DIRECTIONS

CRRF FCRR

RESEARCH AND STUDIES ON RACE RELATIONS IN CANADA

Winter 2020 | Volume 8

CRRF FCRR
Canadian Race Relations Foundation
Fondation canadienne des relations raciales

Directions provides a space for established and emerging scholars, community organizations and race relations practitioners to publish their research. It also offers a forum for important dialogue and debate on race-related issues and best practices, and practical recommendations for policy development and change. Directions is curated to promote social cohesion amongst all individuals and groups living in a harmonious Canada.

ISSN CANADA HAS CATALOGUED THIS PUBLICATION AS FOLLOWS

Directions (Canadian Race Relations Foundation)
Annual
Volume 8
ISSN 1700-2109 (print)
ISSN 2369-7253 (online)

The analysis, views and opinions expressed in this publication are those of the researchers and may not necessarily reflect the views of the Canadian Race Relations Foundation.

SPECIAL THANKS

Sharon Pun, Research, Resource and Records Librarian, CRRF

Suvaka Priyatharsan, Manager, Programs and Information Management, CRRF

Jean-François Pagé, Communications Consultant, CRRF

Len Rudner, Consultant, Len Rudner & Associates

Jeff Wies, Design and Layout, Red Barn Design

CONTACT US

6 Garamond Court, Suite 225
Toronto, Ontario M3C 1Z5
Canada

Telephone:
416-441-1900 | 1-888-240-4936
Fax: 416-441-2752 | 1-888-399-0333

info@crrf-fcrr.ca

www.crrf-fcrr.ca

CONTENTS

INTRODUCTION

EDITORIALS AND ARTICLES

IMMIGRATION AND NATIONALISM

HATE CRIME AND INEQUALITY

TOWARDS RECONCILIATION

CRRF BOARD OF DIRECTORS

OUR VISION

The Canadian Race Relations Foundation is the leading voice and agent of change in the advance towards the elimination of racism and all forms of racial discrimination, and the promotion of Canadian identity, belonging and the mutuality of citizenship rights and responsibilities for a more harmonious Canada.

OUR MISSION

THE FOUNDATION WILL:

- Advance an understanding of, and develop approaches to, harmonious race relations and the elimination of racial discrimination;
- Strengthen Canadian identity as it refers to democratic principles of inherent human dignity, equality, fairness, and justice, which inform its work;
- Expand its clearinghouse and initiatives to inform national policies and public conversation, and
- Facilitate the discussions and conduct further research on race relations and mutual respect.

OUR VALUES

The work of the Foundation is premised on the desire to create and nurture an inclusive society based on equity, social harmony, mutual respect and human dignity. Its underlying principle in addressing racism and racial discrimination emphasizes positive race relations and the promotion of shared Canadian values of human rights and democratic institutions. It strives to coordinate and cooperate with all sectors of society, and develop partnerships with relevant agencies and organizations at the local, provincial and national levels.

VOLUME 8 INTRODUCTION

This volume of Directions is the first after our updated revisioning of our online open access journal with publications once a month. The compilation of articles this year contains an array of subjects and are loosely categorized under three headings. All are important ongoing conversations and these papers seek to further the discussion surrounding these topics of hate crime, reconciliation, immigration and nationalism. We hope to spread knowledge and opinion of these aspects and foster knowledge and critical thinking through our journal. These articles are provided for general information purposes only and do not constitute legal or professional advice. Though these papers do not reflect the opinion of the Canadian Race Relations Foundation, having different perspectives on these subjects are important for building common ground and a harmonious Canada.

MESSAGE FROM THE EXECUTIVE DIRECTOR

LILIAN MA
Executive Director

The Canadian Race Relations is pleased to offer the eighth edition of our *Directions* journal, the first edition after switching to an online monthly publication. The changed parameters of our open-access journal were put in place to make it more accessible to both readers and contributors, as well as to provide new and important research to all by featuring a mix of peer-reviewed submissions and externally published content. Seeing the past year's articles come together have been extremely rewarding and we are excited to share this with you.

Looking at the events of the last year, it is easy to be discouraged by the issues we face as Canadians. Reported increases of hate crimes against vulnerable communities and the rise of extremist voices can challenge our confidence in our collective ability to reach a fully inclusive Canada. Our paper submissions touch upon many different aspects and perspectives of discrimination and race relations – guiding frameworks, reconciliation, and celebration for initiatives, among others.

We hope to continue this important dialogue and discussion of race, racism, and discrimination, through our papers and readership.

A special thank you and appreciation for the assistance of our editorial advisory panel consisting of the following individuals: David Matas, Will Kymlicka, Cynthia Wesley-Esquimaux, Andrew Griffith, Robert Daum, and Phil Triadafilopoulos.

Many thanks also to the 14 contributors for this edition: Barbara Perry, Carl James, Augie Fleras, Maria Jose Yax-Fraser, David B MacDonald, Jacqueline Gillis, Kon K Madut, Chandrakant Shah, Jonnette Watson Hamilton, Joshua Sealy-Harrington, Sheila Block, Grace-Edward Galabuzi, Naiomi Metallic, and Naved Bakli, to staff members and consultant: Zoe Fine, Jefferson Sporn, Sharon Pun, Suvaka Priyatharsan, Praan Misir, and Len Rudner, and to dedicated readers, for their current and ongoing support.

COMMENT FROM THE CHAIRPERSON

TERESA WOO-PAW
Chairperson

The *Directions* journal is an integral resource in shedding light and continuing the discussion on past and current race relation issues. As one of the many important initiatives of the Foundation, *Directions* seeks to maintain and strengthen the relationships between communities and promote an inclusive and diverse Canada. Thank you to all the contributors and I look forward to the conversations that result from this publication.

EDITORIAL ADVISORY PANEL

ANDREW GRIFFITH

Andrew Griffith is the author of *Multiculturalism in Canada: Evidence and Anecdote and Policy Arrogance or Innocent Bias: Resetting Citizenship and Multiculturalism*. He is the former Director General for Citizenship and Multiculturalism and is a fellow of the Environics Institute and of the Canadian Global Affairs Institute.

CYNTHIA WESLEY ESQUIMAUX

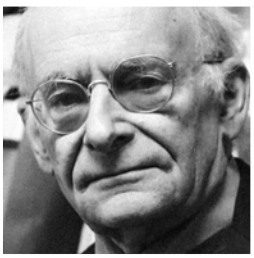
Dr. Cynthia Wesley-Esquimaux served as Vice Provost for Aboriginal Initiatives at Lakehead University for three years, and effective September 2016 was appointed as the 1st Indigenous Chair for Truth and Reconciliation in Canada and continues to develop pathways forward to reconciliation in Canada.

She is an adjunct asst. professor for the Faculty of Anthropology and maintains a status-only appointment at the University of Toronto's Faculty of Social Work. Her teaching and academic writing is directed towards understanding and resolving the continuing transmission of unresolved intergenerational trauma and grief primarily within the Indigenous community.

Cynthia is a Director of the Teach for Canada non-profit which addresses the needs of Indigenous schools in Northern Ontario. She was inducted as a "Honourary Witness" by the Truth and Reconciliation Commission of Canada, and is a member of the Governing Circle for the National Centre for Truth and Reconciliation at the University of Manitoba.

She is a member and resident of the Chippewa of Georgina Island First Nation in Ontario and has dedicated her life to building bridges of understanding between peoples. She sees endless merit in bringing people from diverse cultures, ages, and backgrounds together to engage in practical dialogue and applied research initiatives. She remains deeply committed to public education and active youth engagement from all cultures and backgrounds.

Cynthia co-founded a youth project out of the University of Toronto, the University of Saskatchewan and Lakehead University. Information on the Canadian Roots Exchange (CRE) can be found at: www.canadianroots.ca



DAVID MATAS

David Matas is the senior legal counsel of B'nai Brith Canada. He has maintained a private practice in refugee, immigration and human rights law since 1979. Matas served as a Law Clerk to the Chief Justice of Canada in 1968-69, and was a member of the Foreign Ownership Working Group, Government of Canada, and was special assistant to the Solicitor General of Canada in 1971-72. Matas has also taught constitutional law at McGill University, Introductory Economics, Canadian Economic Problems, International Law, Civil Liberties, and Immigration & Refugee Law, at the University of Manitoba. He has published various books and manuscripts and currently resides in Winnipeg. Matas is a member of the Order of Canada.

PHIL TRIADAFILOPOULOS

Phil Triadafilopoulos is Associate Professor at the University of Toronto's Department of Political Science and the Munk School of Global Affairs and Public Policy. He is the author of Becoming Multicultural: Immigration and the Politics of Membership in Canada and Germany (UBC Press, 2012), the editor of Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective (Springer, 2013), and co-editor (with Kristin Good and Luc Turgeon) of Segmented Cities? How Urban Contexts Shape Ethnic and Nationalist Politics (UBC Press, 2014).

Triadafilopoulos' scholarly publications have appeared in Ethnic and Racial Studies, Social Politics, Social Research, the Journal of Politics and the Review of International Studies. More information about his publications, teaching and current research can be found at https://utoronto.academia.edu/PhilTriadafilopoulos.

ROBERT DAUM

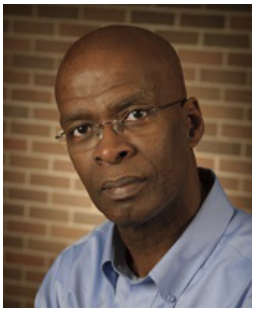
Dr. Robert Daum is an active research collaborator and practitioner in university and inter-university initiatives focused on theory and practice of cultural creativity, transcultural dialogue, and interdisciplinary collaboration. He has published on aspects of critical theory, poetics and narratology of classical rabbinic literature, historiography of religions, cultural studies, gender studies, and public policy.

WILL KYMLICKA

Will is a Canadian political philosopher best known for his work on multiculturalism and animal ethics. He is currently Professor of Philosophy and Canada Research Chair in Political Philosophy at Queen's University at Kingston, and Recurrent Visiting Professor in the Nationalism Studies program at the Central European University in Budapest, Hungary. Kymlicka's writings are philosophical, but are also applied to current issues and debates. His Liberalism, Community, and Culture analyses communitarian writers and issues related to cultural membership. Kymlicka has written about citizenship issues and multiculturalism for the federal government. Among the other writers he discusses and uses are Rawls, Charles Taylor, Walzer, and Sandel. Kymlicka's work appears to be in the area of political theory, with his work being in the liberal tradition, attempting to defend and expand the liberal view of rights, and the individual and society. The arguments in Multicultural Citizenship are clear and well presented, with many Canadian examples - aboriginal peoples, Quebec, immigrant groups, and multiculturalism. Kymlicka's carefully reasoned arguments force the reader to rethink his or her approach to issues related to minorities and group rights, and deal with prejudice, misconception, and fuzzy thinking.

Schooling and University Outcomes of Immigrant Black Students from an Urban Neighborhood

Published in *Directions* October 2018
By Carl E. James, York University, Toronto



BIOGRAPHY

Dr. Carl E. James holds the Jean Augustine Chair in Education, Community & Diaspora at York University, Toronto, where he is also the Affirmative Action, Equity & Inclusivity Officer. He teaches in the Faculty of Education and in the Graduate Programs in Sociology and Social and Political Thought. James' research includes: examination of how race, ethnicity, gender, class and citizenship/immigrant status intersect and affect accessible and equitable opportunities and outcomes in education, employment and well-being for marginalized/racialized people, and Black youth in particular.

ABSTRACT

In this article, I focus on how the schooling situation and educational experiences of students of immigrant parents are mediated by the diverse ways in which social class combines with race, immigrant reference, generational status and other factors to affect their educational and career trajectory. Using the experiences of two African Canadian university students who lived in a working class, "troubled" neighborhood in Toronto, I examine how community forces operated to inform their pathway through university. Both research participants maintained that their own efforts, initiatives and actions, in concert with those of their parents, teachers, coaches, and others accounted for the social and educational paths they took, the aspirations they constructed, and their educational achievements.

INTRODUCTION

It is generally accepted that social class together with factors such as race, ethnicity, and generation status (i.e. immigrant, first, second or third generation) of students affect their schooling experiences and educational outcomes. In fact, the social class backgrounds of students, in terms of

family income and parental education, play a significant role in determining the neighborhood in which they reside, the school they attend, and educational resources to which they have access (Brantlinger, 2003; Finn, 1999; Frenette, 2007; Lareau, 2002; López, 2002; Taylor & Dorsey-Gaines, 1998; Weis & Fine 2005). While middle class students are more likely to do well in the middle class school system of North American societies; in many cases, working class students, especially those of immigrant backgrounds, struggle to do the same. However, there are some cases of students with immigrant parents who, despite the social and cultural differences that exist between them and the school system, capably negotiate the school system to attain their educational goals and those of their parents (Anisef et al, 2000; Boyd, 2002; Fuligni, 1998; James & Haig-Brown, 2001; Louie, 2001; Portes & Macleod, 1999; Rong, & Brown, 2001). In this article, I focus on the schooling situation and experiences of working class students of immigrant parents, noting the complex and diverse ways in which social class combines with other factors to affect their educational aspirations and attainments.

I reference the schooling experiences and educational aspirations and achievements of two African Canadian university students, Conrad and Kendra (all names are pseudonyms), who lived in and attended Northdale High School, in a 'sub/urban' working class neighborhood of Duncan Park in Toronto. The "troubled" neighborhood, as the media refer to it, is home to about 100,000 people of diverse ethnic, racial and religious backgrounds, among them--Italians, East Indians and Sri Lankans (or South Asians), Vietnamese and Cambodians (or Asians), Somalis, Ghanaians, and Black/African Caribbean – believed to be the largest proportion of the residents. The community can be classified as a high density area of high-rise apartment buildings and townhouses which was established in the 1960s (and continues today) as a "reception area" for the increasing number of immigrants and refugees arriving in the city. The community is a mixture of public housing, subsidized rentals, condominiums – owned and rented – and private family dwellings. Ordinarily, the area would have been considered a suburb of Toronto, but given its characteristics, the area is referred to as an "urban area" (or "inner city") and the schools referred to as "urban schools."

The economic, social, and cultural character of Duncan Park is reflective of many low income neighborhoods in large North American cities (Hidalgo 1997; James & Haig-Brown 2001; López 2002; Lorinc, 2003; Myles & Feng 2004). Specifically, it is a community populated by minoritized and immigrant families – many of whom live in impoverished conditions; and even though white people are part of the diversity, the common perception is that it is a "minority community" populated mostly by "Black people." This characterization speaks to the segregated structure of the society or "place stratification" (Myles & Feng, 2004). Myles and Feng (2004) found that these "immigrant enclaves" as opposed to "ethnic communities" are, in effect, transitional neighborhoods, but due to economic resources – specifically family income – some immigrants, especially Blacks, get stuck in high-density apartment buildings for low-income renters and in public housing. According to Myles & Feng, *immigrant enclaves* are the areas where immigrants with limited resources cluster upon arrival in the host community; *ethnic communities* are those where recent, wealthier immigrants segregate by choice forming more enduring, culturally homogeneous neighborhoods (p. 2). Myles and Feng also indicated that in Canada generally, the average Black family income was only 79 percent of white family income, whereas South Asian and Chinese family incomes were 85 percent and 91 percent respectively of whites (p. 11). Further, Black families tended to be younger, more likely to be single parents,

less educated than South Asian and Chinese immigrants, and reside in more ethnically and racially heterogeneous neighborhoods (p. 10).

Studies have shown that drug use and trading, crime and violence are often by-products of the social conditions of low-income, high-density neighborhoods (Hidalgo, 1997; López, 2002). Hidalgo (1997) observed that the pervasiveness of crime and violence, and a fear of losing their children to these negative influences, made families put great efforts into protecting their children from these potential 'dangers' in the neighborhoods. These 'dangers' serve to stigmatize these communities and concomitantly, as "a normal occurrence," criminalize the youth, particularly Blacks, who become part of, as López (2002) writes of minoritized youth in New York, "the burgeoning prison industrial complex" (p. 75). Sustaining this criminalization of Black youth in the Duncan Park neighborhood is racial profiling or stereotyping, based not only on race or color, but also on place of origin (non-white is read as "non-Canadians") thereby singling them out for greater scrutiny or differential treatment (Ontario Human Rights Commission, 2003, p. 6), particularly by police. Typically, Black males are profiled as troublemakers, law-breakers, drug-dealers, criminals and bad boys (James, 2012; James, 2012), and females as loud, irresponsible, sexually available, "baby mothers," and 'girls who are attracted to the bad boys' (Gaymes, 2006; cf Ali, 2003; López, 2002).

The profile of Black youth, partially constructed in relation to the working class immigrant neighborhoods in which they live, help to shape their schooling, as well as their own and others' perceptions of their academic abilities, skills, potentials and possibilities (cf Bloom, 2007). In fact, even though publicly funded, schools in neighborhoods, like Duncan Park, lack the infrastructure, and the political and economic resources and supports as schools in middle class neighborhoods which benefit from the informal parent-driven fundraising and monitoring activities that result in greater resources for students (Frenette, 2007). Further, the high student dropout, suspension and expulsion rates, as well as the relatively high number of "at-risk" (in other words, behavioral problem and academically-failing) students, contribute to a reputation of working class neighborhood schools that makes it difficult for them to attract teachers with the commitment and expertise to work with their students. Some schools in these working class Toronto neighborhoods place their students in uniforms, have hall monitors (or security guards sometimes in uniforms) and security cameras, and lock school doors while classes are in session. These 'surveillance' routines are seen as a means of helping "deficient" and insubordinate youth learn self-discipline. And where mentorship and role modeling programs are developed to help address the educational, familial and social needs of students, ironically in some cases, they further serve to keep students under surveillance. Indeed, as Odih (2002) contends, "these practices serve to subject already vulnerable, disenfranchised working-class males [and females] to increased scrutiny and regulation by government agencies" (p. 99).

In a study a colleague and I conducted with a racially diverse group of twelve university students from the same working class neighborhood in Toronto (James & Haig-Brown, 2001), we found that with the encouragement and support of their parents, participants aspired to receive a university education. They held this aspiration despite the typical low teacher expectations, differences between themselves and their teachers due in large part to social class, the inability of schools to respond to their educational needs, interests and aspirations, and the resulting feelings of alienation from school. Particularly significant was the large role that the geographic and ethnic

communities played in their narratives pertaining to their experiences and aspirations. Some of the youth said that because of the "reputation" of the school and the area, their parents and teachers encouraged them to attend high school elsewhere (cf. Gulson, 2006). While a few youth did as these significant others suggested, most chose to remain at the neighborhood school hoping, as in the case of some of our research participants, that their educational performance and achievements would help to contest the media's images of their community and school as "bad." For that reason, participants aspired to become teachers, social works, lawyers, activists and politicians – careers which they perceived were critical to addressing the needs and issues within their community and help to change media images. They used terms such as "paying back," "giving back" and "returning the dues" to indicate the obligation they felt toward their parents, families, peers and community members.

Clearly, community plays an important role in the lived experiences and expectations of young people. With reference to Conrad and Kendra, I examine how their lives within their working class neighborhood affect their schooling experiences and educational aspirations and attainment. But before doing so, in the following section, I discuss the theories that inform this work. Thereafter, I provide a profile of the participants and then discuss what they said about life in the community and school. I go on to discuss how Conrad and Kendra use and negotiate various forms of capital in order to ensure their educational successes; and I conclude by noting how in exercising agency they attained their educational and occupational goals.

SOCIAL CLASS, SOCIAL AND CULTURAL CAPITAL, AND COMMUNITY WEALTH

In her article on the effects of class on working class youth's transition from urban high schools in New York City to university, Bloom (2007) argues that "it is important to explore the enduring importance of class in explaining the educational trajectories and life chances of poor and working class youth" (p. 344). Social class, Ng (1993) contends, "is not a static category or a thing; it is a *process* that indicates how people construct and alter their relations in terms of the productive and reproductive forces of society, using whatever means they have at their disposal" (p, 51). Related to this process is the set of usable resources and power that individuals derive from the social (including economic, political and educational) structure of society. These resources or cultural capital are recognized as helping to structure individuals' opportunities and possibilities, and are commonly used to explain the differences in educational achievements among students. Parents of middle class and upper class backgrounds are thought to have the necessary resources, values and knowledge – in short, the cultural capital – to pass on to their children to enable them to succeed in the society. Specifically, Lee and Barro (2001) found that higher levels of education and higher income of parents positively affected students' performance and academic achievements (p. 467). These parents have the resources to enable their children (starting with daycare) to have an early education—a headstart, to provide reading materials at home, to develop verbal skills (including how to summarize, clarify and amplify information), to develop interpersonal trust, and to live in neighborhoods with good schools (Aizlewood & Pendakur, 2005; Frenette, 2007; Lareau, 2002).

By contrast, parents of working class background having less income, lower education, and a lesser amount of institutional

knowledge are perceived to lack the knowledge, skills and understanding of the economic, social and educational system, thus putting their children at a disadvantage (see Anisef et al. 2000; Bloom, 2007; Henze, 2005; Maynes 2001). Lareau (2002) also found that working class parents tend to be deferential and constrained in dealing with authority figures such as teachers, police, and government agents, and are generally more distrusting of them than their middle-class counterparts (p. 749). Furthermore, feeling a sense of powerlessness, working class parents tend to intervene very little or not at all, into the schooling affairs of their children, because, as Lareau (2002) noted, they often feel that their interventions are ineffective. Exposed to their parents' ideas, attitudes and interactions with teachers and school administrators, children of working class parents are likely to develop a sense of distrust and powerlessness, while their counterparts of middle class parents tend to cultivate a sense of entitlement, expecting that schools will be responsive to their needs and interests (Lareau, 2002, p. 770).

Researchers suggest that the class culture of educational institutions is premised on a Eurocentric ideology which further disadvantages students from immigrant, racial and ethnic minoritized backgrounds, hence, compounding the efforts it takes for them to pursue and sustain their educational aspirations (Henry & Tator, 2006; Yosso, 2005). In such a context, there is usually pressure to assimilate. But while assimilation or acculturation – that is, the 'blending' into the new or host social and cultural structures and related practices – might provide youth access to the needed cultural capital to get by in the society, there are also the youth's sense of their parents and community supports and expectations that can enable them to function effectively in the larger society thereby limiting their marginalization. In fact, as Zhou (1997) contends, in the context of increasing pressures on immigrant minoritized youth to assimilate into the larger society, family and community supports can make a considerable difference in providing resources that work toward success and nourish the aspirations of the young members of the society (see also Rong & Brown, 2001). Portes and MacLeod (1999) refer to the resources, supports and values that immigrants receive from their communities as social capital. It is the 'banding' together for moral support and using the resources that exist among them to challenge the racism, xenophobia and discrimination (such as lack of recognition or the devaluing of their abilities and skills) they face to ensure their economic, social and cultural survival.

Therefore, the educational achievements of students are not determined merely by the cultural capital resulting from membership in middle class. Indeed, in the case of immigrants, and as Yosso (2005) argues with reference to Communities of Color, there are other forms of cultural capital that marginalized students bring to their schooling that could enable them to succeed if only these knowledges were acknowledged, valued and made use of (see also Milner, 2006, p. 81; Milner 2007). Yosso (2005) refers to the various forms of capital upon which Communities of Color draw as "community cultural wealth" which she defines as "an array of knowledge, skills, abilities and contacts possessed and utilized by Communities of Color to survive and resist macro and micro-forms of oppression" (p. 77). Yosso identifies six forms of community cultural wealth – aspirational, familial, social, linguistic, navigational and resistant capital. She writes:

> *These various forms of capital are not mutually exclusive or static, but rather are dynamic processes that build on one another as part of community cultural wealth. For example, …aspirational capital is the ability to hold onto hope in the face of structured inequality and often without the means to make such dreams*

> *a reality. Yet, aspirations are developed within social and familial contexts, often through linguistic storytelling and advice… that offer specific navigational goals and challenge (resist) oppressive conditions. (Yosso, 2005, p. 77)*

Essentially, social class, in combination with race, ethnicity, gender, language, immigrant status, religion, area of residence, and other factors, help to determine the educational performance, aspirations and achievements of students. Participating in the inequitable education system stands to be difficult for students without the normalized middle class "cultural capital." Nevertheless, their abilities and efforts to effectively read, understand and negotiate the system regardless of their differences – in terms of area of residence, class, race, ethnicity, gender and immigrant status – can open up possibilities and opportunities for them. Young people's capacity to work with and across social and cultural differences can enable them to draw on their "multi-cultural capital" – the abilities, skills and knowledge gained from their interactions with various communities (in terms of neighborhood, racial, ethnic, class, gender and so forth) – to assist them in constructing aspirations and accessing opportunities (James, 2005, p. 219).

THIS STUDY

Conrad and Kendra (all names are pseudonyms) were two of twenty second generation Black students of Caribbean origin, between the ages 18 and 25 years, who participated in a qualitative research study I conducted in the Toronto area in 2001-2002. Both were scholarship students attending the same university and had supplemented their scholarship with student loans. In the larger study, I sought to find out how the raced experiences of participants informed their construction, understanding and articulation of their identity as Canadians, and concomitantly their perceptions of their educational and career opportunities and possibilities. The focus was on second generation and generation-and-a-half youth noting how their experiences traversing the social, educational, cultural, economic and occupational structures of the Toronto society were mediated by the social and cultural references and expectations of their immigrant parents and 'Caribbean community' in Toronto. Significant here is the fact that Conrad and Kendra lived and attended school in the urban, working class area of Duncan Park where the combination of neighborhood, school, and in some cases family characteristics, are known, in many cases, to have played a role in limiting the educational and occupational ambitions and outcomes of students (James & Haig-Brown, 2001; McLaren, 1998).

The stories and descriptions that Kendra and Conrad tell of their worlds, are not taken "as potentially 'true' pictures of 'reality'." Rather their stories opened up for analysis the culturally rich information "through which interviewers and interviewees, in concert, generate plausible accounts of the world" (Silverman 2000, p. 823; cf. Bloom, 2007; Snyder, 2005). As such, their accounts are not mere 'descriptions' of the contexts in which they exist, but are complex interpretations of their situations which are mediated by particular social, economic, cultural and political structures (Bloom, 2007; López, 2002; Delgado-Gaitan, 1994; Waters, 1999). Further, the stories of these students, collected in two interview sessions over a one year period (and more recently a conversation to update) illustrate the ways in which they exercised agency and took on a level of responsibility in navigating and negotiating their schooling and community structures. In what follows, I examine how the culture of the school, in terms of things such as the support and encouragement they received from teachers,

coaches and guidance counselors, functioned to sustain their educational ambitions and make university education a reality for them.

THE PARTICIPANTS

KENDRA

Kendra was a 22-year old third-year university student who was majoring in History and French, while also pursuing a degree in teacher education. She lived with both of her Caribbean-born parents and her two younger brothers in a condominium they own in the Duncan Park area – the area to which they moved about two years before she completed high school. As if to qualify that their condominium living does not represent affluence, Kendra added "we don't have a car and that type of thing." She described her parents as "strict", especially her father, which meant that she "could not stay out late" at nights with her friends, many of whom had parents who were also from the Caribbean. At Northdale, the neighborhood high school she attended for about two years, she enjoyed "good relationships with [her] teachers" many of whom encouraged her to go to university. Such encouragement, plus the support and expectations of her parents and friends – most of whom had planned to attend or were already in university – helped to make attending university a reality for Kendra. In reflecting on her parents' expectations of her, she said: "I think like any other family they just wanted me to go to school, do well and get an education so that I could get a good job and I'd be able to support myself and maybe to do better than they were able to do back in St. Vincent." Her mothers' involvement in the schools she attended – through attendance at parent-teachers' meetings and as a member of the school council of her high school – not only served to keep her parents informed of her behaviors and progress in school, but also served to ensure that Kendra did well in school in order to get to university. However, as Kendra explained in the second interview, her father's 'non-involvement' in her schooling activities does not mean that he was uninterested. As put she it, "… when I talked about my dad being laid-back, … I want to make it clear that I don't see him as a deadbeat dad or anything like that; it's just that he did what he could." While high school for Kendra was "just okay," her "best memories" were of her elementary and middle schools where she was "a good student" – not "as a teacher's pet." (She also enjoyed her first year of university.) Aside from the short period in Grade 8 when she participated on the girls' basketball team and "did a little bit of track," much of her time and energy were spent on her academic work. She noted that her participation in sports came about because her elementary school teachers felt that her height and "long legs" would make her a good athlete.

Interestingly, "up to Grade 12" Kendra disliked history, and it was reflected in the grade she received (C+ in Grade 10 of the high school she attended earlier). She clarified that her earlier disinterest in history was because of the homogeneity of what was taught. As Kendra put it, I think the only diverse topic that we talked about was maybe Natives and it was probably in passing…. I figured that slavery happened here [in Canada] but again it wasn't anything we were taught. I figured that there were contributions made by blacks, and I kind of had an idea… Even during Black History Month the things we were taught were mainly Americanized, so I didn't like history at all."

But it was in Grade 12 that she took a Canadian history course, 'liked it,' and received an A+; "so," as she said, "it wasn't a hard decision" in choosing history as the discipline in which to major in university. She further rationalized her decision by saying that she had no knowledge of other disciplines

such as sociology and anthropology: "I wasn't familiar with those fields, or I probably might have chosen one of them. I don't regret choosing history. I didn't know that you could study, like major in Caribbean studies so I just figured history." Economics was an exception; she had taken an economics course and had declared that as her major on her application to university. Kendra indicated that although she attended information sessions about postsecondary institutions during her final year of high school, she did not remember asking any questions, neither did she seek any help from the school's guidance counselor, so much of her decisions about university were her own. "It was," as she confidently articulated, "just that I knew I was going to university…. So, I just figured it didn't really matter what I did."

Like Conrad (as will be discussed later), Kendra seemed to live by a work ethic of hard work, determination, and with the mindset that anything is possible as long as one puts his or her mind to it. For instance, in response to the question: Do you see anything stopping you from achieving your goals whatever they may be? Kendra said: "Only myself, I guess, because you can always make something possible but you have to believe in yourself to achieve it, or if something is not going right for you find ways to change it. I do know that racism is out there, and I've experienced subtle things but not anything that will stop me--at least right now--from going through [with] what I want to do." Kendra went on to say that while she might have experienced racism, the subtlety of it renders it difficult for her to "pick out;" hence her claim that she cannot remember any experiences with racism. She also added, "I don't let that [racism] define me or stop me from what I need to do…." And she questioned the tendency to focus on racism when talking about the experiences of Black people--"What about people's lives outside of that?" she said, "What about just the regular things? I know to some extent that you can't get away from it just from the fact that racism is always there, but I don't know. It's just that [it is] not everybody's experience…. I just think that there is more to life."

Kendra was clear about her identity as "Canadian," but she also took pride in her Caribbean heritage. As she put it: "I primarily think of myself as Canadian. Like I said I am very proud of my [Caribbean] heritage but I was born here …. So I would think that my primary identity would be Canadian or Black Canadian." Based on her many visits to the Caribbean, particularly Barbados, she figured that life is better in Canada, especially where educational opportunities are concerned. Colonialism, she said, has affected the Black people there as is the case in North America. While Kendra liked visiting the Caribbean, she would not live there because, as she said, "I've grown up here, [and] I could probably live anywhere in North America because I've grown up in North American culture and North American environment.

CONRAD

Like Kendra, Conrad was a 22-year old third-year university student who was pursuing a degree in business administration with the hope of entering law school upon graduation. Ultimately, he wanted to work in international relations. Born in Jamaica, he came to Canada with his mother and older sister at the age of 12 years and settled in a rented apartment in the Duncan Park area about a year and a half after immigrating. He started school at Northdale in Grade 10. Talking about immigrating to Canada, Conrad said that back then "I was excited because you are leaving [Jamaica], you are changing; so that was exciting but apart from that I was indifferent I think." He remembered that in his first year in Canada being asked what he wanted to do when he grows up, he said then, "I want

to get my law degree and go back home to Jamaica." But while today he has no interest in returning to Jamaica (he did not say why), he still aspired to become a lawyer – a career interest which he thought to be a product of his years of exposure to lawyers through his mother who was a legal secretary. To the question, "Is this the career your mother wishes for you?" Conrad answered, "I don't know what she wants me to be. I think she is pretty much of the mentality--do whatever you want to do, sort of thing."

Schooling in Canada held "good memories" for Conrad, especially his time at Northdale which was described as "quite good." He went on to say, "I don't know how I would have coped in a school that's predominantly white." Because of his "love" for Northdale, Conrad regularly returned to talk to Grade 9 students about paying attention to their school work so that they may do well and become successful. These talks with students also served to remind Conrad about his reliance on his high school teachers to help him understand the Canadian education and social systems because his mother was unable to do so. Conrad explained, "I mean my mom understood you go to school, do your homework, you do well" which also meant that he could do whatever he wanted to do. He added:

There is the whole thing of understanding the system, but then there is the basic principles that go along once you understand it – of how to get through it. And I think my mom helped a lot with basic principles of the hard work ethic in terms of getting through it; and the teachers …helped [me] to navigate [the system] in terms of, this is what you need to do; this is what you need to look at.

Conrad's decision to major in business has to do with the fact that he "did math well" and had a desire to "get rich." He unabashedly related his "capitalist mentality" to being an immigrant – the idea of coming to Canada to take advantage of the available opportunities. Not surprising then, he identified as Canadian and at the same time expressed the fact that he is also Jamaican. But more importantly, he said, "I am a product of Canada in that I've taken advantage of… the opportunities that Canada has to offer which is what Canada is all about." Jamaica, then, was for him the place where he "grew up." Because, as he explained, "growing up in Canada for me, it was just applying all the stuff I learned in Jamaica. I don't think I'll be considered a typical Canadian because everything I did was pretty much using the principles that I learnt in Jamaica. So I don't know if I would say that I grew up in Canada at all."

Conrad could not remember any experience with racism; and like Kendra, he said, "I don't allow [incidents of racism and discrimination] to override me…. I am sure there have been comments made, like I know stuff has happened, but I just can't specifically remember." He went on to suggest, "You can allow things to govern your life or you can deal with them then and just kind of move on. I don't allow things to just pass by. If there is open discrimination or something like that, I'll say whatever is necessary to be said and then move on."

LIFE IN THE NEIGHBORHOOD

While both Conrad and Kendra lived and attended school in Duncan Park neighborhood, they had very little interactions with their peers outside of school. This is how Conrad explained things:

Conrad: For me it was pretty simple. Like I went to school, went to track, went home and did my homework. Like outside school I had no friends in the area, so I don't think I had the good experience of what it was like to grow up in [Duncan Park]. I was pretty isolated; even within there I was pretty much in my own

world, so I didn't really, I guess, associate with a lot of people from the area outside of school.

Carl: Why?

Conrad: Because [of a] combination of being too busy with stuff and school, [and a] combination of not wanting to get in trouble because of its reputation, pretty much those two things.

Carl: What about the reputation of [Northdale]?

Conrad: The reputation? I don't know, I can only think of my experiences. I mean you have kids that got into trouble, probably because of the socioeconomic conditions, there is probably more than your typical school but I loved my experience at [Northdale].

Kendra also had very few friends in the area. In fact, she maintained her friendships with peers from her old neighborhood, and it is to them she referred when she talked about having friends already attending and planning to attend university. Kendra's activities outside of school were mainly with her church and island association where she played leadership roles helping to organize youth activities. That Kendra chose not to participate in activities within the neighborhood likely had to do, as in the case of Conrad, with its "reputation" and not wanting to get "into trouble." Consequently, both Kendra and Conrad felt a need to protect themselves from the possible trouble that lurked in the community. Kendra parents', notably her father's, 'strictness,' as discussed earlier, was their way of protecting her from trouble in the community and ensuring her safety as a female (see also Hidalgo, 1997; López 2002).

So in their bid to protect themselves, Kendra and Conrad chose not to be 'part of' the Duncan Park community where they lived. Conrad admitted to living a "pretty isolated" life, and Kendra looked elsewhere for fulfillment of her social and cultural needs and interests. But they were not "outsiders" – uninformed about the needs and issues in the community and not having an interest in addressing them. In a way, they recognized that they were 'part of' the community because they lived and attended school there, and by extension were implicated in the reputation of the community and school. For this reason, they felt that by trying to be model citizens and engaging in volunteer activities in school – Kendra helped to plan Black History Month and Kwanzaa school events and tutored 9th grade students during her final year of high school; Conrad ran for president of the student council but lost. They were doing their part to change the perception of the community as "bad." According to Conrad, "I think it's important that people see people from Duncan Park who don't fit the stereotypical mode…. So if you can break that, or if I can help break that perception just by myself, then I have done something." This idea of playing their part to change the reputation of the community is reflective of findings from an earlier study in which participants also indicated that the careers – teacher, lawyer, community worker – to which they aspired was because they wanted to "give back" to their community which nurtured and supported them to be the university students that they had become (James & Haig-Brown, 2001).

LIFE IN HIGH SCHOOL

High school was a very positive experience for Conrad, and somewhat less so for Kendra. Both of them remembered with satisfaction their experiences with their teachers, guidance counselors, and coaches who "pushed" them in their work. As Conrad stated, at Northdale with "90 percent" of the students population being minority, and "probably 70 percent" Black, "the moment you show promise, especially some…Black teachers would try to help you." So, unlike other Black students who claimed that their teachers and guidance

counselors – many of them white, operated on stereotypes – had low academic expectations of them thereby streaming them into non-university-path programs and encouraged them into sports (Douglas et al, 2006; James & Haig-Brown, 2001; James, 2005a), for Kendra and Conrad, it was the opposite. In fact, as Kendra insisted, "I just haven't had that experience with teachers like [them] trying to make me have lower expectations and stuff like that; so I don't know if I've been lucky. Yeah, that's interesting, and that's something I just never thought about."

In the case of Conrad, moving to Northdale was a "welcomed" opportunity, for it was there in the process of enrolling at the school that the guidance counselor advised him to take advance level courses because she had noticed his very good 9th grade performance (by grades) in the general level courses he had taken. In reflecting on this pivotal point in his academic life, Conrad said: "I had a very indifferent attitude, and I just didn't really care. And so had it not been for the switch, I could have been taking a whole bunch of general courses and not really going anywhere." Talking generally of his experience at Northdale, Conrad went on to say that it was there that "I was able to get in touch with people who took extra initiative because they saw me as a Black male who had potential."

Unlike Kendra, Conrad took full advantage of the opportunities he got through sports. When he was invited by his gym teacher to try out for the track team, he gladly did so, knowing that participating in track was a "way out" of the community, just like basketball student athletes sometimes rely on getting scholarships to study in the United States (James, 2005a; 2003; cf. Douglas et al, 2006; Frey, 2004). Conrad pointed out that his school was known for its good track athletes, many of whom had won U.S. college and university scholarships. This idea of looking to U.S. athletic scholarship as providing a possible "way out" of the neighborhood and a path toward upward social mobility had to do with the fact, as Conrad explained, that "there are more opportunities for people that are Black there [the U.S.], because there's a large number of Black students. And while there is discrimination, I think that there [the U.S.] is better, in terms of community trying to help people that are Black." This notion that the United States offered better opportunities for Black student athletes was well supported by the coaches and teachers at the school, including his coach, Mr. Basil (pseudonym).

While Conrad did not identify Mr. Basil as his mentor or favorite teacher, Mr. Basil was referred to as one of the few teachers who took extra steps to actually make sure that Conrad did well. But it was Mr. Norman, "who is actually not a Black teacher, a white teacher," whom Conrad remembered the most "because he was the pickiest teacher I ever had." And even though many of the teachers who helped Conrad were from the Caribbean and might have been able to appreciate and understand his situation as an immigrant student from the region, it was Mr. Norman Conrad credited with giving him the educational skills upon which he had come to rely – that is, "skills to see his mistakes and having the ability to correct them." The supports that Conrad received from teachers, like Mr. Norman, as he suggested, had to do with the fact that "they were just good teachers who actually cared about students." Therefore, for Conrad, what was most important, was not the race of the teachers, but their love for students, their willingness to "go out of their way to teach…, and seeing students for what they are, and trying to deal with those students for what they are." Such teachers were not always Black.

Similarly, Kendra found her white teachers more generous and supportive, and for this reason would go to any of them first if she had a problem, even though she had "a good

rapport with Black teachers" and "got along" with many of them. Of the Black teachers she said, I remember just being in school, and I think it's partly why I wanted to become a teacher as well. I found that some Black teachers seemed mean, and I don't know if it was because they wanted to push the Black students harder to make sure that they achieve…. Actually, I found that the white ones pushed me more to do, like I guess, more controversial topics than my Black teachers at least they seemed more interested. It wasn't just because I'm a Black student and you are a Black teacher that I would have this overarching bond….

Part of what Kendra and Conrad were communicating is the expectation that their teachers would not see or treat them like "typical Northdale" students or "typical Black" students because they were not. The typical student, as Conrad suggested:

is someone who is pretty smart but who just has little drive; who does no homework; goes to class probably gets 70s. Some may decide to go to university when they are done, or some decide to go to college or some decide to get jobs. I think a typical [Northdale] student is someone who is pretty smart but just because of socioeconomic conditions, lack of drive, their status, the way they see themselves in the country, they just don't do well, or language barriers [are] another big thing…. I think I have some of the same thing that your typical [Northdale] students have; but for some reason, whether it was the family support,… or teachers actually took the time, or my personal drive, I am not sure what. But I think that I am different from the typical [Northdale] student.

Conrad also asserted that students at his school wished to be thought of and treated differently – as students with university ambitions who with the help and commitment of teachers would be able to get to university and eventually move out of the community. Conrad's and Kendra's relationships with teachers were therefore built on the degree to which teachers gave attention to their students' educational agenda, showed them respect, maintained contact with them over time, and were responsive to their needs, interests and aspirations. These were teachers who cared enough to reach out to them, and not simply saw them as 'good students', as Kendra said, but showed "special interests" in them.

Furthermore, Conrad's and Kendra's comments illustrate that race 'sameness' does not obfuscate the class differences that exist between teachers and students. According to Conrad, middle class Black teachers

like to think that they face the same ills as lower class Blacks because they are Black. But that is not the case. Black students are not going to listen to Black teachers from suburbia…just because they are Black; because they… don't turn on the TV everyday and hear something negative about [Duncan Park]. They don't face living in the community where there are people around them who they know sell drugs, who they know have weapons, who they know are dangerous, and living in that community with the expectation, that's the lifestyle, that's an acceptable life. They don't face being third generation welfare people…. And they don't face the low expectation that a lot of kids from [Duncan Park] face and I don't know if they can relate to that. They probably can if they get away from the whole idea; 'just because I'm Black, I'm going to help.' Or 'just because I'm Black, I'm better suited to help.' I don't know if that's completely true.

It was not sufficient therefore to be a Black teacher, but a teacher who acknowledged the differences between their middle class "suburbia" existence and the 'dangers' their students faced (cf. Hidalgo, 1997; Odih, 2002).

Further, Conrad and Kendra expected that teachers would understand, or make efforts to understand, the issues to which students were exposed – drugs, weapons, welfare, low expectations, media images – which affected their schooling and educational lives and outcomes.

As indicated earlier, Conrad and Kendra were in their third year of university when they were initially interviewed. In this regard, they were asked to reflect on how well they thought their high school prepared them for university. Both of them entered university with academic scholarships and received assistance and support from their teachers--hence the expectation would be that they were fairly well prepared for university. But it was only Kendra who felt she was well prepared for university. She admitted that she did not find university difficult; and her professors were very supportive and encouraged her to go to graduate school. The only complaint Kendra had about university was the lack of diversity in course content and offerings that provided information about Blacks and African Canadians in particular. By contrast, Conrad, a business student, felt that he was not sufficiently or adequately prepared for university, specifically "in terms of the level of difficulty" of his program. He claimed that the university students from York Region (a suburban area north of Toronto), compared with many of his peers from similar urban areas of Toronto as himself, were "generally on a different level." He explained: "I think that York region is in a different league in terms of their education system. I know that they pay their teachers more. I think family support for people I know from York Region is generally stronger. I think it's just that the school system in York Region is better than the school system south of York region" (cf. Frenette, 2007). When asked to say what accounts for the differences, Conrad responded:

I mean one of the things that a teacher said to me once is that bad schools get bad teachers, and I'm still not sure if that's true. I am sure there are a few teachers at [Northdale] who I don't think should have been teaching because they brought actually nothing to the classroom. But I know there are a few other teachers who definitely should have, because they were amazing, they cared about students. So I don't know that's actually true that bad schools get bad teachers. I think that's probably part of it. I think the next part of it is just a matter of [other schools] getting different attention than [Northdale] in terms of the type of teachers that want to go there to the type of teachers that actually go there. And I think [it's] the type of students, the student atmosphere, and you can't underestimate the socioeconomic conditions as well in terms of students….

DISCUSSION

The working class neighborhood where Kendra and Conrad lived and attended high school combined with their parents' support, encouragement and aspirations for them helped to inspire their schooling efforts, career aspirations and educational achievements. Although they did not have access to the cultural capital like middle class students to assist them in negotiating their schooling and educational needs, interests and aspirations, they effectively utilized the resources – high aspiration, optimism, determination and family and teacher supports – available to them. In other words, they made use of the multi-cultural capital fostered through their immigrant families and community to chart a path toward attaining their educational goals. But as they indicated, the issues they encountered in school and community were not merely related to their identity as children of immigrant parents but also to race which they understood to intersect with class, immigrant status and gender. In this regard, they named racism as a contributor to the

social and economic situation of people within their community. But interestingly, neither of Conrad nor Kendra recalled any personal experiences with racism; and while they admitted that it exists, they seemed to think that they managed to circumvent its impact because of their positive thinking, their belief in themselves, and not allowing it to "define," "override" or "stop" them, or "govern their lives." It seems, then that Conrad and Kendra coped with racism by telling themselves that if they do not focus on it then they will survive its impact. Their responses to racism could be seen as a form of opposition or resistance to its marginalizing effect – "resistance capital" (Yosso, 2005). This is possibly how they maintained the "hope in the face of structured inequality" that Yosso (2005) suggests, is part of aspirational capital.

Yosso (2005) also talks of navigational capital – the skills to maneuver through social and educational institutions – that the students from Communities of Color draw on to sustain their high levels of achievement (p. 80). So what may be perceived as Kendra and Conrad creating distance between themselves and their community peers by not socializing with them outside of school is likely a way of navigating the "dangers" of the neighborhood which, if they did not exercise such care, might have operated to disrupt their schooling and educational ambitions. This 'distance' that Conrad and Kendra maintained from their peers might have also helped to give their teachers the impression that they were 'different' from the other Black students whom Conrad described as 'lacking the drive to do well.' It is likely then that their 'model minority' status – in Conrad's case, "a Black male who had potential" – appealed to teachers, especially white teachers, who needed to see and work with students who applied themselves to their academic work. Besides, Conrad and Kendra might have successfully used their navigational and multi-cultural capital to negotiate their schooling context, specifically building relationships with 'supportive' teachers, but paradoxically, it might have contributed to maintaining the stereotypes of their peers and the community (cf. Landsman & Lewis, 2006; and Milner 2006 for their discussion of this tendency). So the Eurocentric middle class structure of the school remained intact and not challenged because Conrad and Kendra were able to 'fit in' and succeed through individual efforts. It would be interesting to explore how their constructed "difference" affected the schooling lives of their Black peers. Their success, such as it is, is likely what have them returning to the school, invited by their former teachers, to talk to students. Such invitations are likely premised on the idea that they are "good role models" – especially Conrad as a male – individuals who are able to effectively negotiate social, economic and cultural structures and barriers to attain 'meritorious' success on the basis of their own abilities and skills (cf James & Taylor, 2008)

This notion of "model students" or "good role models" can unwittingly operate as a problem for students who are perceived as 'lacking the drive to do well.' For as long as students like Conrad and Kendra exist in 'urban schools,' then teachers, "with good intentions" as Milner (2006) would say, will probably come to see the problems of low academic achievement, alienation from school, disruptive behaviors, and dropout as more related to the inability of students (and their parents) to meet the expectations of teachers and handle the school program. What is significant here for teachers, is that while students like Kendra and Conrad are prepared to distance themselves from their community peers in order to satisfy the expectations of their parents and teachers, other students might not be willing to do the same because they perceive the cost of doing so – i.e. losing friends and disconnecting from the community – as being too high.

Based on her study of Caribbean youth in New

York City, López (2002) found that there are no "essential" differences between males and females, nevertheless there were "differing race-gender outlooks [which] arise due to differences in experiences, perceptions and responses to racialization and gender(ing) processes, not biology" (p. 69). In the Toronto context as in New York City, as a Black male, Conrad had to contend with the general stereotypes of Black males in the city as athletically- rather than academically-oriented, low achievers, troublemakers, and behavior-problem students (James, 1998). And as a resident of Duncan Park, there are the additional stereotypes of Black males as gang members, drug dealers and gun users. In resisting or working against this racialized gendered profile, and employing his resistance capital, Conrad worked hard to demonstrate that these stereotypes did not apply to him, and in this regard, he abandoned the idea of earning an athletic scholarship – something that he was invited to think about by his coach. Further, with his constructed 'social difference,' he was able to have teachers see his academic potential. Unlike the males in López's (2002) study who were somewhat ambivalent about their educational prospects, Conrad, like Kendra, remained strongly optimistic about education as a means of upward social mobility and a way out of the community (cf. James & Taylor, 2008; Noguera, 2003; Warren, 2005).

The experiences and perceptions of Conrad and Kendra remind us that to deliver an education that is relevant to the students of working class communities and schools like Duncan Park, attention must be paid to the economic, social and cultural context in which they live and through which they understand their possibilities in life (cf. Brantlinger, 2003; Milner, 2006; 2007; Taylor & Dorsey-Gaines, 1998). As such, the challenge for teachers, particularly middle class educators and administrators, irrespective of their race and other related experiences, is to understand how their identities, class privileges, and expectations of their students influence the schooling situation (cf. Landsman & Lewis, 2006). As Conrad and Kendra have indicated, good, caring teachers – that is, teachers who "go above and beyond the call of duty" – are ones who inspired them and made schooling relevant to their needs and interests (cf. Milner, 2007). Such teachers do not necessarily share the same race, minoritized status or experiences, but understand the complex ways in which the selves they bring to the teaching/learning process are informed by their personal histories and perceptions of the students and communities. 'Caring' educators also provide space for students to articulate their needs, interests and aspirations based on their respective social situation and their complex relationship with the community (Finn, 1999; Milner, 2006; Preskill & Jacobvitz, 2001). The classroom, therefore, cannot be seen as separate from the community; for however complicated, distanced, shifting and uneasy the relationships students might have with their community, it remains the context which informs their engagement with school and as Kendra and Conrad have demonstrated, plays a role in their educational and occupational plans. For instance, although Kendra and Conrad did not feel fully part of the community because they never shared the "mentality" of many of their peer group members, they nevertheless, did feel a sense of duty to "give back" to their community and help others who are in the same situation they were once in – it is "a natural impetus," according to Conrad.

CONCLUSION

If schools are indeed to be responsive to the needs, interests, expectations and aspirations of their students, then attention must be given to the complex and diverse ways in which students engage schools and teachers, and

exercise agency. In exercising agency, Conrad and Kendra engaged in constructing a personal path toward attaining their educational and career goals in relation to the socio-cultural, economic and community forces that were operating around them. In the absence of substantial parental knowledge of the schooling system, they relied on their own resources and abilities, and on their reading of the social, cultural, economic, educational, occupational, and community structures to create a path to university. They maintained that their own efforts, initiatives and actions, in concert with those of their parents, teachers, coaches, guidance counselor, educational program, and relevant curriculum, accounted for the social and educational paths they took, the aspirations they constructed, and their educational achievements to date. Today, Kendra is a high school history teacher having graduated with a MA in history, and Conrad is a corporate lawyer, having completed his LLB and MBA degrees.

REFERENCES

Aizlewood, A. & Pendakur, R. (2005). Ethnicity and social capital in Canada. *Canadian Ethnic Studies.* 37(2), pp. 77-102.

Ali, S. (2003). 'To be a Girl': culture and class in schools. *Gender and Education.* 15(3), pp. 269-283.

Anisef, P., Axelrod, P., Baichman, E., James, C., & Turrittin, C. (2000). *Opportunity and uncertainty: Life course experiences of the class of '73.* Toronto: University of Toronto Press.

Bloom, J.L. (2007). (Mis)reading social class in the journey towards college: Youth development in urban America. In *Teachers College Record,* 109 (2), pp. 343-368.

Boyd, M. (2002). Educational attainments of immigrant offspring: Success or segmented assimilation? *The International Migration Review.* 36(4), pp. 1037-1060.

Brantlinger, E. (2003). Who wins and Who Loses?: Social Class and Student Identities. In M. Sadowski (Ed.), *Adolescents at School: Perspectives on Youth, Identity, and Education,* pp. 107-126. Cambridge: Harvard Education Press.

Delgado-Gaitan, C. (1994). Consejos: The power of cultural narratives. *Anthropology & Education Quarterly.* 25(3). Pp. 298-316.

Douglas, B.B., Pitre, E.D., & Lewis, C.W. (2006). African American student-athletes and white teachers' classroom interactions. In J. Landsman & C.W. Lewis (eds). *White teachers/Diverse classrooms: A guide to building inclusive schools, promoting high expectations, and eliminating racism,* pp. 177-149. Sterling, VA: Stylus.

Finn, P.J. (1999). Literacy with an attitude: Educating working class children in their own self interest. Albany, NY: State University of New York Press.

Frenette, M. (2007). Why are youth from lower-income families less likely to attend university? Evidence from academic abilities, parental influences, and financial constraints. Business and Labour Market Analysis: Statistics Canada.

Frey, D. (2004). *The last shot: City streets, basketball dreams.* New York: Houghton Mifflin Company.

Fuligni, A.J. (1998.) Adolescents from immigrant families. In V.C. McLoyd & L. Steinberg (eds.), *Studying minority adolescents: Conceptual, methodological, and theoretical Issues,* pp. 127-144. Mahwah, N.J.: Lawerence Erlbaum Assoc. Inc.

Gaymes, A.M. (2006). Making spaces that matter: Black females in public education. MA thesis, York University, Toronto.

Gulson, K. (2006). A White veneer: Education policy, space and "race" in the inner city. In *Discourse: studies in the cultural politics of education.* 27(2), pp. 259-274.

Henry, F. & Tator, C. (2006). *The colour of democracy: Racism in Canadian society.* Toronto: Harcourt Brace & Company.

Henze, R. C. (2005) Veronica's story: Reflections on the limitations of "support systems": In L. Pease-Alvarez & S. Schecter (eds.), *Learning, Teaching and Community,* pp. 257-276. Mahwah, NJ: Lawrence Erlbaum Assoc., Inc.

Hidalgo, N.M. (1997). A layering of family and friends: Four Puerto Rican families' meaning of community. Education and Urban Society, 30(1), 20-40.

James, C.E. (2005). Constructing aspirations: The significance of community in the schooling lives of children of immigrants. In L. Pease-Alvarez & S. Schecter (eds.) *Learning, Teaching and Community,* pp. 217-233. Mahwah, NJ: Lawrence Erlbaum Assoc., Inc.

James, C.E. (2005a). *Race in play: Understanding the socio-cultural worlds of student athletes.* Toronto: Canadian Scholars' Press.

James, C.E. (2003). Schooling, basketball and U.S. scholarship aspirations of Canadian student athletes. *Race, ethnicity and Education* 6(2), 123-144.

James, C.E. (1998). "Up to no good": Black on the Streets and Encountering Police. In V. Satzewich (ed.) *Racism and Social Inequality in Canada: Concepts, Controversies and Strategies of Resistance,* pp. 157-176. Toronto: Thompson Education Publishing, Inc.

James, C.E. & Taylor, L. (2008). "Education will get you to the station": Marginalized students' experioences and perceptions of merit in accessing university. *Canadian Journal of Education* 31 (3), 567-580.

C.E. James (2012). Students "at risk": Stereotyping and the schooling of Black boys. *Urban Education*. Vol. 47, No.2, pp. 464-494.

James, C.E. & Haig-Brown, C. (2001). "Returning the Dues": Community and the Personal in a University-School Partnership. Urban Education. 36 (2), 226-255.

Landsman, J. & Lewis, C.W. (eds) (2006). *White teachers/Diverse classrooms: A guide to building inclusive schools, promoting high expectations, and eliminating racism.* Sterling, VA: Stylus.

Lareau, A. (2002). Invisible Inequality: Social Class and Childrearing in Black Families and White Families. *American Sociological Review.* 67 (5), 747-776

Lee, J-W. & Barro, R.J. (2001). Schooling Quality in a Cross-Section of Countries. *Economica.* 68, 456-488.

López, N. (2002). Race-Gender Experiences and Schooling: second-generation Dominican, West Indian, and Haitian youth in New York City. *Race Ethnicity and Education.* 5 (1), pp. 67-89.

Lorinc, J. (2003). Class Struggle: inside out deteriorating schools. *Toronto Life,* pp. 98-99.

Louie, V. (2001). Parents' aspirations and investment: The role of social class in the educational experiences of 1.5 and second –generation Chinese Anmericans. *Harvard Educational Review,* 71 (3), 438-474.

Mayes, B. (2001). Educational programnming for children living in poverty: Possibilities and challenges. In R.P. Solomon & J. Portelli (eds.), *The erosion of democracy in education: From critique to possibilities,* pp. 269-296. Calgary: Detselig Enterprises.

McLaren, P. (1998). Life in schools: *An introduction to critical pedagogy in the foundations.* New York: Longman.

Milner, H.R. (2007). African Amertican males in urban schools: No excuses – teach and empower. *Theory into Practice* 46(3), 239-246.

Milner, H. R. (2006). But good intentions are not enough: Theoretical and philosophical relevance of teaching students of color. In J. Landsman & C.W. Lewis (eds). *White teachers/ Diverse classrooms: A guide to building inclusive schools, promoting high expectations, and*

eliminating racism, pp. 79-90. Sterling, VA: Stylus.

Myles, J. & Feng, H. (2004). Changing colours: spatial assimilation and new racial minority immigrants. *Canadian Journal of Sociology, 29* (1), 1-35.

Ng, R. (1993). Racism, sexism, and nation building in Canada. In C. McCarthy & W. Crichlow (eds.) *Race, identity and representation in education,* pp. 50-59. New York: Routledge.

Noguera, P.A. (2003). The trouble with Black boys: The role and influence of environmental and cultural factors on the academic performance of African American males. Urban Education, 38 (4), 431-459.

Odih, P. (2002). Mentors and role models: Masculinity and the educational 'underachievement' of young Afro-Caribbean males. *Race, Ethnicity and Education*, 5 (1), 91-105.

Ontario Human Rights Commission (2003) *Paying the price: The human cost of racial profiling.* Toronto

Portes, A. & MacLeod, D. (1999). Educating the second generation: Determinants of academic achievement among children of immigrants in the United States. Journal of *Ethnic and Migration Studies* 25(3), 373-396.

Preskill, S. & Jacobvitz, R. S. (2001) *Stories of teaching: A foundation for educational renewal.* Upper Saddle River, NJ: Merrill Prentice Hall

Rong, X.L. & Brown, F. (2001). The effects of immigrant generation and ethnicity on educational attainment among young African and Caribbean Blacks in the United States. *Harvard Educational Review* 21 (3), 536-565.

Silverman, D. (2000). Analyzing talk and text. In N.K. Denzin & Y.S. Lincoln (eds.), *Handbook of Qualitative Research,* pp. 821-834. Thousand Oaks, CA: sage Publications.

Snyder, L.L. (2005). The question of "whose truth"? The privileging of participant and researcher voices in qualitative research. In D. Pawluch, W. Shaffir & C. Miall (eds). *Doing ethnography: Studying everyday life,* pp. 128-140. Toronto: Canadian Scholars' Press.

Taylor, D. & Dorsey-Gaines, C. (1998). *Growing up literate: Learning from inner-city families.* Portsmouth, NH: Heinemann.

Warren, S. (2005). Resilience and refusal: African-Caribbean young men's agency, school exclusion, and school-based mentoring programmes. *Race, Ethnicity and Education* 8 (3), 243-259.

Waters, M. (1999). Black Identities: *West Indian Immigrant dreams and American realities.* Cambridge: Harvard University Press.

Weis, L. & Fine, M. (2005). *Beyond silenced voices: Class, race and gender in United States schools.* Albany, NY: State University of New York Press.

Yosso, T. J. (2005). Whose culture has capital? A critical race theory discussion of community wealth. *Race, Ethnicity and Education* 8(1), 69-91.

Zhou, M. (1997). Growing up American: The challenge confronting immigrant children and children of immigrants. *Annual Review of Sociology.* 23, 63-95.

[1] This article first appeared in H. Richard Milner (ed.) (2010). *Culture, Curriculum, and Identity in Education.* New York: Palgrave Macmillan, pp. 117 – 139.

