Diversity and Anti-Racism Background Report for George Brown College

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September 2019

GEORGE BROWN COLLEGE

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George Brown College is located on the Treaty Lands and Territory of the Mississaugas of the Credit.

Give Thanks Prayer

Today we give thanks for our many blessings.
Noongwo g'miigwechweyaanaa GizheManido minik miinigwezwii'anan miinwaa maanagooing.
Today we give thanks to the Creator for so much fortune and what we have been given.

We give thanks for the sky above and the earth below.
G'miigwechtoona amaanda maampii aki g'bagidnamaagoing wii iyaaying.
We give thanks for this here earth we have been offered to be on.

miinwaa maanda n'waamdaaming giizhigong.
and this that we see, the heavens.

We give thanks for the rising of the sun and the moon.
G'miigwechweaa'naa g'bagidnamaagoing giizo miinwaa dibikigiizo wii aabjikaazying.
We give thanks to them, we have been offered the sun and the moon to use.

We give thanks for the beauty of our surroundings.
Gaamiigwechweaa'naakina gegogwenaajongg'gaamiinigoing.
We give thanks to them all things beautiful in this place we have been given.

We give thanks for our parents who brought us into this world and taught us about life.
Kchi miigwetchwinim maanda bimaadziwin gaa miizhiyang gashe miinwaa gos.
Thank you both for this life we are given mother and father.

We give thanks for our brothers and sisters who shared our childhood with us.
Gaa miigwetchwigo noongwa maamwe gii bi kooganiiyaang ge niinwe nikaayeg miinwaa miseyeg.
We all thank you today together who were raised here with us brothers and sisters.

We give thanks for our friends who have journeyed along life's path with us.
Gaa miigwetchweaananing genwa kwiijkenanig gaa bi wiijsemigoo'ing.
We are thankful for our friends who walked along with us.

We give thanks for the laughter of the children.
Gaa miigwetchweaananing gondag baapwin miinwa chinendamowin genwa binoojiyag eyaamwaad.
We are thankful for them, the laughter and the happiness our children they have,

And we give thanks for the love in our hearts.
Gaa miigwetchwigo maanda zaagidwin odenang eyaamaan.
We all thank you for this love in our hearts we have.

1. Distinguishing Between Anti-Racism and Diversity Frameworks

While many equity-driven organizations use both the language of 'diversity' and the language of 'anti-racism' it is important to note that these two frameworks are distinct. Understanding how these concepts diverge is important to appreciating and promoting substantive equality. The Ontario Public Service utilizes the following definitions in its 2018 OPS Inclusion and Diversity Blueprint:

Diversity is the range of visible and invisible qualities, experiences and identities that shape who we are, how we think and how we engage with, and are perceived by the world. These can be along the dimensions of race, ethnicity, gender, sexual orientation, socio-economic status, age, physical or mental abilities, religious/spiritual beliefs, or political ideologies. They can also include differences such as personality, style, capabilities, and thoughts/perspectives.

Anti-racism is a specific approach to eliminate racism that acknowledges that systemic racism exists and that takes proactive steps to fight racial inequity. It actively confronts the unequal power dynamic between groups and structures that maintain it.

Notably, the definition of 'diversity' is primarily descriptive and focuses on visible dynamics. Specifically, diversity identifies that there are discernable differences amongst people and these differences can impact how different people perceive, and are perceived by, the world. Conversely, the definition of 'anti-racism' focuses on both visible and invisible dynamics that differentiate and subordinate certain populations.[1] Anti-racism is premised on the existence of structural inequity which is based on race and requires an active response.

The actions required of an institution will vary depending on whether the primary goal is 'diversity' or 'anti-racism.' While organizations concerned with diversity are often attuned to hiring and/or serving culturally diverse patrons, organizations targeting anti-racism aim to identify and deactivate discriminatory forces of prejudice and power embedded in the institution. Anti-racism models of organizational change seek to expose and dismantle structures that have placed Indigenous and racialized groups in a position of disadvantage while privileging members of the racial majority. Diversity models instead place the emphasis on increasing representational difference within an organization without necessarily accounting for the institutional structures which favour homogeneity or "homosocial reproduction" (Dressel et al, 1994).As such, equity scholars note that diversity and anti-racism are potentially contradictory and that it is manifestly antithetical to substantive equality when diversity is accorded precedence over anti-racism.

Critical race theorists believe racism is "ordinary, not aberrational, [...] the usual way society does business" and "the, common everyday experience of most people of color".[2] Baked-in structural inequities like racism are frequently unacknowledged, making them difficult to address or ameliorate. Anti-racism recognizes that organizational approaches that ignore the extent to which racism is entrenched and perpetuated by systems, are bound to fail.

The Supreme Court of Canada has expressly endorsed that it is incumbent upon society, especially public actors, to be cognizant of systemic racial discrimination. In R. v. S. (R.D.), [1997] 3 SCR 484, the Supreme Court of Canada recognized that judicial notice can be taken of the history of discrimination faced by disadvantaged groups in Canadian society,

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1. The Preamble of Ontario's *Anti-Racism Act, 2017*, S.O. 2017, c. 15 recognizes specific populations, stating: "anti-Indigenous racism, anti-Black racism, antisemitism and Islamophobia reflect histories of systemic exclusion, displacement and marginalization."
2. Delgado, Richard, Stefancic, Jean, *Critical Race Theory: An Introduction* 2nd edition, 2012 NYU Press, at pp. 7

including the experience and racial dynamics of particular racialized populations.[3] This dictum has been adopted by all levels of courts across the country. For example, the Ontario Court of Appeal has stated:

> Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.[4]

Following the Supreme Court's guidance, various judgments have acknowledged the detrimental implications of invisible structural inequity resulting in lost educational, social and economic opportunities for racialized communities. As recently explained by Justice Jamie Campbell of the Nova Scotia Court:

> All Canadians are equal before the law. But all Canadians are not equal in the sense of having equal opportunities. The barriers are not official ones. They are perhaps more pernicious because they can be made to seem like a natural and inevitable part of how a society is structured.[5]

Human rights jurisprudence in Ontario and across the nation also recognizes that racial discrimination is subtle and often stems from unconscious biases and beliefs.[6] The Ontario Human Rights Commission (OHRC) advances that in human rights law it is necessary to distinguish between equity and diversity.[7] In its policy *Count Me In: Collecting Human Rights-Based Data*, the OHRC states "[d]iversity refers to the presence of a wide range of human qualities and characteristics" and equity refers to "the rights of people to have equal access to goods, services and opportunities in society." Significantly, the OHRC recognizes that the "presence" of a diversity of characteristics does not necessarily entail that people have equal access to opportunities and goods within an organization or social context. Consequently, the OHRC promulgates an anti-racism model as consistent with human rights law and necessary for targeting and counteracting discriminatory policies and procedures.

Often the diversity approach avoids discussions of power and privilege, and instead stresses that we all come into the workplace with different perspectives and personal histories, thus all of us contribute to a diverse workplace/learning environment. Resultantly, 'diversity' is often a more popular term than 'anti-racism' as "it encompasses differences that apply to everybody, not just to those who can place themselves within a minority or disadvantaged category" (Tomlinson & Schwabenland, 2010:103). However, adopting the language of diversity over anti-racism can serve to compound structural barriers facing Indigenous and racialized groups.

