

# The Verdict

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**TRIAL  
LAWYERS  
ASSOCIATION  
of BC**

A Legal Reckoning:  
Challenging Systemic Racism  
and White Privilege in the Law

A Call to  
Do Better

Centering Abolition in Practice:  
What We Can Learn from  
Immigrant Gang-Involved Youth

## EDITORIAL ▶



by **ZARA SULEMAN**  
TLABC Member

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## A Legal Reckoning: Challenging Systemic Racism and White Privilege in the Law

"Through the course of my legal education, I began to learn that oppression is not of a unitary character. I experience it as both personal and collective (that is, directed at me - not as an individual but as part of a people). I also experience oppression as layered. I now understand that the way I looked at the world back when I began to study law was naïve or overly simple. Canadian law does not hold forth the hope or power to solve many of the issues that must be struggled with in our communities as the result of oppression at the hands of the Canadian state. Although the discussion here has focused on oppression – because oppression is what I feel as well as see in my daily life - it is essential to recognize that the oppression I have survived (and continue to struggle to survive daily) is the result of colonial beliefs and relationships.

Think about everything that First Nations people have survived in this country: the taking of our land, the taking of our children, residential schools, the current criminal justice system, the outlawing of potlaches, sundances, and other ceremonies, and the stripping of Indian women (and other Indian people) of their status. Everything we survived as individuals or as Indian peoples. How was all of this delivered? The answer is simple: through law. For almost every single oppression I have named, I can take you to the law library and I can show you where it was written down in the statutes and the regulations. Sometimes colonialism is expressed on the face of the statute books, and other times is it hidden in the power of bureaucrats who take their authority from those same books.<sup>1</sup>"

PATRICIA MONTURE-ANGUS, "STANDING AGAINST CANADIAN LAW:  
NAMING OMISSIONS OF RACE, CULTURE AND GENDER"

It has been an exhausting, overwhelming and traumatic time for many Indigenous, Black, and racialized lawyers of colour and communities; and yet for most, the events of this year and the past year are not new to BIPOC (Black, Indigenous, People of Color) lawyers. Navigating the challenges of racism, colonization and white privilege in the legal system and practice of law are not new.

As more unmarked graves are found of Indigenous children at former residential schools, as more stories of racial profiling and deaths of BIPOC people occurring at the hands of police/RCMP are reported, as accounts of Islamophobia, anti-Asian hate crimes, increase, as more resignations and challenges to Indigenous and racialized leaders in politics and law and attacks to critical race theory education in Canada and across the borders abound – there is a clear constellation, a clear critical mass that is demanding our attention.

Legal organizations, firms, law students, and the legal profession are starting to clamour for anti-racism training, trauma informed education, diversity, and cultural competence resources.

This is good... but will it be enough?

Remember that for BIPOC people, this notion of outrage is felt on the daily; the attacks and the need to survive are felt on the very cellular nature of how many of us are required to move through dominant systems.

Critical Race Theory scholars initiated such conversations to challenge dominant legal practice in the 1970's with more academic engagement in the late 80's and 90's. The academic literature, research and advancements in Critical Race Theory are extensive and have only increased in response to systemic racism, white supremacy, and discourses of white privilege in the law and education. The resistance to Critical Race Theory has also increased.

The notion that this time in our lives needs to be a "movement" not a "moment" will rely on the energy and commitment of all that hold power, all that hold privilege, all that live as settlers on this land to ensure that we move beyond educating ourselves and move towards action that rectifies the perpetuation of marginalization, the systemic disempowerment and entrenched inequality. We need to understand the language and action involved in the exchange of power relations – BIPOC people are not marginalized they are being marginalized.

Critical Race Methodology requires a deconstruction of legal rules, principles and policies and it challenges the so-called "neutrality" and "objectivity" of laws that oppress Blacks and other people of colour. Deconstruction is designed to confront subtle forms of discrimination perpetuated by law. Critical Race Theory attempts to expose the ordinariness of racism and to validate the experiences of people of colour, which are important bases for understanding laws that perpetuate their disenfranchisement. (Matsuda 1987: 346-47) ...

Critical Race Theory also employs "narrative," or storytelling. Narrative functions in a number of ways. It can allow lawyers and others to "tell the story" of their clients and the Black experience of racism and subordination in a non-ahistorical way. Narrative can debunk the myths of neutrality and objectivity by placing emphasis upon the confrontational nature of an encounter – between a Black youth and a White police officer who represents the state, for example – in its social and historical context of racial discrimination...