Bringing Awareness of Aboriginal Issues in the Citizenship Examination for New Canadians

Published in *Directions* October 2018

By Chandrakant P. Shah, MD, FRCPC, O.ONT, Professor Emeritus, Dalla Lana Faculty of Public Health University of Toronto Consultant Physician, Anishnawbe Health Toronto Board Member, Anishnawbe Health Foundation

BIOGRAPHY

Chandrakant Shah is a Canadian doctor, researcher, and social activist. As a visible minority seeking to practice medicine after immigrating to Canada in 1965, Dr. Shah experienced a significant amount of discrimination in his professional life. He is currently an Honorary Consulting Physician at Anishnawbe Health Toronto, professor emeritus of the Dalla Lana School of Public Health at the University of Toronto, Honorary Staff of The Hospital for Sick Children and Courtesy Staff at the St. Michael's Hospital. Even after many years, Dr. Shah remains passionate for ongoing advocacy for visible minorities, aboriginal health and safety, health of marginalized groups, diversity, among many others.

ABSTRACT

The Citizenship Department requires all immigrants who wish to become Canadian citizens be well versed in certain aspects of Canada; however when I first encountered it, there were only three cursory lines about the Aboriginal population. There was no mention about the treaties that were signed; about the forced process of assimilation through residential schools; the "sixties scoop"; and how systematically, Aboriginal peoples were stripped of their culture, heritage, language and belief system.

In 1991, I began a one-person letter writing campaign about the need for a change in the Citizenship Guide to provide more information about Aboriginal peoples to new immigrants. Since Confederation, new immigrants represent at least sixteen percent of the Canadian population, yet they have very little or almost no knowledge about Aboriginal peoples – leading many new Canadians to hold stereotypical negative views towards Aboriginal peoples.

My letter-writing campaign lasted for almost three years and as a result in 1994, the materials provided in citizenship guide and the citizenship exams were updated. The guide now includes relevant material about Aboriginal peoples and questions on the exam. Since 1994, over four million new Canadians are now aware of Aboriginal peoples and their history, as will all the future newcomers to Canada.

INTRODUCTION

I immigrated to Canada in 1965 and received my Canadian citizenship in 1970. Being a Commonwealth citizen, all I needed to gain citizenship was to take an oath in front of citizenship judge. No examination was required. However , my wife, who came to Canada in 1966, did not apply for her citizenship promptly, because of a reluctance to give up her citizenship status in India. In 1988, my wife decided that she would begin the application process for gaining Canadian citizenship. Rules had changed by then. To be granted Canadian citizenship, an individual must complete an application process, which includes a citizenship test that all applicants must pass. This test aims to evaluate whether applicants possess knowledge concerning Canadian history and political system that the typical Canadian would be expected to know. Information that could be included on the test may range from the names of provinces, to the name of the first prime minister, to the date of Confederation (Government of Canada, 1988).

The content of the citizenship test at the time was all to be found in a guide that the Canadian government had assembled, a document that became ever present in my house. Out of curiosity, I perused through the guide, not expecting much new information. The following was written in the guide about aboriginal people:

"The Indians and Inuit (also called Eskimos) lived in this country long before it was also known as Canada. They developed many languages and cultures. Their different ways of life developed in relation to the land and vegetation, wild life and weather unique to different parts of the country. Corn, potatoes and tobacco were first cultivated by natives of America, and they invented the kayak, canoe and snowshoes(Government of Canada, 1986)."

At this point in my life, I had developed a deeper understanding of Canadian history and culture than I had possessed when I first came to Canada. I had learned about Canada before the colonists, about the aboriginal clans who had lived across the vast territory, and about their lives after their lands were taken from them either by through the signing of treaties or forceful eviction. Because of this deeper understanding, I was quite taken aback by the sheer lack of information pertaining to those very Aboriginal people. The guide did not mention anything at all about the treaties signed between the crown and different tribes before and after confederation and even today; and what obligations we have towards aboriginal people under those treaties. Treaties are signed between the nations; obligations signed under the treaties are perpetual in nature and by signing those treaties we had accorded different aboriginal tribes nationhood.

I was incredibly distressed by this fact, as it indicated that new Canadians were becoming Canadian without understanding or even discovering our unfair treatment towards aboriginal people, a necessary part of Canada's rich and extensive past. In my mind such an occurrence could not be accepted as it obscured the truth and detached Aboriginal people from their integral role within Canada's history.

THE IMPORTANCE OF CANADIAN HISTORY

Since confederation, Canada has relied heavily on immigrants for its population growth. On an average 16% of the Canadian population is made up of individuals who were born outside of the country (Canadian Social Trend, 2017). According to the 1991 Census, immigrant populations made up 19.5% (1,966,555 persons) of Ontario's total population (Statistics Canada, 1994). These individuals, upon arriving in Canada, are usually adults or in their late teens. In 1991, approximately 13% of the total population of Canada reported a mother tongue other than English or French, as much of the population consists of immigrants. Mother tongue is defined as the first language a person learned at home in childhood and still understood at the time of the survey (Statistics Canada, 1994). In 1988, there were approximately 40,000 new immigrants arriving in Canada, who did not possess the ability to communicate in English or French, Canada's two official languages (Canada Yearbook, 1988). This, and the fact that 17% of female immigrants and 12% of male immigrants had less than a eleven grade education, resulted in many immigrants being unable to read normally accessible material about Canada's history (Statistics Canada, 1994). Many immigrants had little to no understanding of Canada's history and even less of an understanding of Canada's Aboriginal people. As these immigrants were generally hard working, their average employment income in 1990 for those who were settled for five or more years was $24,530 it was extremely difficult for them to understand why aboriginal people, who had an average employment income of $14 561, have so many difficulties in prospering in Canada (Grant , 1999; Kerr et al., 1995). The lack of easily accessible reading material about Canada's history only exacerbated their difficulty in empathizing with Aboriginals.

The last residential schools closed down in 1990, and many aboriginals were living in extremely underprivileged settings—the poorest of the poor (Shah and Johnson, 1992). Their general health was disgraceful in the light of the accomplishments of modern medicine and seemed to further deteriorate as aboriginal peoples faced increasing discrimination in social settings, becoming increasingly ostracized (Ponting, 1988). The lasting effects of colonization, forced assimilation, and harsh physical and emotional treatment were a large part of the high incidences of unemployment, substance abuse, and domestic violence in the aboriginal population (Reading and Wien, 2009). While the struggles of the aboriginal population were quite fathomable in such historical context, the significant dearth of accessible material for new Canadian immigrants meant that many immigrants saw the Aboriginal population as being an unreasonably handicapped community and had developed their stereotypical negative images of them (Ponting 1988).

I viewed the lack of information concerning aboriginal history within the citizenship test preparatory guide as either a slight or oversight on the aboriginal population and their ancestors. The citizenship test should display that applicants understand the complete cultural makeup of the country they are attempting to join, while also giving them the historical context to understand Canadian society.

ADVOCACY FOR CHANGE IN CITIZENSHIP GUIDE

Appalled at the state of the citizenship guide, I began to devise a strategy that would allow me to draw attention to this unfortunate error repeating after 125 years of confederation. At the time, I had developed a fairly large network within the public service

and decided that using my familiarity with these contacts would help me make the state of the citizenship guide a pressing issue for the Department of Multiculturalism and Citizenship.

Since this issue was one that the Canadian government was directly responsible for, I believed that the issue could be solved if I gained the endorsement of credible groups and persons in Canadian society. These endorsements would bring a larger degree of credibility to the issue's urgency, to a much greater degree than I could hope to bring myself. Before my journey into this unknown territory, I also consulted with Honourable Justice Rosalie Abella, who was later appointed to the Supreme Court of Canada in 2004. She was a sympathetic listener and confirmed that this issue was indeed in the political realm, granting me a sense of confidence.

A FLURRY OF LETTERS

However, the heart of my campaign for greater inclusion of Aboriginal history education was my personal letter campaign. Through the months of May and June in 1991, I sent more than twenty-five letters to individuals and organizations who could further my cause. These entities spanned Canada and included then Toronto Mayor Art Eggleton's office, the Canadian Public Health Association and the Ontario Public Health Association (both of which I was a member of), the Archbishop of the Anglican Church of Canada, Moderator of United Church of Canada, the National Catholic Bishops' Assembly, the Assembly of First Nations, the Union of Ontario Indians, and the Native Council of Canada.

The letters I sent were of the same format, explaining the nature of the issue, how I believed it could be solved, and the contact information for the individual government officials whom had the authority to directly affect change.

The following is the general format that my letters were written in:

I have a specific proposal that I would like to bring to the attention of your organization. The proposal deals with two issues; social justice by increasing understanding about the Aboriginal people in historical context thus creating racial harmony in Canada and nation building.

Since confederation, Canada has relied heavily on immigrants for its population growth. Twenty percent of the Canadian population is made of the individuals who were born outside the country i.e. immigrants; for Ontario according to 1986 census, the immigrant population made up 23% (2,095,860 persons) of the province's total population. These individuals when they arrive in the country are usually adults or in their late teens and in recent years they also come under the category of family reunification as elderly family members. In 1986, approximately 15% of the total population of Ontario reported a mother tongue other then English or French, most of them being immigrants. In 1988, there were approximately 40,000 new immigrants arriving in Ontario who had no ability to communicate in either official language which would render them unable to read usual available sources of information about Canada. One quarter of immigrant women and 21% of immigrant men had less then grade nine education. Many have had little benefit of learning the Canadian history and many of them know next to nothing about the People of the First Nations. These immigrants are usually hard working individuals and over all in 1985 their average employment income were higher ($20,208) compared with the non-immigrant population ($19,174) and aboriginal people ($14,699). Many of these immigrants usually fail to understand why the aboriginal people in this land have difficulties.

In contrast many of our native people are the poorest of poor in this country. Their health status is a national disgrace. The unemployment rate amongst them is very high. There is increased incidence of substance abuse and family violence. There are many reasons behind these deplorable situations. Many of these could be related to colonization, imposition of alien culture and postcolonial administrative policies. This could be understood only if one studies this in the historical context. As indicated above many of the new citizens of this country have very little background knowledge of the history. The document provided to individuals preparing for her/his citizenship examination contains following on aboriginal people; The Indians and Inuit (also called Eskimos) lived in this country long before it was also known as Canada. They developed many languages and cultures. Their different ways of life developed in relation to the land and vegetation, wild life and weather unique to different parts of the country. Corn, potatoes and tobacco were first cultivated by natives of America, and they invented the kayak, canoe and snowshoes.

There are few pictures depicting origins and early life styles of Aboriginal people. The prospective citizenship candidates are interviewed by the Citizenship judges for approximately 20 minutes. I was told it was difficult for them to cover materials on aboriginal people because of the shortage of time.

In recent years, with the increased emphasis by the indigenous people on the self determination and land claims settlements, it has become imperative that the non-native group, including new Canadians, understand the plight of the natives for their rights. In democratic society, one would ideally like to have citizens who are well informed on important issues such as constitution, founding of the country by three cultures and the obligations the country has when it signed the treaty with the First Nations People. This would help the building of Canada in a just and fair manner.

Hence I would like the Canadian Government to initiate a program which would consider the following: all the new immigrants and particularly the prospective candidates for the citizenship in Canada receive the education about the indigenous people (Indians and Intuits) in terms of their life styles before the colonization, the treaties signed by the British Crown with the aboriginal people during colonization and after the confederation, major obligations under the treaties that the Canadian population has towards natives, and how we have met those obligations over the past 124 years. It should also include how systematically governments of the day had tried to assimilate the native population and try to explain the present predicaments we are in. This program should be developed by the appropriate Government Department in collaboration with the Aboriginal groups. There should be questions on Aboriginal people in the citizenship examination otherwise people have tendency to ignore the historical material as not relevant.

I would like to request that your Organization endorse the proposal and write to the following Government Ministers raising the above issue and asking them to implement a program which would consider the principles outlined above. 1) The Honorable Elaine Ziemba, Minister of Citizenship, Government of Ontario, and other provincial ministers responsible for similar portfolio; 2) Hon. Mr. Bernard Valcourt , Minister of Employment & Immigration; 3) Hon. Mr. Robert deCotret, Secretary of State; 4) Hon. Mr. Gerry Weiner, Minister of State, Multiculturism & Citizenship, ; 5) and any other appropriate organizations or individuals. When you write to any of the Government Ministers or agencies I would appreciate it, if I could receive the copy of your letter. The second request I have of

you is that if we were to make a deputation to the appropriate Ministers, would your Organization participate in such an activity.

In summary this is a modest proposal, which if implemented could go a long way in instituting a social justice, racial harmony and building the Canada for the next century for all its people and not just a select few.

While some of my letters were not met with endorsements of my proposed reform, I did receive a number of positive responses to my requests from groups like the Canadian Public Health Association, the City of Toronto, and the Ontario Social Development Council. Particularly, the Canadian Public Health Association was active in furthering my letter writing campaign, sending letters endorsing my reform proposal to the Citizenship Judges, the Department of Multiculturalism and Citizenship, and the Minister of Employment and Immigration. The City Council of Toronto actually voted to create amendments that would support the circulation of accurate and detailed Aboriginal history, and openly endorsed my cause (Appendix 1). The responses to my own letters to the parties within the government generally followed a similar pattern. They generally outlined some of their initiatives to increase Aboriginal information access and then informed me that I would be better served discussing the issue with the Minister of Multiculturalism and Citizenship. In the process, I met a staff member in the federal Department of Secretary of State, a Metis man who understood what I was trying to accomplish. He became an internal agent of change within the government and I am extremely grateful for his contributions to the effort.

AN ACKNOWLEDGMENT

In August of 1991, I received a response from the Minister of Multiculturalism and Citizenship. The response to my letter from the department informed me that the Minister was very appreciative of my comments and "desire to increase racial harmony in Canada":

Multiculturalism and Citizenship Canada / Multiculturalisme et Citoyenneté Canada

Deputy Minister / Sous-ministre

Ottawa K1A 0M5

NOV 13 1991

Dr. C.P. Shah
Department of Preventive Medicine
and Biostatistics
Faculty of Medicine
University of Toronto
Toronto, Ontario
M5S 1A8

Dear Dr. Shah:

Recently, a colleague from Indian and Northern Affairs sent me a copy of your proposal to promote understanding of Aboriginal people. As you are aware, this proposal was received and acknowledged last July by the Minister of Multiculturalism and Citizenship, Gerry Weiner.

The comments expressed in your letter have been referred to the Citizenship Registration and Promotion Branch. You may be interested to know that their Promotion and Education unit, which is responsible for citizenship education publications, is working on new educational materials for citizenship applicants and the general Canadian population. Your suggestions will be kept in mind during the preparation of these new education tools and I am confident that the new educational materials will better reflect the important role of Canada's First Nations.

The Department of Multiculturalism and Citizenship shares your interest in promoting mutual understanding and awareness among Canadians and agrees that public education is the first step in achieving that goal. As the Minister pointed out in his letter of August 1st, however, citizenship judges are not required to use a standard set of questions during citizenship interviews. To do so would limit the applicant to learning only standard answers instead of studying and learning a range of information relating to Canada's history, geography and governmental system. I will, however, bring your concerns to the attention of our Senior Citizenship Judge, Elizabeth Willcock, who may want to share your concerns with the citizenship judges.

.../2

Canada

Dear Dr. Shah,

The Honourable Gerry Weiner has asked me to thank you for your thoughtful letter regarding the proposal that new immigrants to Canada receive instruction about our native peoples. The Honourable Robert R. de Cotret has also brought your letter to the Minister's attention. Mr. Weiner appreciates knowing about your laudable desire to increase racial harmony in Canada.

Your proposal is particularly interesting, since part of the mandate of the Department of Multiculturalism and Citizenship is the promotion of greater understanding among all Canadians. The integration of Canadians of all backgrounds into the mainstream as equal citizens also represents the basic thrust of most of the activities of the department.

Your suggestion to include questions about the history of our aboriginal peoples on the citizenship examination has been noted. However, citizenship judges are not required to use a standard set of questions. All citizenship judges are free to select from the instructional material supplied to citizenship applicants a cross-section of questions about Canada's history, geography and governmental system. The educational materials for citizenship applicants are currently being reviewed by departmental officials in the Citizenship Registration and Promotion Branch. Your comments about Canada's aboriginal peoples will be kept in mind during the preparation of the new citizenship education document.

In closing, I would like to thank you once again for your proposal and for your active concern in citizenship education.

Yours Sincerely,

Mary Gusella (personal correspondence)

I also received a letter from Senior Citizenship judge, Hon. Elizabeth Willcock assured me "… the Citizenships Judges would be most supportive of including this important aspect of Canada's heritage as part of the Citizenship hearing and Dr. Shah, you will have my complete cooperation in this important endeavour" (Appendix 2). The deputy Minister of Citizenship Department to Ottawa invited me to a meeting where I was informed that the Citizenship Registration and Promotion Branch of the Department were reviewing the content of the educational materials for citizenship applicants. I was assured that my comments and proposed reforms would be taken into account while the new citizenship document was being created. Shortly after this meeting, I received a letter from the Department of Citizenship that conveyed a similar sentiment; below is an excerpt of that letter.

"Again, thank you for taking the time to write to the Minister. Mr Weiner hopes that you will remain actively involved in encouraging Canadians nation-wide to become more aware of the valuable contributions the First Nations have made and continue to make, to our unique Canadian heritage" (Personal correspondence, 1991],

At the time, I was unsure of whether my words and actions had truly affected change—was I simply being placated for the time being? Over time I have learned that the only way to truly affect change is to sustain one's efforts until they can see the change they have lobbied for. Consistent questioning and correspondence allows one to gradually become immersed in the process of change. In this case, I believe that my sustained correspondence with the Department of Multiculturalism and Citizenship helped their awareness of lack of Aboriginal history in their document and it needed to be addressed by the Department.

SEEING IS BELIEVING

In 1994, the new and improved Citizenship Test Guide was released to the public. I received a phone call from my Métis friend in the government trying to inform me success of my continued efforts and congratulated me. Unfortunately, I was absent from my office that day. When he later phoned me at home, I was out of town and he ended up conveying his message to my wife, profusely thanking me for my efforts on behalf of Aboriginal peoples.I was delighted to note the appearance of a lengthy section concerning Aboriginal history in Canada and questions about aboriginal people were included in the citizenship examination. The updated section made distinctions between the groups of Aboriginals and explained the treaties they signed. The following is an excerpt from the updated section:

The ancestors of Aboriginal peoples are believed to have migrated from Asia many thousands of years ago. They were well established here long before explorers from Europe first came to North America. Diverse, vibrant First Nations cultures were rooted in religious beliefs about their relationship to the Creator, the natural environment and each other.

Aboriginal and treaty rights are in the Canadian Constitution. Territorial rights were first guaranteed through the Royal Proclamation of 1763 by King George III, and established the basis for negotiating treaties with the newcomers— treaties that were not always fully respected.

From the 1800s until the 1980s, the federal government placed many Aboriginal children in residential schools to educate and assimilate them into mainstream Canadian culture. The schools were poorly funded and inflicted hardship on the students; some were physically abused. Aboriginal languages and cultural practices were mostly prohibited. In 2008,

Ottawa formally apologized to the former students.

Today, the term Aboriginal peoples refers to three distinct groups:

Indian refers to all Aboriginal people who are not Inuit or Métis. In the 1970s, the term First Nations began to be used. Today, about half of First Nations people live on reserve land in about 600 communities while the other half live off reserve, mainly in urban centres.

The Inuit, which means "the people" in the Inuktitut language, live in small, scattered communities across the Arctic. Their knowledge of the land, sea and wildlife enabled them to adapt to one of the harshest environments on earth.

The Métis are a distinct people of mixed Aboriginal and European ancestry, the majority of whom live in the Prairie Provinces. They come from both French- and English-speaking backgrounds and speak their own dialect, Michif.

About 65% of the Aboriginal people are First Nations, while 30% are Métis and 4% Inuit. (Government Canada, 2012).

Subsequent changes in the guide in 1999, 2004, and 2010 have kept up with these changes. Statistics Canada reports that 5.4 million immigrants have arrived to Canada from 1994-2016 of which almost 78% have received Canadian citizenship, resulting in approximately 4.2 million immigrants to Canada having benefited from the change in test content in past 24 years (Statista, 2018; Troper, 2014; Continuous Reporting System, 2014). It seemed that change had indeed been affected, and I believe it helped Canada become a more informed society, will increased racial harmony and will build inclusive nation which we all will be proud of! This action was in keeping with the spirit of the 93rd Recommendation of the Truth and Reconciliation Commission, some twenty years ago which states:

93. We call upon the federal government, in collaboration with the national Aboriginal organizations, to revise the information kit for newcomers to Canada and its citizenship test to reflect a more inclusive history of the diverse Aboriginal peoples of Canada, including information about the Treaties and history of residential schools (Truth and Reconciliation Commission, 2015).

AN ACKNOWLEDGMENT

I would like to thank Mr. Alexander Gomes for his help in preparation of this manuscript, and many organizations and institutions who wrote letters to the Federal Government for the change I had requested. Thanks to a special friend Charles in the Department of Secretary of State for his encouragement and being an internal champion for change.

REFERENCES

Canada, Truth and Reconciliation Commission of Canada. (2015). Truth and Reconciliation Commission of Canada: Calls to Action. Winnipeg: Truth and Reconciliation Commission of Canada.

Demography: Language. (1988). In Canada Yearbook (pp. 2-5 – 2-7). Statistics Canada.

Dirks, G. E. (2006, February 7). Immigration Policy in Canada. Retrieved from https://www.thecanadianencyclopedia.ca/en/article/immigration-policy.

Government of Canada. (1986). Discover Canada: The Rights and Responsibilities of citizenship: study guide. Ottawa: Citizenship and Immigration Canada.

Government of Canada. (1988). Prepare for the citizenship test. Ottawa: Citizenship and Immigration Canada

Government of Canada. (2012). Discover Canada: The Rights and Responsibilities of citizenship: study guide. Ottawa: Citizenship and Immigration Canada.

Ponting, J. R. (1988). Public Opinions on Aboriginal Peoples' Issues in Canada. Canadian Social Trends, 11, 9-17.

Reading, C., and Wien, F. (2009). Health Inequalities and Social Determinants of Aboriginal Peoples' Health. Prince George, British Columbia: National Collaborating Center for Aboriginal Health.

Shah, C. P., & Johnson, R. (1992). The Health of Canadian Indians, Australian Aborigines and New Zealand Maori. Canadian Family Physician, 38, 1205-1219.

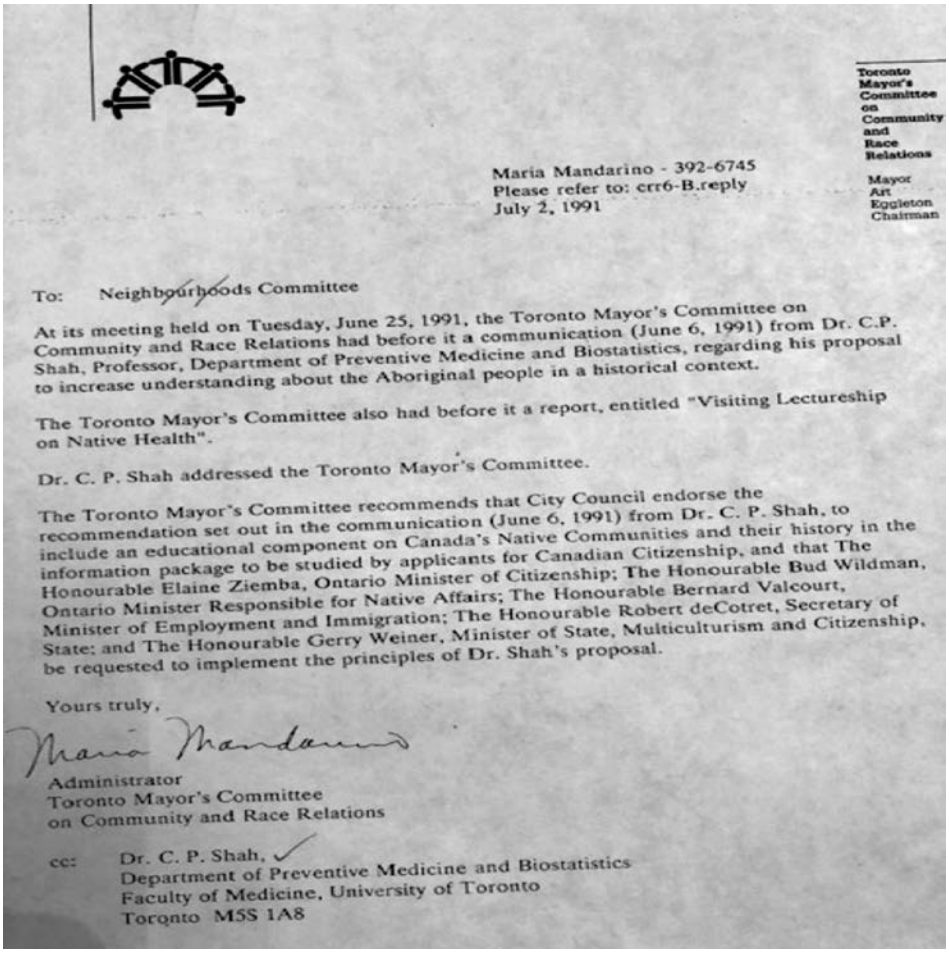
The Continuous Reporting System in International Migration in Americas. (2014). Canada – Overview of the history of international migration in Canada. Retrieved from http://www.migracionoea.org/index.php/en/sicremi-en/238-canada-1-si-ntesis-historica-de-la-migracio-n-en-canada-3.html.

Statista. (2018). Number of Immigrants in Canada from 2000 – 2017. Retrieved from https://www.statista.com/statistics/443063/number-of-immigrants-in-canada.

Troper, H. (2017, September 19). Immigration in Canada. Retrieved from https://www.thecanadianencyclopedia.ca/en/article/immigration.

APPENDICES

Appendix I: Letter from Toronto Mayor's Committee on Community & Race Relation to the author.



Toronto Mayor's Committee on Community and Race Relations

Mayor Art Eggleton Chairman

Maria Mandarino - 392-6745
Please refer to: crr6-B.reply
July 2, 1991

To: Neighbourhoods Committee

At its meeting held on Tuesday, June 25, 1991, the Toronto Mayor's Committee on Community and Race Relations had before it a communication (June 6, 1991) from Dr. C.P. Shah, Professor, Department of Preventive Medicine and Biostatistics, regarding his proposal to increase understanding about the Aboriginal people in a historical context.

The Toronto Mayor's Committee also had before it a report, entitled "Visiting Lectureship on Native Health".

Dr. C. P. Shah addressed the Toronto Mayor's Committee.

The Toronto Mayor's Committee recommends that City Council endorse the recommendation set out in the communication (June 6, 1991) from Dr. C. P. Shah, to include an educational component on Canada's Native Communities and their history in the information package to be studied by applicants for Canadian Citizenship, and that The Honourable Elaine Ziemba, Ontario Minister of Citizenship; The Honourable Bud Wildman, Ontario Minister Responsible for Native Affairs; The Honourable Bernard Valcourt, Minister of Employment and Immigration; The Honourable Robert deCotret, Secretary of State; and The Honourable Gerry Weiner, Minister of State, Multiculturism and Citizenship, be requested to implement the principles of Dr. Shah's proposal.

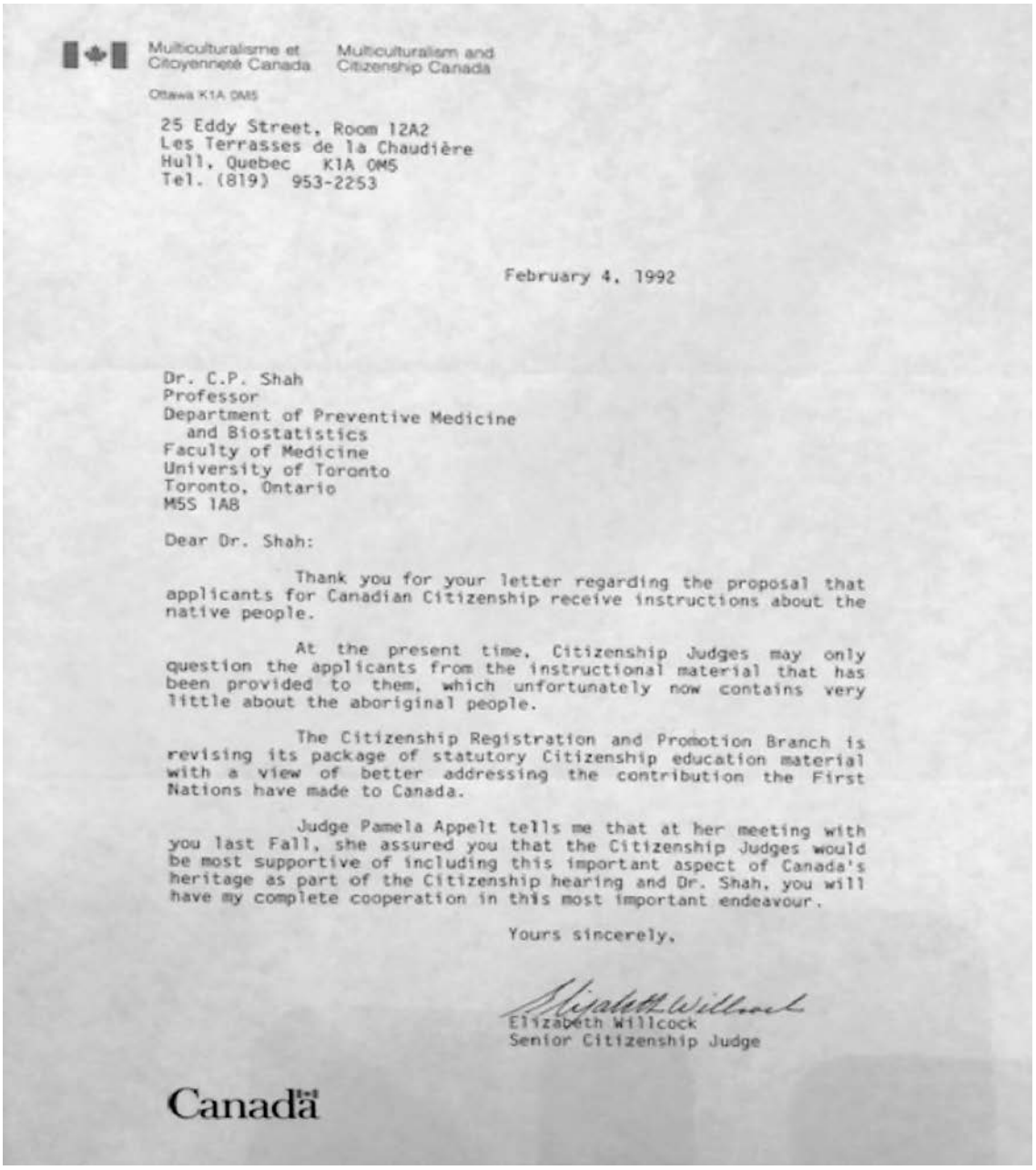
Yours truly,

Maria Mandarino

Administrator
Toronto Mayor's Committee
on Community and Race Relations

cc: Dr. C. P. Shah,
Department of Preventive Medicine and Biostatistics
Faculty of Medicine, University of Toronto
Toronto M5S 1A8

Appendix 2: Letter from Senior Citizenship Judeg Elizabeth Willcock to the author.



Multiculturalisme et Citoyenneté Canada
Multiculturalism and Citizenship Canada

Ottawa K1A 0M5

25 Eddy Street, Room 12A2
Les Terrasses de la Chaudière
Hull, Quebec K1A 0M5
Tel. (819) 953-2253

February 4, 1992

Dr. C.P. Shah
Professor
Department of Preventive Medicine
and Biostatistics
Faculty of Medicine
University of Toronto
Toronto, Ontario
M5S 1A8

Dear Dr. Shah:

Thank you for your letter regarding the proposal that applicants for Canadian Citizenship receive instructions about the native people.

At the present time, Citizenship Judges may only question the applicants from the instructional material that has been provided to them, which unfortunately now contains very little about the aboriginal people.

The Citizenship Registration and Promotion Branch is revising its package of statutory Citizenship education material with a view of better addressing the contribution the First Nations have made to Canada.

Judge Pamela Appelt tells me that at her meeting with you last Fall, she assured you that the Citizenship Judges would be most supportive of including this important aspect of Canada's heritage as part of the Citizenship hearing and Dr. Shah, you will have my complete cooperation in this most important endeavour.

Yours sincerely,

Elizabeth Willcock
Senior Citizenship Judge

Canada

[1] A condensed version of this paper was featured in the Canadian Race Relation Foundation's 150 Stories project. It can be found here: http://www.crrf-fcrr.ca/en/programs/our-canada/150-stories/search-150-stories/item/26843-canada-129-150-dr-chandrakant-shah.

How Nationalism Influenced Settlements and Integration of the Racialized Migrants in Canada

Published in *Directions* October 2018

By Kon K. Madut

BIOGRAPHY

Dr. Madut is a Regular Part-time Professor with the University of Ottawa, Faculty of Social Sciences and a Full-time Reviewer with the municipal government in Ottawa, Canada. Conferreda Ph.D. in Social Science by Tilburg University, The Netherlands, Masters of Liberal Studies (MLS) degree from Fort Hays State University, Hays, Kansas, B.A in Sociology from Alexandria University, Egypt, Social Services Diploma from Algonquin College, Ottawa, Canada and Certificate of Teaching in Higher Education from the University of Ottawa. Dr Madut's current teaching includes Ethnic and the National Question, Comparative Politics: Identity Issues, Social Geography, the Sociology of Work and Organization, Immigration Policies and Multiculturalism in Canada and Quebec. Dr. Madut's research work and interest centred on immigration, employment, ethnicity, nationalism and socio-cultural issues, and the interplay between them as they affect the course and pace of social relations and human well-being. These include global and local issues of cultural and ethnic diversity, construction of groups or individuals identity, communities and its influences on health and human well-being. He is a member of Canadian Sociological Association CSA, American Sociological Association ASA and an Associate of the Taos Institute, USA.

ABSTRACT

This article explores the roots of the theoretical and ideological background that influenced sociopolitical construction of ethnicized communities, identity politics and socioeconomic exclusion of racialized migrants in Canada. The article searches for the historical patterns of biased immigration policies and ideologies that determined who should and should not be admitted to Canada as preferred immigrants with better prospect of integration. This article discusses the era of racial classification and categorization and goes until the

era of multiculturalism, equity, and affirmative action acts of 1986. The article concluded that past historical practices pertained to social exclusion of groups based on race and ethnicity, have paved ways to discriminatory policies that continue to affect progress of racialized immigrants socially, politically and economically to the present time. Further, the article evaluates what has changed in immigration policies throughout the history of resettlement and integration of the racialized migrants and provides new narratives that pave ways for development of human centric and inclusive immigration and resettlement policies.

Keywords; Nationalism, race, identity, integration, migration, exclusion

BACKGROUND

The contributions of immigrants to Canada in the areas of social, cultural, economic and politics have been acknowledged by many researchers. However, an 84-participant focus group study done by Kunz, Milan and Schetagne (2000) concluded that racialized minority migrants continue to face difficulties in resettlement and integrations process (p.40). Another study on socioeconomic integration of racialized minorities, conducted by George and Doyle (2010), indicated that "racialized minorities, like Aboriginal peoples, are seriously disadvantaged in Canada's workforce; with large gaps between labor market prospects for racialized minority and non-racialized minority populations". The neo-liberalized policies that have shaped the fabric of the current Canadian society, immigration process and its future prospects have led scholars, including Knowles (2007), to ask what Canada will look like decades or a century from now if changes are not introduced to strengthen the current immigration policies.

For purposes of this article, the discourse focusses on certain historical sociopolitical constructions of racialized minorities in Canadian society that underpin their current socioeconomic status and continue to hinder their successful integration as effective contributors in Canadian socio-cultural and economic development. According to Taylor (2008), the disproportionate success of majority groups on one hand, and the disproportionate failures of racialized minorities on the other hand, can be traced to inequalities, injustices and social crises founded in deep-rooted socio-political and cultural nationalism constructed by Canada's "founding fathers," who demanded that any ethnic groups coming to Canada should fit socially and culturally into one of the two majority groups (French and English) to better integrate, or assimilate, into a Canadian society. With that rationale, the First Nations communities have remained isolated, as they have neither adapted nor assimilated into the Canadian mainstream and continue to demand rights over ancestral lands (Wotherspoon & Hansen, 2013).

The social and economic disparity of Canadian society along ethnic lines has a long history and can be better understood within the historical perspectives of socio-political and cultural interaction between communities within the larger Canadian society (Knowles 2017). Key among these is immigration policies stretching from the colonial period to the foundation of the Confederation union, and into contemporary Canada. Charon (1983) noted that the fabric of Canadian society has been often cited as a union of the descendants of (1) earlier French and English settlers/immigrants, (2) the First Nations, who are the natives of the land, and (3) the ethnic communities that were brought in by both the English and French to work and subsequently adapt to, or integrate into, the Canadian society.

Saint and Reid (1979) have added a new debate on the discourse of population and migration in Canada, as they believe that there are still unresolved arguments which suggest that the native or the First Nations of Canada

themselves migrated to Canada from Siberia during the Ice Age, when Siberia and Alaska were linked by land. Watson (1979), noted that the European explorers who first came into contact with the First Nations people in Canada thought that their faith was being tested, as they never envisioned the existence of human beings in this part of the world. Other scholars believe that Canada's earliest inhabitants, the indigenous people of Canada known as Indians, combining Métis and Inuit, migrated from Asia. The first European visitors were probably the Vikings, who arrived at Newfoundland in 1497. According to John Cabot's recorded history, the Vikings claimed Newfoundland for the British and eventually remained on the coast of Atlantic Canada. In 1534 Jacques Cartier, a French explorer, arrived and claimed the Gaspe Peninsula, Quebec, for the French and developed their community, called New France (Government of Canada, 2012). This historical contribution subsequently gives more social political and economic rights to French and English in Canada. In 1759 the British pushed into New France and defeated the French. Even so, French people in the New France were permitted to conduct their legal system, use their own language, practice their religion and eventually become Canada's tenth province, which is currently known as Quebec (Lieberson, 1970). In that era, Canada was divided into Lower Canada (French), and Upper Canada (English). Later, in 1867, Canada was formed as a country to include four provinces of Ontario, Quebec, Nova Scotia and New Brunswick. Subsequently, six more provinces joined, including Newfoundland in 1949, with the last territory being Nunavut in 1997. Canada has three territories, Yukon, Northwest Territories and Nunavut, which cover nearly a quarter of Canada's land area (Government of Canada, 2012).

SOCIOLOGY OF THE CANADIAN SOCIETY

The influence of historic trajectories of nation building process is difficult to ignore when examining the social, political and economic construction of Canadian society. For a better development of effective inclusive policies of resettlements, these historical facts must be explored to provide a comprehensive knowledge of integration into Canadian society. Further, they provide insights on social cultural norms and how communities' and ethnic groups' identities are socially constructed within the larger Canadian society. Of course, much progress has been made in terms of communities' improved receptiveness to a multicultural society, along with the establishment of laws that protect the basic human rights of minorities in Canadian society. These laws reinforce respecting human rights, even though not fully implemented in the case of racialized minority migrants, and have improved Canada's profile as a welcoming place for talented and highly educated immigrants worldwide. Moreover, individuals' rights have been considered an important value in Canadian society and are well protected under the Canadian Charter of Rights and Freedoms (Immigration Canada, 2009).

These ideals and principles are enshrined within the Canadian constitution and lifted up as exemplary values of the society. These values have facilitated the progress of the racialized minorities in mainstream Canada: women, gays and lesbians. However, they have done little to address the social injustices facing the racialized ethnic minorities and the First Nations peoples in Canada due to continued marginalization, under-representation and lack of coherent policies to assist these groups to integrate socially, politically and economically into mainstream Canadian society.

As a result, it is reasonable to assume that the historical interpretation of ethnic groups' identity under the cluster of the racialized

minority group has continued to widen the socio-cultural and economic gap between these groups and the mainstream Canadian communities within the contemporary Canada.

RACIALIZATION AND CATEGORIZATION

A. Racialization

For the purpose of preserving national privileges within the mainstream white communities and exclude racialized or "others", the first founding settlers in Canada have identified themselves as Francophones and Anglophones, to distinguish themselves from the other two communities that are officially treated as distinct and unique culturally, racially, ethnically, politically and economically (Porter, 1975). These two communities always treated as unique or different are the Aboriginal (First Nations) community and the radicalized visible minority community. According to the Government of Canada (Public Services Commission, 2009) an Aboriginal person is a North American Indian or a member of a First Nation, Métis or Inuit, North American Indians, or members of a First Nation including treaty, status, or registered Indians, as well as non-status and non-registered Indians.

In this classification, the radicalized visible minority is defined in the Employment Equity Act of 1986, adopted by the Public Services Commission of Canada to refer to the people who fall within the following criteria: [S] omeone (other than an Aboriginal person as defined above) who is non-white in color/race, regardless of birthplace. The visible minority group includes: Black, Chinese, Filipino, Japanese, Korean, South Asian-East Indian (including Indian from India, Bangladeshi, Pakistani, East Indian from Guyana, Trinidad, East Africa, etc.), Southeast Asian (including Burmese, Cambodian, Laotian, Thai, Vietnamese, etc.), non-white West Asian, North African or Arab (including Egyptian, Libyan, Lebanese, etc.), non-white Latin American (including indigenous persons from Central and South America, etc.), persons of mixed origin (with one parent in one of the visible minority groups listed above), other visible minority groups (Public Services Commission,2009).

The terms *immigrant* and *migrant* were later normalized with certain disdainful social and political tones to refer to a political identities of ethnic racialized minority immigrant communities within the Canadian society and cemented the perceptions of otherness. Likewise with the concept of ethnicity, was apparently adopted to describe non-Caucasians, regardless of the actual meaning of ethnicity. For these reasons, Burnet and Palmer (1988) have acknowledged that "ethnic diversity" has been ignored in social policy and as a topic for further research in Canada until recent years and has not been treated as an issue of vital importance in Canadian society. The issues of French and English Canadians have been the main topics of discourse in social science research. The authors note that even though neither the French nor the British are ethnically homogeneous, they expect migrants who come to Canada to assimilate into one of their dominant ethnic groups. In this context, the reference to ethnic groups in the Canadian context applies to neither French nor British, regardless of the broader definition of ethnicity. According to Schermerhorn (1970), ethnicity is: a collectivity within a larger society having real or putative common ancestry, memories of a shared historical past, and a cultural focus on one or more symbolic elements defined as the epitome of their peoplehood... Nonetheless, necessary accompaniment is some consciousness of kind among members of the group. (p. 12) Under Schermerhorn's definition, Francophone and Anglophone are also ethnic groups, the same as other Canadian ethnic groups (visible minority and First Nations).

B. Categorization

Avery (1995), think that the concepts of identification and categorization of people according to their ethnic affiliation in Canada have been in place for years. The focus of the practice was on the origin of people and their ethnic affiliation. In the years 1967 and 1971, and through the year 1981, information about ethnic affiliations was recorded through the census; also, the official record of immigration contained information about ethnic origins. This practice then shifted to gathering information on country-of-origin for the purpose of clustering and the systematic classification of what is known now as visible minority migrants.

Belanger (2006) thought that the establishment of distinct ethnicity-centered communities within Canada was under the continuous scrutiny of the government and became a concern of the top political leadership in Canada because of difficulties with social integration, political participation, and inter-race relations (diversity). Belanger (2006) noted that most of the leadership opinions on racialized migrants in 1945 did not support inter-race relations and interaction between different races. Belanger supports his assertion with the speeches of former Prime Ministers of Canada and political leaders who expressed their opinions on immigrants in the pre-1945 run against inter-cultural and ethnic integration between Caucasian and non-Caucasian migrants.

For both practical and political purposes, immigrants entering Canada were classified into one of three groups: (1) the preferred category, which included British on the top of the list, followed by Americans and Western Europeans; (2) an acceptable but not preferred category, which included East Europeans from Russia, Ukraine, and Poland, and southern Europeans from Italy, Greece and Spain; and (3) the non-preferred and not acceptable category, which included members of any group that would now be classified as a racialized group. Each of these groups, according to Belanger (2006), experienced discrimination in Canadian society, ranging from standard interpersonal relations to dealings with government officials. The practice of clustering and categorizing people that divided the country along four distinct ethnic communities became engrained in Canadian immigration policies and is still in existence today. According to Kelly and Trebilcock (1998), Canadian immigration policies were always set to reflect public concerns about who is allowed to come to Canada, concerns based on the historic presumption of social, political and cultural assimilation of immigrants into the larger (French and English)society. In this context, Kelly and Trebilcock (1998) note that:... the immigration act and regulations provided the government with enough flexibility to prevent access to prohibit naturalization, and to effect the removal of those who were perceived as lowering the standard of acceptable citizenry, by their nationality, race, or political opinions.

Thus, nationals of countries with which Canada was at war ('enemy aliens') were interned and refused entry; African and Asian immigrants were almost entirely prohibited...Unfortunately, the view of Canadian society and perceptions as stated have continued to reflect on their social interaction with people they considered not a perfect fit socially, cultural and racially to what their society perceived as ideal Canadian society. (p. 166)

Therefore, it is important in any discourse of migrants' sociopolitical construction of racial identity in Canada to not overlook past historical practices pertained to social exclusion of ethnic groups, and discriminatory policies that have affected the progress of racialized immigrants socially and economically to the present time. Of course, it is equally important to evaluate what has changed in these immigration policies throughout the history of resettlement and integration of migrants in Canada.

CLUSTERING OF GROUP IDENTITY

When comes to inner perceptions of ethnicity, categorization and marginalization, will find that Canadian society still cleaves along four distinct ethnic groups: (1) Anglophone, (2) Francophone, (3) First Nations, and (4) Visible Minority Communities. Ironically, perhaps, this social structure is upheld by misinterpretation in policies of the Multiculturalism Act of 1986, which encourages communities to remain socially, culturally and ethnically distinct. In this scheme, English and French were named as official languages of Canada, but the existence of official languages does not prevent communities or groups from reading and writing or speaking their own mother tongues, which are neither English nor French. This situation has further widened the social interaction gap between visible minority and mainstream communities in Canada because the dominant languages are English and French.

The extreme form of these interactions is the relationship between the Anglophones and the Francophones, in which both stress socially and politically the preservation of their heritage, language, and race as a distinct nation within Canada whilst expecting the ethnic minority migrants to integrate into undefined, mutually agreed-upon characteristics of Canadian culture. In these segment, the First Nations believe that their heritage and culture are being threatened by English and French cultures, as well as the influence of modernization, which renders them isolated and disadvantaged because the latest technology and its intellectual content is quite alien to their cultural heritage and therefore not embraced. In this structure, the racialized minority communities were adopted into the Canadian society by virtue of their rights and responsibilities pertaining to their status in Canada under the Canadian Constitution. Accordingly, the influence of culture and ethnicity as an indicator of identity has remained the major factor for racialized minority communities, rather than their Canadian nationality and citizenship as granted by constitution. Even so, the common belief in Canadian society is that there is one Canada, one vast and homogenous society into which the ethnic minority communities are to converge, blend, and assimilate to become real Canadians. When new Canadian migrants come to Canada, they are expected to embrace and conform to the Canadian culture, yet what ethnic immigrants find when they get here is a country divided along four major lines. The concept of Canadianism, social relation and interaction among its citizens was only based on values of the rule of law rather than considerations of culture or ethnicity. However, within this segregation and marginalization of communities along an ethnic divide, economic opportunities and support services are concentrated within the Anglophone and Francophone communities by virtue of the political influence acquired over centuries of rule, going back as far as the founding of Canada.

NATIONALISTS STRATEGIES FOR IMMIGRATION

The trends of Canadian migration were for centuries dictated by the need to bring in new workers to fill the shortage of skilled workers within the Canadian labor market. The process was later socially and politically constructed by the policymakers to align with the ideological and socio-cultural inspiration of Canadian mainstream society and its vision of the future of migrants in Canada. As a result, migrants were classified into preferred nations, who were considered acceptable people to be admitted to Canada, and not preferred, who might not assimilate culturally, socially and politically into the Canadian society.

These were the starting point of discrimination whereby, priority of admission for migrants in general from 1900 to1920 was not placed

on ethnic group because they were not considered acceptable migrants to integrate, work and live in Canada. Europe and the United States provided the majority of the migrant population, as the government considered them the most desirable and acceptable migrant workers (Anderson, 1981). The process changed, however, in the 1960s due to changes that were introduced in immigration laws and policies, such as the introduction of the immigration Point System in 1967, which depended on knowledge of English and French, age of migrant (i.e., not too old or too young), arranged employment in Canada, having a relative or family member already in Canada, educated and having intention of migrating to regions with high employment prospects. These factors were also influenced by international policies and acts that helped in addressing issues of social justice and discrimination worldwide, such as the Universal Declaration of Human Rights of 1948. In this context, the record of migration from 1921 to 1945 continued to reflect the ethnic variation in admission of the preferred and acceptable nations who were allowed to come to Canada. This historical review was incorporated to further provide some historical perspective and outline factors that made the ethnic minority community one of the most vulnerable communities within Canadian society (Anderson, 1981). There were many other social, economic, and political factors that led to changes in Canadian immigration policies from 1980 to the 1990s and to the present, factors that changed the dynamics of the immigration selection criteria of people who should be admitted to Canada and provided racialized migrants with more opportunities to come to Canada. For example, the number of people migrating from the most desirable countries, such as the United States and the Great Britain, dramatically declined due to improvements in the economic situations in those countries, and as such, there was a considerable rise in number of people admitted from countries that were considered less desirable, or not accepted (Anderson, 1981).

In addition, the family class system of sponsorship that came with the Immigration Act of 1976 opened doors to migrants who would not normally pass the *point system* set by the immigration authority on who should be admitted to Canada as a migrant or a skilled worker. Another factor that helped in the admissions of more visible minority migrants to Ottawa, or Canada for that matter, was the introduction of family class sponsorship, which helped these migrants who had become *Naturalized Citizens,* or who had *landed* migrant (Permanent Resident) rights to sponsor their relatives overseas to join them in Canada. The priority under this Act was to allow spouses and dependent(s) of migrants with legal status in Canada to be sponsored and admitted to Canada. In this regard, being a spouse or dependent was the approved criteria, regardless of the applicant's ethnic or cultural background.

The sponsoring individual, however, had to be working full-time and have the financial means to support the sponsored spouse and/or dependents for at least ten years after they arrived in Canada. Most importantly, the sponsoring spouse could not be unemployed or receiving any public financial assistance (Immigration Canada, 2009). Other factors that supported the waves of ethnic minorities who migrated to Canada included admission to Canada as conventional Refugees, which according to Immigration Canada (2010a), Are persons who fled their homeland due to a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group. These people were unable or unwilling to return to their countries of birth or habitual residence. Conventional Refugees also included the asylum seekers, categorized as Protected Persons (IMM5520), and those from countries

experiencing ongoing civil wars and armed conflicts, who had documented records of experiencing human rights abuse. With proper documentation of such abuse, the applicant is accepted to live in Canada under either the Conventional Refugee Act or the Humanitarian Designated Class Act introduced by the federal government in 1997. Immigration Canada defines protected persons as those who are determined by the Immigration Refugee Board to be in need of protection (Immigration Canada, 2009).

The refugees are required by immigration authorities to apply for refugee status, preferably outside, but sometimes refugees apply inside Canada. However, it is worth noting that the increase in the number of people who claim their refugee status inside Canada was also facilitated by the improvement in transportation, the affordability of traveling around the world, and new global economic and information revolutions. New factors resulting from globalization have made the world nearer the Global Village envisioned by McLuhan (McLuhan &Powers, 1992) in the 1960s and 1970s: a little village that is accessible to all nations worldwide. It has also widened the choices of preferred destinations to migrants for reasons of employment, or simply to seek a better life within industrial nations. These prospective migrants come to Canada with skills, knowledge, and education that they believe will give them better opportunities.

SETBACK ON THE NATIONALISTS IMMIGRATION

The period between 1999 and 2001 indicates a great shift in the admission of migrants from the most preferred sources of migrants from the United States and UK, including Western Europe, to China, India and Pakistan. The United States and UK continue to contribute most preferred migrants to Canada, even though the shift clearly indicated that migrants from the least preferred countries were accepted in greater numbers than in the years from 1921 to 1945 (Statistics Canada, 2006). China continued to lead the list of countries that contributed the most migrants in the year 2000, followed by India. The years 2000 and 2001 also witnessed a huge decrease in the number of migrants coming to Canada from the United States and United Kingdom, as well as an increase in the number of groups identified as ethnic migrants admitted to Canada. The last era, 1999-2001, has witnessed the highest immigration of ethnic group to Canada from underdeveloped countries. Still, the quest for equality and fair access to economic opportunities for members of this group continues to constitute a major challenge for policymakers and employment professionals.

According to Winnemore and Biles (2006), the most effective initiatives to address social injustices in Canada were the Employment Equity Acts of 1985 and 1995, the Multiculturalism Act of 1988 and the Charter of Human Rights and Freedom in 1982, all of which unsuccessfully attempted to alleviate the social, economic and political exclusion and inequality experienced by members of ethnic migrant groups. Ethnic migrants group do not think that the new immigration policies of inclusion and increases in their admission quota have perceptibly improved their integration into the local labor force nor reduced protectionism and exclusion from fair access to economic opportunities all over Canada. Even though only 14% of Canadians have experienced discrimination because of their ethno-racial origin, the Ethnic Diversity Survey of 2004 indicated that "about 36% of visible minorities have been subjected to discrimination because of their ethnicity, race, language or religion. Of these, 56% faced discrimination in the work place" (HRSDC, A6).

As noted, the discourse of immigration centered on integration, assimilation and

sociocultural adaptation of the migrant within host countries, which has also become a concern of many scholars studying difficulties in migrants' socio-economic integration in host countries. Several scholarly articles have been written on immigration-related issues, with emphasis on migrant psychological, cultural, economic adjustments in Canada, and none of these researchers have predicted any better future policy changes in resettlement of visible minority migrants in Canada.

The nature and magnitude of immigration and migrant-related issues varies from one host country to another and mostly depends on the policies established by the host country, social/political accommodation, and acceptance of the migrant in his/her new society. Furthermore, successful integration and adaptation of migrants depends on their ethnic, cultural and religious influence as perceived by the host country of resettlement, as well as the willingness of society to accommodate individuals' differences. The terrorist attacks of September 11, 2001 in the United States and the rise of global extremism have further complicated the ethnic groups' rights of movement and access to economic opportunities in North America. The ethnic profiling and new scrutiny measures have facilitated creations of highly invasive new policies detrimental to individual freedoms, and encourage, almost justify, discriminatory behavior in all aspects of socio-political and cultural interaction, nationally and internationally (Isani, 2011).

Nonetheless, the lack of institutionalized programs to facilitate assimilation and denounce socio-economic marginalization, and the social isolation of ethnic groups in many of the host countries have been cited as factors that encouraged the development of sub-culturally distinct community organizations, with distinct cultures and ways of life psychologically attached to culture in their countries-of-origin more than their new host, Canada. These new ways of life were considered alien by mainstream communities in Canada, and were therefore sometimes linked to the causes of cultural and religious intolerance (Jedwab, 2006). These new perceptions entailed adaptation of new security measures in Canada that led to difficulties in building harmonized social relations and constructed a stigmatized identity for all racialized migrants because of the new security concerns, which include constant profiling and scrutiny. According to survey conducted by the Department of Justice in Canada (2010), the majority (73%) of respondents indicated that they were not personally affected by any of the post-9/11 security measures; however, more visible minority participants felt that they were affected when compared to the responses of non-minority respondents (31% vs. 25%). The most common ways the participants were affected was by increased security at airports/ delays in air travel (54%) and increased checks at customs/delays crossing borders (44%). Larger proportions of non-minority respondents reported experiencing increased security/ delays in air travel when compared to minority respondents (57% vs. 44%) (2010).Even though most ethnic migrants become citizens in their host countries, citizenship does not improve their lives or facilitate access to social or economic opportunities (Winnemore & Biles, 2006).

Furthermore, ethnic migrants as discussed within the global context have remained a distinct community culturally, socially and economically, with no prospect of change unless current practices of social economic marginalization and isolation within host countries, including Canada, are changed. According to Rifkin (2000), nothing changes unless these forces or practices change. In this context, he stated: Discrimination against the minorities will not change as long as forces that determined the decisions of the gatekeepers are not changed. Their decisions depend partly

on their ideology—that is, their system of values and beliefs which determine what they consider to be "bad" or "good". Thus if we think of trying to reduce discrimination within a factory, a school system, or any organized institution, we…see that there are executives on boards who decide who is taken into the organization or who is kept out of it, who is promoted, and so on. The techniques of discrimination in organizations are closely linked with those mechanisms, which make the life of the members of an organization flow in definite channels. Thus, discrimination has a link to management, and the action of gatekeepers that determine what is done, and what is not done. (p. 180)

The difficulty of migrants' integration into the host country's social fabric and issues of resettlements are worldwide concerns. Even though views of politicians in Canada continue to run contrary to the reality of ethnic migrants in terms of access to fair treatment, rather, it is apparent that Canadian politicians continue to advocate for ongoing admission of migrants to Canada to fill skill shortages in Canada. Paul Martin, former Liberal Canadian Prime Minster (December 12, 2003 – February 6, 2006), stated that "Canada needs immigrants… and we need them to succeed, plain and simple" (CTV Report, 2006). What constitutes success, however, and accommodation of ethnic groups into the Canadian society, has yet to be defined in terms understood by policymakers, mainstream communities, and the ethnic minority migrants.

TOWARDS IMPROVED POLICIES

Apparently, many researchers have emphasized that the ethnic groups in Canada are not well represented in all aspects of social and political institutions, nor granted fair access to economic opportunities and participation in the Canadian social and economic development (Social Planning Council of Ottawa, 2009). The quest for equal opportunities and representation continues to be one of the major setbacks for the progress of ethnic minority communities in Canada at the federal, provincial, and municipal levels. This discussion subsequently led to the question of whether or not the government in Canada and its institutions, as per past immigration policies and their applications historically, have invested in development of policies and programs that would foster social, cultural and economic opportunities for ethnic minorities in Canada. One is left to wonder if the process of effective integration of ethnic groups into the Canadian society and its workforce has been taken into serious consideration as a viable means for socioeconomic development.

These historical service gaps in immigration and integration policies could be also understood as contributing factors in the development of ethnic migrants' perceptions concerning social exclusion, categorization and social injustices, as well as their thoughts relating to their social, cultural, political and economic marginalization within Canadian society. These given discourses on immigration policies and the integration of the clustered migrants have presented challenges in socio-cultural and economic integration for ethnic immigrants in Canada to successfully participate as effective members within their chosen new society. However, these discourses do not prove that all ethnic migrants in Canada do not do well, nor do they dispute those socio-cultural, political and psychological factors that determine the success of racialized immigrants' integration and assimilation in Canadian societies. Rather, the problem remains that the process of social and economic integration in Canada is stalled.

The sociocultural analogy and illustration of the four distinct cultural and economic communities of Anglophone, Francophone, First Nations and the ethnic migrants groups emphasizes the level of ethnic migrants' integration, interaction, social relations and accommodation

within the mainstream communities (Charon, 1983). For example, did these interactions support a sense of belonging that facilitated degree of access and success in economic opportunities, or did a failure to integrate and assimilate lead to marginalization and social exclusions and psychological disparities? The proposal of the four communities' analogy has presented a conceptual model and to outline socio-economic powers concentrated within the mainstream communities by virtue of sociocultural and historical linkages to the ancestral founding fathers of the state in Canada (English and French). In this regard, the other two communities (First Nations and ethnic communities) are viewed socially, politically, and economically as dependent communities that should, through naturalization and immigration, meet the requirements of citizenship to contribute to Canadian societal economic affairs. These complexities of social structure and wealth distributions in Canadian societies have been viewed by the disadvantaged communities, in particular the ethnic groups, as causes of socio-cultural injustices, marginalization, and exclusions.

The sociocultural cultural and economic integration of ethnic groups requires historical review in context of how immigration policies in the past decades that were not in favor of envisioning intercultural relations and the creation of ethnic communities in Canada have changed. These changes should capitalize on immigration policies and factors that facilitated the acceptance of ethnic migrants during the decline in wave of migration from the two major acceptable sources of migrants to Canada (Great Britain and the United States).

Further, the new era of globalization, technological advancements, improvements in transportation, and new humanitarian policies under the United Nations Human Rights Protection Act of December 8, 1948 have facilitated continuous arrival of more ethnic minorities groups to Canada. Even so, I think the immigration policies remained unclear in terms of programs, plans, and strategies that support ethnic minorities' migrant participation and facilitation of meaningful transition into Canadian human resource pool as well improve their psychological and social well-being. As Knowles (2007) has stated, people who are coming to Canada, and the policies that the government has in place, will determine what the country (Canada) looks like 100 years from now. Contrary, the construction and adoption of racialized identity (ethnic minority groups) was later legitimized in immigration policies and served as the basis of socio-political identity in all forms of interaction, socially, politically and economically. This policy of categorizations continues to hinder ethnic migrants' abilities to effectively contribute in Canadian socio-economic development.