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3. See also *R v. Gladue*, [1999] 1 SCR 688 at pages 68-69. In Canada, judges may request "Gladue" reports for Indigenous offenders, which encourages consideration of systemic racism faced by Indigenous populations and promotes alternatives to incarceration such as restorative justice initiatives like community healing. In the April 2018 decision of R. v. Jackson 2018 ONSC 2527, Ontario Superior Court Justice Shaun Nakatsuru, having reviewed studies on anti-Black racism and a report written by Halifax social worker and sociologist Robert Wright, stated "the time has come" for the judiciary to " take judicial notice of slavery, policies and practices of segregation, intergenerational trauma and racism, both overt and systemic as they relate to African Canadians".

4. R. v. Parks, 1993 CanLII 3383 (ON C.A.)

5. R. v. Gabriel, 2017 NSSC 90 at paras 86-87. In *Correia v. York Catholic District School Board*, 2011 HRTO 1733, the Tribunal noted racism does not often manifest through overt stereotyping but rather: "...racial stereotypes become part of the cultural fabric of society, and are transmitted through interactions with others in society, through the media, through literature and educational systems, among other things. It is this process of culturally subsuming racial stereotypes which results in the phenomenon of unconscious racial discrimination, which has been found by this Tribunal and the courts to form part of a proper understanding as to how racial discrimination can be manifested" at page 62.

6. See for example, *Radek v. Henderson Development* (Canada) Ltd. (No. 3) (2005), 52 C.H.R.R. D/430, 2005 BCHRT 302 (CanLII) at page. 482; *Pritchard v. Ziedler* (2007), CHRR Doc. 07-527 (Sask. H.R.T.); *Nassiah v. Peel* (Regional Municipality) Services Board, 2007 HRTO 14 (CanLII); *McKay v. Toronto Police Services Board*, 2011 HRTO 499.

7. See the Ontario Human Right's Commission's *Policy and Guidelines on Racism and Racial Discrimination* ["*OHRC Policy on Racial Discrimination*"]. It is noteworthy that several cases cited in this chapter arise out of racial profiling circumstances. Ontario's post-secondary institutions—with their chronic under-representation of Indigenous and Black students are often patrolled by private security guards or campus police who have long been known to approach community members who "don't look like they belong", requiring them to show identification: see *Park v. University of Ontario Institute of Technology* (No. 3) 2017 HRTO 580. Racial profiling in education is a common occurrence. In "Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario" , survey respondents reported that racialized and Indigenous students are often assumed to be the perpetrators in conflicts with other students: *Under Suspicion*, Ontario Human Rights Commission, 2017.

2. Limitations of 'Diversity-Management'/Representational approach

Current literature on institutional equity strategies identifies serious limitations with a 'diversity-management' or 'representation-based' approach. This scholarship elucidates how lip service adoption of diversity exacerbates discriminatory institutional dynamics. The objections can be broadly classed as: window-dressing; empty rhetoric; trivializing discrimination; and reinforcing privilege.

2.1 Window-Dressing

A diversity-management/representational approach focuses on increasing the presence and visibility of racial and ethnic minorities. This version of the diversity approach succeeds in giving the appearance of organizational change, but neglects the experience of racialized employees within the organization. Diversity activities frequently include celebrating days or months which are associated with racial/ethnic minorities, increasing the presence of racial/ethnic minorities in promotional materials, and diversity mentorship programs. All of these initiatives, if run effectively, could contribute to a more inclusive organization where racial/ethnic minorities feel welcomed and valued. However, these diversity initiatives are insufficient in eradicating institutional racism. Unless there are systems in place to: monitor exclusionary hiring and promotion practices, collect data on the racial stratification of the workplace, and establish and maintain an effective complaints system to address allegations of racism and discrimination, racial equity will not be achieved.

2.2 Empty Rhetoric

Wade (2004) warns against "diversity doublespeak" in which the language of diversity is used to conceal racial discrimination, by placing an emphasis on the importance of diversity while ignoring the presence of inequities. Henry et al.'s 2017 report on racialization and Indigeneity in Canadian universities also found that diversity language does not signal a commitment to addressing structural inequalities:

> Diversity frameworks advocate cultural diversity and plurality, but tend to be vague and to celebrate diversity rather than deal with inequity. Diversity thinking is preoccupied with 'managing' workplace relations rather than with underlying structural issues. [...] Our findings suggest that attention paid to the concepts of equity or diversity are not tied to a commitment to overcome racism. (Henry et al., 2017: 302)

The diversity approach avoids discussions of power and privilege and instead stresses that we all come into the workplace with different perspectives and personal histories, thus all of us contribute to a diverse workplace. This avoidance of more polarizing concepts (such as 'anti-racism' or 'anti-discrimination') is often tied to an avoidance of tackling underlying structural issues or undergoing significant organizational transformation. Accordingly, Mahtani (2012) concludes that "the romance with the language of diversity in the academy has taken us down circuitous routes, most of which have not led to anti-racist outcomes."

2.3 Trivializing Discrimination

Broad diversity approaches which treat all differences as equally salient fail to take into account histories of oppression and exclusion which have served to maintain institutional racial hierarchies. Henry et al. refer to this as the 'diversity trap' "whereby race is e-raced as a mechanism of oppression and becomes simply a manifestation of difference" (2017: 20, sic). While some differences in personal characteristics are trivial and superficial, others are tied to prohibited grounds of discrimination under the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. Cukier et

al. report that "Some have argued that the focus on diversity management undermines the gains made in the earlier anti-discrimination movement by failing to acknowledge discrimination and to address unequal treatment and access to organizational power structures for traditionally disadvantaged minorities"(2017: 1035). By presenting all differences as equally relevant diversity management approaches dilute focus on any particular form of oppression and employ successes in one area of difference to distract from perennial inequities. Accordingly, Cukier et al. conclude that "an unintended consequence of unreflective approaches to diversity is the risk of trivializing racism, sexism, homophobia and other forms of discrimination on prohibited grounds" (2017: 1055).

2.4 Reinforcing Privilege

Under the diversity model members of disadvantaged racial and ethnic groups need to entreat those in power to grant them inclusion by demonstrating value. Inclusion, within this context, is not rights-based but something to be conferred on the basis of added cultural or economic value. Since the concepts of power and privilege are absent from the discussion, efforts towards a more representative workforce cannot be justified as an attempt to remove existing systemic barriers, and instead the rationale must rely on business, rather than moral or legal, imperatives. Further, when representational diversity is presented as counter-evidence to claims of racial inequity, then diversity effectively silences anti-racism efforts. "The technology of happiness about diversity is used as an alibi not to speak about racism and to hide the persistent whiteness of organizations such as universities and schools. As [Ahmed, 2009] poignantly writes: 'Diversity becomes about changing perceptions of whiteness rather than changing the whiteness of organizations'" (Leonardo & Zembylas, 2013).

3. Diversity Frameworks and the Tokenization of Indigenous and Racialized Faculty and Staff

Anti-racism approaches seek to ensure that not only are racialized faces present, but in addition, voices identifying the persistence of racial inequities have the opportunity to be heard. This entails creating space for racialized and Indigenous people to meaningfully shape institutional content. As voiced by a group of anonymous Indigenous scholars writing on the need for Indigenization in the academy: "crafting an idea and then inviting us into it after it is formed is not Indigenization." Conversely, diversity approaches which focus solely on representation risk tokenizing Indigenous and racialized faculty and staff by expecting them to fit into existing institutional norms and then speak for how their under-represented groups may possibly be accommodated into prevailing, mainstream systems. This has the dual effect of 'othering' Indigenous and racialized faculty and staff by expecting them to symbolically fill the representational void (between the composition of the student population and the composition of the faculty) and placing additional burdens on these Indigenous and racialized employees since their presence is expected to enhance campus diversity.

