Law on Treaty 6 territory. The Lodge responds to the expressed needs of Indigenous communities and organizations that want effective strategies to identify, rebuild and develop law and governance structures that resonate with their own legal and governance traditions.

The Lodge was created out of the TRC *Call to Action* #50, which calls for the creation of Indigenous Law Institutes for the development, use and understanding of Indigenous laws.

Dr. Hadley Friedland, professor, and co-lead at the Wahkotowin Lodge along with Dr. Shalene Jobin, talks about the importance of knowing the difference between Indigenous Law and Aboriginal Law.

Indigenous laws should be recognized as law. They can be ancient, d ancient, deeply rooted, and sourced in the sacred or they may be, recent, drafted as Treaty, Agreements, Bylaws, or Legislation. Indigenous laws may draw on elements from both Indigenous legal traditions and other sources of law. [Dr. Hadley Friedland]

For example, just as the Province of Alberta has hunting and fishing regulations, Cree communities have their own Indigenous Laws and legal traditions around hunting and fishing. Koren Lightning-Earle talks about her young daughter who is an avid fisher:

When my daughter goes fishing with her grandpa, she is aware she has 2 sets of laws to follow, Fish and Game regulations and Cree protocol regarding fishing. We teach her the value of both laws and how to honour her Cree legal traditions around hunting and fishing and how to respect provincial regulations. Laws are laws. Cree laws are laws. Our Cree Laws around hunting and fishing were taught to me by father and I'm hoping I can pass those laws down to my daughter.

Indigenous laws have been passed down through generations; however colonialism has severely damaged that process. The Lodge at the University of Alberta, Faculty of Law was created to support and revitalize the process.

Here's Professor Val Napoleon from the University of Victoria, Faculty of Law, commenting on how to start thinking about utilizing Indigenous laws and why it matters.

[music]

[Dr. Val Napoleon, Director, JD/JID program, Associate professor Law Foundation Chair of Indigenous Justice and Governance, University of Victoria, Faculty of Law].

It's something that I think that's important for Indigenous people. But you know what, it's just as important for every Canadian. Canada is multi juridical. And right now the only law that people are familiar with is civil law and common law. And there's a richness of legal history and ways of managing that are thousands and thousands of years old that can help not only just indigenous peoples today insofar as managing ourselves, but also our relationship with Canada, and that matters.

[Subject Heading: Reconciliation and the Way Forward]

There are a number of ways that you, as a lawyer or legal professional in Alberta can advance reconciliation. Here are some suggestions:

- Study Trauma-Informed approaches to lawyering;
- Understand that "Cultural competency" is just the beginning of your journey;
- reach out and familiarize yourself with Indigenous court connected services;
- Learn more about systemic discrimination by reading *Gladue* and *Ipeelee* and other Indigenous cases;
- Read books and articles by Indigenous authors, listen to Indigenous podcasts and watch Indigenous media.

The Law Society created a resource site under www.lawsociety.ab.ca under "Indigenous Initiatives" that will assist you on your path towards learning about current Indigenous legal issues, the Indigenous services and communities in your area, as well as events you can participate in.

We hope this module of 'The Path' inspires you to take steps towards getting involved in reconciliation.

[voice of Dr. Val Napoleon].

Every Canadian should have an understanding of law that allows it to be intensely democratic in terms of how they manage their families, in terms of how they manage their communities, in terms of being a part of the relations of power in Canada. It's everybody's business.

[Sarah Sinclair, Program Manager, sahwoo mokhaak tsi ma taas ("Before Being Judged" Program), Calgary]

*What I hope **The Path** and your personal educational journey shows you is that Indigenous people, clients, also come with the weight of colonialism and there's no escaping that however*

accomplished you are as an individual, the cultural way of colonialism is inescapable. For me as a lawyer, for other Indigenous lawyers, we are privileged in that we're slightly more attuned to that cultural weight when it comes to dealing with indigenous clients. But for non-Indigenous lawyers, it's incumbent upon you to educate yourself on what colonialism has done to our society and Indigenous people."

As you come to the end of your journey through the history and realities of Indigenous Canada, we'll leave you with a few thoughts on why all of this should matter to you.

When the TRC presented its report, Murray Sinclair said that we all have a part to play in reconciliation if we want to see a just and inclusive society in this country we call Canada. He said, "We have described for you a mountain. We have shown you the path to the top. We call upon you to do the climbing."

Taking this course is one step that you've now taken as part of this climbing.

For every topic video in this course, we've included a resource list to help you deepen your understanding of anything you've learned so far.

And finally: wherever you live, or work, or travel to, look around and ask yourself, 'who were the original inhabitants here, and what are their stories?' Visit a friendship centre, or explore your local history, or just chat with a knowledgeable person. That's the best way to show respect; and it will turn your world into a deeper, richer place as well.

[Image of two individuals and the following text: Vice President of the Indigenous Bar Association and lawyer Brooks Arcand-Paul with Chief Tony Alexis, Alexis Nakota Sioux Nation]

Miigwetch, hiy, quanamik, thank you, merci.

[The Path Your Journey Through Indigenous Canada NVision Insight Group Inc.]

[credit roll for Module 5, Topic 3

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GLENN BLACKETT LAW
Barrister

January 30, 2023

via email

The Law Society of Alberta
700, 333 - 11th Avenue SW
Calgary, Alberta T2R 1L9
Attention: Elizabeth J. Osler, KC
Chief Executive Office & Executive Director

Benchers of the Law Society of Alberta
700, 333 - 11th Avenue SW
Calgary, Alberta T2R 1L9

Members of the Law Society of Alberta

Dear: Ms. Osler, Benchers and Colleagues

Re: Rule 67.4 is *Ultra Vires*

INFORMED DECISION-MAKING

At the Law Society of Alberta (the "**LSA**") annual general meeting on December 1, 2022, President, Ken Warren K.C., advised members that the LSA had obtained an opinion that *Rule* 67.4 was *intra vires*. Following the meeting I requested a copy of that opinion. The LSA refused, citing solicitor-client privilege. The LSA did outline the opinion to me in a letter dated December 6, 2022, which is attached.

On February 6, 2023, members will be attending a special meeting for the sole purpose of considering a motion to recommend the repeal of *Rule* 67.4 on the basis, *inter alia*, that it is *ultra vires*.

Given that the opinion is directly on point, providing it to members in advance of the meeting would, of course, provide very important information to members for their consideration of the motion.

By email to Roger Song of January 26, 2023, (also attached) the LSA declined Mr. Song's various suggestions for a meeting format that would permit reasonable discussion. Instead, the LSA has selected the "bare minimum" format outlined in Rule 33(3) (as amended effective January 1, 2023) including a maximum of 2 minutes *per* person speaking and a maximum 20 minutes for the entire meeting (by comparison, the annual general meeting lasted 25 minutes with no members speaking). Further, the LSA has declined to organize representative speakers in advance. Instead, precious meeting minutes will be expended asking each person who is called-on whether they are speaking for or against the motion. The LSA has even indicated it will disable the ability of members to speak by chat function during the meeting.

Even though it was Mr. Song who had requested a format that would permit a more reasonable discussion, the LSA has indicated that it will make a motion at the beginning of the meeting to expand the format.

Given all this, I strongly encourage the LSA to, at least, waive any solicitor-client privilege and deliver a copy of the opinion and this letter to the membership in advance of the meeting.

In addition, I would encourage the LSA to circulate Mr. Song's letter of today's date to the members as well.

RULE 67.4 IS ULTRA VIRES

In *Green* v. *Law Society of Manitoba* [2017] 1 S.C.R. 360, the Supreme Court of Canada found that the Law Society of Manitoba (and, by extension, other law societies in Canada operating under substantially similar legislation) have the power to automatically suspend members who do not report continuing professional development ("**CPD**") hours.

Green is not, however, authority for the proposition that the LSA's Rule 67.4 is *intra vires*. There are a number of key distinguishing features.

In *Green,* the court focused on the following parts of Manitoba's *Legal Professions Act* ("**MB *Act***"):

1. A rule expressly authorizing continuing professional development ("**CPD**"):

   > 43 The Benchers may
   > …
   > (c) establish and maintain, or otherwise support, a system of legal education, including the following:
   > …
   > (ii) a continuing legal education program,

   The AB Act contains no such power.

2. A broad purposive clause:

   > 3 (1) The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

   Alberta's *Legal Professions Act* ("**AB *Act***") contains no such provision, although the LSA's broad purposes are the protection of the public in the delivery of legal services and the protection of its professional members.[1]

3. A broad rule-making power to pursue that express purpose:

   > 4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.

   The AB *Act* contains no such provision. Both the AB *Act* and the MB *Act* contain a broad rule-making power for the benefit of the law society itself, but that rule was not relied on in *Green* (it was mentioned in *obiter dicta*).[2]

In its outline, the LSA does not consider any of these key statutory distinctions.

In the absence of the legislative provisions supporting the finding in *Green*, the LSA asserts authority under sections 6, 7(1), 7(2)(g) and (v).

---

[1] See, for example, *Dechant* v. *Law Society of Alberta*, 2010 ABQB 656; *Singh* v. *Law Society of Alberta*, 2000 ABCA 260 at para 23; *Black* v. *Law Society of Alberta*, 1984 CanLII 1197 at paras 61, 71, 138.
[2] AB *Act* s. 6(n), MB *Act* s. 4(5)

1. Section 6 contains various specific authorizations which are not relevant. For example, the power to establish libraries (6(h)) and obtain insurance (6(k)). The broadest provision is subsection 6(n) (mentioned above) is also not relevant. It is a power to make rules for the benefit of the Law Society of Alberta itself. A similar provision in the MB *Act* (s. 4(5)) was not relied on in *Green*.

2. Section 7(1) is broad authority to make rules "… for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under this or any other Act." However, unlike the MB *Act*, the AB *Act* contains neither a purposive clause (MB *Act* s. 3(1)) nor express authorization to impose CPD (MB *Act* s. 43(c)(ii)).

3. Section 7(2)(g) relates to automatic suspensions. *Green* is fairly clear authority for the proposition that, if it had the power to impose CPD, the LSA would also have the power to automatically suspend members for failing to comply. This is not in issue – which is not to suggest that automatic suspension is appropriate.

4. Section 7(2)(v) relates to "information required" and is not relevant.

The LSA also seems to rely, as authority to impose "the Path", on Truth and Reconciliation Commission of Canada ("**TRC**") Call to Action #27. The TRC's Calls to Action are not legal authorizations.

The LSA does not consider two other key distinguishing features of *Green*.

1. In *Green* the Law Society of Manitoba had not mandated specific CPD content. At issue was only a broad obligation to report having completed CPD.

2. The Court in *Green* referred to the purpose of CPD as the enhancement of "skills, integrity and professionalism."[3] The Path's purpose is "cultural competency" which includes history, sociology, philosophy, and politics. That is not CPD. Indeed, while the LSA imposes substantive requirements for self-reported CPD under Rule 67.1, any CPD mandated by the LSA under Rule 67.3 is "independent" of those substantive requirements.

Finally, the LSA makes no reference to the constitutional dimensions of the Path. Given its historical, sociological, philosophical and political content, the Path, as a condition to practice, infringes on fundamental freedoms guaranteed to members under the *Canadian Charter of Rights and Freedoms* including:

> 2 Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience …
>
> (b) freedom of thought, belief, opinion and expression …

[3] *Green* at para 3.

It is my respectful submission that the LSA's opinion is mistaken and neither *Rule* 67.4 nor its use to mandate the Path is within the statutory power of the LSA, nor compliant with the *Charter*.

While many members likely share the LSA's view that the Path is a constructive step towards indigenous reconciliation, that does not render it legal.

No matter how compelling the Path may be to members of the bar, personally and ethically, the rule of law in Canada depends entirely on the impartial application of law. For this reason, members are required to swear upon being called to the bar an oath that includes:

> I will as a Barrister and Solicitor conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice anyone, but in all things will conduct myself truly and with integrity. I will uphold and maintain the Sovereign's interest and that of the public according to the law in force in Alberta.

Sincerely,



Glenn Blackett
Barrister & Solicitor

PO BOX 99900 EB 051 272
RPO THORNCLIFFE
CALGARY AB T2K 1P6

glennblackett@outlook.com
587-674-3445

LAW SOCIETY of ALBERTA

700, 333 - 11th Avenue SW Phone: 1.403.229.4700
Calgary, Alberta T2R 1L9 Toll Free: 1.800.661.9003

December 6, 2022

Via Email: glennblackett@outlook.com

Mr. Glenn Blackett
PO BOX 99900 EB 051 272
RPO THORNCLIFFE
Calgary, AB T2K 1P6

Dear Mr. Blackett,

Re: Authority to Mandate Continuing Professional Development Education

Thank you for your question following the Law Society's Annual General Meeting. We will not be distributing the opinion we received as it is protected by solicitor client privilege, however we are pleased to outline our position to you.

As you know, the Law Society's core purpose is to uphold and protect the public interest in the delivery of legal services. Part of our active obligation is to create and promote required standards for the ethical and competent delivery of legal services and enforce compliance with those standards in a manner that is fair, transparent, efficient, proactive, proportionate and principled.

The *Legal Profession Act* (sections 6, 7(1), 7(2)(g) and (v)) and the Rules of the Law Society of Alberta (sections 67.4(1), (2) and (3)) provide the Law Society its authority to mandate continuing professional development (CPD). The role of Canadian legal regulators in mandating legal education was also confirmed by the Supreme Court of Canada (SCC) in *Green v. Law Society of Manitoba*, 2017 SCC 20 (CanLII), where the court noted that CPD programs serve the public interest and "enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada."[1]

In addition, Canadian law societies are working to respond to the Truth and Reconciliation Commission of Canada (TRC) Calls to Action. Specifically, Call to Action 27 provides:

> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of resident schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Taken together, the SCC decision and the TRC Calls to Action resulted in careful consideration of what our obligations were, which included obtaining legal advice as President Ken Warren, KC, referred to in the AGM.

[1] At para. 3.

As the standards for what constitutes ethical and competent practice will evolve over time, the Law Society will continually evaluate the emerging needs and mandate CPD education as appropriate and will continue to ensure that all CPD requirements fall within the authority of the Benchers. Further, the decision to mandate any requirement for Alberta lawyers is not taken lightly. The Path (Law Society of Alberta) was designed in a way that was easy for Alberta lawyers to comply, within a reasonable period of time. Having completed The Path (Law Society of Alberta), you are aware of the format, which gave Alberta lawyers the option to stop and start the program at their leisure so that they can easily fit it in around their practices. Lastly, as the requirement to file a CPD plan is currently suspended, completion of the Path (Law Society of Alberta) was the only CPD requirement for Alberta lawyers in 2022.

Sincerely,



Elizabeth J. Osler, KC
Chief Executive Office & Executive Director
Law Society of Alberta

LAW SOCIETY of ALBERTA
700 333 - 11th Avenue SW Phone: 1.403.229.4700
Calgary, Alberta T2R 1L9 Toll Free: 1.800.661.9003

Dear Colleagues,

Re: Resolution at February 6, 2023 Special Meeting

We write to you to ask your support in opposing a resolution before the Law Society of Alberta. The resolution is the subject of a petition challenging the Law Society's Benchers' ability to mandate specific continuing professional development and ultimately the Law Society's role as a self-regulating body. A Special Meeting of the Law Society will take place for active Alberta lawyers on Monday, February 6, 2023, when the resolution from the petitioners will be debated and voted on.

The privilege of self-regulation is at the heart of the upcoming Special Meeting. The Law Society of Alberta must continue to uphold the expectations that come with self-governance.

The Law Society has been operating as an independent regulator since 1907. In consideration of this authority, the Law Society must regulate in the public interest, which includes promoting and enforcing a high standard of professional and ethical conduct by Alberta lawyers.

Continuing professional development (CPD) programs serve the public interest by strengthening public confidence in Alberta's legal profession. Alberta lawyers are required to participate in activities that enhance their skills, integrity, knowledge and professionalism. CPD programs have, in fact, become an essential aspect of professional education in Canada. Most law societies and regulators of other professions across the country have implemented compulsory CPD programs from time to time. While we have no plans for other compulsory programs like The Path, having the ability to think critically and make thoughtful decisions is an essential role of the Benchers.

Next week, we will hear a motion submitted by 50 Alberta lawyers. They believe that the Law Society should not have the authority to mandate specific continuing professional development programming, including the recent Indigenous cultural competency course called The Path. Completion of The Path was mandated following the findings and recommendations of the Truth and Reconciliation Commission.

This motion comes as self-regulating professions face intense scrutiny. Policy makers, along with the general public, are paying close attention to whether organizations like the Law Society are focused on the public interest or on member interests. If we value self-regulation, we must ensure that we continue to discharge our duties using the lens of the public interest in everything we do, including continuing professional development. We believe that Rule 67.4 serves the public interest and should not be repealed.

LAW SOCIETY of ALBERTA
700 333 - 11th Avenue SW Phone: 1.403.229.4700
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We ask that you take the time to think about these important issues carefully and if you haven't already done so, please register for the February 6th meeting, join the debate and vote against the motion, supporting the Law Society in upholding its professional commitments and continuing in its role as a self-regulating body.

As a reminder, in order to participate in the meeting on February 6th at 11 a.m., interested active lawyers must register for the meeting by no later than Friday, February 3rd at 11 a.m. Once registered, you will receive a unique meeting link that will grant you access to the meeting and the right to vote. Lastly, please note that because this meeting is being held virtually, you must log in to the meeting by 10:45 a.m. on February 6th. The virtual meeting 'door' will open at 10 a.m. and will then automatically lock at precisely 10:45 a.m., preventing further admission to the meeting regardless of whether you registered or not. Please give yourself ample time to log in before the door locks at 10:45 a.m.

If you are looking for more information on the Special Meeting or the issue at hand, we encourage you to review the Law Society's FAQ.

Signed,

Law Society of Alberta Benchers

Ken Warren, KC, President
Bill Hendsbee, KC, President-Elect
Sony Ahluwalia, KC
Ryan D. Anderson, KC
Glen Buick, Lay Bencher
Lou Cusano, KC
Ted Feehan, KC
Corie Flett, KC
Kene Ilochonwu, KC
Cal Johnson, KC
Levonne Louie, Lay Bencher
Jim Lutz, KC
Bud Melnyk, KC
Mary Ellen Neilson, Lay Bencher
Sanjiv Parmar
Sandra Petersson, KC
Stacy Petriuk, KC
Ronald A. Sorokin
Deanna Steblyk, KC
Margaret Unsworth, KC
Moira Váně
Grant Vogeli, KC
Salimah Walji-Shivji, KC
Louise Wasylenko, CPA, CMA, Lay Bencher

CPD Plan Requirements and Tool

Active lawyers are required to submit a CPD plan using the CPD Tool by Oct. 1 of each year. Failure by an active lawyer to submit a CPD plan by the deadline will result in an administrative suspension, as set out in Rule 67.3 of the Rules of the Law Society of Alberta (https://documents.lawsociety.ab.ca/wp-content/uploads/2017/01/04144612/Rules.pdf).

The CPD Tool is also available to Alberta lawyers who are not required to submit an annual plan. The Law Society encourages all lawyers to take advantage of the tools and resources being offered through the new CPD approach.

While students-at-law will not have access to the CPD Tool, the Law Society still encourages students to engage in this initiative by familiarizing themselves with the resources that are being offered.

The Law Society strongly believes that learning does not stop once law school ends; like all professions, lawyers (and students) must stay up to date with technology, current issues and consumer needs. Completing professional development benefits you as a lawyer, your law firm or organization and your clients.

In addition to the below, see the CPD Tool User Guide (https://documents.lawsociety.ab.ca/wp-content/uploads/2023/06/23125746/CPD-Tool-User-Guide.pdf), CPD FAQs (https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/cpd-frequently-asked-questions/), CPD Resources (https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/cpd-resources/), CPD Plan Review Process (https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/cpd-plan-review-process/) and Guideline (https://documents.lawsociety.ab.ca/wp-content/uploads/2023/05/11084722/Continuing-Professional-Development-Program-Guideline.pdf) for further information.

CPD Plan Requirements

^ Who This Applies To (#accordion_1_collapse_1)

Only lawyers who hold active status when the CPD planning period opens on July 4 are required to submit a CPD plan for that year. **The only exception to this is for lawyers who have the status of active – non-practicing.** All lawyers are still encouraged to use the CPD Tool to access the benefits of self-assessment and creating personal goals. Lawyers can confirm whether this requirement applies to them by checking the Mandatory Education tab in the CPD section of the Lawyer Portal.

Lawyers may apply for an exemption if on parental leave, medical leave or having another circumstance that prevents them from participating in the CPD program. Generally speaking, lawyers who are actively engaged in the delivery of any legal services during the CPD year (Oct. to Sept. each year) and have active status when the CPD planning period opens on July 4 are required to submit a CPD plan. Plans can be tailored to each lawyer's individual circumstances through the competencies and learning activities selected. Whether providing legal services on a part-time basis or getting close to the end of a career, lawyers can tailor their CPD plan to fit their circumstances.

Exemption requests are submitted through the CPD section of the **Lawyer Portal (https://lsa.memberpro.net/main/body.cfm?menu=login)**. Lawyers are required to request an exemption through the Lawyer Portal in advance of and for each CPD year that their circumstances prevent them from participating in the CPD program.

Lawyers who require an exemption are strongly encouraged to apply well in advance of the Oct. 1 deadline, as exemptions are assessed by the Law Society and processing times can vary. Lawyers who have outstanding exemption applications on Oct. 1 will be at risk of administrative suspension.

Competencies (#accordion_1_collapse_2)

Lawyers are required to select at least two competencies from any of the domains contained within the **Professional Development Profile (https://documents.lawsociety.ab.ca/wp-content/uploads/2022/06/20084753/LSA-ProfessionalDevelopmentProfile_Final_June2022_Abridged_DigitalUse.pdf)** (Profile). The Profile sets out the competencies the Law Society believes are important to maintain a safe, effective and sustainable legal practice in Alberta today. It is not the expectation of the Law Society that all lawyers will be highly proficient in all areas included in the Profile. Lawyers may already possess some of the competencies or want to develop or enhance them with training and learning over time.

There are 29 competencies in the Profile that are broadly applicable to all lawyers. As CPD plans are personal to each lawyer, their practice and their learning goals, lawyers may tailor their chosen competencies to their practice through the learning activities they select and add other competencies that are not included in the Profile. Lawyers are encouraged to add competencies that are specific to their practice area(s) in addition to the competencies they are required to select from the Profile.

Learning Activities (#accordion_1_collapse_3)

Lawyers are required to select at least one learning activity to help develop or enhance each competency they selected in developing their plan, using either the drop-down menu in the CPD Tool or adding another activity or activities of their choice. Lawyers may select more than one learning activity per competency, based on what they determine to be effective for their practice and learning goals.

The Law Society has always taken a broad approach regarding the types of learning activity a lawyer can engage in for continuing professional development. The definition of "Continuing Professional Development," set out in Rule 67.1 of The Rules of the Law Society of Alberta, allows for both formal and informal learning activities to be completed provided the requirements under the Rule are met. In addition to the CPD Tool providing a drop-down menu of popular options, our website **(https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/cpd-resources/)** provides suggestions for various practice types and years at the bar and lawyers can add other types of activities not included in the drop-down menu that are appropriate to their practice and circumstances.

CPD Tool (#accordion_1_collapse_4)

The CPD Tool provides opportunities for lawyers to reflect on their professional development goals, self-assess their current levels of proficiency and prioritize competencies and learning activities to focus on each year.

The Tool also provides more opportunities for lawyers to engage with their plans throughout the year. The Tool allows lawyers to track their progress on their learning activities and reflect on whether and how each activity supported their professional development goals. **This process is**

not required but can enhance the overall learning process and help lawyers determine the types of activities that are effective for them.

The CPD Tool is accessed through the **Lawyer Portal (https://lsa.memberpro.net/main/body.cfm?menu=login)**, by selecting CPD in the drop-down menu located beside the lawyer's name.

The **CPD Tool User Guide (https://documents.lawsociety.ab.ca/wp-content/uploads/2023/06/23125746/CPD-Tool-User-Guide.pdf)** outlines instructions to access the CPD Tool and complete and submit a CPD plan.

CPD Tool Webinar Recording

41:18

Watch the recorded CPD Tool webinar as embers of the Education team introduce the tool and offer a detailed walkthrough.

CPD Tool User Guide

June 23, 2023

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Contact Us

If you have questions about the CPD Tool, email Customer Service or visit the Law Society of Alberta website.

If you would like support in creating your CPD plan, you can contact Education for assistance.

Additional Supports for Completing a CPD Plan

While the Law Society can offer guidance and suggestions on learning activities, it is up to each lawyer to determine how to best improve proficiency in chosen areas of professional development, depending on level of experience, practice context and goals. The following resources have been developed to assist lawyers with this process:

- The Professional Development Profile (Profile) provides guidance for lawyers about what the Law Society considers to be important areas of focus for professional development, regardless of experience or practice area. The Profile forms the framework of the CPD Tool.
- The proficiency scale, developed by Principia Assessments, Ltd. and located within the CPD Tool, is intended to help lawyers assess their current proficiency levels in the selected competencies and to set goals to improve or enhance those proficiency levels.
- The Reflective Practice course helps lawyers learn what reflective practice is, the different kinds of reflection, why it is important to lawyers, how it applies to professional development and what it takes to become a reflective practitioner.
- The Key Resources located within the Law Society's Resource Centre align with the nine domains of the Profile, to help lawyers easily locate resources relevant to their CPD plans.
- The CPD Resources located within Continuing Professional Development on the Law Society website contains information and resources that are available to lawyers when completing and implementing CPD plans; including suggestions for learning activities.
- CPD Frequently Asked Questions located within Continuing Professional Development on the Law Society website contains detailed information on CPD Program Requirements, Exemptions, Creating CPD Plans, Viewing and Downloading Plans, Editing CPD Plans, Tracking Progress on your CPD Plan and General Information.

19. What is the purpose of the full plan if the Law Society is not going to see it? (#accordion_4_collapse_3) 120

The CPD Tool prompts lawyers to assess their own proficiency for each selected competency and record learning activity notes to help lawyers reflect on their learning needs and develop a meaningful and effective CPD plan. All lawyers are required to complete professional development activities to maintain their competence. But there are other ways that professional development can enhance a lawyer's career and lawyers are encouraged to use all of the features of the new CPD Tool to maximize the personal and professional benefits they will receive from that engagement. This additional information that is displayed in the full plan is not accessible to the Law Society as it can be personal and sensitive in nature.

20. I forgot to save a copy of my plan when I submitted. Can I still download a copy of my plan? (#accordion_4_collapse_4)

Current CPD plans can be downloaded from the CPD Tool dashboard by selecting View/Edit Plan in the Current Plan section.

21. How do I view my previous CPD plans? (#accordion_4_collapse_5)

Editing CPD plans

22. Can I change my CPD plan after I submit it? (#accordion_5_collapse_1)

CPD Resources

In addition to the Professional Development Profile **(https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/professional-development-profile/)** and Reflective Practice **(https://learningcentre.lawsociety.ab.ca/mod/page/view.php?id=339)** course, the following information and resources are available when completing and implementing CPD plans.

Law Society Resources (#accordion_1_collapse_1)

The Key Resources **(https://www.lawsociety.ab.ca/resource-centre/key-resources/)** located within the Law Society's Resource Centre align with the nine domains of the Profile, to help lawyers easily locate resources relevant to their CPD plans.

The Law Society's Education department can offer guidance and suggestions on possible learning activities. However, it is up to each lawyer to determine how to best improve proficiency in chosen areas of professional development, depending on level of experience, practice context and goals.

Learning Activity Options (#accordion_1_collapse_2)

The Law Society has always taken a broad approach regarding the types of learning activity a lawyer can engage in for continuing professional development. The definition of "Continuing Professional Development", set out in Rule 67.1 of the Rules of the Law Society of Alberta **(https://documents.lawsociety.ab.ca/wp-content/uploads/2017/01/04144612/Rules.pdf)**, allows for both formal and informal learning activities to be completed provided they are:

- relevant to the professional needs of a lawyer;
- pertinent to long-term career interests as a lawyer;
- in the interests of the employer of a lawyer or 749

Key Resources

Our key resources have been aligned with the nine domains of the Professional Development Profile (https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/professional-development-profile/), making it easier for lawyers to locate resources relevant to CPD plans. Within each domain, lawyers can filter resources by competency, practice setting and format.

(https://www.lawsociety.ab.ca/resource-centre/key-resources/legal-practice/)

Legal Practice

(https://www.lawsociety.ab.ca/resource-centre/key-resources/continuous-improvement/)

Continuous Improvement

Our Glossary

A-E F-K L-O P-T U-Z

When discussing racism and speaking out against it, it is important to be as specific and clear as possible about the terms we use because:

- Racism is often expressed in blanket statements, generalities, and misinformation, coupled with often-intense emotions
- Your ability to identify and counter problematic assumptions, statements and dynamics will be enhanced by your familiarity with appropriate and current terms and their definitions

The CARED Collective maintains a glossary with definitions of key terms related to your work in anti-racism. These terms are crucial to the system of thought that works to combat individual, institutional and systemic racism. This list is by no means exhaustive. Moreover, history has shown us that terminology tends to shift over time, particularly as marginalized groups and individuals are increasingly heard.

You will notice that our citations (in blue) will either link to the online resource or can be found in the footnotes. You will also find additional readings, resources and related terms marked by the following symbol: ➢

➢ See CARED's sections on "The Basics: Level 1" and "The Basics: Level 2"

A - E

Ableism: "The pervasive system of discrimination and exclusion that oppresses people who are differently abled, including differences in mental, cognitive, emotional, and/or physical abilities, through attitudes, actions, or institutional policies" (UC Davies Retrieved 9/14/20).[1] Castañeda and Peters (2000)[2] define the term as "a form of discrimination or prejudice against individuals with physical, mental, or developmental disabilities that is characterized by the belief that these individuals need to be fixed or cannot function as full members of society" (qtd. in Smith, Foley & Chaney, 2008, p. 304).[3]

➢ Click here to see Smith, Foley and Chaney's full article "Addressing Classism, Ableism, and Heterosexism in Counselor Education"

[1] University of California, Davis. LGBTQIA Resource Centre Glossary.
[2] Castañeda, R., & Peters, M. L. (2000). Ableism. In M. Adams, W. J. Blumenfled, R. Castañeda, H. W. Hackman, M. L. Peters, & X. Zúñiga (Eds.), *Readings for diversity and social justice* (pp. 319–323). New York: Routledge.
[3] Smith, L., Foley, P. F., & Chaney, M. P. (2008). Addressing classism, ableism, and heterosexism in counselor education. Counselling & Development, 86, 303-309.

Aboriginal Peoples: A collective name for the diverse Indigenous peoples—the original inhabitants—of Canada. The term was enshrined in the Constitution Act of 1982, and refers to First Nations (which includes Status and non-Status Indians), Inuit, and Métis peoples. While the collective term has offered a sense of solidarity among Indigenous communities, the term has also functioned to erase the distinct histories, languages, cultural practices, and sovereignty of more than fifty nations that lived here prior to European colonization. As such, its usage is often debated, with communities preferring their own terms of self-identification. Recently, the term Indigenous has become more prevalent, as it is the term adopted in the UN Declaration on the Rights of Indigenous Peoples. The Constitution Act affirmed the rights of Aboriginal peoples, but did not define them explicitly, leaving this process to the courts.
➢ See *First Nations*, *Indian*, *The Indian Act*, *Indigenous*, *Métis*, *Native*, *Status/non-Status Indian* & *Inuit*
➢ **Suggested Reading**: *Cultivating Canada: Reconciliation Through the Lens of Cultural Diversity*; Click here to see the full PDF (It may take a moment to load)

Acceptance: "Affirmation and recognition of those whose race, religion, nationality, values, beliefs, etc. are different from one's own. Acceptance goes beyond 'tolerance' which represents a "coming to terms" with difference rather than an embrace or approval of it" (CRRF Retrieved 8/13/20).[4]

Affirmative Action: "An active effort to improve the employment or educational opportunities of members of minority groups and women through explicit actions, policies or programs" (CRRF Retrieved 8/13/20). These explicit actions refer not only to inclusion in the hiring process, but are meant to change how a place of work or learning functions, perhaps in regards to decision making or communication.
➢ See *Employment Equity*

Ageism: "The belief in the intrinsic superiority of people within a certain age range, often accompanied by prejudice, stereotyping, and discrimination on the basis of age, usually against old people" (Colman, 2015).[5] Although ageism most commonly refers to the elderly, it can also be directed towards children, youth, young adults (i.e. any group outside of one's own). Essentially, it is about assuming someone is inferior and less capable due to his/her age or perceived age.