CONCLUSION

In short, there is a need for development of new understandings in the dialogue of race, immigration and sociocultural integration in Canada. That is because the racialized migrants' perceptions about the social-cultural and economic integration were never considered, or incorporated as a body of knowledge, in the discourse of why they remained isolated, marginalized and disadvantageous. Most importantly the psychological scars resulted from such practices needed to be addressed, as migrant began to react negatively towards their dire conditions in their host country (Canada). As well, the process of integration and resettlement into the Canadian socio-cultural and economic pattern can be described as a series of challenging transitions shared by the majority of ethnic immigrants to Canada. So far, there are no new insight that looks into the field of migrants' integration and immigration-related policies. This includes policies that intended to support and facilitate the integration of ethnic immigrants in Canadian society with a focus on their health and psychological well-being

and economic attainment. The underlying assumption is that, these barriers to integration of racialized migrants in Canadian society and their emotional enormity are deep-rooted in history, social norms and political paradigm. Many researchers do not normally discuss such factors; hence their emphases have been mainly placed upon a quantitative approach to understanding barriers to integration, and resettlement in Canada. Minimum attention has been paid on the lack of access to economic opportunities, and on how this lack of access, or impact on feelings of social exclusion has affected migrants physically, psychologically, socially and economically. Consequently, a study by the Federation of Canadian Municipalities (2009) has shown that immigrants are returning to their countries-of-origin, including those who possess talents, skills and experience required within larger Canadian cities. This study recommends that Canada needs a better understanding from the migrants' perspectives on what they perceive as barriers, problems or opportunities in order to develop an inclusive plans for migrant integration and equitable access to economic opportunity with a prospect of effective resettlement in Canada.

REFERENCES

Anderson, A. (1981). *Ethnicity in Canada: Theoretical perspectives.* Toronto, ON: Butterworth.

Avery, D. (1995). *Reluctant host: Canada's response to immigration workers, 1896-1994.* Toronto, ON: McClelland & Stewart.

Belanger, C. (2006). *Canadian opinion on immigrants: Pre-1945.* Westmount, QC: Marianopolis College.

Burnet, J. R., & Palmer, H. (1988). *Becoming Canadians: An introduction to a history of Canada's peoples.* Toronto, ON: McClelland & Stewart.

Canada Immigration. (2010a). *Conventional refugees: Free immigration assessment.* Retrieved April 08, 2010, from HYPERLINK "http://www.canadaimmigrationlaw.net/immigration/refugee.htm"

Canada Immigration. (2010b). *Immigration guide.* Retrieved August 29, 2010, from HYPERLINKhttp://www.cic.gc.ca/english/information/applications/guides/5520E.asp

Charon, M. (1983). *Between two worlds: The Canadian immigrant experience.* Oakville, ON: Dunvegan

Quadrant. CTV Report. (2006). *W5 investigative report on immigration.* Retrieved April 2009, from HYPERLINK "http://www.ctv.ca/canada/"http://www.ctv.ca/canada/

Department of Justice. (2010, January). *The Anti-Terrorism Act and security measures in Canada: Public views, impacts and travel experiences.* Retrieved July 25, 2011, from HYPERLINKhttp://www.justice.gc.ca/eng/pi/rs/reprap/2005/rr05_11/p7.html

Federation of Canadian Municipalities. (2009, March). Quality of life in Canadian communities: *Theme Report #5, Immigration & diversity in Canadian cities & communities.* Retrieved June 10, 2009, from http://www.fcm.ca//CMFiles/QofL Report 5 En1JPA-3192009- 2422.pdf

George, U., & Doyle, R. (2010). *Socioeconomic integration of visible minorities and Aboriginal peoples in Toronto.* University of Toronto. Retrieved June 22, 2011, from HYPERLINK http://www.hrsdc.gc.ca/eng/labour/equality/racism/racism_free_init/george-doyle.shtml

Government of Canada. (2012). *European Discovery of Canada.* Retrieved April 2, 2012, from HYPERLINK "http://www.canadiana.ca/citm/themes/pioneers/pioneers2_e.html" \l "discovery"

Immigration Canada. (2009, April 8). Canada Immigration Law. Retrieved April 8, 2010, from HYPERLINK http://www.canadaimmigrationlaw.net/immigration/refugee.htm

Immigration Canada. (2012, April). *Skilled workers and professionals.* Retrieved April 03, 2012, FromHYPERLINK"http://www.cic.gc.ca/english/immigrate/skilled/index.asp"http://www.cic.gc.ca/english/immigrate/skilled/index.asp

Isani, M. (2011, November).The economic impact of September 11th on Middle Eastern immigrants. *The Park Place Economist,* 17, 34-38. Retrieved November 28, 2011, from HYPERLINK"http://www.iwu.edu/economics/PPE17/isani.pdf"www.iwu.edu/economics/PPE17/isani.pdf

Jedwab, J. (2006). Canadian integration: The elusive quest for models and measures. *Canadian Diversity,* 5(1), 97-103.

Kelley, N., & Trebilcock, M. (1998). *A history of Canadian immigration policy.* Toronto, ON: University of Toronto Press.

Knowles, V. (2007). *Strangers at our gates: Canadian immigration and immigration policy, 1540-2006.* Toronto, ON: Dunder Press.

Kunz, J., Milan, A., & Schetagne, S. (2000). *Unequal access: A Canadian profile of racial differences in education, employment & income.* Toronto, ON: Canadian Race Relations Foundation. Retrieved June 20, 2011, from

Lieberson, S. (1970). Language and Ethnic Relations in Canada. New York: Wiley.

McLuhan, M., & Powers, B. (1992). *The global village: Transformations in world life and media in the 21st century* (Communication and Society). New York, NY: Oxford University Press.

Public Services Commission of Canada, (2009). *Overall progress regarding merit and the guiding values.* RetrievedApril 3, 2012, from HYPERLINK " http://jobs-emplois.gc.ca/centres/definitions-eng.htm

Porter, J. (1975). "Ethnic Pluralism in Canadian Perspective." In N. Glazer and D. P. Moynihan (eds.), Ethnicity, Theory, and Experience. Cambridge: Harvard University Press, 267-304.

Rifkin, J. (2000). *The age of access.* New York, NY: Penguin Putnam.

Saint, J., & Reid, R. (1979). Origins: *Canada's multicultural heritage.* Don Mills, UK: Polity Press.

Schermerhorn, R. A. (1970). *Comparative ethnic relations.* New York, NY: Random House.

Social Planning Council of Ottawa. (2009, June). *Immigrants' economic integration: Successes and challenges.* Retrieved July 7, 2009, from HYPERLINK http://ioi.spcottawa.on.ca/sites/ioi.spcottawa.on.ca/files/pdf/Final_Immigrant_Report_Short_Version.pdf

Statistics Canada. (2006, May). *Community profile.* Retrieved May 29, 2011, from HYPERLINK http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-591/index.cfm?Lang=E

Taylor, L. (2008). Transcreation, transformance, and the fertility of difference: Reading language difference through the lens of translation. In P. Trifonas (Ed.), *World of differences: Rethinking the ethics of global education for the 21st century* (pp. 103-136). Boulder, CO: Paradigm.

Wotherspoon, T., & Hansen, J. (2013). The "Idle No More" movement: paradoxes of first nations inclusion in the Canadian context. Social Inclusion, 1(1), 21-36. https://doi.org/10.17645/si.v1i1.107

Watson, P. (Ed.). (1979). *Our cultural heritage.* Toronto, ON: Clarks, Irwin.

Winnemore, L. & Biles, J. (2006). Canadian integration: The elusive quest for models and measures. *Canadian Diversity,* 5(1), 24-27.

Mothering across cultures: immigrant women's experiences in Halifax

This article was first published in Canadian Scholar's Press:

Mothering across cultures: Immigrant women's experiences in Halifax. In E. Tatsoglou, & P. S. Jaya (Eds.), Immigrant women in Atlantic Canada : Challenges, negotiations, and re-constructions. 2011 (pp. 368). Toronto: *Canadian Scholars' Press/Women's Press.*

By: Maria José Yax-Fraser

BIOGRAPHY

Immigrant[1] women most often become the main caregivers as a result of the immigration process, whether married, single, adoptive, or lesbian mothers. They generally spend a significant amount of time socializing and mediating the new environment for their children. As a result, they are their children's first educators; the transmitters of traditional culture; and also provide important linkages that help their families adapt and integrate to their country of settlement while maintaining ancestral culture and ties with family abroad. They are faced with the responsibility of adapting to their new society not only for their sake, but also for the sake of their children (Kgomo, 1996; Noivo, 2000; Reyes, 2002; Rose et al., 1998; Tummala-Narra, 2004).

My interest in addressing what I came to call "cross-cultural mothering" comes from my experience of immigration and integration into Canadian society, and in Halifax specifically. When I became a mother, I was faced with making cultural choices I did not fully anticipate before I had my children. Although I had lived in Canada for eight years, becoming a mother within a cross-cultural relationship was for me the beginning of a new phase of integration. Long hours spent with my husband talking about our cultural differences and developing an understanding of how we wanted to raise our children did not prepare me to respond smoothly to the challenges of giving birth and raising children in my host country. From decisions around birthing and breastfeeding, to making choices about language and discipline methods, I was engaged in a process that required negotiating cultural values. Often, I felt caught between two cultures; influenced by both the beliefs and ways of raising children in my home country and those that are encouraged in Canada. Going through this process made me realize that I had inadvertently become involved in cross-cultural mothering.

My experience created a curiosity in me, a desire to learn from other immigrant women about their experiences of giving birth, raising children and contributing, as mothers, to Canadian society. For instance, how does an immigrant mother perform her mothering in a country other than the one in which she was born; in a culture that is different from the one she has known all her life? How does she negotiate with her past and present cultural contexts in order to raise and socialize her children? What motivates her to make particular decisions for herself and her family? How does she make decisions about values and behaviours?

Immigrant women in Canada engage in cross-cultural mothering within many family structures and in relationships with partners from their own, or from different, ethnic, racial, and cultural backgrounds. My interest was to learn from other immigrant women, particularly immigrant women in cross-cultural relationships, who were raising children. I wanted to broadly compare the experiences of women married to partners from the same culture/country of origin and the experiences of women, married to Canadian-born[2] partners. I interviewed twelve immigrant mothers from different cultural backgrounds. Six women were married or lived in common law with Canadian-born partners and six were married to partners from their country of origin.

My intention was to situate the experiences of the twelve participant mothers in a broader sociological landscape, posing questions about how their identities, roles and responsibilities as women, and as mothers, related to their needs, their contributions to society, and how they fare in Canada. I was interested in how these women exercise their agency by asserting and reconstructing their identity; negotiating their mothering and parenting practices; and thereby continually shaping Canadian culture.

Given the limitations of existing mothering and parenting models to describe the migrant mothering experience I use the term "cross-cultural mothering." In exploring the mothering experiences of the twelve women involved in this study, I define the term cross-cultural mothering as the complex forms of agency migrant women deploy to adjust to new contexts and environments. This approach highlights how migrant women re-work their identities, construct and continually negotiate their mothering practices, when living within a culture and/or country other than the one in which they were born and/or raised. This concept originates from the premise that these women, situated in specific social contexts and within social relations that are shaped by Class, ethnicity, race, and gender, bring with them a selective and dynamic knowledge of the values and beliefs of child raising held in their culture/Country of origin. This premise also acknowledges that these women, due to their migration, are involved in (re)negotiating cultural values, practices, and institutions of their place of settlement, while maintaining ties with their home countries.

In defining the responsibilities of what I call cross-cultural mothering work, I begin, as does Sara Ruddick (1983), by acknowledging the perspective and the amount of intellectual work that is required in becoming a mother and in travelling the parenting journey. I draw upon theoretical frameworks that define maternal practice as a site of power and resistance; grounding oneself in the belief that the individual survival, empowerment, and identity of children stems from the collective self-determination of one's group (Hill Collins, 1994; Ruddick, 1983, 1989; O'Reilly, 2006). I therefore, define cross-cultural mothering in terms of main four interrelated tasks: 1) preservation and physical survival of the family; 2) the act of balancing and negotiating cultures; 3) nurturance and cross-cultural training in identity, negotiation, representation, and

resistance; and 4) empowerment. I propose that carrying out these tasks has enabled mothers to feel they protect, nurture, guide, and transmit to their children important cultural values (see Yax-Fraser, 2007).

When I first spoke to other migrant[4] women about my interest in documenting the experiences of immigrant mothers, our conversations usually turned to discussions about the marginalization of women everywhere, the under-representation of the mothering experiences in the immigration discourse, and the importance of documenting immigrant women's needs and contributions in the process of immigration and settlement.

Historically, women have been "hidden" in the various theorizations of nation building; theorizing that is largely based on the common understanding of a Western social and political order that divides the sphere of civil society into public and private domains. The work women do raising children, managing, and providing for the household has been located in the private domain and outside the relevant political domain. Consequently, our dominant capitalist patriarchal economic structures, and monetized economy notions of labourer/worker, assign parenthood and mothering a low status, making the costs and work women face in raising children and managing a household invisible (Crittenden, 2001; Mohanty, 1999; Pietilä & Vickers, 1994). In other words, because "mothering" is not recognized as contributing to society in economic terms, it is considered part of women's "nature", and therefore, is taken for granted. It is encapsulated as a "labour of love," and thus it is made invisible.

In her introduction to the Gift Economy, Genevieve Vaughan (1991) points out that in the context of capitalist societies, what is invisible seems to be valueless. Mary Georgina Boulton asserts that in a society that values production, the work of child-bearing and child-raising "goes unrecognised by society which neither pays wages for it nor gives it due social recognition and respect" (1983, p. 22). This lack of recognition has been the basis for overlooking immigrant women's needs in their process of immigration, settlement, and integration. It has influenced society's views, underestimating the important role immigrant women as mothers play in shaping their host society. Women have a central involvement in the construction and reproduction of nations and nationalism as cultural and biological reproducers of the nations; in the transmission of its values, culture and national citizenship; and in nationalist projects of conflict and wars (Yuval-Davis, 1997).

In Canada, little attention has been paid to the mothering experiences of immigrant and migrant women. Their contributions to the economic, demographic, and social development of Canadian society have largely gone unnoticed. When concerns regarding population decline and its impact on the Canadian economy have led to an increase in immigration as an important and effective strategy of population growth, it is necessary to rectify the marginalization of immigrant mothers, and address their needs rights, and contributions to Canadian society.

Looking at the work migrant women do as mothers is important because it provides specific insights into how women's values, intentions, and child-raising practices influence their children's identity and integration into Canadian society. Their changing values, intentions, and practices relating to raising and socializing their children, has implications not only for their children's identity and integration into the host society, but also for social and cultural diversity as well as the economy. Immigrant mothers help reproduce and transform society. Their contributions include, for example, their work as "cultural entrepreneurs"[5] negotiating values cross-culturally and producing reference points for new forms of Canadian identities; their broader

contributions to Citizenship; as well as their contribution in producing future generations of well-rounded men and women. The work women do as mothers is an enormous unrecognised contribution that women give to their families, to the economy, and to society as a whole (Vaughan, 1991).

CROSS-CULTURAL MOTHERING IN HALIFAX

The women participating in this study stated that for them, to be a mother in Canada is different than being a mother in their country of origin. Cross-cultural mothering grants new intellectual dimensions because of the additional invisible intellectual labour involved in negotiating cultures and creating new parenting frameworks to help women raise children. Using the cross-cultural mothering framework, I briefly address some of the commonalities and the differences in the cross-cultural mothering experiences that emerged among these mothers. Commonalities and differences arose from their experiences depending on whether they were married to a partner from the same country and culture or whether they were married to Canadian-born partners.

Crossing Borders

Most mothers in this study came to Canada because of a desire to secure a better future for themselves and their children. Security for them included economic security, personal safety, peace, freedom of expression, and access to educational opportunities:

My husband decided to apply to emigrate especially not just for himself and myself, but for our kids … we decided to go somewhere that we can pay and get a high level of education for them. This is the main purpose or the main point that we came here. Of course, I didn't agree for the first time, especially I had my mom and my dad, my brothers and we had a very strong bond as a family, for a big family. But my husband, you see, he insisted that this is not only for our marriage, but, for the kids and for our future. So, at this time I agree, and we came here as landed immigrants. (Huwaidah)

The experiences of immigration and the reasons for it varied between the two groups of women: those whose partners were from the same culture/Country and those married to Canadian-born men. For-instance, most women in the first group described their decision to emigrate as heavily influenced by the husbands' desire to move to Canada, due to attraction to its social environment and employment or business opportunities, and the women's own desire to secure a better future for their children through access to a higher level of education in a safe environment.

Most women in the second group, however, described themselves as active participants in the process of deciding to make Canada their home. For them, this process involved weighing their options and deciding on a place they and their partners felt would provide better opportunities for them individually and as a family:

It was very difficult … It was mostly me, probably, who just said well … I don't like the idea of going and leaving my family, my friends, my place, the house, just leaving them to come here. That was a decision of years … It was not easy and finally it seemed that we had to do it. After talking about it for so many years, we had to do it … we wanted to provide our children with a wide range of opportunities … (Ninfa)

Once in Canada; the participants found themselves faced with new discoveries and with a series of challenges and changes. Some of the Changes the women experienced were directly connected to their mothering practices. Women married to partners from the same country/culture experienced a transition from a collective spirit of mothering to a nuclear family practice. Many women who were working professional mothers in their country of origin became stay-at-home mothers in Canada.

In general, the women married to Canadian-born men described the support of their husband and his extended family as facilitating their immigration and making the settlement process relatively smooth. Having a husband and his extended family nearby provided them with a form of support and vital guidance towards understanding their new environment, helping them adjust to a new culture, and learning about raising and socializing children. This support prevented them from feeling isolated and lost.

Women married to partners from the same country, however, lost "that chorus of mamas, grandmamas, aunts, cousins, sisters, neighbours" that provide them with support and guidance on their mothering journey (Morrison, quoted in O'Reilly, 2006). They had lost the physical presence of an extended family to help them take care of the children. They had also lost the immediate and direct support from the familiar people they counted on to inform their parenting methods, strategies, and values. These women grieved the loss of this presence; as the absence of extended family deprived their children of the warmth and ongoing close relationships with relatives, the joys of getting together with their extended family, and the development of a sense of belonging through those experiences.

Separation from extended family can be described as the most painful aspect of raising children in a new country. Added to this separation, the economic reality of Halifax had an impact on the integration of some of these mothers and their families. Lack of access to commensurate employment opportunities for them or their husbands put a number of pressures on their families. It had an impact in their settlement experience and their long-term integration. Some of them found themselves considering whether to stay in or leave Halifax. For others it meant becoming an "astronaut family" (Chiang 2008). A term used to describe instances of one parent, usually the mother, immigrating with their children and the other parent, usually the father, staying in the country of origin, living and working to pursue economic advantages. Although this phenomenon first emerged in the 1980s, with most of these families coming from Taiwan and South Korea to the United States, there is a growing number of migrant women in Canada who are experiencing similar situations. In the case of the mothers I interviewed, because their husbands had to return to their country of origin or to relocate abroad to secure employment These mothers redefined both their mothering and parenting practices as single mothers in transnational relationships with their husbands.

Many women in the study who were working professional mothers became stay-at-home mothers, often as a result of their lack of access to integration programs and resources. They recognized that cross-cultural mothering involved sacrifices, but these women named the loss of their professional careers as a sacrifice they made to provide their children with a safe environment and the potential for a brighter future:

I think we sacrifice a lot for them, my husband and me. We gave up our jobs and we had a decent job, both of us. I think this is sacrifice, I hope they have this sign of appreciation to us. So i t's not easy to give your future up, to give up your career up for them, and no one can do something like that except mother and father. It was hard to be away from my customs and culture and the atmosphere that I grew in and to raise children away from all these is hard. … As a woman and mother, I am concentrating and focusing my son's future, not my future. (Huwaidah)

BALANCING CULTURES

Participants in this study described cross-cultural mothering as a journey of new beginnings that involved joy and wonder, as well as sacrifice, sadness, loneliness, and at

times, insecurity. Crossing borders and being a newcomer involves learning about and adjusting to a new culture; dealing consciously or unconsciously with culture shock;[6] and working through the process of re-establishing one's own identity, sense of place, and belonging in the new society.

For most participants, the process of learning and understanding the new culture and establishing their own identity ran parallel to learning about parenting and, raising children in the Canadian context. For many women and their husbands, part of their integration process involved adjusting their parenting practices. For others, giving birth to children in Canada was a new phase of integration. In both cases, women recognized their experiences as a journey of new beginnings that involved a reevaluation of their knowledge as they immerse themselves in new discoveries:

It is something totally unknown; therefore, it is like walking a path through an unknown world. And it is paved with the differences and difficulties, which could be many or few. How do you walk through this path? You take the tools you have, your weaknesses and strengths, and the knowledge that one has about the new environment, about the new world and the knowledge one brings about oneself. Mothering in another country is a hard journey. Life is a difficult journey … you learn and fight obstacles. That's life. (Orfa)

"A balancing act" and "the art of compromising" are terms women used to describe what they and their partners were doing to adjust their parenting methods and philosophy as they responded to their new environment. A lot of thought and consideration, although at times unconscious or unrecognized, went into the process of negotiating cultures; women and their partners picked and chose the values that they would incorporate into their daily practices in order to guide their lives, their families, and their children. While mothers with partners from the same culture perceived the responsibility of balancing cultures as a relationship between their family and the society at large mothers in cross-cultural relationships believed this balancing act began within the confines of their homes. Juggling cultural differences often begins with specific day-to-day arrangements such as sleeping arrangements and daily meals, to other aspects 0t family life including discipline methods, language, and religious practices.

When asked during an interview about what it is like to be a mother in Canada, Ada responded with the assertion: "we compromise on a daily basis," as she explained how she and her husband adjust to each other's expectations in raising their children. Susana also described compromise as an approach to dealing with cultural and religious differences between her and her Canadian-born husband:

We always have to discuss … because (we differ in opinion) … now we are trying to take our oldest daughter to Sunday school to do her first communion … and I don't think he … ever take his first communion. I said, well we have to go to Church every Sunday and we have to take our daughter. "Ah! Every Sunday? Maybe we should go just once a month." In Mexico … everybody goes to church. I remember how my mom raised us, and in some ways, I tried to do things like my mom; but right now it does not look like it's okay. When we eat in Mexico, my mom used to bring our food so that we can watch the TV … and I do like that here with my children, and my husband say "no." At night I tried to bring my children into the bed to sleep with me, like we sleep with my mom when we were little, and he says, "This is not okay". We tried to compromise, once a week they sleep with us; they watch TV just for breakfast not for dinner.

In their cross-cultural mothering, these women negotiated the knowledge they had acquired through their own parents' philosophies and child-raising practices. They also negotiated what they had learned or were learning in the process of adjusting to a new culture, in order to create new parenting frameworks, new parenting philosophies, and new forms of cultural identity. Alicia described this experience in her family:

We have two different cultures in the house although my husband lived in Colombia and really knows our culture and accepts pretty much everything from our culture and I have lived here for so long, I think we still have two cultures in the house. Two cultures that are very mixed at this point, they are one really but it has components from both.

There were many differences among the women participants regarding this process of negotiation, as they brought with them a wealth of knowledge based on their social, cultural, racial, geographical, and political backgrounds; however, there were also common values women guarded, modified, and taught to their children. Some of these values included religion and spirituality, the value of family ties, the importance of living in a collective spirit of parenthood and community, the value of respect, the value of multilingualism, the value of a love for learning including informal and formal education, the value of collective well-being, and the value of healthy nutrition.

For instance, many women asserted that one of the values they guarded dearly was that of respect. Many of them, however, perceived and taught respect to their children in ways that they felt differed from how it was presented and taught in Canadian society. Their concept of respect was very broad and included respect for all human beings regardless of age, race, gender, or ethnic/cultural differences. Pimenta explained: "It is the respect towards the child; this is what I do differently than what my parents did." Ninfa, who felt the elderly are highly esteemed in her country, encouraged her children: "To be respectful with everybody, everybody deserves respect and especially old people." On the other hand, many women highlighted the fact that patriarchy is embedded in most cultures and felt that Canada allows them the freedom to embrace gender equality as a principle for their families. Ada asserted: "Patriarchy! Throw it in the garbage! … I want my daughter to be equal to my son in every possible way."

Negotiating parenting methods, cultural values, beliefs, and traditions is complex even under a multicultural system that encourages integration rather than assimilation. These migrant mothers renegotiated their identities and their mothering practices living in contested diaspora spaces, where they often faced contradictory social factors and experiences. For some women their knowledge of the culture and the English language had an impact on how they balanced cultures. As newcomers, these women endured challenges, confusion, and frustration because they were unaware and uninformed about Canadian pa renting practices. Many of them identified a lack of an existing formal or institutional support system to help them through their integration process as women and as mothers, and perceived this absence as a great challenge. Regardless of their situation, women saw their cross-cultural mothering experiences as a wonderful journey that enriched them and their children because it allowed them to learn the intricacies of the new culture and relearn their heritage culture from a new vantage point.

SUPPORTING SELF-IDENTITY

The women participants judged that, for them, to be a mother in Canada was different than being a mother in their country of origin. Cross-cultural mothering granted new intellectual dimensions because of the additional invisible

intellectual labour involved in negotiating cultures and in creating new parenting frameworks that helped these women raise their children. This invisible labour included work done to help children develop and negotiate their identity. It also included the work done to build children's self-esteem in order to help them cope with and survive within systems of racial oppression and discrimination, integrate into their environment yet resist pressures to assimilate, and to enable children to become socially competent in the present and the future.

Working towards this goal means women are responsible for helping children develop an understanding of their ethnicity and an awareness of the power of race, gender, and Class relations in their new context; such understanding is essential for living successfully in the Canadian multicultural society. How migrant women go about doing this cross-cultural training work, however, is responsive to the positions in which they find themselves at particular conjunctures in relation to the diverse aspects that make up their identity, including race, class, ethnicity, and those of their children and families.

The women in this study used a wide range of strategies to provide their children with the necessary tools for responding to experiences of racism and discrimination in their lives. These included passing on knowledge about their roots, instilling pride in their heritage, and educating their children. However, although most women expressed their desire to teach their children about their roots, not every woman linked this desire with a concern to protect their children from negative representation, discrimination, and racism.

Women married to Canadian-born men emphasized the importance of teaching both cultures to their children, but the majority of these women did not express concerns about issues of racism and discrimination that could potentially affect their children now and in the future. However, although more reluctant or fearful to stir up discussion and name acts of racism and discrimination, most mothers married to partners from the same culture had some level of concern around this issue.

Many of these women acknowledged that they had been confronted with what they described as ignorance, racism, and discrimination in their own experiences and in their experiences as parents. They described Visible and audible differences in their identity and their children's as provoking a kind of response that reflects stereotyping, racism, and discrimination. As a result, they taught their children how to deal with perceived categorization, representation, and racialization by others. For instance, many women who were practicing Muslims or who came from a Muslim country reflected on how judgment and verbal abuse toward themselves and their children became more frequent and more blatant after September 11, 2001. In order to address this, they taught their children how to deal with stereotypes about Muslim identity. Fadwah, who came from South Africa with her family, explained how she and her son have been identified as Arabs, and how she has taught her children to avoid becoming angry, or internalizing other people's comments, but instead to use education as a tool to deal with racism:

I've been asked to go home so many times; my youngest son after September 11, 2001 he was called Osama Bin Laden. Ah, well, that's part of being who we are, because we are not Arabs. We are Muslim and I think that again it goes back to the question of being Muslim and being stereotyped. We've got to live with it! There are always ignorant people who are not willing to question something beyond what's a trademark. So, yes, for sure, especially when you are visibly something. I cover my head so I am visible when I walk down the street. How to deal with ignorance? You say: "I hope you find some peace," and walk away from it. I always

say to them don't confront it; don't become violent about it because they would become very, very angry. Anybody would! What I want to look at when I am teaching is: When you come across this kind of thing, it is [good] to respond with peace. And I've done it, so I teach mv children really to be able to judge stupidity and ignorance and to use some form of education process so that people can see you as human, right? When they do these things they don't see you as human (Fadwah).

Just as women and children experienced blatant expressions of racism, there were also more subtle ways by which they were made to feel excluded. For example, mothers in this study taught their children how to deal with the alienation that often. Comes from comments about the food they eat, the clothes they wear, or the names they were given. Teaching children cross-cultural understanding is not an easy task. Women saw it as an added responsibility to their parenting role, one that took a lot of effort and often brought them pain as a result of witnessing how these experiences threatened their children's self-esteem and self-value. Several women's responses regarding their efforts to help their children develop healthy ways to deal with such issues reflected their desire to protect their children from getting emotionally distressed and hurt by these experiences:

… I get hurt that she has to be in that position to defend something that is so naturally for me and my husband, to be different. But I want to help her out through that. I am ready for the challenge … to make her feel good about herself. I expect her to deal more of that stuff in the next, probably, ten years or in the teenage years. We'll try to make the trips to Bosnia interesting and they always are. So she sees good things. She has good friends there. She is always welcome; her dad is welcome! … So that's the best way I think. By having her enjoy that culture there. And people from Bosnia coming here … (Ada)

NEGOTIATING THE SYSTEM AND BUILDING SUPPORT NETWORKS

Mothering away from home is different for women who must undergo a constant adjustment as they negotiate new social, economic, and political systems and build new support networks. Several mothers expressed that a number of the significant changes they had experienced were the adjustments in moving from an extended family to a nuclear family practice, and sometimes to a single mothering practice; from being working professional mothers to being stay-at-home moms; and from a higher level of economic well-being to a more restricted one because of the differences in the cost of living in Halifax. A significant adjustment was navigating a new form of civil participation as women struggled to find their place as members of Canadian society.

In Canada, the invisibility of women resulting from their immigration status impacts their lives in a myriad of ways and for many years after their arrival. Most of the women participants entered Canada with the status of "dependents" because they were accompanying their husbands who had employment, or because they immigrated in the family class category. Due to their immigration status, some of these mothers were not able to access the same resources available to their husbands, including government-funded English as an Added Language (EAL) programs which were not fully designed to meet the needs of parents with small children. They were not able to access settlement services and formal information about Canadian parenting, nor were they made aware that these services existed once they became landed immigrants. More often, these women learned about these services through people they eventually met, thereby delaying their access to available services to help them integrate into the larger society. All of these issues had an impact on how they negotiated their mothering practices.

Becoming a stay-at-home mom was not always an option for some of these mothers but it was often the result of their immigrant category and legal status; inadequate knowledge of the English language and inadequate access to English language training; the lack of accreditation of their foreign credentials; and their lack of Canadian work experience.

The inability to improve their English skills affected - these women's sense of belonging to Canadian society and their role as mothers. They felt this limited their ability to get a job, to go to school and update their educational training, and to get involved in volunteer work. Most importantly, their lack of English created tensions and power struggles within the family due to the gap in knowledge of English between them and their children, which limited their ability to have direct access to communication with their children's teachers, school principals, and other staff. It also limited their ability to access recreational and parenting resources, to interact with English-speaking parents, to learn the intricacies of parenting, raising children and other various aspects of Canadian culture, and to juggle and negotiate cultures in an informed manner:

I cannot communicate in the playground with other parents … I cannot communicate with teachers … I don't know the Canadian ways of raising children so I cannot say anything about that … sometimes I would like to know some English words to explain myself With others, so this is making very frustrated (laughs) … (Hui Ying)

Most women related that, as newcomers, they did not find an existing formal or institutional support system to help them become informed about Canadian parenting practices. They perceived this absence as a great challenge. They often became aware of such vital information informally through their extended family and indirectly through their interactions with their school age children. The fact that children within the school system, in isolation from their parents, learned about their rights regarding violence against children and about support programs they could access usually added to women's grief and sense of loss. It created tensions within the family as mothers felt their authority was being undermined, that they were losing control and confidence over their parenting roles and responsibilities, and that their parenting practices were not valued and recognized as valid. They also felt that children were being informed about their rights with little explanation of their responsibility to be respectful to their parents' teachings and to the guidance of school teachers.

These women argued that through their own efforts, and out of necessity, they brought a form of support into their lives through friendships with other people. However, they recognized the difficulties they experienced connecting and forming friendships, particularly in the context of Nova Scotian communities that seldom experience immigration. Certainly, the existence of familiar people in Canada has been defined as a source of economic support for newcomer women. It can also act as a bridge that allows for familiarity of community; helping ease their transition to their new environment and facilitating opportunities to meet new people and develop friendships (Nova Scotia Office of Immigration, 2006; Warren, 1986).

In general, women married to Canadian-born men described the support of their husband and his extended family as facilitating their immigration and relatively smooth settlement process. Having a husband and his extended family from the area provided the women with a form of support and Vital guidance towards understanding their new environment, adjusting to a new culture, and learning about raising and socializing children. This support prevented them from feeling isolated and lost. Women married to partners from the same country, however, had lost the physical presence of an extended family to help them take care of the

children. They had also lost the immediate and direct support from the familiar people they counted on to inform their parenting methods, strategies, and values:

A mother here needs to become stronger and more patient and needs to think a lot. In my country it was different. There I could go out, sometimes I went traveling outside Jordan and my children stayed with my family. So I could do [almost] anything I wanted, but here I can't. My children are tied to me (laughs). I can't move. I can't go like I used to, it makes me feel pressured inside myself. (Heba)

Women negotiated the support they needed to integrate into the Canadian society and to raise their children. Many mothers described formal and informal community groups as sources from which they have slowly drawn support. These community groups also provided opportunities to develop friendships with people born in Canada, people from their country, or others Who speak the same language. In their efforts to teach children respect for diversity, some women joined organizations that supported inclusiveness and promoted peace. In their efforts to become active participants in their society, some of these mothers joined informal EAL conversation groups that allowed them to bring their children along. Others, due to a lack of familial support, felt it was very important to participate in an ethnic or cultural organization in order to deal with isolation, receive support, and to transmit cultural values:

I contacted other mothers, other women, Latino women because I was very interested in the Spanish language for my daughter. And the support I got from them is that we are planning or there is a plan of making little Spanish lessons, a school. So that would be some support. Of course, the support that I have is from other friends, mothers who are Spanish speaking. We meet and we speak in Spanish with our children, but the support is not from an institution, there isn't one in Halifax. (Pimenta)

The women in this study navigated through their daily activities and experiences within their families, their paid work, and their communities. They negotiated and reshaped their identity and mothering practices through their everyday lives. They saw their personality, education, individual ties to the world, and their philosophy in life as primary determinants of their successful adaptation to a multicultural society. They expressed a desire to see changes in the Canadian immigration system that would facilitate their immigration, integration, and cross-cultural mothering. The assertion "Canada does not want me, Canada wants my children," made by Huwaidah, one of the women participants, clearly indicates that these women saw their cross-cultural mothering work as valuable to society and that they were aware of its worth to Canada. Motivated by their love and their desire to protect and ensure the survival of their children, these women do all they can to raise healthy children who will become productive men and women, maintaining the social and economic well-being of Canadian society.

CONCLUSION

Mothering in a new country places women on a journey of complex negotiations over new cultural meanings, where they re-define their philosophies, methods, and strategies of raising children, drawing selectively from their own cultural back- grounds and their Canadian experiences. For the participants in this study, cross-cultural mothering was a journey of new beginnings that involved joy and wonder, as well as sacrifice, loneliness, sorrow, and at times insecurity. Their experiences revealed how their gender identities and the social expectations, in both their country of origin and their new country, lead women and men to perform different roles in the migration process, including who makes the decision to leave, who prepares for the move, who leaves first, who is expected to find employment first,

and who takes care of the family and maintains, social and familial contacts with extended family abroad.

Their experiences also revealed how gender-based, sexist, racist, and classist social institutions and immigration policies are shaped to respond to the expectations of what is a socially appropriate role for men and women, regardless of whether they are primary or secondary "bread winners" or full-time mothers and cultural labourers. The actual needs of this study's participants, as women and as mothers were, therefore, made invisible in immigration processes and policies. In particular, no consideration was given to the needs of women who did not conform to gender-based social expectations (Boyd & Grieco, 2003). Consequently, many of these women experienced professional marginalization, a loss of status, and an increased risk of poverty.

The significance of drawing from these mothers' experiences is thus central to understanding the practical activities in all spheres of everyday life and the role women play in the production and reproduction of society (Anderson et al. 1990).

Exploring what actually happened and what women did in the situations in which they found themselves is important in understanding how they make decisions about cultural behaviours and practices in socializing their children. By exploring these activities, the actual intellectual, physical, and spiritual work women do in raising children away from their place of birth or where they grew up is made visible and their voices audible.

Examining the cross-cultural mothering work migrant women perform reveals that women are neither completely silenced nor are they passive subjects (Gedalof, 1997). They are active agents of change. Inhabiting borderland spaces (Anzaldúa, 1987), or a diasporic space (Brah, 1996), women continue to be conscious actors in everyday life; actively producing and reproducing identity in their negotiated public and private social spaces (Glenn et al., 1994). This study's findings have revealed that migrant mothers, in their cross-cultural mothering work live and negotiate in spaces where borders are transgressed; at junctures where cultures pollinate and are revitalized die and are reborn.

Migrant women's cross-cultural mothering work is an activity that demands a great deal of judgement and self-reflection. This constant assessment of options, negotiation, and conscious self-reflective practice was evident in the experiences of all mothers participating in this study; though at first sight hidden, invisible even to participants themselves, and not socially recognized Yet, such activity is the necessary intellectual core of cross-cultural mothering and parenting and, ultimately, involves nothing less than the act and art of balancing cultures for the benefit of society as a whole (Yax-Fraser, 2007).

ENDNOTES

1. I use the term immigrant to refer to a foreign-born person who has settled legally and permanently in another country than that of his/her birth. In Canada, this term is often used as a social construct to define people on the basis of skin colour, social class, English accent, dress, religion, etc. (see Gupta, 1986; Ng, 1986, 1988).
2. In general, the term Canadian-born refers to any person born in Canada, including second-generation Canadian children born to at least one or both parents who are foreign born. In this chapter, the term is used to refer to White Canadians born of European descent (Ralston, 2000).
3. This study, presented in the thesis A balancing act: *The cultural choices and processes of cross-cultural mothering,* was carried out in partial fulfillment for the requirement of the Interuniversity Master's program in Women and Gender Studies at

Dalhousie, Saint Mary's and Mount Saint Vincent Universities in Halifax.

4. The term migrant is a broader term than immigrant, often used to describe people on the move, or people with temporary status, or no status at all, in the country where they live (Brah, 1996; Ng, 1988). In this study I often refer to the participants as migrant women because they continuously travel and cross borders physically or psychologically.
5. See Light and Bachu, 1993.
6. Culture shock is the name given to the physical and emotional upset that comes from having our familiar environment or boundaries greatly changed. Taken from *The heart that breaks is reborn: Culture shock,* by the Metropolitan Immigrant Settlement Association (MISA, which is currently the Immigrant Settlement and Integration Services or ISIS).

REFERENCES

Anderson, Kathryn, et al. (1990). Beginning where we are: Feminist methodology in oral history. Developing theory from oral history. In J. McCarl Nielsen (Ed .), Feminist methods: *Exemplary readings in social science* (pp. 94-112). Boulder: Westview Press.

Anzaldua, Gloria. (1987) *Borderlands/La frontera: The New Mestiza.* San Francisco: Aunt LuteBooks.

Boulton, Mary Georgina. (1983) *On being a mother: A study of women with preschool children.* London and New York: Tavistock Publications.

Boyd, Monica, and Elizabeth Grieco. (2003). Women and migration: Incorporating gender into international Migration theory. Migration Policy Institute. Retrieved October 19, 2010, from www.migrationinformation.org/feature/displaycfm?ID=106

Brah, Avtar. (1996) *Cartographies of Diaspora: Contesting Identities.* London and New York: Routledge.

Chiang, Hung Nora (2008) "Astronaut Families: transnational lives of middle-class Taiwanese married women in Canada". Social & Cultural Geography 9(5):505-518.

Crittenden, Ann. (2001) *The price of motherhood: Why the most important job in the world is still the least valued.* New York: Metropolitan Books.

Das Gupta, Tania. (1986) *Learning from our history: Community development by immigrant Women in Ontario, 1958-1986, a tool for action.* Toronto: Cross Cultural Communication Centre.

Gedalof, Irene. (1997) Against Purity: Identity, Western feminisms and Indian complications. Doctoral dissertation, University of Warwick, Coventry, UK.

Glenn, Evelyn Nakano, Grace Chang, and Linda Rennie Forcey (Eds). (1994) *Mothering: Ideology, experience, and agency.* New York: Routledge.

Hill Collins, Patrica. (1994) Shifting the centre: Race, class, and feminist theorizing about motherhood. In E. Nakano Glenn, C. Chang, and L. Rennie Forcey (Eds), *Mothering: Ideology, experience, and agency* (pp. 45-65). New York: Routledge.

Kgomo, Eugenia Adeline. (1996) Parenting in a different social environment: The experiences and perspectives of immigrant women of African descent in British Columbia. Master's thesis, Simon Fraser University, Burnaby, BC. UMI Dissertation Services.

Light, Ivan Hubert, and Perminder Bachu. (1993) *Immigration and entrepreneurship: Culture, capital, and ethnic networks.* New Brunswick, NJ: Transaction Publishers.

Mohanty, Chandra Talpade. (1999) Women workers and capitalist scripts: Ideologies of domination, common interest, and the politics of solidarity. In S. Hesse-Biber, C. Gilmartin, 8: R. Lydenberg (Eds), Feminist approaches to theory and methodology: An interdisciplinary reader. (pp. 362-388). New York: Oxford University Press.

Ng, Roxana. (1988) *The politics of community services: Immigrant women, class, and state.* Toronto: Garamond Press.

Ng, Roxana. (1996) *The politics of community services: Immigrant women, class, and state.* (2nd ed). Halifax: Fernwood.

Noivo, Edite. (2000) Family diversity and cultural pluralism. In S. E. Nancoo (lid), *21st century Canadian diversity* (pp. 183-206). Mississauga, ON: Canadian Educators' Press.

Nova Scotia Office of Immigration. (2006) Second Nova Scotia immigrant women's round table: A summary report. Halifax: NS.

O'Reilly, Andrea. (2006) *Rocking the cradle: Thoughts on feminism, motherhood and the possibility of empowered mothering.* Toronto: Demeter Press.

Pietilä, Hilkka, and Jeanne Vickers. (1994) *Making women matter: The role of the United Nations.* London: Zed Books Ltd.

Ralston, Helen. (November, 2000) Mothers and daughters in the diaspora: A comparative study of identity construction among Women of South Asian origin in Canada and Australia. Paper presented at the Fifth International Metropolis Conference, Vancouver, BC.

Reyes, Angelita. (2000) *Mothering across cultures: Postcolonial representations.* Minneapolis, MN: University of Minnesota Press.

Rose, Damaris, Pia Carrasco, and Johanne Charboneau. (1998) The role of "weak ties" in the settlement experiences of immigrant women with young children: The case of Central Americans in Montreal. Retrieved October 9, 2010, from: http://Ceris.metropolis.net/Virtual%20Library/community/Rosel/roselhtml

Ruddick, Sara. (1983) Maternal thinking. In J. Trebilcot (ECL), *Mothering: Essays in feminist theory.* (pp. 213-225). Totowa, NJ: Rowman & Allanheld.

Ruddick, S. (1989) *Maternal thinking: Toward a politics of peace.* Boston, MA: Beacon Press.

Tummala-Narra, Pratyusha. (2004) Mothering in a foreign land. *American Journal of Psychoanalysis,* 64(2), 167-182.

Vaughan, Genevieve. (1991) Gift giving and exchange: Genders are economic identities and economies are based on gender. In G. Vaughan (Ed.), *The gift, il dono: A feminist analysis.* (pp. 15-34). Rome, Italy: Meltemi Press.

Warren, Catharine E. (1986) *Vignettes of life: Experiences and self perceptions of new Canadian women.* Calgary, AB: Detselig Enterprises

Yax-Fraser, Maria Josefa. (2007) A balancing act: The cultural choices and processes of cross-cultural mothering. Unpublished Master's thesis, Interuniversity Women and Gender Studies Program Dalhousie University, Halifax, NS.

Yuval-DaVis, Nira. (1997) *Gender and nation.* London: Sage Publications.

Hate in the Peaceable Kingdom

Published in *Directions* September 2018

By: Dr. Barbara Perry, University of Ontario Institute of Technology

BIOGRAPHY

Barbara Perry, PhD, is recognized as one of the world's foremost authorities and renowned authors on Hate Crime. A Professor in the Faculty of Social Science and Humanities at the University of Ontario Institute of Technology (UOIT), and the Director of the Centre on Hate, Bias and Extremism, Dr. Perry is helping to frame the field, and foster global education and support for victims of violence. In 1985, Dr. Perry obtained her Bachelor of Arts in Social Behaviour from Queen's University in Kingston, Ontario; she received her Master of Arts in Sociology from Queen's University in 1987, and earned her Doctorate in Sociology from Carleton University in Ottawa, Ontario in 1992. Throughout her esteemed career, Dr. Perry has received numerous teaching and research awards for her work including the 2013 Distinguished Scholar Award from Auckland University in New Zealand, and in 2018, the Innovation in Academia International Award from Kent University. She was awarded the American Society of Criminology's 2007 Critical Criminologist of the Year. Her pursuit of social justice stems from her desire to have a more critical perspective and she is passionate about giving victims a voice and deeply committed to bringing people in marginalized communities back into the fold so that they can realize full citizenship.

INTRODUCTION

Hate crime is a vital area of inquiry for Canadian scholars. Such violence represents a direct threat to the basic principles of Canadian multiculturalism, in that it has the potential to present significant obstacles to the ability or willingness of affected communities to engage in civic culture. Consequently, hate crime violates our commitment to human dignity and equity. Given the centrality of multiculturalism policy in Canada, this has been surprisingly neglected, especially where the study of ethnicity and racism informs other fields, including the criminology of hate crime. Over the last four years, I have developed and maintained a website clearinghouse of Canadian research on hate crime. The search for relevant materials has revealed a serious dearth of literature. A review of what is available offers up little more than a handful

of academic papers (e.g., McKenna, 1994; and Shaffer, 1996), a significant number of government reports (see, e.g., Roberts, 1995; and Janhevich, 2001; MacDonald and Hogue, 2007), and dozens of anti-violence/anti-hate web sites (e.g., B'Nai Brith; and National Anti-Racism Council). For example, Julian Roberts (1995) produced a much cited review in 1995, but it was largely restricted to an analysis of available statistics and an assessment of data collection methods and practices. Janhevich's (2001) Centre for Justice Statistics has a similarly narrow focus. A 1994 Department of Justice document entitled Hate-Motivated Violence is devoted exclusively to legislative measures (Gilmour, 1994). MacDonald and Hogue's (2007) more recent study is much more detailed, but acknowledges that there is still a dire lack of Canadian data or scholarship on hate crime.

This is not to imply that Canada is free of the stain of hate. Like most other Western nations, Canada has had its share of bias motivated violence – hate crime – throughout history. From the periodic assaults on First Nations communities, to the riotous attacks on Chinese labourers in the 1880s, to the recent spate of anti-Semitic violence in Montreal and Toronto, this country has proven itself to be less inclusive than its international image would suggest. Indeed, the presence of such violence gives lie to the "myth of multiculturalism" which is so deeply embedded in our national psyche. As the Right Honourable Beverly McLachlin (2003) stated in her LaFontaine-Baldwin address, "In Canada, we vaunt our multi-cultural society, yet still racism, anti-Semitism and religious intolerance lurk in our dark corners." What I offer in this chapter is an overview of relevant definitions, data, and justice responses to hate crime, followed by an assessment of the myriad layers of impact associated with this particular form of violence.

DEFINING AND MEASURING HATE CRIME

Typically, legal definitions of hate crime have followed the lead of the model legislation as set out by the Anti-Defamation League, which states that "A person commits a Bias-Motivated Crime if, by reason of the actual or perceived race, color, religion, national origin, sexual orientation or gender of another individual or group of individuals, he violates Section _____ of the Penal code (insert code provisions for criminal trespass, criminal mischief, harassment, menacing, intimidation, assault, battery and or other appropriate statutorily proscribed criminal conduct)." This is very much like the language used in the Canadian sentencing enhancement provision (S718.2a): "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor."

However, such legalistic definitions say nothing about the power relations endemic to the act. Consequently, Perry (2001) has developed the following definition of hate crime, which has come to be widely cited in the sociological literature:

It involves acts of violence and intimidation, usually directed toward already stigmatized and marginalized groups. As such, it is a mechanism of power, intended to reaffirm the precarious hierarchies that characterize a given social order. It attempts to recreate simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the "appropriate" subordinate identity of the victim's group (Perry, 2001: 10).

What is especially useful about this definition is that it recognizes that hate crime is a structural rather than an individual response to difference. Moreover, by emphasizing both violence and intimidation, it allows us to consider the continuum of behaviors that might constitute hate crime. According to the legal definitions, hate crime involves an underlying violation of criminal law or some other statute. From a sociological perspective, this is not very satisfying. It neglects legal forms of violence – what might be called hate incidents - that nonetheless cause harm to the victim and his or her community. The literature on violence against women, for example, has long argued for a broader understanding of what constitutes violence, and indeed crime. Thus, it is important to keep in mind that the violence to which we refer runs the continuum from verbal harassment, to extreme acts such as assault, arson, and murder. Clearly, not all incidents that fall within this definition will be "crimes" from a legal perspective. Yet they do constitute serious social harms regardless of their legal standing. By their very frequency and ubiquity, some of the most minor types of victimization – name calling, verbal harassment, etc. – can have the most damaging effects.

The available data sources on hate crime in Canada are limited. The annual General Social Survey (GSS) and the Ethnic Diversity Survey each include some rather weak questions on hate crime. And, as noted above, there have been a number of Justice Canada and Statistics Canada reports that attempt to measure hate crime. For example, through its Juristat reports, Statistics Canada has published annual hate crime reports since 2004. The most recent report released in 2013 documents just over 1,300 hate crimes in 2011, 3.9 per 100,000 (Allen and Boyce, 2013). The most frequent victims were Black people (21%), gay and lesbian people (18%), and Jewish people (15%). While the majority of offences were non-violent, offences motivated by sexual orientation were, in contrast, violent in two-thirds of the reported cases.

In 2005, the Ontario Attorney General and Minister of Community Safety and Correctional Services established the Hate Crimes Community Working Group to explore and advise on the dynamics of hate crime in Ontario, specifically. In 2006, they released a comprehensive report of their findings. The report reflected the voices of the communities most dramatically affected by hate crime. Specifically, the HCCWG identified seven communities that appear to be especially vulnerable to hate crime: Aboriginal peoples; African Canadians; Asians; people of Jewish faith; people of Muslim faith; lesbian, gay, bisexual, and transgender people; and South Asians. Participants in the public hearings, focus groups, and other similar venues consistently stressed the pervasiveness of bias and hate crimes in their collective lives. For many, such incidents were so common as to have been "normalized" as a standard part of life.

Both the official and unofficial data must be considered carefully. Crime, generally, is under-reported, and hate crime is even more problematic in this respect. It is useful, then, to turn to a consideration of the role of the different layers of the criminal justice system as a means of making sense of the dearth of reporting and information available to us.

CRIMINAL JUSTICE RESPONSES TO HATE CRIME

The criminal justice response to hate crime has been varied and broad, ranging from legislation, to specialized police hate crime units, to anti-violence projects, to the array of services known as Victim-Witness services, and both individual and, more recently, community victim impact statements. Within these contexts, the task of the criminal justice system

is not only to mitigate the negative effects of hate crime for individual victims, but the communities to which they belong.

In contrast to the breadth of US legislative initiatives, Canada has relatively few statutory tools with which to confront hate crime. In 1970, amendments to the Criminal Code recognized as criminal offences promotion of genocide (S.318), public incitement of hatred likely to lead to breach of the peace (319.1), and wilful promotion of hatred (S.319.2) when directed against specified "identifiable groups." In 2001, a bias motivated mischief provision was added (S.430.4.1). Somewhat distinct from these provisions is S.718.2, which is a sentence enhancement statute. It is at this latter context that community impact noted below becomes an important consideration, since it may be one of the factors that mitigates a sentence.

Exacerbating the legislative limitations, very few cases have made their way to the courts. This is captured in McDonald and Hogue's (2007) recent Justice Canada document, An Exploration of Needs of Victims of Hate Crime, in which they report the infrequency of prosecutions under the relevant provisions:

From 1994/5 to 2003/2004 there have been a total of twelve prosecutions and six convictions under s.318 of the Criminal Code (advocating genocide). . . . Under s.319 (incitement to hatred), from 1994/95 to 2003/2004 there have been a total of 93 prosecutions and 32 convictions. . . . No charges have been recorded under s. 430.4.1 (mischief relating to religious property) in this same time period. A review of published case law indicates that between 1996 and 2006 at least 23 cases have applied hate as an aggravating factor in sentencing (hate as an aggravating factor in sentencing (s.719.2(a)(i)) (McDonald and Hogue, 2007: 16).

The explanation for the rarity of hate crime prosecutions arises from constraints in two key areas: prosecutorial decision-making, and police decision-making. Prosecutors face a difficult tension in balancing "hatred" against free speech protections. More concretely, as US scholarship has begun to demonstrate, prosecutors find it exceedingly difficult to "prove" motive (Bell, 2002).

Additionally, prosecutors are, of course, reliant on police decision-making. Unfortunately, there is ample evidence to suggest that police are, in fact, hesitant to identify or investigate hate crimes (Bell, 2002, 2009; Nolan et al, 1999, 2009; Parker, 2009). Bell (2009) identifies an array of structural limitations on police recording of hate crime:

Different levels of organizational procedure exist around hate crimes. In order to be reported, hate crimes must be recognized, counted, and eventually reported. There are vast differences between police departments whether, the degree to which, and in what way officers are trained. Training specifically focused on hate crime factors often leads to increased hate crime reporting. Other institutional factors which increase hate crime reporting include the level of supervision in crime investigations and whether there is departmental policy regarding hate crimes.

Additionally, police indirectly play a role in the very first decision point, that is, in whether the victim decides to report the incident. In addition to the limitations imposed by law enforcement agencies are those presented by trends in public under-reporting. In fact, some argue that hate crimes are even more dramatically under-reported than other UCR offences (Berrill, 1992; Weiss, 1993). Typical reasons for failing to report include fear of retaliation, the sense that nothing could be done, or the sense that the incident was not serious enough to bother police with. Moreover, victims may well fear secondary victimization at the hands of law enforcement officials, or perceive that police will not take their victimization seriously.

Given the assumption that "hate crimes hurt more" (e.g., Iganski, 2001, Perry and Alvi, 2011), the failure of police to fully address hate crime is problematic. It may have the effect of further exacerbating the anxiety created by the initial incident. It is important, then, to document the wide-ranging impacts so that police, prosecutors and judges will understand that it is not just individuals whose needs must be considered, but also those of their immediate and extended communities.

THE IMPACTS OF HATE CRIME

Hate crimes are very different in their effects, as compared to their non-bias motivated counterparts. Specifically, British scholar Paul Iganski (2001, 629) contends that there are five distinct types of harm associated with hate crime:

- harm to the initial victim;
- harm to the victim's group;
- harm to the victim's group (outside the neighbourhood);
- harm to other targeted communities; and
- harm to societal norms and values.

Individual Impacts

Research suggests that first and foremost among the impacts on the individual is the physical harm: bias motivated crimes are often characterized by extreme brutality (Levin & McDevitt, 1992). Violent personal crimes motivated by bias are more likely to involve extraordinary levels of violence. Additionally, the empirical findings in studies of the emotional, psychological, and behavioural impact of hate crime are beginning to establish a solid pattern of more severe impact on bias crime victims, as compared to non-bias victims (see, e.g., Herek et al., 2002; McDevitt, et al., 2001). Among these impacts:

- Victims of bias crimes have been attacked for being different, for being misunderstood, and for being hated. Because the basis for their attack is their identity, they may suffer a deep personal crisis.
- When a bias crime is committed against a member of a minority group, the victim frequently perceives the offender as representative of the dominant culture in society who may frequently stereotype the victim's culture.
- If their membership in a target group is readily visible, victims of bias crimes may feel particularly vulnerable to a repeat attack. This heightened sense of vulnerability may result in the feeling of hopelessness.
- Victims may become afraid to associate with other members of the group that has been targeted, or may fear seeking needed services, believing that these actions increase their vulnerability.
- As a result of the victimization, bias crime victims may respond by more strongly identifying with their group -- or conversely, by attempting to disassociate themselves or deny a significant aspect of their identity.

Community Impacts

Beyond these immediate individual effects, however, hate crimes are also "message crimes" that emit a distinct warning to all members of the victim's community: step out of line, cross invisible boundaries, and you too could be lying on the ground, beaten and bloodied (Iganski, 2001). Consequently, the individual fear noted above can be accompanied by the collective fear of the victim's cultural group, possibly even of other minority groups likely to be victims. Weinstein (1997) refers to this as an in terrorem effect: intimidation of the group by the victimization of one or a few members of that group (see also Perry and Alvi, 2011).

Hate crimes promote fear and insecurity among minority communities, whether the crimes are based on skin colour, race, religion, ethnic origin, or sexual orientation. Without question, awareness of the potential for hate crime enhances the sense of vulnerability and fearfulness of affected communities. This, after all, is the intent of hate crime – to intimidate and instill fear in the whole of the targeted community, not just the immediate victim. Interestingly, when asked to define hate crime, many participants in my study of community impacts explicitly acknowledged the nature of these "message crimes":

Hate crimes occur because people have learned to dislike difference. They occur because people want to feel superior to and have power over others. They are probably more likely to be committed by groups of young people who are looking to act out. They are meant to scare everyone, not just the victim (Asian female).

For many, the message is received loud and clear; they do feel themselves to be equally vulnerable to victimization, and thus, fearful. Upon reading a scenario describing a hypothetical hate crime, an Asian male observed "I feel for Jim - his safety and well-being. I also think that could've been anyone else leaving that meeting and that we all are vulnerable."

The cumulative impact of hate crime and its *in terrorem* effects can be to reinforce the sense of inferiority or of oppression experienced by affected communities. Indeed, my argument has long been that the intent of hate crime is to reassert the subordination of victims and their communities. In *In the Name of Hate,* I contended that, through bias motivated violence, perpetrators attempt to reaffirm their dominant identity, their access to resources and privilege, while at the same time limiting the opportunities of the victims to express their own needs (Perry, 2001). The performance of hate violence, then, confirms the "natural" relations of superiority/inferiority. It is a form of interpersonal and intercultural expression that signifies boundaries. And, significantly, the boundary is "capable of organizing personal interactions in sometimes lethal ways" (Cornell and Hartmann, 1998: 185).

In this context, too, members of vulnerable communities can read the intended message. More significantly, the effect is, in fact, to render them more uncertain about their place in society. It does leave them feeling somehow "less worthy" than the presumptive offender:

Whether they were directly or indirectly made towards me, in my opinion, these were hate crimes as they left me feeling lesser than the other person, as they were directed attacks on my self-esteem and confidence (lesbian).

This is relatively common among immediate victims of hate crime. The fact that it is also a sentiment that emerges among vicarious victims speaks to the power of such violence to intimidate and silence whole communities.

Faced with the normativity of fear-inducing violence, members of vulnerable communities learn to negotiate their safety (Mason, 2009). They adopt an array of strategies for managing their vulnerability, often through changes in behavioural patterns. Across studies, participants expressed the necessity to alter their performance of identity in accordance with what they recognized as the socially established rules for "doing difference". They reported changing routine activities, habits, and ways of being in the world: "Even if you ran to escape they still chased after you. I then knew to travel/move in packs with friends. Never walk alone, bring reinforcements/ witnesses and cell phone." In this way people of colour, gay men and lesbians, and others deemed inferior are kept "in their place." Violence reinforces the boundaries - social and geographical - across which they are not meant to step.

Two communities appear to be especially prone to this identity management. Members of LGBT communities frequently referred to the effects of fear on their decisions to reveal their sexual orientation to others. A gay male states it succinctly: "I have tried to look 'less gay'." A lesbian shares similar sentiments: "I constantly challenge homophobic/ heterosexist comments or ideals. I sometimes dress more feminine than I'd like, just to break down stereotypes. I'm often perceived as being 'straight' because of this." Both comments reflect the extent to which the fear of crime results in a careful crafting of one's identity, such that they are less visible, and thus less vulnerable. This statement vividly demonstrates how many LGBTQ participants modify their behavior and alter the way they express themselves to conceal their sexual orientation and thus decrease the possibility of victimization.

Likewise, in the current context of heightened Islamophobia, many Muslims are challenged by the risk of violence. This is particularly true for those who are "visibly" Muslim by virtue of their dress or appearance. This means that Muslim women who are covered have become especially vulnerable to Islamophobic violence. Consequently, managing their own safety – and thus their identities - has become crucial for Muslim women. Significantly, recognizing the visibility represented by the hijab, many women have come to question their choice to be covered. One young Muslim woman provides her assessment of the impacts:

It makes women more reluctant to wear the hijab or to stand out in that sense. Because they're afraid of what might happen to them if they were to become a visible Muslim. And if they were to wear the hijab. So I see a lot of people say, "the reason I don't wear is because I'm afraid. I'm afraid of what people might think. I'm afraid of what people might do. So I keep it to myself."