The existence of diversity initiatives in post-secondary institutions, without attaching efforts to dismantle ongoing structural and systemic practices, places racialized and Indigenous individuals in isolated working environments where they are likely to face a lack of support and sometimes even outright hostility. This short-sighted, tokenistic approach threatens the ability of post-secondary institutions to retain qualified faculty of colour, deepening the precariousness already associated with employment for these educators.[8]

The OHRC describes tokenism as:

> …the practice of hiring a few members of racialized groups for relatively powerless positions in order to create an appearance of having an inclusive and equitable organization. In reality, these individuals have little voice in the organization. At the same time, they are seen as representative of the group to which they belong and, as a result, their thoughts, beliefs, and actions are likely to be taken as typical of all in their group. Token measures to promote organizational diversity do not work and circumvent substantive change."
> (OHRC, Policy and Guidelines on Racism and Racial Discrimination, 2005)

Tokenistic inclusion of racialized and Indigenous people relies on essentialist notions of race – where members of a particular racial group are assumed to have uniform experiences and perspectives. As described by Yuval-Davis there is "a tendency to essentialize people and their identities by privileging just one social category in which they are located, claiming it as the determining factor that defines that person's identity – as a woman, as a Black, as a member of the working class and so on" (2010: 268).Henry et al. spoke with racialized and Indigenous faculty across Canadian universities who expressed frustration with the "racist notion" of an "authentic self" that can represent the 'South Asian perspective' or the 'Black perspective.' One Indigenous respondent in particular reported that: "being an Indigenous person means that you have an Indigenous perspective or means that you're going to bring some magical Indigenous thing to the table . . . It can lead to tokenising behavior that is not very helpful" (Henry et al., 2017: 98).

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8. See for example, Correia v. York Catholic District School Board, 2011 HRTO 1733 where the Tribunal found the Respondent's subjective impressions of South Asian men and the fear of the "race card" were reasons for denying the Complainant's promotion. A recent example which received significant attention in the Canadian media involved the Bora Laskin Faculty of Law at Lakehead University. Angelique Eagle Woman, an Indigenous woman, was appointed Dean of Lakehead University's law school in 2016. This appointment was noteworthy as Eagle Woman was the first Indigenous Dean of a Canadian law school. Unfortunately, she tendered her resignation in March 2018 complaining in a letter to the school's Aboriginal Advisory Committee that she had been a victim of systemic discrimination as an Indigenous woman. In a press conference held a month after her resignation Eagle Woman reported: "From the very beginning of my tenure as Dean, I felt that there were certain staff and faculty members who were very resistant and over time, I began to see it as systemic racism and called for cultural competency training within the faculty of law and then I begin to experience from the senior administration that they didn't see it the same way and they weren't going to support me in those efforts": see Aboriginal People's Television Network, https://aptnnews.ca/2018/04/25/92834/. Eagle Woman has launched a 2.6 million-dollar civil lawsuit against Lakehead University for racial discrimination: see https://www.theglobeandmail.com/canada/article-former-law-school-dean-sues-lakehead-for-racial-discrimination/

This tokenistic facsimile of inclusion impacts both the degree to which racialized and Indigenous people are incorporated into institution (e.g. surface level initiatives such as window-dressing) and how they are evaluated by the institution. "In fact, tokenism goes well beyond photos and committee participation. It goes to the heart of how racialized and Indigenous faculty are perceived and evaluated. Their presence is required not because of their special abilities, aptitude or knowledge but because of their essential nature as members of particular groups." (Henry et al., 2017: 125). When diversity as an organizational goal is being prefaced on the argument that there is an advantage to the organization of including previously underrepresented groups, Indigenous and racialized staff enter the organization with the added pressure of having to demonstrate not only that they are competent to perform the task for which they have been hired, but in addition bring unique attributes which justify the increased presence of Indigenous and racialized people within the workplace.

Joseph and Hirshfield employ the term 'identity/cultural taxation' to refer to the added burdens placed on racialized and Indigenous faculty by virtue of their marginalization within the academy."Our findings reveal that faculty of colour experience cultural taxation and must demonstrate their merit in ways that their white colleagues do not" (Joseph and Hirshfield, 2011: 135). These findings are consistent with recent scholarship which has identified that:

> "racialized professors have multiple draws on their time and can be taxed with extra duties because they may be part of a limited pool of people who represent diversity within an academic faculty"; and that "racialized faculty experience a double burden, with expectations to mentor more students and, because of the relatively small number of racialized faculty in Canadian universities, frequent requests to sit on a large number of committees to promote symbolic representation"
> (Henry et al., 2017)

Tokenistic representation of marginalized racial groups will exacerbate the conditions of identity/cultural taxation without addressing the structural inequities which produce these experiences of marginalization. Accordingly, anti-racism approaches are needed to tie representational diversity goals to racial equity goals.

As Wade describes, "diversity discussions make people of colour supplicants, and whites become their benefactors" (2004: 1545). Under the diversity model members of disadvantaged racial and ethnic groups need to entreat those in power to grant them inclusion by demonstrating value. Inclusion, within this context, is not rights-based but something to be conferred on the basis of added cultural or economic value. Instead, a rights-based approach to institutional equity recognizes that there is a legal imperative to address the under-representation and institutional exclusion of racialized and Indigenous people.

4. Relationship Between Indigenous Peoples and Canada

In 1763, the British Crown entered into relationship with Indigenous nations through the Royal Proclamation. As noted by Indigenous scholar, John Borrows:

> The Royal Proclamation of 1763 is a 'fundamental document' in First Nations and Canadian legal history. Yet, recent Canadian commentators have often treated the Royal Proclamation of 1763 as a unilateral declaration of the Crown's will in its provisions relating to First Nations. It is time that this misunderstanding was corrected. First Nations were not passive objects, but active participants, in the formulation and ratification of the Royal Proclamation. In the colonial struggle for northern North America, and in the foundational development of principles to guide the relationship between First Nations and the British Crown, First Nations were not dependent victims of a greater power (footnotes omitted)

Borrows later writes that the ceremony surrounding this agreement was done through both written and oral means and the gifting by the Indigenous nations of the Two-Row Wampum to the British representatives. He writes about the significance of this as follows:

> The two-row wampum belt reflects a diplomatic convention that recognizes interaction and separation of settler and First Nation societies. This agreement was first struck by the Haudonosaunee (Iroquois) upon the two-row wampum belt has been commented on by a leading Native legal academic, Robert A. Williams, Jr.: 'When the Haudenosaunee first came into contact with the European nations, treaties of peace and friendship were made. Each was symbolized by the Gus-Wen-Tah, or Two Row Wampum. There is a bed of white wampum which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect. These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and theirs laws, their customs, and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessal (footnotes omitted)'[9].

Borrows further states: "The two-row wampum belt illustrates a First Nation/Crown relationship that is founded on peace, friendship, and respect, where each nation will not interfere with the internal affairs of the other. An interpretation of the Proclamation using the Treaty of Niagara discredits the claims of the Crown to exercise sovereignty over First Nations"[10].