Ally: "A member of a different group who works to end a form of discrimination for a particular individual or designated group" (CRRF Retrieved 8/13/20). For example, a more privileged group or individual may work to end a form of oppression that gives him/her privileges; this could be men who work to end sexism or white individuals who engage in anti-racist work.

Anglocentrism: Centred on or considered in terms of either England/Britain, or the English language. As English is the dominant language in Canada, English-speakers may tend to assume

[4] Canadian Race Relations Foundation (CRRF)
[5] Colman, A. (2015). ageism. In A Dictionary of Psychology. Oxford University Press.

that the English language is both the "norm" and "ideal." People who are Anglocentric may not see that language creates and carries culturally specific perspectives/world views, and may assume that the world views produced through English are universal.

Anti-Black Racism: "Anti-Black racism is prejudice, attitudes, beliefs, stereotyping and discrimination that is directed at people of African descent and is rooted in their unique history and experience of enslavement and its legacy. Anti-Black racism is deeply entrenched in Canadian institutions, policies and practices, to the extent that anti-Black racism is either functionally normalized or rendered invisible to the larger White society. Anti-Black racism is manifest in the current social, economic, and political marginalization of African Canadians, which includes unequal opportunities, lower socio-economic status, higher unemployment, significant poverty rates and overrepresentation in the criminal justice system" (Gov't of Ontario, "Glossary" Retrieved 9/28/20).

Anti-Indigenous Racism: "Anti-Indigenous racism is the ongoing race-based discrimination, negative stereotyping, and injustice experienced by Indigenous Peoples within Canada. It includes ideas and practices that establish, maintain and perpetuate power imbalances, systemic barriers, and inequitable outcomes that stem from the legacy of colonial policies and practices in Canada. Systemic anti-Indigenous racism is evident in discriminatory federal policies such as the Indian Act and the residential school system. It is also manifest in the overrepresentation of Indigenous peoples in provincial criminal justice and child welfare systems, as well as inequitable outcomes in education, well-being, and health. Individual lived-experiences of anti-Indigenous racism can be seen in the rise in acts of hostility and violence directed at Indigenous people" (Gov't of Ontario, "Glossary" Retrieved 9/28/20).

Anti-Oppression: "Strategies, theories, and actions that challenge social and historical inequalities/injustices that have become part of our systems and institutions and allow certain groups to dominate over others" (CRRF Retrieved 8/13/20).

Anti-Racism: "An active and consistent process of change to eliminate individual, institutional and systemic racism" (CRRF Retrieved 8/13/20). This process involves examining and challenging societal structures and individual biases/beliefs that uphold racism and its power imbalances.
➢ To learn more, visit our page Anti-Racism Defined

Anti-Racist Education: "Anti-racist education is based in the notion of race and racial discrimination as being embedded within the policies and practices of institutional structures. Its goal is to aid students to understand the nature and characteristics of these discriminatory barriers, and to develop work to dismantle them" (CRRF Retrieved 8/13/20). However, a focus on anti-racism does not necessarily mean that other forms of oppression are considered or addressed.
➢ See *Multiculturalism*, *Diversity* & *Intersectionality*

Anti-Semitism: "The body of unconscious or openly hostile attitudes and behaviour directed at Jewish people (individually or collectively), leading to social, economic, institutional, religious,

cultural, or political discrimination. Anti-Semitism has also been expressed through acts of physical violence and through the organized destruction of entire communities" (Henry & Tator, 2006, p. 347).[6]

Appropriation: "The claiming of rights to language, subject matter, and authority that are outside one's personal experience. The term also refers to the process by which members of relatively privileged groups 'raid' the culture of marginalized groups, abstracting cultural practices or artefacts from their historically specific contexts" (Henry & Tator, 2006, p. 347).[7] The term also applies to the economic exploitation of marginalized groups (particularly Indigenous peoples) by producing and selling cultural/intellectual property. In such cases, the communities from which the practices/items originate are neither consulted nor given any share of the profits. This is often the case with dream catchers, Inukshuks, soapstone carvings, inappropriate/unauthorized use of images on clothing or furniture.

➢ **Suggested Reading:** Loretta Todd's "Notes on Appropriation"

Assimilation: "The full adoption by an individual or group of the culture, values and patterns of a different social, religious, linguistic or national ethos, resulting in the diminution or elimination of attitudinal and behavioural characteristics of the original individual or group. Can be voluntary or forced" (CRRF Retrieved 8/13/20).

Bias: "A subjective opinion, preference, prejudice, or inclination, often formed without reasonable justification, which influences the ability of an individual or group to evaluate a particular situation objectively or accurately" (CRRF Retrieved 8/13/20). Biases (particularly implicit biases) are built into and perpetuated by societal structures. It is therefore important to examine our biases on an individual level. These biases might be against others' race, gender, weight, disability, sexuality, skin-tone, age, culture or religion.

➢ Click here to take one of Harvard's "Project Implicit" quizzes on implicit bias

Binary Thinking: A Western, capitalist form of perceiving the world that conceives of things only in terms of oppositions: either/or, good/bad, right/wrong, winner/loser, for/against. Binary thinking can be a form of denial or resistance; it supposes that there are only 2 mutually exclusive options and nothing in between. For example, when it comes to Indigenous sovereignty, non-Indigenous individuals may feel that if such a group gains rights, they themselves are automatically losing something (perhaps their home or vacation property) when in reality, someone else's gain is not their loss.

BIPOC: An acronym that stands for "Black, Indigenous, and People of Colour." Some see the term as inclusive as it acknowledges that "POC" (People of Colour) alone does not accurately represent the disparate ongoing and historical experiences of both black and Indigenous people. On the other hand, some argue that using an all-encompassing term like "BIPOC" is lazy, homogeneous and a "product of colonialism" (Luger qtd. in Garcia).[8] The term can be used

[6] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[7] ibid.
[8] Sandra E. Garcia. 2020. "Where Did BIPOC Come From?" New York Times.

generally to represent the non-white experience, however, many "BIPOC" individuals agree that using specific language when referring to racialized groups or experiences is ideal.
➢ **Suggested Reading:** Sandra E. Garcia's article "Where Did BIPOC Come From?"

Black Lives Matter (BLM): A Black-centered political movement founded by Alicia Garza, Patrisse Cullors, and Opal Tometi in 2013 (Black Lives Matter, "Herstory" Retrieved 8/14/20). The movement was created in response to the acquittal of George Zimmerman who brutally murdered 17-year-old Trayvon Martin as he was walking home (unarmed) from the store (ibid.).

"Black Lives Matter is an ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise. It is an affirmation of Black folks' humanity, [their] contributions to this society, and [their] resilience in the face of deadly oppression" (ibid.).

Since 2013, BLM has gained worldwide momentum in its "fight to end State-sanctioned violence, liberate Black people, and end white supremacy" (ibid.).
➢ **Suggested Resources:** Black Lives Matter, BLM in Canada (huffingtonpost.ca) & BLM News (rabble.ca)

Classism: The cultural, institutional and individual set of practices and beliefs that assign value to people according to their socio-economic status. In classism, those in the "upper" and "middle" classes are considered more valuable than those of "lower" classes, such that those in the upper classes are taken more seriously and seen as contributing "more" to society at the expense of recognizing that the class structure is based on exploitation of the labour of the so-called lower classes. Based in capitalist economics and imperialism, classes have been racialized, and can be seen in both local, national, and international contexts: "First World" and "Third World," for example.

Colonialism/Colonization: "Colonialism is defined as a policy or set of policies and practices where a political power from one territory exerts control in a different territory. It involves unequal power relations" (FemNorthNet, 2016, p.1). "Colonialism in Canada may best be understood as Indigenous peoples' forced disconnection from land, culture and community by another group. It has its roots in Canada's history but it is alive and well today, too. In Canada's north, governments offer support to industries that take over northern land for resource extraction and remove Indigenous peoples from it" (ibid.).
➢ **Suggested Reading:** The Truth and Reconciliation Commission of Canada's report What We Have Learned: Principles of Truth and Reconciliation. Click here for the TRC's full list of findings
➢ See *Imperialism* & *Neocolonialism*

Colour-Blindness: Colour-blindness (or colour evasion) is the insistence that one does not notice or see skin colour or race. Annamma, Jackson and Morrison state that colour-blindness "conflates lack of eyesight with lack of knowing. Said differently, the inherent ableism in this term equates blindness with ignorance" (2017, p. 154).[9] Gotanda asserts that this

[9] Annamma, S., Jackson, D., & Morrison, D. (2017). Conceptualizing color-evasiveness: using dis/ability critical race theory to expand a color-blind racial ideology in education and society. *Race Ethnicity and Education*, 20(2), 147-162.

"[n]onrecognition [of the significance of race] fosters the systematic denial of racial subordination and the psychological repression of an individual's recognition of that subordination, thereby allowing such subordination to continue" (Gotanda, 1991, p. 16).[10]
➢ **Suggested Readings**: "The Paradox of Power and Privilege: Race, Gender and Occupational Position" & *White Women, Race Matters: The Social Construction of Whiteness*

Culture: The aspects of individual and group identities that include language, religion, race, gender, experience of migration/immigration, social class, political affiliations, family influences, age, sexual orientation, geographic origin, ethnicity, experience or absence of experience with discrimination or other injustices.

"The totality of the ideas, beliefs, values, knowledge, and way of life of a group of people who share a certain historical, religious, racial, linguistic, ethnic, or social background. Manifestations of culture include art, laws, institutions, and customs. Culture is transmitted and reinforced, and it changes over time" (Henry & Tator, 2006, p. 349).[11]

In Canada, some aspects of complex cultural processes of Indigenous communities and communities of colour (culturally specific foods, clothing, music, art practices etc.) have been assumed by white people to equal "culture"; this happens in conjunction with the exoticizing of difference. Ideally, "culture" should be considered a verb, an action, a process, a way of living.

Cultural Racism: "Portrayal of Aboriginals, Blacks, people of colour and different ethnicities in the media, school texts, literature as inherently "inferior", "savage", "bad", "primitive". The premise by a host society that devalues and stereotypes minority populations" (CRRF Retrieved 8/14/20).

Cultural Sensitivity: The awareness of and responsiveness to the cultural values, beliefs, behaviours of people whose cultural backgrounds are different from our own.
➢ See *Acceptance*

Cultural Values: Ideas that do not require external or outside evidence to be accepted as true. Groups of individuals share more or less similar values or beliefs that help them to communicate with one another and explain their similarities and differences. These values become a yardstick for groups to measure to what degree individuals belong to the group. Groups with different value systems are likely to experience conflict or disagreement because they will experience the same event from the viewpoint of contrasting assumptions.

Decolonization: "Decolonization once viewed as the formal process of handing over the instruments of government, is now recognized as a long-term process involving the bureaucratic, cultural, linguistic and psychological divesting of colonial power. … Decolonization is about shifting the way Indigenous Peoples view themselves and the way non-Indigenous people view Indigenous Peoples. Indigenous Peoples are reclaiming the family, community, culture, language,

[10] Gotanda, N. (1991). A critique of 'our constitution Is colour-blind.' Stanford Law Review, 44 (1), 1-68.
[11] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.

history and traditions that were taken from them under the federal government policies designed for assimilation. Some communities are reclaiming control via self-government agreements, treaties, or other negotiated agreements" (Indigenous Corporate Training Inc., "A Brief Definition of Decolonization and Indigenization" Retrieved 8/18/20).

"Decolonization requires non-Indigenous Canadians to recognize and accept the reality of Canada's colonial history, accept how that history paralyzed Indigenous Peoples, and how it continues to subjugate Indigenous Peoples. Decolonization requires non-Indigenous individuals, governments, institutions and organizations to create the space and support for Indigenous Peoples to reclaim all that was taken from them" (ibid.).
➢ **Suggested Reading**: *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* by Paulette Regan; Click here to read the first 30 pages

Denial: "Refusal to acknowledge the societal privileges … that are granted or denied based on an individual's ethnicity or other grouping" (Institute for Democratic Renewal and Project Change Anti-Racism Initiative, *A Community Builder's Tool Kit*, p. 32).

Discrimination: "The denial of equal treatment and opportunity to individuals or groups because of personal characteristics and membership in specific groups, with respect to education, accommodation, health care, employment, access to services, goods, and facilities. This behaviour results from distinguishing people on that basis without regard to individual merit, resulting in unequal outcomes for persons who are perceived as different. Differential treatment that may occur on the basis of any of the protected grounds enumerated in human rights law" (CRRF Retrieved 8/18/20). There are three kinds of discrimination: **overt discrimination, unequal treatment, and systemic discrimination:**

- **Overt discrimination:** the granting or denying of certain rights to certain groups of individuals.

- **Unequal treatment:** the differential treatment of one group in comparison with another because of certain characteristics (i.e. paying lower wages to women in comparison to men for work of equal value).

- **Systemic discrimination:** the policies and practices entrenched in established institutions that result in the exclusion or promotion of designated groups.

Diversity: "A term used to encompass the acceptance and respect of various dimensions including race, gender, sexual orientation, ethnicity, socio-economic status, religious beliefs, age, physical abilities, political beliefs, or other ideologies" (CRRF Retrieved 8/18/20).

Unfortunately, in discourses of privilege/racism, the recognition of diversity has been used, falsely, as evidence of genuine equality, social justice, and the end of racism. In other words, "diversity training" has, at times, devolved into a simplistic recognition of "differences" with little attention to racism, systemic/institutional racism, unequal distribution of power/authority, and little change in attitudes or actions of the most privileged.

Dominant Culture: In Canada, Dominant culture results from patterns of learned behaviors and values that are shared among members of a group, and are transmitted to group members over time; these behaviors and values distinguish the members of one group from another. Even with the extent of racial and ethnic diversity in Canada, the prevailing cultural values are of European (Western) origin and are perceived as the norm. **Euro-Canadian** is a term used to refer to predominantly white Canadians of European descent and encompasses their cultural values, attitudes and assumptions. It refers to the group of people that is largest in number and "successfully controls other groups through social, economic, cultural, political, or religious power. In Canada, the term has generally referred to White, Anglo-Saxon, Protestant males" (Henry & Tator, 2006, p. 327).[12] The term "mainstream" is often used to describe or refer to dominant culture.
➢ See *Culture*

Employment Equity: "A program designed to remove barriers to equality in employment for reasons unrelated to ability, by identifying and eliminating discriminatory policies and practices, remedying the effects of past discrimination, and ensuring appropriate representation of the designated groups (women; Aboriginal peoples; persons with disabilities; and visible minorities). Employment Equity can be used as an active effort to improve the employment or educational opportunities of members of minority groups and women through explicit actions, policies or programs" (CRRF Retrieved 8/18/20).

Environmental Racism: "A systemic form of racism in which toxic wastes are introduced into or near marginalized communities. People of colour, indigenous peoples, working class, and poor communities suffer disproportionately from environmental hazards and the location of dangerous, toxic facilities such as incinerators and toxic waste dumps. Pollution of lands, air and waterways, often causes chronic illness to the inhabitants and change in their lifestyle" (CRRF Retrieved 8/18/20). Indigenous communities are at particular risk, as is their ability to perform their traditional roles as custodians of the land.

Equality: Equal treatment is valued as one of the central concepts (along with tolerance and freedom of expression) in liberal democracies. Often the discourse of equality is used to perpetuate discriminatory practices because there is a focus on same or equal treatment, which is perceived as fair by dominant culture. Therefore, the focus remains on the treatment and not on the result. If the treatment does not result in equality or the balancing of power, then equality has not been achieved. Keeping the focus on equal treatment is a form of denial and promotes a lack of knowledge by being unwilling to consider how dominant institutions may not meet the needs of racialized people and how they are structured to exclude certain groups (Bolgatz, 2005[13]; Henry & Tator, 2006[14], 2009[15]; Howard, 2006[16]; Sefa Dei et al. 2000[17]).

[12] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[13] Bolgatz, J. (2005). Talking race in the classroom. New York, NY: Teachers College Press.
[14] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[15] Henry, F., & Tator, C. (Eds.). (2009). Racism in the Canadian university demanding social justice, inclusion, and equity. Toronto, ON: University of Toronto Press.
[16] Howard, G. R., (2006). We can't teach what we don't know: White teachers, multiracial schools (Second Edition). New York: Teachers College Press.
[17] Sefa Dei, G. J., Zine, J., Karumanchery. L. L., James-Wilson, S., & James, I. M. (2000). Removing the margins: the challenges and possibilities of inclusive schooling. Toronto, ON: Canadian Scholars' Press Inc.

➢ See *Systemic/Institutional Racism*

Substantive equality or equity stipulates that differences among individuals and groups be taken into account and accommodated for institutional policies, practices and laws. In the context of human rights law, equality does not necessarily mean equal treatment, but rather equal consideration. As such, the result may be the same treatment in some cases and special consideration or treatment in other cases (Kallen, 2003).[18]

Equity: "A condition or state of fair, inclusive, and respectful treatment of all people. Equity does not mean treating people the same without regard for individual differences" (CRRF Retrieved 8/18/20). The claim (often by white, middle-class people) that one treats everyone "the same" is not only false, but is not the goal of anti-racism.

Ethnicity: "The multiplicity of beliefs, behaviours and traditions held in common by a group of people bound by particular linguistic, historical, geographical, religious and/or racial homogeneity. **Ethnic diversity** is the variation of such groups and the presence of a number of ethnic groups within one society or nation" (CRRF Retrieved 8/18/20).

The word "ethnic" is often used to denote non-dominant or less-powerful cultural identities in Canada. In Western Canada (e.g., Alberta), "ethnicity" is typically, and problematically racialized as non-white (as in "ethnic food" aisles in grocery stores). However, communities of white people comprise ethnic communities (e.g., Irish Canadian).

Ethno-Cultural Group: A group of people who share a common distinctive heritage, culture, social patterns and a sense of belonging.

Ethnocentrism: The tendency to view others through the filters and assumptions of one's own group/practices and to see one's own group as "the norm," the best, or the ideal to which others should conform. In anti-racism work in Canada, the term, particularly in terms of what is seen as "the norm," most often and appropriately applies to white, middle-class, Christian, straight people. Belief in the superiority of one's own ethnic group may be a "natural human tendency that advances the notion of dissimilarity between two ethnic groups. Each group evaluates the other as to how similar or different the group is from its own. The more similar they are, the greater the acceptance. The more dissimilar the other group is the more negative stereotyping will occur. This stereotyping can then lead to misunderstandings and possibly hostility" (Leong & Bhagwat, 2001).[19]

Eurocentrism: The tendency to view others through the filters and assumptions of European (primarily Northern European) perspectives, and to assume European practices and perspectives to be the best, the ideal, the norm. One need not be of European ancestry to be Eurocentric. A

[18] Kallen, E. (2003). Ethnicity and human rights in Canada (3rd ed.). Don Mills, ON, Canada: Oxford University Press.
[19] Leong, F. T.L., & Bhagwat, A. (2001). Challenges in "unpacking" the universal, groups, and individual dimensions of cross-cultural counseling and psychotherapy: Openness to experiences as a critical dimension. In D. B. Pope-Davis & H. L. K. Coleman (Eds.), The intersection of race, class and gender in multicultural counseling (pp. 241-266). Thousand Oaks, CA: Sage.

Eurocentric view considers history according to European experiences and paradigms (i.e., the assumption that history in Canada "began" with the arrival of Europeans).

F - K

Feminism: Actions, perspectives, and historical movements aimed at challenging and eliminating sexism. Some forms of feminism, particularly "mainstream" feminism in North American and Europe, have been criticized appropriately for their erasure of race and class dynamics and cultural specificity. For example, these movements might claim a "universal sisterhood" to unite black African women and North American middle-class women without consideration of how white middle-class women may be complicit in racism, classism, and the First World's exploitation of Third World peoples.

First Nations, First Peoples, Aboriginal People: "In Canada, [refers to] status Indians, non-status Indians, Inuit and Métis" (Henry & Tator, 2006, p. 325).[20] Indigenous peoples of North America, recognizing that in both pre-and post-contact with European civilizations, indigenous peoples are not a single entity or a single nation. This term also recognizes, in a contemporary Canadian context, not just that people lived in the geographic space before Western contact, but that their nations preceded the formation of Canada's current political nation-state. The term is sometimes used interchangeably with "Aboriginal," "Native," and "Indigenous," or by more specific nation/band affiliations (e.g. Sikskia, Stoney, Peigan). Depending on self-and group-identification, some aboriginal people might include themselves in the designation "people of colour" [although this is controversial]. The most important distinction to make here is that non-aboriginal people of colour, along with white people, come from immigrant ancestors: "The evidence of racism in Canada is most graphically manifested in the 400-year relationship between a white racist society and oppressed Aboriginal indigenous peoples. … The relationship of aboriginal peoples to the state is significantly different from its relationship to racial minorities" (Henry & Tator, 2006, p. 5).
➢ Click here to see an excerpt from *The Colour of Democracy: Racism in Canadian Society* 4th Edition

First Nations: A term used to refer to the original inhabitants of the territories overlain by Canada, which came into popular usage in the 1980s. It refers to the 50+ specific, autonomous and sovereign Indigenous nations that existed and flourished prior to European colonization (and that continue to do so). The term has been adopted as a collective term among Indigenous communities in Canada, particularly as it asserts both custodianship/occupancy of the land prior to colonization, as well as inherent sovereignty. It has also been taken up by one of the national bodies representing Indigenous peoples in Canada: The Assembly of First Nations.

"First Nations" (plural) refers to more than one of these communities, while "First Nation" (singular) refers to one community/nation. Many communities will self-identify using their

[20] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.

traditional terminology (e.g., Piikani, Tsuu T'ina, Siksika, Kainai).

The term should not be confused with or be considered to include Métis or the Inuit, as these are culturally, linguistically, and in the case of the Inuit, distinct from First Nations peoples.
➢ Click here to learn more about First Nations

Freedom of Expression: In Canada, the right to freedom of thought, belief, expression and opinion, including freedom of the press, and other media, as guaranteed by section 2 of the Charter of Rights and Freedoms. Dissemination of hate propaganda and genocide, however, is a crime under the Criminal Code, although this has recently been appealed successfully in a Supreme Court decision.

There are limits placed on this freedom by the Human Rights Act(s) of various provinces. It is a criminal offense in Canada to promote hatred or advocate genocide or distribute hate propaganda. According to the United Nations definition, genocide can involve mass murder (Rwanda, The Holocaust) as well as assimilationist practices such as the removal of children from their homes/communities with the express intent to destroy their culture (cultural genocide).
➢ See *Genocide*

Genocide/The UN Convention on the Prevention and Punishment of the Crime of Genocide: Passed in New York in 1948, this convention declares genocide a crime under international law. The convention defines genocide as any act committed with the idea of destroying in whole or in part a national, ethnic, racial, or religious group. According to Article II, this includes acts such as:

- Killing members of the group;
- Causing serious bodily or mental harm to the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Forcefully transferring children of the group to another group.

A Royal Commission into the separation of Indigenous Australian children from their families (entitled *Bringing Them Home*) identified the practice as genocide under the UN definition. Canada's Indian Residential School System, by removing children and placing them in boarding schools with an assimilationist agenda, is considered by Indigenous communities and their allies in Canada as a form of attempted genocide.

The convention declares that there is no immunity from being prosecuted for committing genocide: those found guilty of genocide will be punished for their crime, regardless of whether they are or were legally constituted ruler, public officials, or private individuals. According to Article VI, anyone charged with genocide will be put on trial by either:

- a competent court of the country where the act was committed; or
- an international court that has jurisdiction over the people and crimes concerned

(United Nations Human Rights. "Convention on the Prevention and Punishment on the Crime of Genocide").

Harassment: "Harassment is a form of discrimination. It involves any unwanted physical or verbal behaviour that offends or humiliates you, whether subtle or overt. Generally, harassment is a behaviour that persists over time. Serious one-time incidents can also sometimes be considered harassment" (CRRF Retrieved 8/21/20).

Hate Group Activity: "An organization that – based on its official statements or principles, the statements of its leaders, or its activities – has beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics. These organizations spread propaganda intended to incite hatred toward certain groups of people; advocate violence against certain groups on the basis of sexual orientation, race, colour, religion etc.; claim that their identity (racial, religious etc.) is 'superior' to that of other people; do not value the human rights of other people" (CRRF Retrieved 8/21/20). Individuals who promote hatred will often insist that they have the right to do so as a right of freedom of speech. Dissemination of hate propaganda is an offense under the criminal code.

Heterosexism: "[T]he privileged and dominant expression of sexuality in most known societies, which is often regarded as the 'natural' form of human sexual desire. In Western culture, heterosexuality has been normalized and prioritized over all other forms of human sexuality via institutional practices, including the law and social policy" (Henry D. Jary & J. Jary, 2006).[21] In other words, the normalization of heterosexuality denies, denigrates and stigmatizes non-heterosexual forms of behaviour, identity, relationship or community.

It is also referred to as "normative heterosexuality" and "compulsory heterosexuality" and is a foundational assumption of both Western patriarchy and fundamentalist Christianity, whose strong hold on Alberta remains.

Many Indigenous communities in Canada traditionally have celebrated and often venerated "two-spirited" people as having particular gifts relating to their understanding of male and female perspectives. These individuals cannot be defined by the narrow, Western tendency to classify individuals by sexual orientation alone. In other words, to equate homosexuality/ bisexuality/ transgender with Indigenous "two spiritedness" is inadequate to the breadth of "two-spiritedness."
➢ See *Two-Spirited People*

Homophily/Racial Homophily: Homophily "is the principle that a contact between similar people occurs at a higher rate than among dissimilar people" (McPherson, Smith-Lovin & Cook, 2001, p. 416).[22] Thus, racial homophily is "the preference for associating with individuals of the same racial background" (Wimmer & Lewis, 2010, p. 583).[23] Although homophily is often perceived to

[21] Jary, D., & Jary, J. (2006). heterosexuality. In Collins Dictionary of Sociology (4th ed.). HarperCollins.
[22] McPherson, M., Smith-Lovin, L., & Cook, J. M. (2001). Birds of a Feather: Homophily in Social Networks. Annual Reviews, 27, 414-444.
[23] Wimmer, A., & Lewis, K. (2010). Beyond and Below Racial Homophily: ERG Models of a Friendship Network Documented on Facebook. American Journal of Sociology, 116(2), 583-642.

be a neutral concept of group formation, racial homophily and other forms of homophily have been criticized as subtle forms of systemic discrimination.

Moreover, Vicki Smith explains how homophily "contributes to occupational race and sex segregation, a leading cause of the race and sex gaps in pay. One common way that workers learn about new employment opportunities is through their social networks. Job-finding networks tend to be race and sex homophilous. As a result, minorities and women, who are segregated into minority-dominated and female-dominated occupations and workplace networks, pass along job information to other minorities and women, channeling them into segregated jobs as well. Employers who rely on referral-based hiring also contribute to the maintenance of occupational race and sex segregation because employees tend to refer socially similar job applicants, reproducing the race and sex composition of the current labor force" (*Sociology of Work: An Encyclopedia*, 2013).[24]

Homophobia: "Negative attitudes towards homosexual people and homosexuality which may be manifested in discrimination, hostile behaviour, or hate crimes. … The use of 'phobia' has been criticized as implying a pathological and irrational fear rather than a form of prejudice analogous to racism. … Internalized homophobia is reflected in laws, policies, practices, and the history of invisibility of gay people in the mass media" (Chandler & Munday, 2016).[25] This fear/prejudice of gay, lesbian, bisexual and transgendered people is rooted in the desire to maintain the heterosexual social order.

Human Rights: "In Canada, human rights are protected by federal, provincial and territorial laws. The Canadian Human Rights Act and provincial/territorial human rights codes protect individuals from discrimination and harassment in employment, accommodation and the provision of services. The *Canadian Charter of Rights and Freedoms* protects every Canadian's right to be treated equally under the law. The Charter guarantees fundamental freedoms such as (*a*) freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association" (CRRF Retrieved 8/21/20).

On 10 December 1948, the United Nations adopted and proclaimed The Universal Declaration of Human Rights (UDHR).
➢ Click here to see the full Declaration

Ideology/Ideological Racism: "A complex set of beliefs, perceptions, and assumptions that provide members of a group with an understanding and an explanation of their world. Ideology influences how people interpret social, cultural, political, and economic systems. It guides behaviour and provides a basis for making sense of the world" (Henry & Tator, 2006, p. 350).[26]

Idle No More: "With roots in the Indigenous community, Idle No More began in November 2012 as a protest against the introduction of Bill C-45 by Stephen Harper's Conservative government.

[24] Smith, V. (Ed). (2013). Sociology of Work: An Encyclopedia. Sage Publications.
[25] Chandler D., & Munday, R. (2016). homophobia. In A Dictionary of Media and Communication. Oxford University Press.
[26] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.

Idle No More activists argued that the Act's changes diminished the rights and authority of Indigenous communities while making it easier for governments and businesses to push through projects without strict environmental assessment. The movement quickly gained supporters from across Canada (and abroad), and grew to encompass environmental concerns and Indigenous rights more generally" (Tabitha Marshall. "Idle No More," *The Canadian Encyclopedia Online*, Retrieved 9/8/20).
➢ Click here to learn more about Idle No More

Immigrant: "One who moves from their native country to another with the intention of settling permanently for the purpose of forging a better life or for better opportunities. This may be for a variety of personal, political, religious, social or economic reasons" (CCRF Retrieved 9/8/20). This term is sometimes used incorrectly to refer to people of colour. The term "**New Canadian**" has emerged more recently, partly in resistance of this misuse of the term and the assumption that a "true" Canadian is white.

Imperialism: "While 'colonialism' … is used to refer to the domination and control of non-European places/people by Europeans settled in that space, imperialism is the principle behind the colonial project. But the term also gestures at the organization of the colony and territories into a profitable economic and political system, with attempts at cultural homogenization as well" (Nayar, 2015, p. 94).[27] In other words, imperialism is the ideological foundation that justifies and normalizes domination and exploitation of people and territories (i.e. racism, capitalism), while colonization/colonialism refer to the material practices, policies, and actions of dispossession and domination (e.g., war, enslavement, dispossession/dispersal of people through violence as well as ideology, Christianization, and so on).
➢ See *Colonialism*

Implicit Bias: "Thoughts and feelings are "implicit" if we are unaware of them or mistaken about their nature. We have a bias when, rather than being neutral, we have a preference for (or aversion to) a person or group of people. Thus, we use the term "implicit bias" to describe when we have attitudes towards people or associate stereotypes with them without our conscious knowledge. A fairly commonplace example of this is seen in studies that show that white people will frequently associate criminality with black people without even realizing they're doing it" (Perception Institute. "Implicit Bias," Retrieved 9/8/20).
➢ Click here to test your implicit bias in regards to race, age, countries, skin-tone, gender, weight or sexuality

Inclusive Education: "Education that is based on the principles of acceptance and the inclusion of all students. Students see themselves reflected in their curriculum, their physical surroundings, and the broader environment, in which diversity is honoured and all individuals are respected" (CRRF Retrieved 9/8/20).

In recent years, the term "inclusive" has proven problematic, insofar as its practitioners and

[27] Nayar, P. K. (2015). The Postcolonial Studies Dictionary. Chichester, SXW: John Wiley & Sons, Ltd.

proponents have falsely assumed that an increase in representations of diversity (a wider range of students seeing their communities reflected in the curriculum) somehow automatically equals anti-racism education. This is because the diversity of representations (and even increases in the hiring of teachers of colour and Indigenous teachers) does not automatically change how the system functions, nor does it in itself change the power dynamics that continue to grant power and authority to whiteness/white people and dominant methods. Instead, an "add-on" approach to education has been adopted, in which the system remains fundamentally unchanged in its practice and assumptions, with representations of people of colour and Indigenous people added on to an unchanged, dominant, center. This leaves Indigenous people and people of colour in a difficult position: the increase in diverse representation is pointed to by white people as evidence that inclusiveness has already been achieved, while they are left in periphery of the decision-making process.

Inclusive Language: "The deliberate selection of vocabulary that avoids the explicit or implicit exclusion of particular groups and that avoids the use of false generic terms, usually with reference to gender" (CRRF Retrieved 9/9/20). An example of inclusive language is the use of the word "partner" in place of "husband/boyfriend" and "wife/girlfriend," both of which reinforce heterosexuality as norm.