In this respect, the potential for anti-Muslim violence serves its intended purpose of enforcing appropriate public performances at the very least. Sadly, the risk of victimization often means that victimized communities are forced to prioritize their safety over their expression of identity.

Social Impacts

Hate crime throws into question not only the victim's and the community's identity, but also our national commitment to tolerance and inclusion. The persistence of hate crime is a challenge to democratic ideals. It reveals the fissures that characterize its host societies, laying bare the bigotry that is endemic within each. In short, the persistence – and in fact periodic flurries – of hate crime gives lie to the Canadian canon of multiculturalism. The shock and incomprehension expressed by participants in a recent study are also symptomatic of a loss of innocence with respect to Canadian values, for the shock was consistently a reflection of shattered illusions. Illustrative comments like the following have been common across the studies that I have conducted:

This is a crime. I feel very sad for Jim, but also I feel a sadness for the state of a community where people feel it is appropriate to harass someone because of their orientation (gay male).

The hurt is strong as in Canada we are supposed to live in society without fear of attack.

Such sentiments highlight the fragility of the mantra of multiculturalism. The underlying ethos is not necessarily the daily reality for vulnerable communities who both experience and fear violence motivated by ideals in direct contrast to those embedded in the

national mantra. The messages of inclusion, participation, and engagement are matched by their mirror images in the acts of violence inspired by racism, heterosexism and other related "isms." It should be noted that in this Canada is not unique. Writing of the Australian paradox, Chris Cunneen (1997: 138) highlights the irony wherein "a liberal democracy, with its commitment to anti-discrimination, simultaneously functions within an institutional framework which can be described as having pervasive racism." The cultural, social and political mood in western nations like Canada and Australia uneasily supports both a disabling and enabling environment for hate.

REASON FOR OPTIMISM: THE MOBILIZING EFFECTS OF HATE CRIME

In some cases, hate crime has been a catalyst for positive change. That is, patterns of persistent violence, or highly publicized cases - like the 1998 Matthew Shepard or James Byrd cases - often have the unintended effect of mobilizing victim communities and their allies. We saw some evidence of this in Ontario in response to the alleged incidents of hate crime against Asian anglers north of Toronto. Indeed, community outcry resulted in the establishment of an inquiry into those events (Ontario Human Rights Commission, 2007; 2008).

The objects of hate violence can and do develop constructive alternatives to the prejudice and violence that confronts them. One First Nations male indicated that hate can be unlearned. "I think it is learned. It is learned partly in our educational system, it is learned in the home and is learned through the media culture. I would suggest that the only good news is that hate can be unlearned."

Whether individually or collectively, there is value in challenging hate crime and the biases that inform it. There were participants who were relatively optimistic about the potential for change, and who suggested progressive strategies for harnessing the energy of vibrant communities to counteract both the potential for and the impact of hate crime. For example, "This story makes me want to help educate people so that future generations will be more accepting and less afraid. Education is the key to eliminating irrational fears." Indeed, earlier, we noted that respondents claimed to have changed their patterns of behaviour in order to avoid victimization.

I had never really worn the hijab before, but for a short period of time, right after 9/11 I started wearing it as like, a sign of defiance, you know? And I like also knew that because it wasn't my style and I wasn't going to keep it on for too long but it was definitely a time when I felt like being more visibly Muslim was necessary for me to deal with the.. all the anti-Muslim sentiments and hate that was going around like in my school and but I remember… and it wasn't ever directed as me and I wasn't really challenged after that. I just wanted to feel defiance (Female – Toronto).

One constructive behavioural shift noted by many was that they felt inspired to react at an individual and/or collective level:

In an attempt to promote gay rights and tolerance I donate money to EGALE, join protests, have written in local newspapers, questioned charitable/social agencies with regards to their policies and resources for dealing with LGBT community clients. In the scenario above I would help to ensure factual media coverage of the event to shed light on the issue of homophobia/gay bashing - perhaps work with a neighbourhood community group to deal with the issue (gay male).

It is these sorts of reactions to the normativity of violence that will ultimately present the greatest defense. To use the moment of victimization to confront and challenge oppression speaks volumes. In particular,

it says to the perpetrator that affected communities refuse to "stay in their place," but will instead fight for a reconstructed definition of what that place is. Moreover, such resistance also sends a powerful message of strength and solidarity to the communities themselves.

REFERENCES

Allen, M., and Boyce, J. 2013. Police-reported Hate Crime in Canada, 2011. *Juristat.* Ottawa: Statistics Canada. Catalogue no. 85-002-X.

Bell, J. 2002. *Policing hatred.* New York: New York University Press.

Berrill, K. 1992. Anti-gay violence and victimization in the United States: An overview. In G. Herek and K. Berrill (eds.), *Hate Crimes: Confronting Violence Against Lesbians and Gay Men* (pp. 19-45). Newbury Park, CA: Sage.

Cornell, S. and Hartmann, D. 1998. Ethnicity and Race: Making Identities in a Changing World. Thousand Oaks CA: Pine Forge Press.

Cunneen, C. 1997. Hysteria and hate: the vilification of Aboriginal and Torres Strait Islander people. In C. Cunneen, D., Fraser, and S. Tomsen (eds.), *Faces of Hate: Hate Crime in Australia.* Leichhardt NSW: Hawkins Press. Pp.137-161.

Gilmour, G. 1994. *Hate-Motivated Violence.* Ottawa: Department of Justice Canada.

Hate Crimes Community Working Group. 2006. *Addressing Hate Crime in Ontario.* Toronto: Attorney General and Minister of Community Safety and Correctional Services.

Herek, G., Cogan, J., and Gillis, J. R. 2002. *Victim experiences in hate crimes based on sexual orientation. Journal of Social Issues,* 58 (2): 319-339.

Iganski P. 2001. Hate crimes hurt more. *American Behavior Scientist,* 45 (4): 627- 638.

Janhevich, D. 2001. *Hate Crime in Canada: An Overview of Issues and Data Sources.* Ottawa. Statistics Canada.

Levin, J. & McDevitt, J. 1992. *Hate crimes: The rising tide of bigotry and bloodshed.* New York: Plenum.

Lim, H. A. 2009. Beyond the immediate victim: Understanding hate crimes as message crimes. In P. Iganski (ed.), *Hate Crimes: The Consequences of Hate Crime* (pp. 107-122). Westport, CT: Praeger.

McDevitt, J., Balboni, J. Garcia, L. and Gu, J. 2001. Consequences for victims: A comparison of bias- and non-bias motivated assaults. *American Behavioral Scientist,* 45 (4): 697-711.

McDonald, S., and Hogue, A. 2007. *An Exploration of the Needs of Victims of Hate Crime.* Ottawa: Department of Justice.

McKenna, Ian. 1994. Canada's hate propaganda laws – A critique. *Ottawa Law Review,* 26: 159-183.

McLachlin, B. 2003. *The Civilization of Difference.* LaFontaine-Baldwin Address. Toronto: The Institute for Canadian Citizenship.

Noelle, M. 2002. The ripple of effect of the Matthew Shepard murder: Impact on the assumptive worlds of members of the targeted group. *American Behavioral Scientist,* 46 (1): 27-50.

Noelle, M. 2009. The psychological and social effects of anti-bisexual, anti-gay, and anti-lesbian violence and harassment. In P. Iganski (ed.), *Hate Crimes: The Consequences of Hate Crime* (pp. 73-106). Westport, CT: Praeger.

Nolan, J., Bennett, S. & Goldenberg, P. 2009. Hate Crime Investigations. In F. M. Lawrence (ed.) *Hate Crimes: Responding to Hate Crimes (Volume 5)* (pp. 71-88). Westport, CT: Praeger.

Ontario Human Rights Commission. 2008. *Preliminary Findings: Inquiry Into Assault on Asian Canadian Anglers.* Toronto: Ontario Human Rights Commission.

Ontario Human Rights Commission. 2007. *Fishing Without Fear: Report on the Inquiry into Assaults on Asian Canadian Anglers.* Toronto: Ontario Human Rights Commission

Mason, G. 2009. Body Maps: Envisaging Homophobia, Violence, and Safety. In P. Iganski (ed.), *Hate Crimes: The Consequences of Hate Crime* (pp. 49-72). Westport, CT: Praeger.

Parker, R. 2009. Police Training. In F. M. Lawrence (ed.) *Hate Crimes: Responding to Hate Crimes* (Volume 5) (pp. 51-70). Westport, CT: Praeger.

Perry, B. 2001. *In the name of hate.* New York: Routledge.

Perry, B., and Alvi, S. 2011. "We are all vulnerable:" The in terrorem effects of hate crime. *International Review of Victimology.*

Roberts, J. 1995. Disproportionate Harm: Hate Crime in Canada. Ottawa: Department of Justice.

Schaffer, Martha. 1996. "Criminal Responses to Hate- Motivated Violence: Is Bill C-41 Tough Enough?" McGill Law Journal. Vol. 41: 199-250.

Weinstein, J. 1992. First amendment challenges to hate crime legislation: Where's the speech? *Criminal Justice Ethics,* 11(2): 6-20.

Weiss, J. 1993. Ethnoviolence's impact upon and response of victims and the community. In R. Kelly (ed.), *Bias Crime* (pp. 174-185). Chicago: Office of International Criminal Justice.

Colour as a Discrete Ground of Discrimination

This paper was first published in the Canadian Journal of Human Rights.

Joshua Sealy-Harrington and Jonnette Watson Hamilton, "Colour as a Discrete Ground of Discrimination" (2018) 7:1 Canadian Journal for Human Rights 1-33, online: https://cjhr.ca/colour-as-a-discrete-ground-of-discrimination/.

By: Jonnette Hamilton and Joshua Sealy-Harrington

Jonnette Hamilton

Joshua Sealy-Harrington

BIOGRAPHY

Jonnette Watson Hamilton is a Professor in the Faculty of Law at the University of Calgary. She received her LLB from Dalhousie University and her LLM from Columbia University. Her current research focuses on equality issues, particularly in the context of section 15 Charter challenges based on all grounds of discrimination and human rights issues at the intersection of residential tenancies and disability grounds. Her areas of teaching include property law and theory and law and literature. She received a Students' Union Teaching Excellence Award in 2018 and the Canadian Bar Association –Alberta Branch/Law Society of Alberta Distinguished Service Award for Legal Scholarship in 2017.

Joshua Sealy-Harrington is a doctoral candidate at Columbia Law School and lawyer at Power Law. His research theorizes the complex relationships amongst law, identity, and sexuality, while his practice explores the intersection of these relationships with public, constitutional, and criminal law. In practice, Joshua has appeared before all levels of court, including the Supreme Court of Canada. Before joining Power Law, Joshua completed three judicial clerkships, two at the Supreme Court of Canada (for Justice Clément Gascon) and one at the Federal Court (for Justice Donald J. Rennie, now of the Federal Court of Appeal). His writing has been published in various law journals, National Magazine, The Globe and Mail, and Newsweek. And his legal scholarship has been cited by the Federal Court, Federal Court of Appeal, and Supreme Court of Canada. He can be followed on twitter @joshuasealy.

Joshua Sealy-Harrington† and Jonnette Watson Hamilton‡

Colour, as a ground of discrimination, is usually equated with or subsumed under the ground of race. We argue that colour does and should have a discrete role in human rights and equality cases because it highlights certain hierarchies and forms of marginalization unaddressed by the ground of race. To support this argument, we first explore the concepts of "race" and "colour" and their relationship to one another as well as the harms done by discrimination based on colour. Then, after a brief review of the use of race and colour in international and domestic instruments, we examine American anti-discrimination employment cases to learn from that country's experience with separating race and colour as two separate grounds of discrimination. We then turn to the emerging Canadian jurisprudence recognizing colour as a distinct ground and the possible consequences of that recognition.

† B.Sc. (UBC), J.D. (Calgary). Joshua is a Black lawyer with Trinidadian-Canadian ancestry. He will be attending Columbia Law School in the fall of 2018 for an LL.M. concentrating in Critical Race Theory.

‡ B.A. (Alta.), LL.B. (Dal.), LL.M. (Col.). Jonnette is a non-racialized Professor at the University of Calgary, Faculty of Law.

I. INTRODUCTION

Almost every international and domestic human rights instrument prohibits discrimination on the grounds of both race and colour.

However, in Canada, as elsewhere, complaints and decisions about discrimination usually subsume colour within the ground of race. Complainants and decision-makers routinely assume that skin pigmentation and race are synonymous. As a consequence, the case law suggests that colour plays little or no role as a discrete ground of discrimination.[1]

We believe this state of affairs is changing and that colour as a discrete ground may become more important in human rights and equality law. First, more people are self-identifying as multi-racial, in part as a result of inter-racial marriages and immigration,[2] and these self-identifications may challenge racial categorizations.[3] Second, the legitimacy of racial classification is increasingly called into question,[4] whereas colour is seen as describing objectively identifiable biological realities.[5] Third, some commentators argue that discrimination is becoming less overt and more subtle and that colour as a ground of discrimination may be able to better handle that subtlety.[6] Fourth, some scholars note that, within racial minority groups, intra-group screening and preferencing is on the rise, based on hierarchies linked to personal characteristics other than race, such as colour.[7] Fifth, individuals may be increasingly willing to claim discrimination against members of the same racial group, rather than prioritize racial solidarity.[8] Finally, tribunals and courts are beginning to recognize that race and colour are distinct categories, each distinguishing different facets of identity that may be subject to discrimination.[9]

A move toward colour playing a more significant role in our domestic human rights law is evident in Canada's first reported human rights decision based solely on the prohibited ground of colour: Brothers v Black Educators Association.[10] Rachel Brothers, a lighter-skinned Black woman who self- identified as bi-racial,[11] was fired from her job as a Black Educators Association (BEA) Regional Educator primarily because she "wasn't black enough"[12] in the eyes of other darker-skinned BEA employees, who considered themselves "actually black."[13] In this type of intra-group discrimination case, race is often seen as unavailable as a ground of discrimination.[14] Colour must stand alone as the asserted ground.

In this article, we will argue that colour, despite its apparent equivalence with race, can play an

important discrete role in anti-discrimination initiatives, highlighting certain hierarchies and forms of marginalization unaddressed by the ground of race. We develop this argument in Part II by, first, looking at the categories of "race" and "colour" and their relationship to one another, then focusing on the harms done by discrimination based on colour. In Part III we briefly review the history of race and colour in international and domestic human rights instruments.

Next, in Part IV we consider the judicial treatment of the colour ground. We begin with a review of the American jurisprudence, focusing on the problems that have typically arisen in discrimination claims based on colour. Our analysis of the emerging Canadian jurisprudence addressing colour as a discrete ground of discrimination follows. We find that colour makes intra- group claims such as Brothers', as well as intersectional claims, possible or at least easier to advance. Colour also enhances decision-makers' understanding of race and identity by forcing judges and tribunals to conceptualize colour as distinct from race and analyze the relationship between the two concepts. We also find that colourism claims tend to involve direct discrimination, in other words claims based on explicit line-drawing, rather than adverse effects discrimination claims – those where facially neutral rules are alleged to have a discriminatory impact.[15] Few colourism claims seem to have been based on adverse effects,[16] which is perhaps another reason to analyze colourism as a distinct ground. In Part V, we conclude that colour is playing an increasingly important role in deconstructing hierarchy; that it is important now, more than ever, to reflect on how colourism informs the growing divisions within multi-cultural societies; and that solidarity within racial groups should not be secured at the expense of individuals and communities that experience marginalization because of the colour of their skin.

II. "RACE" AND "COLOUR"

The relationship between the concepts of race and colour is both complicated and contradictory. Nevertheless, an understanding of these concepts and their relationships is necessary to appreciate how colour can play a discrete role in human rights and equality litigation.[17]

The traditional view is that race and colour are synonymous, with colour serving as a proxy for race.[18] This is observable in historical census categories of race that are labelled exclusively in terms of colour, such as White, Red, Yellow, and Black.[19] We also see this in almost every Canadian human rights case that includes a claim of racial discrimination, where the colour ground is included as part of the claim and race and colour – as well as ancestry, place of origin, ethnic origin and national origin – are used as synonyms.[20] Another common view sees colour as a subset of race,[21] as when it is identified as the predominant feature of racialization.[22] The current prevailing view is that colour and race are separate, but overlapping, systems of hierarchy.[23] However, geography, history and the individuals or groups involved all influence the relationship between race and colour.[24]

The relationship between colour and race is more complex if colour is understood to mean more than simply skin pigmentation. If colour is as much about culture – about a person's education, their socio-economic class, the neighbourhood in which they live, how they dress, what type of music they listen to, and much more – as it is about skin tone, then colour and race are even more inextricably linked.[25] A charge that an individual is, for example, "not black enough" should not be presumed to relate solely to skin pigmentation.[26] Indeed, in the intra-group context, such accusations are understood by some to be demands for authenticity and group solidarity and by others as demands for conformity to stereotypes.[27]

Nevertheless, as our discussion in Part IV of the discrimination claims brought on colour grounds will show, those claims appear to have been argued and decided simply in terms of the phenotype. This narrow understanding of the colour ground may be pragmatic, because discrimination based on culture is not a prohibited ground.[28] However, in some cases it is evident that a restricted or even simplistic focus is based upon a lack of understanding of the many linkages between race and colour and a lack of familiarity with the large body of both theoretical and empirical research that interrogates both concepts. Discussing that large body of literature is beyond the scope of this paper's introduction to the work that colour might do as a discrete ground of discrimination. What we attempt to do in this introduction is sketch out some of the basics of the two concepts and their relationships.

A. THE CONCEPT OF "RACE"

We begin with the concept of race itself and the now discredited view of race as biology or genetics.[29] This understanding is referred to by critical race scholars as the "naïve concept of race," meaning that we talk and act as if our racial categories simply mirror distinct biological and hereditary divisions.[30] For example, a 1995 decision of the Ontario Human Rights Tribunal accepted, based upon expert evidence, that race is "a biological concept which refers to the inherited physical and physiological characteristics of a group of people."[31] Colour is just one of the characteristics that has contributed to the construction of racial categories and the categorization of individuals into racial groups. The same 1995 human rights decision which accepted a biological definition of race also saw colour as one of the most common defining features of race and therefore "a characteristic within a race."[32] People often use race and colour interchangeably because colour is the most visible physical feature associated with race, despite race's correlation with other phenotypic features such as eye colour or shape, hair texture, nose width, lip fullness, etc.[33] Phenotypic prototypicality, or the degree to which people look like archetypal members of their racial group, plays a significant role in how group members and non-members make racial identifications.[34] However, defining racial categories by phenotypes does not tell us how those particular features came to be considered racially significant,[35] and is incomplete in so far as it misses the cultural and social attributes that also inform racial categories and racial identification.[36]

The prevailing view of race is that it is a social construct – a phenomenon that humans have created because of our values and interests and not a naturally existing fact.[37] Thus, Haney-López, in his review of the creation, maintenance and experience of race, defines "a 'race' as a vast group of people loosely bound together by historically contingent, socially significant elements of their morphology and/or ancestry,"[38] and Lee calls racial classifications "[locations] for a series of beliefs and judgments about the nature of the people within those categories."[39]

Many examples illustrate the social construction of race: the oppression of Africans with albinism, whose ancestors are Black but whose skin colour is white;[40] the perceived metamorphosis of the Irish from non-White/subjugated to White/non-subjugated;[41] and discrimination against white-skinned individuals with medical disorders which darken their skin.[42] The fluidity inherent in socially constructed identities can give rise to controversies over the illegitimacy of deliberately changing how one's identity is perceived by others. A recent and well-known example is that of Rachel Dolezal, formerly an African studies instructor and head of the Spokane, Washington chapter of the National Association for the Advancement of Colored People (NAACP), who was "outed" as being White after years of

phenotypically and culturally presenting herself as a Black woman.[43]

Race is socially constructed through a process that weighs the subjective perspective of both the individual whose race is being assigned and, even more so, the individual(s) assigning that race.[44] Perceptions of race are necessarily imprecise and subjective.[45] Only the perception of race is required to trigger racial stereotypes.[46] Indeed, some human rights statutes specifically recognize that discrimination occurs when a person suffers disadvantage flowing from either their "actual" or their perceived race.[47] The Supreme Court of Canada affirmed the importance of perception when it analogized the ground of disability, which was at issue in the case before it, with the ground of race:

When an employer refuses to hire someone because it considers the candidate's skin to be too brown, regardless of whether the candidate actually has brown skin or whether the employer subjectively perceives it as such, the employer has engaged in discriminatory practices on the basis of colour and it must then justify the exclusion as a requirement of the employment. Thus, whether the exclusion is based on race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national origin or social condition, discrimination exists whether the employer's identification of that race, colour, sex, or sexual orientation is objective or purely subjective.[48]

The social construction of race does not make racism any less real. As Geller explains: "Perhaps there are no races; but there are certainly black people."[49] In other words, race is legally salient, despite its social construction, because it causes "specific social harms to concrete groups of human beings."[50]

B. THE CONCEPT OF "COLOUR" AND COLOURISM

The colour ground of discrimination – like most grounds – is undefined in international instruments and domestic legislation.[51] However, courts and tribunals assume it refers to the visible physical characteristic of skin tone or hue[52] – the physical appearance alone, without a cultural component.[53] Skin colour is seen as an immutable, objective, biological quality.[54] It is a physical feature that "varies along a gradated scale when measured by a light meter."[55] But, although colour is a continuous variable on a spectrum of imperceptible differences, it can be used discontinuously to assign individuals to one discrete racial category or another.[56]

The most important point, however, is that the recognition of different skin colours is not colourism. It is not the infinite differences in skin tone that are the source of colour-based discrimination, but rather the social meaning ascribed to those differences.

Colourism usually refers to hierarchies based on the spectrum of skin colour within a racialized group, namely, intra-group differentiation.[57] However, colour-based discrimination does not only happen within non- White racial groups and, when it does, it is often an adaptation to a colonial history of colour-based discriminatory practices by Whites.[58]

Alice Walker is usually credited with coining the term "colourism," and her definition – "prejudicial or preferential treatment of same-race people based solely on their color"[59] – is an example of colourism restricted to intra-group discrimination. In an oft-cited definition that sees colourism as uni- directional, Hunter described it as "a process that privileges light-skinned people of colour over dark in areas such as income, education, housing, and the marriage market."[60] However, another well-received definition – that colourism is

"the tendency to perceive or behave towards members of a racial category based on the lightness or darkness of their skin tone"[61] – focuses on differential treatment rather than light-skinned privilege, acknowledging that skin tone bias may sometimes disadvantage lighter-skinned individuals.[62] Perhaps the most expansive understanding of colourism is that of Chanbonpin who describes colourism as "a multifaceted system of subordination that influences not only the way that in-group members treat each other, but also how outsiders treat in-group members, and how in-group members treat outsiders."[63] We understand colourism to be multi-directional, with light- skinned individuals sometimes disadvantaged and sometimes advantaged, and to be inter-group and well as intra-group. We also note that, although colourism is usually thought of as a binary of light and dark, there is some empirical evidence that three categories – light, medium and dark – are required to account for the differential effects of colourism.[64]

Colourism operates around the world. The world-wide market for chemicals that lighten skin tones is one illustration of this reach.[65] However, every country's cultural and historical context informs how colourism manifests there. For example, in India, colourism now appears to be a customary practice perpetuated by cultural beliefs and social institutions such as the family, marriage, education and the media.[66] Qualitative research has found that, irrespective of class or caste, lighter skin colour is related to higher rates of acceptance in society, with darker-skinned females being more adversely affected than darker-skinned males.[67]

There is extensive interdisciplinary literature on colourism, most of it written by American scholars dealing with Black and White Americans.[68]

We cannot do justice to that huge body of work here, but we do want to highlight some of the harms of colourism, to indicate why it is a significant type of discrimination.

C. THE HARMS OF COLOURISM

Since there are very few Canadian empirical studies on the impact of race and ethnicity in areas such as incarceration and health,[69] little is known about the material impacts of colourism in Canada.[70] However, in the United States there is a growing body of evidence demonstrating that, on average, darker-skinned Blacks and Latinos have lower incomes, less education, and fewer prestigious jobs than lighter-skinned Blacks and Latinos.[71] The impact of these three factors is as great between lighter- and darker-skinned Blacks as it is between Blacks and Whites in the United States.[72] Other American studies have indicated that light-skinned Blacks are consistently privileged over dark-skinned Blacks when it comes to student punishment and adult incarceration.[73] Studies also show that darker skin-colour prejudice negatively affects Latinx mental health,[74] as it does the mental and physical health of Black Americans.[75]

These negative effects are usually the result of stereotyping.[76] In an influential article, Hunter traced the roots of colourism back to European colonialization and the maintenance of a white supremacy that was "predicated on the idea that dark skin represents savagery, irrationality, ugliness, and inferiority."[77] White skin, on the other hand, was constructed as civility, rationality, beauty, and superiority.[78] Today there are well-documented stereotypes of darker-skinned Blacks as unintelligent, unattractive, impoverished, criminal and lazy.[79] The association of dark skin with criminality for males is particularly well documented.[80] American studies have found that darker skin colour, in general, is linked with "incompetence and hostility, as well as disfavoured political viewpoints, such as a lack of patriotism and

disloyalty."[81] In addition, the more that individuals are perceived to have the typical phenotypic features of a stereotyped group, the more accessible the stereotypes become.[82]

While anecdotal, similar biases appear to be present in at least some members of the Canadian judiciary. Justice Eidsvik of the Alberta Court of Queen's Bench recently remarked that she felt uncomfortable entering an informal hearing room "full of big dark people".[83] Similarly, Shain Jackson, an Indigenous lawyer in British Columbia, recounted how the judge at a sentencing hearing assumed that a darker-skinned Indigenous colleague, dressed as he was and standing next to him, was the accused at a sentencing hearing.[84] These troubling examples are seemingly rooted in the same stereotypes summarized above – that darker-skinned persons, and especially males, are more threatening and more likely to be criminals.

In contrast to those negative stereotypes, lighter-skinned Blacks are typecast as motivated, educated, and attractive.[85] These positive stereotypes associated with lighter-skinned individuals also help explain why Asian- Americans are often viewed as the "model minority"– "Honourary Whites" whose success purports to prove the absence of racism in the United States.[86] However, colourism is not a one-way phenomenon, as we have already noted. Light-skinned people do experience some disadvantages due to colourism. For example, light-skinned Black American women and men are often subject to interrogations about their racial authenticity or legitimacy.[87] While skin tone is just one of the many dimensions upon which authenticity is judged, it was found to be the most common reason for the rejection of biracial individuals by darker-skinned group members.[88] In Canada, Métis people have been excluded by First Nations communities for being "too White" or "wannabe Indians."[89] Some experimental studies have indicated that experiencing rejection by same-race individuals may be especially harmful to mental and emotional well-being.[90] The advantages and disadvantages are not equal; the disadvantages attached to lighter skin do not have the significant economic impacts that systemic discrimination against darker-skinned individuals does.[91]

The differences that gender makes to colourism are understudied.[92] Nevertheless, research has shown that the influence of skin colour on educational, occupational, and financial outcomes is greater for African-American women than men.[93] Studies indicate that, in the workplace, colourism plays one role for black women because of beliefs about attractiveness,[94] and another for black men because of stereotypes about threat potential.[95] Many studies have confirmed that skin tone influences attractiveness ratings assigned to black women far more than it does for men, indicating that fair skin is perceived to be a particularly feminine characteristic.[96] Light skin tones are interpreted as beauty, and attractiveness is social capital for women, who can convert it to educational, economic or other types of capital.[97] This point can perhaps be seen most starkly in the demand by darker-skinned women for skin lightening products.[98] This demand appears to be increasing despite the publicized adverse effects on health and importation bans on these products by many countries.[99]

Notwithstanding the harms of colour discrimination, some scholars and activists oppose recognition of intra-group colourism claims. Banks and McCray argue that such claims undercut race-based claims and divert attention from larger issues.[100] Hochschild notes that any discussion of differentiation for skin colour can appear to be a "divide and conquer" tactic, threatening solidarity.[101] Harris worries that a shift from categorical racism to differentialist racism will lessen the

sense of a "linked fate" among members of racialized groups.[102] Also, many people of colour see colourism as an "in house" issue that is either embarrassing, a tragedy, or a sign of racial self- hatred.[103]

Despite these important reservations about pursuing colourism claims, there are good reasons to do so. Banks also argues that their non-recognition trivializes the economic implications that result from the social capital granted at birth to lighter-skinned group members.[104] Baynes believes that, even if race were to no longer matter, "color will still be a problem because darkness casts a longer discriminatory shadow than lightness."[105] Hochschild argues that "there are too many cases in history in which the demand for group solidarity inhibited fights against injustice well past the point of necessity," and that there is no persuasive reason to ignore the unfair situation of the worse off.[106] She also notes that while overt racism has declined significantly in the United States over the past 50 years, colourism has not.[107] Norwood questions what we are wiling to pay to achieve unity and how much must be sacrificed to obtain it.[108] Pursuing colourism claims may be difficult. Racial minorities, especially women, have historically been under represented in Canadian human rights cases.[109] The causes have been varied, but include observations of police mistreatment of racial minorities and complaint systems that fail to respond to the realities of their lives.[110] Nevertheless, despite those difficulties, such claims should still be brought by those harmed and should be recognized by tribunals and courts. Neither the continuing relevance of racism, nor the difficulties that colour discrimination complainants will face, warrant precluding claims based on colour discrimination when such claims – like those based on race or on race in conjunction with colour – capture a form of discrimination resulting in tangible harm. Indeed, the purposes of human rights legislation speak very loudly to what is to be gained by resisting discrimination in any setting, including the intra-group context.

For example, the preamble of the Ontario *Human Rights Code* reminds us:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well- being of the community and the Province.[111]

Having explored the impact of colourism, we now turn to international and domestic legislative efforts that have been made to combat this form of discrimination.

III. INTERNATIONAL INSTRUMENTS AND DOMESTIC LEGISLATION

At the end of the Second World War, the United Nations Charter declared in its opening article that one of the purposes of the United Nations is to promote respect for human rights "without distinction" based on four enumerated grounds: race, sex, language, and religion.[112] Three years later, the 1948 Universal Declaration of Human Rights (UDHR) was adopted, prohibiting discrimination on an expanded list of ten grounds, including both race and colour.[113] In turn, the UDHR inspired the wording in many other international human rights instruments, which reproduce the

UDHR's list – including both colour and race – in their non-discrimination clauses.[114]

Several scholars have examined what led the drafters of the UDHR to add "colour" to its non-discrimination article, rather than simply adopting the language of the UN Charter.[115] Deliberations about including "colour" revolved around three main points. The first point – that race and colour differ – supported including colour in order to capture this distinct aspect of human identity. The second and third points – that race includes colour, and that including colour would suggest the UN Charter did not address colour discrimination because that ground was not included in the Charter's non- discrimination clause – opposed including colour as a stated ground.[116] The drafting history thus indicates mixed views on whether colour and race are distinct grounds of discrimination, but also shows that the inclusion of colour was deliberate and extensively negotiated.[117]

Despite its deliberate inclusion 70 years ago, colour is an underdeveloped ground at the international level, with race and colour usually being used interchangeably.[118] A recent review of the reports of organizations which monitor compliance with the relevant instruments did not reveal any cases where those organizations expressed concern about discrimination based on colour alone; instead, colour was always grouped together with race and ethnic origin.[119]

Domestically, Canadian jurisdictions gradually introduced legislation prohibiting discrimination based on enumerated grounds, including colour.[120] The timing of the introduction of domestic human rights legislation coincided with its advent in the international arena, and for many of the same reasons.[121]

The implementation of "fair practices" anti-discrimination laws in New York in the 1940s was critical to the form that Canadian legislation took in the 1950s.[122] The New York initiative implemented then President Franklin D Roosevelt's 1941 Executive Order 8802 which prohibited discrimination in the defense industry "because of race, creed, color, or national origin."[123] Thus, both race and colour appeared as grounds in the model used for the first Canadian fair practices legislation in Ontario.[124] By 1960, five other Canadian provinces and the federal government had enacted anti-discrimination legislation of the fair practices variety.[125]

Fair practices legislation was followed by the first human rights code in the country, proclaimed in 1962 in Ontario, which continued to prohibit discrimination on the same grounds, including both race and colour.[126] By 1977, each provincial and federal jurisdiction had human rights codes and a human rights commission in place.[127] And each of those codes prohibited – and continue to prohibit – discrimination on the basis of both race and colour, as well as related categories (though some jurisdictions subsume both within an "ancestry" category).[128]

In the first decade following the enactment of the human rights codes legislation, there was little or no interpretation of the race or colour grounds.[129] However, as various reviews of human rights commissions illustrate, these grounds began to be used in the 1980s, albeit with inordinately low success rates compared to claims on other grounds.[130] In their review, Sangha and Tang concluded that the success rates of claims of racial and colour discrimination were so low due to a number of factors: the perception of racism as being abnormal and a very serious threat to respondents' reputations; a focus on the attitudinal problems of the complainant; a requirement for corroboration; insensitivity to how words and images can be interpreted in very different ways by people of colour because of associated racist stereotypes; and an assumption that if employers already had employees who were persons of colour, they

did not discriminate.[131] All of these reviews analyzed claims alleging race and colour discrimination together, as one type of claim, which was in keeping with the approach of the tribunals of the day.[132]

In addition to the human rights legislation in each jurisdiction, section 15 of the *Canadian Charter of Rights and Freedoms* prohibits discrimination based on enumerated grounds, including race and colour.[133] Unlike the human rights codes which apply only in specific contexts, such as employment, accommodations, and services available to the general public, the *Charter* applies to government actors, as well as non-government actors implementing government policies or programs.[134] However, like almost all of the human rights codes, there has been no discussion of colour as a discrete ground under section 15 of the *Charter*.

I. JUDICIAL TREATMENT OF THE COLOUR GROUND

We now turn to the judicial treatment of the colour ground of discrimination. Before looking at Canada's much smaller body of jurisprudence, we offer a brief overview of the claims, litigation and settlements that deal with colour as a discrete ground in the United States, focusing on Title VII of the *Civil Rights Act of 1964.*[135] We chose to look for lessons in the American jurisprudence for three reasons. First, unlike other possible comparator jurisdictions, the United States has a history of grappling with complaints based solely on the ground of colour.[136] Second, its critical race theory scholarship, which is more robust than elsewhere, has analyzed the relevant jurisprudence.[137] Finally, its experience with slavery, segregation and other forms of racial discrimination is closer to the Canadian experience than that of any other jurisdiction, despite Canada and the United States having very different histories.[138]

A. JUDICIAL TREATMENT OF COLOUR IN THE UNITED STATES

i. Statutory Foundation for Colourism Claims

In the Unites States, the first colourism cases were brought under section 1981 of the *Civil Rights Act of 1866,*[139] which guarantees non-white citizens the same rights to make and enforce contracts as white citizens have. However, colour discrimination claims most frequently arise in the employment context.[140] Today, they are most commonly brought under Title VII of the *Civil Rights Act of 1964,*[141] which prohibits discrimination on the basis of both colour and race, as well as other grounds. However, Title VII claims are dealt with by the United States Equal Employment Opportunity Commission (EEOC), established in 1965 as the main federal agency charged with enforcing laws prohibiting employment discrimination.

Of the few colour discrimination complaints the EEOC initially received, nearly all included race discrimination complaints.[142] Nonetheless, a slow rise in the number of colour discrimination claims – from 762 in 1997 to 1,735 in 2007[143] – led the EEOC to develop its E-RACE (Eradicating Racism and Colorism for Employment) Initiative. As part of that Initiative, the EEOC added the following multi-directional definition of colour discrimination in 2008 that includes both inter- and intra- group claims:

Color discrimination occurs when a person is discriminated against based on his/ her skin pigmentation (lightness or darkness of the skin), complexion, shade, or tone. Color discrimination can occur between persons of different races or ethnicities, or even between persons of the same race or ethnicity. For example, an African American supervisor violates Title VII if [s/]he refuses to hire other African Americans whose skin is either darker or lighter than her/his own.[144]

Charges of colour discrimination surged immediately after the E-RACE Initiative raised awareness about colour as a potential discrete source of discrimination. The number of claims doubled in 2008 and they have continued to number between 2,600 and 3,200 each year since then.[145] Not only did the number increase, but so did the percentage of charges of colour discrimination that did not also include race.[146]

Despite these increases in number of claims, colourism charges are inordinately unsuccessful. Since the Initiative, the EEOC has determined that in only two-and-a-half to six percent of cases is there reasonable cause to believe that colour discrimination occurred. In contrast, roughly two-thirds of claims based on other grounds meet the reasonable cause threshold.[147]

Of the few colourism complaints assessed as having reasonable cause, most are resolved without trial, and very few have been decided by courts. Still, commentators have reached some conclusions based on the relatively small number of trials, a slightly larger number of motions to strike and some publicized settlements.[148]

ii. The Jurisprudence Considering Colourism

In the earlier cases, which were brought under section 1981 of the *Civil Rights Act of 1866,* courts often refused to recognize colour discrimination claims. For example, in *Sere v Board of Trustees of the University of Illinois,*[149] the trial court dismissed a discrimination claim by a darker-skinned Nigerian plaintiff against his lighter-skinned African-American supervisor, holding that intra-group colour-based claims were not actionable under section 1981. The appeal court did recognize the possibility that intra-group colour discrimination might exist but was reluctant to engage in "the unsavory business of measuring skin color."[150] In contrast, in an earlier claim by a Puerto Rican individual, a court had acknowledged the possibility of her colour discrimination claim, stating that "considering the mixture of races and ancestral national origins in Puerto Rico, [colour] may be the most practical claim for a Puerto Rican to present."[151]

These early cases illustrate two points that persist in the American case law: that courts are more willing to recognize a colourism claim when the claimant is racially ambiguous,[152] or comes from a country where racial classifications are less clear cut (making Latinx and South Asian claimants more likely to succeed than Black claimants),[153] and that when individuals of the same race are involved the expected preferential treatment of those with lighter skin does not always hold.[154]

The reluctance to consider colour claims changed slowly following the United States Supreme Court decision in *Saint Francis College v Al-Khazraji,*[155] when a United States citizen born in Iraq sued his former employer alleging discrimination on the basis of his Arabian ancestry. The lower court had granted summary judgment for the employer on the basis that Arabs were Caucasians and a Caucasian could not sue another Caucasian under section 1981. In recognizing that a claim could lie between parties who were members of the same race, the court acknowledged that "clear-cut [racial] categories do not exist" and that "racial classifications are for the most part sociopolitical, rather than biological, in nature."[156] It then made the oft-cited point that section 1981, at a minimum, prohibited "discrimination against an individual because he or she is genetically part of an ethnically or physiognomically distinctive sub-grouping of homo sapiens . . . [but] *a distinctive physiognomy is not essential* to qualify for § 1981 protection."[157] Subsequent courts understood *Saint Francis* to mean that discriminatory behaviour based on an employer's belief that a claimant

belonged to a certain race was the actionable behaviour, rather than the employee's physical characteristics.[158]

One of the earliest Title VII intra-group colourism cases was *Ali v National Bank of Pakistan*.[159] Its approach paralleled that of the early section 1981 cases. The claimant, a light-skinned citizen of Pakistan claimed that his employer preferred dark-skinned citizens. The court explained that, even if Ali's claim of intra-racial colour discrimination was valid, the colourism practices complained of fell outside the realm of the "American experience,"[160] indicating a need for cultural evidence that was emphasized in later cases.[161] The court added that, even if Ali could establish skin tone discrimination, these claims are "usually mixed with or subordinated to claims of race discrimination,"[162] questioning the viability of colour as a discrete ground.

Walker v Internal Revenue Service[163] is perhaps the best known of all the American colourism cases, even though Tracy Walker ultimately lost her case after a trial on the merits.[164] The complainant, a light-skinned Black woman, charged that she had been treated badly because of her colour by her supervisor, a darker-skinned Black woman. The employer argued that the plaintiff had no claim because colour in Title VII had generally been interpreted to mean the same thing as race and because "there simply is no cause of action pursuant to Title VII available to a light-skinned Black person against a dark-skinned Black person."[165] However, relying on *Saint Francis,* the court concluded that "it is not controlling that in the instant case a black person is suing a black person."[166] Subsequent courts have read *Walker* to stand for the proposition that "intra-racial color discrimination claims are authorized by both Title VII and existing Supreme Court precedent."[167]

Ali and Walker involved intra-group claims by lighter-skinned plaintiffs. In contrast, *Arrocha v City University of New York*[168] involved a darker-skinned Afro-Panamanian instructor who sued his employer for failing to renew his appointment as an adjunct instructor, claiming that the Latino department head discriminated against Black Hispanics and favoured lighter-skinned Hispanics. The instructor's claim survived a summary judgment application because the employer produced no evidence of the skin colour of the adjuncts who were hired, but lost at trial.[169] *Arrocha* illustrates the misconception that an employer cannot discriminate on the basis of colour so long as it has hired one or more employees who are as dark-skinned as the claimant.

Evidence is often the problem in Title VII cases, as it was for the claimant in *Brack v Shoney's Inc,*[170] who was described as a gay, dark-skinned Black male who was demoted from his position as a restaurant manager. Evidence showed that his supervisor called him "the little black sheep," compared him with a lighter-skinned Black male employee by saying the two were "like night and day," described the lighter-skinned employee's hair as "nice and wavy and straight" instead of "nice too" and said the claimant would do well at one store because it was a "first of the month store,"[171] whereas another store needed a "fair skinned" manager who would be closer to the background of the customers.[172] The court denied the discrimination claim because it found that each of the statements, except the one about the need for a fair-skinned manager, could be interpreted as referring to something other than skin colour.

We quote the exact language complained of in *Brack* in order to contrast it with the language used in cases where the claimant succeeded. For example, discrimination on the basis of an African-American employee's dark skin colour was acknowledged in a settlement between the employer and the EEOC.[173] The employee

claimed that his lighter-skinned African-American manager called him such derogatory names as "tar baby" and "black monkey" and told him to bleach his skin.[174] Another case that settled was based on allegations that a lighter-skinned Black female manager told one of her darker- skinned African-American employees that she looked as "black as charcoal" and repeatedly called her "charcoal" until she quit.[175] A third case that also settled involved an estimator and project manager for a stone contracting company who was from Pakistan, Muslim and brown-skinned.[176] The EEOC sued on the employee's behalf on the basis of national origin, religion and colour, alleging, in connection with the colour ground, that the employee was told he was the same colour as human feces.[177]

The extreme nature of these examples is reflected in the fact that they were settled, rather than fought, by the employer. But they also illustrate a point made by Delgado: since racism is a normalised part of American society, it is only "extreme and shocking" instances of racism that are recognised as such by the law.[178] Despite the number of colourism claims, in 2010 Jones was unable to find more than four claims dealt with by the EEOC where the claimant won after a trial on the merits.[179]

Other barriers to colourism claims have been identified that are applicable beyond the context of the American statutory provisions and the country's history and culture. Jones notes that anti-discrimination law has traditionally been concerned with the categorical exclusion of group members, whereas discrimination based on colour operates through inter- and intra-group preferences that identify which members of more clearly defined racial categories are not acceptable members of that category.[180] Jones found that colourism claims based on preferences for subsets of people of colour – for example, people with lighter skin – are very difficult to prove unless everyone with darker skin is excluded and everyone with lighter skin is treated better.[181] This obstacle therefore stems from trying to force colourism claims into a familiar mould, that is, comparing the treatment of groups defined by clear boundaries. Another obstacle is the common assumption that employers who are people of colour will not discriminate against employees of the same colour.[182] Because such employers do not match people's expectations of what discrimination looks like, Jones posits that decision-makers may be skeptical and consider other reasons for the behaviour, or they may be indifferent because both employer and employee are people of colour, or they may be accepting of the conduct because other types of discrimination are more important.[183] There is also a tendency to assume that any employer who has hired a person of colour will not distinguish between people of colour.[184] Hernandez calls the latter the "diversity defence."[185] Both of these assumptions may help explain Sternlight's finding that courts are too willing to dismiss colourism claims through summary judgment.[186]

Banks also identified multiple barriers to colourism claims after examining 51 employment discrimination cases involving South Asians decided between 1981 and 2014. She too notes the evidentiary deficiencies that are typical of colourism cases and that are complicated because courts are uneasy about drawing distinctions based on skin tone.[187] Courts' unfamiliarity with colourism practices is another problem identified by Banks.[188] That problem could be remedied, at least partially, by expert evidence. However, McCray notes that the lack of lawyers who know how to produce the right type of evidence is itself a problem.[189]

B. JUDICIAL TREATMENT OF COLOUR IN CANADA

The treatment of colour discrimination in Canadian tribunals and courts is extremely

limited.[190] In the vast majority of discrimination cases, colour appears in the judgment only where the decision-maker lists the multiple grounds of discrimination alleged by plaintiffs,[191] suggesting the colour ground has no discrete impact. However, some Canadian cases discuss colour more meaningfully and these decisions indicate that the colour ground impacts human rights jurisprudence in two ways: directly, in the resolution of three types of claims (colour discrimination claims themselves, intersectional claims and intra-group claims); and indirectly by influencing courts' and tribunals' understanding of identity and, in turn, discrimination.

i. The Direct Impact of Colour as a Ground of Discrimination

The presence of colour in the jurisprudence obviously facilitates the resolution of colour discrimination claims. In the United States, the increase in the number of colourism claims following the EEOC's E-RACE Initiative illustrates this point.[192]

Being able to claim colour as the ground of discrimination, rather than relying on the broader and more complex category of race, might lessen the evidentiary burden on claimants, who need not link discrimination based on colour to a specific racial category. Indeed, in the Brothers decision discussed in the next section, the tribunal held that Ms. Brothers' termination on account of her skin colour did not amount to racial discrimination because she was unable to establish that multiple overt colourist remarks necessarily implied a "concurrent qualitative evaluation of racial or cultural purity or connectedness."[193] In other words, proving racial discrimination was more difficult in that case because race is a complex concept to link seemingly discriminatory conduct to. In contrast, skin colour is much simpler to describe because of its objective nature, and much easier to connect to the enumerated ground of colour, assumed to be simply skin pigmentation.[194]

For example, in *Sibayan v Cusmano,*[195] a Filipino man described as having "brown skin" resisted an application to dismiss his complaint, which alleged "that [the defendant] made fun of or ridiculed [the plaintiff] for what he assumes is his skin colour."[196] The plaintiff did not have to adduce independent evidence to demonstrate that a protected ground such as race or ethnic origin was a factor in the alleged discriminatory behaviour, as required by *Moore v British Columbia (Education),*[197] because the behaviour itself was explicitly linked to the colour ground. If we are correct that almost all discrimination on the basis of colour will be direct discrimination, then this aspect of a colour claim should always be easier to prove.

Still, as the American experience illustrates, even with colour as a ground, it is difficult to prove discrimination because it is often subtle or understood to mean more than simply skin pigmentation. The subtlety of discrimination based on colour and race has been noted in Canadian judgments.[198] For example, a respondent may overtly discriminate based on the colour of someone's skin or they may subtly discriminate based on "cultural or other characteristics" that they associate, consciously or unconsciously, with persons of that skin colour,[199] making it more difficult to prove a prohibited ground was a factor in their behaviour.

Second, the presence of colour in the enumerated grounds facilitates the resolution of claims of intersectional discrimination, that is, discrimination based on multiple overlapping grounds.[200] This phenomenon of multiple concurrent grounds as factors in one or more instances of discriminatory conduct has been considered by Canadian courts in the context of colour discrimination.[201]

In *CSWU Local 1611 v SELI Canada Inc,*[202] the Union filed a complaint on behalf of a group

of Latin American workers constructing the rapid transit expansion for the 2010 Winter Olympic Games in Vancouver. The complaint alleged that the Latin American workers were discriminated against as compared to European workers who received superior salaries, accommodations, meal arrangements and expense arrangements.[203] The presence of colour as a ground of discrimination contributed to the Court's ultimate ruling that the complainants shared identifiable characteristics related to enumerated grounds.[204] In particular, the complainant group distinguished itself from those who were not discriminated against by combining various grounds to create a unique group. Individual grounds were insufficient to make that distinction on their own because, for example, the common ancestry of the group was only shared to "some degree."[205] The Court held that the complainant group could only be identified based on "[t]he sum of these characteristics," which included the fact that they were "relatively dark-skinned."[206] Accordingly, while not decisive, colour played an important role in defining the complainant group intersectionally so that its members could form a "distinctive identifiable group,"[207] distinguishable from those who did not experience discrimination.

In *Pieters v Peel Law Association,*[208] two Black lawyers and a Black articling student entered the lawyer's lounge of the Brampton Courthouse, which limits admission to lawyers and law students. Despite entering with a group of other (non-Black) lawyers, the Black lawyers and law student were singled out by the librarian and asked for identification to prove their right to be in the lawyer's lounge.[209] The Human Rights Tribunal of Ontario held that the complainants were intersectionally discriminated against based on race and colour, but the Divisional Court quashed that decision.[210] On appeal, the Ontario Court of Appeal reinstated the decision of the Human Rights Tribunal. In so doing, the Court of Appeal relied in part on the colourism experienced by the complainants, and held that the race and colour of the complainants were both factors in the librarian's questioning of them.[211] Accordingly, as in *CSWU,* the presence of colour in the enumerated grounds enabled the complainants in *Pieters* to make use of all relevant evidence to support a finding of discrimination linked to enumerated grounds.

Two other cases support the idea that the inclusion of colour in the enumerated grounds may help to capture a dimension of intersectional discrimination. In *Nassiah v Peel (Regional Municipality) Police Services Board,*[212] a police officer assumed a suspect lacked English language competency in part because of the colour of her skin. And, in *Balikama v Khaira Enterprises,*[213] an employer discriminated against a Black tree planter, in part due to his skin colour, which was a factor in the employer's opposition to the tree planter's intimate relationship with a White woman.[214]

Third, the presence of colour in the enumerated grounds facilitates the resolution of intra-group discrimination claims, as the *Brothers* case illustrates.

In *Brothers,* Rachel Brothers – an employee of the Black Educators' Association – was terminated primarily because she was "not as black as" one of her subordinates, Ms. Collier, who, with a stronger connection to the Association's head office, coordinated Brothers' termination.[215] This case involved intra-group discrimination based on skin colour, not race, because both Brothers and Collier were Black.[216]

The *Brothers* case therefore affords an opportunity to explore how the colour ground can be used to understand colourism within racial communities. Specifically, colour is a useful lens through which to view discrimination against bi-racial individuals

like Brothers. As the tribunal noted, bi-racial individuals are exposed to a unique form of discrimination which sandwiches them between discrimination "equally from either those who self-identify with an historically dominant, or an historically oppressed, community."[217] Individuals such as Brothers may be exposed to colourism by both Whites (for being too black) and Blacks (for not being black enough). For example, Collier described Brothers as not "black enough", not a "black person", and not "actually black."[218]

In the end, the presence of colour in the protected grounds was crucial to Ms. Brothers' success before the Nova Scotia Human Rights Commission, which found that Brothers suffered discrimination based on colour, but not race:

I spoke earlier in this decision about the difficulty experienced by those who self-identify as bi-racial when colourist comments are made. Depending on the intent or perspective of the person making the comments, the bi-racial person must often be uncertain about whether the comment on colour also imports some concurrent qualitative evaluation of racial or cultural purity or connectedness. Based on the entirety of the evidence here, I am not prepared to find that the BEA as an organization made any racial or cultural evaluation of Ms. Brothers when colourist comments were heard. In final submissions, I understood that Ms. Brothers has also fairly come to this view. This is a case about discrimination on the basis of colourism only. I do not find any discrimination here on the basis of race.[219]

Brothers illustrates how the presence of colour as a ground with discrete force is critical for certain human rights and equality claims given that colour and race are not always synonymous.

ii. The Indirect Impact of Colour as a Ground of Discrimination

The existence of colour as an enumerated ground also benefits equality- seekers indirectly because its presence affords decision-makers the opportunity to deepen their understanding of identity by distinguishing race from colour. That in turn allows courts and tribunals to explore the relationship between hierarchy and discrimination because a gradated colour spectrum (e.g. from black to white) is a particularly well-recognized instance of an identity-based hierarchy. A continuous colour spectrum is a more easily understandable example of hierarchy as compared to race, which has often been constructed in binary formats (e.g. either Black or White).

Brothers provides a good example of this benefit. The Nova Scotia Human Rights Commission conducted a detailed exploration of the differences between the race and colour grounds,[220] an analysis that almost surely would have been absent without the presence of colour as a discrete enumerated ground. Brothers' ability to claim discrimination on the basis of colour motivated the tribunal to explore the concepts and their similarities, differences and connections, and that exploration, in turn, might enable subsequent courts and tribunals to do the same.

In *Brothers*, the claim of colourism also provided the tribunal with a unique opportunity to confront a particularly topical example of hierarchy and discrimination, namely, the perception of lighter skinned individuals as more attractive, a connection we explored in Part II.[221] The Board in *Brothers* specifically confronted this stereotype when discussing the colourism experienced by Ms. Brothers:

Even if some people continue to believe that it is a compliment to remark on the lighter colour of someone's skin, they should now realize that the recipients do not always

receive the comments that way.[222]

A superficial analysis would conclude that a compliment could never be construed as a form of discrimination. For example, many people are often surprised when parents are offended by remarks about how attractive their multi-racial children will be.[223] But these comments can be problematic as they may be predicated on the perceived superiority of whiter or lighter skin.[224] That assumed superiority is arguably the primary reason why Brothers was "complimented" for her relatively lighter skin. That the Board in Brothers recognized this nuance, following its in-depth discussion of colourism, suggests that its exploration of this issue informed its members about subtler aspects of discrimination that may have been misunderstood or ignored in the absence of colour as an enumerated ground.

V. CONCLUSION

Domestic and international human rights instruments seek to deconstruct "identity hierarchies" based on protected grounds.[225] As we have shown, colour is one such hierarchy. Further, colour is a hierarchy that is uniquely capable of capturing certain forms of discrimination, including intersectional and intra-group discrimination, that we believe may be on the rise. Consequently, colour has an important role to play in human rights and equality law and policy, and we anticipate that role will expand in the future.

Discriminating against someone based on the colour of their skin, whether in the provision of employment, accommodation or services, or in distinctions made by governments, limits individuals' ability and opportunities to fully participate in and contribute to our society. In the current era, where many multicultural societies from North America and Europe to Australia are struggling to embrace their diversity, it is critical to reflect on the various grounds on which people suffer discrimination and to articulate the harm and wrong precisely and remedy that discrimination. The presence of colour in various human rights instruments, constitutions and statutes is a critical tool in this effort.

We are cognizant that colourism, particularly in the context of intra- group discrimination, can undermine efforts at solidarity within racialized communities. But Canadians should not promote solidarity at the expense of members of marginalized communities. Nor do they need to. Colour discrimination appears to have a significant, material and negative impact on educational, occupational and financial outcomes, contributing to marginalization within disadvantaged groups, and to oppression. Opposing all forms of colour discrimination is the most effective means for achieving substantive equality.

FOOTNOTES

1 See e.g. CSWU Local 1611 v SELI Canada Inc, 2008 BCHRT 436 at para 237 [SELI]; Mitchell v Nobilium Products Ltd (1981), 3 CHRR D/641, 1981 WL303352 (Ont. Bd. Inq.) [Mitchell]; William J Aceves, "Two Stories about Skin Color and International Human Rights Advocacy" (2015) 14:4 Wash U Global Studies L Rev 563 [Aceves]; Vinay Harpalani, "To Be White, Black or Brown? South Asian Americans in the Race- Color Distinction" (2015) 14:4 Wash U Global Studies L Rev 609 [Harpalani].

2 See Angela P Harris, "From Color Line to Color Chart?: Racism and Colorism in the New Century" (2008) 10 Berkeley J Afr-Am L & Pol'y 52 at 62. In 2011, 19.1% of Canada's population identified themselves as a member of a visible minority group, as compared to 16.2% in 2006. Between 2006 and 2011, Asia (including the Middle East) was Canada's

largest source of immigrants, accounting for almost 60%, as compared to 12.5 % of newcomers arriving from Africa and 12.3% from the Caribbean, Central and South America. See Canada, Statistics Canada, Immigration and Ethnocultural Diversity in Canada, National Household Survey 2011, Catalogue No 99-010-X2011001 (Ottawa: Statistics Canada, 2013), online: <www12.statcan.gc.ca/ nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm>.

3 Margaret Shih & Diana T Sanchez, "When Race Becomes Even More Complex: Toward Understanding the Landscape of Multiracial Identity and Experiences" (2009) 65:1 J Social Issues 1 at 3, 6.

4 See e.g. Michael Banton, "The Race Relations Problematic", in Ellis Cashmore & James Jennings, eds, Racism: Essential Readings (London: Sage Publications, 2001) 286 at 287–88 [Banton, "Race Relations Problematic"]; Leila Nadya Sadat, "Introduction: From Ferguson to Geneva and Back Again" (2015) 14:4 Wash U Global Studies L Rev 549 at 549. See also the discussion of the concepts of race and colour in Part II.

5 See e.g. Leonard M Baynes, "If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness? An Investigation and Analysis of the Color Hierarchy" (1997) 75:1 Denver U L Rev 131 at 133; Paul Gowder, "Racial Classification and Ascriptive Injury" (2014) 92:2 Wash U L Rev 325 at 357.

6 See e.g. Trina Jones, "Intra-Group Preferencing: Problems of Proof in Colorism and Identity Performance Cases" (2010) 34 NYU Rev L & Social Change 657 at 668 [Jones, "Intra-Group Preferencing"]; Angela Onwuachi-Willig & Mario L Barnes, "By Any Other Name?: On Being 'Regarded As' Black, and Why Title VII Should Apply Even if Lakisha and Jamal are White" 2005:5 Wisconsin L Rev 1283 at 1285; Faisal Bhabha, "'Islands of Empowerment': Anti-Discrimination Law and the Question of Racial Emancipation" (2013) 31:2 Windsor YB Access Just 65 at 71, 74.

7 See e.g. Jones, "Intra-Group Preferencing," *supra* note 6 at 659, 691.

8 On solidarity's silencing effect, see e.g. Tennille McCray, "Coloring Inside the Lines: Finding a Solution for Workplace Colorism Claims" (2012) 30:1 Law & Inequality 149 at 176; Jennifer L Hochschild, "When Do People Not Protest Unfairness? The Case of Skin Color Discrimination" (2006) 73:2 Social Research 473 at 485 [Hochschild, "Not Protest Unfairness?"]; Russell Rickford, "Black Lives Matter: Toward a Modern Practice of Mass Struggle" (2016) 25:1 New Labor Forum 35 at 38.

9 See e.g. the E-RACE Initiative of the United States Equal Employment Opportunity Commission (EEOC) discussed in Part IV.A.1. See also the Federal Court of Australia's decision in Eatock v Bolt, [2011] FCA 1103 (a successful claim by an Aboriginal woman that newspapers articles had conveyed offensive messages about fair-skinned Aboriginal people).

10 Brothers v Black Educators Association, 2013 CanLII 94697 (NS HRC) [Brothers].

11 "Bi-racial," like "mixed race," carries problematic connotations of racial purity; see e.g. John Hutnyk, "Hybridity" (2005) 28:1 Ethnic & Racial Studies 79 at 90. We use the term in this paper because the Nova Scotia Human Rights Commission repeatedly referred to Ms. Brothers as bi-racial.

12 *Supra* note 10 at para 42. While such a comment could be interpreted either as a direct reference to Ms. Brother's skin colour, or as an indirect reference to her supposed lack of racial authenticity, based on the tribunal's findings, the remarks related exclusively to the former. *Ibid* at para 83. For further discussion on the relationship between colour and racial authenticity, see Part II.

13 *Ibid* at para 42. In this paper, we have adopted the convention of capitalizing words such as Black and White when they are used to refer to racial groups and omitting capitals when they are used to refer to skin colour. We have also preferred "Black" to, for example, "African-Canadian," in order to capture the visual element that is the focus of this paper.

14 *Ibid* at para 83. See also United States, Equal Employment Opportunity Commission (EEOC), "Race and Color Discrimination: A Distinction with the Difference" (2009) 20:3 The Digest of Equal Employment Opportunity Law, online: <https://www.eeoc.gov/federal/digest/xx-3.cfm> [EEOC, "Race and Color Discrimination"].

15 Sophia Moreau, "What is Discrimination?" (2010) 38:2 Philosophy & Public Affairs 143 at 154.

16 In addition, most of the colourism claims we examined involved intentional discrimination, rather than unconscious negative stereotyping. See e.g. Brothers, *supra* note 10 at paras 44, 49.

17 Timothy Caulfield, "Defining 'Race' as the Defining Problem" (2009) 45:5 Hous L Rev 1475 at 1480–81; Peter Geller, Making Blackness, Making Policy (PhD Dissertation, Harvard University, 2012), online: Digital Access to Scholarship at Harvard, <http://nrs.harvard.edu/urn-3:HUL.InstRepos:9548618> at 32.