While there were several other treaties between First Nations and the British Crown, all of this was undone shortly after the centenary of the Royal Proclamation by the Canadian government's adoption of the Indian Act in 1867 and the subsequent establishment of the Residential Schools System and what has now been named in the report on Missing and Murdered Indigenous Women as the systematic effort toward genocide of Indigenous peoples.

This has widely been considered a betrayal of the Royal Proclamation as it has had catastrophic effects on Indigenous peoples. As noted by Bonita Lawrence:

> To be federally recognized as an Indian either in Canada or the United States, an individual must be able to comply with very distinct standards of government regulation… The Indian Act in Canada, in this respect, is much more than a body of laws that for over a century have controlled every aspect of Indian life. As a regulatory regime, the

9. See p. 169 Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government
10. Ibid p.

Indian Act provides ways of understanding Native identity, organizing a conceptual framework that has shaped contemporary Native life in ways that are now so familiar as to almost seem "natural."[11]

In citing this, it is important to note some of the restrictive provisions of the Indian Act which:

1. Denied women status;
2. Introduced residential schools;
3. Created reserves;
4. Renamed individuals with European names;
5. Restricted First Nations from leaving reserve without permission from Indian Agent;
6. Enforced enfranchisement of any First Nation admitted to university…;
7. Could expropriate portions of reserves for roads, railways and other public works, as well as to move an entire reserve away from a municipality if it was deemed expedient;
8. Could lease out uncultivated reserve lands to non-First Nations if the new lease holder would use it for farming or pasture;
9. Forbade First Nations from forming political organizations;
10. Prohibited anyone, First Nation or non-First Nation, from soliciting funds for First Nation legal claims without special license from the Superintendent General. (this 1927 amendment granted the government control over the ability of First Nations to pursue land claims)…;
11. Prohibited the sale of alcohol to First Nations;
12. Prohibited sale of ammunition to First Nations;
13. Prohibited pool hall owners from allowing First Nations entrance;
14. Imposed the "band council' system;
15. Forbade First Nations from speaking their native language;
16. Forbade First Nations from practicing their traditional religion;
17. Forbade western First Nations from appearing in any public dance, show, exhibition, stampede or pageant wearing traditional regalia...;
18. Declared potlatch and other cultural ceremonies illegal...;
19. Denied First Nations the right to vote;
20. Created the 'permit system' to control First Nations ability to sell products from farms;
21. Is a piece of legislation created under the British rule for the purpose of subjugating one race - Aboriginal people.[12]

This damaging legacy has troubled the relationships between Indigenous peoples and the Canadian government since that time and has been recognized as a significant impediment to making Canada whole by the current Federal government. In this context, the current government's document **Principles respecting the Government of Canada's relationship with Indigenous peoples**[13] "The Government of Canada is committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change."

This document goes on further to state:

Indigenous peoples have a special constitutional relationship with the Crown. This relationship, including existing Aboriginal and treaty rights, is recognized and affirmed in section 35 of the *Constitution Act*, 1982. Section 35 contains a full box of rights, and holds the promise that Indigenous nations will become partners in Confederation on the basis of a fair and just reconciliation between Indigenous peoples and the Crown.

11. Lawrence, Bonita. "*Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview*." Hypatia. 18:2. 2003. 3.1
12. See Bob Joseph, 2018, 21 Things You May Not Know About the Indian Act: Helping Canadians Make Reconciliation with Indigenous Peoples a Reality
13. https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html

The Government recognizes that Indigenous self-government and laws are critical to Canada's future, and that Indigenous perspectives and rights must be incorporated in all aspects of this relationship. In doing so, we will continue the process of decolonization and hasten the end of its legacy wherever it remains in our laws and policies.

As noted by the Assembly of First Nations, in 1990 the Supreme Court of Canada determined that "Treaties and statutes relating to First Nations should be liberally construed and uncertainties resolved in favour of the (Indigenous Peoples). Despite this, federal and provincial governments have interpreted Treaties very narrowly, viewing First Nations as having 'ceded, surrendered and released' their title and rights through these instruments. This narrow and one-sided view of Treaties – essentially as 'real estate' deals whereby First Nations "sold" their interests in vast parcels of land for trinkets – not only defies logic, but continues to generate significant uncertainty in many parts of Canada. Treaties between the Crown and First Nations establish a constitutional and moral basis of alliance between our peoples and the sovereign institutions of the Canadian state – one that must be built upon rather than diminished[14] ".

Such an approach has led to a Superior Court decision in Sudbury, Ontario that has decided in favour of 21 northern Ontario First Nations in a case involving the interpretation of treaties that were signed 168 years ago. This decision now requires both the federal and provincial governments to increase their yearly annuities, which have not been raised in over 140 years[15].

Based on this, the Canadian Government has articulated 10 principles that are to guide these values[16]. They are:

1. The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.
2. The Government of Canada recognizes that reconciliation is a fundamental purpose of section 35 of the *Constitution Act*, 1982.
3. The Government of Canada recognizes that the honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.
4. The Government of Canada recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.
5. The Government of Canada recognizes that treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.
6. The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.
7. The Government of Canada recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.
8. The Government of Canada recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.
9. The Government of Canada recognizes that reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.
10. The Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.

14. See Assembly of First Nations Treaties Fact Sheet, May 2010
15. See *First Nations members expect 'huge' payout from annuities court decision*, 2018, Gary Rinne, ElliotLakeToday.com
16. See Assembly of First Nations Treaties Fact Sheet, May 2010

As for Canadian laws that support these principles, there are both national and international frameworks that the Canadian government has made commitments to implement. Many of these were cited in the 1996 5-volume report of the **Royal Commission on Aboriginal Peoples**[17] that was rather quickly set aside by successive Canadian governments. Further, the recent issues surrounding the demotion from Cabinet, and subsequent resignation to the Liberal Party of Canada, of the first Indigenous person to be appointed Justice Minister, the former Honourable Jody Wilson-Rayboult, has been a major setback to work on reconciliation between the Canadian government and Indigenous nations as the former Minister was held in high regard by Indigenous peoples and was championing the efforts toward truth and reconciliation.

As if this were not damaging in its own right, there was then the release of the long-awaited two-volume report on *Missing and Murdered Indigenous Women*[18] that put forward cogent and well-researched arguments on the process of systematic genocide of Indigenous peoples by Canadian governments and a direct link between this and the formation and operation of Residential Schools that, in turn, led to the Truth and Reconciliation Commission's report, setting up responses by Canadian institutions to this report, including those by post-secondary colleges and universities.

4.1 The Canadian Charter of Rights and Freedoms, 1982

"Section 35 of Canada's Constitution Act recognizes Aboriginal treaty rights, and legally protects rights that were in existence when the Act came into force on April 17, 1982. The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "aboriginal peoples of Canada" includes First Nations,Inuit and Metis. Many mainstream institutions view Aboriginal peoples as part of the category of a settler minority group. The inherent and treaty rights of Aboriginal (First) peoples makes them unique and separate from settler minority groups. Aboriginal peoples should be viewed through their rights which are protected by law under Canada's Constitution Act and not viewed through the lens of a settler minority group." - Direct quote from Canadian Constitution provided by Bob Whiteduck Crawford, Indigenous Professor/Counselor.