Indian: The term widely used until very recently by Europeans and Euro-Canadians to identify (and erase the differences among) the Indigenous peoples of South, Central, and North America. It is believed to have originated with Christopher Columbus, who thought he had arrived in Asia when he arrived in the Caribbean. Indigenous communities have continued to assert and fight for the formal recognition of their own traditional terms of self-identification (in their traditional languages), and the term "Indigenous" has become generally accepted as an appropriate term for referring collectively to Indigenous peoples. The term "Indian" has been recognized as derogatory and incorrect in its history and usage, but its use in Canada persists because of the continuing legislated definitions of "Indian" contained in The Indian Act (1876) and more recently, in the enshrinement of Aboriginal Rights under the Canadian Constitution Act of 1982. While some Indigenous people in Canada do self-identify as "Indian," the use of the term "Indian" by non-Indigenous people is generally confined to discussions of legislative definitions and concerns.

"The Canadian Constitution recognizes three groups of Aboriginal peoples: Indians (more commonly referred to as First Nations), Inuit and Métis. These are three distinct peoples with unique histories, languages, cultural practices and spiritual beliefs" (Indigenous and Northern Affairs Canada Retrieved 9/8/20). Indians are categorized as "status" (also referred to as registered), non-status, and Treaty Indians. According to the Indian Act, a status Indian is registered as an Indian under the Indian Act and a non-status Indian is not registered under the Act. A Treaty Indian is a person who belongs to a First Nation that signed a treaty with the Crown.

As with the Indian Act, the legislated definition of an "Indian" person in Canada is fraught with the ideologies and material realities of colonialism, and profoundly affects eligibility for a

person's rights, access to voting privileges, and funding within a band/reserve/community. Indeed, it is used to determine band membership, though First Nations have fought strenuously for the right to determine their own membership. One example of the colonial foundation of the Act is its history of the stripping of Indigenous women of any Indian status if she married a non-Indian person, which affected the status of her children. Bill C-31, which was passed in 1985, only partly addressed this problem (as it conflicted with human rights legislation), as it restored status for the individual women but placed limits on the status of her children and grandchildren.
➢ **Suggested Reading:** "Indian Act and Women's Status Discrimination via Bill C31 and Bill C3"

The Indian Act (Canada): First passed by the Canadian government in 1876 as an amalgamation of existing colonial legislation, policies, and ideologies, and still in existence today, the Indian Act essentially gives the federal government power/jurisdiction over Indigenous people and affairs in Canada. It is the only legislation in Canada that defines individuals and groups according to imperialistic definitions of "race." The Act defines who is or is not an Indian and who is eligible for specific rights, access to resources, and funding. The Act has granted the government the authority to ban traditional ceremonial practices such as the Potlatch, (and to imprison practitioners), to grant Indian Agents virtually complete authority over reserve communities, to create the Indian Residential School system, and to strip Indigenous women of "status" for marrying non-Indigenous men.

While many of the most offensive provisions of the Indian Act were removed in 1951, Indigenous communities and their allies view the Act as the mechanism by which the federal government has been able to serve its own interests in terms of the acquisition of and power over land, resources, and Indigenous people. At the same time, Indigenous communities are hesitant to abolish the Indian Act because: *a)* the Act does by implication recognize some inherent Indigenous rights (even if it does so by actively denying these rights) and *b)* for justified fears that abolishing the Act would be a move towards assimilation rather than recognition of Indigenous sovereignty.
➢ Click here to learn more about the Indian Act

Indigeneity: *"*[T]he state or quality inherent to an indigenous group—or individual, that exemplifies their position as an original people who inhabit and were born, or produced naturally, in a given land or region, including their descendants and relations thereof*"* (Mexikayotl, "The Problem with Indigeneity").

Indigenization: To "[m]ake indigenous; subject to native influence. … [According to Indigenous Corporate Training:]

- Indigenization recognizes validity of Indigenous worldviews, knowledge and perspectives
- Indigenization identifies opportunities for indigeneity to be expressed
- Indigenization incorporates Indigenous ways of knowing and doing

Indigenization requires non-Indigenous people to be aware of Indigenous worldviews and to respect that those worldviews are equal to other views. Indigenization is about incorporating

Indigenous worldviews, knowledge and perspectives into the education system, right from primary grades to universities.

It must be acknowledged that there is not a homogenous Indigenous worldview, and that each Indigenous nation or community will have their own worldview. There may be similarities and common points but it is a frequently made assumption that they are all the same. Therefore, when an organization, say a school district, makes a commitment to indigenize their curriculum they need to consult with the Indigenous community on whose land the schools stand for input on how to incorporate their knowledge and ways of doing into the curriculum" (Indigenous Corporate Training Inc., "A Brief Definition of Decolonization and Indigenization" Retrieved 9/8/20).

Indigenous: According to The United Nations' "Permanent Forum on Indigenous Issues," Indigenous peoples are the descendants "of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement, or other means." Indigenous peoples practice unique traditions and "retain social, cultural, economic, and political characteristics that are distinct from those of the dominant societies in which they live. It is estimated that there are more than 370 million Indigenous peoples spread across 70 countries worldwide" (The United Nations, "Who are indigenous peoples?").

According to the UN, the most fruitful approach is to "identify rather than define Indigenous peoples. This is based on the fundamental criterion of self-identification as underlined in a number of human rights documents." A contemporary understanding of this term is based on the following:

- Self-identification as Indigenous, at the individual level, and accepted as such by the community as their member
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic, or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities

"There are 370 million indigenous persons living in the world today. Of those, there are more than 5,000 distinct groups in more than 70 countries. Although representing 5 per cent of the world's population, indigenous peoples represent 15 per cent of the world's poorest people" (The United Nations, "Durban Review Conference," Geneva 2009).

Indigenous Rights in Canada: "It is difficult to generalize about definitions of Indigenous rights because of the diversity among First Nations, Métis and Inuit peoples in Canada. Broadly speaking, however, Indigenous rights are inherent, collective rights that flow from the original

occupation of the land that is now Canada, and from social orders created before the arrival of Europeans to North America. For many, the concept of Indigenous rights can be summed up as the right to independence through self-determination regarding governance, land, resources and culture" (Catherine Bell & William B. Henderson. Rev. Gretchen Albers. "Rights of Indigenous Peoples in Canada," *The Canadian Encyclopedia Online*, Retrieved 9/8/20).

"Indigenous peoples have traditionally pointed to three principal arguments to establish their rights: international law, the Royal Proclamation of 1763 (as well as treaties that have since followed) and the common law as defined in Canadian courts. …

On the national stage, the Royal Proclamation of 1763 has historically been viewed as the constitutional basis for Indigenous treaties and a source of legal rights. Affirmed by section 35 of the Constitution Act, 1982, the legal principles of the Royal Proclamation are still applied in modern-day treaties.

The inclusion of section 35 in the Constitution signaled a new era of judicial and political opinion on the question of Indigenous rights. This section protects a spectrum of different Indigenous and **treaty rights**, including legal recognition of customary practices such as marriage and adoption, the site-specific exercise of food harvesting and other rights that do not involve claims to the land itself, and assertions of ownership of traditional lands" (ibid.).

Individual Racism: "The beliefs, attitudes and actions of individuals that support or perpetuate racism. Individual racism can occur at both a conscious and unconscious level and can be both active and passive. Examples include telling a racist joke, using a racial epithet or believing in the inherent superiority of whites" (Adams, Bell & Griffin (eds.). *Teaching for Diversity and Social Justice: A Sourcebook*, qtd. in Racial Equity Resource Guide).

Individual Racism is learned from broader socio-economic histories and processes and is supported and reinforced by systemic racism. Because we live in such a culture of individualism (and with the privilege of freedom of speech), some people argue that their statements/ideas are not racist because they are just "personal opinion." Here, it is important to point out how individualism functions to erase hierarchies of power, and to connect unrecognized personal ideologies to larger racial or systemic ones. That is, individualism can be used as a defensive reaction. This is why it is crucial to understand systemic racism and how it operates.
➢ To learn more, visit our page "Individual Racism vs. Systemic Racism"

Intergenerational Trauma: "Historic and contemporary trauma that has compounded over time and been passed from one generation to the next. The negative effects can impact individuals, families, communities and entire populations, resulting in a legacy of physical, psychological, and economic disparities that persist across generations" (Gov't of Ontario, "Glossary" Retrieved 9/28/20).

Internalized Racism (Dominance): Internalized dominance "describes and explains the experience and attitudes of those who are members of dominant, privileged, or powerful

identity groups" (Tappan, 2006, p. 2116).[28] Griffin explains how "members of the [dominant] group accept their group's socially superior status as normal and deserved" (qtd. in Tappan, 2006, p. 2116).[29]

Internalized Racism (Oppression): Stuart Hall defines internalized racism as "the 'subjection' of the victims of racism to the mystifications of the very racist ideology which imprison and define them" (qtd. in Pyke, 2010, p. 552).[30] More specifically, the term can be defined as "the individual inculcation of the racist stereotypes, values, images, and ideologies perpetuated by the White dominant society about one's racial group, leading to feelings of self-doubt, disgust, and disrespect for one's race and/or oneself" (Pyke, 2010, p. 553).[31] It must be noted that this internalized racism is not the fault of the oppressed individual and that "[p]lacing responsibility on the oppressed to solve the problem suggests it is of their own making, which easily leads to blaming the victims for internalized racism" (Pyke, 2010, p. 554).[32]

Additionally, "[i]nternalized racism is the situation that occurs in a racist system when a racial group oppressed by racism supports the supremacy and dominance of the dominating group by maintaining or participating in the set of attitudes, behaviors, social structures and ideologies that undergird the dominating group's power. It involves four essential and interconnected elements:

• *Decision-making* — Due to racism, people of color do not have the ultimate decision-making power over the decisions that control our lives and resources. As a result, on a personal level, we may think white people know more about what needs to be done for us than we do. On an interpersonal level, we may not support each other's authority and power — especially if it is in opposition to the dominating racial group. Structurally, there is a system in place that rewards people of color who support white supremacy and power and coerces or punishes those who do not.

• *Resources* — Resources, broadly defined (e.g., money, time, etc.), are unequally in the hands and under the control of white people. Internalized racism is the system in place that makes it difficult for people of color to get access to resources for our own communities and to control the resources of our community. [They] learn to believe that serving and using resources for [themselves] and [their] particular community is not serving "everybody."

• *Standards* — With internalized racism, the standards for what is appropriate or "normal" that people of color accept are white people's or Eurocentric standards. [They] have difficulty naming, communicating and living up to [their] deepest standards and values, and holding [themselves] … accountable to them.

[28] Tappan, M. B. (2006). Reframing Internalized Oppression and Internalized Domination: From the Psychological to the Sociocultural. Teachers College Record, 108(10), 2115-2144.
[29] ibid.
[30] Pyke, K. D. (2010). What is Internalized Racial Oppression and Why Don't We Study It? Acknowledging Racism's Hidden Injuries. Sociological Perspectives, 53(4), 551-572.
[31] ibid.
[32] ibid.

• *Naming the problem* — There is a system in place that misnames the problem of racism as a problem of or caused by people of color and blames the disease — emotional, economic, political, etc., on people of color. With internalized racism, people of color might, for example, believe [they] are more violent than white people and not consider state-sanctioned political violence or the hidden or privatized violence of white people and the systems they put in place and support" (Racial Equity Resource Guide, "Glossary" Retrieved 9/8/20).
➢ See *Implicit Bias, Privilege* & *Internalized Racism/Oppression*

In *Teaching/Learning Anti-Racism: A Developmental Approach*, Derman-Sparks and Brunson Phillips discuss the "psychological dilemma of conflicting judgments about one's value as a member of a racial and cultural group" (p. 58).[33] This dilemma (to either accept, reject or ignore the negative identity ascribed to them by society) often leads the individual to "implicitly accept the negation of their humanness and [they] are thus forced to question their own basic worth. This strategy for reducing contradictions creates new conflicts and tensions, for, by buying into the belief that people of color are "bad," they are left with the problem of how to be "of color" and "good" at the same time. The preservation of self-esteem, then, becomes the source of tension. In order for individuals to be of basic worth, they must resist accepting the fact that they belong to the inferior group. Consequently, they try to become less like their own people and more like the admired group. In other words, accepting society's view pushes these individuals to locate themselves outside of the racial/ethnic group" (Derman-Sparks & Brunson Phillips, 1997, p. 58).[34]

Importantly, it is possible for oppressed individuals to "reject racism's false picture of their people. [These individuals] hold on dearly to what they know to be true: the reality of oppression against people of color, the importance of recapturing the characteristics of their cultural history, the need to articulate the racist practices of White society" (ibid.).[35]
➢ See *Internalized Racism (Dominance)* & *Implicit Bias*

Intersectionality: "The experience of the interconnected nature of ethnicity, race, creed, gender, socio-economic position etc., (cultural, institutional and social), and the way they are imbedded within existing systems and define how one is valued" (CRRF Retrieved 9/9/20). In other words, the interconnected nature of all forms of oppression against particular groups.

Inuit: "Inuit — Inuktitut for "the people" — are an Indigenous people, the majority of whom inhabit the northern regions of Canada. An Inuit person is known as an Inuk. The Inuit homeland is known as Inuit Nunangat, which refers to the land, water and ice contained in the Artic region. The term Inuit Nunangat may also be used to refer to land occupied by the Inuit in Alaska and Greenland. In 2011, using data from the National Household Survey, Statistics Canada estimated that 59,440 people in Canada, about 4.2 percent of the Aboriginal population, identified themselves as Inuit" (Minnie Aodla Freeman. Rev. Anne-Marie Pedersen, Zach Parrot & David

[33] Derman-Sparks, L., & Brunson Phillips, C. (1997). Teaching/Learning Anti-Racism: A Developmental Approach. New York, NY: Teachers College Press.
[34] ibid.
[35] ibid.

Gallant. "Inuit," *The Canadian Encyclopedia Online*, Retrieved 9/9/20).

There are eight main Inuit ethnic groups: the Labradormiut (Labrador), Nunavimmiut (Ungava), Baffin Island, Iglulingmuit (Iglulik), Kivallirmiut (Caribou), Netsilingmiut (Netsilik), Inuinnait (Copper) and Invialuit or Western Arctic Inuit (who replaced the Mackenzie Inuit). Inuktitut, the Inuit language, has five main dialects in Canada: Inuvialuktun (Inuvialuit region in the Northwest Territories); Inuinnaqtun (western Nunavut); Inuktitut (eastern Nunavut dialect); Inuktitut (Nunavik dialect); and Nunatsiavumiuttut (Nunatsiavut)" (ibid.).

"The Inuit have never been subject to the *Indian Act* and were largely ignored by the Canadian federal government until 1939, when a court decision ruled that they were a federal responsibility, though still not subject to the *Indian Act*. What followed were policies that enforced assimilation into a "Canadian" way of life. Formerly nomadic peoples were transformed, sometimes through forced relocation, into sedentary communities, and disc numbers were introduced to supersede an Inuit naming system that did not correspond to administrative needs" (Ibid.). Despite these challenges, the Inuit have demonstrated tremendous resiliency and adaptability, negotiating the land claim resulting in the creation of the Inuit territory of Nunavut in 1999 (Peter Kikkert. "Nunavut," *The Canadian Encyclopedia Online*, Retrieved 9/9/20). In 2010, Leona Aglukkaq was named the first Inuk federal cabinet minister when she became the federal minister of health (CBC News. "Inuit welcome Aglukkaq as federal health minister," Retrieved 9/9/20).
➢ Click here to learn more about the Inuit

Islamophobia: "Fear, hatred of, or prejudice against the Islamic religion or Muslims" (CRRF Retrieved 9/9/20).

L - O

LGBTQIA2S: An acronym for Lesbian, Gay, Bisexual, Trans (can be used for Transgender, Transsexual, Transitioning, Transman and Transwoman), Queer/Questioning, Intersex, Asexual and Two-Spirit. Other possible acronyms include LGBTQ2S, LGBT, LGBTQ, LGBTQA, TBLG. (LGBTQ2S Toolkit Retrieved 9/14/20). "Although all of the different identities within "LGBT" are often lumped together (and share sexism as a common root of oppression), there are specific needs and concerns related to each individual identity" (ibid.).
➢ Suggested Resources: The University of Technology Sydney's terminology, The University of California Davis' LGBTQIA Resource Center Glossary & LGBTQ2S Terms and Definitions (Canadian Context)
➢ See our definitions for *Transgender*, *Transexual*, *Queer* & *Two-Spirited People*

Liberalism/Liberal (Democratic) Racism: Democratic liberalism is distinguished by a set of beliefs that includes, among other ideals: the primacy of individual rights over collective or group rights; the power of (one) truth, tradition, and history; an appeal to universalism; the sacredness of the principle of freedom of expression; and a commitment to human rights and equality. But as many scholars observe, liberalism is full of paradoxes and contradictions and assumes different

meanings, depending on one's social location and angle of vision (Hall, 1986[36]; Goldberg, 1993[37]; Apple, 1993[38]; Winant, 1997[39]). As Parekh argues, "Liberalism is both egalitarian and inegalitarian" (1986, p. 82).[40] It simultaneously supports the unity of humankind and the hierarchy of cultures. It is both tolerant and intolerant (Henry & Tator, 2006, p. 28).[41]

Majority: "The numerically largest group within a society. The majority may be (but is not necessarily) the dominant group that successfully shapes or controls other groups through social, economic, cultural, political, military or religious power" (CRRF Retrieved 9/14/20). In most parts of Canada, the term refers to white, English-speaking, Christian, middle-to-upper income Canadians.

Melting Pot: "A term used to refer to an American monocultural society in which there is a conscious attempt to assimilate diverse peoples into a homogeneous culture, rather than to participate as equals in the society while maintaining various cultural or ethnic identities" (Oyewole, 2017).[42] The term is often used as a contrast to multiculturalism in Canada.
➢ See *Multiculturalism*

Métis: A term used in Canada to refer to people of mixed Indigenous and European ancestry who share a distinct history, culture and "nation" within Canada (that is distinct from Indigenous or European culture). That is to say, being part Indigenous and part white does not automatically make one Métis. In the Canadian Constitution Act of 1982, Métis people (along with those of "Indian" and Inuit descent) are defined as a distinct Aboriginal people.

In terms of history, the Métis National Council, explain how the "advent of the fur trade in west central North America during the 18th century was accompanied by a growing number of mixed offspring of Indian women and European fur traders. As this population established distinct communities separate from those of Indians and Europeans and married among themselves, a new Aboriginal people emerged – the Métis people – with their own unique culture, traditions, language (Michif), way of life, collective consciousness and nationhood" (The Métis Nation. "Who are the Métis?" Retrieved 9/14/20).

"Distinct Métis communities developed along the routes of the fur trade and across the Northwest within the Métis Nation Homeland. This Homeland includes the three Prairie provinces (Manitoba, Saskatchewan, Alberta), as well as, parts of Ontario, British Columbia, the Northwest Territories and the Northern United States" (ibid.).

"Consistently throughout history, the Métis people have acted collectively to protect and fight

[36] Hall, S. (1986). Variants of liberalism. In J. Donald and S. Hall (Eds.). Politics and ideology. Milton Keynes: Open University Press.
[37] Goldberg, D.S. (Ed.). (1990). The anatomy of racism. Minneapolis: University of Minnesota Press.
[38] Apple, M. (1993). Constructing the 'other': Rightist reconstructions of common sense. In C. McCarthy and W. Crichlow (Eds.), *Race, identity, and representation in education.* New York and London: Routledge.
[39] Winant, H. (1997). Behind blue eyes: Whiteness and contemporary U.S. racial politics. In M. Fine et al. (Eds.), Off white: Readings on race, power, and society (pp. 40-56). New York and London: Routledge.
[40] Parekh, B. (1986). The 'new right' and the politics of nationhood. In The new right: Image and reality. London, UK: Runnymede Trust.
[41] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[42] Oyewole, A. (Ed). (2017). Glossary. Black Lives Have Always Mattered, A Collection of Essays, Poems, and Personal Narratives. New York, NY: 2Leaf Press.

for their rights, lands and ongoing existence as a distinct Aboriginal people and nation within the Canadian federation – from the Métis provisional governments of Riel in Manitoba (1869-70) and Saskatchewan (1885) to contemporary Métis governing bodies. This dedication continues to exist as citizens and communities throughout the Métis Nation Homeland keep the nation's distinct culture, traditions, language and lifestyle alive and pursue their own social and economic development" (ibid.).

While the federal government formally recognizes the distinct history and culture of the Métis people, the specific determination of what constitutes Métis rights remains in process. It should be noted, however, that in Western Canada there is a history of scrip (a form of land ownership granted by the Canadian government) and a growing body of court cases recognizing Métis hunting and fishing rights.

- See also *First Nations*, *Inuit*, *Indigenous*, & *Aboriginal*
- **Suggested Reading**: âpihtawikosisân's article "Who are the Métis?"

Minority Group: "Refers to a group of people within a society that is either small in numbers and may have little or no access to social, economic, political, or religious power. [A group in a minority position does not have to be in the minority numerically.] Minority rights are protected by the Canadian Charter of Rights and Freedoms, the Human Rights Acts and Codes, and the UN Convention on the Rights of Minorities" (CRRF Retrieved 9/14/20).

Multiculturalism: A state policy announced by the federal Liberal government in 1971. It acknowledged that many Canadians with non-dominant ethnicities experienced unequal access to resources and opportunities. It urged more recognition of the contribution of those ethnicities and more equity in the treatment of all Canadians. Since 1971 there has been increasing recognition of the limitations of this concept. Firstly, because it does not explicitly acknowledge the critical role that racism plays in preventing this vision from materializing; and secondly, because it promotes a static and limited notion of culture as fragmented and confined to ethnicity (Thomas, 1987).[43]

Moreover, while multiculturalism in policy did not explicitly exclude or deny Indigenous Canadians' treaty rights and claims to territories, in practice, or in mainstream/dominant perceptions of multiculturalism, Indigenous Canadians and 'non-dominant ethnic communities' were viewed as being the 'same' under the law. The practice of multiculturalism is often about examining or celebrating surface culture. Surface culture refers to the things that bring cultures together for example events where ethnic groups are focused on in the context of food, dance or traditional dress. This is often referred to as a multicultural event or celebrating diversity. Although these types of celebrations bring people together, they do not address the political, social and economic imbalances as there is no discussion of race as a social construct, racism or power (Sleeter & Mclaren, 1995).[44] These events ignore the deeper cultural issues which often cause difficulties or conflict between cultures due to lack of understanding of deeply held

[43] Thomas, B. (1987). Multiculturalism at work: A guide to organizational change. Toronto, ON, Canada: YWCA.
[44] Sleeter, C., & McLaren, P. (1995). Multicultural education, critical pedagogy, and the politics of difference. New York, NY: SUNY.

cultural beliefs. Deep cultural beliefs that are different than mainstream beliefs are often viewed as problems or disadvantages by mainstream/white Canadians.
➢ See *Culture*

Native: "A general term for a person originating from a particular place. This term is somewhat ambiguous because many people of immigrant ancestry who have been born in North America claim to be "native" Canadians or Americans. The capitalization of the word is used to refer to the descendants of Indigenous peoples, but does not denote a specific Aboriginal identity (such as First Nations, Métis, or Inuit). In reference to Aboriginal peoples, it is generally thought of as outdated" (CRRF Retrieved 9/14/20).

Neocolonialism: "While many nations in Africa, Asia and South America acquired political independence from European nations in the 20th century, economic control over the new nations has continued. … [These] independent nations (former colonies) rarely have economic independence. Their economic policies are usually subject to scrutiny and even pressure by First World nations or supranational organizations (that are essentially controlled by First World nations). … Puppet regimes (that we have seen installed in numerous African nations through the 20th century) are usually an effective way for the First World nations to retain political and economic control over the new nation. … Exploitation of the natural resources of the former colonies continues through mining and cheap labour (sweatshops). Economic control is also very often accompanied by cultural imperialism. From the dominance of European languages (especially English) to consumer products to entertainment (Hollywood's empire), cultural imperialism in the age of globalization is the most visible 'face' of neocolonialism" (Nayar, 2015, p. 115).[45]
➢ See *Imperialism*

New Canadian ➢ See *Immigrant*

Non-Status Indian ➢ See *The Indian Act*

Oppression: The systemic, institutionalized or individual subjugation of one individual or group by a more dominant individual or group; it can be overt or covert. Put simply, it is an abuse of power that is justified by the dominant groups' explicit ideology. To uphold this unequal dynamic, physical, psychological, social, or economic threats or violence are often used. The term also refers to the injustices suffered by marginalized groups in everyday interactions with members of the dominant group.
➢ See *Power* & *Prejudice/Racial Prejudice*

P – T

Patriarchy: "The norms, values, beliefs, structures and systems that grant power, privilege and

[45] Nayar, P. K. (2015). The Postcolonial Studies Dictionary. Chichester, SXW: John Wiley & Sons, Ltd.

superiority to men, and thereby marginalize and subordinate women" (CRRF Retrieved 9/14/20). While patriarchy does privilege men, this privilege does not automatically extend to all men, to men of colour, Indigenous men, gay/bisexual men, men living poverty, or men with disabilities, given the intersecting operation of racism, heterosexism, classism, and ableism.

People of Colour: "A term which applies to non-White racial or ethnic groups; generally used by racialized peoples as an alternative to the term "visible minority." The word is not used to refer to Aboriginal peoples, as they are considered distinct societies under the Canadian Constitution. When including Indigenous peoples, it is correct to say "people of colour and Aboriginal peoples" (CRRF Retrieved 9/14/20).

Political Correctness: In the late 1980s and the early 1990s, minority groups argued that terms used by the mainstream to identify them were often inaccurate, inappropriate, and offensive. They urged the acceptance of their own terms of self-definition. As these terms have entered the public discourse, they have been met with a combination of relief and support, supportive uncertainty, and downright resistance. All of these responses, rather confusingly have been referred to as "political correctness."

For example, those of us who want to support a particular groups' processes of self-naming, and who want to avoid using a term that is seen by the group as derogatory, want to use the "appropriate" or "correct" term. In the case of Indigenous groups and the vast array of terminology, this can be a process of uncertainty. Change, however, typically involves resistance, and "political correctness" has also been used, increasingly negatively, as backlash against the struggle of minority peoples' rights to self-definition and the power shifts that entails. "Political correctness" has been accurately identified as a liberal or conservative (often white, middle-class) strategy that defuses the momentum of minority groups to shift power relationships in our society.

Additionally, as Paul Kivel writes, the "words we use to describe groups of people have developed within the system of racism as it has changed historically … It can be hard for white people to accept new terms because they represent challenges to long standing social relationships. Different words call forth different behaviour. We may feel less secure that we know the racial rules – what to say and how to act" (Kivel, 1996, p. 75-76).[46]

Power: "The ability to influence others and impose one's beliefs" (CRRF Retrieved 9/14/20). Basically, all power is relational, and the different relationships either reinforce or disrupt one another. The importance of the concept of power to anti-racism is clear: racism cannot be understood without understanding that power is not only an individual relationship but a cultural one, and that power relationships are shifting constantly. Power can be used malignantly and intentionally, but need not be, and individuals within a culture may benefit from power that they are unaware of.

[46] Kivel, P. (1996). Uprooting racism: How white people can work for racial justice. Gabriola Island, BC: New Society Press.

Position Power: The extent of one's authority within an organization; it is the juice that comes with your title or place in the organization. This power is usually governed by predetermined rules, policies, and procedures, and generally speaking, it is one's right to exercise various punishments and rewards that are within one's scope of the organization.

Prejudice/Racial Prejudice: To "pre-judge" an individual or group. "A state of mind; a set of attitudes held, consciously or unconsciously, often in the absence of legitimate or sufficient evidence" (CRRF Retrieved 5/17/18). Oftentimes, prejudices are not recognized as stereotypes or false assumptions and through repetition, become accepted as "common sense." When backed with power, prejudice results in acts of discrimination and oppression against groups or individuals. **Racial prejudice** refers to a set of discriminatory or derogatory attitudes based on assumptions deriving from perceptions about race/skin colour. Racial Prejudice can be directed at white people (e.g., "White people can't dance") but is not considered racism because of the systemic relationship of power.
➢ Click here to see our section "What is Racism?" and our definitions for *Racism* & *Racial Discrimination*

Privilege: Refers to unearned benefits, advantages, or rights for belonging to the perceived "normal" or "natural" state of the "mainstream" and/or dominant culture. Privilege allows for active, persistent exclusion and the devaluation of those who are "othered" or "marginalized."

"Privilege is not [only] about race or gender, but … it is a series of interrelated hierarchies and power dynamics that touch all facets of social life: race, class, gender, sexual orientation, religion, education, gender identity, age, physical ability, passing, etc." (Media Smarts. "Forms of Privilege," Retrieved 9/16/20).

There are several elements to privilege:

1. "[T]he characteristics of the privileged group define the societal norm." For example, an individual judged to succeed or fail depending on how similar their characteristics are to those who hold the privilege (the norm).
2. "Members of the privileged group gain greatly by their affiliation with the dominant side of the power system... [therefore] achievements by members of the privileged group are viewed as the result of individual effort, rather than privilege."
3. "Members of privileged groups can opt out of struggles against oppression if they choose. *Often this privilege may be exercised by silence*."
4. "The holder of privilege may enjoy deference, special knowledge, or a higher comfort level to guide societal interaction."
5. "Privilege is not visible to its holder; it is merely there, a part of the world, a way of life, simply the way things are" (Wildman & Davis, 1997, p. 315-316).[47]

[47] Wildman, S. M., & Davis, A. D. (1997). Making systems of privilege visible. In R. Delagado, R. & J. Stefancic (Eds.), Critical white studies: Looking behind the mirror (pp. 314-319). Philadelphia: Temple University Press.

➢ See *White Privilege/White-Skin Privilege*

Queer: "One definition of queer is abnormal or strange. Historically, queer has been used as an epithet/slur against people whose gender, gender expression and/or sexuality do not conform to dominant expectations. Some people have reclaimed the word queer and self identify in opposition to assimilation (adapted from "Queering the Field"). For some, this reclamation is a celebration of not fitting into social norms. Not all people who identify as LGBTQIA use "queer" to describe themselves. The term is often considered hateful when used by those who do not identify as LGBTQIA" (LGBTQIA Resource Center Glossary Retrieved 9/18/20).
➢ See *LGBTQIA2S*

Race: "'Race' is a socially constructed phenomenon, based on the erroneous assumption that physical differences such as skin colour, hair colour and texture, and facial [or other physical] features are related to intellectual, moral, or cultural superiority. The concept of race has no basis in biological reality and, as such, has no meaning independent of its social definitions" (Henry & Tator, 2006, p. 9).[48] In other words, race is a "concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies" (Omi & Winart, 1994, p. 55).[49] Although race is socially constructed, it significantly affects the lives of people of colour and Indigenous people.
➢ Click here to see our section on "Race" and our definitions for *Racism* & *Racial Discrimination*

Race Relations: "The pattern of interaction, in an inter-racial setting, between people who are racially different. In its theoretical and practical usage, the term has also implied harmonious relations, i.e., races getting along. Two key components for positive race relations are the elimination of racial intolerance arising from prejudicial attitudes, and the removal of racial disadvantage arising from the systemic nature of racism" (CRRF Retrieved 9/18/20).

Racialization: Racialization is the very complex and contradictory process through which groups come to be designated as being of a particular "race" and on that basis, they are subjected to differential and/or unequal treatment. Put simply, "racialization [is] the process of manufacturing and utilizing the notion of race in any capacity" (Dalal, 2002, p. 27).[50] It is the "process through which groups come to be socially constructed as races, based on characteristics such as race, ethnicity, language, economics, religion, culture, politics, etc." (CRRF Retrieved 9/20/20).

Racialization is also the "extension of racial meaning to a previously racially unclassified relationship, social practice or group. Racialization is an ideological process, an historically specific one. Racial ideology is constructed from pre-existing conceptual (or, if one prefers, "discursive") elements and emerges from the struggles of competing political projects and ideas seeking to articulate similar elements differently" (Omi & Winant, 1989).[51]

[48] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[49] Omi, M., & Winant, H. (1994). Racial formation in the United States: From the 1960s to the 1980s (Second Edition). New York: Routledge.
[50] Dalal, F. (2002). Race, Colour and the Process of Racialization: New Perspectives from Group Analysis, Psychoanalysis and Sociology. New York, NY: Brunner-Routledge.
[51] Omi, M., & Winant, H. (1994). Racial formation in the United States: From the 1960s to the 1980s (Second Edition). New York: Routledge.

➢ **Suggested Reading:** Our page on "Racialization"

Racial and Ethnic Identity: "An individual's awareness and experience of being a member of a racial and ethnic group; the racial and ethnic categories that an individual chooses to describe him or herself based on such factors as biological heritage, physical appearance, cultural affiliation, early socialization and personal experience" (Adams, Bell & Griffin (eds.). *Teaching for Diversity and Social Justice: A Sourcebook*, qtd. in Racial Equity Resource Guide).