Narrative can also be a way to understand and interpret judicial opinions in order to deconstruct the "racial" and other ideologies that may underlie them.<sup>2</sup>

CAROL A. AYLWARD, CANADIAN CRITICAL RACE THEORY:  
RACISM IN THE LAW

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As lawyers, judges, members of the legal profession, we are tasked and entrusted with upholding justice, fairness, and the rule of law. But these notions are fraught within in a legal system originally built on advancing the colonial enterprise and which have continued to create a legal foundation to benefit those privileged with rights and those systematically denied legal rights. The attainment of substantive equality remains illusive to BIPOC communities.

We are at a moment in time when a legal reckoning must occur.

As the police, RCMP and military systems are being forced to hold a mirror to their procedures, policies, and climates that permit systemic racism, (amongst many other oppressions, such as sexism, homophobia, etc.) so too must the legal system face inward and have serious conversations and take action about the manner in which legal institutions are creating more trauma, more damage, more harm and more racial injustice.

Are we ready to make concrete changes?

Law relies on a positivist conception of knowledge.

That is, there is a straight line between the knower and the known. In law, judges and juries are meant to discover the truth from the array of information put before them. There is only one objective truth and it is empirically provable. Reason features prominently and emotion is ruthlessly banished. The rule of law is the 'consistent application of prior stated rules', a process theoretically uninformed by politics or ethics. Storytelling in the law, then, is an intellectual movement that is 'a rebellion against abstractions.' Its purpose is to interrogate the space between the knower and the thing known; its function is one of putting the context back into law... Storytelling is a theoretical attention to narrative, to the nature and consequences of this conceptual scheme. Concretely it is an interrogation of how courts come to convert information into fact, how judges, juries and lawyers come to 'objectively' know the truth: Those whose stories are believed have the power to create fact.

...

As long as we see ourselves as not implicated in relations of power, as innocent, we cannot begin to walk the path of social justice and to thread our way through the complexities of power relations.<sup>3</sup>

SHERENE H. RAZACK, LOOKING WHITE PEOPLE IN THE EYE:  
GENDER, RACE, AND CULTURE IN COURTROOMS  
AND CLASSROOMS

The contributors to this issue were tasked with sharing their views on the state of racism and white privilege in the law. Through cases, legal analysis, practice areas and personal accounts, the writers have endeavored to highlight the diverse sites where power rests in the legal system and the role various areas in the

law need to work on to make change. I thank them for their efforts to advance these difficult conversations.

There is also the very real fear and insecurity of speaking truthfully about one's experience of racism, colonization and experience of white privilege in the day to day practice of the law and legal profession. There is the real worry of being ostracized, labelled, silenced, and the professional/personal backlash that is likely to occur for being "that" lawyer that speaks about "race" and "racism" and "white privilege". In order to provide safety, the editorial team had provided space for an anonymous submission but ultimately anonymity could not securely address the significant reality and the potential risk for the author's legal career; these circumstances forced the author to not submit.

This outcome both deeply saddens and angers me but it clearly illustrates the fear of retribution and the actual experience of this occurring to one's legal profession. If BIPOC lawyers feel afraid of harm in the legal system that we are tasked to uphold then what does this say for the clients we work to advocate for from our communities?

TLABC and *the Verdict* have begun the process; have started on this journey. A journey with no end date and many obstacles. Some of you will read this issue and see yourselves, communities and experiences reflected, maybe for the first time in *the Verdict* and TLABC. This may give you some hope, some comfort.

Some of you will read this issue and may experience other reactions, including discomfort, disbelief that the legal profession is that bad, or even that systemic racism exists.

This is the reality of the spectrum that occurs when we engage in work on anti-racism and white privilege. This is the work of challenging systems of power that have gone unchecked. I encourage those with privilege to sit in uncomfortable spaces and have conversations that are hard and difficult. I encourage BIPOC lawyers to seek comfort and support as they/we are challenged to continue to confront systemic racism in the law.

Moving towards a new definition of justice, will require us all to find our way along this path. The contributors have provided us valuable insight.

Let the journey (continue) begin... ❖

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- 1 Patricia Monture-Angus, "Standing against Canadian Law: Naming Omissions of Race, Culture and Gender", *Locating Law: Race, Class, Gender Connections*, Edited by Elizabeth Comack, et al. (1999: Fernwood Publishing, Nova Scotia) pages 83 and 93.
  - 2 Carol A. Aylward, *Canadian Critical Race Theory: Racism in the Law* (1999: Fernwood Publishing, Nova Scotia) pages 34 -35.
  - 3 Sherene H. Razack, *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms*, (1999: University of Toronto Press, Toronto) page 37 and 22.