Section 15 of the *Charter* provides for equality rights – the right to equality before and under the law, as well as equal protection and benefit of the law. These provisions aim at ensuring that everyone is treated with equal respect, dignity and consideration without distinction based on race, national or ethnic origin, or colour, amongst other enumerated grounds. Section 15 provides for both formal and substantive equality in that section 15 (1) secures the right to equality before and under the law through the prohibition of discriminatory or unequal treatment (e.g. procedural equality), while section 15 (2) allows for special provisions or "affirmative action programs" to rectify historical exclusions and structural disadvantages. Measures to address systemic racism are consistent with the dictates of the Charter in that they seek to ameliorate "conditions of disadvantaged individuals or groups including those that are disadvantaged because of race [...]"

Section 35 of the Charter affirms the unique constitutional status of "Aboriginal peoples of Canada" (defined in the *Constitution Act*, 1867 ("Canadian Constitution") as inclusive of three distinct groups: Indian, Inuit and Métis peoples of Canada) by recognizing "existing Aboriginal and treaty rights."[19] Indigenous scholars (such as Pamela Palmater and Kiera Ladner) have been critical of the uneven legacy of section 35, and note that affirming "Aboriginal treaty rights" ought to entail mutual recognition of nationhood and commitment to a continuous nation-to-nation relationship.

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17. This Commission was set up following the crisis in Oka (Quebec) in 1991. Its report was released in 1996.
18. See Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, Volumes 1a and 1b (2019)
19. The Supreme Court of Canada ruled in Daniels v. Canada (Indian Affairs and Northern Development) 2016 SCC 12, that Métis and other non-status aboriginal people are considered Indians under s. 91(24) of the Canadian Constitution.

Observing treaty rights includes recognition and acknowledgement of the treaties that govern where we live and work.[20] For instance, the Ryerson Land Acknowledgment reads as follows: "Toronto is in the 'Dish With One Spoon Territory'. The Dish With One Spoon is a treaty between the Anishinaabe, Mississaugas and Haudenosaunee that bound them to share the territory and protect the land. Subsequent Indigenous Nations and peoples, Europeans and all newcomers have been invited into this treaty in the spirit of peace, friendship and respect." Notably, institutional obligations to Indigenous communities and governing treaties extend beyond pre-scripted territorial acknowledgements.

Anishinaabe writer and educator Hayden King (who helped author the land acknowledgement) has since critiqued this statement and expressed concern that these territorial acknowledgements have become "very superficial" and "fetishize these actual tangible, concrete treaties". King cautions that scripted land acknowledgements should not be used by institutions as "an alibi for doing the hard work of learning about their neighbours and learning about the treaties of the territory and learning about Ryerson those nations that should have jurisdiction" (CBC Radio, Jan 20, 2019).

Canadian constitutional and human rights jurisprudence support the adoption of a rights-based analysis which recognizes that deeply entrenched biases exist in society that systemically discriminate against racialized communities.

Within the context of Ontario there are provincial, federal and international rights frameworks that guarantee the right to equality on the basis of race, colour, ancestry and ethnicity and the right to be free of racial discrimination on these grounds. Before reviewing these regimes, it is important to recall that the Constitution and human rights legislation have primacy over all other statutes.[21] For example, the Ontario Human Rights Code has primacy over all other legislation and contracts, including collective agreements, in the Province of Ontario. [22]

It is also noteworthy that human rights legislation has been described as "the final refuge of the disadvantaged and the disenfranchised."[23] Given the special nature of human rights protections, the Supreme Court of Canada has stated human rights law calls for a large, purposive, liberal interpretation in keeping with its principal objectives, to ensure the remedial goals of the legislation are achieved.[24]

20. This includes the duty to consult. In Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, the Supreme Court of Canada affirmed that governments have a duty to consult with Aboriginal groups when making decisions which could negatively impact the lands and resources to which Aboriginal people may assert a claim. Recently, in Mikisew Cree First Nation v. Canada (Governor General in Council), [2018] 2018 SCC 40, the Supreme Court rendered a divided decision of whether the government has a duty to consult Aboriginal peoples when deciding legislation that may harm treaty rights and whether courts have a role in enforcing consultation. Five judges recognized the honour of the Crown was involved at the lawmaking stage, but seven judges concluded there was no binding duty to consult before passing legislation.
21. See for example, *Moore v. British Columbia* (Education), 2012 SCC 61.
22. See for example, *L.B. v. Toronto District School Board*, 2015 HRTO 1622 at para. 98. Some statutory exemptions to the Code do exist but these are explicitly legislated.
23. *Zurich Insurance Co v. Ontario* (Human Rights Commission), [1992] 2 SCR 321 at para 18.
24. See, for example, *Canada (Attorney General) v. Mossop*, [1993] 1 SCR 554 at para. 94. See also *Insurance Corp of British Columbia v. Heerspink*, [1982] 2 SCR 145 at 157-58; *Ontario (Human Rights Commission) v. Simpsons Sears Ltd,* [1985] 2 SCR 536 at para. 12; *Canadian National Railway Co v. Canada* (Canadian Human Rights Commission), [1987] 1 SCR 1114 at 1134-38; *New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc*, 2008 SCC 45 at para 67; *Quebec (Commission des droits de la personne et droits de la jeunesse) v. Montreal (City)*, 2000 SCC 27 at para 30.

4.2 Provincial frameworks

Anti-Racism Act, 2017

The ARA was brought into existence in 2017 to combat persistent systemic racism in Ontario's public sector. The preamble of the ARA recognizes that "systemic racism is often caused by policies, practices and procedures that appear neutral but have the effect of disadvantaging racialized groups. It can be perpetuated by a failure to identify and monitor racial disparities and inequities and to take remedial action." The Act requires that the Ontario government maintain an anti-racism strategy which includes: 1. Initiatives to eliminate systemic racism, including initiatives to identify and remove systemic barriers that contribute to inequitable racial outcomes; 2.Initiatives to advance racial equity; and 3.Targets and indicators to measure the strategy's effectiveness.

The Act includes the establishment of anti-racism data standards to identify and monitor systemic racism. Through regulation, public service organizations (such as any university that receives regular and ongoing operating funds from the Government of Ontario for the purposes of post-secondary education or a college of applied arts and technology established under the Ontario Colleges of Applied Arts and Technology Act, 2002) can be required to collect specified information for the purposes of eliminating systemic racism and advancing racial equity.

Additionally, the Act recognizes that "Systemic racism is experienced in different ways by different racialized groups." Unlike a broad diversity approach that attempts to be all encompassing of various vectors of difference, the ARA is supportive of focused anti-racism measures that attend to those groups most adversely impacted. "For example, anti-Indigenous racism, anti-Black racism, antisemitism and Islamophobia reflect histories of systemic exclusion, displacement and marginalization."