Racial Discrimination: "Any distinction, exclusion, restriction, or preference based on" perceptions about race "that has the purpose of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life" (Henry & Tator, 2006, p. 351).[52]

It is important to note the difference between racial discrimination and racism. The Ontario Human Rights Commission describes racism as being a "broader experience" than racial discrimination.
➢ Click here to learn more on OHRC's webpage

In other words, racial discrimination can happen to anyone who is discriminated against based on their race and is usually an individual act. Racism is more pervasive as it is not only an individual behaviour or act, but a way of thinking and is institutionalized/inherent in Canada. In Canada, anyone can experience racial discrimination but only people of colour and Indigenous people can experience racism; white people, as the dominant group, benefit from a system that oppresses others on the basis of race. In this system, white people are not put at a disadvantage due to their race, thus, it is not possible for them to experience racism.
➢ Click here to learn more about the UN's *International Convention on the Elimination of All Forms of Racial Discrimination*
➢ **Suggested Reading:** Our page on "The Myth of Reverse Racism"

Racial Microaggressions: "Everyday insults, indignities and demeaning messages sent to people of color by well-intentioned white people who are unaware of the hidden messages being sent to them. [Oftentimes, white people will deny or not see that they are delivering such messages as it "assails their self-image of being good, moral, decent human beings [and instead, they must contend with the idea that] … at an unconscious level they have biased thoughts, attitudes and feelings that harm people of color" (Sue qtd. in DeAngelis).[53]

Examples: "What are you?" (often directed at mixed race individuals) "Where are you from?" "You speak good English." "When I look at you, I don't see color." "I'm not a racist. I have several Black friends." "Everyone can succeed in this society if they work hard enough." "Why do you have to be so loud/animated? Just calm down." "Why are you so quiet? We want to know what you think. Be more verbal. Speak up more." "You people…" "As a woman, I know what you go

[52] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[53] DeAngelis, Tori. Unmasking 'Racial Microaggressions.' APA, 2009, Vol 40, No. 2, p. 42.

through as a racial minority." A store owner following a customer of color around the store. (For more, see Examples of Microaggressions).

Microaggressions can leave the receiver feeling confused/angry due to the subtle nature of these communications, especially if the speaker denies that their words or actions are biased. Overall, these backhanded comments and behaviours can cause individuals to feel "as if they don't belong, that they are abnormal or that they are untrustworthy" (DeAngelis).
➢ **Suggested Readings:** Examples of Microaggressions & Tori DeAngelis' article Unmasking 'Racial Microaggressions'

Racial Minority: "A group of persons who, because of their physical characteristics, are subjected to differential treatment. Their minority status is the result of a lack of access to power, privilege, and prestige in relation to the majority group" (Henry & Tator, 2006, p. 351).[54]

Racial Profiling: "Any action undertaken for reasons of safety, security or public protection that relies on assumptions about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or differential treatment [or arrest]" (CRRF Retrieved 9/18/20).

Racism: Racism refers not only to social attitudes towards non-dominant ethnic and racial groups but also to social structures and actions which oppress, exclude, limit and discriminate against such individuals and groups. Racist social attitudes originate in and rationalize discriminatory treatment. Racism in the larger society can be seen in discriminatory laws, residential segregation, poor health care, inferior education, unequal economic opportunity and the exclusion and distortion of the perspectives of non- dominant Canadians in cultural institutions (Thomas, 1987).[55]

Racism refers to "a system in which one group of people exercises power over another on the basis of skin colour; an implicit or explicit set of beliefs, erroneous assumptions, and actions based on an ideology of the inherent superiority of one racial group over another, and evident in organizational or institutional structures and programs as well as in individual thought or behaviour patterns" (Henry & Tator, 2006, p. 352).[56]

Racism also consists of "policies and practices, entrenched in established institutions, that result in the exclusion or advancement of specific groups of people. It manifests itself in two ways: (1) institutional racism: racial discrimination that derives from individuals carrying out the dictates of others who are prejudiced or of a prejudiced society; (2) structural racism: inequalities rooted in the system-wide operation of a society that excludes substantial numbers of members of particular groups from significant participation in major social institutions" (Henry & Tator, 2006, p. 329).[57]
➢ **Suggested Reading:** Our page "What is Racism?"

[54] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[55] Thomas, B. (1987). Multiculturalism at work: A guide to organizational change. Toronto, ON, Canada: YWCA.
[56] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[57] ibid.

Reverse Racism: "The term 'reverse racism' is sometimes used to characterize 'affirmative action' programs, but this is inaccurate. Affirmative action programs are attempts to repair the results of institutionalized racism by setting guidelines and establishing procedures for finding qualified applicants from all segments of the population" (Ricky Sherover-Marcuse. "A Working Definition of Racism," p. 2).
➢ Click here to learn more about the **myth** that affirmative action takes jobs and scholarships away from white people

"The term 'reverse racism' is also sometimes used to characterize the mistreatment that individual whites may have experienced at the hands of individuals of color. This too is inaccurate. … [W]e should not confuse the occasional mistreatment experienced by whites at the hands of people of colour with the systematic and institutionalized mistreatment experienced by people of color at the hands of whites" (ibid.).
➢ Click here to see our section "Reverse Racism – Myth or Reality"
➢ **Suggested Readings**: Tim Wise's article "A Look at the Myth of Reverse Racism", Michael Harriot's article "Reverse Racism, Explained"(American context) & Manisha Krishnan's article "Dear White People, Please Stop Pretending Reverse Racism Is Real"(Canadian context)

Segregation: "The social, physical, political and economic separation of diverse groups of people, based on racial or ethnic groups. This particularly refers to ideological and structural barriers to civil liberties, equal opportunity and participation by minorities within the larger society" (CRRF Retrieved 9/18/20). Exclusive neighbourhoods and gated communities are examples of economic segregation; the fact that these neighbourhoods are predominantly white demonstrates how whiteness and middle/upper class ideologies are mutually reinforcing.

Settler Colonialism: The term is characterized by "a persistent drive to ultimately supersede the conditions of its operation. The successful settler colonies 'tame' a variety of wildernesses, end up establishing independent nations, effectively repress, co-opt, and extinguish indigenous alterities, and productively manage ethnic diversity. By the end of this trajectory, they claim to be no longer settler colonial (they are putatively 'settled' and 'postcolonial' – except that unsettling anxieties remain, and references to a postcolonial condition appear hallow as soon as indigenous disadvantage is taken into account). Settler colonialism thus covers its tracks and operates towards its self-supersession … In other words, whereas colonialism *reinforces* the distinction between colony and metropole, settler colonialism erases it" (Veracini, 2011, p. 3).[58]
➢ See *Colonialism*

Sexism: "The cultural, institutional, and individual set of beliefs and practices that privilege men, subordinate women, and devalue ways of being that are associated with women" (LGBTQIA Resource Center Glossary Retrieved 9/18/20).

Sexual Orientation: Sexual orientation can be defined as feelings of attraction towards other

[58] Veracini, L. (2011). Introducing settler colonial studies. Settler Colonial Studies, 1(1) 1-12.

people (same sex, opposite sex, both sexes etc.) and does not require sexual activity or intimacy.

Socially-Imbued Power: Is based on social identities that the society has historically (and currently) privileged. Social identities include one's gender, race, class, language, ethnicity, sexuality, physical and mental health. A high level of socially-imbued power often brings greater access to other forms of power. Generally, socially-imbued power is exercised unconsciously and influences others through the confidence that accompanies such power. When people are conscious of the dynamics of socially imbued power, they may choose to use it and/or challenge it with different consequences (Thomas, 1987).[59]

Social Justice: "A concept premised upon the belief that each individual and group within society is to be given equal opportunity, fairness, civil liberties, and participation in the social, educational, economic, institutional and moral freedoms and responsibilities valued by the society" (CRRF Retrieved 9/18/20).

Status and non-Status Indian ➢ See *The Indian Act*

Stereotyping: "A preconceived generalization of a group of people. This generalization ascribes the same characteristic(s) to all members of the group, regardless of their individual differences" (CRRF Retrieved 9/18/20). These generalizations are often based on misconceptions or false/incomplete information.

Systemic/Institutional Racism: "Racism that consists of policies and practices, entrenched in established institutions, that result in the exclusion or advancement of specific groups of people. It manifests itself in two ways: (1) institutional racism: racial discrimination that derives from individuals carrying out the dictates of others who are prejudiced or of a prejudiced society; (2) structural racism: inequalities rooted in the system-wide operation of a society that excludes substantial numbers of members of particular groups from significant participation in major social institutions" (Henry & Tator, 2006, p. 352).[60]

Tolerance: Usually meant as a supportive or open attitude towards those perceived as different from oneself, and most often referring to attitudes of white people towards people of colour and Indigenous peoples. While the term has a basis in international law, in Canada, it has developed the problematic connotation of "putting up with." That is, white Canadians may perceive themselves as "tolerant of differences" but only insofar as they are not required to think or behave in non-racist ways. "[T]oday the term acceptance is preferred" (CRRF Retrieved 9/18/20).

Transgender: Sometimes shortened to "trans," the term refers to people whose gender identity is different from the social expectations for the physical sex they were assigned at birth. It is important to note the difference between biological sex (genitals, chromosomes) and social gender (perceptions and ideologies about masculinity and femininity). Leslie Feinberg

[59] Thomas, B. (1987). Multiculturalism at work: A guide to organizational change. Toronto, ON, Canada: YWCA.
[60] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.

describes this umbrella term as encompassing "transsexuals, drag queens, butches, hermaphrodites, cross-dressers, masculine women, effeminate men, sissies, tomboys, and anybody else willing to be interpolated by the term" (Stryker & Whittle, 2006, p. 4).[61]
➢ See *LGBTQIA2S*

Transexual: Transexual refers to a person who identifies as the opposite sex they were assigned at birth. A transexual individual may undergo medical treatment to change their physical sex to match their sex identity (through hormone treatments and/or surgery). Not all transexual individuals can have, or desire, this treatment.
➢ See LGBTQIA2S

Treaty: "Indigenous treaties in Canada are constitutionally recognized agreements between the Crown and Indigenous peoples. Most of these agreements describe exchanges where Indigenous nations agree to share some of their interests in their ancestral lands in return for various payments and promises. On a deeper level, treaties are sometimes understood, particularly by Indigenous people, as sacred covenants between nations that establish a relationship between those for whom Canada is an ancient homeland those whose family roots lie in other countries. Treaties therefore form the constitutional and moral basis of alliance between Indigenous peoples and Canada" (Anthony J. Hall. Rev. Gretchen Albers. "Treaties with Indigenous Peoples in Canada," *The Canadian Encyclopedia Online*, Retrieved 9/22/20).

In 1990, the Supreme Court of Canada, in the Sioui case, determined that "treaties and statutes relating to Indians should be liberally construed and uncertainties resolved in favour of the Indians." In the same case, the court introduced into Canadian jurisprudence a principle adopted from a 19th-century ruling in the USA indicating that treaties "must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians" (ibid.).

"In spite of the constitutional character of treaties, the non-Indigenous peoples who made and implemented them tended to see them as self-serving deals rather than sacred pacts between independent nations. Historically, non-Indigenous treaty negotiators believed treaties were inexpensive and convenient ways to strip Aboriginal title (i.e., ownership) from most of the lands in Canada so that resources could be used by settlers. … Even in modern times, the federal and provincial governments tend to interpret treaties in legalistic terms, contending that Indigenous peoples "ceded, surrendered, and yielded" their ancestral rights and titles through treaties. In other words, treaties can be seen as real estate deals by which the Crown purchased Indigenous lands and provided them with reserves and one-time or continual payments in return" (ibid.).

"This narrow view of treaties has produced a huge divide between the Canadian government's perspective and that of Indigenous peoples. On the one hand is the government's view of treaties as legal instruments that surrendered Indigenous rights. On the other is the Indigenous view of treaties as instruments of relationships between autonomous peoples who agree to

[61] Stryker, S., & Whittle, S. (2006). The transgender studies reader. New York, NY: Routledge.

share the lands and resources of Canada. Seen from the Indigenous perspective, treaties do not surrender rights; rather, they confirm Indigenous rights. Treaties recognize that Indigenous peoples have the capacity to self-govern. Bridging the gap between these two views of treaties poses a huge challenge to people and lawmakers in Canada" (ibid.).
➢ Click here to view the full article on the Canadian Encyclopedia

Two-Spirited People: "Two-Spirit, a translation of the Anishinaabemowin term *niizh manidoowag*, refers to a person who embodies both a masculine and feminine spirit. Activist Albert McLeod developed the term in 1990 to broadly reference Indigenous peoples in the lesbian, gay, bisexual, transgender and queer (LGBTQ) community. Two-spirit is used by some Indigenous peoples to describe their gender, sexual and spiritual identity" (Michelle Filice. "Two-Spirit," *The Canadian Encyclopedia Online*, Retrieved 9/22/20). The mainstream terms used for lesbian, gay, bisexual, transgendered and queer individuals are seen, in an Indigenous context, as Eurocentric, too focused on sexual orientation/gender identity alone, and, as a result, narrow and limiting.
➢ Recommended Resource: First Stories – Two Spirited. 2007. Written and directed by Sharon A. Desjarlais. 6 mins.
➢ See *LGBTQIA2S*

U - Z

United Nations Declaration on the Elimination of All Forms of Racial Discrimination: "The Declaration on the Elimination of All Forms of Racial Discrimination is a human rights proclamation issued by the United Nations General Assembly, outlining that body's views on racism. It was adopted by the General Assembly on 20 November 1963. This Declaration was an important precursor to the legally binding Convention on the Elimination of All Forms of Racial Discrimination" (*Wikipedia*, Retrieved 9/22/20).
➢ Click here to learn more about the *Declaration on the Elimination of All Forms of Racial Discrimination*

United Nations Declaration on the Rights of Indigenous Peoples (2007): "The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007, by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine)" (UNDESA. "United Nations Declaration on the Rights of Indigenous Peoples," Retrieved 9/22/20).

"Years later the four countries that voted against have reversed their position and now support the UN Declaration. Today the Declaration is the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates

on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples" (ibid.).

United Nations International Day for the Elimination of Racial Discrimination: "The UN General Assembly resolution 2142 (XXI), adopted on 26 October 1966, proclaimed 21 March as the International Day for the Elimination of Racial Discrimination to be commemorated annually. On that day, in 1960, police opened fire and killed 69 people at a peaceful demonstration in Sharpeville, South Africa, against the apartheid "pass laws". Proclaiming the Day in 1966 which signifies the struggle to end the policy of apartheid in South Africa, the General Assembly called on the international community to redouble its efforts to eliminate all forms of racial discrimination" (United Nations, "International Day for the Elimination of Racial Discrimination," Retrieved 9/22/20).

Universalism: "The assumption that there are irreducible features of human life and experience" (Ashcroft, Griffiths & Tiffin, 2002).[62] Claims about the universality of existence, however, usually emanate from the mainstream/dominant locations, and use white, western, middle-class, straight, male experience and perspectives as holding true (or ideal) for all of humanity. An insistence on universality, or its possibility, often emerges as a response by white people to discussions of racism (e.g. "we are all the same"); the evidence that these individuals "present," however, is often vague or generalized to the point of meaninglessness in the attempt to erase the materialities of privilege and oppression (i.e., "we all love our children"). The ideology of universalism is pervasive in Canada, used to market a wide range of commodities, especially literature and film.

Visible Minority: "Term used to describe people who are not white. Although it is a legal term widely used in human rights legislation and various policies, currently the terms racialized minority or people of colour are preferred by people labelled as 'visible minorities'" (CRRF Retrieved 9/22/20).

White Fragility: "White people in North America live in a social environment that protects and insulates them from race-based stress. This insulated environment of racial protection builds white expectations for racial comfort while at the same time lowering the ability to tolerate racial stress … White Fragility is a state in which even a minimum amount of racial stress becomes intolerable [for white people], triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium" (DiAngelo, 2011, p. 54).[63]
➢ **Suggested Reading:** Robin DiAngelo's article "White Fragility: Why It's So Hard to Talk to White People About Racism"

Whiteness: "A social construction that has created a racial hierarchy that has shaped all the social, cultural, educational, political, and economic institutions of society. Whiteness is linked to

[62] Ashcroft, B., Griffiths, G., & Tiffin, H. (2002). *The empire writes back: theory and practice in post-colonial literatures* (2nd ed.). New York, NY: Routledge.
[63] DiAngelo, R. (2011). White Fragility. International Journal of Critical Pedagogy, 3(3), 54-70.

domination and is a form of race privilege invisible to white people who are not conscious of its power" (Henry & Tator, 2006, p. 353).[64]

"'Whiteness,' like 'colour' and 'Blackness,' are essentially social constructs applied to human beings rather than veritable truths that have universal validity. The power of Whiteness, however, is manifested by the ways in which racialized Whiteness becomes transformed into social, political, economic, and cultural behaviour. White culture, norms, and values in all these areas become normative natural. They become the standard against which all other cultures, groups, and individuals are measured and usually found to be inferior" (Henry & Tator, 2006, p. 46-47).[65]

Ruth Frankenberg asserts that whiteness is "a dominant cultural space with enormous political significance, with the purpose to keep others on the margin. … [W]hite people are not required to explain to others how 'white' culture works, because 'white' culture is the dominant culture that sets the norms. Everybody else is then compared to that norm. … In times of perceived threat, the normative group may well attempt to reassert its normativity by asserting elements of its cultural practice more explicitly and exclusively" (qtd. in Estable et al., 1993, p. 21).[66]
➢ **Suggested Reading:** Our page on "Understanding Whiteness"

White Privilege/White-Skin Privilege: "Refers to the unquestioned and unearned set of advantages, entitlements, benefits and choices bestowed on people solely because they are white. Generally white people who experience such privilege do so without being conscious of it.

Examples of privilege might be: "I can walk around a department store without being followed." "I can come to a meeting late and not have my lateness attributed to [my] race." "Being able to drive a car in any neighborhood without being perceived as being in the wrong place or looking for trouble." "I can turn on the television or look to the front page and see people of my ethnic and racial background represented." "I can take a job without having co-workers suspect that I got it because of my racial background." "I can send my 16-year old out with his [or her] new driver's license and not have to give him [or her] a lesson [on] how to respond if police stop him [or her].'" (Peggy McIntosh. "White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women Studies," qtd. in Racial Equity Resource Guide).

Peggy McIntosh explains how "[a]s a white person I realized I had been taught about racism as something which puts others at a disadvantage, but had been taught not to see one of its corollary aspects, white privilege, which puts me at an advantage. … I have come to see white privilege as … an invisible weightless knapsack of special provisions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks. … I

[64] Henry, F., & Tator, C. (2006). The colour of democracy: Racism in Canadian society. 3rd Ed. Toronto, ON: Nelson.
[65] ibid.
[66] Estable et al. (1997). Teach Me to Thunder: A Manual for Anti-Racism Trainers. Canadian Labour Congress.

began to see why we [white women] are justly seen as oppressive, even when we don't see ourselves that way. At the very least, obliviousness of one's privileged state can make a person or group irritating to be with" (McIntosh, 1997, p. 292).[67]

➢ **Suggested Readings:** Peggy McIntosh's article "White Privilege: Unpacking the Invisible Knapsack", Cory Collins' article "What is White Privilege, Really?" & Media Smarts' article "Forms of Privilege"

➢ See *Privilege* & *Whiteness*

White Supremacy: This term is often connected to extremist, right-wing hate groups. However, the term is often used in anti-racist work to force an acknowledgement of the belief systems underlying whiteness. Thus, white supremacy is seen as the ideology which perpetuates white racism. This ideology exists in both the overtly prescriptive form, i.e. the white supremacy that we attach to right-wing white power groups, and as the self-perpetuating cultural structure also know as whiteness.

Xenophobia: Refers to the "attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity" (qtd. in UNESCO. "Xenophobia," Retrieved 9/22/20).[68] In other words, xenophobia is "[f]ear and hatred of strangers or foreigners or of anything that is strange or foreign" (CRRF Retrieved 9/22/20).

Last Update: 9/28/20

[67] McIntosh, P. (1997). A personal account of coming to see correspondences through work in women's studies. In R. Delagado, R. & J. Stefancic (Eds.), Critical white studies: Looking behind the mirror (pp. 291-299). Philadelphia: Temple University Press.
[68] Declaration on Racism, discrimination, Xenophobia and Related Intolerance against Migrants and Trafficked Persons. Asia-Pacific NGO Meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Teheran, Iran. 18 February 2001.



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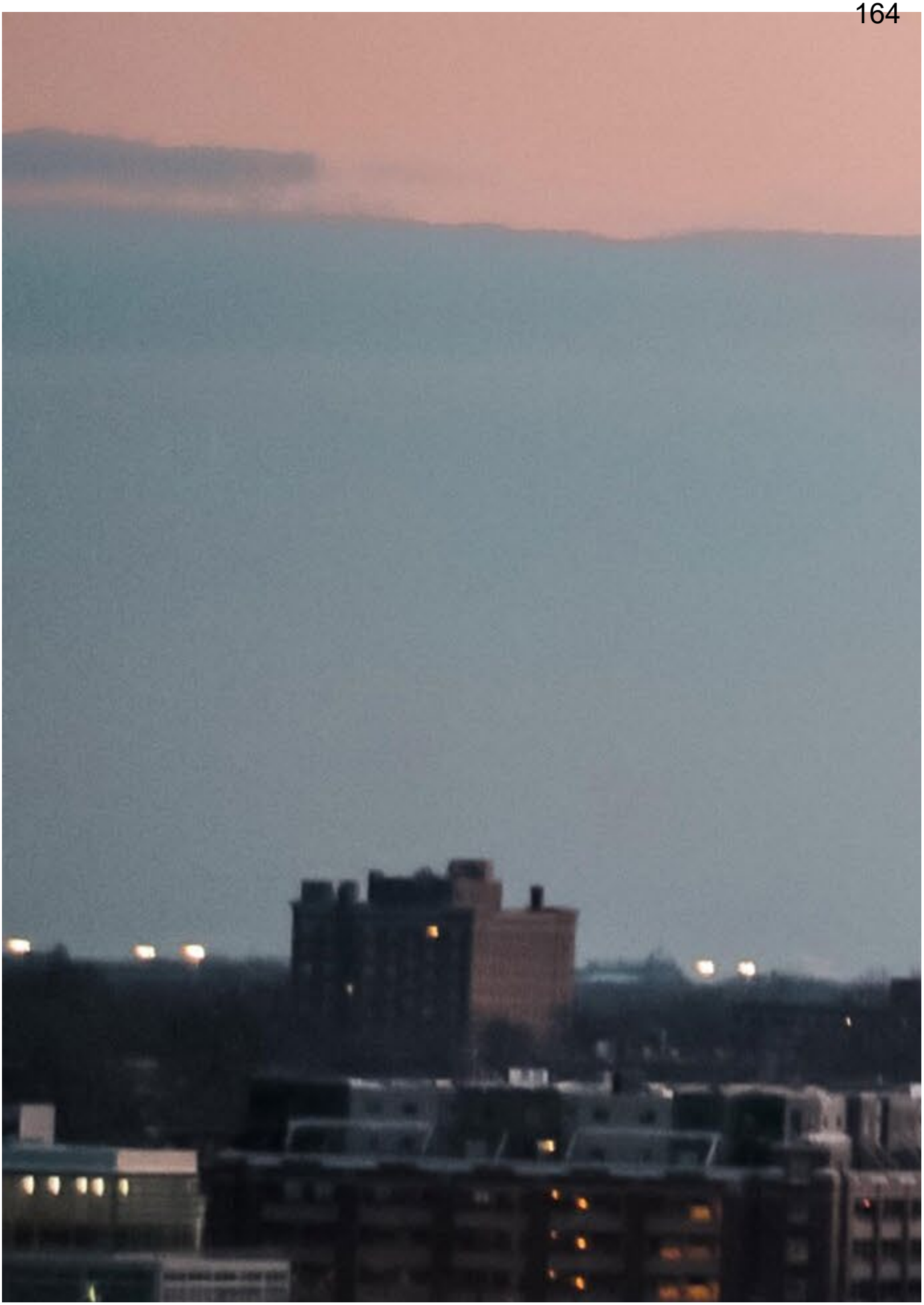
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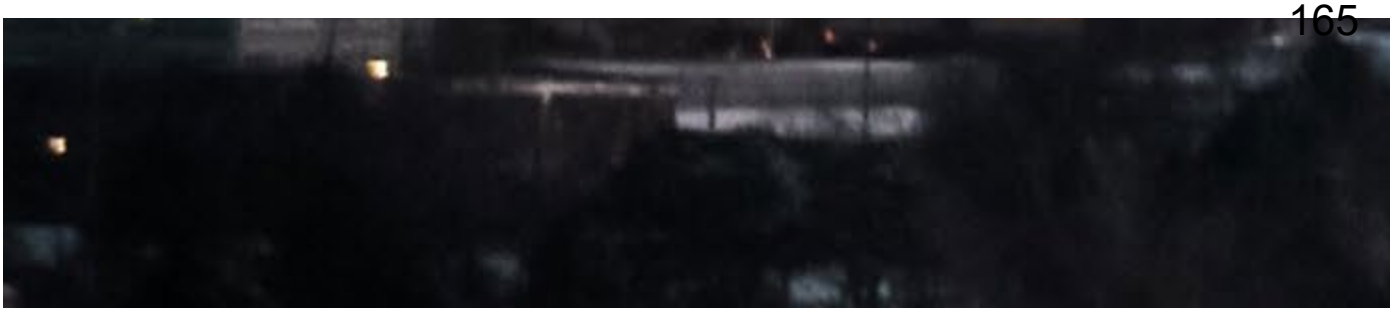
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Strategies of Liberal Racism

> "My schooling gave me no training in seeing myself as an oppressor, as an unfairly advantaged person, or as a participant in a damaged culture. I was taught to see myself as an individual whose moral state depended on her individual moral will" (McIntosh, 1997, p. 292).

In the West, what has become known as the "cult of individualism" has impacted us in such a way that it can be very difficult to understand anything outside of our own experience. We will often individualize situations rather than approach them with systemic analysis in mind (e.g., the preference for seeing racism as isolated, overt, or an extreme incident such as racial epithets, rather than an ongoing and often unintentional set of attitudes that lead to structures of domination). Individualism fosters a belief that everyone is free to choose, that our destiny is within our own control and that choice, determination, "pulling oneself up by one's boot straps," are all individually determined and ultimately achievable despite social, economic, racial and cultural circumstances.

> "Canadians have a deep attachment to the assumption that in a democratic society individuals are rewarded solely on the basis of their individual merit and that no one group is singled out for discrimination. Consistent with these liberal, democratic values is the assumption that physical differences such as skin colour are irrelevant in determining one's status. ... While lip service is paid to the need to ensure equality in a pluralistic society, most Canadian individuals, organizations, and institutions are far more committed to maintaining or increasing their own power" (Henry & Tator, 2006, pp. 2-3).

What is Liberal Racism?

Liberalism is distinguished by a set of beliefs that includes, among other ideals: the primacy of **individual rights** over collective or group rights; the power of **(one) truth, tradition, and history**; an appeal to **universalism**; the sacredness of the principle of **freedom of expression**; and a commitment to **human rights and equality**. But as many scholars observe, liberalism is full of paradoxes and contradictions and assumes different meanings, depending on one's social location and angle of vision (Hall, 1986; Goldberg, 1993; Apple, 1993; Winant, 1997). Bikhu Parekh argues that liberalism "is both **egalitarian and inegalitarian**" (1986, p. 82). It simultaneously supports the **unity of humankind and the hierarchy of cultures**. It is both **tolerant and intolerant** (Henry & Tator, 2006, p. 28).

One common way that liberal racism shows up is through **the Burden of Representation**. It manifests as follows:

1. One minority individual is assumed to represent his or her entire cultural/racial group, usually combined with the assumption that this individual/culture is "traditional."

2. A single creative (or critical) text (filmic, literary, etc.) is expected and assumed to represent an entire minority culture, or even to "contain culture" (with culture vaguely defined but assumed to be "traditional").

3. The expectation of dominant culture that minority groups or individuals "teach" the dominant majority about the minority culture, the dominant culture's misperceptions, and racism. (e.g. the expectation that Indigenous representatives should teach people about all or specific Indigenous cultures and histories; the expectation that black individuals should teach non-blacks how to be anti-racist)

4. The expectation of dominant culture to receive affirmation from minority cultures that they are "not racist" or to

> "use" those in the less privileged position as proof that they are not racist ("I have a friend who is ..... therefore...")

When it comes to the representation of a particular group through some sort of medium that is external to the actual group/individual comes the issue of interpretation. Ann Marie Baldonado explains how, "[r]epresentations, then can never really be 'natural' depictions. ... Instead they are constructed images, images that need to be interrogated for their ideological content. ... If there is always an element of interpretation involved in representation, we must then note who may be doing the interpreting" On this subject, Ella Shohat asserts that "[e]ach filmic or academic utterance must be analyzed not only in terms of who represents but also in terms of who is being represented, for what purpose, at which historical moment, for which location, using which strategies, and in what tone of address" (Shohat, 1995, p. 173)

This questioning is particularly important when the representation of the subaltern (or marginalized) is involved. The problem does not rest solely with the fact that often marginalized groups do not hold the "power over representation" (Shohat, 1995, p. 170). It rests also in the fact that representations of these groups are both flawed and few in numbers. Shohat states that dominant groups need not preoccupy themselves too much with being adequately represented. There are so many different representations of dominant groups that negative images are seen as only part of the "natural diversity" of people. However, "representation of an underrepresented group is necessarily within the hermeneutics of domination, overcharged with allegorical significance" (Shohat, 1995, p. 170). The mass media tends to take representations of the subaltern (or marginalized) as allegorical, meaning that since representations of the marginalized are few, the few available are thought to be representative of all marginalized peoples. The few images are thought to be typical, sometimes not only of members of a particular minority group, but of all minorities in general.

> "The denial of aesthetic representation to the subaltern has historically formed a corollary to the literal denial of economic, legal, and political representation. The struggle to 'speak for oneself' cannot be separated from a history of being spoken for, from the struggle to speak and be heard" (Shohat, 1995, p. 173).

Strategies of Liberal Racism

There are several recognizable and frequently repeated strategies used in liberal racism that make anti-racism work difficult. Most of these strategies share common and overlapping processes: outright or masked denial, minimization, defensiveness and guilt.

- **Making invisible:** Ignoring. Failing to recognize a person of colour or Indigenous person as a "regular" Canadian.
- **Claiming "reverse racism":** This term is sometimes used in relation to anti-racism initiatives, affirmative action, or equity policies that are actually designed to rectify the results of institutionalized racism by setting guidelines and establishing procedures for findings qualified applicants from all segments of the population. The term "reverse racism" is also sometimes used to describe the mistreatment that individual whites may have experienced at the hands of people of colour. The inaccuracy here is that we should not confuse racial prejudice and other forms of mistreatment experienced by whites at the hands of people of colour with racism — the concentration of power and privilege in our society that leads to the systematic and institutionalized mistreatment of people of colour. (Sherover-Marcuse, 1988, p. 2).
- **Fear of assertiveness:** Hesitancy of white people to engage in confrontational or challenging dialogue with people of colour. The fear of making mistakes. Not holding people of colour as able. Fear of giving critical feedback to people of colour.
- **Denying differences:** Comfort of white people around people of colour who talk and act most like white people.
- **Approval seeking:** Being more "anti-racist" in the presence of people of colour. Wanting a pat on the back for positive action. "But special praise and rewards? For what? For recognizing people as equals and treating them

like human beings? ... Is applause due to those white people who acknowledge [the existence of racism]? ... I'm sorry, but that's like giving a man the Nobel Peace Prize because he doesn't beat his wife" (Burton, 1994, p. 2).