18 Aceves, *supra* note 1 at 563; Harpalani, *supra* note 1 at 609.

19 Constance Backhouse, Colour-Coded: A Legal History of Racism in Canada, 1900–1950 (Toronto: University of Toronto Press, 1999) at 3 (linking Canadian racial distinctions specifically to colour); Chris Anderson, "From Nation to Population: The Racialization of Métis in the Canadian Census" (2008) 14:2 Nations and Nationalism 347 at 354 (examining the role of the 1901 census categories of White, Red, Black and Yellow in developing the category "Metis").

20 See the discussion in Part IV.B. Other Court decisions have described ethnic identity as the umbrella term encompassing race, colour, ancestry, and place of origin. See e.g. SELI, *supra* note 1 (alleging that Latin American workers working on the Canada Line Skytrain expansion in Vancouver in anticipation of the 2010 Winter Olympic Games were discriminated against in comparison with workers from Europe who received superior salaries, accommodations, meal arrangements, and expense arrangements).

21 See e.g. Tauyna Lovell Banks, "Colorism: A Darker Shade of Pale" (2000) 47:6 UCLA L Rev 1705 at 1713 [Banks, "Colorism"] (contending that colourism constitutes a form of race-based discrimination); Michael Banton, "The Nature and Causes of Racism and Racial Discrimination" (1992) 7:1 International Sociology 69 at 74 (including colour, descent, national origin and ethnic origin as sub-categories of race). Other grounds of discrimination, such as national origin, do contribute to racial classification. Indeed, among some groups, race and national origin are conflated in discrimination claims. See

e.g. Taunya Lovell Banks, "Colorism among South Asians: Title VII and Skin Tone Discrimination" (2015) 14:4 Wash U Global Studies L Rev 665 at 669 [Banks, "Colorism among South Asians"]; Ronald E Hall, "Eurocentrism and the Postcolonial Implications of Skin Color among Latinos" (2011) 33:1 Hispanic Journal of Behavioral Sciences 105 [Hall, "Eurocentrism"]. Ethnic origin is also often conflated with race: Geller, *supra* note 17 at 3; Denia Garcia & Maria Abascal, "Coloured Perceptions: Racially Distinctive Names and Assessments of Skin Color" (2015) 60:4 American Behavioural Scientist 420.

22 "Racialization" is used to describe the socio-historical processes for "the creation, inhabitation, transformation, and destruction of formal racial categories and of social meanings associated with race": Harpalani, *supra* note 1 at 611, n 15; Michael Omi & Howard Winant, Racial Formation in the United States, 2nd ed (New York: Routledge, 1994) at 55.

23 Margaret Hunter, "The Persistent Problem of Colourism: Skin Tone, Status, and Inequality" (2007) 1:1 Sociology Compass 237 at 239 [Hunter, "Persistent Problem"] (noting that the hierarchy employed in colourism, however, is usually the same one that governs racism: light skin is prized over dark, and European facial features and body shapes are prized over African features and body shapes). A recent example of this view of racial discrimination as a power hierarchy can be seen in the Supreme Court of Canada's decision in British Columbia Human Rights Tribunal v Schrenk, 2017 SCC 62, [2018] 1 WWR 1 [Schrenk] (concerning the jurisdiction of the Tribunal over workplace discrimination) at para 43: [E]conomics is only one axis along which power is exercised between individuals. Men can exercise gendered power over women, and white people can exercise racialized power over people of colour. The exploitation of identity hierarchies to perpetrate discrimination against marginalized groups can be just as harmful to an employee as economic subordination.

24 See e.g. Salvador Vidal-Ortiz, "On Being a White Person of Color: Using Autoethnography to Understand Puerto Ricans' Racialization" (2004) 27:2 Qualitative Sociology 179 at 180, n 2 (contrasting racial systems in the United States that focus on a Black/White one-drop framework with Latin American systems which also include a stronger Indigenous background, socioeconomic status, familial social position and citizenship).

25 See Brothers, *supra* note 10 at para 24 (noting that "there are some who also extend the 'colourist' or 'shade- ist' idea to include a racial and perhaps even a cultural element. … [A]s a person appears more deeply complected in a non-white hue, she is considered more purely and more fully a member of the other race or ethnicity, and more fully integrated into, or more completely a part of that other racial or ethnic culture.") The authors would like to credit one of the anonymous reviewers for prompting this point.

26 The "not black enough" insult is one that is also heard within Australian Aboriginal and Torres Strait communities. For example, Shannon Dodson, a fair-skinned Yawuru activist with a family name that is well known in political circles, writes about how she has been greeted with a disappointed "I thought you would be a lot darker" or dismissed at a community presentation with the words "I don't have to listen to you coconuts", with "coconuts" being a derogatory term

that implies a person is "acting white" despite being brown on the outside. See Jack Latimore, "Shannon Dodson: Too White, Too Black, or Not Black Enough? This is Not a Question for Others to Decide" IndigenousX (13 June 2017), online: <https://www. theguardian.com/commentisfree/2017/jun/09/too-white-too-black-or-not-black-enough-this-is-not-a- question-for-others-to-decide>. For another example, in a context perhaps more familiar to readers, see Ron Walters, "Barack Obama and the Politics of Blackness" (2007) 38:1 J Black Studies 7 (assessing the debate over the relevance of Barack Obama's "Blackness," defined as the cultural cues in his personal identity).

27 See generally E Patrick Johnson, Appropriating Blackness: Performance and the Politics of Authenticity (Duke University Press, 2003) (describing how diverse constituencies persistently try to prescribe the boundaries of "authentic" blackness); Kimberly Jade Norwood, "The Virulence of BlackthinkTM and How Its Threat of Ostracism Shackles Those Deemed Not Black Enough" (2004–2005) 93:1 Kentucky L Rev 143 at 149 [Norwood, "The Virulence of Blackthink"] (discussing how her blackness was questioned based on opinions she held or was suspected of holding by self-appointed guardians of blackness). See also Stephen L Carter, in Reflections of an Affirmative Action Baby (Basic Books, 1992) at 30: "If you know the color of somebody's skin, you know what the person values (or should value), what causes the person supports (or should support), and how he or she thinks (or should think)."

28 While "culture" is not a protected ground, race, ancestry, place of origin, ethnic origin and national origin are. And it is likely that a discrimination claim based on the intersection of "colour" and "culture" could be re-articulated as a discrimination claim based on one or multiple of these alternate protected grounds.

29 See e.g. Ian F Haney-López, "The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice" (1994) 29:1 Harv CR-CLL Rev 1 at 11 (reviewing evidence that there are no genetic characteristics possessed by all Blacks but not by non-Blacks and no gene or gene cluster common to all Whites but not to non-Whites); Sandra Soo-Jin Lee, Joanna Mountain & Barbara A Koenig, "The Meanings of 'Race' in the New Genomics: Implications for Health Disparities Research" (2001) 1 Yale J Health Policy L & Ethics 33 at 39 (the "widely accepted consensus among evolutionary biologists and genetic anthropologists is that biologically identifiable human races do not exist").

30 Gowder, *supra* note 5 at 327. See also Anderson, *supra* note 19 at 352 (arguing that the Canadian concept of citizenship is strongly connected to a biological concept of race that involves an essentialization with consequences for how the Métis are imagined as part of a race, rather than as part of a nation).

31 Espinoza v Coldmatic Refrigerator of Canada Ltd, 1995 CarswellOnt 4202, 29 CHRR D/35 (WL Next) [Espinoza] at para 225 (Ont Board of Inquiry), aff'd [1998] OJ No 4019, 1998 CarswellOnt 3825 (Ont Div Ct).

32 *Ibid* at para 225.

33 See Harpalani, *supra* note 1 at 609, 612 (arguing that colour is the most common visual feature and symbol of race); Cedric Herring, (2004) "Skin Deep: Race and Complexion in the 'Colourblind' Era" in C Herring, VM Keith, & HD Horton, eds,

Skin Deep: How Race and Complexion Matter in the "Color-Blind" Era (Urbana and Chicago: University of Illinois at Chicago, 2004) at 18–19, n 1 (noting skin colour is the most visible, enduring and difficult to change of the many phenotypic features).

34 Clara L Wilkins, Cheryl R Kaiser & Heather Riece, "Detecting Racial Identification: The Role of Phenotypic Prototypicality" (2010) 46:6 J Experimental Social Psychology 1029 (discussing three studies showing that the degree to which an individual looks like a prototypical member of his or her racial group shapes inferences about racial identification); Matthew S Harrison and Kecia M Thomas, "The Hidden Prejudice in Selection: A Research Investigation on Skin Color Bias" (2009) 39:1 J Applied Social Psychology 134 at 134 (noting that in-group homogeneity is required to construct race as a social category).

35 Jayne Chong-Soon Lee, "Review: Navigating the Topology of Race" (1994) 46:3 Stanford L Rev 747 at 761.

36 Geller, *supra* note 17. See also Norwood, "The Virulence of Blackthink", *supra* note 27 at 149 (discussing proxies for race that include wealth, academic success, place of residence, speech patterns, music preferences and political positions); Angela Onwuachi-Willig, "Volunteer Discrimination" (2007) 40:5 UC Davis L Rev 1895 at 1913–14 (arguing that the "performance of identity" is as important to racialization and racial identification as are genealogy and phenotype).

37 *Ibid* at 8–9.

38 Haney-López, *supra* note 29 at 7.

39 Lee, *supra* note 35 at 762.

40 See e.g. Through Albino Eyes: The Plight of Albino People in Africa's Great Lakes Region and a Red Cross Response, Advocacy Report (Geneva: International Federation of Red Cross and Red Crescent Societies, 2009), online: <www.ifrc.org/Global/Publications/general/177800-Albinos-Report-EN.pdf>; Aceves, *supra* note 1.

41 Noel Ignatiev, How the Irish Became White (New York: Routledge Classics, 2009). See also Sébastien Grammond, "Disentangling 'Race' and Indigenous Status: The Role of Ethnicity" (2008) 33:2 Queens LJ 487 (reviewing the continuous and discomforting use of "race" by Canadian courts to describe Indigenous peoples).

42 Banton, "Race Relations Problematic", *supra* note 4 at 288. These examples also illustrate the use of race as a tool for subjugating those of purportedly inferior races. See Bill Ashcroft, Gareth Griffiths & Helen Tiffin, Post-Colonial Studies: The Key Concepts (London: Routledge, 2000) at 180–86.

43 Khaled A Beydoun & Erika K Wilson, "Reverse Passing" (2017) 64:2 UCLA L Rev 282. See also Rogers Brubaker, Trans: Gender and Race in an Age of Unsettled Identities (Princeton, NJ: Princeton University Press, 2016).

44 Geller, *supra* note 17 at 43.

45 Ellis P Monk, Jr, "The Cost of Color: Skin Color, Discrimination, and Health among African-Americans" (2015) 121:2 American J Sociology 396 at 409; See also Barbara Kay, "Delaware students can now choose their own race. This should end well" National Post (15 February 2018), online: <http://nationalpost.com/opinion/barbara-kay-delaware-students-can-now-choose-their-own-race-this-should-end-well> (describing the subjectivity of transracial and transgender identities).

46 Onwuachi-Willig & Barnes, *supra* note 6 at 1324–25; Paola Loriggio, "Federal government to test name- blind hiring for public service", The Globe and Mail (20 April 2017), online: <www.theglobeandmail.com/>.

47 See infra note 128.

48 Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City), 2000 SCC 27, [2000] 1 SCR 665 at para 56, quoting Commission des droits de la personne du Québec v Ville de Laval, [1983] CS 961 at 966 [emphasis added].

49 Geller, *supra* note 17 at 8.

50 Sadat, *supra* note 4 at 560.

51 The EEOC's 2008 E-RACE initiative defines colour; see infra text accompanying note 130.

52 See e.g. EEOC, "Race and Color Discrimination", *supra* note 14; Brothers, *supra* note 10 at para 23.

53 In Brothers, *supra* note 10 at para 24, the Nova Scotia Human Rights Commission acknowledged that some "include a racial and perhaps even a cultural element" in the concepts of colour and colourism. However, in its summary of the evidence, the Commission did not find cultural components to comments that the claimant was "too light skinned to 'officially represent them'", the Black Educators' Association, or that the community "wanted a black person in the Regional Educator job that was actually black," even though such comments might have been references to Ms. Brothers' class or education or where she lived, rather than or in addition to refences to her skin colour. *Ibid* at paras 42–43.

54 This view is vulnerable, given the common use of chemical agents to lighten skin pigmentation, known as skin whitening, skin lightening and/or skin bleaching. See e.g. Yaba Amgborale Blay, "Skin Bleaching and Global White Supremacy: By Way of Introduction" (2011) 4:4 J Pan African Studies 4.

55 Banton, "Race Relations Problematic", *supra* note 4 at 291.

56 *Ibid* at 291–92.

57 Harpalani, *supra* note 1 at 609.

58 Lance Hannon, "White Colourism" (2015) 2:1 Social Currents 13 (arguing both White racism and White colourism must be acknowledged); Trina Jones, "Shades of Brown, The Law of Skin Color" (2000) 49:6 Duke LJ 1487 [Jones, "Shades of Brown"] (tracing the historical development of colourism in the United States); Kimberly Jade Norwood "'If You Is White, You's Alright…' Stories about Colorism in America" (2015) 14:4 Wash U Global Studies L Rev 585 at 592 [Norwood, "Colourism in America"] (arguing that "colonialism in the new world played a pivotal role in the centuries-old preference we see … for white and light skin"). The origin of colourism practices in India and other parts of South Asia is contested, with some arguing that colour-based discrimination pre-dated colonial rule and colonialism only exacerbated existing colourist attitudes. For examples of various perspectives on the issue, see Tony Ballantyne, Orientalism and Race: Aryanism in the British Empire (London: Palgrave Macmillan, 2017) (tracing the emergence and dissemination of Aryanism within the British Empire in the 19th century); Neha Mishra, "India and Colourism: The Finer Nuances" (2015) 14:4 Wash U Global Studies L Rev 725

(arguing skin colour prejudice in India exists irrespective of class or caste); Banks, "Colorism among South Asians", *supra* note 21 at 671 (arguing that earlier theories, now largely discredited, linked colourism practices to India's caste system); Joan Leopold, "British Application of the Aryan Theory of Race to India" (1974) 89:352 The English Historical Rev 578; Doug Coulson, "British Imperialism, the Indian Independence Movement, and the Racial Eligibility Provisions of the Naturalization Act: United States v. Thind Revisited" (2015) 7 Georgetown J L & Modern Critical Race Perspectives 1 (discussing immigrants from India in the early 20th century who applied for American citizenship on the basis that they were White).

59 Alice Walker, "If the Present Looks like the Past, What Does the Future Look Like?" in In Search of Our Mother's Gardens: Womanist Prose (Orlando: Harcourt Inc, 1983) 290 at 290–91.

60 Hunter, "Persistent Problem", *supra* note 23 at 237. See also Hochschild, "Not Protest Unfairness?", *supra* note 8 at 474 (noting that colourism can be defined both uni-directionally (i.e. exhibited only by those with power and status) and multi-directionally).

61 Keith Maddox & Stephanie Gray, "Cognitive Representations of Black Americans: Re-exploring the Role of Skin Tone" (2002) 28:2 Personality and Social Psychology Bulletin 250 at 250.

62 Sadat, *supra* note 4 at 551, n 6.

63 Kim D Chanbonpin, "Between Black and White: The Coloring of Asian Americans" (2015) 14 Wash U Global Studies L Rev 637 at 643.

64 See e.g. Sarita Sahay & Niva Pirhan, "Skin-Color Preferences and Body Satisfaction Among South Asian-Canadian and European-Canadian Female University Students" (1997) 137:2 J Social Psychology 161 (finding that medium-skinned women had the lowest body image because they were too dark to attain the ideal of lightness but not dark enough to reject it); JeffriAnne Wilder, "Revisiting 'Color Names and Color Notions': A Contemporary Examination of the Language and Attitudes of Skin Color Among Young Black Women" (2010) 41:1 J Black Studies 184 (finding that language and beliefs indicate that colourism operates as a three-tiered structure rather than the tradition binary paradigm); Ekeoma E Uzogara & James S Jackson, "Perceived Skin Tone Discrimination across Contexts: African-American Women's Reports" (2016) 8:2 Race & Social Problems 147 at 149 (summarizing research that indicates colourism may operate on a three-layered structure of dark, medium, and light skin).

65 See e.g. Evelyn N Glenn, "Yearning for Lightness: Transnational Circuits in the Marketing and Consumption of Skin Lighteners" (2008) 22:3 Gender & Society 281 [Glenn, "Yearning for Lightness]; Margaret L Hunter, "Buying Racial Capital: Skin-Bleaching and Cosmetic Surgery in a Globalized World" (2011) 4:4 J Pan African Studies 142.

66 Cynthia Sims & Malar Hirudayaraj, "The Impact of Colorism on the Career Aspirations and Career Opportunities of Women in India" (2016) 18:1 Advances in Developing Human Resources 38 at 39 (reviewing the literature on colourism in Asia). See also Herring, *supra* note 33 at 12.

67 Mishra, *supra* note 58 at 745 (noting that colourism in India hides among other variables and is gendered); Anna Holmes,

"Black With (Some) White Privilege" New York Times (10 February 2018), online: <https:// www.nytimes.com/2018/02/10/ opinion/sunday/black-with-some-white-privilege.html> (describing the greater societal acceptance and thus greater success of mixed race African-Americans over non-mixed African-Americans in the arts, sports, music and politics).

68 For analysis of colourism in other contexts, see e.g. Evelyn N Glenn, ed, Shades of Difference: Why Skin Color Matters (Stanford: Stanford University Press, 2009) [Glenn, Shades of Difference] (looking at how colourism impacts people's lives in Latin America, Asia, Africa, and North America); Kimberly Jade Norwood, ed, Color Matters: Skin Tone Bias and the Myth of a Post Racial America (New York: Routledge, 2014) (using evidence from around the world to demonstrate that in most cultures lighter is better); Debito Arudou, "Japan's Under-Researched Visible Minorities: Applying Critical Race Theory to Racialization Dynamics in a Non-White Society" (2015) 14:4 Wash U Global Studies L Rev 695 (examining the contribution of skin colour to how one "looks Japanese"); Angela Aujla, "Others in Their Own Land: Second Generation South Asian Canadian Women, Racism, and the Persistence of Colonial Discourse" (2000) 20:2 Canadian Women's Studies 41 (discussing internalized racism among multigenerational South Asian Canadian women); Jeremiah Chin et al, "Terminus Amnesia: Cherokee Friedman, Citizenship, and Education" (2016) 55:1 Theory into Practice 28 (looking at the influence of colourism on the Dawes Rolls); Hall, "Eurocentrism", *supra* note 21 (arguing that those with darker skin experience significant impacts that are not acknowledged by mainstream social science due to its Eurocentric bias); Vidal-Ortiz, *supra* note 24 (using his own experience as a Puerto Rican to illustrate the limitations of American race and ethnic constructs).

69 The main problem appears to be that data on race in Canada is not routinely collected and available, at least in the criminal justice context: see Charles Reasons et al, "Race and Criminal Justice in Canada" (2016) 11:2 Intl J Criminal Justice Sciences 75 at 78; Gerry Veenstra, "Black – White Health Inequalities in Canada" (2016) 18:1 J Immigrant & Minority Health 51.

70 Exceptions include Statistics Canada, "The 2006 Canadian Immigrant Labour Market: Analysis by Region or Country of Birth", 13 February 2008, online: <http://www.statcan.gc.ca./daily-quotidien/080213/ dq080213b-eng.htm> (revealing that the unemployment rates of Black youth are more than twice as high as those of White youth); Gerry Veenstra, "Mismatched Racial Identities, Colourism, and Health in Toronto and Vancouver" (2011) 73:8 Social Science & Medicine 1152 (finding that darker-skinned Black respondents were more likely than lighter-skinned Black respondents to report poor health outcomes); CE James, "Students 'at Risk': Stereotypes and the schooling of black boys" (2011) 47:2 Urban Education 464 (examining Black Canadian youths' lived experiences of racism in the school setting); Julian Hasford, "Dominant Cultural Narratives, Racism, and Resistance in the Workplace: A Study of the Experiences of Young Black Canadians" (2016) 57:1–2 Community Psychology 158 (finding that race is a defining aspect of the lived work experience for young Black Canadians and the impact of slavery and colonization

continues to play out in the modern workplace).

71 See e.g. M Hughes & BR Hertel, "The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness among Black Americans" (1990) 68:4 Social Forces 1105; Baynes, *supra* note 5 at 160–62; Hochschild, "Not Protest Unfairness?", *Supra* note 8 at 476–79; Harrison & Thomas, *Supra* note 34 at 136–38; Norwood, "Colourism in America," *Supra* note 58 at 593–98.

72 Hughes & Hertel, *Supra* note 71 at 1109, 1112, 1114 (finding that skin colour overshadows educational background and prior work experience in hiring decisions).

73 Uzogara & Jackson, *Supra* note 64 at 150.

74 Nayeli Y Chavez-Dueñas, Hector Y Adames & Kurt C Organista, "Skin-Color Prejudice and Within-Group Racial Discrimination: Historical and Current Impact on Latino/a Populations" (2014) 36:1 Hispanic J of Behavioral Science 3.

75 Monk, Jr. *Supra* note 45; Norwood, "Colorism in America," *Supra* note 58 at 597.

76 Leland Ware, "'Color Struck': Intragroup and Cross-Racial Color Discrimination" (2013) 13:1 Conn Pub Int LJ 75 at 76.

77 Hunter, "Persistent Problem," *Supra* note 23 at 238.

78 *Ibid*.

79 Norwood, "The Virulence of Blackthink", *Supra* note 27 at 163; Harrison & Kecia M Thomas, *Supra* note 34 at 155–56.

80 See e.g. Onwuachi-Willig & Barnes, *Supra* note 6 at 1905; JL Eberhardt et al, "Seeing Black: Race, Crime, and Visual Processing" (2004) 87:6 J Personality & Social Psychology 876; Kimberly Barsamian Kahn & Paul G Davies, "Differentially Dangerous? Phenotypic Racial Stereotypicality Increases Implicit Bias among Ingroup and Outgroup Members" (2011) 14:4 Group Processes Intergroup Relations 569.

81 Michelle Goodwin, "Race as Proxy: An Introduction" (2004) 53:3 DePaul L Rev 931 at 933.

82 Kahn & Davies, *Supra* note 80 at 569–70.

83 Meghan Grant, "Calgary judge apologizes to law students for comments 'insensitive to racial minorities'" (2018) CBC News: <http://www.cbc.ca/news/canada/calgary/judge-university-calgary-law-students- comments-kristine-eidsvik-apology-1.4474760>.

84 The Continuing Legal Education Society of BC, "But I Was Wearing a Suit" (November 23, 2017), online: YouTube <https://www.youtube.com/watch?v=HTG7fi-5c3U&feature=youtu.be> at 00h:00m00:58s.

85 Monk, Jr, *Supra* note 45 at 405.

86 Baynes, *Supra* note 5 at 134; Chanbonpin, *Supra* note 63 at 656–57.

87 Chanbonpin, *Supra* note 63 at 642, n 28; Hunter, "Persistent Problem," *Supra* note 23 at 244 (arguing that 'proving' oneself to be an authentic member is a significant burden for the light-skinned in Latino, African-American, and Asian American communities); Hadiya Roderique, "Dating While Black: What I Learned About Racism from my Online Quest for Love" The Walrus (15 February 2017) , online: <https://thewalrus.ca/dating-while-black/> (describing how people question the racial authenticity of mixed race women).

88 Cherise A Harris & Nikki Kahanna, "Black Is, Black Ain't: Biracials, Middle-Class

Blacks, and the Social Construction of Blackness" (2010) 30:6 Sociological Spectrum 639 at 643–44 (identifying skin tone, social class, and five other dimensions upon which authenticity is judged); Kevin R Johnson, "'Melting Pot' or Ring of Fire?: Assimilation and the Mexican American Experience" (1998) 10:1 La Raza LJ 173 at 204, 206 (discussing how light-skinned Mexican-Americans may be challenged by other Mexican Americans as being too White). One of the authors, a light-skinned Trinidadian-Canadian, has had the authenticity of his racial identity repeatedly questioned. On one occasion during the drafting of this article a stranger volunteered that the author only had dreadlocks to pretend he was "hood" and exclaimed: "You're not even black. You're some half black, barely black, bullshit."

89 Cathy Richardson, "Metis Identity Creation and Tactical Responses to Oppression and Racism" (2006) 2 Variegations 56 at 61.

90 Uzogara & Jackson, *Supra* note 64 at 156.

91 Hunter, "Persistent Problem," *Supra* note 23 at 246.

92 Uzogara & Jackson, *Supra* note 64 at 151.

93 Mark E Hill, "Skin Color and the Perception of Attractiveness Among African Americans: Does Gender Make a Difference?" (2002) 65:1 Social Psychology Quarterly 77 at 88.

94 See e.g. Margaret Hunter, "Colorstruck: Skin Color Stratification in the Lives of African American Women" (1998) 68:4 Sociological Inquiry 517; Margaret Hunter, "If You're Light You're Alright: Light Skin Color as Social Capital for Women of Color" (2002) 16:2 Gender & Society 175; Alfiee M Breland-Noble, "The Impact of Skin Color on Mental and Behavioral Health in African American and Latina Adolescent Girls: A Review of the Literature", in Ronald E Hall, ed, The Melanin Millennium: Skin Color as 21st Century International Discourse (Dordrecht: Springer, 2013) 219.

95 Harrison & Thomas, *Supra* note 34 at 138, 155.

96 Hill, *Supra* note 93 at 88.

97 Sims & Hirudayaraj, *Supra* note 66 at 41. See also Ronald E Hall, "Skin Color Bias: A New Perspective on an Old Social Problem" (1998) 132:2 J Psychology: Interdisciplinary & Applied 238 at 239 (finding a significant relationship between skin colour and perceptions of physical beauty among African-American college freshmen).

98 Ronald E Hall, "The Bleaching Syndrome Among People of Color: Implications of Skin Color for Human Behavior in the Social Environment" (2006) 13:3 J Human Behavior in the Social Environment 19 at 27.

99 The products often contain mercury, corticosteroids, or high doses of hydroquinone, but use rates by women around the world are high, ranging from 24 percent in Japan to 77 percent of traders in Lagos, Nigeria. See Glenn, "Yearning for Lightness", *Supra* note 65 at 285; Levashni Naidoo, Nokubonga Khoza & Ncoza C Dlova, "A Fairer Face, a Fairer Tomorrow? A Review of Skin Lighteners" (2016) 3:3 Cosmetics 33.

100 Banks, "Colorism," *Supra* note 21 at 1741; McCray, *Supra* note 8 at 176.

101 Hochschild, "Not Protest Unfairness?", *Supra* note 8 at 488. See also Jennifer L Hochschild, "The Skin Color Paradox and the American Racial Order" (2007) 86:2

Social Forces 643 (finding that Blacks' perceptions of discrimination, belief that their fates are linked, and attachment to their race almost never varies by skin colour despite the adverse impacts of colourism on dark-skinned Blacks at 643) [Hochschild, "Skin Color Paradox"].

102 Harris, *Supra* note 2 at 63.

103 Hunter, "Persistent Problem," *Supra* note 23 at 250; Chavez-Dueñas, Adames & Organista, *Supra* note 74 at 4–5, 17; Hochschild, "Not Protest Unfairness?", *Supra* note 8 at 474, 483–84.

104 Banks, "Colorism," *Supra* note 21 at 1741.

105 Baynes, *Supra* note 5 at 133.

106 Hochschild, "Not Protest Unfairness?", *Supra* note 8 at 489.

107 Hochschild, "Skin Color Paradox", *Supra* note 101 at 661.

108 Norwood, "The Virulence of Blackthink", *Supra* note 27 at 180.

109 Nitya Duclos, "Disappearing Women: Racial Minority Women in Human Rights Cases" (1993) 6:1 CJWL 25 (commenting on the federal record).

110 *Ibid* at 38; "Hundreds in Canada protest against police brutality after death of black man", The Guardian (31 July 2016), online: <https://www.theguardian.com/>; "Canadian police officer charged in death of mentally ill black man," The Guardian (6 March 2017), online: <https://www.theguardian.com/>.

111 Human Rights Code, RSO 1990, c H 19.

112 Charter of the United Nations, 26 June 1945, Can TS 1945 No 7 art 1, para 3.

113 Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948). Art 2 states, in part: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

114 Article 1 of the 1963 Convention on the Elimination of all Forms of Racial Discrimination is an exception, defining "racial discrimination" as distinctions "based on race, colour, descent, or national or ethnic origin." International Convention on the Elimination of All Forms of Racial Discrimination, GA Res 2106(XX), 20th Sess, Supp No 14, UN Doc A/6014 (1965) 47 (entry into force for Canada, 13 November 1970).

115 See e.g. Johannes Morsink, The Universal Declaration of Human Rights: Origins, Drafting, and Intent (University of Pennsylvania Press, 1999) at 102–03; Stephanie Farrior, "'Colour' in the Nondiscrimination Provisions of the Universal Declaration of Human Rights and the Two Covenants" (2015) 14:4 Wash U Global Studies L Rev 751.

116 Farrior, *Supra* note 115 at 757; Morsink, *Supra* note 115 at 102–03.

117 Sadat, *Supra* note 4 at 557.

118 Aceves, *Supra* note 1 at 563.

119 Farrior, *Supra* note 115 at 769. Farrior quotes a current member of the Committee on Civil and Political Rights, which monitors compliance, as stating they "never thought about a separate violation on grounds of colour, if only because of the almost automatic assumption that colour equals race". *Ibid* at 769, n 135.

120 The struggle against fascism and the extent of the Holocaust in World War II, as well as the subsequent formation of the United Nations, played significant roles in the introduction of anti-discrimination

legislation in Canada. See e.g. Walter Tarnopolsky, "Discrimination and the Law in Canada" (1992) 41 UNBLJ 215 at 226; Robert Brian Howe & David Johnson, Restraining Equality: Human Rights Commissions in Canada (Toronto: University of Toronto Press, 2000) at 3, 6; Carmela Patrias & Ruth A Frager, "'This Is Our Country, These Are Our Rights': Minorities and the Origins of Ontario's Human Rights Campaigns" (2001) 82:1 Canadian Historical Rev 1 at 1. But see James W St G Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada" (2002) 34:1 Canadian Ethnic Studies 1 (cautioning against exaggerating the effects of the international context on the campaign to eliminate racial discrimination at 25).

121 *Ibid*.

122 Tarnopolsky, *Supra* note 120 at 227.

123 "The President Establishes the Committee on Fair Employment Practice and Reaffirms the Policy of Full Participation in the Defence Program by All Persons, Regardless of Race, Creed, Color, or National Origin". Exec Order 8802, 1941 Pub Papers 233 (25 June 1941) at 234. For discussions of the developments leading up to this Executive Order, see generally Louis Ruchames, Race, Jobs and Politics: The Story of the FEPC (New York: Columbia Press, 1953); Arthur Earl Bonfield, "The Origin and Development of American Fair Employment Legislation" (1967) 52:6 Iowa L Rev 1043.

124 Fair Employment Practices Act, SO 1951, c 24; Fair Accommodation Practices Act, SO 1954, c 28. For the impetus and actors behind these first statutes, see e.g. Howe & Johnson, *Supra* note 120 at 7–8; I A Hunter, "Human Rights Legislation in Canada: Its Origin, Development and Interpretation" (1976) 15 UWO L Rev 21 at 24; Arnold Bruner, "The Genesis of Ontario's Human Rights Legislation: A Study in Law Reform" (1979) 37:2 UT Fac L Rev 236.

125 Dominique Clément, "History of Canadian Human Rights Laws", Canada's Human Rights History at 2, online: <historyofrights.ca/history/human-rights-law/>.

126 Ontario Human Rights Code, SO 1962, c 93, ss 1–4. See also Howe & Johnson, *Supra* note 120 at 9–10; IA Hunter, *Supra* note 124 at 27.

127 Tarnopolsky, *Supra* note 120 at 228; Clément, *Supra* note 125.

128 Eleven of fourteen statutes enumerate both race and colour as prohibited grounds: Human Rights Code, RSBC 1996, c 210, ss 7–11; Alberta Human Rights Act, RSA 2000, c A-25.5, ss 3–5, 7–8; Human Rights Code, RSO 1990, c H 19, ss 1–3, 5–6; Charter of Human Rights and Freedoms, CQLR c C-12, s 10; Human Rights Act, RSNS 1989, c 214, s 5; Human Rights Act, RSNB 2011, c 171, ss 4–8; Human Rights Act, RSPEI 1988, c H-12, s 1(1)(d); Human Rights Act, 2010, SNL 2010, c H-13.1, s 9(1); Human Rights Act, SNWT 2002, c 18, s 5(1); Human Rights Act, SNu 2003, c 12, s 7(1); Canadian Human Rights Act, RSC 1985, c H-6, s 3(1). The Saskatchewan Human Rights Code, SS 1979, c S-24.1, s 2(1)(m.01) lists, inter alia, colour and "race or perceived race." The Human Rights Code, CCSM c H175, s 9(2) includes "colour and perceived race" within the category of "ancestry" and the Human Rights Act, RSY 2002, c 116, s 7 includes "colour and race" within the category of "ancestry."

129 IA Hunter, *Supra* note 124 at 34.

130 Internal reviews by the federal, Nova

Scotia, Quebec and British Columbia human rights commissions, conducted between 1988 and 2000, found that race-based claims were disproportionately rejected for lacking substance and also dismissed without a hearing more often than those based on other grounds - and the differences were large. See Dave Sangha & Kwong-Leung Tang, "Race Discrimination and the Human Rights Process" (Paper delivered at the Canadian Critical Race Conference 2003, University of British Columbia, Canada, 2 May 2003) for a discussion of these reviews. For example, the British Columbia study found that only three percent of race complaints were successful in their final disposition, as compared to 53% of the sexual harassment complaints, and only three percent of race harassment complaints were settled, while 56% of sexual harassment complaints were settled: Sangha & Tang, *Ibid*, citing Ana Mohammad, The Investigation of Race Complaints at the BC Human Rights Commission (Vancouver: BC Human Rights Commission, 2000).

131 Sangha & Tang, *Supra* note 130 at 5–6.

132 See e.g. Mitchell, *Supra* note 1 (treating race, colour and ethnic origin as synonymous when looking at the dismissal of Black employees of West Indian origin); Frank v AJR Enterprises Ltd (1993), 23 CHRR D/228 (BCCHR) (failing to distinguish among race, colour, ancestry in a complaint about a hotel's treatment of Aboriginal women).

133 Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 15(1) [Charter].

134 Pridgen v University of Calgary, 2012 ABCA 139 at paras 62–78, 350 DLR (4th); BC Civil Liberties Association v University of Victoria, 2016 BCCA 162 at paras 17–41, [2016] 8 WWR 678.

135 Civil Rights Act of 1964, 42 USC §§ 2000e et seq.

136 See generally Jean R Sternlight, "In Search of the Best Procedure for Enforcing Employment Discrimination Laws: A Comparative Analysis" (2004) 78:5 Tulane L Rev 1401 (comparing the legislation and dispute resolution processes in the United States, Great Britain and Australia). The high profile Australian Federal Court decision in Eatock v Bolt, *Supra* note 9 was brought on behalf of fairer-skinned Aboriginal persons in connection with two inflammatory newspaper articles – one titled "White is the new black" and the other titled "White fellas in the black" – which suggested the fair skin colour of the plaintiff and others like her indicated they were not genuinely Aboriginal. The articles repeatedly drew attention to the plaintiffs' skin colour and colour was the point of contrast between the plaintiffs and those the articles intimated were "real" Aboriginal people. The claim was brought under s 18C of the Racial Discrimination Act 1975 (Cth) (RDA) which targets offensive behaviour that is based on "race, colour or national or ethnic origin." The meanings of "race," "ethnic origin" and "colour" were analyzed: *Ibid* at paras 309–16. The court determined that "colour" was used in 18C "to refer to skin-colour when used as an indicator of race including as an indicator of a broad racial sub-species like the Caucasians. Accordingly, an act based on the skin-colour of a person when used to connote race, is an act done 'because' of the 'colour' of the person. . .": *Ibid* at para 316. This statutory interpretation therefore treated colour and race as almost entirely overlapping concepts.

Commentators have noted that there have been very few successful claims based on the race or colour grounds of the RDA, which appear to be treated as synonymous grounds, and which require overt and explicit references to race or colour for success. See Beth Gaze, "The RDA at 40 Years: Advancing Equality or Sliding into Obsolescence?" in Perspectives on the Racial Discrimination Act: Papers from the 40 Years of the Racial Discrimination Act 1975 (Cth) Conference (Australian Human Rights Commission, 2015) 66 at 78.

137 See e.g. Mathias Möschel, "Color Blindness or Total Blindness? The Absence of Critical Race Theory in Europe" (2007) 9:1 Rutgers Race & L Rev 57 at 70–76, 83 (noting that racism in continental Europe is primarily associated with anti-Semitism and article 13 of the Treaty and the consequent Council Directive speaks of "racial or ethnic origin", but not colour); Shanthi Elizabeth Senthe & Sujith Xavier, "Re-Igniting Critical Race in Canadian Legal Spaces: Introduction to the Special Symposium Issue of Contemporary Accounts of Racialization in Canada" (2013) 31:2 Windsor YB Access Just 1 at 2.

138 See e.g. Eric Fong, "A Comparative Perspective on Racial Residential Segregation: American and Canadian Experiences" (1996) 37:2 The Sociological Quarterly 199 at 204–05 (noting the similarities in the historical context of slavery and segregation in the two countries); RN Lalonde, JM Jones & ML Stroink, "Racial Identity, Racial Attitudes and Race Socialization among Black Canadian Parents" (2008) 40:3 Canadian Journal of Behavioural Science 129 at 129–30 (acknowledging the differences between the United States and Canada but pointing out a "shared cultural experience" of discrimination). But see Sharon J Boatswain & Richard N Lalonde, "Social Identity and Preferred Ethnic/Racial Labels for Blacks in Canada" (2000) 26:2 J Black Psychology 216 at 218–19 (discussing factors that make the Canadian context distinct from the American context for Blacks, including more recent immigration, more prevalent West Indies ancestry, smaller relative numbers and less residential segregation); Sonia Lawrence, "Lost and Found" (2013) 31:2 Windsor YB Access Just 97 (arguing that Canadians cannot rely on critical race work done in the United States because of divergent historical, demographic and legal contexts; proof and the lack of Canadian data which illustrates differential treatment; and the need for local praxis).

139 Civil Rights Act of 1866, 42 USC § 1981 (1866).

140 Jones, "Intra-Group Preferencing," *Supra* note 6 at 662, n 19. The other major source of colourism claims is the Fair Housing Act, 42 USC § 3602 (2012). See *Ibid*.

141 *Supra* note 135. Section 2000e-2(a) states that "It shall be an unlawful employment practice for an employer – (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." For a review of

the legislative and jurisprudential history of the Civil Rights Act of 1964 that is focused on the ground of colour, see Kate Sablosky Elengold, "Branding Identity" (2015) 93:1 Denver L Rev 1.

142 Joni Hersch, "Characteristics of Color Discrimination Charges Filed with the EEOC" in Hall, ed, *Supra* note 94 at 231.

143 EEOC, "Color-based charges FY 1997 – FY 2017", online: <https://www.eeoc.gov/eeoc/statistics/enforcement/ color.cfm>.

144 EEOC, "Questions and Answers About Race and Color Discrimination in Employment", online: <https:// www.eeoc.gov/policy/docs/qanda_race_color.html>.

145 EEOC, "Color-based charges FY 1997 – FY 2017," *Supra* note 143. There is no indication whether the claims were intra- or inter-group claims.

146 Hersch, *Supra* note 142.

147 EEOC, "Color-based charges FY 1997 – FY 2017", *Supra* note 143. Colour charges do fare better than race charges. Since 2008, EEOC has annually determined there is reasonable cause for only two to four percent of race-based charges. *Ibid*.

148 Detailed analyses of the influential cases have been undertaken by Banks, "Colorism," *Supra* note 21; Trina Jones, "Shades of Brown," *Supra* note 58; Jones, "Intra-Group Preferencing," *Supra* note 6; Cynthia E Nance, "Colorable Claims: The Continuing Significance of Color Under Title VII 40 Years After Its Passage" (2005) 26:2 BJELL 435; Hersch, *Supra* note 142 at 233–34.

149 628 F Supp 1543 at 1546 (ND Ill 1986) [Sere], aff'd on other grounds, 852 F 2d 285 (7th Cir 1988).

150 *Ibid* at 1546.

151 Felix v Marquez, 1981 WL 275 at para 7; 24 Empl Prac Dec (CCH) 31,279 (DDC1980).

152 Banks, "Colorism," *Supra* note 21 at 1726–27.

153 Jones, "Intra-Group Preferencing," *Supra* note 6 at 662, n 19.

154 Hersch, *Supra* note 142 at 234.

155 481 US 604 (1987).

156 *Ibid* at 610, n 4.

157 *Ibid* at 613 [emphasis added].

158 See e.g. Franceschi v Hyatt Corp, 782 F Supp 712 at 720 (DPR 1992). See also Banks, "Colorism," *Supra* note 21 at 1729. In discussing the perception of race, the court in Perkins v Lake County Department of Utilities, 860 F Supp 1262 at 1273 (ND Ohio 1994) wrote, "subjective perception of an individual's race clearly plays an important role in racial classification where discrimination is involved. This Court has never encountered an instance in which an employer admittedly first checked the pedigree of an employee before engaging in discriminatory conduct."

159 508 F Supp 611 at 613 (SD NY 1981) [Ali].

160 Banks, "Colorism among South Asians", *Supra* note 21 at 675, citing Ali, *Supra* note 159.

161 *Ibid* at 680, citing Muhammad v Islamic Society, No G036534, 2008 Cal App Unpub Lexis 2693.

162 *Ibid* at 675, citing Ali, *Supra* note 159 at 614.

163 Walker v Secretary of the Treasury 713 F Supp 403 at 405–08 (ND GA 1989) [Walker], affirmed 953 F.2d 650 (11th Circuit, 1992).

164 Walker v Secretary of the Treasury, 742 F Supp 670 (ND Ga. 1990) [Walker Trial], aff d, 953 F 2d 650 (11th Cir. 1992). See e.g. Amy Weinstein, "Must Employers Be Colorblind?: Title VII Bars Intra-Racial Employment Discrimination: Walker v Secretary of Treasury, IRS, 713 F Supp 403 (ND Ga. 1989)" (1990) 68 Wash U Global Studies L Rev 213; Banks, "Colorism," *Supra* note 21 at 1713–14, 1722, 1732.

165 Walker, *Supra* note 163 at 405.

166 *Ibid* at 408.

167 Walker Trial, *Supra* note 164 at 671.

168 2004 US Lexis 4486 (EDNY 2004).

169 Judgment in a Civil Case, Arrocha v City University of New York, No 02-CV-868 (SJF) (LB) (EDNY 2004).

170 249 F Supp 2d 938 (WD Tenn 2003) [Brack].

171 I.e., a store primarily serving customers dependent on government payments that arrive at the end or beginning of the month.

172 Brack, *Supra* note 170 at 947–48.

173 EEOC, "Rare Bias Case Involves Dark Skin Color of African American Employee", Press Release (August 7, 2003), online: <https://www.eeoc.gov/eeoc/newsroom/release/archive/8-07-03.html>.

174 See Donnamaria Culbreth, Employment Discrimination in the 21st Century: An Empirical Investigation of the Presence of Intraracial Color Discrimination Among Black Americans in the Workplace (PhD Dissertation, Capella University, 2006) at 28. See also Kathy Russell-Cole, Midge Wilson & Ronald E Hall, The Color Complex: The Politics of Skin Color in a New Millennium, revised edition (New York: Anchor Books, 2013) at 198–99.

175 EEOC v Family Dollar Stores Inc. No. 1: 02-CV-829 (D Ga 2003), cited in EEOC, "Race and Color Discrimination," *Supra* note 14.

176 EEOC, Press Release "Rugo Stone to Pay $40,000 to Settle EEOC National Origin, Religion and Color Bias Lawsuit", Press Release (7 March 2012), online: <https://www.eeoc.gov/eeoc/newsroom/release/3-7- 12b.cfm>.

177 *Ibid*.

178 Richard Delgado "Review Essay: Recasting the American Race Problem" (1991) 79:5 Cal L Rev 1389 at 1393–94. See also Sternlight, *Supra* note 136 at 1422–23 (identifying problems meeting the burden of proof absent the rare "smoking gun" evidence).

179 Jones, "Intra-Group Preferencing," *Supra* note 6 at 662, n 19. For a description of the tests and evidentiary burden under Title VII, see e.g. Roy L Brooks, Rethinking the American Race Problem (Berkeley: University of California Press, 1990) at 54–64.

180 Jones, "Intra-Group Preferencing," *Supra* note 6 at 660.

181 *Ibid* at 691–92.

182 *Ibid* at 665.

183 *Ibid* at 682–88.

184 *Ibid* at 665.

185 Tanya Kateri Hernandez, "Latino Inter-Ethnic Employment Discrimination and the Diversity Defense" (2007) 42 Harv CR-CLL Rev 259 at 266.

186 Sternlight, *Supra* note 136 at 1422–23.

187 Banks, "Colorism among South Asians," *Supra* note 21 at 680.

188 *Ibid*.

189 McCray, *Supra* note 8 at 166.

190 Using both the LexisNexis Quicklaw and WestlawNext Canada databases, we searched for "colour /4 discrim!" in the former and "colour AND race AND discrimination" in the latter. Then we reviewed the list of our search terms in context and examined only those cases that used "colour" in more than a general reference to enumerated grounds (e.g. a quote of the legislation). We examined a total of 32 cases but found that most of them simply used race and colour as synonyms.

191 See e.g. Adams v Metropolitan Regional Housing Authority, 2001 NSSC 134 at para 6, 108 ACWS (3d) 452; Economic Development Edmonton v Baah, 2003 ABQB 721 at para 9, [2003] AJ No 1270; University of British Columbia v Chan, 2013 BCSC 942 at para 7, [2013] BCJ No 1118; Ibrahim v Shaw Cablesystems GP, 2010 FC 1220 at para 1, 195 ACWS (3d) 790; Pieters v University of Toronto, [2003] OJ No 1316 at para 3, 226 DLR (4th) 152.

192 See *Supra* text accompanying note 132.

193 Brothers, *Supra* note 10 at para 83. Many other cases have not required such a high standard of proof and have viewed race and colour as more intimately linked. See e.g. Espinoza, *Supra* note 31 at para 225 (describing colour as "a characteristic within a race"); Williams v North Vancouver (City), 2004 BCHRT 441 at para 59, [2004] BCHRTD No 465 (discussing both race and colour indistinguishably under the umbrella of "racial discrimination"); Uzoaba v Canada (Correctional Service), [1994] CHRD No 7 at paras 49, 297, 26 CHRRR D/361 (also discussing both race and colour indistinguishably under the umbrella of "racial discrimination").

194 Brothers, *Supra* note 10 at para 23 (describing how colour simply "refers to visible 'skin colour'").

195 2011 BCHRT 288, [2012] BCWLD 1508.

196 *Ibid* at para 14.

197 2012 SCC 61 at para 33, [2012] 3 SCR 360 (requiring the complainant to demonstrate that they have a characteristic that is protected from discrimination, they experienced an adverse impact with respect to a service, and that the characteristic was a factor in that adverse impact in order to demonstrate prima facie discrimination and shift the burden to the respondent).

198 See e.g. Morin v Canada (Attorney General), 2005 CHRT 41 at para 191, 54 CHRR D/351 ("[a] tribunal should … consider all circumstances in determining if there exists a 'subtle scent of discrimination'"); Zahedi v Xantrex Technology Inc, 2009 BCHRT 214 at para 22, [2009] BCWLD 6117 ("discrimination may be subtle, and may only reveal itself gradually over a series of events").

199 R v Shergill, 1996 CanLII 8167 at para 10 (ONSC), 40 CRR (2d) 308.

200 Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43:6 Stan L Rev 1241 at 1244. See also Rachel Kahn Best et al., "Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation" (2011) 45:4 Law & Soc'y Rev 991 (examining the impact of demographic intersectionality, in which overlapping demographic characteristics produce disadvantages that are more than the sum of their parts, and claim intersectionality, in which plaintiffs allege discrimination on the basis of intersecting ascriptive characteristics, and finding that both dramatically reduce claimants' success).

201 Intersectionality appears to have two different meanings in Canadian jurisprudence. One sees discrimination based on multiple protected grounds resulting in a unique form of discrimination. See e.g. Espinoza, *Supra* note 31 at para 224 and Radek v Henderson Development, 2005 BCHRT 302 at paras 463–87, 52 CHRR D/430. The other views the result as a more harmful form of discrimination. See e.g. Turner v Canada, 2012 FCA 159 at para 48, [2012] FCJ No 666 and Canadian Human Rights Act, *Supra* note 128 at s 3.1.

202 SELI, *Supra* note 1 at para 238.

203 *Ibid* at para 9.

204 *Ibid* at para 248.

205 *Ibid* at para 240.

206 *Ibid*.

207 *Ibid* at para 245.

208 Pieters v Peel Law Association, 2013 ONCA 396, 363 DLR (4th) 598 [Pieters]. For an analysis of Pieters, see Bhabha, *Supra* note 6.

209 Pieters, *Supra* note 208 at paras 1–3.

210 *Ibid* at paras 4–5.

211 *Ibid* at para 128.

212 Nassiah v Peel (Regional Municipality) Police Services Board, 2007 HRTO 14 at paras 100–06, 61 CHRR D/88.

213 Balikama v Khaira Enterprises, 2014 BCHRT 107, 79 CHRR D/40.

214 *Ibid* at para 612.

215 *Supra* note 10 at paras 1–6.

216 *Ibid* at paras 4, 6, 51, 83.

217 *Ibid* at para 25.

218 *Ibid* at para 42.

219 *Ibid* at para 83 [emphasis added].

220 *Ibid* at paras 22–25.

221 See *Supra* text accompanying notes 70–75, 84–88.

222 Brothers, *Supra* note 10 at para 78. See also *Ibid* at para 36 ("She also testified that … 'realistically in my world' it was a benefit to have a colour closer to that of the 'dominant race.' … She suggested that the 'go work for whittie' comment should actually be seen as a compliment.")

223 Joy Stokes, "Why Fetishizing Mixed-Race Children Can Be Dangerous", XO Necole (May 23, 2016), online: <xonecole.com/what-fetishizing-biracial-children-says-about-you/>.

224 Stokes, *Supra* note 223; Jennifer Patrice Sims, "Beautiful Stereotypes: The Relationship Between Physical Attractiveness and Mixed Race Identity" (2012) 19:1 Global Studies in Culture & Power 61 (examining the "biracial beauty" stereotype, and reviewing British, Australian and Japanese studies that showed the mixed race phenotype was judged the most attractive).

225 See Schrenk, *Supra* note 23 at para

Muslim Youth Experiences in Quebec Secondary Schools: Race, Racialization, and the 'Dangerous Muslim Man'

This article was first published in New Trends in Social and Liberal Sciences Journal.

Bakali, Naved. (2016). Muslim Youth Experiences in Quebec Secondary Schools: Race, Racialization, and the 'Dangerous Muslim Man'. NETSOL: New Trends in Social and Liberal Sciences. 1. 26-39. 10.24819/netsol2016.7.

By: Naved Bakali

BIOGRAPHY

Dr. Naved Bakali is an Assistant Professor of Education at the American University of Dubai and a non-Resident Research Fellow with Trends Research and Advisory. In addition to having a PhD in Educational Studies from McGill University, he also completed an MA in Culture and Values in Education from McGill and a B.Comm from Concordia University. Bakali is very much involved with community-based activism with a background in various charitable and non-profit projects and being a research associate with the Obat Helpers Canada. His research and research interests encompass anti-Muslim racism (Islamophobia), critical race theory, and Muslim youth identity, looking towards the ultimate goal of understanding and developing practical approaches to social justice education in diverse learning environments and structures.

INTRODUCTION

In the decade after the 9/11 terror attacks, there has been a significant increase in racialization, mistrust, and prejudice towards Muslims around the world including in Canada (CAIR-CAN, 2008). Recent polls indicate that 54 per cent of Canadians as a whole have a negative opinion of Islam. This number rises as high as 69 per cent in Quebec (Angus Reid, 2013). In this only French-speaking province of Canada, identity politics combined with secularist discourses have framed Muslims as a threatening 'Other' outside the 'nationalist space' (Bilge, 2013; Leroux, 2010; Wong, 2011). Since 9/11, a growing body of literature suggests that Muslim youth in North American societies have experienced conflicts in their schools impeding social and

academic progress caused by issues relating to identity, integration, racism, and gender (Bakali, 2015 & 2016; Liese, 2004; Maira, 2014; Zine, 2006). This article examines the racialized experiences of six Muslim men who attended Quebec secondary schools in the post 9/11 context between 2006 and 2013. Racialization occurs when a group is conceived of as a race by virtue of certain non-biological qualities, such as one's religious affiliations, and experience prejudicial treatment as a result. Often these ascribed racial identities result through relationships of power in order to perpetuate and maintain domination and subordination of one group over another (Omni & Winant, 1994). Muslim male experiences in Canadian secondary schools has been distinct from Muslim female experiences (Bakali, 2016; Razai-Rashti, 2005; Zine, 2006). In particular, young immigrant-origin Muslim men in Quebec have lower graduation rates from secondary schools than Muslim immigrant-origin girls (McAndrew, Ledent, & Murdoch, 2011). Furthermore, the case of young Muslim men is of interest, as a growing number of young men have joined or attempted to join the civil conflict in Syria citing concerns over alienation and marginalization in Quebec (Logan, 2015). The findings of this study suggested that anti-Muslim racism experienced by young Muslim men in their secondary schools was influenced by the domestic state policy of secularism and media discourses in Quebec, as well as the clichéd archetypes and tropes of Muslims that have emerged in the aftermath of 9/11 in the North American context. This inquiry contributes to the understanding of anti-Muslim racism in Canada by examining the experiences of Muslim males who attended Quebec secondary schools from their perspectives.

LITERATURE REVIEW

A number of studies have examined the experiences of Muslims and schooling in the North American context, considering both Canadian and American Muslims (Sensoy & Stonebanks, 2009). For example, Zine has examined the experiences of Muslim youth attending secondary schools in the larger Canadian context (2001), focusing primarily on youth from Ontario, as well as the experiences of young Muslim women who wear the head veil (2006). Another study by Maira (2014) described the experiences of Arab, South Asian, and Afghan communities in the US and the discrimination that they encountered. Her findings suggest that Muslim youth felt their right to free speech was restricted in the context of the War on Terror because they believed they were under constant surveillance. In the Quebec context, studies have examined issues relating to discrimination and racial profiling of racialized youth in Quebec schools (CDPDJ, 2011; McAndrew, Ledent, & Murdoch, 2011). However, there are very few, if any studies, which focus on the experiences of Muslim youth in Quebec secondary schools. One study looked specifically at issues relating to racism towards Muslims in Quebec school textbooks (McAndrew, Oueslati, & Helly, 2007). The authors looked at textbooks used in French-language secondary schools across Quebec throughout the 2003-2004 school year to examine how these texts represented Islam and Muslims. They examined 21 French textbooks to see how they presented Islam and Muslim cultures, the Muslim world at an international level (i.e. historical events, events between civilizations, and political situations), as well as Muslims in Quebec and Canada. The findings of this study revealed that stereotypical representations and factual errors relating to Muslims abounded in these texts. In particular, it was found that there were problems in the covering of "historical events

that largely legitimize[d] Western actions, a strong tendency towards homogenizing and essentializing Muslim cultures, as well as a near total absence of Muslims as Quebec and Canadian citizens" (p. 173). This study shed light on subtle forms of racism that existed within textbooks used in educational institutions in Quebec. However, it did not describe the lived realities of Muslim students who attended these educational institutions. Though this study uncovered misinformation in the materials used by educational institutions in Quebec, it fell short in describing the psychological and sociological impacts that this could have on students, particularly Muslim students.

This study is original as it investigates how Muslim youth experiences in Quebec secondary schools have been impacted by values promoted in Quebec, particularly in relation to the Quebec Education Program (QEP) and discourses of interculturalism. This study is of relevance as Muslims are a growing demographic within Quebec and Canadian society. There are approximately 243,000 Muslims in Quebec, which accounts for roughly 3% of the population. After Christianity, Islam is the largest religion in Quebec. Additionally, Muslims are the fastest growing religious community in Canada (Statistics Canada: National Household Survey, 2011). Focusing on Muslim participants and the racializing discourses they have to negotiate, in the context of the societal debates over nationalism, cultural purity and fears of cultural erosion, this study attempts to understand the racialized experiences of six Muslim men who attended Quebec secondary schools in the post 9/11 context between 2006 and 2013.

THEORIZING ANTI-MUSLIM RACISM

The theoretical framework which guided this study was informed by a Critical Race perspective (Razack, 2008; Thobani, 2007). From this perspective, "racism is defined as a structure embedded in society that systematically advantages Whites and disadvantages people of color" (Marx, 2008, p. 163). Critical Race Theory provides a framework for theorizing and understanding why and how racism occurs. It elucidates subtle and explicit forms of racism and articulates how they can be prevalent in society, yet disguised and masked in such a way that they continue to exist unimpeded. I have adopted this framework because scholarship from this perspective describes anti-Muslim racism as systemic racism which pervades Western societies. Anti-Muslim racism, from this perspective, is not simply an outgrowth of the 9/11 terror attacks, but rather is symptomatic of a long enduring tradition of racism that has existed and is engrained in Western societies. This manifests through numerous social structures including educational institutions (Ladson-Billings, 2009). A number of critical race feminists have provided useful insights, frameworks, and approaches to examine the phenomenon of Islamophobia (Razack, 2008; Thobani, 2007). They have examined Islamophobia both from Canadian and global perspectives and have greatly informed this study. A common theme in their works addresses the social construction of the Muslim 'Other'.

Drawing from critiques in post-colonial theory, namely those of Edward Said (1979), 'Otherness' is "the condition or quality of being different or 'other,' particularly if the differences in question are [deemed] strange, bizarre, or exotic" (Miller, 2008, p. 587). Often the concept of 'Other' is represented as a diametrically opposed 'self'. Hence, designating a group or individuals as 'Other' not only defines that group or individuals but also defines the 'self' as its antithesis. 'Other', as I will be using the term, is a conception designated by a hegemonic subject that mystifies and fetishizes an object (Said,

1979). In other words, 'Othering' involves an obscuring and demonization of the 'Other'. The 'Othering' of Muslims as described by Said (1979) in his work Orientalism has informed many of the current day critiques of anti-Muslim racism (Kumar, 2012; Shaheen, 2008; Sheehi, 2011). According to Said (1979), Orientalism is "a style of thought based upon an ontological and epistemological distinction made between the "Orient" and (most of the time) "the Occident"" (p. 2). Said noted the presence of Orientalist thought in the works of European scholars, artists and academics throughout the 19th and 20th centuries. Through analyzing canonical European literary works from this era, Said (1979) noted the existence of misrepresentations, over-simplifications and binaries which constructed the West as being diametrically opposed to the East. Said (1979) argued that Orientalists viewed the East or the "Orient" as being overly sensual, primitive, and violently opposed to the West. According to Said (1979), these views of the Orient perpetuated a constant ensemble of images and stereotypes that homogenized Arab and Muslim cultures. As Kumar (2012) notes, a number of lingering Orientalist myths continue to endure in dominant Western discourse about Islam. These include the notion that Islam is a monolithic religion that perpetuates gender-based discrimination, that Muslims are incapable of reason and rationality or democracy and self-rule, and that Islam is an inherently violent religion.

Since 9/11, the 'Othering' of Muslims, as elucidated by Said (1979), has been inextricably linked to the War on Terror. As Razack (2008) observes, "three allegorical figures have come to dominate the social landscape of the 'war on terror' and its ideological underpinning of a clash of civilizations: the dangerous Muslim man, the imperiled Muslim woman, and the civilized European" (p. 5). The 'dangerous Muslim man' is possessed of rage and inflicts violence through terrorism and abuse towards women. The 'imperiled Muslim woman' is the figure of the oppressed Muslim woman in need of rescue from her backwards culture and religion. The 'civilized European' represents the antithesis of the archaic Muslim. His/her interventions in Muslim majority nations are legitimized and sanitized through the aforementioned figures. Grounding my analysis of the 'Othering' of Muslims through the archetypes of the 'dangerous Muslim man' and the 'imperiled Muslim women' will help explicate comments discussed by the participants. I turn now to elaborate on the methodological processes utilized in this study.