4.3 Human Rights Code, 1962

The Ontario Human Rights Code, introduced in 1962, was the first act in any province to incorporate all existing anti-discrimination prohibitions into a single powerful overarching legislation. The Code evolved from earlier provincial anti-discrimination legislation that prohibited racial discrimination (Racial Discrimination Act, 1944). The Code prohibits discrimination in the areas of services, goods and facilities[25], housing accommodation[26], contracts, membership in vocational associations[27], and with respect to employment[28], based on the enumerated grounds, including the race-related grounds of race, ancestry, place of origin, colour, and ethnic origin. The Human Rights Tribunal of Ontario has noted:

> The harm [...] of being discriminatorily denied a service, an employment opportunity or housing is not just the loss of service, job or home but the harm of being treated with less dignity, as less worthy of concern and respect because of personal characteristics, and the consequent psychological effects.[29]

25. This would include educational services, co-ops and placements and educational premises, buildings, classrooms, etc.
26. This would include campus housing.
27. This would include faculty association and registration and/or enrollment with licensing entities and certifying bodies, for example, the Ontario College of Social Workers and the Ontario Association of Veterinary Technicians.
28. 'With respect to employment' is interpreted broadly to include pre-, post and during employment, including volunteer positions.
29. *Arunachalam v. Best Buy*, 2010 HRTO 1880 at para 45. In *McKay v. Toronto Police Services Board*, 2011 HRTO 499, the Tribunal noted that prejudicial stereotypes about Indigenous people prejudices and stereotypes have a powerful and pervasive impact on the psyche of mainstream society. See also *Radek v. Henderson Development (Canada) Ltd. And Others* (No. 2),2004 BCHRT 340. In *Wickham v. Hong Shing Chinese Restaurant* 2018 HRTO 500 at para. 38, the Tribunal stated: It is common ground in the case law, and as outlined in the [OHRC's] policy that anti-Black racism often manifests itself in subtle ways. A prevailing and particularly pernicious stereotype that is sometimes applied to Black people is that they are criminals, or have a propensity towards criminal activity, see the policy at page 20, *Nassiah v. Peel (Regional Municipality) Services Board*, 2007 HRTO 14 and McCarthy. Thestereotype of "Black person as criminal" is closely related to racial profiling, which is a form of racial discrimination, see Nassiah, at para 112.

An important feature of the Ontario Human Rights Code is section 14, which permits special programs that are "designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity." Specifically, section 14 of the Code provides that a program, which otherwise would be considered discriminatory because it offers preferential treatment to an identified population, may be implemented if designed to assist disadvantaged groups and relieve hardship. This provision encourages the development and use of special programs as effective ways to achieve substantive equality by helping reduce discrimination or addressing historical prejudice.[30] As such, section 14 may be utilized to establish programs which are aimed at addressing systemic racism.

Section 29 of the Code also sets out that the OHRC is responsible for forwarding policy which promotes the elimination of discriminatory practices. The OHRC released its Policy and Guidelines on Racism and Racial Discrimination in 2005, which avers that "racial discrimination and racism must be acknowledged as a pervasive and continuing reality as a starting point to assessing how the Code applies and what can be done to address them" (OHRC, 2005: 1). The policy describes systemic racial discrimination as consisting of:

> [...]patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for racialized persons.

The policy sets the expectation that organizations should seek to identify and remove systemic discrimination by exploring three considerations: numerical data; policies, practices and decision-making processes; and organizational culture.

The foregoing *Code* provisions have been used to require educators to proactively adopt anti-racism initiatives. For example, in *Grant v. York Region District School Board*, a landmark case in which the Applicant, represented by the Human Rights Legal Support Centre at mediation, negotiated a comprehensive non-confidential settlement package. The Respondent school board agreed, amongst other things, to the following systemic undertakings:[31]

- Establish a Human Rights Office. Part of the mandate of the Human Rights Office shall be to collect and report data to equity-related advisory committees.

- Reinstate the Every Student Counts survey to capture statistics related to incidents of racism, including anti-Black Racism, and shall have the survey completed by the end of the 2017/2018 school year.

- Provide academic services to students through Student Success departments in secondary schools and in conjunction with curriculum services. To be made available to students who are experiencing academic difficulties as a result of racial discrimination.

- Provide counselling and psychological services and supports through its Social Work and Psychological Services Department. To be made available to students who have experienced racial discrimination.

- Assign a Teacher Liaison to develop a group including students, support staff and teachers, to discuss issues impacting student achievement and well being amongst African/Caribbean Canadian male students.

- Roll out mandatory training for all staff on equity, human rights, racism and anti-oppression, including anti-Black racism.

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30. In *Casey v. Anishnawbe Health Toronto*, 2013 HRTO 1244, the Tribunal of Ontario noted that it was not discriminatory for an organization to put in place a policy to increase understanding of the traditional values of Aboriginal culture and that the policy did not constitute discrimination even though it seemingly elevated one creed or ethnicity over another.
31. See Charline Grant Settles Human Rights Case with York Region District School Board (May 18, 2017) https://www.newswire.ca/news-releases/charline-grant-settles-human-rights-case-with-york-region-district-school-board-622930174.html and Grant v. York Region District School Board, Minutes of Settlement: http://www.hrlsc.on.ca/sites/default/files/docs/en/Media/2017-05-17%20Grant%20v%20YRDSB%20Backgrounder%20Website%20English%20version.pdf

- Hold a two-day workshop to focus on delivering educational programing to racialized students with topics such as Islamophobia, anti-Black racism, anti-Indigenous racism.

- Establish subcommittees to address issues of anti-Black racism and Islamophobia and invite community members to participate.

4.4 Truth and Reconciliation Commission of Canada, 2015

The Truth and Reconciliation Commission (TRC) was created by the Indian Residential Schools Settlement Agreement, to reconcile and repair relationships with Indigenous Peoples affected by residential schools. The TRC Final Report documents the practice and legacy of the residential school system within the context of the Canadian colonial project: "The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources." The TRC Final Report issued 94 calls to Action which stress the need for enhanced training in intercultural competency, conflict resolution, human rights, and anti-racism in multiple areas of Canadian society. Further, the Calls for Action place specific emphasis on the role of post-secondary institutions in the process of reconciliation:

- "We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate educational and employment gaps between Aboriginal and non-Aboriginal Canadians."
- "We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages"
- "We call upon the federal, provincial, and territorial governments to provide necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into class-rooms."

The federal government has accepted the TRC report and committed to the development of a Recognition and Implementation of Rights Framework.

All levels of Canadian courts have echoed the findings of the TRC report and emphasized the goal of reconciliation in an array of legal jurisdictions, from criminal law to treaty law to social services and human rights law. These cases have placed heightened importance on ensuring that systemic equity and anti-racism analysis is applied to Indigenous cases, thereby requiring due recognition be accorded to the historical colonial disadvantages experienced by Indigenous communities.[32]

There are a myriad of cases which speak to the substantive and legal obligations in respecting the rights of Indigenous people begins with truth and reconciliation.[33] For example, in *Daniels v. Canada (Indian Affairs and Northern Development),* [2016] 1 SCR 99, the Supreme Court of Court stated:

The constitutional changes, the apologies for historic wrongs, a growing appreciation that Aboriginal and non-Aboriginal people are partners in Confederation, the Report of the Royal Commission on Aboriginal Peoples, and the Final Report of the Truth and Reconciliation Commission of Canada, all indicate that reconciliation with all of Canada's Aboriginal peoples is Parliament's goal.

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32. See for example, *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 16

33. Recently, the Supreme Court of Canada stated "[i]f truth and reconciliation is to be achieved and if *nous le regrettons, we are sorry, nimitataynan, niminchinowesamin, mamiattugut*, is to be a genuine expression of Canada's request for forgiveness for failing our Aboriginal peoples so profoundly, the justness of the system for the compensation for the victims must be protected.": J.W. v. Canada (Attorney General), 2019 SCC 20.

In the decision in *Fontaine v Canada*[34], the Ontario Superior Court reinforces proactive consultation and forefronting the interests of Indigenous Peoples is integral to the healing and restoration of these communities.