- **Assuming things are better:** Failure to recognize the perceptions of people of colour about current racial inequity. The belief that racial oppression existed in the past, not today, or somewhere else, not here.
- **Comparing oppressions:** Denying or minimizing the impact of racism by suggesting that some forms of oppression are worse than or analogous to others – "I'm more oppressed than you are." "As a woman, I identify with your oppression."
- **Colour-blindness:** Premise is that sameness is a compliment. "I don't even think of you as black." Espousing the liberal sentiment of "We're all the same under the skin."
- **Defining the other:** Defining a person of colour and what their experience is. Inability to listen to and accept their experience.
- **Stereotyping:** A fixed set of ideas often exaggerated and distorted. It is a mental picture that sees all members of a group as being the same. (Collins, 2006, p.39)

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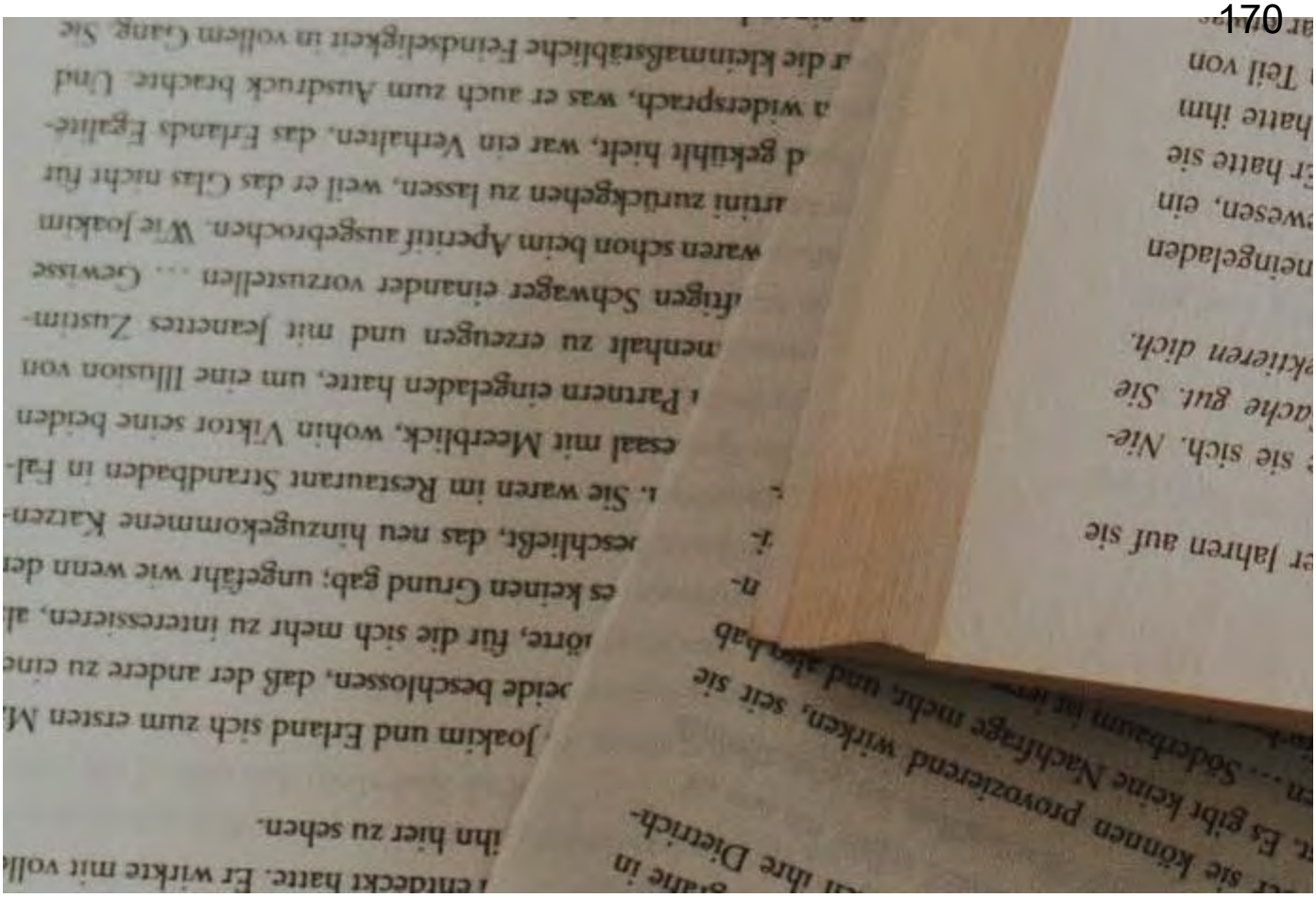
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Whiteness

"a dominant cultural space with enormous political significance, with the purpose to keep others on the margin"

> "Racism is based on the concept of whiteness—a powerful fiction enforced by power and violence. Whiteness is a constantly shifting boundary separating those who are entitled to have certain privileges from those whose exploitation and vulnerability to violence is justified by their not being white" (Kivel, 1996, p.19).

What is Whiteness?

In Alberta, the word "white" is sometimes used to refer specifically to skin colour or "race." This may appear like the reinforcement of the old (and racist) categories of European imperialism, and in some cases, it may in fact be meant that way. But in our experience, we have found that when people refer to "white people" (either in self-identification or identifying individuals/groups), it is actually being used as a shorthand reference to whiteness; that is, to the social meaning that we have attached to this concept. It is used as a shorthand for the **privileges and power** that people who **appear white** receive because they are not subjected to the racism faced by people of colour and Indigenous people.

It is important to notice the difference between being "white" (a category of "race" with no biological/scientific foundation) and "whiteness" (a powerful social construct with very real, tangible, violent effects). We must recognize that race is **scientifically insignificant**. Race is a **socially constructed category** that powerfully attaches meaning to perceptions of skin colour; inequitable social/economic relations are structured and reproduced (including the meanings attached to skin colour) through notions of race, class, gender, and nation.

> Ruth Frankenberg defines whiteness as "a dominant cultural space with enormous political significance, with the purpose to keep others on the margin. ... [W]hite people are not required to

> explain to others how 'white' culture works, because 'white' culture is the dominant culture that sets the norms. Everybody else is then compared to that norm. ... In times of perceived threat, the normative group may well attempt to reassert its normativity by asserting elements of its cultural practice more explicitly and exclusively (qtd. in Estable, 1997, 21).

An example of this normative whiteness was the furor concerning Baltej Singh Dhillon's fight to wear a turban, for religious reasons, as part of his RCMP uniform. The argument that the Mountie uniform was a "tradition" that should not be changed belied white Canadians' perceptions of Sikh people and communities of colour as "threatening" their position of privilege in Canada.

↳ Click here to learn more about the Baltej Singh Dhillon Case.

Key Features of Whiteness

Whiteness is multidimensional, complex, and systemic:

- It is **socially and politically constructed**, and therefore a learned behaviour.
- It does not simply refer to skin colour, but to its **ideology** based on beliefs, values behaviours, habits and attitudes, which result in the unequal distribution of power and privilege based on skin colour (Frye, 1983; Kivel, 1996).
- It represents a **position of power** where the power holder defines the categories, which means that the power holder decides who is white and who is not (Frye, 1983).
- It is **relational**. "White" only exists in relation/opposition to other categories/locations in the racial hierarchy produced by whiteness. In defining "others," whiteness defines itself.
- It is **fluid**—who is considered white changes over time (Kivel, 1996).
- It is a **state of unconsciousness:** whiteness is often invisible to white people, and this perpetuates a lack of knowledge or understanding of difference which is a root cause of oppression (hooks, 1994).
- It shapes how white people view themselves and others, and places white people in **a place of structural advantage** where white cultural norms and practices go unnamed and unquestioned (Frankenberg, 1993). Cultural racism is founded in the belief that "whiteness is considered to be the universal ... and allows one to think and speak as if whiteness described and defined the world" (Henry & Tator, 2006, p. 327).
- Whiteness is a set of **normative privileges** granted to white-skinned individuals and groups; it is normalized in its production/maintenance for those of that group such that its operations are "invisible" to those privileged by it (but not to those oppressed/disadvantaged by it). It has a long history in European imperialism and epistemologies.
- Whiteness is distinct but not separate from ideologies and material manifestations of ideologies of class, nation, gender, sexuality, and ability.
- The meaning of whiteness is historical and has shifted over time (i.e. Irish, Italian, Spanish, Greek and southern European peoples have at times been "raced" as non-white).

↳ Click here to explore our glossary definitions of *White Fragility*, *Whiteness*, *White Privilege/White-Skin Privilege* & *White Supremacy*

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Cultural Competency: A Necessary Skill for the 21st Century Attorney

By Travis Adams

I. INTRODUCTION

An effective lawyer must possess skills for cross-cultural engagement by developing cultural competency. Cultural competency, like other legal skills, requires a disciplined approach to viewing the world from different perspectives. When beginning law school, many first year law students are challenged to let go of the belief that "there is **one** right answer" to legal problems. Law students are typically high achievers, accustomed to good grades, correct answers, and getting problems "right." After countless hours of studying and later being corrected in lecture halls by law professors, eventually most law students succumb to their training and stop seeing the law like an algebraic equation and instead consider legal problems from different perspectives. Legal professors facilitate this by playing "devil's advocate", asking students to argue the side they disagree with, and changing fact patterns on the spot in order to increase the complexity of a legal situation. Whether Torts, Property, Contracts, Criminal, Legal Writing or Constitutional Law, students are taught how to analyze and argue the law from different perspectives.[1]

Arguing the law from different perspectives is an essential aspect of advocacy and part of our responsibility to zealously advocate for our clients. [2] Effective advocacy involves more than a mastery of the law but also a deep understanding of the client and the facts surrounding the legal matter. In a tort case for negligence, a plaintiff's attorney will tell the story of a plaintiff who was careful, vulnerable, responsible, and victimized. Using the same facts, the defense will characterize the plaintiff as clumsy, reckless, greedy, and opportunistic. A skilled attorney can tell the most compelling story using the substantive law within the rules of evidence and procedure.

Advocacy requires an ability to see different perspectives because it is by nature a cross-cultural experience.[3] Culture is the summation of an individual's ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical attributes,

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[1] Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering, in* RACE, CULTURE, PSYCHOLOGY AND THE LAW 47, 47 (Kimberly Holt Barrett &William H. George eds., 2005).
[2] ANN. MODEL RULES OF PROF'L CONDUCT R. 1.3 cmt. 1 (2011)
[3] BRYANT & PETERS, *supra* note 1, at 47.

marital status, and a variety of other characteristics.[4] The law is its own culture with values, attitudes, and norms of behavior.[5] Any law student who has tried to communicate to friends and family "how class was today" understands this cross-cultural exercise. The world of proximate cause, appellate briefs, reasonableness standards, and motion hearings create a context for a law student that is unfamiliar to the outside world. For this reason, awareness, knowledge and skills involving how to navigate cultural difference are essential to the practice of law, even when the client and the attorney come from similar social locations and cultural groups. However, when an attorney and his or her client come from different cultural groups, effective advocacy utterly depends on cultural competency. As one scholar puts it, "to be effective in another culture, people must be interested in other cultures, be sensitive enough to notice cultural differences, and then also be willing to modify their behavior as an indication of respect for the people of other cultures."[6]

This paper argues that cultural competency is an essential skillset for the 21st century attorney who seeks to deliver effective advocacy and serve justice. This paper begins by defining cultural competency and applies the definitions to the work of a lawyer. Arising from foundations of good anthropological and ethnographic practice, molded in professional standards of medicine, mental health, social work, and law, cultural competency demands self-awareness, immersion, repeated revision, open-mindedness, resistance to stereotyping, and attention to detail.[7] This paper uses Milton Bennet's Intercultural Development Continuum (IDI) as a way to discuss and measure cultural competency. The IDI, an assessment tool used to survey individuals in order to measure their ability to engage in and recognize cultural differences, is a widely respected approach to cultural competency.[8] While no tool is perfect or all encompassing, this paper's goal is to use a tool already accepted by a broad base of institutions in education, business, social services and other fields as a safe place to begin the conversation. By connecting

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[4] *Id.* at 48.
[5] *Id.* at 47.
[6] D. P. S. Bhawuk & Richard Brislin, *The Measurement of Intercultural Sensitivity Using the Concepts of Individualism and Collectivism*, INT'L J. INTERCULTURAL REL. 413, 416 (1992).
[7] *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 HOFSTRA L. REV. 677, 682 (2008).
[8] Intercultural Database Inventory, *Bibliography of Publications On the IDI* available at https://www.idiinventory.com/pdf/bibliography-of-publications.pdf (Last visited May 31, 2013).

the fields of cultural competency and lawyering, I argue that there is a growing need for training law students to be culturally competent.

Next, this paper will explore four central reasons for why cultural competency is essential to the 21st century attorney. First, we will look at the social and economic realities that continually make the legal world more multicultural and globalized than ever before. Second, this paper explores the tendency of individuals and groups to prefer homogenous spaces and favor that which is similar to them. Third, this paper will explore the prevalence of cultural competency in other disciplines to demonstrate how the legal world is falling behind in this area when compared to similar professions such as social work, education and medicine. Lastly, this paper will discuss the areas of the profession best served by cultural competent advocacy.

An analysis of cultural competency would not be complete without the recognition and serious consideration of the author's social location and context. Such cultural self-awareness is considered in social science to be the key to multicultural competence, especially for an attorney, because an attorney's awareness of his or her own culture allows for a more accurate understanding of cultural forces that affect him or her as a lawyer, his or her client, and the interaction of the two.[9] I am a 26-year-old, white, heterosexual male from a middle class background. I am approaching my final year of law school and the majority of my legal training has occurred in the criminal and child protection realm. Only in the last five years have I been trained in cultural competency. I am grateful and indebted to have mentors and teachers who are culturally diverse to help me along in this journey. Without their mentorship, this paper, which marks an early checkpoint in a long journey of discovery, would not be possible.[10]

II. WHAT IS CULTURAL COMPETENCY?

A wide range of academic and professional fields have studied cultural competency. As a result the concept has generated different definitions and tools for measurement.[11] Cultural competency tools use generalized benchmarks that signify an individual's competency development stage. Culture and personal development can seem like hard to pinpoint, lofty

[9] Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 369 (2005).
[10] Thank you specifically to Lawrencina Oramalu-Mason, Shawn Moore, and Roberta Jones.
[11] This paper will use the definition and continuum created by the Intercultural Development Inventory. *See* www.idiinventory.com.

terms. The measurement tools discussed in this section will allow us to explore cultural competency and the law with a set of consistent terms and measurements.

Cultural competency[12] is the ability to accurately understand and adapt behavior to cultural difference and commonality.[13] A cultural competency tool, places individuals on a continuum that identifies their cultural competency ranging from a monocultural mindset on one end to an intercultural or global mindset on the other.[14] The Development Model of Intercultural Sensitivity (DMIS) uses "stages" in order to explain patterns that emerge from systematic observations.[15] The most important theoretical concept for cultural competency is that all experience is constructed.[16] For instance, a middle aged lawyer walking down the street who witnesses a man rob another man at gunpoint will experience that event differently than a young child. Similarly, a European American person who happens to be in the vicinity of a Hmong New Year celebration may not have anything like the same experience a Hmong person has at the same event; assuming that the European American has no "Hmong" categories in her brain to construct that experience. As a result, the European American will likely create a meaning for the Hmong New Year event using one's own cultural experience.

It is important to keep in mind that cultural knowledge is not the same as cultural competence. An American Christian may have a broad knowledge of the religious practices of an Indian Hindi but will still experience and relate to every aspect of an Indian Hindi through the cultural lens of an American Christian. The brain typically fits every experience into a familiar category.[17] The less developed a person's cultural competency level the fewer categories available to categorize and the more details of culture ignored or overgeneralized.[18] It is much like a search function on a computer. Each time we have a new experience something in our brain goes back in time and searches through our life history. When our brain finds a file that is

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[12] This paper uses the term "cultural competency." For the purposes of this paper, "cultural competency" the same meaning as "cross-cultural competency" and "intercultural competency."

[13] Milton Bennett, Becoming Interculturally Competent, In Wurzel, J. (Ed.) (2004). Toward Multiculturalism: A Reader in Multicultural Education 62, 72 (2004).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] Julia Ann Gold, *ADR Through A Cultural Lens: How Cultural Values Shape Our Disputing Processes*, J. DISPUTE RESOLUTION 289, 293 (2005).

[18] James W. Bagby, *Cross-Cultural Study of Perceptual Predominance in Binocular Rivalry*, 54 J. ABNORMAL AND SOC. PSYCHOL. 331, 331-34 (1957).

similar to the new experience it associates the new experience with the closest corresponding file. Then we react to the new experience accordingly.

We interact with other disciplines much the same way. Before a student enters law school he or she may read a legal case and the only "file" the student's brain uses is "law". However, after three years of law school the same student will read that same case law and create much more specific categories by which to file that case in her brain. What she once saw as just "law" will now be seen as "a Supreme Court case," "a Justice Stevens decision," "constitutional law," "First Amendment issue," "free speech," "time place manner restriction." When trained, the brain will categorize law, with greater particularity and appreciation for the distinct differences that exist within each legal situation. With respect to cultural differences, as one becomes more interculturally competent, nuances in communication style, gender roles, conflict style, perceptions of authority, ethics, and other aspects of culture become more evident. Sometimes it seems incredible "how deep the rabbit hole goes."[19]

Like the person with very few cultural "categories," an ethnocentric mindset makes sense of cultural differences and commonalities based on one's own cultural values and practices.[20] A person with this mindset would allow his or her stereotypes to make broad inferences about the situations he encounters and would have less complex perceptions and experiences of cultural difference and commonality.[21] He or she may be able to recognize cultural differences such as food and clothing but may not notice deeper cultural differences such as conflict styles or relationship statuses.[22]

On the other end of the spectrum, an ethnorelative mindset makes sense of cultural differences and commonalities based on one's own *and* other cultures' values and practices. This person does not make broad stereotypes but would notice cultural patterns in order to recognize cultural difference.[23] A truly ethnorelative mindset allows one to express their alternative cultural experience in culturally appropriate feelings and behavior.[24] These abilities make people much more likely to engage in, rather than to avoid, cultural difference.

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[19] *The Matrix*. 1999. (Warner Brothers film 1999) (quoting Morpheus).
[20] BENNETT, *supra* note 13, at 62.
[21] *Id.* at 72.
[22] *Id.* at 63
[23] *Id.* at 68-69.
[24] *Id.* at 70.

In the legal setting, a person with a monocultural mindset would likely struggle interviewing a client who perceives time differently. For instance, a witness may not be accustomed to orienting a story based on hours, days, months, or years. If the lawyer comes from a culture where stories are told in a linear time-related manner, the monocultural mindset lawyer may perceive the client's failure to provide certain information as uncooperative, unintelligent, or untruthful.[25]A person with an intercultural mindset would be quicker to recognize how a client's cultural difference may impact the client's storytelling. A cultural competent lawyer sees organizing and assessing facts as a cultural difference and not a deficit in character or intelligence.[26]

Applying the DMIS continuum to advocacy

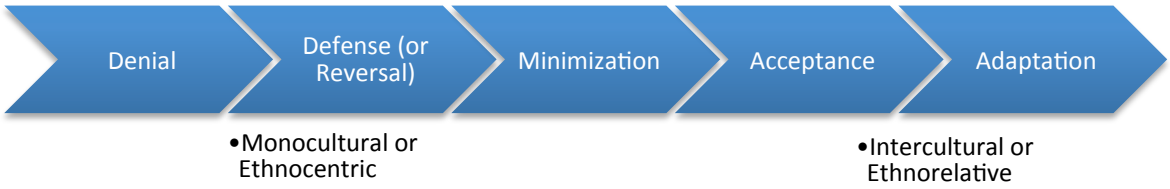


Figure 1 DMIS Continuum

The Intercultural Development Inventory creates different stages along the spectrum ranging from ethnocentric to ethnorelative.[27] In order from the most monocultural mindset to the most intercultural, the developmental stages are *Denial, Defense, Minimization, Acceptance, and Adaptation.*[28] The first three, *Denial, Defense,* and *Minimization,* are ethnocentric orientations, while people in *Acceptance* and *Adaptation* have ethnorelative orientations.[29]

Remember that to practice law inherently involves cross-cultural engagement, moving from one stage of the DMIS to the next would directly impact a lawyer's advocacy. The purpose of this paper, and more specifically this section, is to appreciate the importance of culturally

[25] GOLD, *supra* note 17, at 298.
[26] BRYANT & PETERS, *supra* note 1, at 47.
[27] BENNETT, *supra* note 13, at 62.
[28] *Id.* at 72.
[29] *Id.* at 62.

competent lawyering and to notice how advocacy strengthens as a lawyer moves up the DMIS continuum.

First, in *Denial*, one's own culture is experienced as the only real one and other cultures are ignored or vaguely identified.[30] A *Denial* lawyer may avoid focusing on aspects of the client's story that feature cultural difference or perhaps completely avoid working in fields of law or geographic areas with culturally different people. The *Denial* lawyer may see culture in very simple categories such as "race" or "deserving or undeserving" of economic inequity.[31] However, as the client's situation becomes more complex and dynamic, thus falling outside of the superficial categories created by the *Denial* lawyer, the lawyer may begin to ignore or avoid facts that fall outside of the client's experience. There is literally no field of law where ignoring cultural details would not impair an attorney's practice.

In the next stage, *Defense*, other cultures are recognized yet viewed negatively and the person's own culture is perceived as being the only one that is "normal." [32] Recently, feminist and black liberation theorists have used the term "cultural imperialism" to describe this practice of normalizing one's own cultural expressions while viewing cultural differences in others as lacking and negative.[33] In this way, a *Defense* prosecutor may have biases against people from a minority cultural group. These biases could cause the prosecutor not to trust people from this cultural group as much and seek more strenuous penalties for crimes than the prosecutor would seek for people of the prosecutor's own cultural group.[34] Unfortunately, it is very common among prosecutors to take advantage of the fact that so many people in our society are in the *Defense* DMIS stage. In one gang-related criminal case in Minnesota involving an African-American defendant, African-American defense witnesses, and an all white jury, the prosecution had accentuated its gang theory by arguing to the jury "[T]he people that are involved in this [defendant's] world are not people from your world ... these are the defendant's people. [35]

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[30] *Id.* at 63.
[31] *Id.* at 64.
[32] Alan S. Gutterman, *Training leaders to identify and cope with cultural diversity*, in BUS. COUNSELOR'S GUIDE TO ORG. MGMT. § 44:26 (2012).
[33] Iris Marion Young, *Five Faces of Oppression*, in Diversity, MULTICULTURALISM AND SOCIAL JUSTICE 35, 42 (2002).
[34] William E. Martin & Peter N. Thompson, *Removing Bias from the Minnesota Justice System*, in BENCH & B. MINN. 16, 18, (2002).
[35] State v. Vue, 606 N.W.2d 719 (Minn. Ct. App. 2000)

Defense[36] orientations oftentimes occur much more subtly and less overtly prejudiced. Imagine a *Defense* attorney must represent her client in a business contract negotiation with another foreign business whose native culture features significantly different communication or negotiation habits from the attorney's cultural background. The foreign business representative does not exhibit behavior that the *Defense* attorney associates with politeness or friendliness even though this is exactly what the foreign business representative understands to be polite in his own cultural mindset. A *Defense* attorney would be at risk of labeling the foreign business representative as "uncivilized" or "less developed" rather than using a culturally different relational style.[37] Even worse, the attorney could likely misinterpret the foreign business as unwilling to negotiate or untrustworthy in character. This could have a negative impact on the client.

Next, individuals in *Minimization*, tend to emphasize similarity and the cross-cultural applicability of economic, political, philosophical, or even behavioral traits.[38] A person in *Minimization* may recognize superficial cultural realities such as food, language, or clothing but still utilizes one's own cultural patterns as central to an assumed universal reality. Using the business negotiation example from before, a *Minimization* lawyer may overestimate their appreciation for the home culture of the foreign business and be relatively tolerant. However, because the *Minimization* lawyer does not see her own culture clearly, if the negotiation goes poorly and conflict arises, the *Minimization* lawyer will still judge the other business's use of a different conflict resolution style as "lacking" or a poor choice.[39] This is because the *Minimization* lawyer still sees the world through an ethnocentric lens and fails to see deeper cultural differences such as philosophy, ideology, and, in this case, conflict style.[40] Lawyers involved in cross-cultural depositions, client interviews, or cross-examinations are likely to cause

[36] Within *Defense,* is a subcategory of *Reversal*. A person in *Reversal* exhibits all of the same characteristics as *Defense,* only backwards. In *Reversal,* people have negative value judgments on their own cultural group and have positive value judgments on other cultures.
[37] BENNETT, *supra* note 13, at 65.
[38] *Id.* at 67.
[39] *Id.* at 68.
[40] *Id.* at 67.

communicative misunderstandings if they view or treat people from different cultures as being "generally more similar to themselves than dissimilar."[41]

Acceptance marks the DMIS stage where an individual takes a more globalized or ethnorelative perspective and one's own culture is experienced as just one of a number of equally complex worldviews.[42] In her article on the "Five Habits of Culturally Competent Professionals" scholar Kimberly Barrett recommends taking time to review the major influences and processes in one's socialization—the role that family, friends, media, and the broader socio-historical, cultural environment have played in influencing one's views of groups other than one's own.[43] Similarly, an *Acceptance* attorney working in a child protection setting for the first time and having his first client interview with a family would likely ask very different questions than an attorney in an ethnocentric DMIS stage would ask. The *Acceptance* attorney would be aware of how his own cultural context has informed his assumptions about a family unit. As a result, the attorney would assume less about the family norms and ask questions that demonstrate a broader and more complex understanding of how families can form themselves. The *Acceptance* attorney will have significant advantages in communication as well. Instead of viewing the whole world through the prism of American cultural archetypes, the *Acceptance* attorney will remember that more than one meaning may exist for verbal and nonverbal messages communicated between people from different cultures.[44]

Unlike the *Denial* or *Defensive* attorney, the *Acceptance* attorney will be able to understand the difference between himself and the family he is interviewing while seeing them as equally human.[45] However, this does not mean the *Acceptance* attorney must lose all sense of ethics because "everything is relative."[46] Instead, by truly accepting the relativity of values within cultural context, and experiencing the world as organized by different values, the

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[41] William Haskins, *Pitfalls in Intercultural Communication for Lawyers*, 16 TRIAL DIPLOMACY J. 71, 74 (1993).
[42] BENNETT, *supra* note 13, at 68.
[43] Kimberly Holt Barrett and William H. George, *Psychology, Justice, and Diversity: Five Challenges for Culturally Competent Professionals*, 6 (Sage Publications 1999).
[44] Nina Ivanichvili, *The Person Behind the Face: A Lawyer's Guide to Cross-Cultural Depositions Minnesota's Attorneys Are Increasingly Likely to Be Deposing Someone Whose Native Language Is Other Than English. Knowing How to Use an Interpret*, BENCH & B. MINN., 22, 26 (2004).
[45] BENNETT, *supra* note 13, at 68.
[46] *Id.* at 69.

Acceptance attorney is able to maintain an ethical commitment in the face of cultural relativity.[47] Cultural relativity does not mean ethical relativity, and an *Acceptance* attorney in the child protection scenario would be able to distinguish between how one's personal ethical commitment to protecting children and the cultural relativity of parenting styles.

A person in the last DMIS stage of cultural competency, *Adaptation*, can empathize with other cultures to the extent that he or she yields culturally appropriate perceptions and behaviors.[48] Further, in *Adaptation*, a person retains his own cultural identity without assimilating to another culture. People in *Adaptation* have the acute ability to recognize patterns of cultural behavior, enabling allow them to define themselves broadly. Milton illustrated this when he described someone in *Adaptation* as having a, "German critical, Japanese indirect, Italian ironic, African American personal in addition to a primary European Male explicit style."[49] To the extent that each behavior emerged from a real connection to the various cultures, they would all be authentically you.[50] Another excellent example comes from Christine Zuni Cruz, a self proclaimed "community lawyer" within Indigenous communities.[51] She describes how she moves in and out of cultural behaviors as an attorney,

> "The three voices I speak in: native, lawyer, and clinician provide different perspectives. As native, I speak as a native person living within my native community; as lawyer, I speak from my experience in working within the community; as clinician, I speak combining the above voices, seeking to improve the lawyering done in the name of, on behalf of, for, and with native peoples and native nations. These voices inform my discussion of community and culture. The basis of my ideas stem from my experience of being part of a distinct native community, long served by lawyers and a profession external to the community. My perspective on community comes from my work within my own pueblo, and within other pueblos both as a lawyer and a judge. My perspective on culture is closely related to community, but it is also informed by the work I engaged in over several years to revise the New Mexico Children's code to provide greater cultural protection for native children and youth."[52]

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[47] W.P. Berry, Forms of Intellectual and Ethical Development in the College Years: A Scheme. (Jossy-Bass 1970).
[48] BENNETT, *supra* note 13, at 70.
[49] *Id.* at 71.
[50] M.J. Bennet and I. Castiglioni, *Embodied Ethnocentrism and the Feeling of Culture: A Key to Training for Intercultural Competence*, in HANDBOOK OF INTERCULTURAL TRAINING 249, 249 (2004).
[51] Christine Zuni Cruz, *(on the) Road Back in: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 560 (1999).
[52] *Id.*

Cruz is aware of the different cultural contexts she moves in and out of and does not place a value judgment on one community over another based upon cultural behaviors. Further, Cruz has an appreciation for how her different cultural experiences have shaped her. The awareness of one's own cultural identity is essential for moving into the ethnorelative orientations of the DMIS.

The *Adaptation* attorney is best suited for the work of a lawyer because she can function as a "cultural chameleon": recognizing cultural differences and quickly picking up on acceptable and/or advantageous behaviors.[53] The *Adaptation* attorney has the capacity to better communicate within the typical cross cultural attorney-client relationship because she can put herself "in the client's shoes".[54] Furthermore, the *Adaptation* attorney has a greater capacity to practice various legal disciplines and recognize the nuances in each field and cooperate with a variety of judges in each unique courtroom environment. He or she will more quickly observe and adapt to patterns of all kinds, something all lawyers seek to do. While all of these benefits exist within a relatively homogenous cultural world, the *Adaptation* attorney's greatest strengths and societal impact will be the result of the attorney's ability to work with a diverse range of clients and be able to perform zealous advocacy on their behalf.

Cultural competency is especially essential during depositions, a time where the *Adaptation* attorney's skills are put to the test.[55] Nina Ivanichvili is CEO of www.LanguageAlliance.com, a firm specializing in legal translation and interpretation in over 80 languages.[56] She designed a CLE called "A Lawyer's Guide to Cross-Cultural Depositions" in which she describes scenarios that test a lawyer's ability to recognize cultural difference.[57] In one scenario, Invanichvili describes an American attorney deposing a well-dressed, middle-aged, non-English-speaking woman in a civil lawsuit where the attorney is trying to establish the cost of the woman's clothing. The woman has had several jobs, is wearing decent clothing, and is middle aged. These attributes could lead the attorney to assume similarities between the woman and her American counterparts with regards to the woman's independence— financially or otherwise — from her husband. However, this woman is originally from a small, male-

[53] *See* Bennett, *Becoming Interculturally Competent*, 70.
[54] *Id.*
[55] IVANICHVILI, *supra* note 44, at 26.
[56] *Id.*
[57] *Id.*

dominated village and does not know what her articles of clothing cost because her husband makes all the purchasing decisions in the family. The *Adaptation* attorney would be slower to make assumptions of cultural similarity. The *Adaptation* attorney would instead ask questions like, "Who handles the money in your household?" or "Who in your family purchases clothes?" Furthermore, the attorney would pick up on social cues and communication patterns such as responsiveness, silence, and social taboos in order to make the otherwise potentially timid deposed woman more comfortable and honest.[58]

In the same way a law student receives training to recognize the difference between a tort law fact pattern and a contract law fact pattern, so too must a lawyer learn to identify cultural differences. The DMIS continuum assumes that contact with cultural difference generates pressure on an individual to change one's worldview. If an attorney worked at a firm where successful attorneys consistently used different approaches, it would become increasingly difficult for her to believe in only one system for drafting motions. Similarly, the more we understand how many different ways there are to live, the less ethnocentric our worldview becomes. Attorneys better serve their clients interests by understanding culturally learned differences, recognizing commonalities between themselves and others, and acting on their insight in culturally and legally appropriate ways.[59] This paper will develop this concept further in the next section where we will go beyond simply providing examples of the DMIS development stages and instead explore how cultural competency impacts the legal profession.

III. WHY SHOULD AN ATTORNEY BE CULTURALLY COMPETENT?

An attorney should be culturally competent in order to better represent his or her client and also to better serve justice. This next section will address both the practical and ideological arguments for training attorneys to be culturally competent. The ideological arguments come from the author's perspective that an attorney has the ethical responsibility to be more than just a "hired gun" who gives the client total autonomy.[60] Instead, the attorney has a role to provide ethical advice and at times become an agent of social change. The arguments presented focus on

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[58] *Id.*
[59] Mitchell R. Hammer, *Intercultural Development Continuum*, DEVELOPING INTERCULTURAL COMPETENCE, (December 28, 2013), www.idiinventory.com.
[60] THOMAS L. SHAFFER AND ROBERT COCHRANE JR., LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY 2 (6th ed. 2009).

the culturally competent attorney's enhanced advocacy skills as well as the attorney's greater capacity to serve justice.