RESEARCH METHODOLOGY

Based upon my review of the literature, the questions that emerged to guide this study were: (1) did Muslim men attending Quebec secondary schools feel that they were perceived as 'Other' in their schools? And (2) If the participants perceived that anti-Muslim racism existed in their Quebec secondary schools, what were its causes and how did this 'Othering' manifest? I employed a critical ethnographic approach in this inquiry. Critical ethnography can be understood as a "research methodology through which social, cultural, political, and economic issues can be interpreted and represented to illustrate the processes of oppression and engage people in addressing them" (Cook, 2008, p. 148). Therefore, this methodological approach can be particularly useful when examining oppressed or racialized groups. It is a methodological approach which is in line with Critical Race Theory, as it listens to the voices of marginalized classes and highlights their agency, challenging oppression and subordination (Cook, 2008). Critical ethnography involves interviewing subjects and creating a record of observation, collecting field notes, observing participants

in social sites, as well as analyzing the social structures with which participants interact with and which impact or influence the social surroundings of participants (Carspecken, 1996). The use of critical ethnography has been taken up in the fields of sociology and cultural studies and it has increasingly been used in educational research (Carspecken, 1996). Certain assumptions undergird critical ethnography when applied in the field of education. These include the beliefs that "inequality exists in society, mainstream practices often reproduce inequalities, oppression occurs in many forms and is most forceful when it involves hegemonic learning, and critical research should engage in social criticism to support efforts for change" (Cook, 2008, p. 148). Therefore, this methodology places emphasis on the lived experiences and agency of participants because it is through their insights that criticism and social change is possible. As this approach recognizes the authority of the participant in describing their lived realities, critical ethnographers must engage in a reciprocal process in which the researcher and participants work together in constructing their knowledge of an issue. Thus, researchers employing this methodology engage in a reflexive process.

Critical self-reflexivity can be described as the "researchers' engagement of continuous examination and explanation of how they have influenced a research project" (Dowling, 2008, p. 747). As I am a Muslim secondary school teacher who has witnessed and experienced anti-Muslim discrimination, and given the nature of this study, it was inevitable that I would encounter moments in which subjectivity would be entangled in my interpretations and analyses. Hence, reflexivity was a useful tool to employ throughout this research project to help avoid overstating participants' experiences. There are a number of strategies at the disposal of the researcher to engage in self-reflexivity. I used self-reflective diaries, examined my personal assumptions and goals, and attempted to clarify some of my individual belief systems and subjectivities (Ahern, 1999). Self-reflective diaries were written immediately after interviews and before transcription. This process helped me identify my assumptions as well as how I understood and interpreted participants' comments. I also found referring back to audio-recorded interviews and transcripts upon completing my preliminary data analysis helped me to be more cognizant of my assumptions. Through engaging in a self-reflexive process, I wanted to avoid overstating participants' comments, as well as avoid an over-deterministic analysis.

Context of the study: All participants interviewed in this study resided in Quebec and attended Quebec secondary schools. A unique feature of Quebec society is that it employs an interculturalism model for integrating its ethnically diverse populations, as opposed to the rest of Canada, which promotes a multiculturalism approach (Haque, 2012). Interculturalism came about in response to Canada's implementation of its multiculturalism policies and has been promoted and in operation officially in Quebec since the 1970s (Waddington et al., 2011). According to Leroux (2010), the 1990 policy document Au Québec pour bâtir ensemble: Énoncé de politique en matière d'immigration et d'integration best articulates the policy implications of interculturalism which has three main principles: "French as the language of public life; a democratic society, where everyone is expected and encouraged to participate and contribute; and an open, pluralist society that respects democratic values and intercommunitarian exchange" (Gouvernement du Québec 1990, p.16). One of the key differences between interculturalism and multiculturalism is the notion of a moral contract between newcomers and Quebec society, which suggests that Quebec's common

public culture is at the forefront (Leroux, 2012). The adoption of interculturalism as Quebec's official stance towards racial diversity instead of multiculturalism is rooted in the notion of self-preservation. As Waddington et al. (2011) state: "Québec's opposition to multiculturalism is grounded in the belief that the Canadian government's policy of multiculturalism is a betrayal of Québec's historical status within the Canadian federation and undermines Québec's grounds for seeking greater political autonomy" (p. 314). As there have been ongoing tensions over safeguarding language and identity in Quebec, this approach ensured its preservation as a unique minority in Canada while it also offered "a means of partial or limited integration within Canada, releasing the Québécois from the fear of loss of their linguistic culture…providing a sustainable means of remaining within Canada" (DesRoches, 2013, p. 7). Thus, interculturalism takes a more assimilationist approach to integration of racial minorities in order to safeguard traditional Quebecois culture (Talbani, 1993).

Interculturalism has been central to the formation of the Quebec Education Program and its courses, particularly the Ethics and Religious Culture (ERC) program in Quebec primary and secondary schools (Waddington et al., 2011). The main objectives of the ERC program are: "the recognition of others" and "the pursuit of the common good" (MELS, 2008, p. 2). The objectives of this program are rooted in a number of principles, which includes fostering living in harmony with others (MELS, 2008). These objectives form the backdrop of the three competencies of the program: reflects on ethical questions, demonstrates an understanding of the phenomenon of religion, and engages in dialogue (MELS, 2008). It deserves to be noted that the ERC is the only mandatory religious education program in all of Canada but that the program makes no attempt to disguise the importance and supremacy of Quebec's religious cultural heritage (Boudreau, 2011).

The participants and interview process: The participants for this study were drawn from the Montreal and the South Shore of Quebec. The reason for drawing participants from these two areas was because there is a large concentration of Muslims, and I had good contacts with community organizations in these areas. Furthermore, both of these areas were within a reasonable distance of my residence, which facilitated data collection. Hence, I employed convenience sampling. While employing convenience sampling, I considered students from both English and French linguistic sectors to facilitate recruiting participants. I received approval from the McGill Research Ethics Board prior to engaging in interviews with participants. These interviews and analyses were part of a larger study relating to my doctoral research involving twenty interviews of the experiences of eighteen former and current Muslim students and Muslim and non-Muslim teachers in Quebec secondary schools in the post-9/11 context. In examining the experiences of former secondary school students, I relied on retrospective narratives while conducting the interviews. An issue of relying on memories when doing ethnographic research is that responses might be subject to one's present perspective, therefore they might be malleable and susceptible to inaccuracy or loss, as Davis & Starn (1989) argued. However, as Pignatelli (1998) observed, memory has the potential to enrich a critical ethnography, "[m] emory binds the rich potential of the narrative to fascinate, seduce, and draw us closer to the practical, activist intentions of a critical ethnography" (p. 407). In other words, relying on memory or the use of telling stories is in line with some of the foundational principles of critical ethnography, which is to give voice to socially marginalised members of society. Hence, these narratives are relevant even if

they rely on memory. For the purposes of this inquiry, I only discussed the experiences of the six Muslim male student/former student participants. Interviews were audio recorded and transcribed over a span of six months from May 2013 to October 2013 and were semi-structured, posing open ended questions relating to: (1) how Muslims were perceived in society; (2) if perceptions of Muslims were shaped by media representations; (3) if they had encountered racism against Muslims within educational contexts. Interviews were transcribed verbatim excluding slurs or unclear utterances such as 'uhm's' and 'ah's'. There were a total of six Muslim male participants in this study, only one of which was a high school student at the time of the interview. The five other participants were all recent high school graduates, having completed their high school diploma within three years of the interview. All of the participants attended high school in the Greater Montreal region and came from middle-class socio-economic backgrounds. Two of the participants attended English public schools, three attended public French schools, while one of the participants attended a private French school. All of the participants identified themselves as practicing Muslim men while they were in high school. The pseudonyms of the participants were as follows: Yusuf, Ismail, Ahmad, Adam, Zaid, and Ali. Yusuf, Ismail, and Zaid were of Pakistani origin; Adam and Ali were of Indian origin, and Ahmad was Algerian. All of the male participants were born and raised in Quebec and their parents immigrated to Canada before they were born. Yusuf and Ismail were interviewed individually, while the other four participants were interviewed together in a group interview. This was done to accommodate the participants as these four men felt more comfortable doing the interviews in a group setting. Yusuf was in his second year at a university preparatory college, referred to as Collège d'enseignement général et professionnel (CEGEP) in Quebec, during the time of the interview. He was the sole participant that had attended a private school throughout his secondary education, which had only a few Muslim students. Ismail was a first year CEGEP student during the time of his interview. He also attended a school where there were very few Muslims; as such he felt he was clearly identifiable as a Muslim in his school. Ahmad was completing his final year of high school during the time of the group interview and he attended a school that had many different racialized groups including a number of Arabs and Muslims. Adam and Ali were both completing their final year of CEGEP and Zaid was an undergraduate student during the time of the group interview. All three of them attended high schools that had a number of Muslim students.

Data analysis: Upon completing all of the interviews I began transcription of the interviews. Transcription was done in rounds with various features of talk recorded in each round. I began by focusing on what was said and then in subsequent rounds, tried to record gaps in speech and intonation. As there is no "one standard, ideal, and comprehensive mode of transcription" (Mishler, 1997, p. 271), I transcribed the interviews to accurately purvey the perceptions and responses of the participants to the best of my ability. This included using italics to indicate emphasis in participants' intonations, as well as repeatedly listening to audio files of the interviews and comparing them with transcripts to ensure the meaning of participants' comments were clearly communicated in the transcripts. Additionally, I took field notes relating to each question asked in the interviews to help facilitate any points of confusion while transcribing. Transcription of interviews only occurred upon completing all the interviews.

I employed inductive analysis for coding data (Thomas, 2006) with the intent of constructing

my understanding of participants' experiences of racism and prejudice in schools. This involved detailed readings of the data to derive concepts and themes. Hence, the interviews were coded after listening to the audio-recordings and reading each transcript multiple times. Close readings of the transcripts helped me identity meaningful units, which enabled me to derive categories and emergent themes from the text. In total, I came up with three major relevant themes that re-occurred in the data. The category labels for these themes were: (1) experiences/perceptions of racism in society; (2) experiences/perceptions of racism in schools; and (3) experiences/perceptions relating to media representations of Muslims. Identification of these themes through colour coding facilitated data reduction and analysis. As there was not a large number of participants in this inquiry, I reduced and collapsed the codes manually using the physical transcripts. Through continual revision and refinement of the category system, I selected "appropriate quotations that convey[ed] the core theme or essence of a category" (Thomas, 2006, p. 242) for this inquiry. Upon completing my data analysis, I began to write up my findings.

DISCUSSION OF FINDINGS

Experiences in secondary school: The participants had varying types of experiences in secondary school. Most of the participants generally felt that their overall experience in high school was positive. However, all the participants experienced some levels of racism against Muslims in their secondary schools. Yusuf felt tremendous pressure to represent Islam when he was a secondary student:

Yusef: Well going to school—I went to a private French high school—I have to say, we weren't just a minority, there were barely any Muslims in that school. The thing, going to such a French school, people don't really know a lot about Muslims. So you feel obliged to represent your religion and sometimes it's kind of hard because you're at that age where you're not only trying to find out who you are but you're trying to fit in as well. So sometimes you leave out some of the things of Islam so that you could just tell people what they want to hear maybe, and not necessarily show the right image of Islam. But I mean like for the teachers, a lot of times they're going to show videos and stuff that might not necessarily be for [Islam], but you don't have any choice but to accept it. Like one of the videos I had seen in my high school, it had to do with Muslim sisters praying behind men, and that was just one mosque that they used in the video but they kind of made a general image of how women are inferior to men in Islam, which isn't the case. But at that age, like, you don't really know how to say your thoughts, how to be against it. So you're better off just keeping your mouth shut.

Yusuf described how being a high school student was a time of self-exploration. This was difficult for him because of certain assumptions associated with Muslims and Islam in his secondary school. Yusuf was cognisant of his 'Otherness' in his high school setting as well as the types of understandings people had of Muslims and Islam. Hence, he expressed he was trying to "fit in", suggesting that being an accepted member of the student body was not a taken-for-granted situation for him. Rather, he needed to make efforts to be accepted even if this meant telling students "what they want to hear" at the expense of misrepresenting his faith. Some studies have shown that within educational institutions, students have been able to assert their Muslim identity through participation with Muslim student groups formed within the school, as these help ease tensions relating to peer pressure and prevent marginalization (Khan, 2009; Zine, 2001). Unfortunately, in Yusuf's

school such an organization did not exist.

The challenges of being a Muslim in a Quebecois school were compounded with further difficulties when teachers would show materials casting Muslims in a negative light. Yusuf's comments suggested that he would be at odds with the types of media portrayals of Muslims presented by his teacher as he described a video that was shown to his classmates, which essentialized Muslim women as inferior to men. Such representations of Muslim women in the Canadian context have been documented in depth by Jiwani (2010) as she observes, "[t]he tendency within the news media and current affairs programming has been to project representations of the veiled woman as essentially an abject and victimized Muslim figure" (p. 65). Yusuf felt that in his classroom setting he had no "choice but to accept" this dominant Islamophobia frame, despite the fact that he felt such representations cast his faith in a negative light. Instead of the classroom being a space where Yusuf felt comfortable to express himself, his identity, and his beliefs, he described feelings of alienation, 'Otherness', and was forced to accept racialized discourses un-valorizing Muslims and Islam. Yusuf described how the archetype of the 'imperilled Muslim woman' was perpetuated in his experiences in secondary school through media presented to his class. Despite disagreeing with these portrayals, Yusuf felt the need to regulate his views and beliefs about the issue by remaining silent. Yusuf's experiences of being exposed to Islamophobic media discourses in his classes were similar to those of other participants.

Participants from the group interview discussion felt that school curricula in Quebec, as well as teachers, in some instances, facilitated anti-Muslim discourses:

Zaid: The only problem that would come up, especially in Ethics class or religion class, where debates would come over different religions and then people had their opinions and what not…we'd compare other religions like Christianity to Islam and all the other religions and then there would be discussions to that. So there would be people who would agree and disagree and that would cause debates and even fights. I remember once we were talking about Islam and comparing it to Judaism and there were a few people who got offended and there was a Muslim and a Jew and they began to fight in class and they started fighting after class as well but it got better afterwards. But it shows that this religion class caused more tension.

Ali: I think they want politically correct answers as well, like a lot of times if you say what you want, what you believe in, you won't get the full marks, they want you to say what the media says.

Adam: The most secular response.

Ali: yeah, exactly.

Zaid discussed how his ERC class at times would be a source of tension in his high school, particularly when religions were discussed. These tensions involved debates within the classroom and at times even escalated to violent confrontations outside of the class. Zaid did not specifically imply that his teacher was responsible for the confrontation; however, other participants in the group interview felt that teachers facilitated tensions towards Muslims and Islam.

Ali's comments suggested that teachers wanted students to regurgitate dominant Islamophobic media discourses even if these contradicted their own beliefs and understandings of issues. Therefore, Ali's understanding of what was, "politically correct", stemmed from what was being said in the media. Adam added to these comments and stated, "the most secular response" to which Ali agreed. These comments demonstrated how a state funded institution,

like a secondary school, reproduced Quebec media racialized discourses and state policies relating to secularism, as teachers seemingly wanted students to mimic these if they were to receive "full marks". Not conforming to state policies and Islamophobic media discourses carried the penalty of not getting "full marks". These comments suggested that some of the participants perceived their classrooms as apparatuses of state indoctrination, as they felt obliged to give "the most secular response" even if this was at odds with their Islamic beliefs. As was the case with Yusuf, other participants also felt the need to regulate their speech with regards to their beliefs within a classroom setting. A similar pattern has been noted by Maira (2014) in her study of Arab, South Asian, and Afghan communities in the US. In this study, it was found that Muslim youth felt their right to free speech was restricted in the context of the War on Terror because they believed they were under constant surveillance. It would appear that in the post-9/11 context Muslim youth in this study as well as in other contexts fear reprisals by state institutions and policies for their beliefs and thus regulate their speech.

In Ahmad's experiences some teachers not only expected students to accept state and media discourses but also engaged in the process of mis-educating their students about Islam and Muslims.

Ahmad: The school I went to…. it wasn't the students that had issues; I found it was the teachers. Once in physics class I was balancing a book on my head and the teacher said, Ahmad, stop praying. He thought it was funny and a good joke, but I didn't appreciate that and the students understood that. Or for example, just because I would pray at school, I've never encountered a student—they will ask me questions, but never in a negative way, but the way the teachers view it, when you talk about your religion (in a positive way), they're against that. It's like you said before, you won't get full grades if you're not 'with the teacher'. For example, my Ethics teacher, he's not educating people he's mis-educating people by not giving information that is precise and neutral. When it comes to Christianity, Judaism it's fine but with Islam he chooses information against Islam and he presents this to students as if it's normal but it's not something that's normal.

Ahmad described how one of his teachers singled him out as on object of ridicule because of his 'Muslimness'. Ahmad described how students around him did not bother him when he would observe prayers, and would ask questions, which he did not perceive as demeaning. However, he felt a sense of conflict and tension towards his teachers when he would speak about his religion in a way that contradicted state and media discourses. Ahmad felt a strong bias from his ERC teacher when discussing Islam. He felt that his teacher would pick and choose what to present about Islam creating a distorted picture of his faith. Ahmad described how his ERC course facilitated constructing his Islamic faith as 'Other', a process that frequently occurs in Quebec political and media discourses (Bilge, 2013; Wong, 2011; Mahrouse, 2010; Mookerjea, 2009;). Ahmad specifically identified his teacher as being the cause of these tensions through presenting the Islamic faith with bias. He felt that his faith was being unfairly presented and if he wanted to get "full grades" he would have to be "with the teacher". In other words, he was indirectly being forced to accept media and state discourses surrounding Muslims within his ERC class. If he did not do so, he would be penalized.

An important reoccurring theme that came up with participants when recounting their high school experiences was the stereotype of 'dangerous Muslim men' (Razack, 2008), which would regularly manifest in different forms within their secondary school settings.

As mentioned previously, the participants would sometimes have taunts thrown at them relating to violence and terrorism. Some of these stereotypical views towards Muslim men manifested within the school culture during dress-up days like on Hallowe'en:

Zaid: Well, in high school, especially around secondary four and five, we had two classes one of them was Ethics and we were talking mainly about Islam, Christianity, Judaism, Buddhism, and that stuff and also in our Contemporary World class, we were talking about the war between Palestine and Israel. So the topic of Islam was pretty popular in secondary four and five. So one Hallowe'en, I guess you can say there was a Hallowe'en party or Hallowe'en day at school, and a few people—a group came dressed up as the so called 'Muslim' with the turban and beard and what not. So they came to school like that, and as people saw they also took their gym clothes and made a turban and found, I don't know paper or what not, and made a beard and that was their costume for the day.

Interviewer: And why would they dress up as Muslims for Hallowe'en, what were they trying to show by wearing the turban?

Zaid: I guess they were trying to be unique but they weren't. I don't think they were trying to offend us. I guess mostly the purpose of Hallowe'en costumes is to look scary, so I guess they were trying to show that as being terrorists or Muslims.

Zaid discussed how the topic of Muslims and Islam came up in some of his courses, namely his Contemporary World class and the ERC course, as he attended secondary school during the height of the War on Terror. Though Zaid did not directly indicate that these courses negatively depicted Muslims, his comments did suggest that through these courses students in his school received exposure to Muslims and the Islamic faith. Hence "the topic of Islam was pretty popular" in a number of subjects at the school that Zaid attended. As such, when it came time for Hallowe'en a group of students thought it would be a good idea to come to school dressed up as Muslims. Zaid's comments link the instruction in his Contemporary World and ERC classes with this incident. One can infer from this that the information that students obtained about Muslims and Islam in these courses reproduced the image of the 'dangerous Muslim man'. This archetype employs a number of visual signifiers including the beard and clothing items such as the turban (Gottschalk & Greenberg, 2008), which is what students wore to embody this archetype.

The presence of the 'dangerous Muslim man' archetype was further confirmed when Zaid discussed why he thought non-Muslim students would think that dressing up as Muslims on Hallowe'en would be an appropriate costume, as he sated "the purpose of Halloween costumes is to look scary". Zaid's description of this episode was very telling. He stated that a group of students came dressed up as the "so called Muslim". Zaid did not state that the students came dressed as violent terrorists. The students came dressed as the 'Muslim', at least how the figure of the 'Muslim' has come to be known in Western discourse through an Orientalist lens (Mamdani, 2005; Sheehi, 2011). This incident demonstrated the students' understanding of what it meant to be 'Muslim'. Their understanding of 'being Muslim' on Hallowe'en embodied the tropes of violence and intimidation, as the purpose of the attire was to "look scary". A number of the incidents described by the participants above alluded to how media representations of Muslims impacted how they were perceived in secondary schools.

Muslim male students' views on media: All of the participants felt they were racialized in how Muslims were represented in popular

cultural mediums such as television programs, Hollywood films and the news media. Zaid discussed how biased media representations of Muslims were shown in his class and how non-Muslim students linked these representations to Muslims students that were present:

Zaid: There was a funny [incident] in class. We were watching a movie and I don't remember what movie it was but in the first scene there was this white man, he was in jail and he was making a movie. So he starts off, hi my name is this and he stutters and he closes the camera, then he starts again, starts recording again and says, hi my name is…closes again. And he does it three times and he closes. And then at the end he goes in the name of Allah the Most Merciful and the he says my name is, and he says a Muslim name and I'm a terrorist and then the movie starts. And it's funny because like only two Muslims in the class and everybody looked at us laughing.

Zaid described how a film, which depicted Muslim terrorist stereotypes was shown to his class. Zaid did not recall the name of the film, however what he described resonates with a Hollywood film called *Unthinkable* (2010) directed by Gregor Jordan and starring Samuel L. Jackson and Michael Sheen. In the opening scene of *Unthinkable*, similar to what Zaid described, the viewers are presented with a white male who is making a video tape describing how he has placed three nuclear bombs in US cities and that he will detonate them if his demands are not met. The opening scene of this film shows a man, Steven Younger, struggling to speak about his terrorist plot. After attempting numerous times to describe his plot unsuccessfully, he finally begins his message by asserting his Muslim identity starting with the common phrase uttered by Muslims whenever beginning an act of worship, "In the name of Allah". Instead of introducing himself as Steven Younger, as he previously did, he now introduces himself through his Muslim persona of Yusuf Atta Muhammad. Unsurprisingly, the character is now able to discuss his plans without any difficulties as he has openly abandoned his non-Muslim identity, which was the only thing holding him back from describing his violent plot.

Zaid discussed how his non-Muslim classmates automatically linked this scene with the two Muslims in the class. This episode demonstrated how the racialization of Muslims occurred in the experiences of this participant. The terrorist in the opening scene of the film was a white male and yet simply because of his affiliation with the Islamic faith, students watching the film automatically made a connection between the terrorist and the Muslim students, who aside from their faith had nothing in common with the character. Zaid's comments suggested that the racialization of Muslims was not perceived as something unethical and unacceptable as he was not offended by this association and felt that it was a funny incident. Similarly, Ismail faced a racialization of his faith which associated him with terrorism but he did not take much offense to such distasteful actions:

You know at first when I came into high school, I had the joke, oh, when are you going to blow up the school? Or, how about you bomb that person. Just those jokes, which refer to terrorism because that's how we're seen as because that's how we're portrayed as in the media. And for me, I would just take them as jokes. I'm like, well ok that doesn't really bother me—go ahead, you know. And what I would do is, I would go along with the joke, and eventually—which that's something they didn't expect—and eventually they stopped making any jokes at all.

Ismail would regularly have taunts and jokes relating to terrorism thrown at him because he was Muslim. Students would ask Ismail "when are you going to blow up the school"

presuming that it was only a matter of time before he would take such an action. Ismail felt that stereotypes associating his faith with violence and terrorism were a result of media representations of Muslims, as he mentioned "that's how we're seen as because that's how we're portrayed as in the media". Ismail described how he coped with these taunts by telling his peers "that doesn't really bother me—go ahead". Luckily for Ismail, this behaviour from his peers eventually stopped, however, for other students that is not always the case.

J'Lein Liese (2004) discusses how there are levels of discrimination that occur in educational settings. The first level of discrimination relates to slurs based on stereotypes. Often slurs can be used to "dehumanise another person or social group to justify a violent act" (p. 67). In other words, racial slurs directed at students can eventually escalate into forms of physical violence. In the context of the War on Terror, racial slurs such as 'terrorist' have been employed to "justify retaliatory actions post 9/11" (Liese, 2004, p. 67). This has occurred through the wars in Afghanistan and Iraq, as these nations were described as supporting terror and were part of the 'Axis of Evil'. Hence, the term 'terrorist' is synonymous with groups of people who are enemies of the state in the War on Terror and warrant violent policing. If students are being labelled as 'terrorists' in Quebec secondary schools, it should not simply be taken as a joke and should be seriously addressed by teachers and by the school. Ismail did not mention that any teachers or administrators within his school came to his defence when he was ridiculed in this manner; rather he simply treated these incidents as a joke and did not let these taunts get to him. This type of reaction was similar to Zaid, who was also seemingly untroubled by how a film which depicted a Muslim terrorist was immediately linked to him and another Muslim student in his class. In both cases the Muslim students did not feel that the racism they were experiencing was troubling or something that needed to be seriously addressed.

There were a number of common themes and issues that emerged from the data analysis of the interviews. The most obvious of these trends was that most participants experienced, directly or indirectly, some form of anti-Muslim racism and prejudice in their secondary schools. However, there was a wide range in how participants interpreted the racism that they experienced. For example, Ahmad adamantly suggested that there was anti-Muslim racism in his secondary school through his experiences. Zaid and Ismail were not as troubled by their experiences of racialization and did not articulate very strong sentiments of racism. They held these views despite the fact that they encountered a number of instances, which demonstrated that anti-Muslim racism clearly existed in their secondary school experiences. Zaid and Ismail both described racist incidents in which their classmates associated them with terrorism, as not being a very serious issue. Zaid and Ismail interpreted these incidents as "funny" or as "jokes". It is my contention that this attitude was emblematic of how racism was seemingly normalized in the day-to-day experiences of these participants. They were not attuned to how they were experiencing racism, as they were not offended and seriously concerned over these issues. In a way, it would seem that they had unconsciously accepted this type of treatment and categorizations, possibly because they were prevalent in state policies and practices, as well as political and media discourses in Quebec.

Participants' suggested that the racialization of Islam associated them with violence and terrorism. Most participants described how the archetype of 'dangerous Muslim man' as represented by the figure of the Muslim terrorist was regularly perpetuated through

media discourses. Participants also described how they encountered this affiliation to terrorism in Quebec society as well as in secondary schools. Zaid, Ahmad, and Ismail discussed how they faced taunts and racial slurs associating them with terrorism and violence in their schools. They also described how at times they felt the need to regulate their speech in conformity to Quebec values and norms associated with secularism in their classrooms. Participants discussed how they feared reprisals or punishment for having beliefs that contradicted these policies or were not in line with the teachers' beliefs. Hence, the participants did not describe racism in the form of physical violence and abuse, but rather in how they were perceived, stereotyped, and treated by classmates and teachers.

CONCLUSION AND IMPLICATIONS

This article examined the racialized experiences of six Muslim men who attended secondary schools in Quebec in the aftermath of the 9/11 terror attacks. In this study, the participants' experiences of Islamophobia in Québec schools were triggered through the association of terrorism and backwardness to their 'Muslimness'. Participants described how they encountered the notion of 'dangerous Muslim men' in their secondary schools, which has become endemic in the context of the War on Terror. While one can situate the participants' experiences within the broader context of the post-9/11 and War on Terror era, quite importantly, their experiences resonated particularly with racism and discrimination prevalent in Quebec state policies and media discourses during the same period. This study contributes to the body of Canadian critical race scholarship, since it examined experiences of Muslim men with Islamophobia in Quebec schools after 9/11. Furthermore, this study also provided insights relating to critical race educational scholarship by highlighting Muslim men's experiences of anti-Muslim racism in educational institutions.

This critical ethnography provides valuable and important insights as it sheds light on how a group of Muslims experienced racism in Quebec secondary schools in the post-9/11 context. In addition, this study illustrates the complexity of prejudices that people might harbour, not conveniently defined in a single form but rather existing in a web of sentiments encapsulating ideas about race, racism, ethnicity, nationalism, religion, gender, and culture. This study brings to light a range of issues Said (1979) and others have explored as the lens of Orientalism through which people employ such sentiments and prejudices in Quebec society, as in many other contexts, it is important to expose the complexity of racializing experiences of young Muslim men. This in turn may help educators and politicians better understand young Canadians Muslims and imagine a more just and equitable education for all students in the schools of Quebec.

WORKS CITED

Abo-Zena, M., Sahli, B., & Tobias-Nahi, C. (2009). Testing the courage of their convictions: Muslim youth respond to stereotyping, hostility, and discrimination. In O. Sensoy, & C. Stonebanks, Muslim voices in school: Narratives of identity and pluralism (pp. 3-26). Rotterdam: Sense Publishers.

Ahern, K. (1999). 10 tips for reflexive bracketing. Qualitative Health Research, pp. 407-411.

Angus Reid (2013). Canadians view non-Christian religions with uncertainty, dislike, Vancouver, BC: Angus Reid Global.

Bell, D. (2009). Who's affraid of critical race theory. In E. Taylor, D. Gillborn, & G. Ladson-Billings, Foundations of critical race theory in education (pp. 37-50). New York, NY: Routledge.

Bilge, S. (2012). Mapping Quebecois sexual nationalism in times of 'crisis of reasonable accommodations'. Journal of Intercultural Studies. Vol. 33, No. 3, 303-318.

Bilge, S. (2013). Reading the racial subtext of the Quebecois accommodation contraversy: An analytics of racialized governmentality. Politikon: South African Journal of Political Studies. Vol. 40, No. 1, 157-181.

Boudreau, S. (2011). From confessional to cultural: Religious education in the schools of Quebec. Religion and Education, Vol. 38, No. 3, pp. 212-223.

CairCan. (2008, May 23). CairCan: News release. Retrieved March 25, 2014, from CairCan website: http://www.caircan.ca/itn_more.php?id=A2984_0_2_0_M

Canada, S. (2011). 2011 National Household Survey, Ottawa: Government of Canada.

Carspecken, P. (1996). Critical ethnography in educational research. New York, NY: Routledge.

Commission des Droits de la Personne et des Droits de la Jeunesse (CDPDJ). (2011). Racial profiling and systemic discrimination of racialized youth. Quebec: Commission des Droits de la Personne et des Droits de la Jeunesse.

Cook, K. (2008). Critical ethnography. In: The Sage encyclopedia of qualitative research methods. Thousand Oaks, CA: Sage Publications, pp. 148-151.

Davis, N., & Starn, R. (1989). Introduction. Representations, Vol. 26, Spring, 1-6.

DesRoches, S. (2013). Intercultural citizenship education in Québec: (Re)producing the Other in and through historicised colonial patterns and unquestioned power relations. Educational Research for Social Change. Vol. 2, No. 2, pp. 5-16.

Dowling, M. (2008). Reflexivity. In: The Sage encyclopedia of qualitative research methods, Volume two. Thousand Oaks, CA: Sage Publications, pp. 747-748.

Gottschalk, P. & Greenberg, G. (2008). Islamophobia: Making Muslims the enemy. Lanham, Maryland: Rowman & Littlefield Publishing Group, Inc.

Haque, E. (2012). Multiculturalism within a bilingual framework: Language, race, and belonging in Canada. Toronto, ON: University of Toronto Press.

Jiwani, Y. (2010). Doubling discourses and the veilded Other: Mediations of race and gender in Canadian media. In S. Razack, M. Smith, & S. Thobani, States of Race: Critical race feminism for the 21st century (pp. 59-86). Toronto, ON: Between the Lines.

Khan, S. (2009). Integrating identities: Muslim American youth confronting challenges and creating change. In O. Sensoy, & C. Stonebanks, Muslim voices in school: Narratives of identity and pluralism (pp. 27-40). Rotterdam: Sense Publishers.

Kumar, D. (2012). Islamophobia and the politics of empire. Chicago, IL: Haymarket Books.

Ladson-Billings, G. (2009). Just what is critical race theory and what's it doing in a nice field like education. In E. Taylor, D. Gillborn, & G. Ladson-Billings, Foundations of critical race theory in education (pp. 17-36). New York, NY: Routledge.

Leroux, D. (2010). Québec nationalism and the production of difference: The Bouchard-Taylor commission, Québec Identity Act, and Québec's immigrant integration Policy. Quebec Studies. Vol. 49, pp. 107-126.

Leroux, D. (2012). Debating Québec's interculturalism as a response to Canada's multiculturalism: An exercise in normative nationalisms?. Canadian Diversity. Vol. 9, No. 2, pp. 67-71.

Leroux, D. (2013). The many paradoxes of race in Québec: Civilization, laïcité, and gender inequality. In L. Caldwell, D. Leroux, & C. Leung, Critical inquiries: A reader in studies of Canada. Halifax: Fernwood Publishing.

Liese, J. (2004). The subtleties of prejudice: How schools unwittingly facilitate Islamophobia and how to remedy this. In B. V. Driel, Islamophobia in educational practice (pp. 57-69). Sterling, VA: Trentham.

Logan, N. (2015, May 20). Global News. Retrieved from Global News: World: http://globalnews.ca/news/2008320/does-quebec-have-a-young-extremist-problem/

Mahrouse, G. (2010). Reasonable accommodation' debates in Quebec: The limits of participation and dialogue. Race and Class. Vol. 52, No. 1, 85-96.

Maira, S. (2014). Surveillance Effects: South Asian, Arab, and Afghan American youth in the War on Terror. In S. Perera, & S. Razack, At the limits of justice: Women of colour on terror (pp. 86-106). Toronto, ON: University of Toronto Press.

Mamdani, M. (2005). Good Muslim bad Muslim: America, the cold war, and the roots of terror. New York: Three Leaves Press.

Marx, S. (2008). Critical race theory. In L. Given, The Sage encyclopedia of qualitative research methods: Vol. one (pp. 163-167). Thousand Oaks, CA: Sage.

McAndrew, M., Ledent, J., & Murdoch, J. (2011). La Reussite Scolaire des Jeunes Quebecois Issues de l'Immigration au Secondaire. Quebec: MELS.

McAndrew, M., Oueslati, B., & Helly, D. (2007). L'évolution du traitement de l'islam et des cultures musulmanes dans les manuels scolaires québécois de langue française du secondaire. Canadian Ethnic Studies. Vol. 39, No. 3, 173-188.

MELS. (2008, May). MELS: Ethics and Religious Culture. Retrieved January 23, 2011, from MELS Web site: https://www7.mels.gouv.qc.ca/DC/ECR/pdf/ecr_secondary.pdf

Miller, M. (2008). Otherness. In L. Given, The Sage encyclopedia of qualitative research methods: Volume two (pp. 587-589). Thousand Oaks, CA: Sage Publications.

Mishler, E. (1997). Representing discourse: The rhetoric of transcription. Journal of Narrative and Life History, 255-280.

Mookerjea, S. (2009). Hérouxville's Afghanistan, or, accumulated violence. Review of Education, Pedagogy, and Cultural Studies. Vol. 31, No. 2, 177-200.

Omni, M., & Winant, H. (1994). Racial Formation in the United States From the 1960s to the 1980s: Second Edition. New York, NY: Routledge.

Pignatelli, F. (1998). Critical ethnography/ poststructuralist concerns: Foucault and the play of memory. Interchange, Vol. 294, 403-423.

Razack, S. (1998). Looking white people in the eye: Gender, race, and culture in courtrooms and classrooms. Toronto: University of Toronto Press.

Razack, S. (2008). Castin out: The eviction of Muslims from Western law and politics. Toronto: University of Toronto Press.

Rezai-Rashti, G. (2005). The persistence of colonial discourse: Race, gender, and Muslim students in Canadian schools. In V. Zawilski, C. Levine-Rasky, & (eds), Inequality in Canada: A reader on the intersection of gender, race and class (pp. 178-187). Don Mills, Ontario: Oxford University Press.

Russell, G., & Kelly, N. (2002). Research as Interacting Dialogic Processes: Implications for Reflexivity. Forum: Qualitative Social Research, Volume 3, No. 3, Art. 18.

Said, E. (1979). Orientalism. New York: Vintage Books.

Sensoy, O., & Stonebanks, C. (2009). Muslim voices in school. Boston, MA: Sense Publishing.

Shaheen, J. (2008). Guilty: Hollywood's verdict on Arabs after 9/11. Northampton, Massachusetts: Olive Branch Press.

Sheehi, S. (2011). Islamophobia: The ideological campaign against Muslims. Atlanta, GA: Clarity Press.

Talbani, A. (1993). Intercultural education and minorities: Policy initiatives in Quebec. McGill Journal of Education, Vol. 28, No. 3, 407-419.

Thobani, S. (2007). Exalted subjects: Studies in the making of race and nation in Canada. Toronto: University of Toronto Press.

Waddington, D., Maxwell, B., McDonough, K., Cormier, A., & Schwimmer, M. (2011). Interculturalism in Practice: Québec's new Ethics and Religious Culture curriculum and the Bouchard-Taylor report on reasonable accommodation. In M. Peters, & T. Besley, Interculturalism, Education & Dialogue. New York, NY: Peter Lang.

Wong, A. (2011). The disquieting revolution: A genealogy of reason and racism in the Québec press. Global Media. Vol. 4, No. 1, 145-162.

Zine, J. (2001). Muslim youth in Canadian schools: Education and the politics of religious identity. Anthropology & Education Quarterly. Vol. 32, No. 4, 399-423.

Zine, J. (2006). Between orientalism and fundamentalism: Muslim women and feminist engagement. In K. Hunt, & K. Rygiel, (En) gendering the War on Terror (pp. 27-51). Hampshire: Ashgate Publishing.

Persistent Inequality

This article was first published for the Canadian Centre for Policy Alternatives:

Block S. and Galabuzi G.E. (2018). Persistent Inequality: Ontario's Colour-coded Labour Market. Centre for Policy Alternatives, online: https://www.policyalternatives.ca/publications/reports/persistent-inequality

By: Sheila Block and Grace-Edward Galabuzi

Sheila Block

Grace-Edward Galabuzi

BIOGRAPHY

Sheila Block is a senior economist and public commentator with the Canadian Centre for Policy Alternatives (CCPA). Along with an Honours B.A. in Economics from the University of British Columbia and an MA in Economics from the University of Toronto, Sheila Block has experience working as both a political advisor and public servant in the Ontario government, as well as an economic in the labour movement. Her research and specializations include Canada's labour market, public finance, and inequality.

Grace-Edward Galabuzi is Associate Professor in the Department of Politics and Public Administration. In addition to earning his BA, MA, and Ph.D in Political Science from York University, he also holds a BA in Economics from the University of Winnipeg. His academic teaching areas include equity and human rights and third world politics and research interests include local community responses to global economic restructuring, the racialization of the Canadian labour market, and social exclusion and social economic status of racialized groups in Canada. Prior to his academic career, Dr. Galabuzi has worked in the Ontario government as a senior policy analyst and was a former provincial coordinator of the Ontario Alliance for Employment Equity. He is much involved in many community campaigns and public debates regarding social justice issues.

EXECUTIVE SUMMARY

Ontario's labour market is increasingly racialized and persistently unequal. In this paper, we present a portrait of Ontario's colour-coded labour market as of 2016 (the latest data available) and compare it to how things looked in 2006. Overall, there were 3.9 million racialized individuals living in Ontario in 2016, representing 29% of Ontario's population—a notable increase from 23% of the population in 2006.

Racialized workers in Ontario had a slightly higher labour force participation rate than non-racialized workers (65.3% versus 64.5%) in 2016. However, racial- ized Ontarians continued to experience higher unemployment rates. Racialized women had the highest unemployment rate at 10%, followed by racialized men at 8.7%, non-racialized men at 7%, and non-racialized women at 6.3%.

An occupational breakdown of the workforce sheds light on the gendered and racialized gap in the labour market. Racialized women were most likely to be in the lowest-paying occupations. The share of racialized women (25.1%) working in occupations that fall in the bottom 10% of average earnings was 66% higher than the share of non-racialized men (15%). Non-racialized women were slightly less likely to work in these low-wage occupations than racialized women (23.6%). The share of racialized men in these lowest-paying occupations (17.8%) was higher than the share of non-racialized men (15.1%).

These patterns are reversed for occupations that pay in the highest 10% of average earnings: 11% of non-racialized men worked in these highest-paying occupations, followed by 8.8% of racialized men, 5.7% of non-racialized women, and 5.5% of racialized women. In short, the racialized gap can be found at both the bottom and the top of the occupational distribution.

These labour market experiences contribute to the persistent wage gap:

- In 2015, racialized men earned 76 cents for every dollar non-racialized men earned.
- Racialized women earned 85 cents for every dollar non-racialized women earned.
- These earnings gaps have remained virtually unchanged since 2006.
- Labour market discrimination remains gendered and racialized: racialized women earned 58 cents for every dollar non-racialized men earned.
- There has been little progress in closing the earnings gap between men and women. Non-racialized women earned 69 cents for every dollar non-racialized men earned. Racialized women earned 77 cents for every dollar racialized men earned.

We also explore the notion that racialized workers fare worse in the job market because many of them are immigrants, and all immigrants struggle before landing a good job. Our findings demonstrate that not all immigrants have the same experience.

Among prime-age (25–54 years old) workers, racialized male immigrants earned 70 cents for every dollar non-racialized male immigrants earned. Racial- ized female immigrants earned 78 cents for every dollar that non-racialized female immigrants earned. These gaps continue into the second generation and beyond. Second-generation racialized men earned 78 cents for every dollar second-generation non-racialized men earned. Second-generation racialized women earned 64 cents for every dollar second-generation non- racialized men earned.

These findings point to the need for Ontario to deal with the uncomfort- able truth that its labour market is not equally welcoming to all immigrants. They also indicate that differences in immigrants' outcomes are not based only on education levels and language skills, but also on racialization.

The data also illustrate the importance of understanding the distinct barriers in the labour market faced by different racialized groups. There are many examples that illustrate these differences. Both men and women who identified as Black had higher labour force participation rates than their non-racialized counterparts. However, they also had higher unemployment rates and bigger wage gaps than the average for all racialized workers. Men who identified as Filipino had much lower unemployment rates than

non- racialized workers and yet had a larger earnings gap; while women who identified as Filipino had lower unemployment rates and a smaller earnings gap than the racialized average. Men and women who identified as Latin American had lower unemployment rates and larger earnings gaps than the average for all racialized workers.

Addressing the labour market discrimination faced by racialized work- ers will require a deeper understanding of racism and the different ways it is manifested in the labour market for different racialized groups. That understanding needs to be used to shape policy to address these different barriers and forms of discrimination.

The bottom line: we are still waiting for bold new policies to close the persistent gap between racialized and non-racialized men and women in Ontario. Until we tackle the barriers to employment equity and to decent work, Ontario's racialized income gap is unlikely to go away.

INTRODUCTION

In previous reports we examined the labour market experiences of racial- ized* workers in Canada and Ontario, drawing upon 2006 census data. Our analyses revealed a disturbingly colour-coded labour market.[1] We detailed how racialized workers experienced higher unemployment rates, lower earnings, and employment segregation in the labour market. We also showed that there was a gendered dimension to the racialized labour market experience: the barriers that racialized women faced in the labour market were greater than those faced by racialized men, non-racialized women, and non-racialized men.

This report focuses on the Ontario labour market experience of racialized workers, drawing upon 2016 census data. Much has changed since 2006. Changes in the structure of Ontario's economy began in the 1990s, but the foundations of Ontario's labour market were shaken during the financial crisis of 2008–09. These changes were accelerated, in large part, by the decline of manufacturing in the province and rapid technological developments spawning new forms of economic activity. For instance, Ontario lost more than 260,000 manufacturing jobs between 2001 and 2016.[2]

We have also seen other shifts in the labour market as precarious em- ployment has become more prevalent. This has contributed to increased income insecurity and a reduction in non-wage remuneration. Women and racialized workers are over-represented in the sectors of the economy where low-wage, precarious work has become most prevalent. However, the rise in precarious work has not only affected low-income workers—it has had an impact on workers across the earnings spectrum.[3]

The changes in the industrial structure of the economy, along with the rise in precarious work, have resulted in a hollowing out of middle-income jobs and a rise in both high-wage and low-wage jobs. Ontario is becoming more polarized, as middle- and working-class families see their share of the income pie shrinking while upper middle–class and wealthy families take home a growing share.4

In this report, we use Statistics Canada data from the 2016 census to describe the labour market experiences of racialized and non-racialized Ontario workers. We compare this data to the 2006 census data.

The 2016 census data provides the first opportunity in 10 years for us to do this kind of analysis. Before its release, we did not have reliable data to measure the gap in labour market outcomes between racialized and non-racialized workers. The limitations of the 2011 National Household Survey made an analysis by racialization impossible.5 The census is the only source of Statistics Canada labour market data on racialization.

* The term racialized is used to acknowledge "race" as a social construct and as a way of describing a group of people. Racialization is the process through which groups come to be designated as different and, on that basis, subjected to differential and unequal treatment. In the present context, racialized groups include those who may experience differential treatment on the basis of race, ethnicity, language, economics, and religion (Canadian Race Relations Foundation, 2008). This paper uses data on visible minority status from the 2006 and 2016 censuses. Visible minority status is self-reported and refers to the visible minority group to which the respondent belongs. The Employment Equity Act defines visible minorities as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour." Census respondents were asked: "Is this person…white, Chinese, South Asian, Black, Filipino, Latin American, Southeast Asian, Arab, West Asian, Japanese, Korean, other (specify)." The data on visible minority status do not include Indigenous peoples, CCPA research on their labour market experience will be forthcoming.

RACIALIZED POPULATION IN ONTARIO

Canada is one of the world's more racially diverse nations and the makeup of its population continues to evolve. In 2016, 51% of Canada's racialized population resided in Ontario. That amounts to 3.9 million racialized individuals living in Ontario, accounting for 29% of Ontario's population, up from 2.7 million in 2006 (23% of the population).

The largest racialized group in Ontario consists of those who identified as South Asian, followed by those who identified as Chinese, and then those who identified as Black. These three groups account for two-thirds of the racialized population in the province (see Table 1).

Table 1 Ontario racialized population, composition 2016

South Asian	1,150,415	29.6%
Chinese	754,550	19.4%
Black	627,715	16.2%
Filipino	311,675	8.0%
Arab	210,440	5.4%
Latin American	195,955	5.0%
West Asian	154,670	4.0%
Southeast Asian	133,855	3.4%
Multiple visible minorities	128,590	3.3%
Visible minority, n.i.e.	97,970	2.5%
Korean	88,940	2.3%
Japanese	30,835	0.8%
Total Racialized	3,885,610	100.0%

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016211

LABOUR MARKET STATUS

Table 2 shows the participation, employment, and unemployment rates for racialized and non-racialized Ontarians in 2016. It shows that racialized Ontarians had slightly higher labour force participation rates (65.3%) than non-racialized Ontarians (64.5%). While racialized women had only a very slightly higher participation rate than non-racialized women (at 60.7% compared to 60.6%), racialized men (at 70.3%) had a participation rate that is 1.7 percentage points higher than non-racialized men (at 68.6%).

Racialized men and women also had higher unemployment rates than their non-racialized peers: racialized women had the highest unemployment rate at 10%, followed by racialized men at 8.7%, compared to non-racialized men at 7% and non-racialized women at 6.3%.

Racialized men had a slightly higher employment rate than non-racialized men (64.2% compared to 63.8%). However, when the employment rate is disaggregated by age, non-racialized men had higher employment rates for all age groups except 55- to 64-year-olds. Racialized men in that age group had an employment rate that is more than five percentage points higher than non-racialized men. Racialized women had a lower employment rate (54.6%) than non-racialized women (56.8%).

Table 2 Employment, unemployment and participation rates: Ontario, 2016

	Racialized			Non-racialized		
	Men	Women	Total	Men	Women	Total
Participation rate	70.3	60.7	65.3	68.6	60.6	64.5
Employment rate	64.2	54.6	59.2	63.8	56.8	60.2
Unemployment rate	8.7	10.0	9.3	7.0	6.3	6.7

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016286.

CHANGES SINCE 2006

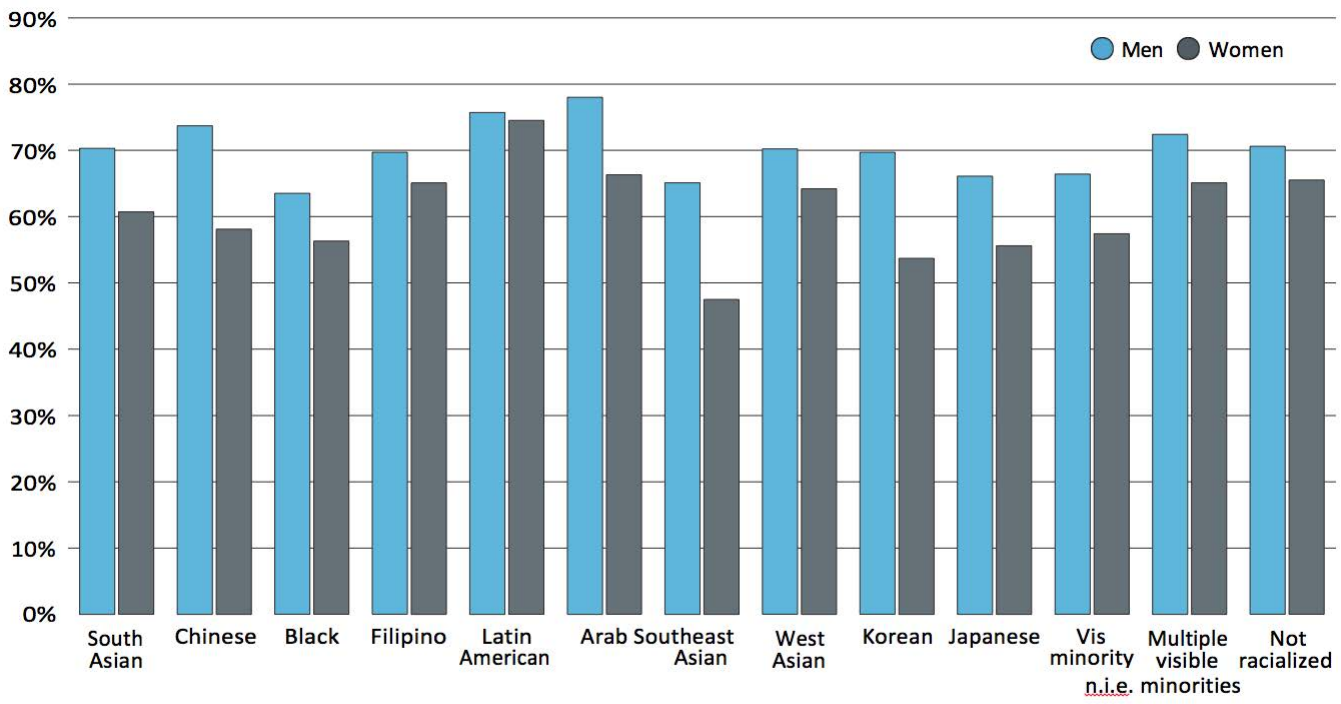
When compared to the data from the 2006 census, 2016 census data show an overall deterioration in labour market conditions for both racialized and non-racialized workers. The unemployment rate for racialized workers was

0.6 percentage points higher in 2016 than it was in 2006 and 0.9 percentage points higher for non-racialized workers. The employment rate for racial- ized workers was 2.7 percentage points lower than it was in 2006 and 2.8 percentage points lower for non-racialized workers.

There was a sharper deterioration in labour market conditions for men than for women. The employment rate dropped by 3.7 percentage points for racialized men and by 4.3 percentage points for non-racialized men. There was a 1.4 percentage point increase in non-racialized men's unemployment rates and a 0.9 percentage point increase in racialized men's unemployment rate. Racialized women's employment rate dropped by 0.3 percentage points and non-racialized women's employment rate dropped by 1.4 percentage points. There has also been a drop in labour market participation rates since 2006: non-racialized men's participation dropped by 3.6 percentage points and racialized men's by 3.3 percentage points. This compares to a 1.8 per- centage point drop for racialized women and a 1.3 percentage point drop for non-racialized women.

While non-racialized men had the lowest unemployment rate in 2006 at 5.8%, in 2016 it was non-racialized women who registered the lowest unemployment rate, at 6.3%.

FIgure 1 Labour force participation rates by racialized group and gender: Ontario, 2016



Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016286.

DIFFERENCES IN LABOUR MARKET EXPERIENCE BY RACIALIZED GROUP

There are sharp differences in labour market experiences by racialized group. While this is not a new phenomenon, it is an important one to note. As Figure 1 shows, men who identified as Filipino, Latin American, or South Asian had labour force participation rates between five and nine percentage points higher than those who identified as non-racialized. Men who identified as Chinese had labour force participation rates five percentage points lower than non-racialized men. Women who identified as Filipino had a labour force participation rate almost 14 percentage points higher than that of non-racialized women, while women who identified as Arab had a labour force participation rate 13 percentage points lower.

Only men who identified as Filipino had lower unemployment rates than those who identified as non-racialized. All other men who identified as racialized had higher unemployment rates—in particular, those who identified as Black or Arab had unemployment rates above 12%.

Women from all racialized groups, except those who identified as Filipino, had higher unemployment rates than women who identified as non-racialized. Women who identified as Arab had the highest unemployment rate, at 15.8%, which is two-and-a-half times higher than the unemployment rate of non-racialized women. Women who identified as West Asian, Black, or South Asian also had unemployment rates at or above 12% (see Table 10 in Appendix).

DIFFERENCES IN EMPLOYMENT BY OCCUPATION

Detailed data is publicly available on employment by occupation in the 2016 census. In this report we examine employment by gender and by racialized group for four-digit national occupational classifications (NOCs), which provides us with insights into the earnings gap between racialized and non-racialized workers. Just like broader labour market trends, these patterns are both racialized and gendered.

We sorted the NOC codes from lowest to highest average incomes for the total population and divided them into 10 equal groups. We then looked at the distribution of employment by these occupational groupings for racialized women and men as well as for non-racialized women and men.

These data demonstrate clear differences in employment by occupational groupings: 25.1% of racialized women worked in occupations in the bottom 10% of average earnings, while 23.6% of non-racialized women worked in these occupations. In comparison, 17.8% of racialized men and 15.1% of non-racialized men worked in occupations in the bottom 10% of the earn- ings scale. The share of racialized women working in in occupations that fall in the bottom 10% of average earnings was 66% higher than the share of non-racialized men.

The data also show that 5.5% of racialized women and 5.7% of non- racialized women worked in the occupations paying in the top 10% of average earnings. That compares to 8.8% of racialized men and 11% of non-racialized men working in these occupations.

The gendered and racialized dimensions of Ontario's 2016 labour market go beyond the two extremes of the highest- and lowest-paying jobs. Overall, 66.5% of racialized women worked in occupations in the bottom half of the earnings distribution compared to 63.4% of non-racialized women. Mean- while, 57.2% of racialized men and 53.2% of non-racialized men worked in occupations in the bottom half of the earnings distribution.

This means that racialized women were 25% more likely to be working in occupations in

the bottom half of the income distribution than non-racialized men. While racialized men were less likely to be in low-wage occupations than women, they were more likely to be in low-wage occupations than non-racialized men.

Table 3 Distribution of employment by occupation: Ontario, 2016

	Racialized		Non-racialized	
	Women	**Men**	**Women**	**Men**
1st	25.1	17.8	23.6	15.1
2nd	11.7	8.4	9.1	6.8
3rd	16.7	15.0	15.8	14.9
4th	7.9	8.7	8.3	7.8
5th	5.1	7.3	6.6	8.5
6th	4.7	6.2	5.2	8.3
7th	7.2	7.3	10.9	8.9
8th	9.7	10.7	9.9	10.6
9th	6.5	9.7	5.0	8.0
10th	5.5	8.8	5.7	11.0
Total	100	100	100	100

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016356.

DIFFERENCES IN EMPLOYMENT INCOME

Table 4 shows the persistent gap in average employment income between racialized and non-racialized workers.6 It also shows the clear gendered dimension to Ontario's racialized income gap. According to the 2016 census, racialized women earned 58 cents for every dollar that a non-racialized man made. There is a narrower gap between racialized and non-racialized men: racialized men earned 76 cents for every dollar that a non-racialized man earned. The gap narrows further when comparing the incomes of racialized and non-racialized women, with racialized women earning 85 cents for every dollar that non-racialized women earned. Non-racialized women earned 69 cents for every dollar a non-racialized man earned.

We have not limited this analysis of employment income to full-time, full-year workers because labour market discrimination includes barriers to full-time employment as well as the frequency and duration of unemploy- ment. Comparing the income gap for all workers is one way of capturing these differences in access to employment as well as the differences in employment incomes for those who are employed.

Comparisons of full-time, full-year workers show a similar pattern, albeit with a smaller gap in earnings. Racialized women working full-time and full-year earned 66 cents for every dollar that non-racialized men working full-time and full-year earned. The gap narrowed between men, with racial- ized men working full-time and full-year earning 80 cents for every dollar that non-racialized men working full-time and full-year earned. And the gap narrowed even further when comparing the incomes of women, with racialized women working full-time and full-year earning 87 cents for every dollar that non-racialized women working full-time and full-year earned.

Table 4 Employment income by racialized group and gender: Ontario, 2015

	Average Employment Income ($s)		Earnings gap: same gender		Earnings gap: non-racialized men
	Men	Women	Men	Women	Women
Total racialized	44,799	34,530	0.76	0.85	0.58
South Asian	46,793	33,054	0.79	0.81	0.56
Chinese	51,228	40,217	0.87	0.99	0.68
Black	37,478	33,726	0.63	0.83	0.57
Filipino	40,322	34,359	0.68	0.84	0.58
Latin American	42,539	30,717	0.72	0.75	0.52
Arab	43,638	30,279	0.74	0.74	0.51
Southeast Asian	41,688	31,417	0.71	0.77	0.53
West Asian	39,349	29,576	0.67	0.72	0.50
Korean	43,845	32,211	0.74	0.79	0.54
Japanese	66,367	42,804	1.12	1.05	0.72
Visible minority, n.i.e.	43,511	35,921	0.74	0.88	0.61
Multiple visible minorities	44,911	34,856	0.76	0.85	0.59
Non-racialized	59,103	40,811	1.00	1.00	0.69

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016213.

Table 5 Employment income by racialized group and gender: full-time, full year, Ontario, 2015

	Average Employment Income ($s)		Earnings gap: same gender		Earnings gap: non-racialized men
	Men	Women	Men	Women	Women
Total racialized	64,071	52,981	0.80	0.87	0.66
South Asian	66,538	52,907	0.83	0.87	0.66
Chinese	72,650	61,124	0.90	1.01	0.76
Black	55,773	52,568	0.69	0.87	0.65
Filipino	54,437	45,861	0.68	0.76	0.57
Latin American	57,208	45,700	0.71	0.75	0.57
Arab	66,609	53,340	0.83	0.88	0.66
Southeast Asian	55,789	44,537	0.69	0.74	0.55
West Asian	59,341	50,585	0.74	0.83	0.63
Korean	61,888	50,038	0.77	0.83	0.62
Japanese	95,415	66,489	1.18	1.10	0.83
Visible minority, n.i.e.	58,693	51,503	0.73	0.85	0.64
Multiple visible minorities	65,682	54,525	0.82	0.90	0.68
Non-racialized	80,555	60,584	1.00	1.00	0.75

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016356.

COMPARISONS OF EARNINGS TRENDS FROM 2005 TO 2015

The census data gives us a snapshot of the dimensions of inequality in Ontario's labour market. It also tells us whether we're making any progress on closing the income gap. The answer is yes and no: While the overall earnings gap between racialized and non-racialized men and racialized and non-racialized women remains virtually unchanged since 2006, the earnings gap between men and women, both racialized and non-racialized, has shrunk. Even so, this gap remains in the double digits: racialized women earned 58 cents for every dollar non-racialized men earned in 2015, compared to 53 cents in 2005. Non-racialized women earned 69 cents for every dollar non-racialized men earned in 2015, compared to 63 cents in 2005.

There are differences by racialized group. While the earnings gap remained in the double digits for men in all racialized groups except those who identified as Japanese, it has narrowed for those who identified as South Asian, Chinese, West Asian, Latin American, and Korean. The earnings gap has widened, however, for those who identified as Black, Filipino, Southeast Asian, and multiple visible minorities. While it remained in the double digits, the earnings gap between non-racialized men and racialized women has shrunk across all racialized groups (see Table 11 in Appendix).

Table 6 Average Employment Earnings, constant 2015 dollars

	2005		2015		Earnings Gap: same gender		Earnings Gap: non-racialized men	
	Men	Women	Men	Women	2005	2015	2005	2015
Racialized	43,789	31,756	44,799	34,530	0.74	0.76	0.53	0.58
Non-Racialized	59,461	37,485	59,103	40,811	0.85	0.85	0.63	0.69

IS THE RACIALIZED INCOME GAP A RESULT OF IMMIGRATION?

A common Canadian narrative is that the discrimination that racialized workers face in the labour market is part of the immigrant experience and that it is common to all immigrants. The story is that everyone who comes to this country struggles, especially at first, but the sacrifice is worth it because succeeding generations reap the benefits of that sacrifice. However, the data show that labour market experiences are different for racialized and non- racialized immigrants. The data also show that income inequality between racialized and non-racialized Ontarians extends beyond the immigrant experience, affecting second and third generations, and beyond.

Table 7 shows employment income for prime-age (25–54) racialized and non-racialized workers by generational status. Racialized male immigrants earned 70 cents for every dollar that non-racialized male immigrants earned. Racialized female immigrants earned 78 cents for every dollar that non- racialized female immigrants earned.