4.5 International Frameworks

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007

The UN Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on September 13th, 2007 and was officially endorsed by the current Canadian government in May 2016 — without the qualifications attached by the previous government. Coast Salish scholar Sarah Morales describes UNDRIP as providing "a normative framework for engagement between Canada and its Indigenous peoples. If implemented in good faith, with the aim of realizing its overarching purpose of Indigenous self-determination, it will provide an opportunity to address historical power imbalances, which have led to illegal land takings and resource exploitation" (Morales, 2017). UNDRIP includes the principle of obtaining the "free, prior and informed consent" (fpic) of Indigenous peoples when states are making decisions that will affect their rights or interests. Observing this principle requires state institutions and public service organizations to not only consult with Indigenous peoples but to ensure that Indigenous peoples have been meaningfully engaged and are in agreement with policies and processes that affect them (including equity strategies and data collection).

The United Nations International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The UN International Convention on the Elimination of All Forms of Racial Discrimination specifies that "discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State." Canada ratified the International Convention on the Elimination of All Forms of Racial Discrimination on October 14, 1970 and submits reports to the UN Committee on Elimination of Racial Discrimination (CERD). When Canada last appeared before CERD in 2017, the CERD expressed concerns over the lack of reliable data which effectively "renders invisible the differences in the lived experiences of diverse communities", as well as the disproportionate incarceration of African-Canadians and Indigenous peoples and the failure of the Canadian state to adhere to the UNDRIP principle of free, prior and informed consent.

34. Fontaine v. Canada (Attorney General), Schedule B. 2018 ONSC 6381

5. Data Collection and Disaggregation

The Ontario Human Rights Commission (OHRC) has identified that the persistent absence of people with particular characteristics, in particular those that relate to protected human rights grounds, may signal inequity. Accordingly, data collection on demographic and diversity-related information can be critical to assessing the extent to which an organization is meeting its equity objectives. Given that there is a notable distinction between the presence of diverse characteristics and the realization of equity within an organization, data collection aimed at the advancement of equity should capture both the numerical presence of a diversity of characteristics within an organization and the experiences of those with marginalized characteristics. This can be achieved through data collection that is nuanced and reflective of the stratification of diversity within organizational hierarchies and clusters, and the collection of qualitative/narrative accounts that provide for a deeper understanding of equity and inclusion.

According to the OHRC, human rights-based data collection should be conducted for the following purposes:
- monitor and evaluate discrimination
- identify and remove systemic barriers
- lessen or prevent disadvantage
- promote substantive equality for people identified by Code grounds

The OHRC's Policy and Guidelines on Racism and Racial Discrimination identifies that there are both proactive and reactive rationale to collect race-related data. The OHRC takes the position "that data collection and analysis should be undertaken where an organization or institution has or ought to have reason to believe that discrimination, systemic barriers or the perpetuation of historical disadvantage may potentially exist." In instances where there is a perception that a policy or practice has a disproportionate impact along racial lines or where there have been concerns voiced regarding systemic racism, data collection should be undertaken to monitor and evaluate whether or not the discrimination exists.[35] Alternatively, an organization may proactively elect to collect race-based data in the interest of promoting substantive equity, especially in circumstances where there are historical or sectoral racial inequities that may also be present at the institutional level.

There have been sectoral concerns raised of the relative absence of racialized and Indigenous faculty across Canadian post-secondary institutions, especially in comparison to the student population. A recent Canadian scan of racialized and Indigenous faculty found that while there is a paucity of reliable and comparable data, there is evidence that 'visible minorities' with PhDs are not being hired at comparable rates and racialized professors do not receive tenure as often as Whites (Henry et al., 2017). Researchers also noted that the scarcity of available data makes it difficult to "monitor or measure the success of equity policies and programs" (2017: 304). Recent Ontario anti-racism legislation has also introduced a mechanism by which public service organizations (such as any university that receives regular and ongoing operating funds from the Government of Ontario for the purposes of post-secondary education or a college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act*, 2002) can be required to collect specified information for the purposes of eliminating systemic racism and advancing racial equity.

35. In a recent report regarding police racial profiling, the OHRC stated that data establishing the existence of disparities in police engagement augments Black citizens' reports of trauma and the loss of dignity many associate and have come to expect during interactions with police. For communities where negative stereotypes about truthfulness and criminality endure, the availability of "objective" information is critical to surmount unearnedcredibility barriers many Black people face when reporting having been racially profiled or assaulted by police: see A Collective Impact: Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service, Ontario Human Rights Commission, November, 2018 at pg. 3.

5.1 Social and Historical Context

Given the historical legacy of racism within Canada, achieving racial equity requires active efforts to redress historical inequities. Accordingly, Henry at el. identify that:

> The biggest problem is inertia. It is a historically racist system and so you don't have to do any bad thing for racism to perpetuate itself. All you have to do is nothing. (2017: 98)

Racial equity efforts, such as data collection, must be contextualized within an understanding of how racial prejudice has shaped Canadian institutions and continues to perpetuate racial hierarchies. The OHRC's Policy and Guidelines on Racism and Racial Discrimination asserts that "We must be aware of the events of the past in order to address contemporary manifestations of racial discrimination and racism." Discriminatory practices were both enshrined in Canadian law and protected by private law principles. As described by Canadian legal scholar Colleen Sheppard "overt racism premised on reigning ideologies of white supremacy, was codified in laws and state policies" (2010: 15). These laws and policies included the residential and educational segregation of Black and Indigenous peoples. Numerous reports on the disproportionate incarceration and poverty rates of Indigenous and Black Canadians have noted that these current manifestations of racial inequity are inextricably tied to histories of slavery and colonialism. This necessitates racial equity strategies that are attentive to the institutional expressions of Anti-Black and Anti-Indigenous Racism.

The Ontario Data Standards for the Identification and Monitoring of Systemic Racism provides the following definitions of Anti-Black and Anti-Indigenous racisms:

> Anti-Black racism
> Anti-Black racism is prejudice, attitudes, beliefs, stereotyping and discrimination that is directed at people of African descent and is rooted in their unique history and experience of enslavement and its legacy. Anti-Black racism is deeply entrenched in Canadian institutions, policies and practices, to the extent that anti-Black racism is either functionally normalized or rendered invisible to the larger White society. Anti-Black racism is manifest in the current social, economic, and political marginalization of African Canadians, which includes unequal opportunities, lower socio-economic status, higher unemployment, significant poverty rates and overrepresentation in the criminal justice system.

> Anti-Indigenous racism
> Anti-Indigenous racism is the ongoing race-based discrimination, negative stereotyping, and injustice experienced by Indigenous Peoples within Canada. It includes ideas and practices that establish, maintain and perpetuate power imbalances, systemic barriers, and inequitable outcomes that stem from the legacy of colonial policies and practices in Canada. Systemic anti-Indigenous racism is evident in discriminatory federal policies such as the Indian Act and the residential school system. It is also manifest in the overrepresentation of Indigenous peoples in provincial criminal justice and child welfare systems, as well as inequitable outcomes in education, well-being, and health. Individual lived-experiences of anti-Indigenous racism can be seen in the rise in acts of hostility and violence directed at Indigenous people.