A. *Increasingly Diverse Country; Increasingly Global World*

The economic and sociological realities of 21st century make United States more culturally and racially diverse than at any other time in history. Dramatic increases in ethnic minority populations in the United States are leading to a demographic shift that will place whites in the minority racially, while collectively, people of color will become the majority. According to the 2010 U.S. Census Bureau, non-Hispanic Whites made up 65% of the country and are projected to make up 46% in 2050. Already in 2010, whites were the minority in four U.S. states Hawaii, California, Texas, and New Mexico (New York is only 58% white and Florida is 57% white).[61]

The changing domestic demographics are not the only cause for growing diversity among an American lawyer's client base. Practicing law in the 21st century means working in a globalized economy where our world grows increasingly integrated due to the rapid exchange of information, capital, and prevalence of free trade. Most of the ten largest global law firms now have more lawyers located outside their home-country office than in their home country and all of them have offices outside their home country.[62] Moreover, it is not just U.S. lawyers who are exporting their services to other countries; foreign lawyers have imported their services into the United States in increasing numbers. For example, between 1993 and 2003, U.S. exports of legal services grew 134%, but imports grew 174%.[63] As future lawyers, law students must be familiar with the norms and ethical rules governing these foreign lawyers, as well as possess the skills to navigate working in a global practice. Our education must include perspectives on advocacy from lawyers in the global south, i.e. South Africa; the global east, i.e. China; the global north, i.e. Germany as well as here in the global west. We get a fuller picture of the different advocacy strategies and perspectives when we encounter different cultural lenses. This makes us stronger attorneys.

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[61] Projections of the Population by Sex, Race, and Hispanic Origin for the United States: 2010 to 2050" U.S. Census Bureau. Retrieved 2010-10-24.
[62] Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOBAL STUD. L. REV. 463, 495 (2005) (citing The Global 100, Am. Lawyer, (2004)).
[63] Laurel S. Terry, *A, "How To" Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course*, 51 ST. LOUIS U. L.J. 1135, 1138 n.9 (2007).

The Supreme Court acknowledged the importance of creating culturally competent legal professionals amidst our changing social landscape. In *Grutter v. Bollinger*, the Court endorsed the University of Michigan's affirmative action policy because diversity is 'essential' to quality education, preparation for work in a global economy, cross-racial understanding, and decreasing prejudice.[64] A core premise of this endorsement is that 'the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.[65] While exposure to diverse people in ideas through a diverse student body serves an essential role in developing culturally competent law students, many scholars recognize field work and service learning as an essential role in developing cultural competency and cross cultural lawyering skills. [66] Service learning, practicums, and clinic experience in culturally diverse environments must be a part of a culturally competent attorney's training.

In reality, regardless of where one lives and what type of law one practices, you clients will come from different cultural backgrounds. The way the world and our country are developing means greater cultural diversity in our pool of clients, judges, juries, co-counsels and witnesses.

B. *Cultural Competency's Prominence in Other Professional Disciplines*

Other similar professional and academic disciplines devote significantly more attention and training to cultural competency than the legal field. Today, scholars in the area of business, education, nursing and social work are all expanding their understanding of cultural competency, and seeking to build cultural competency in their professionals.[67] The legal world is similar to these other disciplines in terms of the populations served and the benefits gained from cultural competency. For example, lawyers, like a doctors, counselors, social workers, and psychologists need to identify cultural bias when it emerges and to document the influence of adverse

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[64] 539 U.S. 306, 332 (2003).
[65] Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 370 (2005).
[66] Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, 56 N.Y.L. SCH. L. REV. 445, 446 (2012)(Clinicians have looked to human rights clinics, and particularly international fieldwork, as a way to advance clinical pedagogy and cross-cultural training).
[67] Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 Int'l J. Legal Info. 22, 23 (2011).

circumstances in the lives of their clients that are related to prejudice.[68] Even so, the law lags behind these other disciplines because it closely resembles dominant American culture and its value of "universalism".[69] Our court system, legal doctrines, and law schools are entrenched in the universalist belief that what is right is right, regardless of the circumstances or who is involved.[70] To a universalist, fairness means treating everyone the same, and one should not make exceptions for family, friends, or members of one's in group.[71] Furthermore, universalists believe it is important to put feelings aside and look at situations objectively and that people and systems should avoid making exceptions to rules.[72]

Social work is an example of a related field that has integrated cultural competency training as a central part of its training. The National Association of Social Workers Standards for Cultural Competence in Social Work Practice ("NASW Standards") require that "social workers shall have and continue to develop specialized knowledge and understanding about the history, traditions, values, family systems, and artistic expressions of major client groups served.[73] Standards of performance for disciplines such as social work show that the view of culture as often rooted in ethnicity and nationality but defined overall by much more—including all social groups and subgroups with which an individual associates—is now well-established in the professional world.[74] Similarly, attorneys cannot be blind to the social groups and subgroups to which their clients identify. The clients' legal issues, expectations of their attorney, communications with their attorneys, perceptions of the legal system and desired outcomes are all based on the clients' cultural identities. Lawyers, like social workers, doctors, or psychologists must be able to fully know who their client is.

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[68] Kimberly Holt Barrett & William H. George, Psychology, Justice, and Diversity: Five Challenges for Culturally Competent Professionals, 6 (2005).
[69] GOLD, *supra* note 17, at 302.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] Nat'l Ass'n of Social Workers, *NASW Standards for Cultural Competence in Social Work Practice, Cultural Competence*, available at http://www.naswdc.org/practice/standards/NASW CulturalStandards.pdf (Last visited Apr. 10, 2012).
[74] *See* NASW Standards, at Introduction.

C. *A Practice Area Recognizing the Need for Cultural Competency- Death Penalty Mitigation*

Death penalty mitigation is one area of legal practice with an established record of using culturally competent advocacy. Here, culturally competent advocacy typically comes in the form of telling the defendant's culturally relevant story, or what is sometimes called the defendant's social history.[75] In recent years, the Public Interest Litigation Clinic and the University of Missouri-Kansas City School of Law in cooperation with seasoned capital litigators and mitigation specialists across the United States created The Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases ("Supplementary Guidelines").[76] The Supplementary Guidelines seek to identify high standards for capital punishment defense predominantly by adding a mitigation specialist who is adept at describing the social history and cultural context of the client's worldview.[77]

These methods are becoming the norm in capital cases. For example, in *Wiggins v. Smith* the United States Supreme Court stated that trial counsel's failure to investigate the defendant's life history "fell short of the professional standards that prevailed," noting that a social history investigation was "standard practice."[78] The history of capital cases has shown that defendants are frequently cast by prosecutors to be inhumane or people who fall outside of the societal norm.[79] In fact, the Supreme Court has stated repeatedly that the Constitution requires, in all but the rarest of capital cases, that the person in charge of sentencing be allowed to consider "as a mitigating factor, any aspect of a defendant's character or record […] that the defendant proffers as a basis for a sentence less than death."[80]

Legal scholar Craig Haney argues that one of the most common successful tools to advance a capital sentence is to alienate the defendant from the jury.[81] Cultural information properly used to explain the defendant to the jury, on the other hand, presents a "reality of

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[75] Craig Haney, *Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to Death*, 49 STAN. L. REV. 1447, 1454 (1997).
[76] Sean D. O'Brien, *When Life Depends on It: Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 HOFSTRA L. REV. 693 (2008).
[77] *Id.*
[78] 539 U.S. 510 (2003).
[79] HANEY, *supra* note 75, at 1454.
[80] Skipper v. South Carolina, 476 U.S. 1, 4 (1986) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982).
[81] HANEY, *supra* note 75, at 1454.

personhood."[82] Cultural information and cultural context can overcome one of the great barriers to humanizing a defendant before a jury: stereotyping. Stereotyping of the defendant is a danger whenever evidence is presented about the defendant's life.[83] However, effective advocacy that communicates the context of the defendant's upbringing, challenges, and other life details encourage jurors to understand the defendant's view of the world and his or her actions.[84]

In the context of mitigation, culturally competent investigation is more than an admirable and desirable skill—it is a standard of performance.[85] However, the advocacy practices described in the Supplementary Guidelines in Death Penalty Mitigation are easily transferred into other areas of practice.[86] According to the DMIS continuum, the less developed a person's cultural competency, the more likely a person is to view people from their own culture as "real humans."[87] The process of alienating a defendant from the jury utilizes the ethnocentric worldview, which views cultural difference as a negative rather than a value-neutral characteristic. As a result, defendants' pay the price for more than guilty conduct, but also their perceived "otherness".

D. *Ethnocentrism limits the attorney's ability to tell her client's story*

The telling of stories holds an important role, not just in capital punishment mitigation, but also in the legal system as a whole. The courts are a place where many of the activities making up social life within that society simultaneously are represented, contested, and inverted. [88] When working cross culturally, a lawyer's cultural competency will be tested when the facts may be undisputed, but the meaning of the facts offer a completely different explanation for "what happened". Two federal cases provide excellent examples of the necessity of cultural competency when it comes to telling the story of the "other".

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[82] Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 547 (1995).
[83] *Id.* at 553.
[84] Scharlette Holdman & Christopher Seeds, *Cultural Competency in Capital Mitigation*, 36 HOFSTRA L. REV. 883, 922 (2008).
[85] *Id.* at 896.
[86] O'BRIEN, *supra* note 76, at 693.
[87] BENNETT, *supra* note 13, at 63.
[88] Gerald Torres and Kathryn Milun, *Translating Yonnondio by Precedent and Evidence: The Mashpee Indian Case*, 4 DUKE L.J. 625 (1990).

First, in *Mashpee Tribe v. Town of Mashpee*, lawyers were faced with a decision on how to tell the plaintiff's story.[89] In this case, the Mashpee Tribe filed a land claim suit against United States government to recover tribal lands alienated from them in violation of the Indian Non-Intercourse Act of 1790.[90] This Act prohibited the transfer of Indian tribal land to non-Indians without approval of the federal government. However, in order to have standing to sue the Mashpee had to first establish that they were a federally recognized Tribe.[91] While this seemed like a rather straightforward legal issue, the challenges the court faced in its efforts to define "Indian Tribe" were complex. The Mashpee's strategies in sustaining themselves as a people played against them in the court of law. These strategies included: fighting wars against the Europeans, using controlled and selective methods of assimilation into white culture, mixing with other races, and selling their land. Confusingly, the Mashpee were ruled to not be a Tribe in 1790, ruled to be a tribe in 1834 and 1842, but again were ruled not a tribe in 1869 and 1870.[92] After forty days of testimony from tribal members, historians and social scientists, the Mashpee's case was dismissed because the tribe was ruled to not have maintained a "tribal identity" throughout its history.

The challenge of establishing federal tribal recognition for the Mashpee was insurmountable for two reasons. First, the Mashpee were forced to fit the story of their tribe into a language that did not give meaning to their history and social practices. [93]Telling their legal story required using Eurocentric tools of the English language, the rules of evidence, and legal precedent. Requiring a particular way of telling a story not only strips away meaning but also causes certain culturally significant events to appear unintelligible to the culturally incompetent.[94] The Mashpee lacked the technical language to effectively communicate their tribal identity within the Western Eurocentric understanding of the community.

Second, as stated before, the facts of this case were not disputed, but their meaning was viewed entirely different. The Mashpee viewed their story as one of cultural survival and support

[89] 447 F. Supp. 940 (D. Mass.) 1978, *aff'd sub. Nom. Mashpee Tribe v. New Seabury Corp.,* 592 F.2d 575 (1st Cir.), cert. denied, 444 U.S. 866 (1979).
[90] Torres and Milun, *Translating Yonnondio by Precedent and Evidence,* 633.
[91] *Id.*
[92] *Id.* at 55.
[93] *Id.* at 54.
[94] *Id*.

that they were in fact a tribe.[95] However, to the court those same facts proved that the Mashpee no longer existed as a "separate" cultural group and as such, the Mashpee were divested from their land.[96] Regardless of whose fault it was, in the end the Mashpee lost their case because their narrative did not fit into the dominant narrative's ethnocentric legal definition of a "tribe."

In the second case, *City of Richmond v. J.A. Croson Co.,* the Supreme Court struck down a Richmond ordinance that set aside thirty percent of the subcontracting work on city construction jobs for minority firms because the ordinance denied white contractors "equal protection of the laws".[97] Legal scholar Thomas Ross describes this case as an excellent example of how judges, like all advocates, rely on storytelling to communicate one's worldview.[98] Justice Scalia's concurring opinion and justice Marshall's dissent each describe a different story, picking and choosing which facts to tell the reader, in order to communicate their ideology on affirmative action. Scalia tells a story from his cultural location, using symmetry as the standard for justice.[99] In his Eurocentric view, equal protection is the same law whether drawn for whites or blacks and that principal endures any argument of a historical reality.

Marshall's dissent, tells the story of racism.[100] He tells the story of Richmond endorsing state-sponsored racism for centuries and now it finds itself in a place in need of a remedy.[101] Marshall's opinion is deeply specific and contextual to Richmond's history and political climate.[102] However, Marshall's critique of the other Justice's opinions and their lack of empathy to the experience of racism is the most powerful aspect of his opinion. Marshall writes:

> The majority's view that remedial measures undertaken by municipalities with black leadership must face a stiffer test of Equal Protection Clause scrutiny than remedial measures undertaken by municipalities with white leadership implies lack of political maturity on the part of this Nation's elected minority officials that is totally unwarranted. Such insulting judgments have no place in constitutional jurisprudence. [103]

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[95] *Id.* at 57.
[96] *Id.* at 58.
[97] 109 S. Ct. 706 (1989).
[98] Thomas Ross. "The Richmond Narratives". 68 TEX. L. REC. 381 (1989).
[99] *Id.* at 44.
[100] *Id*. at 49.
[101] *Id*.
[102] 109 S. Ct. 706, 742-745 (1989)(J. Marshall dissenting).
[103] *Id*. at 754.

Two Court Justices wrote entirely different opinions. One was founded on the perceived universal principal of "fairness as symmetry." The other was deeply contextual and deeply personal. Both of the opinions reflect the cultural background of the Justices. While Justice Scalia masks cultural subjectivity through claims of objective principle, Justice Marshall quite plainly speaks about the history of racism and admonishes his fellow jurists for lacking any sense of that same perspective. Seeing the most brilliant legal minds end up in such entirely different places during one opinion demonstrates the power and significance of culture. The *City of Richmond v. J.A. Croson Co.,* should serve as a reminder that while the law may seek to be neutral, our lives and worldviews are not. The culturally competent attorney is one who recognizes how our own cultural context influences one's storytelling and makes objectivity impossible.

IV. CONCLUSION

The DMIS model of understanding cultural competency provides an essential tool for attorneys in the 21st century to advocate effectively and justly. I hope this paper can be used to foster greater conversation about how the IDI, and cultural competency in general, can and should be used to train attorneys.

If the 2012 election taught us anything, it was that political power within the American democracy could not be achieved by appealing solely to the cultural plurality in this country. Other narratives are gaining systemic power by building critical mass. We are a country of many cultures, within an economy pushing us into regular interaction with the global world. We must start now to train attorneys prepared to recognize cultural difference and navigate its intersection with the law. Only with these skills can an attorney truly see a client's full humanity and advocate for his or her legal rights.

LAW SOCIETY of ALBERTA
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Approved Bencher Public Minutes

Public Minutes of the Five Hundred and Seventh Meeting of the Benchers of the Law Society of Alberta (the "Law Society")

February 24, 2022

Videoconference

8:30 am

ATTENDANCE	
Benchers:	Darlene Scott, Outgoing President Ken Warren, President Bill Hendsbee, President-Elect Lou Cusano Ted Feehan Corie Flett Kene Ilochonwu Cal Johnson Jim Lutz Barb McKinley Bud Melnyk Sandra Petersson Sanjiv Parmar Stacy Petriuk Deanna Steblyk Margaret Unsworth Moira Váně Grant Vogeli Salimah Walji-Shivji Louise Wasylenko
Executive Leadership Team:	Elizabeth Osler, CEO and Executive Director Cori Ghitter, Deputy Executive Director and Director, Policy and Education Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations Nancy Carruthers, General Counsel and Director, Regulation

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ATTENDANCE	
Staff:	Sharon Allard, Executive Assistant to the Deputy Executive Director and Director, Policy and Education Susannah Alleyne, Equity, Diversity & Inclusion Counsel Ryan Ancona, Business Technology Barbra Bailey, Manager, Education Nancy Bains, Tribunal Counsel and Privacy Officer Catherine Bennett, Executive Assistant to the CEO and Executive Director Colleen Brown, Manager, Communications and Stakeholder Engagement Ruth Corbett, Governance Administrator Shabnam Datta, Manager, Policy John Eamon, General Counsel and Senior Manager, Risk, Alberta Lawyers Indemnity Association ("ALIA") Kate Fiori, Governance Assistant Jennifer Freund, Policy & Governance Counsel Sharon Heine, Senior Manager, Regulation Amanda Miller, Policy Counsel Kendall Moholitny, Senior Manager, Professionalism Len Polsky, Manager, Legal Technology and Mentorship, Policy and Education Christine Schreuder, Governance Coordinator Chioma Ufodike, Senior Manager, Trust Safety and Compliance Rebecca Young, Education Counsel
Guests:	Glen Buick, Public Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society Carsten Jensen, Law Society of Alberta representative to the Federation of Law Societies of Canada Amanda Lindberg, Vice-President, Canadian Bar Association Alberta Nonye Opara, Executive Director, Pro Bono Law Alberta Robert Philp, Indigenous Advisory Committee Bencher Liaison Kathleen Ryan, Chair, Equity Diversity and Inclusion and Lawyer Competence Advisory Committees Christine Sanderman, Executive Director, Legal Education Society of Alberta Dale Spackman, Corporate Secretary, ALIA
Regrets:	Sony Ahluwalia Ryan Anderson

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

Item
Call to Order **Mr. Warren called the meeting to order at 8:30 a.m. and welcomed everyone, particularly new Bencher, Mr. Parmar. Mr. Warren delivered the Indigenous land acknowledgement statement for Alberta.**

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	Item
1	**Remarks from Outgoing President** Ms. Scott provided her final remarks as President, reflecting on her years as a Bencher and President. She highlighted the Board's accomplishments and unceasing progress on initiatives in pursuit of the Law Society's strategic goals, particularly in the face of the pandemic. Ms. Scott thanked the Benchers, the Executive Leadership Team and Law Society staff for their hard work and support.
2	**Opening Remarks from the President** Mr. Warren provided his opening remarks, expressing his appreciation to Ms. Scott on behalf of the Benchers for her leadership through difficult times and for her mentorship during his term as President-Elect. Mr. Warren highlighted the importance of the Law Society's strategic goals as the focus of the Board's work and the importance of working together to achieve those goals with the overall mandate to protect the public interest. Ms. Scott left the meeting. Mr. Buick and Ms. Moholitny left the meeting.
3	**Leadership Report** Documentation for this item was circulated with the materials prior to the meeting. Ms. Osler provided comments on the following: - The materials included a link to the 2021 Year in Review Report, which highlighted some of the Law Society's most impactful projects. Ms. Osler thanked the Benchers for their commitment and engagement, and ELT and staff for their work. - The Return to Office plan commences on March 1 for managers and March 7 for employees on a temporary voluntary basis. - Plans are underway for the April Bencher meeting to be held at the office in person. - A special Bencher education session on Complaint Dismissal Appeals facilitated by Jim Casey will take place on April 8.
4	**Board Relations Guideline and In Camera Guideline Annual Review** Documentation for this item was circulated with the materials prior to the meeting. Mr. Hendsbee provided introductory remarks on the history of the Board Relations Guideline and the In Camera Guideline and outlined each Norm and its purpose. Ms. Flett joined the meeting at 9:30 a.m.
5	**ALIA Memorandum and Articles Amendments** Documentation for this item was circulated with the materials prior to the meeting. Mr. Spackman and Mr. Eamon presented the proposal for amendments to modernize the ALIA Memorandum of Association and Articles as outlined in the materials and responded to questions. Mr. Spackman emphasized that the amendments do not change the relationship

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	Item
	between the Law Society and ALIA and do not attempt to broaden ALIA's powers with respect to the provision of products to members. **Motion: Melnyk/Cusano** **That the Benchers approve the Resolutions set out in Attachment 5 to the briefing memorandum provided for this item.** **Carried unanimously** Mr. Spackman and Mr. Eamon left the meeting at 9:38 a.m.
6	**2022 Committees, Advisory Committees, Liaisons and Other Bodies** Documentation for this item was circulated with the materials prior to the meeting. Mr. Warren advised that the high level of interest from the profession in serving on committees means that there are a number of people who could not be appointed or reappointed. A correction was noted to add the Chair of the Credentials and Education Committee to the membership slate for the Viscount Bennett Scholarship Committee. The amendment to the motion was accepted by the mover and seconder and is reflected in italics in the motion below. **Motion: Ilochonwu/Melnyk** **To appoint the 2022 Bencher committees, advisory committees, liaisons and representatives to "other bodies" as set out in the 2022 Committees, Advisory Committees, Liaisons and Other Bodies list*, subject to adding the Chair of the Credentials and Education Committee to the membership slate for the Viscount Bennett Scholarship Committee*; and** **To continue the term of appointment for any person on a 2021 committee involved in any ongoing adjudicative matter until such time as a report or decision is rendered on the matter in which they are involved.** **Carried unanimously**
7	**Statement of Investment Policies and Goals Amendments** Documentation for this item was circulated with the materials prior to the meeting and revised documents were added on February 23. Ms. Meade presented the proposed amendments and the additional changes that were made to the documents that were circulated initially. Ms. Meade highlighted the process that was followed for the investment review of the ALIA and the Law Society's portfolios and their Statement of Investment Policies and Goals ("SIP&G"). The Audit and Finance Committee ("AFC") considered a balanced approach to the asset mix, with the goal of achieving diversity and growth while preserving capital. The proposed revised SIP&G recommends a gradual transition to 15% in alternative investments such as infrastructure and real estate.

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	Item
	Ms. Petriuk, Chair, AFC, thanked AFC members for their thorough review of the asset mix and SIP&G and to the Finance department team for their hard work. Ms. Meade responded to questions from the Benchers and provided clarification on a few points. **Motion: Petriuk/Petersson** **That the Benchers approve the revised Statement of Investment Policies and Goals as presented.** **Carried unanimously** The Chair called for a recess at 10:00 a.m. and reconvened the meeting at 10:15 a.m. Ms. Ufodike and Ms. Bailey joined the meeting at 10:15 a.m.
8	**Strategic Committee Priorities** Documentation for this item was circulated with the materials prior to the meeting. Ms. Osler advised that this agenda item forms part of efforts to increase transparency of budget processes and ensure the Board's fiduciary duty and oversight of strategic work are fully supported. Priorities identified for 2022 will inform the 2023 budget and resource allocation. Ms. Ghitter presented the Strategic Committee Priorities, highlighting that the priorities and resources anticipated need to be revisited later in the year when the budget process begins. In response to a question, Ms. Ghitter confirmed that the Policy and Regulatory Reform Committee's priority for a status review will incorporate a review of all statuses, including inactive maternity leaves. The Benchers also asked whether the *Legal Profession Act* amendments are still a priority and Ms. Osler outlined the challenges associated with getting the government to prioritize legislative amendments to the Act. In the meantime, the Law Society continues to utilize the Rules to advance its work where the legislation is outdated. **Motion: Cusano/Wasylenko** **That the Benchers approve the priorities as set out in the attached Lawyer Competence Committee, Equity, Diversity and Inclusion Committee and Policy and Regulatory Reform Committee memorandums.** **Carried unanimously**
9	**Innovation Sandbox Update** Documentation for this item was circulated with the materials prior to the meeting. Ms. Ufodike and Mr. Polsky presented the update, which included a refresher on the Innovation Sandbox; outreach and key FAQs; and applications in the pipeline. The Benchers discussed the following: - It was suggested that the Law Society's mandate to protect the public interest should be emphasized.

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	Item
	- All proposals assessed by the Law Society's Innovating Regulation Group are risk rated according to the established Bencher criteria. Approved applicants in the Sandbox must enter into an agreement with the Law Society. - Issues relating to questions such as overlapping jurisdictions, for example, form part of the risk assessment of all applications on a case-by-case basis. Providers will be monitored on an ongoing basis and will be required to report regularly. - In response to a question about the risk of complaints in relation to services, Ms. Ufodike and Mr. Polsky provided information from the Utah Legal Sandbox program which experienced an extremely low ratio of harm-related complaints to services being provided. - The Law Society plans to publish all approved providers and the Benchers will receive regular updates. Ms. Ufodike left the meeting at 11:30 a.m.
10	**Access to Justice Update** Ms. Ghitter provided an oral report, highlighting the following: - Improvements to access to justice can seem intangible; however, almost all the Law Society's strategic work is viewed through the lens of access to justice, in accordance with the Strategic Plan. - The Lawyer Referral Service review is in the process of collecting data and developing options for improvements. - There have been six Access to Justice ebulletins since October 2020 and the Law Society is exploring ways to implement regular communications. Ms. Ghitter advised that the Law Society can assist clinics with request for volunteers; however, it cannot provide help with fundraising.
11	**Audit and Finance Committee Report** Documentation for this item was circulated with the materials prior to the meeting.
12	**Equity, Diversity and Inclusion Committee Update** Documentation for this item was circulated with the materials prior to the meeting. Ms. Wasylenko, Equity, Diversity and Inclusion Committee Chair, and Ms. Ghitter, responded to questions about the Continuing Professional Development Profile and confirmed a guide and education will be available to support lawyers.
13	**Lawyer Competence Committee Update** Documentation for this item was circulated with the materials prior to the meeting.

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	Item
14	**Tribunal Office Update** Documentation for this item was circulated with the materials prior to the meeting.
15	**CONSENT AGENDA** Documentation for this item was circulated with the materials prior to the meeting. There were no requests to remove any items from the consent agenda and the items were approved concurrently. **Motion: Melnyk/Steblyk** **15.1 To approve the December 2, 2021 Public Bencher Meeting Minutes;** **15.2 That the Benchers approve the date and time of the 2022 Annual General Meeting of the Law Society of Alberta to be December 1, 2022 at 4:00 p.m. at the offices of the Law Society, or such other date and time and place (or means) as the CEO and Executive Director of the Law Society may determine in their discretion; and** **15.3 That the Benchers re-appoint PricewaterhouseCoopers (PwC) as auditors for the Law Society of Alberta for the fiscal year ending December 31, 2022.** **Carried unanimously**
16	**AGENCY REPORTS** The following Agency reports were circulated with the materials prior to the meeting: 16.1 Alberta Law Foundation Report 16.2 Alberta Law Reform Institute Report 16.3 Alberta Lawyers' Assistance Society Report 16.4 Canadian Bar Association Report 16.5 Federation of Law Societies of Canada Report 16.6 Legal Education Society of Alberta Report 16.7 Pro Bono Law Alberta Report 16.8 Real Estate Practice Advisory Liaison Report
17	**Other Business** There being no further business, the public meeting was adjourned at 11:55 a.m.

Form 9
[Rule 3.19]

COURT FILE NUMBER	2301 14224
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT:	YUE SONG
RESPONDENT:	THE LAW SOCIETY OF ALBERTA
DOCUMENT	**CERTIFIED RECORD OF PROCEEDINGS**

Clerk's Stamp
JUDICIAL CENTRE OF CALGARY
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2301 14224
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CLERK OF THE COURT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Field LLP
2500 – 10175 101 St NW
Edmonton AB, T5J 0H3
Attention: Katrina M. Haymond, KC, & Jason Kully
Phone: 587-773-7174
Fax: 780-428-9329
Email: khaymond@fieldlaw.com/jkully@fieldlaw.com
File No. 59201-23

1. Please find attached:

The written record of the decision or act that is the subject of the originating application for judicial review	
TAB A	Approved Bencher Public Minutes - October 4 & 5, 2023
	Memo re Code of Conduct Amendments - September 6, 2023
	Approved Bencher Public Minutes - April 27, 2023
	Memo re Continuing Professional Development (CPD) Rule and Guideline Amendments - April 27, 2023
	Continuing Professional Development Program Guideline, Final for Benchers - April 27, 2023
	Approved Bencher Public Minutes - September 29, 2022
	Memo re CPD Program Requirements and Review Process - September 29, 2022
	LSA Professional Development Profile, Final - June 2022
	Approved Bencher Public Minutes - April 21, 2022

	Memo to Benchers re Draft Professional Development Profile - April 21, 2022
	Memo to Benchers for Decision re Acknowledgment of Systemic Discrimination - April 21, 2022
	Approved Bencher Public Minutes - October 1, 2021
	Approved Bencher Public Minutes - December 3, 2020
	Memo re Rule 67.4 Mandatory Education Benchers - December 3, 2020
	Memo re Indigenous Cultural Competency Education Parameters Benchers - December 3, 2020
	Approved Bencher Public Minutes - October 1, 2020
	Memo re Lawyer Competence Committee Memo LSA Indigenous Training - October 1, 2020
	The Path module descriptions and learning outcomes including LSA content
	Approved Bencher Public Minutes – May 14, 2020
	Approved Bencher Public Minutes – February 20, 2020
	A Path Forward on Competence – February 11, 2020
The reasons given for the decision or act, if any	
TAB B	*See documents above*
The document which started the proceeding	
N/A	
The evidence and exhibits filed with the person or body; and	
N/A	
Anything else in our possession relevant to the decision or act, namely:	
TAB C	Approved Minutes of Policy and Regulatory Reform Committee - May 17, 2023
	Approved Minutes of Policy and Regulatory Reform Committee - April 13, 2023
	Approved Minutes of Lawyer Competence Committee - April 12, 2023
	Approved Minutes of Policy and Regulatory Reform Committee - March 15, 2023
	Approved 2023 Special Meeting Minutes of the Law Society of Alberta - February 6, 2023
	Petition for a Special Meeting of the Members of the Law Society of Alberta - January 13, 2023
	Approved Minutes of Lawyer Competence Committee minutes - April 27, 2022
	Approved Minutes of Equity Diversity and Inclusion Committee - March 31, 2022
	Approved Minutes of Lawyer Competence Committee - March 16, 2022

	Meeting Minutes of Indigenous Advisory Committee (IAC) Meeting - March 14, 2022
	Approved Minutes of Equity Diversity and Inclusion Committee - February 10, 2022
	Approved Minutes of Equity Diversity and Inclusion Committee - January 12, 2022
	Approved Minutes of Policy and Regulatory Reform Committee - September 14, 2021
	Approved Minutes of Lawyer Competence Committee - October 30, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - September 17, 2020
	Approved Minutes of Lawyer Competence Committee - September 11, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - August 13, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - July 15, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - March 11, 2020

2. The following are parts of the notice to obtain record of proceedings that cannot be fully complied with and the reasons why: N/A

3. I certify that I have attached all records as required by Rule 3.19(1).

Name of person who certifies this record: Elizabeth J. Osler, KC

Position: Chief Executive Officer & Executive Director, Law Society of Alberta

Signature: 

Professional Development Profile

for Alberta Lawyers



LAW SOCIETY of ALBERTA



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Professional Foundations Proficiency Scale on p.8 by Principia Assessments Ltd. is licensed under CC BY-NC-ND 4.0



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Foreword

We are excited and proud to introduce the Law Society of Alberta's Professional Development Profile for Alberta Lawyers. The publication of the Profile is an achievement that reflects the vision and leadership of the Law Society of Alberta and members of the Alberta legal community. The Profile is intended to apply to lawyers after being admitted to the bar, regardless of experience or practice area. It sets out the competencies that are important to maintain a safe, effective and sustainable legal practice in Alberta today.

In 2020, the Benchers of the Law Society of Alberta set out to enhance its approach to continuing professional development (CPD). One key goal is to make the annual CPD planning process more meaningful and engaging for Alberta lawyers, by providing guidance on what the Law Society sees as important areas of focus. To achieve this, the Benchers determined a new competency framework was an integral part of the work to enhance lawyer competence and CPD. This Profile is the result.

The Profile represents a unique approach to CPD amongst Canadian legal regulators. It aims to enhance the elements of Alberta's approach to CPD that have always worked well, which includes a focus on self-reflection, self-assessment and learning outcomes. The Profile is meant to foster a holistic and innovative approach to lawyer competence for legal practice in Alberta today and in the future. It is intended to serve as a source of inspiration and aspiration for Alberta lawyers and will be the foundation for the Law Society's new approach to lawyer competence and CPD going forward.

The Profile does not include substantive areas of law, but broad areas of knowledge and skills that lawyers practising in all areas might look to develop or expand. As has always been the case, Alberta lawyers are encouraged to pursue CPD specific to their practice areas in addition to areas set out in the Profile.