Table 7 Average employment income by generation and racialization: prime-age workers, Ontario, 2015

	Racialized		Non-Racialized		Earnings Gap: same gender		Earnings Gap: non-racialized men	
	Men	Women	Men	Women	2005	2015	2005	2015
First generation	51,006	37,787	73,317	48,593	0.70	0.78	0.52	0.66
Second generation	60,162	49,527	77,388	52,944	0.78	0.94	0.64	0.68
Third generation or more	58,354	43,790	68,117	47,454	0.86	0.92	0.64	0.70

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016210.

Although it is smaller, that gap in employment income also holds true for Canadian-born racialized workers compared to non-racialized workers. Second-generation racialized men earned 78 cents for every dollar second- generation non-racialized men earned. Second-generation racialized women earned 64 cents for every dollar second-generation non-racialized men earned. And the gap continued for those who Statistics Canada categor- izes as third-generation or beyond. However, the numbers of second- and third-generation racialized Ontarians drop off sharply, so this data should be interpreted with caution.

For first-generation Ontarians, the earnings gap varied substantially. The largest earnings gap is observed for immigrants who identified as West Asian (they earned 64 cents for every dollar that non-racialized immigrants earned), while the smallest gap is for those who identified as Japanese (they earned 83 cents for every dollar non-racialized immigrants earned).

The earnings gap for second-generation racialized Ontarians was much more dispersed. The wage gap worsened for Ontarians who identified as Black, Latin American, Southeast Asian or multiple visible minorities. On the other hand, second-generation Ontarians who identified as Chinese or Japanese earned $1.04 and $1.05 respectively for every dollar that second-generation non-racialized Ontarians earned.

Table 8 Average employment income ratios by generation and racialized groups: prime-age workers, Ontario, 2015

	First generation	Second generation	Third generation or more
Total racialized	0.72	0.84	0.89
South Asian	0.73	0.94	0.96
Chinese	0.81	1.04	0.93
Black	0.69	0.67	0.71
Filipino	0.65	0.80	0.71
Latin American	0.68	0.62	0.62
Arab	0.72	0.81	0.94
Southeast Asian	0.68	0.64	0.83
West Asian	0.64	0.70	-
Korean	0.70	0.96	1.18
Japanese	0.83	1.05	1.28
Visible minority, n.i.e.	0.72	0.76	0.68
Multiple visible minorities	0.81	0.75	0.86
Non-racialized	1.00	1.00	1.00

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016210 and authors' calculations.

There is a lot of variability in income levels between first generations and third-and-beyond generations. Average employment incomes were lower for about half of the groups (including non-racialized Ontarians) while they increased for about half the groups. Two groups, those who identified as Korean or Japanese, had earnings that were 18% and 28% higher, respectively, than non-racialized Ontarians. What stands out is that those who identified as Black, Latin American or Filipino consistently had a large earnings gap despite the length of time that their families had been in Ontario.

The differences in experiences by racialized group shows the importance of a disaggregated analysis. The variations in labour market outcomes by racialized group suggest that there are differences in the barriers faced by different groups in the labour market. These barriers need to be explored and better understood, and policy responses need to be tailored to them if they are to be effective.

RACIALIZED POVERTY

The stark reality of racialized poverty in Ontario has also not changed much since 2006. The data show persistent racialized poverty even as the propor- tion of the Ontario population that is racialized grows.

Table 9 shows a much higher prevalence of poverty among racialized communities in Ontario. While 21.3% of racialized Ontarians had incomes below the LIM-AT (Statistics Canada's low-income measure, after-tax), only 11.5% of non-racialized Ontarians' incomes were below this measure. All racialized groups except those who identified as Filipino had higher poverty rates than non-racialized Ontarians. Those who identified as Arab, West Asian, and Korean had poverty rates above 30%, or nearly three times higher than those of their non-racialized neighbours.

Table 9 Racialized poverty: share of population below LIM-AT, Ontario 2015

	Women	Men	Total
Total Racialized	21.4	21	21.3
South Asian	18	18.1	18
Chinese	22.4	22.1	22.2
Black	25.1	22.9	24.1
Filipino	7.8	7.2	7.5
Latin American	21	18.6	19.9
Arab	41.5	39.7	40.6
Southeast Asian	18.5	18.2	18.4
West Asian	36.3	35.9	36.1
Korean	31.8	30.9	31.4
Japanese	12.2	11.9	12.1
Visible minority, n.i.e.	18.9	17.2	18.1
Multiple visible minorities	17.5	16.7	17.1
Non-racialzied	12.3	10.7	11.5

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016211

CONCLUSION

Our analysis demonstrates the persistence of patterns of employment and income inequality along racial and gender lines in the Ontario labour market. The employment and income gap between racialized and non-racialized workers remains firmly in place.

Racialized workers in Ontario are more likely to be working in low-wage occupations than non-racialized workers. Labour market policies that support all low-wage workers continue to be desperately needed. The provisions of Bill 148, including the increase in the minimum wage, are important ways to reduce racial inequality in Ontario. Pay equity provisions in that legislation which decrease the gap between full-time, part-time, and temporary workers would also contribute to decreasing the racialized income gap. The repeal of Bill 148 will further contribute to the persistence of racialized labour market inequality. Legislated employment equity policies are needed to improve access to opportunities across the income spectrum.

The data also illustrate the importance of understanding the distinct barriers in the labour market faced by different racialized groups. There are many examples in the data that illustrate these differences. Both men and women who identified as Black had higher labour force participation rates than non-racialized workers. Their unemployment rates and wage gaps were also larger than the average for all racialized workers. Men who identified as Filipino had much lower unemployment rates than non-racialized workers and yet had a larger earnings gap; while women who identified as Filipino had a lower unemployment rate and earnings gap than the racialized average. Men and women who identified as Latin American had lower unemployment rates and higher earnings gaps than the average for all racialized workers. Addressing the labour market discrimination faced by racialized work-ers will require a deeper understanding of racism and the different ways it is manifested in the labour market for different racialized groups. That understanding needs to be used to shape policy to address the different barriers and forms of discrimination faced by racialized workers.

The data also shows that during this 10-year time period, both racialized and non-racialized women made larger average income gains than men, while non-racialized men's average incomes have stagnated. We know that these averages mask differences across the earnings spectrum. Men in Ontario have experienced both losses in middle-income jobs and rising incomes for high-income earners. We know the decline in manufacturing jobs combined with the rise in precarious work are contributing to this trend, but further research is needed.

Among prime-age (25–54) workers, racialized male immigrants earned 70 cents for every dollar that non-racialized male immigrants earned. Racial- ized female immigrants earned 78 cents for every dollar that non-racialized female immigrants earned. These gaps continue into the second generation and beyond. Second-generation racialized men earned 78 cents for every dollar second-generation non-racialized men earned. Second-generation racialized women earned 64 cents for every dollar second-generation non- racialized men earned.

These findings point to the need for Ontario to deal with the uncomfortable truth that its labour market is not equally welcoming to all immigrants, and that differences in immigrants' outcomes are not based only on education levels and language skills, but also on racialization.

The bottom line: we are still waiting for bold new policies to close the persistent gap between racialized and non-racialized men and women in Ontario. Until we tackle the barriers to employment equity and to decent work, Ontario's racialized income gap is likely to remain.

APPENDIX

Table 10 Labour force statistics by racialized group and gender, Ontario, 2016

	Men			Women			Total		
	Participation rate	Employ rate	Unemploy rate	Participation rate	Employ rate	Unemploy rate	Participation rate	Employ rate	Unemploy rate
Total raciailzed	70.3	64.2	8.7	60.7	54.6	10.0	65.3	59.2	9.3
South Asian	73.7	67.9	7.9	58.1	51.3	11.7	66.0	59.7	9.6
Chinese	63.5	58.6	7.7	56.3	51.5	8.5	59.7	54.9	8.1
Black	69.7	61.1	12.3	65.1	57.2	12.0	67.2	59.0	12.2
Filipino	75.7	71.3	5.9	74.5	70.8	5.0	75.0	71.0	5.3
Latin American	78.0	72.0	7.7	66.3	60.0	9.6	71.8	65.6	8.6
Arab	65.1	57.3	12.0	47.5	40.0	15.8	56.7	49.0	13.5
Southeast Asian	70.2	64.0	8.9	64.2	58.8	8.3	67.0	61.2	8.6
West Asian	69.7	63.1	9.5	53.7	47.2	12.2	61.7	55.1	10.7
Korean	66.1	60.5	8.4	55.6	50.7	8.8	60.5	55.3	8.6
Japanese	66.4	61.0	8.0	57.4	53.2	7.3	61.2	56.5	7.6
Vis minority n.i.e.	72.4	66.9	7.7	65.1	59.4	8.8	68.5	62.8	8.2
Multiple visible minorities	70.6	63.6	9.9	65.5	59.0	9.9	67.9	61.2	9.9
Not racialized	68.6	63.8	7.0	60.6	56.8	6.3	64.5	60.2	6.7

Source Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016286.

Table 11 Average employment earnings, constant 2015 dollars

	2005		2015		Earnings Gap:Same Gender 2005		2015		Earnings Gap: Women to non-racialized men	
	Women	Men	Women	Men	Women	Men	Women	Men	2005	2015
Total racialized	31,756	43,789	34,530	44,799	0.85	0.74	0.85	0.76	0.53	0.58
South Asian	29,508	44,043	33,054	46,793	0.79	0.74	0.81	0.79	0.50	0.56
Chinese	35,569	48,826	40,217	51,228	0.95	0.82	0.99	0.87	0.60	0.68
Black	32,277	39,421	33,726	37,478	0.86	0.66	0.83	0.63	0.54	0.57
Filipino	33,989	41,622	34,359	40,322	0.91	0.70	0.84	0.68	0.57	0.58
Latin American	26,643	39,303	30,717	42,539	0.71	0.66	0.75	0.72	0.45	0.52
Arab	28,702	43,652	30,279	43,638	0.77	0.73	0.74	0.74	0.48	0.51
Southeast Asian	29,075	43,164	31,417	41,688	0.78	0.73	0.77	0.71	0.49	0.53
West Asian	25,628	35,746	29,576	39,349	0.68	0.60	0.72	0.67	0.43	0.50
Korean	26,359	38,806	32,211	43,845	0.70	0.65	0.79	0.74	0.44	0.54
Japanese	44,916	77,176	42,804	66,367	1.20	1.30	1.05	1.12	0.76	0.72
Visible minority, n.i.e.	31,452	42,527	35,921	43,511	0.84	0.72	0.88	0.74	0.53	0.61
Multiple visible minority	34,828	47,178	34,856	44,911	0.93	0.79	0.85	0.76	0.59	0.59
Non-racialized	37,485	59,461	40,811	59,103	1.00	1.00	1.00	1.00	0.63	0.69

Sources 2016 census Catalogue number 98-400-X2016213 and 2006 Census Catalogue Number 97-563-X2006060, and authors' calcuations

NOTES

1 See Block S. and Galabuzi G.E. (2011). Canada's Colour-Coded Labour Market. Wellesley Institute and Canadian Centre for Policy Alternatives. And Block S. (2010). Ontario's Growing Gap: The Role of Race and Gender in Ontario's Racialized Income Gap. Canadian Centre for Policy Alternatives.

2 Statistics Canada. Table 14-10-0202-01, Employment by Industry, Annual.

3 See the Poverty and Employment Precarity in Southern Ontario series of studies, as well as Hennessy T. and Tranjan, R. (2018). No Safe Harbour: Precarious Work and Economic Insecurity Among Skilled Professionals in Canada. Canadian Centre for Policy Alternatives.

4 Block, S., (2017). Losing Ground: Income Inequality in Ontario, 2000–15. Canadian Centre for Policy Alternatives.

5 Block, S., Galabuzi, G.E., and Weiss, A. (2014). Colour-Coded Labour Market by the Numbers. Wellesley Institute.

6 The census collects data on labour market experience in 2016 and on income for 2015. The definition of employment income is "all income received as wages, salaries and commissions from paid employment and net self-employment income from farm or non-farm unincorporated business and/or professional practice during the reference period.

Repairing the Rift: Reconciliation as Relations-Repair

Published in *Directions* November 2018

By: Augie Fleras

BIOGRAPHY

Augie Fleras is an adjunct professor of sociology and legal studies at the University of Waterloo. He received his PhD. from Victoria University in Wellington, NZ with a focus on Maori Studies and Social Anthropology Throughout his career, Dr. Fleras has published some 30 books in addition to numerous book chapters, referred articles, and reports, with Future projects including a book on Rethinking the Academy: Moving Beyond Eurocentrism (Peter Lang) and 50 Years of Official Multiculturalism (under review with UTP). His research and publication interests include, the Politics of Indigeneity, Postmulticulturalism, Multiculturalism, Race/Ethnic/Indigenous Relations, Media and Minorities, Social Inequality, Citizenship.

INTRODUCTION

However redemptive in principle, reference to (re)conciliation as relations-repair is littered with conceptual obstacles. Nowhere is this more evident than in debates over the concept of "broken" when analyzing and realigning the relationship between settler Canada and Indigenous peoples. Does it refer to a treaty-based relationship, now broken, and in need of mending to reset it ("reconciliation")? Or is the relationship inherently broke, beyond quick-fix repair, and primed for a massive remake ("conciliation")? Different models of reconciliation as relations-repair are proposed – victim-based, survivor-centred, perpetrator-focused – each of which differently frames assumptions, objectives, and outcomes. This essay argues that the expressions "broken relationship" and "relations-repair" are open to diverse interpretations, especially when applied to the politics of reconciliation. No less problematic in repairing the rift in Canada-Indigenous peoples' relations is the distinction between reconciliation and conciliation as alternative models. That the relationship of Indigenous peoples to settler Canada may have begun broke, and is working as intended, the onus is on re-interpreting relations-repair as a pathway to (re)conciliation.

A Black Lives Matter (BLM) rally in Toronto in late August 2016 drew attention to a profoundly uncomfortable truth. The criminal justice system implicated in the death of Abdirahman Abdi, a 37 year old Somali-Canadian man was neither broken nor malfunctioning. According to BLM activists, it was working precisely as intended, controlling those at the margins of Canada's racialized regime. This inconvenient accusation - namely, the system is inherently broke (not just broken) and in need of a substantive overhaul – had the perhaps unintended effect of disrupting those polite fictions that inform Canada's blemished history of criminal injustice (Maynard 2017; Chartrand 2018). Neither the system nor the relationships within it were designed to work in an inclusive manner. Rather they were constructed instead to reflect, reinforce, and privilege a white Canada at the expense of the disempowered. Framing Canada as structurally Eurocentric and systemically biased secures a powerful interpretive lens that accounts for the dispossession of Indigenous peoples lands, culture and children; the exploitation of racialized workers, from 19 century Chinese railroad labourers to 21st century temporary foreign workers, particularly in the Seasonal Agricultural Workers Program; and the inequalities of exclusions that pervade institutional spaces, from policing and education to child protection/health care services (Talaga 2018; Fleras 2017). Or as Lisa Monchalin explains in her book, The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada (2015), the persistence and pervasiveness of a lived-colonialism exposes the contradictions of reconciliation as relations-repair within a system that created the problem in the first place yet balks at acknowledging the scope of its complicity.

Canadians may want to believe that Canada's colonial history comprised a cooperative venture between settlers and occupants, apart from a few bad apples to mar an otherwise peaceful national project. The reality is that Canada was coaxed into existence through a tissue of lies and fraudulent abuses against a backdrop of orchestrated violence and institutionalized theft (Alfred 2005; Coulthard 2014; Thobani 2007). The often abusive and fractious relationship between Canada and Indigenous peoples continues to be embedded in a matrix of relations usually defined as broken and badly in need of repair to mend the rift. The consecutive acquittals of those charged in the deaths of 22 year old Colten Boushie of Red Pheasant First Nations and 15 year old Tina Fontaine of Sagkeeng First Nations has done little to undo that perception (Cheng and Chowdhury 2018). In the hope of re-priming a relationship built on colonial structures that Indigenous Affairs Minister Carolyn Bennett conceded "started badly" from the onset, Prime Minister Justin Trudeau has prioritized the centrality of reconciliation for renewing Canada's relationship to Indigenous peoples on a nation-to-nation basis (Kennedy 2015; Government of Canada 2018; Department of Justice 2017). The Department of Justice (2017:5) makes this very clear when it capitalizes on the ethos of the TRC to explain, "Reconciliation is an ongoing process through which Indigenous peoples and the Crown work cooperatively to establish and maintain a mutually respectful framework for living together, with a view to fostering strong, healthy, and sustainable Indigenous nations within a strong Canada…Reconciliation, based on recognition, and respect will require hard work, changes in perspectives and actions, and compromises and good faith, by all." However well-intentioned this commitment to reconcile through attitude modification, consensus is divided over how or why the relationship is broken, what needs doing, and the appropriate reconciliatory model to put Canada's house in order. With three

ideal-typical models jockeying for position in framing reconciliation, there is even less agreement over its meaning and applicability to settler-Indigenous peoples' relations, especially when the concept of conciliation proposes an alternative interpretation (Wyile 2016; Amagoalik 2008).

The politics of reconciliation are sharply contested and deeply politicized (TRC 2015; Doxtader 2003; Vine 2016; Bloomfield 2006; Schaap 2005). The meaning of reconciliation reflects a complex and multivalent quality, as evidenced by its fraught and diverse frames of reference: settling scores, reintegration of perpetrators and survivors, catharsis, restoration and renewal, peace-keeping, truth-seeking, an apology, forgiveness and redemption, community building and social healing, harmony and friendship, mutual recognition and respectful relations. In general, reconciliation provides a way of addressing difficult historical legacies by changing relations between an oppressor and oppressed, from one of antagonism and conflict to that of mutual respect and active cooperation (Maddison et al. 2016; Kymlicka and Bashir 2008). References to reconciliation may operate at *individual* levels in reconciling Indigenous peoples with non-Indigenous Canadians, in a *legal* context by reconciling the pre-existence of Indigenous societies with the sovereignty of the Crown, in a *treaty* context for reconciling opposed versions to arrive at a mutual negotiated accommodation, and at *practical* levels in reconciling competing interests such as pipeline building (Jai 2014). Not only does reconciliation mean different things to different people, but its very meaning may be altered when conveyed in another language or across sociopolitical contexts (Wyile 2016). Divergent and conflicting models of reconciliation as process, goal/outcome, or relationship can be discerned (Bloomfield 2006) that often pit Indigenous approaches against non-indigenous understandings (Sheppard 2013; James 2012; Stanton 2017; Anker 2016; Walters 2009; Turner 2011; Bloomfield 2006; Henderson and Wakeham 2013). From the federal government's perspective, reconciliation as it applies to a land claims policy is about achieving certainty through extinguishment for economic exploitation and resource development; by contrast, an Indigeneity-driven justice models of reconciliation addresses agreements that acknowledge the centrality of land for the survival of Indigenous peoples (McIvor 2018; Alfred 2005). Proposed models of reconciliation as relations-repair include *victim-based, survivor-centred,* and *perpetrator-focused* – all of which concur the relationship is broken and in need of mending. Where they differ is in defining the nature of the broken relationship, how and why it got that way, what repairs are necessary for righting historical wrongs, and what kind of governance outcomes are anticipated from a reconciliatory pathway (Maaka and Fleras 2005).

Canada commits to the principle of reconciliation in renewing its relationship with First Nations, Metis, and Inuit (Department of Justice 2017). A victim-based approach to reconciliation is commensurate with a state-centric mindset in reconciling Canada-Indigenous peoples' relations. Reconciliation through victim rehabilitation in a so-called post-conflict era reflects a statist belief that the damage that once created the harm is precisely that: past history. Injustices are deemed to be historical, the passage of time has erased any crime or responsibility, and the obligation for redress no longer exists (Alfred 2009). Reconciliation simply requires an apology for past 'mistakes', individual forgiveness that's consistent with the confessional practices of Christian traditions, adequate compensation for righting historical wrongs, and a commitment to bring about closure - and move on (Nagy and Gillespie 2015; Sheppard 2013). The assimilationist logic

behind a depoliticized and remedial-based reconciliation asks the victims to become reconciled to their losses or, alternatively, resigned to their fate.2 As a result of this whitewashing of history and culpability, those framed as victims under a state sponsored reconciliation are pathologized around therapeutic discourses of catharsis and rehabilitation that individualize the violence and attendant remedies (Chrisjohn and Young 2012; Nagy and Gillespie 2015). In failing to address underlying problems by pressing privatized healing into the service of national interests (Schaap 2005), a victim-based reconciliation is designed to pacify resistance and overcome estrangement without disrupting the Canada project or transforming relations. The centrality of Canada's structural colonialism and historic injustices is glossed over, in effect reinforcing the primacy of symbols over substance, mindsets over material redistribution, and recognition and respect over meaningful action and political reconciliation (Ansloos 2017; Corntassel 2012; Regan 2010).

A survivor-centred approach to reconciliation begins with the assumption that Indigenous people continue to be harmed by the government's reliance on assimilationist laws, policies, and practices, both deliberate and systemic. Reconciliation as "societal healing" (Cilliers et al. 2016) is premised on the principle of promoting mutually accommodative changes through healing and education. A survivor-centred vision of reconciliation espoused by the TRC promotes a mutually engaged dialogue involving both Indigenous peoples and non-indigenous Canadians (Stanton 2017). Privileging survivors as the experts from whom the dominant sector must learn and live establishes a kind of role reversal (Kymlicka and Bashir 2008). Those voices silenced by the Indian Residential School system are foregrounded (TRC 2015); in turn, non-Indigenous Canadians are painted into the picture as complicit in a context that benefits some, disadvantages others (James 2012; Sheppard 2013). In endorsing a rapprochement between former antagonists and the forgiveness of wrongdoers such as the case in South Africa (Tutu 1999), a survivor-centred approach emphasizes the hearing of stories and promotion of healing across the board without explicit reference to identifying violators or isolating political accountability. For the TRC (2015), reconciliation is about establishing a mutually respectful relationship (self-respect for Indigenous peoples, recognition and respect among all Canadians), based on an awareness of the past, acknowledgement of the harm inflicted, an atonement for the consequences of colonial injustices and injuries, and action to modify behavior and practice reconciliation in everyday lives.3 In addition to personal healing of both survivors and victimizers through truth telling, the TRC (2015) concedes the importance of the wider context and transformational change. Any meaningful reconciliation may have to move beyond the specifics of the IRS system by acknowledging the systemic damage and the intergenerational legacy of colonialism, in addition to redressing those policies and practices both in the past and at present that remain steeped in assimilation rather than expressive of self-determination. In other words, structural inequalities need to be addressed in repairing damaged trust through concrete actions that demonstrate real societal change (ie, "reconciliACTION" [Mercredi 2017]) (TRC 2015), albeit intertwined with the lived realities of survivors in a mutually reinforcing fashion (James 2012).

A perpetrator focused approach rejects the possibility of any reconciliation in the current socio-political context of a settler/colonial state (Sheppard 2013). According to Indigenous academics such as Alfred (2009), Coulthard (2014), and Corntassel and Holder

(2008) among others, a state-sponsored or victim-based reconciliation constitutes an empty gesture whose abstracted commitment to mutual recognition and respect frequently assume equivalence where none exists (Anker 2016). Too often state-sponsored reconciliation interventions propose to repair the rift through half-hearted and symbolic measures that paper over the domination that produced the violations at the outset (James 2012), while suppressing Indigenous peoples concerns under the gloss of regime legitimation and appeals to national unity (Corntassel and Holder 2008). Nor is there any hope of an authentic reconciliation through relations-repair without a disruptive break from the past, including full restitution (or reparations) for lost territory and resources, de-commissioning the colonization that justified racist initiatives including the IRS system, a rethinking of Indigenous rights within the framework of Canadian constitutionalism (Borrows 2002), and an end to neocolonial policies (decolonization) that abort Indigenous peoples' rights to self-determining autonomy (Alfred 2009). Of particular importance is the creation of a fundamentally new socio-political relationship based on Canada's admission of wrong-doing, acceptance of responsibility, and a commitment to a restitution-driven reconciliation. Without recourse to the return of land and compensation, according to Taiaiake Alfred (2005) reconciliation is dismissed "as an emasculating concept, weak-kneed and easily accepting of half-hearted measures of a notion of justice that does nothing to help Indigenous peoples regain their dignity and strength."

The logic behind a perpetrator-driven reconciliation (or perhaps, conciliation is the more appropriate concept – see second last paragraph) is transformative along a nation-to-nation partnership rather than restorative of some mythical state of harmony or the pursuit of national unity (Anker 2016). A survivor-centred discourse of understanding, forgiveness, catharsis, and healing may be necessary, yet prove insufficient, without an explicit framing of the IRS system as central to the colonial agenda of land theft and tribal dispossession (James 2012). Or as Metis scholar Jo-Ann Episkenew (2009:17) puts it, "Healing without changing the social and political condition that first caused the injuries would be ineffectual". By the same token, critics contend, an emphasis on the structural and political dimensions of reconciliation in renewing the relationship (Sheppard 2013) runs the risk of marginalizing the perspectives of the survivors, of treating them as little more than as pawns in a geopolitical struggle, and a silencing of voices in ways not altogether different from traumas in the past (James 2012; also see Cilliers et al 2016). Still, it is argued (Alfred 2009), any hope of bringing about significant and permanent changes in the relationship between governments and the First Nations is contingent on transformational and redistributive reconciliation that bolsters Indigenous capacity to regain power, take control of land and resources, and reclaim self-determining autonomy.

Clearly, then, all three models of reconciliation models concede the reality of a broken relationship, the centrality of relations repair for moving forward, and the need to repair the rift in reconciling Canada-Indigenous peoples relations. A state-sponsored approach to reconciliation emphasizes a highly individualized and victim-based account of relations-repair; a survivor-centred approach embraces a mutual adjustment process of healing and education; and a perpetrator-focus approach is directed toward the political, structural and systemic. Nevertheless, as well intentioned as it might be, the trope "the system (and the relationships within it) is broken" may be potentially misleading because of an implicit blind spot. The broken system metaphor is predicated on the

assumption that (a) the current system isn't working as it once did (b) it's causing major social problems (c) it must be fixed through appropriate measures. But in proposing a seemingly simple solution to a complex problem, the word "broken" may do a disservice when applied to a social system and intergroup relations. For example, when an appliance breaks, it is broken unequivocally: the options are to fix it, throw it away, or buy a new one. By contrast, as Paul Knox Clarke argues in his ALNAP blog, relations and systems don't break like this because, unlike appliances or machines, they are not static in form or function but changing and negotiated, with the result that some components change, others don't; some elements work well, others badly and still others hardly at all; and not everyone agrees on which parts of the system require a few tweaks or sweeping root-and-branches changes. In other words, reference to the "broken" metaphor may not represent the most appropriate framing of Canada-Indigenous peoples' relations for, unlike buying a new appliance, tested and true, creating a wholly new system is without precedent or assurance of success. Caveats aside (how do you throw out a system and start over again?), however, there is much to be said in promoting the concept of "brokenness" as an interpretive lens for rethinking the relationship between past and present. It serves to remind that Canada's often ruthless oppression of Indigenous peoples and racialized minorities was not a mistake – a kind of residual fallout or collateral damage from on otherwise healthy arrangement in pursuit of peace, order, and good government – as much as the logical expression of an inherently flawed system that began badly and never recovered.

Canada's political fictions become unglued when reassessing the relational status of Indigenous peoples through the lens of broke(n) as metaphor. First, neither racism and discrimination nor colonialism and Indigenous dispossession constitute aberrations from a sound and functioning system but are deeply implicated in Canada's socio-political fabric and constitutional regime. Even formal guarantees of equality rights cannot possibly level a structurally "un-level" playing field when injustices are neither incidental nor evidence of dysfunction. Racialized persons and Indigenous peoples may be formally equal on paper or before the law, yet they must exercise these legal rights and scramble for success in a white-o-centric context, neither reflective of their lived experiences nor conducive to advancing their interests. Second, if Canadians are serious about challenging the dysfunctionalities of Canada's relationship to Indigenous peoples, it's not enough to tinker with the conventions that refer to the rules – a process akin to applying a bandage on a malignant wound. It's about transforming those structural rules that inform the conventions - a daunting scenario for, as Mao Zedong once said (and I paraphrase), transformation is not a tea party. Third, although a commitment to relations-repair must remain at the forefront of models and moves for post-colonizing Canada through the constructive engagement of a power-sharing partnership, caution is advised (Maaka and Fleras 2005). A relations-repair model of reconciliation must transcend those narratives that mistakenly dwell on resetting a once-working relationship, now damaged, yet salvageable. The challenge lies in decolonizing the gaze by dislodging a hegemonic mindset that triumphalizes Canada's mix of histories, narratives, and structures as essentially sound and fair when, in reality, both the system and the relationships within it operated within the parameters of a toxic Euro-whiteness.

In such a contested context, it's not surprising that some Indigenous peoples may be suspicious of the "re" in reconciliation for implying a return to something that never

existed (Schaap 2008). As John Amagoalik (2008) smartly asserts, Canada needs a conciliation4 rather than reconciliation since there is no harmonious past to return to. A history of genocide, colonialism, treaties as instruments of theft and dispossession, broken promises, and human rights violations has seen to that. Historic treaties may have paid lip-service to the concept of Indigenous nationhood, but the First Nations had to acknowledge the prior authority of the Crown and cede large tracts of land to British authorities for settlement and to prevent seizure by foreign powers (RCAP 1996). Even the numbered treaties negotiated by Canada on behalf of the Crown often dealt an unfair deal for Indigenous peoples. Indigenous peoples were not involved in drafting treaty texts or represented by legal counsel at the negotiation table, resulting in provisions that were ambiguously worded, at cross-purposes, and prone to miscommunication (Jai 2014). And although treaties may have embodied a commitment to share the land and respect Indigenous autonomy, these agreements were increasingly nullified by government policies of removal, denial, and suppression (RCAP 1996). In that the implementation of treaty terms and promises was problematic from the outset, the system is more than just broken and amenable to repairs for restoring it to health. It is intrinsically broke and requires a from-the-ground-up conciliation as a new beginning. Such an assessment draws attention to the complexities implicit in the politics of "brokenness", albeit within a framework that assumes Canada's relationship with Indigenous peoples *began broke* and is working precisely – and perversely - as planned.

However forceful such a view, there is yet another, more positive theme on reconciliation: treaty federalism.5 Treaties signed between the Crown and Indigenous peoples may prove a viable basis for restoring a unique yet broken relationship along reconciliatory lines (White, 2002; Flynn and Fraser 2018). For many Indigenous leaders and scholars, both the historic treaties as well as the Royal Proclamation of 1763 and the Treaty of Niagara in 1764 provide a template for a treaty-based model of reconciliation. The spirit and intent of the treaties are viewed as a solemn covenant among nations, rooted in a commitment to partnership, sharing, and mutual respect that persists as a relationship-building instrument (Jai 2014). Consider how Taiaiake Alfred (2005) argues that the treaties and the Royal Proclamation continue to matter because they hold out the promise of a restitution-based relationship that should exist between Canada and Indigenous peoples. True, once Canada became a country and inherited these treaty-based obligations unilaterally devolved to it by the Crown, it broke many of the guarantees and promises (Palmater 2012). Yet the fact that the terms of the treaties were routinely violated does not alter their underlying legitimacy as living agreements that require periodic reassessment of their spirit and intent (RCAP 1996). Reference to Canada as a treaty federalism puts pressure on restoring the principles and practices of treaties to their rightful place in advancing a nation-to-nation relationship (McIver 2018; Flynn and Fraser 2018). It also confirms the worth of drawing inspiration from the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission, both of whom endorse the centrality of a relations-based reconciliation along the lines of Two Row Wampum as a principled governance for living together separately, yet equally.

FOOTNOTES

1 The TRC incorporates into its reconciliation models aspects of family law based on the premise of an estrangment or dispute between spouses in addition to the Catholic notion of the Sacrament of Reconciliation that restores a repentent's

status through a process of confession, penance, and absolution (Wyile 2016).

2 For example, the 1996 R. v. Van der Peet Supreme Court ruling required Indigenous peoples as prexisting societies and distinct cultures to reconcile with Crown sovereignty [rather than vice versa (see Venne 1998).

3 The mandate of the TRC was explicitly directed to incorporate the 1998 Statement of Reconciliation by Jane Stewart, the then Minister of Indian Affairs and Northern Development, that is, to renew and restore a partnership to foster Indigenous peoples' participation in Canadian society in a manner that preserves and enhances their collective identities, communities and governances, and overall wellbeing (James 2012).

4 Reconciliation is defined as an act of restoring harmony to a prior unity, whereas conciliation refers to the action of creating harmony from a state of hostility or division (Wyile 2016).

5 My thanks to a reviewer of this essay for drawing attention to this important issue. See also Barsh and Youngblood (1980) and White (2002).

ACKNOWLEDGMENTS

I am both grateful and indebted to two reviewers of this essay for their helpful comments and suggestions. I would also like to acknowledge that this essay was written on lands traditionally occupied by the Haudenosaunee, Neutral, and Anishinaabe Peoples

REFERENCE LIST

Alfred, Taiaiake. 2005. Wasase. Indigenous Pathways of Action and Freedom. Peterborough: Broadview Press.

Alfred, Taiaiake 2009 Restitution is the Real Pathway to Justice for Indigenous Peoples. IN Response, Responsibility, and Renewal: Canada's Truth and Reconciliation Journey. G. Younging et al (eds). Ottawa: Aboriginal Healing Foundation.

Amagoalik, John 2008 Reconcilation or Conciliation? An Inuit Perspective. From Truth to Reconciliation: Transforming the Legacy of Residential Schools. M. B. Castellano et al (eds.). Ottawa: Aboriginal Healing Foundation

Anker, Kirsten 2016 Reconciliation in Translation: Indigenous Legal Traditions and Canada's Truth and Reconciliation Commission. Windsor Yearbook of Access to Justice 33: 15-44

Ansloos, Jeffrey 2017 The Treachery Behind Justin Trudeau's Reconcilation Talk. Maclean's. September 21.

Asch, Michael 2014. On Being Here to Stay. Treaties and Aboriginal Rights in Canada. University of Toronto Press

Barsh, Russel and James Youngblood Henderson 1980. The Road: Indian Tribes and Political Liberty. University of California Press.

Bloomfield David 2006 On Good Terms: Clarifying Reconciliation. Berlin: Berghoff Research Centre

Borrows, John 2002 Recovering Canada: The Resurgence of Indigenous Law. Toronto: UTP

Cairns, Alan, 2000. Citizen Plus. Vancouver: UBC Press

Chartrand, Vicki 2018. Broken System:Why is a Quarter of Canada's Prison Population Indigenous? The Conversation. February 18.

Cheng, C. and I. Chowdhury 2018 Canada's Reconciliation: Unwilling, Unready, Undeserving. The Varsity, April 3

Chrisjohn, R. D. and S. L. Young. 1994. Shadows and Substance in the Residential School Experience in Canada. A Report to the Royal Commission on Aboriginal Peoples. October

Cilliers, J. 2016 Reconciling After Civil Strife Increases Social Capital But Decreases Individual Well-being. Science, May 13

Clarke, Paul Knox 2015 Is 'Broken' the Right Way to Describe the Humanitarian System. ALNAP (Active Learning Network for Accountability and Performance). November 5.

Corntassel, Jeff 2012 Re-envisioning Resurgence: Indigenous Pathways to Decolonization and Sustainable Self Development. Decolonization: Indigeneity, Education & Society 1(1):86-96

Corntassel, Jeff and Cindy Holder 2008 Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self Determination in Australia, Canada, Guatemala, and Peru. Human Rights Review 9(4):465-480

Coulthard, Glen 2014. Red Skins, White Masks. Rejecting the Colonial Politics of Recognition. Minneapolis, University of Minnesota Press.

Department of Justice 2017 Principles Respecting the Government of Canada's Relationship With Indigenous Peoples. Ottawa.

Doxtader, Eric 2003. Reconcilation – A Rhetorical Concept/ion. Quarterly Journal of Speech 89 (4)267-292

Fiss, Tanis. 2004. Apartheid: Canada's Ugly Secret. Centre for Aboriginal Policy Change. Canadian Taxpayer Federation. Calgary.

Flanagan, Tom. 1999. First Nations? Second Thoughts. Montreal and Kingston: McGill-Queen's University Press.

Fleras, Augie 2017. Inequality Matters: Toronto: OUP

Fleras, Augie and Jean Leonard Elliott 1991. The Nations Within. Toronto: OUP

Flynn, Alexandra and Clara MacCallum Fraser 2018 Let Indigenous Treaties – Not the Duty to Consult – Lead Us to Reconciliation. The Conversation, October 29.

Government of Canada 2018 Royal Proclamation and the Covenant of Reconciliation. Ottawa. Retrieved November 2.

Henderson, Jennifer and Pauline Wakeham (eds). 2013 Critical Perspectives on the Culture of Redress. Toronto: UTP

Jai, Julie 2014 The Journey of Reconciliation: Understanding the Treaty Past, Present, and Future. Caledon Institute of Public Policy. January 28

James, Matt 2012 A Carnival of Truth? Knowledge, Ignorance, and the Canadian Truth and Reconciliation Commission International Journal of Transitional Justice 6(2):1-23

Kennedy, Mark 2015 Fixing Relations with Indigenous Peoples "the Unfinished Business of Confederation" New Minister Says. Ottawa Citizen, November15

Kulchyski, Peter 2013 Aboriginal Rights are Not Human Rights: In Defence of Indigenous Struggles. Arbeiter Ring Publishing.

Kymlicka, Will and Bashir Bashir 2008. The Politics of Reconciliation in Multicultural Societies. New York: OUP

Ladner, Kiera and Myra Tait (eds.) 2017 Surviving Canada: Indigenous Peoples Celebrate 150 Years of Betrayal. Winnipeg: ARP.

Maaka, Roger and Augie Fleras 2005. The Politics of Indigeneity. Dunedin NZ: Otago University Press.

Maddison, Sarah, Tom Clark, Ravi de Costa, and Peter Read (Conveners) 2016 The Non-Indigenous Responsibility to Engage: Scoping Reconciliation and its Alternatives. Academy Paper based on Workshop supported by the Academy of Social Sciences in Australia in conjunction with the University of Melbourne and Victoria University. April 15-16.

Manuel, Arthur 2017 The Reconciliation Manifesto: Recovering the Land, Rebuilding the Economy. James Lorimer & Sons.

Maynard, Robyn 2017 Policing Black Lives. Halifax: Fernwood

McIvor, Bruce 2018 Have We Witnessed the End of the Modern Treaty Process? First Peoples Law, June 28.

Mercredi, Jason 2017 Reconcilation is an English Word. Northern Public Affairs, July, pp. 58-61.

Nagy, R. and E. Gillespie 2015. Print Media Coverage of Indian Residential Schools. Transitional Justice Review 1(3):3-40

Neeganawedgin, Erica 2012 "Chattling the Indigenous Other": A Historical Examination of the Enslavement of Aboriginal Peoples in Canada. AlterNative 8(1)

Palmater, Pam 2012 Cited, in the 'Special Relationship' of Native Peoples and the Crown, Jennifer Clibbon, CBC News, May 22

Regan, Paulette 2010 Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada. Vancouver: UBC Press

RCAP (Royal Commmission on Aboriginal Peoples. 1996 Restructuring the Relationship. Volume 2. Ottawa: Government of Canada.

Saul, John Ralston 2009. A Fair Country: Telling Truths About Canada. Toronto:Penguin

Schapp, Andrew 2005. Political Reconciliation. London: Routledge

Sheppard, Colleen 2013 Indigenous Peoples in Canada: Understanding Divergent Conceptions of Reconciliation. ISID Aboriginal Policy Study Papers PB-2013-04. Montreal, McGill University.

Stanton, Kim 2017 Reconciling Reconciliation: Differing Conceptions of the Supreme Court of Canada and the Truth and Reconciliation Commission. Osgoode Digital Commons. Pp 21-32

Talaga, Tanya 2018 The Health Care System in Canada's North is Failing – But Not by Accident. The Niagara Falls Review, October 20.

TRC (Truth and Reconciliation Commission) 2015 Honoring the Truth, Reconciling for the Future. Summary of the Final Report of the TRC of Canada. Ottawa.

Tutu, Desmond 1999 No Future Without Forgiveness. New York: Image

Venne, Sharon 2000 Treaty Doubletalk in Canada. Indigenous Law Bulletin. Vol.45

Vine, Timothy E. M. 2016 The Truth and Reconciliation Commission of Canada and Crown-Aboriginal Relations. Unpublished PhD Thesis, London: University of Western Ontario.

White, Graham 2002 Treaty Federalism in Northern Canada:Aboriginal-Government Land Claims Boards. Publius: The Journal of Federalism 32(3):89-102/

Widdowson, Frances and Albert Howard 2008 Disrobing the Aboriginal Industry. Montreal/ Kingston: McGill-Queens' University Press

Wyile Hannah 2016 Lost in Translation: Conciliation and Reconciliation in Canadian Constitutional Contexts. International Journal of Canadian Studies 54:84-113

Sovereignty, Indigeneity, and Biopower: The Carceral Trajectories of Canada's Forced Removals of Indigenous Children and the Contemporary Prison System

This article was first published in Sites: A Journal of Social Anthropology and Cultural Studies:

MacDonald D. and Gillis J (2017). Sovereignty, Indigeneity, and Biopower: The Carceral Trajectories of Canada's Forced Removals of Indigenous Children and the Contemporary Prison System. 14:1 Sites: A Journal of Social Anthropology and Cultural Studies 35-55. http://dx.doi.org/10.11157/sites-vol14iss1id362

By: David MacDonald & Jacqueline Gillis

David MacDonald

Jacqueline Gillis

BIOGRAPHY

David B MacDonald is a mixed-race political science professor at the University of Guelph. He has parents originally from Trinidad by way of India and Scotland and was raised on Treaty 4 lands in Regina, Saskatchewan. He was appointed as the Research Leadership Chair for the College of Social and Applied Human Sciences in 2017. He has a PhD in International Relations from the London School of Economics. Before coming to Guelph, he was Senior Lecturer in Political Studies at Otago University, New Zealand (2002-07), and Assistant Visiting Professor at the ESCP Graduate School of Management, Paris, France (1999-2002). He has written four books, co-edited four, and have co-authored two political science textbooks with Oxford UP, in addition to book chapters and journal articles. His writing is on International Relations, comparative Indigenous politics, genocide studies, and critical race theory. He has a 5-year SSHRCC Insight Grant (with co-researcher Sheryl Lightfoot) on Indigenous practices of self-determination in comparative perspective, with a focus on Canada and Aotearoa New Zealand. Recent books are The Sleeping Giant Awakens: Genocide, Indian Residential Schools, and the Challenge of Conciliation (University of Toronto Press, 2019) and Populism and World Politics: Exploring Inter- and Transnational Dimensions, co-edited with F.A. Stengel and D.Nabers (Palgrave MacMillan, 2019). His website is www.davidbmacdonald.com.

Jacqueline Gillis is a PhD candidate in the University of Guelph's Political Science department. Her research explores the facilitators and barriers to the bridging of Indigenous traditional knowledges and settler knowledges in the collaborative creation of local level climate change strategies. Her work is funded by a Social Sciences and Humanities Research Council of Canada Doctoral Fellowship.

INTRODUCTION

For seven generations, the Canadian settler state sought to take a large proportion of Indigenous children from their parents and home communities, forcibly removing them to a network of Indian Residential Schools (IRS), where a central goal of the state and the four main Christian churches was to destroy all that was Indigenous in these children. A key purpose was to make Indigenous peoples disappear, along with their sovereign rights to land, language, spirituality, and governance. As this system wound down, Indigenous children were forced into foster, adoptive, and institutional 'care', a process known as the '60s Scoop'. These forms of child incarceration have a causal link to extremely high rates of Indigenous imprisonment in Canada's settler colonial justice system. Deena Rymhs has observed that 'The personal histories of indigenous people in Canada are so heavily entangled in carceral institutions that it is difficult to discuss the former without the latter' (2008, p. 2). In this article we explore the histories and intentions behind the IRS system, the 60s Scoop, and the prison system, deploying Foucault's notion of biopower in order to understand how Canada historically and contemporaneously has sought to discipline Indigenous peoples and make them disappear through biopolitical acts.

This article is divided into three sections. The first explores Foucault's work on biopower and emphasises how we might understand Canada as a historico-political field. The second part examines the IRS system as an example of a space imbued with biopower, which has both constructed Indigenous subjectivity and functioned to regulate Indigenous lives. Complementing this examination is an overview of the 60s Scoop, where the practice of removing children from their homes essentially continues into the present day in the child welfare system. Finally, we examine the contemporary incarceration of Indigenous peoples as a biopolitical space wherein Indigenous peoples are either made into more productive individuals or remain excluded from white, settler society. We argue that each of these institutions is connected with the strategic wielding of biopower on behalf of the Canadian state. We should also be clear however, that Indigenous peoples have been resilient in the face of these oppressive systems and people, and we note the rise of an Indigenous resurgence throughout the country, epitomised in movements such as Idle No More.

THEORETICAL FOUNDATIONS

The work of French political theorist Michel Foucault offers critical insights that can be applied to the form and function of the power relations between the Canadian state and Indigenous peoples. His account of governmentality has been instrumental in critiques of the IRS system as a totalising institution used by the settler state as a tool of aggressive assimilation (Million, 2000). Further, Foucault's notion of heterotopia, understood as places and spaces that act both to mirror and distort reality, has been applied to the Canadian Museum of Civilization. Miranda Brady (2013) recently observed that the museum offered a politically motivated reflection of the IRS system which tacitly suggested that this period of history is over, and obscured the continued legacies of the

system. Accordingly, Foucauldian thought has been prominent in our conceptualisations of the social control which has emanated from the state. In keeping with this tradition, we argue that the exercise of what Foucault calls biopower has been intrinsic to the strategies and mechanisms of the Canadian settler colonial state used to govern the social and biological processes of Indigenous peoples.

Foucault places his argument regarding biopower in historical context, tracing a genealogy from the deductive power to seize 'things, time, bodies, and ultimately life itself' exercised by the pre-modern sovereign, to the emergence of biopower within the modern state (1978, p. 136). To Foucault, the most visible manifestation of the pre-modern form of power was the sovereign king or monarch, who possessed the right to 'take life or let live' (p. 138). Imbued with this power, the sovereign could endanger the lives of his or her subjects – for example, in requiring them to defend the sovereign in war – or terminate the lives of subjects when they transgressed the laws of the sovereign (p. 135). 'Power in this instance was essentially a right of seizure: of things, time, bodies, and ultimately life itself; it culminated in the privilege to seize hold of life in order to suppress it' (p. 136). Critical to this type of power was the execution of power in the form of public displays of torture or carceral punishment; the sovereign perceived the violation of law as an act of war and thus an act which necessitated the reassertion of power (Foucault, 1977, p. 49).

Foucault then discusses biopower, a form of power which emerged in the modern state following the deductive model of power deployed in the pre-modern age (Foucault, 1978, p. 136). This new power focuses not on suppressing life with the threat or realisation of death, but rather, encompasses the right to 'foster life or disallow it to the point of death' (p. 138). Power here works 'to incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them' (p.136). As such, power is no longer something repressive but something that seeks to manage the growth and care of populations. Biopower manifests itself in two mutually-reinforcing forms. The first, the 'anatomo-politics of the human bodies', is 'centered on the body as a machine: its disciplining, the optimization of its capabilities […] the parallel increases of its usefulness and its docility, [and] its integration into systems of efficient and economic control' (p. 139). The second form, which Foucault calls biopolitics, 'focused on the species body, the body imbued with the mechanics of life and serving as the basis of the biological processes: propagation, births and morality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary' (p. 139). These two different mechanisms, the disciplining of the body and the regulation of the population, functioned in tandem to constitute a modern form of power, biopower. The sites of biopower vary considerably, Foucault posited, as it is 'present at every level of the social body and utilized by very diverse institutions (the family and the army, schools and the police, individual medicine and the administration of collective bodies) [; biopower] operated in the sphere of economic processes, their development, and the forces working to sustain them' (p. 141).

Key to the emergence of biopower is an analysis of how race and war related both to sovereignty and broader arguments around power. In Society Must Be Defended, Foucault (2003 [1997]) explains how war is not only a physical act but also a discourse that is relied upon in the formation of states. Specifically, he shows how war-making increasingly centralised authority while war simultaneously became foundational to discourses that were used to

explain the power of this centralised authority (p. 267). At the end of the sixteenth century, we began to see a challenge to this discourse of sovereign absolutism through the writings of Coke, Lilburne, and Boulainvilliers, who demonstrated how 'it was war that presided over the birth of States: not an ideal war – the war imagined by the philosophers of the state of nature – but real wars and actual battles; the laws were born in the midst of expeditions, conquests, and burning towns; but the war continues to wage within the mechanisms of power, or at least to constitute the secret motor of institutions, laws, and order' (p. 267–68). Foucault defines this shift as the creation of a historico-political field, which 'is constituted by certain elements: a myth of sovereignty, a counter-narrative and the emergence of a new subject in history' (Moreton-Robinson, 2006, p. 390). In France, for example, we see the creation of a counter narrative through the refutation of 'the myth of the inherited right to rule, [when] Boulainvilliers' history of the nobility advanced the idea that because of their investments in participating in war they too had rights' (Moreton-Robinson, 2009, p. 63). Here, then we see the possibility of 'a discourse in which truth functions as a weapon to be used for a partisan victory' (Foucault, 2003, p. 270).

Furthermore, we see a hierarchy of subjects within this discourse. Foucault explains that war 'divides the entire social body, and it does so on a permanent basis; it puts all of us on one side or the other' (2003, p. 268). In France, this change was exemplified by new forms of subjectivity, specifically, one which is tied intimately to the notion of superior and inferior races. Foucault states that 'when at the end of the sixteenth century and the beginning of the seventeenth, there appeared new political forms of struggle between the bourgeoisie on the one hand and the aristocracy and the monarchy on the other, it was, logically enough, the vocabulary of race struggle that was used to describe [these conflicts]' (2003, 101). In France, the historical myth, the counter-narrative, and the creation of subjects are all present. In the eighteenth century, a shift occurred in the types of binaries used when 'race surface[d] as a biological construct […] because disciplinary knowledges came into being and regulatory mechanisms were developed to control the population' (Moreton-Robinson, 2009, p. 63). Foucault writes that racism emerged at this point, when 'a whole politics of settlement (peuplement), family, marriage, education, social hierarchization, and property, accompanied by a long series of permanent interventions at the level of the body, conduct, health, and everyday life, received their color and their justification from the mythical concern with protecting the purity of the blood and ensuring the triumph of the race' (1978, p. 149). In this way, power becomes a productive force, resulting in the production of particular types of knowledge about race, life and health that are applied to the facilitation of 'normal' subjectivities.

In some Indigenous writing, biopower is viewed as having created Indigenous subjectivities. For example, Brendan Hokowhitu (2013) shows how biopower has been used to produce some Indigenous subjectivities and de-authenticate others. Specifically, he shows how in Aotearoa New Zealand 'the modernized urban Indigenous subject has become a corrupted and inauthentic form of Indigeneity due to its devolution from traditional culture and space. Thus, it is unworthy of being a Treaty Partner' (p. 362). Despite the majority of Māori residing in urban spaces maintaining and identifying with their tribal heritage (p. 357), they remain constructed as inauthentic and post-colonial subjects and, consequently, worthy of fewer rights and less recognition from the state (p. 370). Importantly, Hokowhitu notes how Māori urban and tribal groups

ultimately 'enabled the debate to be framed by a single-truth-seeking ideology […] [which is] detrimental to the broader vision of Indigeneity as it permitted the regulation of difference within the space of an "authentic reality"' (p. 368). Thus, Hokowhitu articulates how colonial regimes of truth discipline Indigenous peoples and thereby hinder self-determination efforts. Similarly, Moreton-Robinson (2009) demonstrates how the production of Indigenous subjectivities by and through the settler state circumscribes Indigenous sovereignty. Within the Australian context, she observes that 'patriarchal white sovereignty pathologies itself through the tactics and strategies it deploys in subjugation. Deceit, neglect, blame, abuse, violence and denial become tactics and strategies of war to subjugate the Indigenous enemies and their counter claims of sovereign rights' (p. 77).

We suggest that similar discursive strategies and the operation of biopower can be observed in the Canadian context. Like other settler colonial states, Canada's sovereignty was built on the myth of terra nullius: that the land belonged to no one and, further, that 'Indigenous peoples never believe in owning property and, therefore, Europeans weren't stealing anything' (Vowel, 2016, p. 237). This myth itself was crucial to justifying the theft of land and resources by white colonisers. A number of Indigenous theorists have, therefore, sought to counter claims of settler sovereign rights, asserting rightly that Indigenous sovereignty was never surrendered (Cardinal, 1977; Palmater, 2015; Vowel, 2016).

Furthermore, through colonisation, historically specific forms of subjectivity were produced, namely, the Indigenous person. In colonised states, an assumed innate racial hierarchy positioned white settlers as superior to Indigenous peoples. In Canada we also see the internalised stratification of Indigenous subjectivities within Indigenous communities. As Episkenew notes, some feel as though it is natural to position 'the settlers at the top, the Status Indians very low down, and the Métis and non-Status Indians at the bottom' (2009, p. 82). As an administrative classification of the federal government, Indigenous peoples have no control over status (Vowel, 2016, p. 26), and allocating status is a tool the state uses to demarcate (and thus control) supposedly 'inauthentic' and 'authentic' Indigenous people and consequently grant differentiated rights and privileges. This classification is similar to that of iwi (tribe, people) in New Zealand, which likewise designates and provides rights to authentic, 'traditional' Indigenous subjects; although whakapapa (genealogy) is primarily used to determine who is a member of which iwi, this does not fall to the government (Hokowhitu, 2013, p. 365). Canada as a political entity can then be seen as a historico-political field, marked by continuous efforts to protect whiteness from Indigeneity through biopower in an effort to defend society and make war in modern forms, from the residential school system onward to the prison system today.

INDIAN RESIDENTIAL SCHOOLS

The IRS system grew out of European settler population expansion and Indigenous population contraction during the nineteenth century. The Indigenous population declined to 1 per cent relative to the settler population (Truth and Reconciliation Commission, 2015a), and the changing demographic balance had a strongly negative effect on Indigenous peoples. The Truth and Reconciliation Commission (TRC) avers that as 'the Indian Department and the churches were becoming ever more closely allied, they began to treat Aboriginal people as colonized people whose lives it was their responsibility to control and change, rather than as independent, self-governing nations' (2015c, p. 56).

In Section 91 (24) of the British North America Act, which created the dominion of Canada, the federal government gave itself the power to enact legislation for 'Indians and lands reserved for Indians'. This allowed the government to begin a process of dissolving Indigenous governments and outlawing Indigenous cultures and ceremonies, while taking land and stripping Indigenous peoples of their political, legal, and economic power. The government also arrogated the power for itself to define who was or was not an 'Indian', and they could strip Indigenous peoples of their Indian 'status' at will. Canada's first Prime Minister, John A. Macdonald, was clear that Indigenous peoples were to be considered less than adults, describing the government's role as akin to 'guardianship as of persons underage, incapable of the management of their own affairs' (TRC, 2015a, p. 106–108).

The TRC outlines a process from the 1880s in which the federal government acted to 'jail First Nations leaders, disarm them, control their movements, limit the authority of their governments, ban their spiritual practices, and control their economic activities' (2015a, p. 131). The IRS system was established in the same period and modelled, as the TRC notes, 'on schools for delinquent and criminal youth, [which] represented a betrayal rather than a fulfillment of the Treaty promises to provide on-reserve education' (p. 130). While educational systems throughout the western world were coercive and often violent and abusive, Indigenous children were particularly targeted in Canada, as Grant Charles and Mike DeGagné note: 'throughout Canadian history it was only Aboriginal children who over an extended period of time were required to live in institutions because of their race' (2013, p. 346).

A larger climate of legal suppression made it exceedingly difficult for Indigenous parents to resist the coercive nature of the system. An illegal pass system was introduced by Indian Affairs in 1885, and the following year, in contravention of the treaties, pass books were distributed to Indian agents, and Indigenous peoples were forbidden from leaving their reserves without permission (TRC, 2015a, p. 127–28). In 1927, an amendment to the Indian Act made it illegal for Indigenous peoples to hire lawyers in pursuit of land claims (Miller, 2004, p. 17), and until 1960, Indigenous peoples with status did not have the right to vote federally, which meant they were essentially voiceless in terms of Canadian politics and disenfranchised in the settler electoral system. They could not vote in provincial elections in Quebec until 1969.

The IRS system, run by the federal government and the four main Christian churches, dates officially to 1883, when the federal government partnered the Anglican and Catholic churches in opening three 'industrial schools' in the prairie provinces (TRC, 2015a, p. 83). These schools operated from the 1880s to the 1970s, with the last of them closing only in 1996 (Haig-Brown, 1998, p. 31–32). At least 150,000 children passed through 139 schools, while the government was fully aware of the political ramifications of the schools as a means of quelling Indigenous political resistance to colonisation. Children would act as hostages, with one official remarking in 1886 that 'it is unlikely that any Tribe or Tribes would give trouble of a serious nature to the Government whose members had children completely under Government control' (TRC, 2015a, p. 167). Consequently, the IRS were part of an effort to wage a modern war against Indigenous peoples. As Foucault elaborated, this war is waged 'by a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from that norm, against those who pose a threat to the biological heritage' (2003, 61). In the Canadian context, white settlers emerged as the norm – thus necessitating the re-subjugation of Indigenous peoples in order to safeguard society.

Central to the operation of educational and religious institutions for Indigenous peoples was the concept of original sin, which was integral to the creation of the subjectivities of Indigenous peoples through colonisation. Indigenous peoples were seen as sinful, deviant, and abnormal, and needed to be subjected to rigorous control. Here, the main biopolitical goal of the IRS system, to foster non-Indigenous life, comes to light. As the TRC reports,

> The churches and religious orders that operated the schools had strong and interrelated conceptions of order, discipline, obedience, and sin [. . .] The approach to discipline in schools was based in scripture: corporal punishment was a biblically authorized way of keeping order and of bringing children to the righteous path. (2015a, p. 519)

Indeed, the government intended to end the separate existence of Aboriginal peoples as Aboriginal peoples. In 1887, John A. Macdonald argued, 'The great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion, as speedily as they are fit for the change' (Miller, 2004, p. 191). Duncan Campbell Scott, Deputy Minister of Indian Affairs, expressed similar sentiments in 1920: 'I want to get rid of the Indian problem […] Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department' (TRC, 2015d, p. 57). The TRC observes, 'The goal was assimilation: the end of special status for First Nations people, the effective dissolution of the reserves, and the termination of the Treaties (if there were no Indians, there could be no Treaty responsibilities)' (2015b, p. 13–14). Therefore, we contend that the schools themselves were premised upon biopower, and the institutions sought to defend settler society against itself and regulate Indigenous lives in ways we explore below.

BIOPOWER, DISCIPLINE, AND CONTROL IN THE IRS SYSTEM

In order to manage Indigenous peoples, in a very real sense adults were treated like children, and children were treated like criminals. Models for the IRS system were overtly penal in orientation. For example, the nineteenth-century reformatory in Citeaux, France, took in boys under sixteen who had been found guilty of criminal offences, and used physical abuse and hard labour to discipline and 'reform' them. In addition, the Catholic Oblate missions modelled many early schools on the French 'Durieu system', named for the Oblate leader Paul Durieu. Describing the thinking and methodology behind this form of educational system, historian J. R. Miller notes that the Oblates 'employed methods of total control over mission Indians for the purpose of effecting a permanent conversion to Christian religious values and practices'. Thus, 'The Durieu system aimed at eradicating all unChristian behaviour by means of strict rules, stern punishments for transgressors, and use of Indian informers and watchmen or proctors to ensure conformity and to inflict punishments as necessary' (Miller, 1996, p. 91).

Miller notes commonalities between the Durieu system and the type of carceral educational institutions established by the Anglican Church Missionary Society, which in the mid-nineteenth century set up highly controlled schools in what is now British Columbia (p. 91). Regardless of the models upon which the schools were based, biopower functioned in the IRS through both violent and non-violent forms of disciplining the body. Numerous practices were physically brutal. Traditional braids were cut, hair was shorn, and traditional clothing and all personal articles

were taken. Understanding the high level of coercion in the IRS system and reflecting a Foucauldian analysis, the Assembly of First Nations (AFN) described the schools as 'total institutions.' That is, institutions in which 'all activities of the children – eating, sleeping, playing, working, speaking – were subject to set time tables and to regulations determined by staff comprised of supervisors and teachers who, for the most part, belonged to a variety of Christian denominations'. Comparing the IRS to penitentiaries, the AFN highlighted the difference between the almost complete control wielded by adult staff and the almost total powerlessness of their young charges (AFN, 1994, p. 3–4). In addition, the use of corporal punishment was widespread, as was the incidence of verbal, emotional, physical, and sexual abuse (see Milloy, 1999, ch. 5–7; Miller, 1996, ch. 11). Thus, the schools made every effort to discipline the physical bodies of Indigenous children in order to mould them into something controllable and knowable and, importantly, something which would not threaten the life of the white population.

Furthermore, in the IRS system, we see numerous efforts to regulate the body through the internalisation of the coloniser's ways of being and knowing. For instance, children were baptised, and their Indigenous names were replaced with British or French Christian ones (TRC, 2015a, p. 599–600). Letters between parents and children were also tightly controlled, with frequent censorship (p. 604–605). Furthermore, the suppression of Indigenous languages and their replacement with those of the colonisers was government policy (TRC, 2015d, p. 57-58). Some school principals also sought to control marriage, encouraging or discouraging marriages, while parental wishes about whether or not their children should marry were largely disregarded, because parents and children alike were perceived as wards of the state (p. 654–56). Beyond this, residential schools sought to bombard Indigenous children with white culture, language, and values.

In New Zealand, Native Schools operated for nearly a century and were designed along parallel lines. State-run Native Schools made a similar effort to re-subjectify Indigenous children through assimilation into European culture, with a focus on eradicating the Māori language and replacing it with English (Timutimu, Simon, and Matthews 1998, p. 111). Ngareta Timutimu, Judith Simon, and Kay Morris Matthews explain how extensive these strategies of re-subjectification were: 'To assist in achieving its "civilizing" goals the Department saw it as important not only to place European buildings in Maori settlements but also to appoint European families to serve as teachers in the Native Schools and, "especially, as exemplars of a new and more desirable mode of life"' (1998, p. 111).

Likewise, in promoting the merits of residential schooling in 1958, one Catholic Oblate leader stressed the totalising influence of removing children from their communities. While day schools would mean that Indigenous children would still be 're-exposed to their native culture, however diluted, from which the school is trying to separate them', residential schools would 'surround its pupils almost twenty-four hours a day with non-Indian Canadian culture through radio, television, public-address system, movies, books, newspapers, group activities, etc.' (TRC, 2015b, p. 19).

Numerous survivors of the IRS system have described how these processes of subjectification impacted on them at the time. One recalled: 'I was lost. I felt like I had been placed in a black garbage bag that was sealed. Everything was black, completely black to my eyes and I wondered if I was the only one to feel that way' (TRC, 2012, p. 22–23). Others have reflected on the long-term impacts of these practices in schools which

sought to inculcate respect and admiration for whiteness and the idea that Indigenous people were inferior to white colonists (Parada and Wehbi, 2017, p. 10–11). Some suggest that Indigenous communities are significantly fragmented as a consequence of these internalisations. For example, communities are often split between church adherents and those following a 'traditional' life style (Quesnel, 2011). Others still have reflected on how the IRS system created a cultural, spiritual, and linguistic limbo-land for large numbers of Survivors. A considerable body of evidence has been gathered on this topic, particularly on the problems of intergenerational trauma and the many social problems that have resulted from IRS experiences (Woolford, 2009, p. 85). Through the IRS system, the Canadian state undertook population control against the perceived threat of Indigeneity, via both physical and internalised discipline.

In many ways, the IRS system deployed the tools and necessary elements of biopower. The system itself was predicated upon the subjectification of Indigenous peoples as abnormal, delinquent, and in need of salvation in comparison to the superior white settlers. The children were thus placed in residential schools, schools which Foucault might have classified as institutions 'within the social body which make the discourse of race struggle function as a principle of exclusion and segregation and, ultimately, as a way of normalising society' (2003, p. 61). In an effort to protect the integrity and primacy of the white settler, students were physically and mentally disciplined and re-subjectified in order to be useful to the Canadian settler state. Furthermore, doing so would thereby end the special status of First Nations people and dissolve their cultures in order to be rid of the Treaty responsibilities of the state, an occurrence common throughout settler colonial states.

60S SCOOP AND PRESENT-DAY CHILD WELFARE

The goal of removing Indigeneity from mainstream society was furthered by the 60s Scoop; the mass removal of Indigenous children from their families into the child welfare system, in most cases without the consent of their families or bands. This process occurred primarily from the mid-1960s to the mid-1980s. At the Scoop's peak, one in four status Indian children were separated from their parents for all or part of their childhood, with the number of Indigenous children taken totalling between 16,000 and 20,000 (Fontaine, Dan, and Farber, 2013). Many children were even shipped to the United States, resulting in Alston-O'Connor's suggestion that 'The long-term implementation and destructive intergenerational impacts of Canadian government policies during the Sixties Scoop are consistent with the United Nations definition for cultural genocide' (2010, p. 55). Metis children were also targeted in large numbers alongside First Nations children. Of the 60s Scoop, the TRC has observed that 'By 1980, 4.6% of all First Nations children were in care; the comparable figure for the general population was 0.96%'. They also observe that the Scoop pursued similar government policy goals to the IRS system but used different means, and was thus 'in some measure simply a transferring of children from one form of institutional care, the residential school, to another, the childwelfare agency' (2015b, p. 147–48).

The practice of removing Indigenous children from their communities continues, and currently there are more Indigenous children in care now than there were Indigenous children in residential schools in any given year. Indigenous children and families are significantly more likely to have interactions with the child welfare system, as they are over-represented in each stage of child

welfare decision-making. Indigenous families are four times more likely to be investigated by child welfare organisations than non-Indigenous families (Sinha et al., 2013). The over-representation within the investigation stage itself suggests that the normalising of Indigenous peoples as delinquent has disseminated into new spaces as Foucault suggested, specifically into the contemporary social work sphere. In addition, 48 per cent of the 30,000 children placed in out-of-home care in Canada identify as Indigenous (Aboriginal Children in Care Working Group, 2015, p. 7).

The impact of placement in out-of-home care is significant for both the children and their families. Youth in the child welfare system in Canada have higher incidences of mental health problems, behavioural issues, and low self-esteem (Fraser et al., 2015, p. 67). Former foster children have lower levels of education than the Canadian population at large and earn approximately $326,000 less income over their lives in comparison to the general population (Aboriginal Children in Care Working Group, 2015, 12). In addition, the ability of children who are placed in out-of-home care to maintain their cultural heritage and identity is a significant concern (Blackstock, Trocmé, and Bennett, 2004, p. 902).

The 60s Scoop and its legacies in the current child welfare system can be seen as examples of the exercise of biopower. They signal an effort by the Canadian state to defend society from Indigenous peoples, who have been and continue to be constructed as abnormal or dangerous. As Suzanne Fournier and Ernie Crey note, 'The white social worker, following hard on the heels of the missionary, the priest and the Indian agent, was convinced that the only hope for the salvation of the Indian people lay in the removal of their children. Adoptive families were encouraged to treat even a status Indian child as their own, freely erasing his or her birth name and tribe of origin, thus implicitly extinguishing the child's cultural birthright' (1997, p. 84). Similarly, Indigenous ways of knowing are denigrated, with practices related to Indigenous ways of child rearing, such as 'custom adoption' or community involvement in the upbringing of a child, constructed as inadequate in comparison to the ideal of the nuclear Anglo family (p. 82). Indigenous parents became constructed as lesser parents, who were incapable of taking proper care of their children. These messages ultimately legitimised the removal of children from their families and formed normalising discourses which became internalised within the young adoptees.

The severe consequences of this internalisation of the norm of inadequacy have been brought to light. Shandra Spears, for example, writes about the significant effect on her identity of being adopted into a white household, 'Having no Native women in my life, I had no way of knowing that I was a beautiful Native girl. I didn't even know that I was Native. There was no Native "mirror" that reflected my beauty; only a white mirror that reflected my difference'. Spears continues, 'Having no one to tell me that I was worth protecting, I "knew" that I was worthless and bad' (2011, p. 129). This experience has resulted in long-term problems that she terms the '"Adoptee Syndrome", a collection of shutdown and self-destructive behaviours […] very much like that of a bird who has fallen from the nest or a person who is so seriously ill that she or he can no longer eat' (p. 132). These effects are the outcomes of the functioning of both traditional disciplinary power and biopower on Indigenous subjectivities. They are based on colonial discourses of Indigenous parents being unfit and unable to adhere to Euro-centric parenting norms. These discourses are foundational to a biopolitical strategy which sought to eliminate Indigeneity from society, so as to make settler life 'healthier and purer' (Foucault, 2003, p. 255), and to create a

form of settler normativity. The impact of this functioning of biopower is long-lasting and has been linked to present-day incarceration, a system in which Indigenous peoples are significantly more likely to be placed in comparison to non-Indigenous peoples.

INCARCERATION

Across settler colonial states, there are significant discrepancies between Indigenous and non-Indigenous incarceration rates, and Canada is little different. In January 2016, Indigenous adults accounted for one-quarter (25 per cent) of the inmate population in federal penitentiaries, even though Indigenous peoples comprise only 4.3 per cent of the total population (Correctional Investigator Canada, 2016, p. 43). Similarly, in provincial/territorial correctional facilities, Indigenous adults accounted for 24 per cent of admissions (Reitano, 2016, p. 4). The over-representation of Indigenous peoples is especially pronounced for females, who represent 35 per cent of admissions to federal or provincial/territorial correctional services, while males account for 23 per cent (Reitano, 2016, p. 4). Indigenous youth are also disproportionately affected: while they constitute 6 per cent of the youth population, they make up 30 per cent of youth in custody (Corrado, Kuehn, and Margaritescu, 2014, p. 40).

As well as the concerns associated with over-representation, the treatment of Indigenous peoples in Canadian correctional facilities is a critical matter. A recent study by the Office of the Correctional Investigator Canada (CIC) found that Indigenous peoples accounted for 30 per cent of all use of force incidents in penal institutions (2016, p. 31). These incidents occur when verbal interventions fail, 'leading, in some cases, to some unhelpful or even punitive response options, up to and including the use of inflammatory agents, physical handling or restraints, disciplinary charges or placement in a segregation or observation cell' (p. 19). These escalations reflect a critical element of the modern carceral prison. Foucault noted, 'There remains, therefore, a trace of "torture" in the modern mechanisms of criminal justice – a trace that has not been entirely overcome, but which is enveloped, increasingly, by the non-corporal nature of the penal system' (1977, p. 16). While punishment of the mind is the most crucial form of torture within the carceral system, physical torture remains ever present. Indeed, while in custody, Indigenous peoples are significantly more likely to experience egregious acts of physical and mental violence.

The disproportionate incarceration of Indigenous peoples has long been the subject of government inquiries at the provincial and federal levels of government. The disproportionate rates of incarceration were first recognised in 1975 (Treasury Board Secretariat, 1975). Twenty years after this acknowledgement, the Royal Commission on Aboriginal Peoples concluded that the criminal justice system was still failing Indigenous people (1996, p. 39–43), recognising the interrelation between the lasting impact of colonisation and assimilation and the over-representation of Indigenous peoples in prison. Indeed, numerous scholars have sought to understand better the correlation between the intergenerational effects of the IRS system and the broader carceral systems that criminalise Indigenous subjects. For example, a recent study by Amy Bombay, Kimberly Matheson, and Hymie Anisman demonstrates the significant impact the IRS and other injustices against Canada's Indigenous peoples have had, in that 'relative to non-IRS adults, the IRS offspring reported greater cumulative childhood abuse, neglect, and indices of household dysfunction (e.g., being raised in a household affected by domestic violence, substance abuse, criminal behaviour, and mental illness)' (2014, p. 326). The over-

representation of Indigenous peoples in prison has been an ongoing reality for Indigenous communities, and has been an acknowledged concern of the Canadian state and academics for over forty years. We suggest that the way the prison system and the IRS compound health and social inequalities is intimately linked to colonial continuities in the subjectification of Indigenous peoples as abnormal and the need to reform such individuals through the institutionalised use of biopower.

In response to these critiques and inquiries, institutions at the federal and provincial levels have undertaken various revisions of and made additions to their criminal policies and procedures (see Boyce this issue). At the federal level, the Parliament introduced Bill C-41 1995, 'which provided that when sentencing, "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders"' (Jeffries and Stenning, 2014, p. 451). This provision resulted in the establishment of the Gladue Principles, which contend that social history factors, such as the impact of the residential school system, and systemic background factors, such as poverty, a lack of education, substance abuse, and poor living conditions, should be considered when sentencing and classifying Indigenous offenders (Jeffries and Stenning, 2014, p. 451). Though the Principles have the potential to address the over-representation of Indigenous peoples in the criminal system, their impact is disputed. A recent study noted that the influence of the Principles on the sentencing of Indigenous offenders was minimal as they had no impact on the sentencing decisions of judges (Welsh and Ogloff, 2008, p. 509). Likewise, the Correctional Investigator of Canada found that, despite previous policy directives to apply the Gladue Principles to correctional decision-making, they remain insufficiently applied in sentencing (2016, p. 43). Indeed, the significant increase in the number of Indigenous detainees in federal and provincial corrections facilities demonstrates the negligible impact of the Gladue Principles and the failure of state initiatives to address the society-wide stigmatisation of Indigenous peoples and the drive to re-subjectify Indigenous peoples.

Other methods of addressing the over-representation of Indigenous peoples in the Canadian criminal justice system have also been urged. For example, some have called for the establishment of Gladue Courts, specialised courts which would render judicial decisions sensitive to the Gladue Principles and the colonial history of Canada and take into account alternative programmes and treatments which are more in line with Indigenous principles (Roberts and Melchers, 2003, p. 215). Another alternative is circle sentencing, a practice which 'is conceptually derived from some First Nations governance practices in which community decisions are made collectively by elders and other community members sitting in a circle, each making some contribution to debate' (Jeffries and Stenning, 2014, p. 456). However, despite the acknowledged failure of the present judicial system to respond to the over-representation of Indigenous peoples within its confines and the numerous potential legal solutions, Indigenous peoples remain concentrated within the penal system.

Foucault offers insight into the reasons for such a penal concentration. The inscribing of norms on Indigenous bodies remains consistent, wherein they are constructed as delinquent and in need of discipline to become docile (Foucault, 1977, p. 138). This docility is facilitated in order to protect the perceived superior, white society from the abnormal, specifically, Indigenous subjectivity. We suggest that the heightened physical abuse of

Indigenous peoples in Canada's prison system represents an effort to discipline Indigenous peoples violently in order to re-subjectify them into mainstream, white, society. Thus, in the prison system we see the anatomo-politics of the human body come into action, as the prison system itself, with its supervision, segregation, and ordering of time, attempts to create a mechanised body, one which is disciplined, optimised, and docile in order to be re-subjectified in the normal order (p. 172); in this case, white settler colonial society.

CONCLUSION

The colonial institutions of the Canadian settler state have disrupted and destroyed the lives and communities of many Indigenous peoples since the state was created 150 years ago. In this history, we can identify numerous institutions imbued with biopower which have sought, by physical and internal means, to render Indigenous bodies less threatening to white mainstream and normal society. For example, the Indian Residential Schools were designed to use violent and non-violent forms of discipline in order to eliminate Indigenous peoples as peoples through their individualisation, separation and seclusion, and internalised subjectivity based on settler norms. We can add to these more general institutions, like day schools, prisons, and social services, which, due to their continued penalties for what is deemed to be delinquency and abnormality, function as means of Indigenous destruction. We can also look more broadly at the long-term social and health effects of living in a colonial society, which are not specifically related to any purpose-built or general institution.

Within a larger study of colonialism and the methods of settler management of Indigenous lives, Foucault's work on biopower allows us to understand better how the various institutions of the state discipline and punish Indigenous peoples for simply being Indigenous (Foucault, 1978, p. 139). Settler colonial studies suggests that settlers are mainly interested in land and resources, and primarily see Indigenous peoples as obstacles to settlement. Yet the history of totalising control in the residential schools, the 60s Scoop, and the carceral system demonstrates that something much more productive and devastating is at work. By this we mean a strong desire on the part of settler institutions to contain and re-subjectify Indigenous identities and either reform or destroy them.

ACKNOWLEDGEMENTS

The research and writing of this chapter is made possible by SSHRCC Insight Grant 430201. Ngāmihi nui, nya: wāh, kinana'skomitina'wa'w, miigwech, thank you, to Murray Sinclair, Marie Wilson, Wilton Littlechild, Kim Murray, Rick Hill, Paulette Regan, Jim Miller, John Milloy, Michael Cachagee, Ry Moran, Aimee Craft, Dawnis Kennedy, Sheryl Lightfoot, Kiera Ladner, Malinda Smith, and Brian Budd.

REFERENCES

Aboriginal Children in Care Working Group. (2015). *Aboriginal Children in Care: Report to Canada's Premiers.* Ottawa: Council of the Federation Secretariat.

Alston-O'Connor, E. (2010). The Sixties Scoop: Implications for Social Workers and Social Work Education. *Critical Social Work* 11(1), 53–61. http://www1.uwindsor.ca/criticalsocialwork/the-sixties-scoop-implications-for-socialworkers-and-social-work-education

Assembly of First Nations (AFN). (1994). *Breaking the Silence.* Ottawa: AFN.

Blackstock, C., Nico, T., and Bennett, M. (2004). Child Maltreatment Investigations among Aboriginal and Non-Aboriginal Families in Canada. *Violence against Women* 10(8), 901–16.

Bombay, A., Matheson, K., Anisman, H. (2014). The Intergenerational Effects of Indian Residential Schools: Implications for the Concept of Historical Trauma. *Transcultural Psychiatry* 21(1), 320–38.

Brady, M. (2013.) The Flexible Heterotopia: Indian Residential Schools and the Canadian Museum of Civilization. *Peace and Conflict: Journal of Peace Psychology* 19 (4), 402–20.

Cardinal, H. (1977). The Rebirth of Canada's Indians. Edmonton: Hurtig Publishers.

Charles, G. and DeGagné, M. (2013). Student-to-Student Abuse in the Indian Residential Schools in Canada: Setting the Stage for Further Understanding *Child & Youth Services. Child and Youth Services* 34 (4), 343–59.

Corrado, R., Kuehn, S., and Margaritescu, I. (2014). Policy Issues Regarding the Over-Representation of Incarcerated Aboriginal Young Offenders in a Canadian Context. *Youth Justice* 14 (1), 40–62.

Correctional Investigator Canada (CIC). (2016). *Annual Report of the Office of the Correctional Investigator:* 2015–16. Ottawa: Correctional Investigator Canada.

Episkenew, J. (2009). *Taking Back Our Spirits: Indigenous Literature, Public Policy and Healing*. Winnipeg: University of Manitoba Press.

Fontaine, P., Dan, M., and Farber, B. (July 19, 2013). A Canadian Genocide in Search of a Name. *Toronto Star.* http://www.thestar.com/opinion/commentary/2013/07/19/a_canadian_genocide_in_search_of_a_name.html

Foucault, M. (1977). *Discipline and Punish: The Birth of the Prison*. New York: Random House Vintage.

——. (1978). *The History of Sexuality,* Volume 1: An Introduction. New York: Pantheon.

——. (2003 [1997]). *Society Must Be Defended*. London: Penguin.

Fournier, S., and Crey, E. (1997). Stolen From Our Embrace: The Abduction of First Nations

Children and the Restoration of Aboriginal Communities. Vancouver: Douglas & McIntyre.

Fraser, S., Vachon, M., Hassan, G., and Parent, V. (2015). Communicating Power and Resistance: Exploring Interactions between Aboriginal Youth and Non-Aboriginal Staff Members in a Residential Child Welfare Facility. *Qualitative Research in Psychology* 13 (1), 67–91.

Haig-Brown, C. (1998). *Resistance and Renewal: Surviving the Indian Residential School*. Vancouver: Arsenal.

Hokowhitu, B. (2013). Producing Indigeneity. In C. Andersen and E. J. Peters (Eds.), *Indigenous in the City: Contemporary Identities and Cultural Innovation,* (pp. 354–76). Vancouver: UBC Press.

Jeffries, S., and Stenning, P. (2014). Sentencing Aboriginal Offenders: Law, Policy and Practice in Three Countries. *Canadian Journal of Criminology and Criminal Justice* 56 (4), 447–94.

Miller, J. R. (1996). *Shingwauk's Vision: A History of Native Residential Schools.* Toronto: University of Toronto Press.

Miller, J. (2004). *Reflections on Native-Newcomer Relations*. Toronto: University of Toronto Press.

Million, D. (2000). Telling Secrets: Sex, Power and Narratives in Indian Residential Schools'. *Canadian Woman Studies* 20(2), 92–104. Retrieved from http://cws.journals.yorku.ca/index.php/cws/article/view/7615

Milloy, J. (1999). *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*. Winnipeg: University of Manitoba Press.

Moreton-Robinson, A. (2006). Towards a New Research Agenda? Foucault, Whiteness and

Indigenous Sovereignty. Journal of Sociology 42 (4), 383–95.

——. (2009). Imagining the Good Indigenous Citizen: Race War and the Pathology of Patriarchal White Sovereignty. *Cultural Studies Review* 15 (2), 61–79. Retrieved from http://epress.lib.uts.edu.au/journals/index.php/csrj/article/view/2038/2216

Palmater, P. (2015). *Indigenous Nationhood: Empowering Grassroots Citizens.* Blackpoint: Fernwood.

Parada, H., and Wehbi, S. (2017). Preface: Anti-Oppression Research: Epistemologies, Principles, Directions. In H. Parada and S. Wehbi (Eds.) *Reimagining Anti-Oppression Social Work Research* (vii–xiii). Toronto: Canadian Scholars Press.

Quesnel, J. (2011). The Hidden Faith Battles on Canada's Reserves. *C2C Journal.* Retrieved from http://www.c2cjournal.ca/2011/12/the-hidden-faith-battles-on-canadas-reserves/

Reitano, J. (2016). Adult Correctional Statistics in Canada, 2014/2015. *Juristat* 36 (1). Retrieved fromhttp://www.statcan.gc.ca/pub/85-002-x/2016001/article/14318-eng.htm

Roberts, J., and Melchers, R. (2003). The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001. *Canadian Journal of Criminology and Criminal Justice* 45 (2), 211–42.

Royal Commission on Aboriginal Peoples. (1996). *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada.* Ottawa: Canada Communication Group-Publishing.

Rymhs, D. (2008). *From The Iron House: Imprisonment in First Nations Writing.* Waterloo: Wilfrid Laurier University Press.

Sinha, V., Trocmé, N., Fallon, B., and MacLaurin, B. (2013). Understanding the Investigation-Stage Overrepresentation of First Nations Children in the Child Welfare System: An Analysis of the First Nations Component of the Canadian Incidence Study of Reported *Child Abuse and Neglect* 2008. Child Abuse & Neglect 37, 821–31.

Spears, S. (2011). Strong Spirit, Fractured Identity: An Ojibway Adoptee's Journey to Wholeness. In M. Cannon and L. Sunseri (Eds.) *Racism, Colonialism and Indigeneity in Canada,* (pp. 127–33). Don Mills: Oxford University Press.

Timutimu, N., Simon, J., and Matthews, K. M. (1998). Historical Research as a Bicultural Project: Seeking New Perspectives on the New Zealand Native Schools System. *History of Education* 27 (2), 109–124.

Treasury Board Secretariat. (1975). *The Native Inmate within the Federal Penitentiary System.* Ottawa: Treasury Board Secretariat.

Truth and Reconciliation Commission of Canada (TRC). (2012). *Interim Report.* Winnipeg: Truth and Reconciliation Commission of Canada.

——. (2015a). Canada's Residential Schools: *The History, Part 1 Origins to 1939.* Montreal: McGill-Queen's University Press.

——. (2015b). Canada's Residential Schools: *The History, Part 2 1939 to 2000.* Montreal: McGill-Queen's University Press.

——. (2015c). T*ruth and Reconciliation Commission of Canada: Calls to Action.* Winnipeg: Truth and Reconciliation Commission of Canada.

——. (2015d). *Truth and Reconciliation Commission of Canada: Honouring the Truth, Reconciling for the Future. Summary of the Final Report of the Truth and Reconciliation Commission of Canada.* Winnipeg: Truth and Reconciliation Commission of Canada.

Vowel, C. (2016). *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada.* Winnipeg: Highwater Press.

Welsh, A., and Ogloff, J. (2008). Progressive Reforms or Maintaining the Status Quo? An Empirical Evaluation of the Judicial Consideration of Aboriginal Status in Sentencing Decisions. *Canadian Journal of Criminology and Criminal Justice* 50(4), 491–517.

Woolford, A. (2009). Ontological Destruction: *Genocide and Canadian Aboriginal Peoples. Genocide Studies and Prevention: An International Journal* 4 (1), 81–97. Retrieved from http://scholarcommons.usf.edu/gsp/vol4/iss1/6

Celebrating 30 Years of the Indigenous Blacks & Mi'kmaq Initiative: How the Creation of a Critical Mass of Black and Aboriginal Lawyers is Making a Difference in Nova Scotia

Published in *Directions* June 2019

By: Naiomi Metallic[1]

BIOGRAPHY

Naiomi Metallic is an Assistant Professor of Law and holds the Chancellor's Chair in Aboriginal Law and Policy at the Schulich School of Law, and practices law at Burchells LLP. Being from the Listuguj Mi'gmaq First Nation in Quebec, she was also the first Mi'gmaq person to be a law clerk at the Supreme Court of Canada. Along with holding a BA and LL.B from Dalhousie and being a proud IB&M Initiative alumna herself, she also has an LL.L from Ottawa and an LL.M from Osgoode. Her passion lies in harnessing law to promote the well-being of Indigenous peoples in Canada which she has shown and is showing through her legal practice, writing, teaching, and speaking.

INTRODUCTION

September 2019 will mark the 30th anniversary of the Indigenous Blacks & Mi'kmaq Initiative ("IB&M Initiative") at the Schulich School of Law at Dalhousie University (the "Law School"). Although the IB&M Initiative is one of the only dedicated support and access programs for Black and Aboriginal students in a Canadian law school and has garnered some recognition and awards, most in the Canadian legal profession are not familiar with it. As a proud alumna of the IB&M Initiative[2], on this occasion of the IB&M Initiative 30th year, I wish to shine a spotlight on the incredible impact this program has had on Canada's legal profession and justice system.

The IB&M Initiative has been dogged at times in its history by misconceptions and unfair criticism; for example, then Premier Russell MacLellan made public comments questioning the competence of graduates

of IB&M Initiative. Other members of the legal community labour under similar misconceptions, including that IB&M graduates undertake different (and easier) legal training than other law students and that the program produces graduates who are unprepared or unqualified for the practice of law.[3] The purpose of this article is to show that the Initiative, in addition to ensuring that the legal profession becomes more representative of historically marginalized communities, has had a transformative effect on the legal profession and justice system. In light of this, it is surprising to me that there are still so few affirmative action programs in Canadian law schools.[4] My hope is that this celebratory account of the IB&M Initiative will persuade other law schools and governments of the benefits of such programs and encourage them to create and support similar programs.

NOVA SCOTIA, DONALD MARSHALL JR. AND THE IB&M INITIATIVE

Like every other province and territory in Canada, Nova Scotia has had a long history of pushing certain peoples to the margins of society. In Nova Scotia's case, this includes both the Mi'kmaq people[5] as well as African Nova Scotians[6] (who have also referred to themselves as 'Indigenous Blacks' at times and this name would be reflected in the title of Initiative[7]). Both groups have faced significant economic and social marginalization and discrimination over centuries from white settler society in Nova Scotia and their governments. It is beyond the scope of this article to relay those experiences in detail. However, this is not to suggest that either group were passive victims of colonialization. One can find many stories of resistance and resilience from both communities over this time period, and since the 1960s, both communities have actively and continuously advocated for reform and social justice for their peoples.[8]

Although Nova Scotia is not unique from other provinces in having a long history of racism against its First Nations or African Canadian populations, it does stand out for having been the first (and only one of a few) to have that racism put on national display through a public inquiry.[9]

I am referring, of course, to the *1989 Royal Commission on the Donald Marshall, Jr., Prosecution*, addressing the wrongful murder conviction of Donald Marshall Jr., a Mi'kmaq man from the Membertou First Nation in Sydney, Nova Scotia. The travesty of justice that was Donald Marshall Jr.'s wrongful conviction has had profound effects in a multitude of areas—too many to enumerate here—but certainly, this includes a lasting impact on legal education and the legal profession in Nova Scotia.

In 1971, Marshall was charged and convicted with the murder of his friend, Sandy Seale, a young African Nova Scotian man, who was in fact killed by Roy Ebsary, an older white man, whose violent and senseless act was motivated by racism.[10] Marshall spent 11 years incarcerated for a crime he did not commit. In 1989, a Royal Commission of Inquiry concluded that the criminal justice system failed Donald Marshall, Jr. at virtually every turn, from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The Royal Commission found that these failures were due, in part, to the fact that Mr. Marshall was an Aboriginal person.[11]

To address the numerous failures of Nova Scotia's legal system, the Royal Commission's report ("the Marshall Report") contained 82 recommendations calling for changes in a wide number of areas. To address the systemic racism that the Commission identified in so many facets of Nova Scotia's legal system, the report called on various actors in the justice system[12] to implement a variety measures to (1) increase the representation of racialized

and Aboriginal peoples in positions of power in the legal system; (2) increase understanding by all justice system actors of the systemic discrimination issues faced by Mi'kmaq and African Nova Scotian communities in the province; and (3) create policies and committees to further positive race relations.[13]

These recommendations have been implemented to varying degrees by different actors in the justice system.[14] Among the more successful initiatives that followed the Royal Commission, were the creation of a Racial Equity Committee of the Nova Scotia Barristers Society (the self-governing body of the legal profession in Nova Scotia, "NSBS") in 1990, as well as the creation of an Equity Office within the NSBS in 1994 to be advisory to Bar Council on matters relating to race relations.[15] The recommendations also led to initiatives within the Nova Scotia Department of Justice promoting greater hiring of Mi'kmaq and African Nova Scotia lawyers.[16]

The Mi'kmaq and African Nova Scotian communities of Nova Scotia also responded to the Marshall Inquiry by pushing for greater equality of access to university education. Some gains had already been made in 1971 with the creation of the Transition Year Program, following demands of both communities for equal access to Dalhousie University.[17] In the lead-up to the Marshall Report, responding to calls from the Mi'kmaq and African Nova Scotian communities, the President of Dalhousie created a Task Force on Access for Indigenous Black and Native People with a mandate to propose a strategic plan whereby Dalhousie could most appropriately serve the needs of the Black and Native communities.[18] The Task Force was Chaired by a professor from the Law School.[19]

Unsurprisingly, given all of these factors, a key recommendation coming out of the Task Force Report, issued in early 1989 and entitled *Breaking Barriers: Report of the Task on Access for Black and Native People,* called for the creation of the IB&M Initiative.[20] The idea for such a program was not generated from scratch by the Task Force: a couple of years earlier, in 1986, some administrators and professors at the Law School had made an unsuccessful grant application to the American Law School Admissions Council for the creation an access program for minority students, which served as an early prototype.[21] Members of the Law School, working with representatives from both the Mi'kmaq and Indigenous Black communities, advanced the proposal for the IB&M Initiative through the Law School's Faculty Council and planned for its commencement in September 1989. Donor funding was secured to support the first cohort of students; however, sustained funding was less certain.[22] Clearly, the Royal Commission was paying attention to the creation of the IB&M Initiative. In its Report, issued in December 1989, the Commission commended favourably on the creation of the Initiative, stressed that sustainable funding for it be a priority, and called upon the governments of Canada and Nova Scotia, and the Nova Scotia Bar, to provide financial support to the Initiative.[23] This recommendation was implemented.

A significant part of the mandate of the IB&M Initiative is to increase the representation of Indigenous Blacks and Mi'kmaq people in the legal profession. It does so by reserving 12 spots in each in-coming first-year class of the Law School for 6 students from the Indigenous Black Nova Scotian community and 6 students from the Mi'kmaq community. The Initiative currently defines "Indigenous Black Nova Scotians" as individuals who are Black and were born and raised in Nova Scotia, and who have a substantial connection with a historically Black community in Nova Scotia. Mi'kmaq are defined as individuals who are Mi'kmaq and were born and raised in Mi'kmaqi or have a substantial connection with a Mi'kmaw community in Mi'kmaqi. The IB&M Initiative places the admission of African Nova Scotian and Mi'kmaq students as its highest priority.

However, other Black and Aboriginal students across Canada are also urged to apply. If, in any given year all qualified Indigenous Blacks and Mi'kmaw students have been admitted and there are still spaces available, Black students who are not indigenous to Nova Scotia and Aboriginal students who are not Mi'kmaq, may be admitted through the IB&M category.[24]

The Initiative takes a holistic approach to assessing applicants from the Mi'kmaq or African Nova Scotian communities, considering factors like previous work history, family responsibilities, commitment to community, and individual experiences of overcoming adversity, in addition to GPA and LSAT scores. Further, the Initiative recognizes that, for a variety of reasons, some of which may be systemic, some students may not have had the same opportunities as other students to excel in their studies or achieve exceptional LSAT results.[25]

Further, the Initiative provides students with various supports, including a 4-week preparatory pre-law program, mentoring and academic support (upon request) while in law school, as well as some financial support,[26] all in order to aid students' success at law school. The Initiative is overseen by a Director, who is a member of the faculty and teaches law school courses in addition to being the administrator of the Initiative.[27] The Director is also supported by an administrative assistant and a Community Advisory Council, made up of Mi'kmaq and Indigenous Black lawyers, community members, Law School faculty members and the Director of the Initiative. The Advisory Council has played a critical role in ensuring that the Initiative responds to the needs and concerns of Mi'kmaq and African Nova Scotian communities.[28]

THE IB&M INITIATIVE'S IMPACT ON NOVA SCOTIA'S LEGAL SYSTEM

Although systemic racism and inequality continues to exist in Nova Scotia and not all of the 82 recommendations in the Marshall Report have been fully implemented,[29] the initiatives and programs that have arisen in response to Donald Marshall Jr.'s wrongful conviction are changing both the face of the legal system in Nova Scotia (by making it more diverse) and the attitudes of those in it (by educating and raising awareness of critical race issues). The IB&M Initiative has been crucial in this regard.

At the time of the Marshall Report, of the almost 1200 lawyers in Nova Scotia, none were Mi'kmaq and only about a dozen were Black.[30] As of the fall of 2018, there are 2961 lawyers, both practising and non-practising, in Nova Scotia.[31] The first cohort of the Initiative started at Dalhousie Law School in the fall of 1989, and over the past thirty years, over 200 Black and Aboriginal IB&M students have graduated from Dalhousie Law School.[32] This has materialized into 64 members of the Nova Scotia Barristers Society who are Mi'kmaq or Aboriginal as of 2018-2019, representing 2.2% of total lawyers in the province. There are 79 lawyers in Nova Scotia who are African Nova Scotian or Black as of 2018-2019, representing 2.7% of the total lawyers in the province.[33] Of course, not all of these individuals are IB&M alumna, but many are. Finally, five more IB&M graduates articled in Nova Scotia in 2018-2019.

Unfortunately, there are no national statistics on the ethnic/racial composition of Canadian legal profession that we can use to assess Nova Scotia's progress on increasing diversity within its bar. The Federation of Law Societies publishes snapshots comparing provincial and territorial law societies statistics on their members, but these only compare gender and years of call comparison.[34] I suspect this is so because some law societies do not collect statistical data on the ethnic/

ractial composition in their annual lawyer reports. Unfortunately, that only leaves us with anecdotal comparisons. In this regard, I often compare Nova Scotia to New Brunswick to illustrate the difference the IB&M Initiative has had on the composition of the legal profession in the Maritimes. New Brunswick has two law schools, 15 First Nations communities (2 more than Nova Scotia) as well as historic black communities, but to my knowledge does not keep any statistics on diversity within the legal profession and only has about has about six practising First Nations lawyers, two of whom are also licenced and primarily living in Nova Scotia. I do know the number of African New Brunswickers practising in that province.

What is also impressive about Nova Scotia is the range of legal workplaces in which we now find Aboriginal and Black lawyers within the province. Nova Scotia Legal Aid ("NSLA"), which has about 100 staff lawyers, now has 2 Aboriginal and 9 Black lawyers on staff and has a practice of hiring African Nova Scotian and Mi'kmaq articling students. Fifteen IB&M alumni work for the Nova Scotia Department of Justice, including within the Public Prosecution Services ("PPS"). Mi'kmaq lawyers within PPS have been instrumental in leading Indigenous awareness initiatives within their workplace and in developing a ground-breaking policy for PPS, entitled, "Fair Treatment of Indigenous Peoples Prosecution Policy to Direct Crown Attorneys" made public in February 2019[35]. Six alumni also work for Justice Canada. We also now find IB&M alumni who are partners and associates in large, medium and small firms, as well as a number of sole practitioners or proprietors their own small firms. Although the representation of IB&M alumni in private practice has seen the slowest growth, this is also now changing.[36]

In addition, a number of Mi'kmaq IB&M alumni have gone on to work as in-house legal counsel for Aboriginal organizations in the province and for First Nations governments. As well, some Mi'kmaq alumni have used their legal training to act as policy advisors to First Nations governments and the Mi'kmaq Grand Council. One alumnus is currently the Chief of his First Nation, two others are Senior Mi'kmaq Advisors presiding over the Mi'kmaq of Nova Scotia's modern-day treaty negotiations, and another has led the Nova Scotia Branch of the Native Women's Association and has been a key spokesperson nationally on the issue of missing and murdered Indigenous women. All of these individuals are pursuing important goals on behalf of the Aboriginal community.

Four IB&M alum have been appointed to the judiciary, three to the Nova Scotia Provincial Court and one to the Nova Scotia Supreme Court. Further, there is a growing pool of alumni with the requisite number of years of experience, as well as the credentials and reputation that would make them excellent candidates for the bench. We also now have two Mi'kmaq lawyers in the province (one of whom is an IB&M alum) that are small claims court adjudicators in the province. Another Mi'kmaq lawyer is now Chair of the Nova Scotia Human Rights Commission. Other impressive in-roads forged by IB&M alum include court clerkships, six Queens Counsel recipients, a member of the Legislative Assembly and Attorney General of New Brunswick, and lecturers, as well as law professors.

IB&M graduates are also active volunteers in the legal community and beyond. We have had five IB&M graduates sitting as members of Bar Council ("Benchers") over the past decade with the current second vice president set to be the first Mi'kmaq to hold the position of Bar Society President,[37] and many more who have sat on Bar Council committees, including the Racial Equity Committee ("REC"). As a past Bencher, I would like to put some emphasis on the difference that I feel having Aboriginal and Black lawyers on Bar Council makes. Without a doubt, having benchers at the table who can be strong advocates for the importance of diversity in the legal profession, as well remind the other members of Council about the access to justice needs

of their communities (as well as that of other historically disadvantaged groups), has changed things. Perhaps more than ever before, the NSBS now devotes significant attention to equity and diversity issues and responding to the Truth and Reconciliation Report in its strategic plan,[38] having equity, diversity and non-discrimination feature prominently in its regulatory objectives and management systems for ethical legal practice,[39] emphasizing lawyer cultural competence,[40] and supporting community projects on Indigenous child welfare and African Nova Scotia land titles issues.[41]

Since 2011, Nova Scotia Legal Aid ("NSLA") has embarked on a 'Diversity Refocus'. This has translated into NSLA creating a Racial Diversity Committee, taking steps to raise the profile of NSLA with IB&M Initiative students, and creating an Aboriginal Justice Initiative steered by a committee made up of the NSLA's Aboriginal lawyers and Commissioner. Some of the concrete initiatives that have resulted from the coalescing of these developments, include (1) the provisions of in- or near-community services in both Mi'kmaq and African Nova Scotia communities by NSLA lawyers; (2) increased outreach with these communities to determine how NSLA can improve service delivery; (3) forming partnerships with community groups to support legal reform in certain areas;[42] (4) the addition of a self-identification questionnaire for Aboriginal clients on the NSLA's intake questionnaire;[43] and (5) dedicated time for cultural competence CPD at each annual staff meetings of the NSLA and other in-house PD sessions.

Beyond the NSBS and NSLA, IB&M alumni sit on numerous other boards and committees, including the Provincial Judicial Appointments Committee, the federal Nova Scotia Judicial Appointments Committee, the Commanding Officer Advisory Board of the RCMP, the Review Board for the Office of Nova Scotia Police Complaints Commission, and various corporate boards, boards of education, charities, and university boards. Recently, an IB&M alumna was named as Chair of Dalhousie's Board of Governors.[44] In my view, the value that the IB&M graduates bring to these boards in educating others around the table about Aboriginal and African Nova Scotian communities and their histories and continuing challenges, cannot be overstated. The above are only some of the many examples of how the presence of IB&M graduates in Nova Scotia's legal profession is making positive changes for the Mi'kmaq and African Nova Scotia communities in Nova Scotia and beyond.

Finally, it bears mentioning that the IB&M Initiative has received significant recognition for its critical work in promoting diversity and critical race awareness. The list of awards the Initiative has won include CBA Touchstone Award (2010), the Canadian Race Relations Foundation Award of Excellence Education (2014), the CBA-NS Branch – Law Day Award (2015), and the Lexpert Zenith Award celebrating Diversity and Inclusion (2016).

WHAT MAKES THE SITUATION IN NOVA SCOTIA SO SUCCESSFUL?

Most law schools in Canada have publicly committed to the principle of diversity.[45] In this regard, many have special admission categories for Aboriginal and other historically disadvantaged communities that consider more than just GPA and LSAT scores.[46] However, a study of Canadian law school admission criteria suggests that flexible admission criteria alone are not sufficient to achieve diversity in the legal profession.[47] The provision of financial support (given that many students from historically disadvantaged communities and their families cannot afford law school, especially in the era of sky-rocketing law school tuition), as well as academic support, have been identified as key factors to ensuring students from historically disadvantaged backgrounds make it through

law school and enter the legal profession.[48]

As noted earlier, the IB&M Initiative offers both financial and academic supports, in addition to holistic admissions criteria, and there is no question that this is crucial for IB&M students' success in law school. But another feature of the Initiative that is so important but often overlooked—which I wish to highlight—is the creation of a community of law students and alumni that support and help each other. The value that belonging to this community brings to the professional development of IB&M students and alumni deserves significant emphasis.

Speaking as an alumna of the IB&M Initiative, I can say that from the beginning of my law school career, when I participated in the 4-week pre-law program with the other incoming IB&M students, I felt myself to be part of a community and that sense of belonging lasted throughout my time in law school and beyond. I have drawn much strength, support and insight from my fellow IB&M colleagues.

Being in the IB&M Initiative gives students and graduates a sense of assuredness and belonging that a minority student simply admitted through general or discretionary law school admissions criteria might not get from their law school experience. The Initiative creates a critical mass of Aboriginal and Black students; students are assured that, in any given year, there will be about 35 other people in the Law School who look like them and come from similar backgrounds. They are also now assured that they will have a few professors from their communities.

The key role of the IB&M Director in the success of the Initiative also deserves emphasis. The Initiative has had three directors from the Mi'kmaq and African Nova Scotia communities to date, with the current Director, Michelle Williams, having served in the position for over 15 years. The Director plays a critical role not only in supporting, advising and mentoring students, but also in advocating for students and the Initiative more broadly. The institutional and financial support that the Initiative depends upon has fluctuated at times, and the Director has played an essential role in assuring the ongoing vitality of the program. It is fair to say that without the tireless efforts of the current and past directors, it is unlikely that the Initiative would have had the longevity or would have generated and maintained the level of cohesion that it has. In addition to this, the Director serves as a public face of the Initiative, promoting and raising awareness in the Mi'kmaq and African Nova Scotia communities and beyond, as well as championing alumni. Finally, the Director serves as a catalyst for change in the broader community, using her role to advocate for greater representation of members of the Mi'kmaq and African Nova Scotia communities within all parts of the legal profession, including within the bar society and judiciary.

It is also significant that the IB&M Initiative is a formal institution at the Schulich School of Law, not simply an admission category. As a formal institution, the Initiative has a mandate and history, giving it permanence and legitimacy that doesn't exist where diversity is sought simply through admission criteria. In this regard, beyond its important work in increasing representation, the Initiative also has a mandate to foster systemic changes in the legal system by inclusion of diverse perspectives, achieved through:

- facilitating initiatives that contribute to the production of legal knowledge from Aboriginal and African Nova Scotian perspectives through organizing guest lectures, assisting with student-led and other conferences, and encouraging community-legal partnerships and activities;
- encouraging scholarly research on and from Aboriginal and African Canadian/Nova Scotian perspectives; and
- supporting the work of the IB&M Community Advisory Council, IB&M Standing Committee and related committees of the Law School &

University.

Further, the existence of a formal institution permits students and alumni to rally around it and celebrate it. Indeed, the Initiative holds at least two annual receptions for students and alumni to meet and network with each other, as well as holding celebratory events (lecture series and gala dinners) for large milestones, such as the Initiative's 20th and 25th anniversary and soon the 30th anniversary. Such events are integral to the students and alumni of the IB&M Initiative seeing themselves as a community.

Outside of larger formal events, throughout their time at the law school, the IB&M students are reminded that the Initiative's purpose is to combat systemic racism in the justice system and the role they play in this. As a result, critical race issues become common topics of discussion during both formal and informal gatherings of IB&M students and graduates. This leads to many IB&M students and graduates feeling comfortable in raising and addressing issues of race, class and privilege in various settings.

Following graduation, another important institutional legacy of the Marshall recommendations, the Racial Equity Committee ("REC") of the NSBS, provides an important forum allowing IB&M alumni, and other racialized and Aboriginal lawyers practising in Nova Scotia, to raise critical race issues affecting the legal profession and justice system, as well as support important justice projects within the Aboriginal and African Nova Scotia communities. The REC serves to extend and enhance the sense of community created by the IB&M Initiative.

It is the qualities that the IB&M Initiative instils in its graduates—a sense of assuredness, a sense of community and belonging, and confidence in raising critical race issues—that is now allowing these alumni to go out and change attitudes and raise awareness about their communities in the various areas in which they work and volunteer. Alumni, along with the Initiative's Director, have also been instrumental in defending and advocating for the continued need for the Initiative within the law school to the university at large and the government during those times when there has been waning institutional support for the Initiative and addressing institutional racism. Changing attitudes and eliminating systemic racism does not happen overnight, but now, some 30 years since the Marshall Report, we are beginning to see some profound changes in the legal profession in Nova Scotia.

CONCLUSION

Other provinces in Canada do not need to have experienced a wrongful conviction of an Indigenous or racialized person like Donald Marshall Jr., or some other travesty of justice laying bare the systemic racism inherent in its legal system, to achieve what Nova Scotia has. That would be beyond perverse. Systemic racism persists in legal systems across the country; no travesty of justice has to occur to prove this. Provincial governments and law schools can and should act now to create and support access and programs like the IB&M Initiative. The same goes for legal regulators, regarding the creation of Equity Offices and Racial Equity Committees. A commitment to equality and eliminating systemic discrimination in the legal system is all that is needed. The commitment to substantive equality and the explicit recognition of affirmative action programs set out in Canadian Charter of Rights and Freedoms alone would be a sufficient justification for creating such programs and initiatives. The Calls to Action from the Truth and Reconciliation Commission, and the recent Calls to Justice of the Missing and Murdered Indigenous Women and Girls Inquiry further bolster this.[49]

By creating a critical mass of Aboriginal and Black students within the law school, and nurturing and supporting those students, the IB&M Initiative creates conditions will allow Aboriginal and Black graduates not just to 'make it' into the profession, but to thrive as a

vibrant community within the legal profession. The Initiative creates Aboriginal and Black lawyers who feel strong in their identity, who have a network of peers to draw strength and support from, and who have the courage to take on positions in places of power where their communities have been historically excluded, and bravely raise issues of race and equality in those spaces.

The impact that IB&M graduates have in raising awareness of race issues and changing the discourse around race and equality issues in places of power can be quite significant. This can be seen from the few examples I have given above of changes that have occurred at both the NSBS, NSLA and PPS in the past few years since IB&M grads have been participating and influencing the decision-making structures of those organizations. Other law schools, with support from their provincial governments, federal government and legal societies, should follow the Schulich School of Law's and Nova Scotia's leads and create access for those racialized groups that remain among the most marginalized in their jurisdictions.

FOOTNOTES

1 I would like to thank third year (now graduated) student, Katie Glowach for her help in preparing this article, as well as current IB&M Director, Michelle Williams, for providing comments on several drafts.

2 I am a Mìgmaq woman (originally from the Listuguj Mìgmaq First Nation in Quebec) and a lawyer in Nova Scotia. I hold law degrees from the Schulich School of Law ("Schulich") at Dalhousie University (LL.B), Ottawa University (LL.L) and Osgoode Hall Law School at York University (LL.M). I was the first Mìgmaq person to clerk at the Supreme Court of Canada (2006-2007). I have been practising law in Nova Scotia since February 2008 in private practice at Burchells LLP, and in that regard have sat on various committees including the Racial Equity Committee of the Nova Scotia Barristers Society, the Bar Council of the NSBS, the board of directors of the Nova Scotia Legal Aid Commission, and Dalhousie University's Board of Governors. On July 1, 2016, I began a full-time tenure track appointment at Schulich as an assistant professor and holding the Chancellor's Chair in Aboriginal Law and Policy.

3 Premier Russell MacLellan later apologized. See CBC News, "Employment equity coming for N.S. law firms", February 20, 1999.

4 Note that the Allard School of Law at the University of British Columbia has an Indigenous Legal Studies program that supports up to 25 Indigenous students per year. However, the program does not have dedicated funding for students, although they can apply for several scholarships and awards. The law school at the University of Saskatchewan's Native Law Center also offers a Native Law Summer Program, which is an eight-week summer course that provides Aboriginal students from across Canada an opportunity to study first-year Property Law before beginning law school in the fall. Many students take this course as a condition of their acceptance to law school. It is not a full law degree program, however, nor does it provide dedicated funding for students to attend the program. Finally, there is the Akitsiraq Law School, a law program designed for Inuit students from Nunavut, now in its third co-hort of students. The program is offered through partnerships with other law schools, currently the University of Saskatchewan, wherein professors travel to Nunavut and teach in intensive periods. Students are provided both financial and other supports for the program.

5 The land mass that we now know as Nova Scotia has been part of the Mi'kmaq people's territory, Mi'kmaki, for some

11,000 years or more. While treaties were signed between the Mi'kmaq and British in the mid-1700 to share these lands and live in peace and friendship, starting in the mid -19th century, Mi'kmaq were forced from their lands onto reserves through a combination of sickness from diseases that were new to North America, colonial laws, policies and a growing settler population that wanted these lands for their own settlement. On reserve, provincial and federals prohibited Mi'kmaq from engaging in their traditional livelihoods and forced their economic marginalization and sought to assimilate Mi'kmaq a number of different ways.

6 Michelle Williams explains that this includes the decendents of enslaved people of African descent under the French and British rule of the region, Black Loyalist who fought on the side of the British in the American War of Independent in exchange for the freedom and rpomose of land and provisions in Nova Scotia, and the enslaved African Americans who forcibly joined their white Loyalist "owners" in coming to Nova Scotia. This also includes the descendants of Jamaican Maroons, African American refugees/ freedom fighters of the War of 1812, descendants of Caribeean immigrants many of whom joined the industrialized workforce in Cape Breton in the early 1800s and the working and professional classes in later years, and more recent immigrants who have com to Nova Scotia from various African countries and other parts of the African diaspora. See Michelle Williams, "African Nova Scotia Restorative Justice: A Change Has Gotta Come," (2013) 26 Dalhousie LJ at 424-425.

7 *In Speaking My Truth: Volume III: Cultivating Canada,* (Aboriginal Healing Foundation, 2012), George Elliott Clarke explains the phrase that was coined in the late 1970s and was intending to distinguish between those of African descent of long residency in Nova Scotia, from more recent black arrivals, most from the Caribbean and from the United States and from Africa. He notes it was not intended to erase their claim to original presence by the Mi'kmaq people.

8 Clearly, the story of viola Desmond's refusal to leave a whites-only area of the Roseland Theatre in New Glasgow, Nova Scotia is a famous example of Black Nova Scotia resistance to anti-black racism. In *Out of the Depths – The Experience of Mi'kmaq Children at the Indian Residential School at Shubenacadie, Nova Scotia,* 3rd ed. (Black Point, Nova Scotia: Roseway Publishing, 2001), Isabelle Knockwood gives several examples of how Mi'kmaq children at the Shubenacadie residential school engaged in small acts of resistance and rebellion against the priests and nuns running the school. In *Stories, Memories, Reflections* (Black Point, Nova Scotia: Roseway Publishing, 2001), Doug Knockwood writes about how his father successfully sued the residential school in the 1930s to have Doug and his brother permanently released from the school.

9 There have since been similar inquiries in other provinces including the 1991 *Report of the Aboriginal Justice Inquiry of Manitoba* investigating the wrongful deaths of Helen Betty Osborne and J.J. Harper; the 2004 *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* in Saskatchewan for the 1990 death of Neil Stonechild from hypothermia and accusations that police misconduct contributed to his death; the 2004 *Ipperwash Inquiry Report* into the shooting death of Anthony O'Brien "Dudley" George during the occupation at Ipperwash Provincial Park, among others.

10 When he stabbed Seale, Ebsary shouted, "This is for you, Black Man," just before stabbing Seale Royal Commission on the Donald Marshall, Jr., Prosecution –

Digest of Findings and Recommendations (December 1989), at p. 2. Online: http://novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf

11 *Ibid.* at p. 1.

12 The parties that were identified included: (a) the provincial Department of Justice, (b) Dalhousie Law School, (c) the Nova Scotia Scotia Barristers' Society and the legal profession, (d) Judicial Councils and Chiefs Judges, (e) Legal Aid Nova Scotia, (f) the Legal Education Society of Nova Scotia, (g) the RCMP and municipal police forces, and (h) the Nova Scotia Human Rights Commission.

13 Here are I am summarizing numerous recommendation in the Report including: 9-19, 26-27, and 31-34.

14 L. Jane McMillan, "Still Seeking Justice: The Marshall Inquiry Narratives" (2014) 47 UBC l Rev 927-990.

15 See NSBS Equity Office: http://nsbs.org/improving_justice/the_equity_program.

16 Since the 1990s, the Nova Scotia Department of Justice has had a policy of reserving one of its articling position each year to a graduate from the Indigenous Blacks and Mi'kmaq Initiative (described below). The Department of Justice has also implemented a mentorship initiative for IB&M students to expose them to the work of the Department.

17 See Carol Aylward "Adding Colour – A Critique of: "An Essay on Institutional Responsibility: The Indigenous Blacks and Micmac Programme at Dalhousie Law School" (1995) CJWL/RFD 470 at 486. At note 71, Aylward describes the Transition Year Programme ("TYP") as an access program for Black and Mi'kmaq Nova Scotians who have been disadvantaged educationally. The Programme is designed to introduce students to the University Environment and to prepare them for entrance into the undergraduate programme after completion of the TYP one-year course.

18 Richard F. Devlin and A. Wayne MacKay, "An Essay on Institutional Responsibility: The Indigenous Blacks and Micmac Programme at Dalhousie Law School" (1991) 14 Dalhousie L.J. 296 at 299.

19 *Ibid.*

20 Dalhousie University, Breaking barriers: Report of the Task Force on Access for Black and Native People (Halifax: Dalhousie University, 1989), (Chair: A. Wayne MacKay).

21 *Ibid* at 298.

22 *Supra* note 17 at 299-311.

23 See Report, *supra* note 21, Recommendation 11, at p. 26.

24 Indigenous Black and Mi'kmaq Initiative webpage, "How to Apply," online: https://www.dal.ca/faculty/law/indigenous-blacks-mi-kmaq-initiative/how-to-apply.html

25 Whether GPA and LSAT scores should continue to be the prevailing standards by which we measure suitability to enter law school has been questioned those who charge that such standards systematically favour students from privileged backgrounds. Yet the continued reliance GPA and LSAT scores has not been justified by empirical study: see Dawna Tong & W Wesley Pue, "Best and Brightest? Canada Law School Admissions" (1999) 37:4 Osgoode Hall LJ 843.

26 Due to cut-backs on funding in recent years, financial supported has been limited to only those African Nova Scotian students who were either born or raised in Nova Scotia, or who otherwise have a substantial connection to a historically black community in Nova Scotia, and those Aboriginal students of Mi'kmaq descent with a connection to Mi'kmagi (the

traditional Mi'kmaq territory). With rising tuition rates, finding sufficient funding to support students IB&M students is an ongoing challenge for the Initiative.

27 For more information, see Indigenous Black and Mi'kmaq Initiative webpage, mainpage, online at: http ://www.dal.ca/faculty/law/indigenous-blacks-mi-kmaq-initiative.html.

28 Indigenous Black and Mi'kmaq Initiative webpage *Ibid*, "Council & Committee"

29 See "Still Seeking Justice: The Marshall Inquiry Narratives", *supra* note 6.

30 See Report, *supra* note 21, Vol. 1, at p. 154

31 Nova Scotia Barristers Society Fall/Winter 2018/2019 Statistical Snapshot, online: https://nsbs.org/sites/default/files/cms/menu-pdf/2018statsnapshot.pdf

32 *Ibid.*

33 These numbers are a combination of self-identification statistics provided by Nova Scotia Barristers Society for 2018, as well as the authors knowledge of the Nova Scotia bar.

34 See Federation of Law Societies webpage, "Statistics," online: https://flsc.ca/resources/statistics/.

35 Public Prosecution Service New Release, "Fair Treatment of Indigenous Peoples Prosecution Policy to Direct Crown Attorneys," February 26, 2019, online: https://novascotia.ca/news/release/?id=20190226001.

36 See "Employment Equity within the NSBS Membership", *supra* note 13.

37 Nova Scotia Barristers Society Announcement, "Tuma T. W. Young acclaimed as Second Vice-President for the 2019-2020 Council year" online: https://nsbs.org/news/2019/02/tuma-t-w-young-acclaimed-second-vice-president-2019-2020-council-year. Mr. Young's is not an IB&M alum; his law degree is from the University of British Columbia, but his is supporter and friend to the program. Overall there have been six Mi'kmaq and African Canadian lawyers who have been members of the NS Barristers Society governing council.

38 See NSBS, "2016-2019 Strategic Framework", online: http://cdn2.nsbs.org/sites/default/files/cms/menu-pdf/2016-2019_stratframework.pdf.

39 One of six of the NSBS Council's Regulatory Objectives is to "Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system" and one of its 10 core elements of an effective management system for ethical legal practice is "Working to improve diversity, inclusion and substantive equality." For more information, see NSBS website, "Legal Services Regulation," online: https://nsbs.org/legal-services-regulation.

40 For example, since 2013, cultural competency has been made a mandatory part of articling clerks' Skills Course offered by the NSBS. Since 2014, the Bar Exam materials have been amended to speak to how the substantive law may apply to Aboriginal clients differently in certain circumstances. Cultural competency CPD has been offered at various NSBS and CBA conference. Finally, the REC, with the support of Council, continues to develop resources to assist in cultural competency training.

41 See #TalkJustice update: North Preston land titles project, online: https://nsbs.org/talkjustice-update-north-preston-land-titles-project.

42 For example, the NSLA participates in a Child Welfare Working Group to examine reform in the area of child welfare services in First Nations communities, is on a committee looking at standardizing sentencing circles in NS, and has formed a working group with the African Nova

Scotia community in the Prestons to address their legal needs.

43 This is because the Aboriginal status of a client can impact the application of the law in various ways. The self-id questionnaire was rolled out in April 1, 2014, and just in the first four month period, 282 applications self-identified as Aboriginal.

44 Dal New, "Meet the New Chair: Candace Thomas Set To Lead Dal's Board Of Governors," May 9, 2019.

45 See Faisal Bhabha, "Towards a Pedagogy of Diversity in Legal Education" (2014) 52 Osgoode Hall LJ 59 at para. 7.

46 See Dawna Tong & W Wesley Pue, "Best and Brightest? Canada Law School Admissions" (1999) 37:4 Osgoode Hall LJ 843.

47 See Dolores J. Blonde et al., "Law Students, Law Schools and their Graduates" (2001) 20 Windsor YB Access to Just 211. In this regard, Charles C. Smith argues that most Canadian law school's commitment to diversity is weak and their public commitments are but lip service: see "Who is Afraid of the Big Bad Social Constructionists? Or Shedding Light on the Unpardonable Whiteness of the Canadian Legal Profession" (2008) 45 Alta L Rev 55.

48 *Ibid.* and see also Bhabha, *supra* note 22 at para. 33-41.

49 Truth and Reconciliation Commission of Canada: Calls to Action (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), nos 27 and 28; *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls,* Calls for Justice (June 2019) nos 10 and11.

ANNOUNCING THE 2020 DIRECTIONS CALL FOR PAPERS

The Canadian Race Relations Foundation (CRRF) is pleased to announce a Call for Papers for the 2020 issue of Directions.

Directions, a peer-reviewed publication, provides community-based, action-oriented research, commentary, and perspectives on eliminating racism and discrimination. This journal serves as an important piece of our mission to strengthen Canadian values and to build a united Canadian community. Directions offers a forum for important dialogue and debate on race-related issues and practical recommendations for policy development and change.

Since 2019, we have changed the way in which we will share your articles.

Articles will be peer-reviewed as soon as possible. Once approved they will be translated and published immediately on our website.

We will also accept previously published articles.

We will continue to accept original book reviews but will also accept previously published submissions.

At the end of the year, the complete volume (containing all approved submissions) will be published online and in print.

We believe that this approach will continue the tradition of encouraging research and the sharing of best practices.

For more information, please visit our website:

www.crrf-fcrr.ca/en/call-for-papers