The Profile is the first step in the Law Society's enhanced approach to CPD. The Law Society will continue to develop guidance and resources to support lawyers in creating meaningful and effective CPD plans. The next step is to create an interactive tool, which is currently in development, to help lawyers with this process. In the meantime, we hope lawyers will use the Profile to guide and enhance their CPD activities.

Ken Warren, QC
Law Society of Alberta President
and Project Steering Committee Chair

Elizabeth J. Osler, QC
Chief Executive Officer and Executive
Director of the Law Society of Alberta

June 2022

Purpose of the Profile

The Profile is intended for use by Alberta lawyers. All references to lawyers in this document refer to Alberta lawyers.

The purpose of the Profile is to:

- Guide lawyers in understanding what competencies are associated with safe, effective and sustainable legal practice.
- Support the CPD of lawyers through ongoing self-assessment and learning.
- Support lawyers in developing their professional identity throughout their career.
- Provide a definition of competence to offer guidance for other regulatory and educational purposes that support competency development.
- Assist employers and articling principals to develop work experiences and practices that support competency development.
- Inform continuing legal education providers about the competencies that are important to legal practice today to assist in future content development for lawyers.
- Support the Law Society's development of a professional development program for lawyers.

The Profile is not intended to:

- Be a checklist of requirements.
- Duplicate entry to practice competencies developed by other organizations.
- Address substantive legal knowledge and procedures specific to different areas of legal practice.
- Include every competency that lawyers practising law in Alberta might need.
- Create a legal standard to be used in professional negligence claims.
- Set threshold standards for purposes of discipline.

The Profile and related documentation are intended to be living documents; they are expected to evolve and change as the demands on lawyers evolve and change. This version reflects the current understanding of the demands on lawyers who have been admitted to the practice of law in Alberta.

Profile Elements

Domains: The Profile outlines nine domains or areas of competency that are important for Alberta lawyers. The domains set out the suggested areas in which professional development might be undertaken.

Domain Statements: Each domain has an introductory statement that conveys the overall scope and intent of the domain. The statements are not intended to be exhaustive and, like the rest of the Profile, are intended to be sources of inspiration and aspiration for Alberta lawyers.

Competencies: Each domain contains a number of competencies, which are areas in which a lawyer might seek to develop professionally within that domain. While these competencies have been identified as being important for safe, effective and sustainable legal practice and for continuing competence, they should be thought of as a menu of options for lawyers to pursue when creating CPD plans, rather than as a checklist of requirements. Competencies are numbered and located in the left column of the Profile.

Performance Indicators: Performance indicators illustrate observable or readily inferable behaviours in the area outlined by each competency. The performance indicators provide examples of different aspects of the competency that a lawyer can develop. Performance indicators are listed in the right column of the Profile.

Glossary: A glossary of terms is provided at the end of the Profile, with glossary terms highlighted in burgundy text wherever they are used.

Graphic: The graphic representation of the domains found on page 3 of the Profile depicts a compass, which is consistent with the purpose of the Profile to offer guidance to Alberta lawyers on their professional development journeys. As the Legal Practice domain represents the core legal elements of a lawyer's role, it is in the centre of the compass and is the first domain in the Profile. However, all the domains are interconnected and equal in importance to safe, effective and sustainable legal practice in Alberta today. To indicate this, the rest of the domains are listed in alphabetical order, both in the graphic and in the Profile. The graphic represents the Law Society's holistic and innovative approach to lawyer competence.

Proficiency Scale

A proficiency scale clarifies a level of progress towards a standard or expectation. For any given competency, different levels of proficiency are expected at various career stages and in various practice areas and contexts. The Law Society has adopted the proficiency scale below, developed by Principia Assessments, Ltd., to be used with the Profile.



Professional Foundations Proficiency Scale by Principia Assessments Ltd. is licensed under CC BY-NC-ND 4.0

The scale is intended to be used by Alberta lawyers to both self-assess current level of proficiency in a given competency and to set goals for the desired levels of proficiency in that competency. The scale may be applied to any competency in the Profile to assist Alberta lawyers in identifying professional development goals and creating annual CPD plans. There is no expectation that levels of proficiency move in lockstep across or within domains. For instance, a lawyer may be proficient at one competency (the Excel level) and just beginning to test out another competency (the Attempt level).

While the Law Society can offer guidance and suggestions, it will be up to each lawyer to determine how to best improve their proficiency in their chosen areas of professional development, depending on their level of experience, practice context and goals.

Some examples for using the Proficiency Scale in relation to the Profile include:



A lawyer in a large firm who has been called to the bar for six years is starting to draw in more of their own clients, and decides they want to start placing more focus on Lawyer-Client Relationships, specifically on fostering collaborative and trusting lawyer-client relationships. Using the Proficiency Scale, the lawyer might judge themself at the Attempt stage but would like to be performing in accordance with the description of the Excel stage. This might help the lawyer decide to focus on improving on this competency.



A lawyer who serves as in-house counsel may assess themself as being at the Pre-discovery stage with respect to Truth and Reconciliation. Because this is a newer concept for this lawyer, they may decide to place a great deal of focus on improving their knowledge in this domain, based on the guidance set out in the corresponding competencies and performance indicators.



A partner in a medium-sized law firm who has taken on some management duties may determine they want to place greater focus on supports for well-being in their firm. They determine that they are at the Discover stage of the Proficiency Scale for this competency and want to Lead in this area. Because they want to move up four stages on the Proficiency Scale, they might decide to work on all performance indicators listed for that competency and seek resources to put supports in place for all those areas.

Professional Development Profile
for Alberta Lawyers

1 Legal Practice

Lawyers can accurately identify legal issues. Lawyers employ research, analytical and problem-solving skills to formulate clear and appropriate legal strategies. Lawyers are effective communicators and advance their clients' interests within their practice-specific contexts.

Competency	Performance Indicators
1.1 Critically evaluate a matter	• Use appropriate and current substantive and procedural law applicable to one's own practice area(s) • Accurately identify relevant facts, legal issues and informational gaps or discrepancies • Gather with due diligence all relevant information • Research, interpret and correctly apply common law, statutes, regulations, rules, procedure, policy and theory to a legal issue • Seek relevant expertise on a matter when needed • Prudently assess possible courses of action, by considering the range of potential outcomes and weighing the risks of each • Create legal strategy appropriate and proportionate to client needs and means
1.2 Communicate effectively	• Express concepts clearly, precisely, logically, accurately and concisely • Use plain language where appropriate • Adapt communications appropriately to different contexts, purposes and audiences (courts, clients, lawyers, enumerated groups, other individuals)
1.3 Advance client interests	• Present well-prepared, accurate and appropriate legal argument and analysis • Use persuasive communication • Adapt legal strategy or approach and pivot as circumstances change • Take steps to protect client interests

2 Continuous Improvement

Lawyers are committed to continuous improvement of legal service delivery and to lifelong learning, with the goal of providing the highest quality legal services.

Competency	Performance Indicators
2.1 Commit to continuous improvement in the provision of services	• Proactively seek feedback and input from clients and others to identify aspects of service that could be enhanced • Demonstrate adaptability and openness to new ideas • Foster innovation and development of best practices • Develop solutions to overcome obstacles to implementation of best practices
2.2 Cultivate a growth mindset	• Engage in intentional self-reflection, goal setting, and professional development planning • Continuously identify opportunities for professional development and improvement • Engage in work or training that will expand skills, knowledge or responsibilities • Encourage and support colleagues in undertaking new learning and development

3 Cultural Competence, Equity, Diversity and Inclusion

Lawyers have an awareness of the unique experiences of the enumerated groups set out in the *Alberta Human Rights Act*. They implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-appropriate services and outcomes. Lawyers treat all people with dignity and respect and take active steps to support and advocate for members of enumerated groups.

Competency	Performance Indicators
3.1 Build intelligence related to cultural competence, equity, diversity and inclusion	• Develop understanding of enumerated groups as set out by the *Alberta Human Rights Act* • Develop self-awareness of how one's own conscious and unconscious biases affect perspectives and actions • Reduce one's own biases through continual education, self-reflection and inquiry • Recognize how systemic inequalities and barriers affect individuals and groups • Develop an awareness of the effects of individual and systemic trauma • Consider how multiple points of discrimination interact to create barriers for individuals
3.2 Incorporate equity, diversity and inclusion in practice	• Practise anti-discrimination and anti-racism • Ensure that services are accessible to all • Develop and promote a deeper understanding of sexual orientation and gender identity • Take action to accommodate visible and invisible disabilities • Implement strategies to mitigate trauma • Take action to dismantle systemic inequalities and barriers
3.3 Champion enumerated groups in professional activities	• Advance inclusion through intentional, positive and conscious efforts • Respect the diverse cultures, perspectives, backgrounds, interests and goals of clients, co-workers and colleagues • Adapt communication for enumerated groups as applicable • Advocate for those facing systemic barriers to accessing what they need or deserve • Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion • Promote a healthy, safe and inclusive workplace • Increase awareness of qualifications of internationally trained lawyers

4 Lawyer-Client Relationships

Lawyers assess lawyer-client relationships, both internal and external, for suitability and clearly establish the scope of the relationships. Lawyers communicate effectively with their clients and connect with them in a professionally appropriate manner. Lawyers are mindful of and attentive to the entirety of their clients' circumstances and support clients in pursuing their goals, priorities and broader interests.

Competency	Performance Indicators
4.1 Determine suitability of lawyer-client relationships	• Accurately assess and reassess risks associated with potential and existing client relationships • Evaluate if personal considerations might impact lawyer-client relationships • Provide appropriate referrals when it is in the client's best interests
4.2 Establish lawyer-client relationships	• Clarify when providing general legal information versus legal advice which would trigger a client relationship • Listen actively to understand client expectations, build trust and foster exchange of information • Accurately identify who is authorized to give instructions and receive information • Obtain, clarify and document client instructions and confirm course of action • Clearly communicate the terms and limits of the lawyer's scope of work/retainer for the client, including fees, and act accordingly
4.3 Engage in ongoing communication with clients	• Proactively and regularly communicate to keep clients informed • Respond to client communications in a timely manner • Manage client expectations • Communicate respectfully and empathetically
4.4 Foster collaborative and trusting lawyer-client relationships	• Candidly and thoroughly inform clients of their options and potential outcomes • Ensure clients understand information and advice provided • Empower clients to act on own behalf or seek out resources when appropriate • Consider the entirety of each client's circumstances in all aspects of a matter

5 Practice Management

Lawyers employ a range of strategies and skills to support the delivery of efficient and effective legal services and internal processes. Lawyers manage and mitigate risks to their practice and use technology and innovation to improve legal services.

Competency	Performance Indicators
5.1 Use effective time management and organization skills	• Anticipate and prioritize case, project and workload needs • Verify that new assignments are within one's own capacity • Perform all work in a timely and cost-effective manner • Fully utilise practice management tools and software (e.g., checklists, diary, conflict check system) • Delegate tasks that can appropriately and efficiently be performed by others
5.2 Manage files effectively and securely	• Secure files to prevent unauthorized access • Use file management systems that support efficient file tracking, retrieval, retention and destruction • Adhere to privacy and confidentiality requirements • Ensure matters are thoroughly and clearly documented
5.3 Use effective accounting and billing procedures	• Ensure timely and regular billing practices in accordance with retainer agreements or other applicable billing guidelines • Implement practices and procedures to ensure compliance with Law Society reporting and accounting requirements applicable to practice • Access available resources related to billing and accounting when clarification or advice needed
5.4 Supervise and manage effectively	• Provide required information and relevant instructions for efficient delegation • Ensure quality of work produced by others • Provide necessary and useful support and direction to others through training and constructive feedback • Manage conflict between individuals and groups in practice and model appropriate conflict resolution behaviours • Seek and apply tools to build and enhance management skills
5.5 Assess and manage practice risks	• Implement processes for regular, thorough and honest assessment of practice risks • Create plans and strategies to mitigate identified practice risks • Engage in business continuity and succession planning
5.6 Demonstrate technological competence	• Evaluate risks and benefits of potential technological innovations to clients and to one's own practice • Advocate for the timely and appropriate adoption of technology to increase efficiency and effectiveness of legal practice • Use technology, the internet and digital platforms responsibly

6 Professional Conduct

Lawyers are honest, trustworthy and act with integrity. Lawyers execute good judgment and adhere to high standards of behaviour and accountability – to their clients, co-workers, colleagues, members of the legal profession, the courts, tribunals and the Law Society.

Competency	Performance Indicators
6.1 Act ethically	• Accurately recognize, anticipate and resolve ethical issues that arise in legal practice • Consistently and decisively make informed and reasoned decisions about ethical issues • Implement practices and procedures that ensure individual and organizational compliance with requirements related to ethical and indemnity obligations, including case law, statutory requirements, the Code of Conduct and Rules of the Law Society of Alberta • Promptly consult with others (e.g., Practice Advisors, colleagues) when it is unclear how to act ethically in a given situation
6.2 Demonstrate good character	• Continuously demonstrate integrity, honesty and trustworthiness • Consistently practise civility and respect in interactions with others • Act on a good-faith basis when dealing with clients, co-workers, colleagues, the legal profession and the public
6.3 Use sound judgement	• Make logical decisions based on all available information and potential outcomes • Seek out additional information when there are gaps in knowledge • Promptly recognize when tasks or matters fall outside one's own competence and access appropriate sources when assistance or referral is required

7 Professional Contributions

Lawyers foster professional relationships with their colleagues, opposing counsel, courts and tribunals, the Law Society, other professional groups, pro bono organizations, and generally support the administration of justice and enhancements to the legal system. Lawyers strive to strengthen the profession and, where possible, promote and improve access to legal services and access to justice.

Competency	Performance Indicators
7.1 Foster collegiality and civility in the legal profession	• Demonstrate professional courtesy, honesty, candour, respect and civility in dealings with clients, colleagues, the courts, tribunals and others • Work constructively with others to resolve issues in a timely and cost-effective manner when appropriate • Acknowledge and consider other viewpoints, and express any disagreement thoughtfully and respectfully • Work collaboratively with colleagues within the lawyer's work environment • Mentor peers and/or junior colleagues
7.2 Enhance the administration of justice	• Actively volunteer with or otherwise support professional associations and community organizations • Promote a clear and accurate understanding of the legal profession to others (e.g., the media, the public) • Foster dialogue between lawyers and the judiciary
7.3 Advance access to legal services and access to justice	• Recognize how access to justice issues impact the justice system • Enhance access to legal services for everyone • Provide pro bono services and support pro bono organizations • Ensure matters proceed effectively and efficiently • Collaborate with others to make systemic improvements to increase access to justice

8 Truth and Reconciliation

Lawyers are integral to the development, interpretation and application of laws. Alberta lawyers understand the historical and current impacts that Canadian law has on Indigenous Peoples (First Nations, Inuit and Métis) in Canada and participate in reconciliation.

Competency	Performance Indicators
8.1 Strengthen understanding of the truth regarding the experience of Indigenous Peoples in Alberta and Canada	• Recognize the history and diversity of various Indigenous communities of Alberta and Canada • Understand the terminology used to describe Indigenous Peoples and its significance at law • Acknowledge the impacts of colonization and systemic discrimination • Respect the differences among traditional lands, Treaty territories and Métis Settlements in Alberta • Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada • Understand the history of Indian Residential Schools and day schools and their impact on the well-being of Indigenous Peoples • Recognize the historical and ongoing impacts of Canadian and Alberta law on Indigenous Peoples
8.2 Demonstrate support for reconciliation with the Indigenous Peoples of Canada	• Apply Calls for Action and Calls for Justice applicable to Indigenous Peoples • Acknowledge and respect the traditional Indigenous territory in which the lawyer practises or lives • Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients • Recognize that Indigenous Peoples have their own restorative justice systems and use them where appropriate • Enhance access to restorative justice initiatives and options available in communities

9 Well-being

Lawyers make their own physical, mental and emotional well-being a priority in order to ensure their capacity to practise competently. They manage the stresses of practice in the ways that are effective for their individual circumstances in order to provide high-quality legal services and promote healthy workplaces. Lawyers support and foster others' well-being.

Competency	Performance Indicators
9.1 Build resilience	• Develop flexibility and adaptability in the face of adversity or stress • Mitigate effects of stress and trauma, accessing supports as needed • Approach challenges as opportunities to learn, grow and improve, where appropriate
9.2 Maintain personal health	• Practise physical, mental, and emotional self-care and health management • Strive to consistently use healthy coping skills • Identify and seek out resources for support for personal problems that might interfere with one's own ability to practise
9.3 Demonstrate self-awareness	• Recognize one's own stressors and how they manifest • Recognize impact of one's own behaviours on others' well-being • Take concrete steps to ensure work-life challenges do not have an adverse impact personally and professionally
9.4 Support well-being of others	• Encourage adoption of healthy coping skills and stress management practices • Demonstrate empathy toward others in professional settings • Strive to foster optimal health and well-being of others in professional settings • Recognize signs of distress/struggle in others • Assist others in obtaining supports for their well-being

Glossary

Access to legal services: While access to justice is a commonly used phrase, it applies primarily to access to the court system. Access to legal services includes access to all types of services a lawyer might provide, some of which do not involve the courts. Access refers to more than affordability; it includes considerations relating to geographic location, language, and health, among others.

Business continuity planning: The process of creating systems of prevention and recovery to deal with potential threats to a company. In addition to prevention, the goal is to enable ongoing operations before and during execution of disaster recovery.

Enumerated groups: Groups of people who share identities based on the characteristics set out in the *Alberta Human Rights Act*, which states that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Growth mindset: The belief that one's talents can be developed through hard work, good strategies, and input from others. Individuals who adopt more of a growth mindset are more likely to embrace lifelong learning, put in more effort to learn, view feedback as an opportunity to learn, believe failures are just temporary setbacks, willingly embrace challenges and view others' success as a source of inspiration.

Healthy coping skills: Constructive or positive ways we manage internal and external stress, and which are associated with good mental health. Some examples may include seeking out social support, establishing boundaries, practising gratitude, engaging in a hobby, getting enough sleep, exercising, spending time outdoors and journaling.

Practice risks: Threats that impact a lawyer's reputation, opportunity, operating costs or ability to carry on business. Examples of risks in legal practice may include but are not limited to ethical complaints, insurance claims, cyber-attacks, fraud, theft, staffing issues, unexpected life events and disasters.

Resilience: The process of adapting well in the face of adversity, trauma, tragedy, threats, or significant sources of stress, such as family and relationship problems, serious health problems, or workplace and financial stressors.

Development of the Profile

The Law Society retained ACT, Inc. ("ACT") to facilitate the development of the Profile. ACT is a mission-driven not-for-profit organization based in the United States. ACT's Credentialing and Career Services group provides advisory and consulting services to organizations that educate, license and certify individuals in a range of professions.

The Law Society's 2021-2022 Bencher Lawyer Competence Committee served as the project Steering Committee and provided guidance and oversight throughout. ACT led the project and ensured that all activities conformed to best practices. ACT consulted with the Steering Committee at key decision points to verify that all processes and work products aligned with the purpose of the Profile.

The Profile was created using an iterative process that involved input from over 65 individuals at different points in the development process. Drafting of the Profile was undertaken primarily by a volunteer Task Force of Alberta lawyers, with outside input and feedback collected and incorporated at several points in the development process.

The Law Society selected the Task Force members from among the volunteers who responded to a province-wide call for participation. Appointments to the Task Force were made to balance practice setting, role, location, gender and representation of equity-deserving groups among other considerations.

Drafting of the Profile elements took place across three sets of meetings. In creating its first draft, the Task Force drew upon its own expertise as well as the competencies developed by other entities including the Canadian Centre for Professional Legal Education, the Law Society of New Brunswick, the Royal College of Physicians and Surgeons of Canada and the Institute for the Advancement of the American Legal System.

The Task Force delineated competencies and performance indicators within a preliminary set of professional development domains. The domain structure took into consideration guidance from the Steering Committee, the Law Society's strategic plan and recommendations provided by outside consultants. See the section titled Profile Elements for further description of the Profile elements.

Steering Committee and Task Force members and internal Law Society staff stakeholders reviewed and commented on the first draft of the Profile. At its second set of meetings, the Task Force incorporated feedback from the reviewers into a second draft of the Profile.

Peer consultation was subsequently undertaken via a series of facilitated focus group sessions to obtain feedback regarding the second draft. The focus groups include the Law Society's Indigenous Advisory Committee, Lawyer Competence Advisory Committee and Equity, Diversity and Inclusion Advisory Committee, as well as an external focus group assembled from among respondents to the initial call for participation. The focus groups were asked for general feedback, as well as targeted feedback applicable to their subject matter expertise.

At its third set of meetings, the Task Force made its final revisions to the Profile, considering all comments from the focus groups. The draft Profile consisted of nine professional development domains, 30 competencies and 131 performance indicators associated with the competencies. The Steering Committee approved the Task Force's final draft with only a limited number of revisions to improve clarity and readability.

ACT administered a survey to Alberta lawyers to collect validation evidence for all the elements of the Profile. Participants rated the importance of each domain and competency to effective legal practice in Alberta today and evaluated the usefulness of the performance indicators as a means of describing potential areas for professional development. The ratings made by the survey respondents validated all of the elements of the Profile. After reviewing the survey results with ACT, the Steering Committee endorsed the profile, which was subsequently approved by the Benchers of the Law Society.





Acknowledgments

Creation of the Profile was made possible through the combined efforts of numerous contributors. The Law Society's 2021–2022 Bencher Lawyer Competence Committee served as the project Steering Committee and provided guidance and oversight throughout the effort. The 11-member project Task Force worked tirelessly and thoughtfully across numerous sessions to draft and refine the Profile. Members of the Law Society staff and over 45 additional practitioners and other subject matter experts participated in focus groups and provided crucial feedback on an interim draft. All contributors to these efforts are listed on the next page. This work was completed on a short timeline, during the sometimes-challenging circumstances of the Covid-19 Pandemic. We are deeply appreciative of the time and thoughtful contributions these individuals dedicated to the development of the Profile.

We also want to thank the lawyers who completed the survey to validate the Profile elements, including those who volunteered to pilot test the survey.

Thank you to Jordan Furlong at Law21, and to Jennifer Flynn of Principia Assessments Ltd., for their guidance leading up to and throughout this project.

Finally, we are grateful to our project development partners at ACT, Inc. – Patricia Muenzen, PhD and Carla Caro, MA – for leading the project, and to Barbra Bailey, Rebecca Young and Maggie Thaxter at the Law Society for providing administrative support.

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Memo

Draft Professional Development Profile for Alberta Lawyers

To	Benchers
From	Barbra Bailey, Manager, Education
Date	April 21, 2022

Proposed Motion

Motion:
That the Benchers approve the Professional Development Profile, as written.

Background

In February 2020, the Benchers of the Law Society of Alberta (the "Law Society") suspended the mandatory Continuing Professional Development ("CPD") filing requirement for the profession for the years 2020 and 2021. While the CPD planning tool has remained available for those who want to continue using it, it is not mandatory and no administrative suspensions are taking place during this period. The motion to suspend the filing requirement was supported by a Rule change at the May 14, 2020 Bencher meeting that suspended Rules 67.2 and 67.3 (the "CPD Filing Requirement") for a period of two years.

The suspension of the CPD Filing Requirement was taken in recognition that the Law Society's CPD program was due for a review and an upgrade. This was, in part, revealed by the results of a survey of recently called lawyers and lawyers who act as mentors and principals conducted in 2019 about the articling experience in Alberta. Among other things, the survey revealed that 51% of responding lawyers in the first 5 years of practice felt only somewhat prepared or unprepared for practice coming out of their articles. There was also a recognition that the old process did not incorporate any accountability or follow up on the plans that were filed. The Benchers determined that there were improvements that could be made, and to do this, the Law Society should build an entirely new approach.

To facilitate the review process, the Law Society engaged consultant Jordan Furlong to undertake a review of the Law Society's current approach to lawyer competence, including interviews with stakeholders, as well as a review of approaches taken in other jurisdictions. Jordan's work took place over the late spring and early summer of 2020 and in October 2020, he delivered a report to the Lawyer Competence Committee ("LCC"),

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titled, "Lawyer Licensing and Competence in Alberta" (the "Furlong Report"), setting out a series of recommendations to guide the Law Society's work in this area. The LCC adopted the recommendations and developed its own recommendations regarding prioritization of the items contained in the Furlong Report, including possible timelines for implementation, taking into account the resources, collaborations and further consultations with the profession that would be required.

In December of 2020, the Benchers approved the recommendations set out in the Furlong Report, along with the LCC's proposal for prioritization, as set out in a memo to the Benchers from Cori Ghitter dated December 3, 2020.

In adopting the Furlong Report and the proposed plan for prioritization and implementation in December 2020, the Benchers agreed that a new competency framework, one that sets out the desired level of competency in several areas for lawyers at various stages of their career, should form part of the overall work to enhance the Law Society's approach to CPD. In fact, much of the work contemplated in the Furlong Report would be guided by the foundation laid by a new competency framework for lawyers in Alberta. In recognition of this, the Benchers extended the suspension of the CPD Filing Requirement for an additional year in October 2021, to provide sufficient time to develop the competency framework. The CPD Filing Requirement will be reinstated in 2023, with the first filing deadline taking effect on September 30, 2023.

The process to develop the draft Professional Development Profile for Alberta lawyers (the "Profile") has spanned the better part of a year, with several steps overseen along the way by the LCC. This memo provides an overview for the Benchers about the project and the Profile, as well as intended uses of the Profile and how it fits into the bigger picture of the Law Society's CPD program.

Intended Purposes of the Profile

From the outset of this project, the Law Society has followed a number of guiding principles for the Profile, stemming from the Furlong Report, discussions with the LCC and advice from consultants. This section sets out those high-level principles for the intended purpose of the Profile. Further details on intended purposes, as established by the LCC, are set out below in the section titled, "Concept Specification."

Aspirational Guide

The primary guiding principle for the purpose of the Profile is that it will be used as an aspirational guide for lawyers to help them assess their proficiency in the professional development areas set out in the Profile and to plan their CPD goals and activities accordingly. The Profile is not intended to be used as a checklist of requirements, nor will it be used by the Law Society to assess the competence or proficiency of lawyers in order to maintain licensure or in the disciplinary process.

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The Profile represents the areas of professional development that the Law Society believes are relevant for modern lawyers. It will be up to each lawyer to determine which areas to focus on at various stages of their careers. While the Profile has been drafted with the intention that the contents should be applicable to all lawyers to some degree, they will not all apply equally to all lawyers. Some lawyers will want to pay more attention to some areas than others, depending on their practice context and career stage and some lawyers may never pursue development in certain areas of the Profile. For those areas that they do choose to develop in, the Profile sets out some guidance for what to focus on within that area.

The guidance takes the form of competencies and performance indicators, which illustrate potential areas for professional development in each domain (for further detail, see the section titled, "Components of the Profile," below). The Profile highlights *what* areas a lawyer might choose to focus their professional development efforts in but does not tell lawyers *how* to improve in those areas; suggestions will be made through the new CPD self-assessment and planning tool, but ultimately the *how* will be left up to each lawyer. Lawyers are invited to assess their own progress in these areas, rather than being assessed by the Law Society.

Beyond Entry Level

The Profile has been developed in recognition that the early years of practice are more focused on entry-level competencies, and that we already have clear sets of entry-level competencies through both the Canadian Centre for Professional Legal Education (CPLED) and the National Committee on Accreditation (NCA). While this Profile can serve as inspiration for lawyers in their early years of practice, it has been developed with the intention of going beyond entry-level competencies.

In keeping with the guiding principles that the Profile should be beyond entry level and aspirational, the Profile does not include baseline requirements for lawyers that are set out in the Code of Conduct. The Profile focuses on the manner in which lawyers set themselves up for success in those areas, rather than focusing on straight compliance with Code requirements, which are requirements for all lawyers once they have been called to the bar and not aspirational.

Progressive Proficiency

The Profile is also intended to acknowledge that each lawyer's professional development needs and goals will vary as their career progresses and as their practice context changes over time. A proficiency scale will accompany the final Profile to assist lawyers in benchmarking their proficiency in each of the competency areas as they advance through their careers. It will help lawyers measure their current proficiency and prioritize areas they want to work on based on their own circumstances and practice needs.

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Substantive Law

The Profile does not cover substantive law. Rather, the Profile establishes a foundation and identifies competencies that are broadly applicable to lawyers across practice areas. The Law Society has discussed the possibility of developing supplemental guidance for specific, high-criticality areas of law in the future and this may be considered in a future phase of the CPD program. The Profile includes competencies that focus on staying up to date in the lawyer's chosen practice area(s), but generally speaking, the competencies take a broader approach to legal practice skills and knowledge that cuts across practice areas.

Foundation for CPD Program

If approved, the Profile will serve as the foundation for the self-assessment and planning tool the Law Society is developing to enhance the experience of creating a CPD plan. The tool will be structured around the Profile, helping lawyers to focus in on areas of interest and connecting them with learning activities to develop those competencies. The Profile will also guide the development of future CPD programming developed by the Law Society, such as programs aimed at early career-stage lawyers. It will provide guidance to lawyers in general about the areas the Law Society sees as being relevant to effective legal practice in Alberta today.

Components of the Profile

This section explains the various components of the Profile to promote a better understanding of the construction and use of the Profile, as well as the development and validation processes, outlined below.

Title

At the outset of the project, the framework was referred to as a "Competency Profile for Alberta Lawyers." Throughout the course of the project, the Law Society observed that this title caused confusion about the purpose of the document. To reflect the aspirational, guiding nature of the document, the title was changed to "Professional Development Profile for Alberta Lawyers."

Domains

Domains represent the highest level of the structure of the Profile. The domains set out the broad areas in which professional development might be undertaken by lawyers. A reminder here, that the Profile does not include substantive areas of law, but broad areas of knowledge and skill that lawyers practicing in all areas might look to improve.

The Profile contains nine domains, as follows:

1. Legal Practice
2. Professional Conduct

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3. Well-being
4. Lawyer-Client Relationships
5. Professional Contributions
6. Cultural Competence, Equity, Diversity and Inclusion
7. Truth and Reconciliation
8. Practice Management
9. Continuous Improvement

Several different suggestions about how the domains should be sequenced were considered. There was no clear consensus regarding the ideal linear sequencing of the domains, and they appear in the current draft in no particular order. The final, published version of the Profile will include a graphic representation of the domains.

Introductory Domain Statements

These statements, which appear in each domain before the competencies and performance indicators, convey the overall scope and intent of the domain. They are not intended to be exhaustive and, like the rest of the Profile, are intended to be inspirational statements of aspirations for lawyers to work towards.

Competencies

Competencies are areas in which a lawyer might seek to develop professionally within each domain. They are numbered and located in the column on the left in the Profile. The Profile contains 30 distinct competencies, with two to six for each domain. Competencies should be thought of as a menu of options for lawyers to pursue, rather than a checklist.

Performance Indicators

Performance indicators illustrate observable or readily inferable behaviours in the area outlined by the competency. They appear in bulleted lists in the column on the right in the Profile. Together, the performance indicators capture different aspects of the competency and contribute to its full description. There are a total of 129 performance indicators in the Profile, ranging from three to seven for each competency.

Glossary

In drafting the Profile, efforts were made to use plain language wherever possible, to ensure the Profile would be as accessible as possible to a wide array of users. The goals of clarity and accessibility were balanced with the need for current and proper terminology and in some cases, glossary terms were included. The glossary appears at the end of the Profile, with glossary terms highlighted in blue text wherever they are used.

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Overview of Project to Date

Concept Specification

In June 2021, the LCC approved a concept specification for the competency framework, prepared by Principia Assessments, Ltd. ("Principia"), a Calgary-based company. A concept specification is a basic outline for the framework and includes key terminology, purposes and primary use cases for the Profile, major competency elements, and presentation format or style. While it was expected that some perspectives may shift over the course of the project, it was important to achieve working clarity on those high-level items.

In approving the concept specification at the outset of the project, the LCC established a set of guidelines for the project, as follows:

- The intended purposes of the Profile are to:
  - Guide employers and articling principals in developing experiences and practices that support competency development
  - Guide Alberta lawyers in understanding what competencies are associated with safe, effective, and sustainable practice
  - Support Alberta lawyers in their ongoing self-assessment and learning (in the context of continuing professional development)
  - Support development of a professional development program for lawyers in Alberta
  - Articulate a definition of competence to offer guidance for other regulatory and educational purposes
  - Inform legal educators about priorities for learning
  - Support lawyers in developing their professional identify throughout their career

- In addition, the Profile will:
  - Be holistic
  - Demonstrate leadership and innovation
  - Set out the competencies that all lawyers should be able to demonstrate in order to have a safe, effective and sustainable practice after the benefit of a few years of experience
  - Be consistent with (yet not duplicative of) the competency profiles developed by CPLED, the NCA and the Law Society of New Brunswick
  - Align with the Law Society of Alberta's strategic plan
  - Primarily offer guidance and be a source of inspiration and aspiration for Alberta lawyers
  - Be a "living document" that is expected to evolve and change as the demands of lawyers in Alberta evolve and change

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- The Profile is not intended to:
  - Duplicate entry to practice competencies promulgated by other organizations (i.e., Federation, CPLED)
  - Address knowledge and procedures specific to different areas of legal practice
  - Include every competency that lawyers practising law in Alberta might need
  - Create any obligations or requirements of lawyers practising law in Alberta with respect to any third party
  - Set threshold standards for purposes of discipline

Principia was unable to work on the remainder of the competency framework project and the Law Society sought other consultants to complete the project.

Development Process

In July 2021, the Law Society engaged ACT, Inc. ("ACT") to facilitate the development of a competency profile for Alberta lawyers. ACT is a mission-driven not-for-profit organization based in the U.S. Their Credentialing and Career Services group provides advisory and consulting services to organizations that educate, license and certify individuals in a range of professions. ACT has worked with a number of other organizations in the professional regulation space, including the Federation of Law Societies of Canada, the Canadian Council of Registered Nurse Regulators and the Canadian Council of Veterinary Registrars.

The LCC provided strategic direction in its role as Steering Committee for the project. As such, the LCC was consulted at key decision points in the development process and kept abreast of developments in the process. ACT's work was guided by the parameters set out in the concept specification, as approved by the LCC. In addition, the LCC was tasked with reviewing interim drafts of the Profile, providing direction with respect to the format and contents of a survey of the profession to validate the draft Profile and reviewing the outputs from the validation process in order to sign off on a final draft of the Profile.

ACT's role was to ensure the structure and content of the Profile addressed stakeholder needs and that the development process adhered to best practices of the measurement community. ACT conducted all research and development activities, including facilitating the Task Force process, conducting focus group sessions and designing and implementing the validation survey and analyzing the results.

ACT's methodology included using a volunteer Task Force as the primary drafters of the framework. The Law Society recruited volunteers for this purpose and assembled a Task Force made up of a representative cross section of members of the profession, with regard to practice setting, location, gender and representation of equity-deserving groups among other considerations. Kene Ilochonwu served as a member of the Task Force, as well as a liaison between the Lawyer Competence Committee and the Task Force. Barbra

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Bailey and Rebecca Young participated in the Task Force working sessions to answer questions and offer contributions from the Law Society's point of view.

At its August 2021 meeting, ACT had an initial meeting with the LCC to confirm some assumptions based on the guidelines established in the concept specification and provide an overview of the development process.

ACT and Law Society staff created an initial draft set of domains, taking into consideration the guidance of the LCC, the Law Society's strategic plan and the competency areas recommended in the Furlong Report. Finally, the draft was informed by other frameworks identified in the concept specification as being good models for our work, including those of the Institute for the Advancement of the American Legal System ("IAALS") and the Royal College of Physicians and Surgeons of Canada ("CanMEDS"). The domains were drafted to include issues that have becoming increasingly prominent in the profession and in society, such as well-being, innovation and intercultural competency. They were also drafted to be broad enough so that they could conceivably apply to lawyers in all types of practices settings in some manner.

In September 2021, the LCC approved the draft domains that served as a framework for the Task Force as they began the process of drafting competencies and performance indicators for each domain. The Task Force held its first set of working sessions on September 13 and 17. Those sessions resulted in a rough first draft that was provided to the individual Task Force Members, the LCC and internal LSA staff stakeholders for review and initial comment. The Task Force then held working sessions on October 5, 6 and 13 to incorporate feedback from the reviewers into the document and otherwise make further enhancements to the draft.

At its October 2021 meeting, the LCC reviewed the latest draft of the Profile and provided feedback on elements of the draft that could be clarified. The LCC also approved ACT's plan for peer consultation via a series of facilitated focus group sessions.

Next, ACT facilitated four two-hour focus group sessions for the project, between October 26 and November 4. The focus groups include the Indigenous Advisory Committee, the Lawyer Competence Advisory Committee, the Equity, Diversity and Inclusion Advisory Committee, and an external focus group assembled for the purpose of this project through a call for interest to the profession. The focus groups were asked for general feedback, as well as some targeted feedback as applicable to their subject matter expertise.

The Task Force concluded its work on November 24, after holding its final working sessions to consider the feedback from the focus groups. The Task Force considered all comments from the focus groups, as well as additional feedback sought from subject matter experts in areas where the Task Force felt it could benefit from additional feedback. These included representatives of the Alberta Lawyers' Assistance Society (including a mental health professional), who focused on the well-being domain, and Jennifer Flynn of Principia, to ensure the draft had stayed true to the concept specification. As with the previous review of comments from the LCC and internal stakeholders, many of the

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comments were incorporated into the Profile. Overall, there was a high level of consensus among the Task Force members around the content and organization of the document.

Law Society staff completed a final comparison of the Profile against complaints and claims data that had been provided by the Law Society and ALIA to ensure it addressed areas of high risk.

In December 2021, the LCC reviewed the Task Force's final draft. They suggested a few small revisions to improve the readability and clarity of the document but overall, they approved of the work of the Task Force. At this meeting, the LCC also approved ACT's plan for a validation survey of the Profile, to affirm the relevancy of all aspects of the Profile to Alberta lawyers.

Validation Process

Best practice in survey research is to pilot test the survey instrument and process prior to launch of the survey. The Law Society had recruited 25 volunteers for the pilot test group at the time the Task Force and the external focus group were recruited. Pilot testing took place between January 5 and 16, 2022. The pilot testers took the survey and provided feedback about the clarity of the instructions, rating scales and Profile elements, and commented on the user experience. They were also given the opportunity to provide suggestions on improving the survey. As a result of this feedback, some adjustments were made to improve the clarity and precision of survey questions, as well as the communication around the intended purpose of the Profile.

The survey questions were drafted so as to accurately frame the purpose of the Profile – as an aspirational guide rather than a tool for assessing competency. Respondents were asked to rate each element of the Profile; for domains and competencies, they were asked to rate their importance/relevance to effective legal practice in Alberta today. For performance indicators, they were asked whether they were good examples of how the competency might be demonstrated by Alberta lawyers. The survey also asked about areas of the Profile in which lawyers are most interested in pursuing professional development in the future, which will assist the Law Society in prioritizing resources and other supports for the Profile and the eventual CPD self-assessment and planning tool.

The survey asked questions about respondents' demographic and professional background to enrich the analysis by (1) permitting subgroup analysis of the ratings based on factors such as years of experience and practice setting, and (2) permitting evaluation of the extent to which the respondents' characteristics align with those of the profession as a whole. Finally, respondents were asked about the completeness of the Profile, and to provide any additional comments.

ACT built and hosted the survey on the Qualtrics platform and an invitation to participate was distributed by the Law Society through Constant Contact, its regular eBulletin platform. Two versions of the survey were created (one for competencies, one for performance indicators), and respondents were randomly directed to one version in order

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to reduce the time it took to complete. Both groups saw the full content of the Profile but only rated half of it. To further maximize response rate, LESA and the Law Society donated a free LESA seminar and a draw was done for all those who took the survey.

The final survey was open to the profession from January 24 to February 13. Both active and inactive lawyers were eligible to take the survey but lawyers who had not worked in a legal role within the last five years were asked to opt out, in order to maximize the relevancy of the responses to current practice in Alberta. In accordance with industry practices, ACT completed a power analysis to determine the minimum targeted sample size for the survey, which was 350 responses. There were 370 completed responses when the survey closed.

Law Society staff reviewed the open-ended comments and, in response, made some small adjustments to the language in some parts of the Profile, to clarify their meaning.

The LCC reviewed the survey results at its March 2022 meeting, as well recommendations from ACT about how to interpret the results according to industry practices. After ACT's presentation, the LCC determined that no adjustments to the Profile were necessary and agreed to recommend that the Benchers approve it at the April Bencher meeting.

A full timeline of the steps taken with respect to ACT's methodology is attached as Appendix A. ACT will also make a presentation to the Benchers to describe the development and validation process and the survey findings at the Bencher meeting.

Recommendation

The Profile presented for approval by the Benchers represents the product of a robust development methodology, including eight full days of Task Force meetings, and an iterative development process that included thoughtful consideration of input from internal and external stakeholders. These stakeholders include focus group participants with subject matter expertise in various areas of the Profile, and reviewers with knowledge of the needs and goals of the Law Society (the members of the LCC and key Law Society and ALIA staff).

The 11-member Task Force and the focus groups were selected from the pool of applicants to be as representative of the profession as possible. There were 35 focus group participants in total and a total of 63 subject matter experts were consulted during the process. Finally, the Profile has been validated through a survey of the profession.

As the Steering Committee for the project, the LCC has provided direction throughout the project and has recommended that the Benchers approve the Profile, as written.

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Next Steps

If the Benchers approve the Profile at this meeting, the Law Society will continue to work with ACT to finalize a published version of the Profile that will include a graphic representation of the domains, as well as a proficiency scale to be used in conjunction with the Profile. The proficiency scale can be used by lawyers to measure their proficiency level for each competency and set professional development goals. The scale was developed by Principia for this purpose.

The Law Society will also finalize the rollout plan for the Profile, including the communications plan and educational materials to assist lawyers in using the Profile. Work has begun to develop education and guidance for lawyers on how to engage in reflective practice and self-assess areas that may benefit from further professional development, using the Profile as a guide.

A final package, including all of the above and incorporating Bencher feedback from discussion at the April meeting, will be presented to the Benchers at their meeting in June.

The Profile will be used to inform the development of the CPD self-assessment and planning tool that must be ready to launch July 1, 2023, to assist lawyers in filing their CPD plans by September 30, 2023, when the CPD Filing Requirement will be reinstated. In order to meet that timeline, development of the tool must begin by the fall of 2022.

The Profile will also serve as a foundation to future CPD programming developed by the Law Society, including programs recommended in the Furlong Report for development in the short-term.

Attachments

Appendix A - Timeline of ACT Project Activities

Appendix B – Draft Professional Development Profile for Alberta Lawyers

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Approved Bencher Public Minutes

Public Minutes of the Five Hundred and Fifth Meeting of the Benchers of the Law Society of Alberta (the "Law Society")

October 1, 2021

Videoconference

8:30 am

ATTENDANCE	
Benchers:	Darlene Scott, President Ken Warren, President-Elect Sony Ahluwalia Ryan Anderson Lou Cusano Ted Feehan Corie Flett Elizabeth Hak Bill Hendsbee Kene Ilochonwu Cal Johnson Jim Lutz Barb McKinley Bud Melnyk Sandra Petersson Stacy Petriuk Deanna Steblyk Margaret Unsworth Moira Vánë Grant Vogeli Cora Voyageur Louise Wasylenko
Executive Leadership Team:	Elizabeth Osler, CEO and Executive Director Cori Ghitter, Deputy Executive Director and Director, Policy and Education Nancy Carruthers, General Counsel and Director, Regulation Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations

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9 Lawyer Licensing and Lawyer Formation – Implementation Proposal

Documentation for this item was circulated with the meeting materials. Mr. Warren, Chair of the Lawyer Competence Committee (LCC), introduced the proposal for Lawyer Licencing and Lawyer Formation. Mr. Warren advised the Benchers that Mr. Furlong's report had not changed since it was presented and discussed at the October 1 Bencher meeting; however, the results of a focused survey were added to the package of materials for this item. Mr. Warren highlighted the concerns raised in the survey; however, noted there was nothing raised in the survey that the LCC had not considered. Some of the recommendations in Mr. Furlong's report were recognized as ambitious and challenging.

Mr. Furlong provided an overview of the report and recommendations. Ms. Ghitter then presented the Implementation Proposal memo, outlining the short, medium, and long-term priorities.

Christine Sanderman joined the meeting.

The Benchers' discussion and questions focused on the communications aspects of the mandatory training requirements and the importance of clear communications to ensure the membership is fully informed.

Motion: Warren/Petriuk
That the Benchers adopt the recommendations, framework, and timeline for implementation of the recommendations, as set out in Jordan Furlong's Report on Lawyer Licensing and Competence in Alberta and in the implementation proposal memorandum.

Carried unanimously

Mr. Furlong left the meeting at 10:00 a.m.

10 Rule Amendment to Mandate Indigenous Cultural Competency Education

Documentation for this item was circulated with the meeting materials.

10.1 Exemptions

Mr. Warren, LCC Chair, introduced the proposal for parameters and exemptions to the Indigenous Cultural Competency Education, highlighting the Benchers' October 1, 2020 decision in favour of mandatory training. The Benchers then discussed each proposed parameter separately.

During the Benchers' discussion, a Bencher commented that some members believe that the Law Society is not prepared to implement the mandatory training and that there is a lack of clarity regarding how to and who will determine exemptions. Ms. Ryan, Chair of the LCC Advisory Committee, advised that similar concerns were voiced by some members of the LCC and the LCC Advisory Committee and that these concerns were addressed in the meeting

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Approved Bencher Public Minutes

Public Minutes of the Five Hundredth Meeting of the Benchers of the Law Society of Alberta (the "Law Society")

October 1, 2020
Videoconference
8:30 am

Benchers present	Kent Teskey, President Darlene Scott, President-Elect Ryan Anderson Corie Flett Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Lou Pesta Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Deanna Steblyk Margaret Unsworth Ken Warren Louise Wasylenko
Regrets	Arman Chak Cora Voyageur
Executive Leadership Team members present	Elizabeth Osler, CEO and Executive Director Cori Ghitter, Deputy Executive Director and Director, Policy and Education Nancy Carruthers, General Counsel and Director, Regulations Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations David Weyant, President and CEO, Alberta Lawyers Indemnity Association

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Staff present	Barbra Bailey, Policy Counsel Nancy Bains, Tribunal Counsel & Privacy Officer Colleen Brown, Manager, Communications Ruth Corbett, Governance Administrator Shabnam Datta, Policy Counsel Jennifer Freund, Policy Counsel Tina McKay, Senior Manager, Business Operations, Membership Andrea Menard, Indigenous Initiatives Liaison Kara Mitchelmore, CEO, Canadian Centre for Professional Legal Education Stephen Ong, Business Technology Len Polsky, Manager, Legal Technology and Mentorship Katie Shea, Membership Counsel Christine Schreuder, Governance Coordinator
Guests present	Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society Jordan Furlong, Consultant Bianca Kratt, Vice-President, Canadian Bar Association Alberta Nonye Opara, Executive Director, Pro Bono Law Alberta Sandra Petersson, Executive Director, Alberta Law Reform Institute Christine Sanderman, Executive Director, Legal Education Society of Alberta

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

	Item
1	**Opening Remarks from the President** Mr. Teskey called the public meeting to order at 8:35 a.m. and delivered the Indigenous land territorial acknowledgement statement for Alberta. Mr. Teskey welcomed guests Jordan Furlong and Bianca Kratt to the meeting. Mr. Ong left the meeting.
2	**Leadership Report** The Leadership Report included a memo on the Law Society's COVID-19 pandemic response, Big Issues and Engagement timelines, an updated Law Society organizational chart, and a Membership Statistics Update Memo. Ms. Osler thanked Benchers for their support of the Law Society as it pivoted in response to the pandemic to keep the strategic work moving forward. Ms. Osler thanked staff for their commitment to advancing the operational and strategic work in the face of additional pandemic-related work, in particular, members of the Executive Leadership Team (ELT) and Dr. Kara Mitchelmore for stepping up in countless ways over the last six months. Ms. Osler highlighted the following items from the Leadership Report: - Organizational changes: ELT has been looking ahead to identify the challenges and opportunities and the resources required to meet the Law Society's strategic goals and objectives in the next few years. The resulting reorganization demonstrates the Law

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Society's commitment to excellence and strength within the leadership groups. Ms. Osler outlined the updated organizational changes, in particular introducing and welcoming Ms. Carruthers to her new role as General Counsel and Director of Regulation. The following changes were announced:

- A new Education division has been formed under the Policy department to support the strategic goal of competence and wellness. Accordingly, Ms. Ghitter's title has changed to Deputy Executive Director and Director, Policy and Education. Len Polsky has assumed the new role of Manager, Legal Technology and Mentorship in the Policy and Education department. Newly created positions to be filled are for a Manager, Education and Manager, Policy.
- The reorganization in the Regulation department reflects the Law Society's commitment to proactive regulatory reform. The newly-titled Professionalism and Practice Advisors division comes under the direction of General Counsel and Director, Regulation. Ms. Osler thanked Sharon Heine for stepping in as acting General Counsel. Ms. Heine will continue as Senior Manager, Regulation. Kendall Moholitny will assume the role of Senior Manager, Professionalism.
- The Practice Advisors will join the Regulation group and will report directly to Ms. Carruthers.
- In the Finance and Accounting department, Chioma Ufodike has accepted the new role of Senior Manager, Risk and Compliance. Ms. Ufodike has been tasked with a special project to review and enhance the billings process in response to the increasing complexity of the risk and compliance work. Ms. Ufodike will report to the CFO with a dotted line to General Counsel and Director, Regulation. The new Manager, Trust Safety will be Bernadette Charan, previously Supervisor, Trust Safety.

- Membership Statistics Memo from Tina McKay, Senior Manager, Membership: steps are being taken to address the impact of the cancellation of the National Committee on Accreditation exams on internationally trained lawyers.
- Return to Office: the Law Society continues to be guided by the Alberta government's updates on COVID-19.

Ms. Osler advised the Benchers that her goal for the Law Society is to show resilience as it moves forward with its strategic work during these unprecedented times.

3 Lawyer Competence Committee ("LCC")

Documentation for the following two items was circulated with the meeting materials.

3.1 Lawyer Licensing and Competence in Alberta Report

Mr. Warren, LCC Chair, introduced Mr. Furlong's report, noting that it will provide the Law Society with an opportunity to lead in this area. Mr. Furlong then presented preliminary observations, the categories of lawyer licencing, new lawyer development, and continuing lawyer learning, and finally a series of recommendations for the Law Society's discussion.

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Summary of the Benchers' discussion:

- In response to a concern expressed about the diminishing supply of articling positions and decreasing demand for legal services, Mr. Furlong advised that in his conversations with law school Deans, there was recognition that not everyone with a law degree will become a licenced lawyer. The report is intended not only to help the Law Society begin to deal with significant issues of imminent importance, but also to consider how to approach the licensing of lawyers, including an understanding of what a lawyer is.
- The significant cost of some of the proposals contained in the report was discussed, particularly the "Possibilities of a Teaching Law Firm", although this was recognized as an aspirational target.
- The Benchers discussed how to prioritize the recommendations. The report suggested that the recommendation that the Law Society develop new pathways into the profession is a top priority. Mr. Furlong advised that although implementation is not an immediate requirement, the Law Society should begin working on this as soon as possible to plan for the challenging times ahead.
- As well as the consideration of alternatives to articling, it will be important to improve the current articling system and the Law Society's budget will provide for this work to begin. The need to create opportunities in a fair and equitable manner will be important to the public, students, and the government.
- The recommendation that the Law Society require solo practitioners to submit a business continuity plan was discussed, particularly audit and compliance, and how to ensure resources are provided to the profession in a non-discriminatory manner. Ms. Ghitter advised that the Law Society's intention would be assistive not punitive, and that providing resources and requiring compliance would start in a small way.
- Discussions at the LCC Advisory Committee revealed a variety of different experiences and priorities that were helpful and informed the final report.
- It was suggested that the Law Society is well-positioned to begin work on short term projects immediately. Longer-term initiatives would be shaped by regular Bencher conversations.
- The Benchers commended Mr. Furlong on his report and the LCC on the work done. The opportunity for the Law Society to begin addressing these issues was recognized and there was broad support for continuing with the next phase of the work.

Mr. Furlong left the meeting.

3.2 Indigenous Cultural Competence Training

Mr. Warren introduced the proposal for Indigenous Cultural Competence Training through NVision's online video-based course, "The Path". He advised that the discussions at LCC and the LCC Advisory Committee revealed strongly held views on both sides of the question of whether the course should be mandatory. The ensuing discussion at the Bencher table revealed a similar divergence of views.

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Ms. Bains joined the meeting.

Summary of Benchers' perspectives:

- Some Bencher members of the LCC found that their thinking evolved as they participated in the discussions and the training. They found the course engaging, informative and easy to complete. Moreover, there was a substantial amount of information they hadn't been aware of which informed their final view on the matter.
- It was suggested that legal aspects of the course would need to be relevant in Alberta.
- Some Benchers felt that forcing the membership to take the course could be contentious and they questioned the view that some lawyers wouldn't take the course voluntarily. It was suggested that the course should be promoted as a choice and that a variety of resources could be utilized to inform members of its importance and encourage participation.
- The February 21, 2020 Bencher resolution to create competence programs on Indigenous issues to meaningfully address the Law Society's obligation arising from the Calls to Action in the Truth and Reconciliation Reports was suggested to be an important consideration in support of making the course mandatory.
- Regardless of whether the course is mandatory or not, Benchers recognized that communications would be key to ensuring the membership understands the importance of the training.

Mr. Teskey advised the Benchers that the vote would normally require a simple majority if taken at an in-person meeting; however, the 2/3 rule was adopted for votes at meetings by virtual means.

Motion: Warren/Ryan
That the Benchers mandate Indigenous cultural competency training for all Active Alberta lawyers.

Carried by a 2/3 majority

Ms. Sanderman, Ms. Menard and Ms. Shea left the meeting.

4 ALIA Civil Litigation Filing Levy

Documentation for this item was circulated with the meeting materials. Mr. Weyant presented ALIA's initiative to pilot a levy for civil litigation files. He advised the Benchers that consultation meetings with key stakeholders have been productive so far, with overall support for the initiative and helpful suggestions for its implementation.

The Benchers' comments and questions mirrored those at the consultation meetings, namely on issues of disbursement; areas of exclusion/inclusion; the anticipated impact on the base levy; whether the revenue can be counted before the levy is collected; how compliance will be

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	handled; and that clear communications will be key to successful implementation of the pilot project.
5	**Access to Justice Update** Documentation for this item was circulated with the meeting materials.
6	**CPLED Update** Documentation for this item was circulated with the meeting materials.
7	**Equity, Diversity and Inclusion Committee Report** Documentation for this item was circulated with the meeting materials.
8	**Indigenous Initiatives Liaison Report** Documentation for this item was circulated with the meeting materials.
9	**Tribunal Office Update** Documentation for this item was circulated with the meeting materials.
10	**Consent Agenda** The consent agenda items were circulated with the materials. There were no requests to remove any items from the consent agenda. **Motion: Warren/Scott** **10.1 To approve the June 26, 2020 Public Bencher Meeting Minutes; and** **10.2 To approve the 2022 Bencher Meeting Dates.** **Carried**
11	**Reports for Information** 11.1 Alberta Law Foundation report 11.2 Alberta Law Reform Institute report 11.3 Alberta Lawyers' Assistance Society report 11.4 Canadian Bar Association report 11.5 Legal Education Society of Alberta report 11.6 Pro Bono Law Alberta report
12	**Other Business** There being no further business the public meeting was adjourned at 1:00 pm.

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Memo to Benchers

LSA Indigenous Training

From	Jennifer Freund, Policy Counsel
Date	October 1, 2020

Introduction

The Law Society of Alberta is planning to introduce an Indigenous training program as part of its Indigenous Initiatives work and the Continuing Professional Development Program redevelopment. This program, The PATH, will be introduced in early 2021 to Alberta's lawyers.

An outstanding question with regards to this program is whether the program should be mandatory for all current and incoming Active Alberta lawyers or whether it should be voluntary.

The Law Society of Alberta has actively been working to respond to the Reports and *Calls to Action* released by the *Truth and Reconciliation Commission of Canada*. The Law Society has publicly stated that:

> The Law Society of Alberta is committed to respond to the Truth and Reconciliation Commission's Call to Action #27 in a thoughtful and collaborative way that builds and strengthens relationships with Indigenous peoples and communities.[1]

One of the ways in which the Law Society of Alberta can meet this commitment is to develop meaningful and effective training on Indigenous cultural competence. While developing this training is difficult and complex and will require ongoing work, the current goal is not perfection but to get started in undertaking the development of quality programming. In other words, the programming discussed below is intended to provide a baseline of knowledge to Alberta lawyers. This knowledge base would need to be expanded over time.

This memo looks at the impetus for the implementation of this training program and potential considerations in decision-making regarding the mandatory/optional nature of the program. It also engages questions about the role of the regulator in identifying core

[1] https://www.lawsociety.ab.ca/about-us/key-initiatives/indigenous-initiatives/

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competencies for lawyers and what steps the regulator can or should take in ensuring lawyers have the opportunity to build those core competencies.

Should the Benchers wish that the PATH be a mandatory program for Alberta lawyers, the recommended motion would be as follows:

> ***That the Benchers mandate Indigenous cultural competency training for all Active Alberta lawyers.***

Background

Truth and Reconciliation Commission of Canada

As part of the *Indian Residential Schools Settlement Agreement*, the Government of Canada created the *Truth and Reconciliation Commission of Canada* which

> spent six years travelling to all parts of Canada to hear from the Aboriginal people who had been taken from their families as children, forcibly if necessary, and placed for much of their childhoods in residential schools
>
> …
>
> The Commission heard from more than 6,000 witnesses, most of whom survived the experience of living in the schools as students. …Children were abused, physically and sexually, and they died in the schools in numbers that would not have been tolerated in any school system anywhere in the country, or in the world. (p. V).

The Summary of the Final Report of the Truth and Reconciliation Commission of Canada (Summary) notes that the purpose of the Commission was to determine the truth of what happened so that a foundation could be laid for reconciliation.

The Summary states that:

> Reconciliation requires that a new vision, based on a commitment to mutual respect, be developed. It also requires an understanding that the most harmful impacts of residential schools have been the loss of pride and self-respect of Aboriginal people, and the lack of respect that non-Aboriginal people have been raised to have for their Aboriginal neighbours. Reconciliation is not an Aboriginal problem; it is a Canadian one. Virtually all aspects of Canadian society may need to be reconsidered. (p. VI)

As a result of the Commission's work, during 2015 and 2016, six volumes of Final Reports were created, along with six Indices to support them. In addition, in 2015 the

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Commission also released the Summary report, a report titled The Survivors Speak, and one titled Principles of Truth and Reconciliation.[2]

As an outcome of the work and reports, in 2015 a number of "*Calls to Action*" were developed and published.[3] These were intentionally named *Calls to Action*, and not recommendations, to spur individuals and organizations into action to actively participate in reconciliation.

There are 94 *Calls to Action* identified in 22 categories under the broad titles of either *Legacy* or *Reconciliation*. While the *Calls to Action* are intended to spur all Canadians into action, they are directed to specific groups or organizations to facilitate this process. A number of the *Calls to Action* apply to the work of lawyers in a variety of practice areas, the education of lawyers and reforms to justice.

Call to Action 27, under the title *Legacy* and the category of *Justice* specifically addresses action to be taken by Law Societies:

> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Call to Action 28 makes a similar statement regarding law schools:

> We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism

There are a number of educational topics listed in this *Call to Action* for inclusion in any course(s) or program(s) that lawyers may take that would permit the Federation and its member Law Societies to ensure that lawyers receive appropriate training.

The Law Society of Alberta's Response

[2] http://nctr.ca/reports.php
[3] http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf

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In addition to the statement supporting the Truth and Reconciliation Commission of Canada's *Call to Action* 27, the Law Society has been working on a number of Indigenous initiatives. These include:

- Indigenous Land Acknowledgements, which includes basic land acknowledgements, pronunciations and tips for those wishing to make land acknowledgements;
- Indigenous Law Student Summer Employment Program, which facilitates job searches for Indigenous students looking for summer work and employers who wish to develop relationships with Indigenous students;
- Indigenous Advisory Committee, which provides feedback and input on Law Society Indigenous Initiatives;
- Indigenous Initiatives Liaison, who works with the Law Society to develop and implement Indigenous Initiatives and works closely with the Indigenous Advisory Committee;
- Hosting two-day Indigenous conferences in both Calgary and Edmonton;
- Providing education to both Benchers and Law Society staff; and
- Supporting Indigenous programming with various stakeholders, including the University of Edmonton Faculty of Law and the University of Calgary Faculty of Law.

Further to these initiatives, at the February 2020 Bencher Meeting, the Benchers passed the following resolution:

> That the Bencher Lawyer Competence Committee and Indigenous Advisory Committee work with staff to create competence programs for 2020 and 2021 on Indigenous issues to meaningfully address our obligation arising from the Calls to Action in the Truth and Reconciliation Report.

Since that time, the Lawyer Competence Committee and the Indigenous Advisory Committee have identified a program for Indigenous education for lawyers to provide a foundation in the topics listed in *Call to Action* 27. This program is called The Path. The Indigenous Initiatives Liaison along with the Indigenous Advisory Committee have been working with the developers of The Path to create Alberta specific content to include in the program, with the intention of offering an educational tool specifically for Alberta Lawyers.

For information on the importance of Alberta specific content, please see **Appendix A**, Alberta's Indigenous Context.

Federation of Law Societies of Canada Response

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The Federation of Law Societies of Canada (FLSC) established a Truth and Reconciliation Commission Calls to Action Advisory Committee, immediately after the Truth and Reconciliation Commission of Canada released its report. This FLSC Committee released a recommendations document to the FLSC Executive in May 2020. This document makes a number of recommendations for responses to the work of the *Truth and Reconciliation Committee of Canada* and its *Calls to Action*.

The recommendations were adopted in full in mid-August by the FLSC Executive.

These recommendations address both *Call to Action* 27 and 28. As discussed above, 27 addresses the FLSC and Law Societies.

The FLSC Committee notes, at paragraph 5 of the recommendations document, that:

> While the language of Call to Action 27 specifically references the Federation, it is understood that individual law societies are directly responsible for training and education of future legal professionals.

The Federation Committee notes the importance of reconciliation and the role of lawyers in this process. The Committee identifies the following rationale for its work:

> The Advisory Committee recommends a path to reconciliation that emphasizes enhancing knowledge, sharing information, encouraging ongoing dialogue and relationship-building, and promoting reflection on individual and institutional levels. The Advisory Committee recognizes that cultivating an understanding of the fact that Canada is a multi-juridical country in which Indigenous legal orders, the common law and the civil law all have an important place is integral to transforming the relationship between the legal profession and Indigenous peoples in Canada.

The Committee comments on the important role that law societies play in educating lawyers to assist in the reconciliation process. Through its work, the Committee developed recommendations not only for the Federation but also for Law Societies.

The first of these recommendations is:

> That the Federation urge all law societies to make a formal commitment to reconciliation and develop a framework or steps for putting that commitment into action.

Using the Law Society of Alberta's statement as an example of a Law Society that has already done work in this area, the Federation implores "law societies to provide ongoing opportunities for competency and awareness training for law society leadership and staff".

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The Federation Committee goes on to address education and explicitly recommends mandatory Indigenous cultural competency training.

This recommendation is as follows:

> That the Federation urge law societies to
>
> • Consider mandatory Indigenous cultural competency training.
>
> • Ensure that legal professionals in their jurisdictions are provided with access to educational opportunities to enhance their knowledge and understanding of Indigenous peoples, the legacy of colonization and the existence of Indigenous legal orders.
>
> • Ensure the availability of a continuum of educational opportunities and resources to recognize the diversity of legal practices and Indigenous peoples and legal orders within a given jurisdiction.
>
> • Collaborate with Indigenous organizations in the development and delivery of cultural competency training or rely on training already developed by such organizations.

The Federation Committee provides a number of statements in discussion of their recommendation for mandatory training. While noting that recent graduates may have the benefit of increased Indigenous focused learning in law school, in response to *Call to Action* 28, those who graduated before may not have had access to such learning and that law societies should work to address this gap. The Committee states that:

> The Advisory Committee is of the view that, at a minimum, members of the legal profession in every jurisdiction should be encouraged to undertake training that will enhance their knowledge and understanding of Indigenous peoples and legal orders.

The Committee acknowledges that a one-size-fits-all approach may not meet the needs of all lawyers, however “all members of the legal profession need a baseline knowledge of the issues outlined in Call to Action 27, including the existence of Indigenous legal orders”.

This would allow for a primary course for all lawyers, followed by opportunities to expand their knowledge as appropriate for their practice area and location. The Committee states that “Adopting an approach to Indigenous cultural competency that recognizes a continuum of knowledge would be consistent with the ethical obligations of legal professionals.”