5.2. Employment Equity Legislation

The practice of utilizing data collection to address specific historical inequities has been established for decades in Canadian law through the Employment Equity Act of 1986. The Act "requires federally regulated employers to review workplace policies and practices to identify systemic barriers and to set up proactive initiatives to promote equality for four designated groups: women, Aboriginal peoples, persons with disabilities, and members of visible minorities (defined as persons who are non-Caucasian in race or non-white in colour). These four groups were selected because they had been historically excluded, mistreated, and denied opportunities in the workplace" (Sheppard, 2010: 28). The *Employment Equity Act* was established in response to Justice Rosalie Abella's 1984 Report of the *Royal Commission*

on Equality in Employment which concretized a national understanding of systemic discrimination: "Rather than approaching discrimination from the perceptive of the single perpetrator and the single victim, the systemic approach acknowledges that by and large the systems and practices we customarily and often unwittingly adopt may have an unjustifiably negative effect on certain groups in society" (1984: 223). Utilizing equity plans and institutional-level data, the employment equity approach strives to address systemic discrimination by tracking the composition of federally-regulated workplaces and promoting the inclusion of the four historically excluded groups.[36]

While Employment Equity legislation (including the companion Federal Contractors Program) provides a significant precursor for contemporary race-based data collection standards, the transformational success of this legislation has been hampered by limited reporting requirements and the use of the 'visible minority' category which conflates the experiences of distinct racialized groups. Henry et al. (2017) are particularly critical of recent changes to the Federal Contractors Program which undermine the effectiveness of equity plans by not requiring open data reports. Canada was also criticized by the UN Committee on the Elimination of Racial Discrimination in 2017 for failing to systematically collect disaggregated data in the interest of monitoring and evaluation of the implementation and impact of policies to eliminate racial discrimination and inequality. Further, the Committee reiterated its concern about the continued use of the term "visible minority" – "as it renders invisible the differences in the lived experiences of diverse communities." Thus, while Employment Equity legislation provides an important basis for the collection of data relating to equity-seeking groups, it is insufficient as a framework for systemic anti-racism work since it provides for limited data collection and does not disaggregate amongst racial groups.

5.3. Indigenous Data Considerations

Collecting data on Indigenous peoples within the context of the Canadian state is particularly fraught given the significance of the census to Canadian colonialism. As documented by Debra Thompson "counting the number of persons with Aboriginal ancestry was necessary in order for the state to determine the progress of the assimilative goals of the Indian Act, a totalizing regime that paternalistically governed the lives of status Indians from cradle to grave" (2005: 119). Through the census and the Indian Act, the Canadian government unilaterally determined who would be counted as an "Indian", thereby abrogating the rights of generations of Indigenous persons, in particular women. The racist provisions of the Indian Act also created an incentive for Indigenous peoples to hide their indigeneity from the state in order to avoid being subject to increased surveillance and restricted freedoms.

Given the racist colonial legacy of the census, as well as the unique constitutional rights of Aboriginal persons, the Ontario Data Standards for the Identification and Monitoring of Systemic Racism sets out specific Indigenous data considerations under Anti-Racism Act:

- PSOs [public service organizations] should consider the interests of Indigenous communities and organizations in exercising authority, control, and shared decision making in the collection, management, use and disclosure of information regarding Indigenous people and communities, consistent with relevant privacy legislation.
- Indigenous data governance considerations vary between First Nations, Métis, and Inuit communities and organizations. There are common goals, including emphasis on the importance of engagement, transparency, and Indigenous ownership and control of information (including how it is collected, used, managed, analyzed, interpreted, and reported publicly).
- Indigenous data governance principles aim to ensure that information collected from Indigenous communities is used to empower communities with knowledge and tools to work towards positive community outcomes.
- Transparency is the focus in relationship building, proactive engagement, and strategic data governance partnerships with the government and/or other broader public service bodies, institutions, and agencies.

36. Recent research compiled by the Canadian Association of University Teachers found "significant wage gaps: between men and women; and between white, Aboriginal and racialized academic staff": see Underrepresented & Underpaid Diversity & Equity Among Canada's Post-Secondary Education Teachers (April 2018).

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principle of obtaining the "free, prior and informed consent" (fpic) of Indigenous peoples when states are making decisions that will affect their rights or interests should inform how public service organizations approach the collection of race-based data. Additionally, the First Nations' principles of OCAP© (Ownership, Control, Access and Possession) set out Indigenous jurisdiction over their own data. Accordingly, proactive engagement with affected Indigenous groups and communities is required prior to commencing data collection.

5.4 Disaggregation and Racial Categories

While the category 'visible minority' is an aggregate grouping of various racial and ethnic minorities, an anti-racism approach which recognizes the distinctiveness of racisms and the multiplicity of lived experiences between racialized groups will instead employ disaggregated data. "Disaggregated data is broken down into component parts or smaller units of data for statistical analysis. In the context of race-based data, this means breaking down the composite (aggregate) "racialized" category into its component parts such as Black, South Asian, East/Southeast Asian, Latino, Middle Eastern, White, etc." (Ontario Data Standards for the Identification and Monitoring of Systemic Racism). Aggregate categories, such as 'visible minority' or 'racialized', are able to obscure persistent inequalities impacting particular groups with specific histories of exclusion. Accordingly, anti-racist scholars recommend use of "disaggregated data [to] enable a full explanation of the situation of various groups" (Henry et al. 2017: 312). Additionally, the OHRC cautions against using "a broad category such as "racialized" [that] can mask important differences between racialized groups, since racialized groups are not subject to exactly the same experiences, racial stereotypes and types of discrimination." The OHRC further specifies that "when it is necessary to describe people collectively, the term "racialized person" or "racialized group" is preferred over terms like "racial minority," "visible minority," "person of colour" or "non-White" as it expresses race as a social construct rather than as a description based on perceived biological traits" (OHRC, Count Me In, 2010).

When collecting disaggregated racial data under the Ontario Anti-Racism Act, the Ontario Data Standards for the Identification and Monitoring of Systemic Racism recommends using the below racial categories, which are distinct from, but comparable to the Canadian Census Categories.

ARA Race Categories	Canadian Census Categories
Black	Black
East/Southeast Asian	Chinese, Korean, Japanese, Southeast Asian, Filipino
Indigenous (First Nations, Métis, Inuk/Inuit)	Aboriginal
Latino	Latin American
Middle Eastern	Arab, West Asian
South Asian	South Asian
White	White

The Anti-Racism Data Standard differentiates between race and ethnic categories by asking separate questions, whereas the Canadian census categories conflate race, ethnicity and nationality. Canadian race scholar Debra Thompson asserts that "the conflation or equation of race with ethnicity often diminishes the claims of racial minorities" (2008: 527). By equating racial and ethnic identities, the challenges encountered when engaging in diversity can be blamed on the ideological differences and cultural practices which allegedly pose challenges for social integration. Conversely, if disparities and disproportionalities can be shown to fall along explicitly racial lines, this indicates the presence of systemic racial barriers. Additionally, while the logic of the Canadian census only allows non-Indigenous individuals to respond to the question of race, the Ontario Anti-Racism Data Standards allows all individuals to answer the race question in recognition that there is racial diversity within Indigenous communities. Finally, the Anti-Racism Data Standards recommends a specific sequence of questions:

The sequence of questions can help to improve response rates and the accuracy of the race information provided. When individuals are asked to provide information about more specific identities (such as Indigenous identity and ethnic origin) before they are asked about race, they are more likely to select a race category and less likely to write in a unique response or refuse to answer.

While disaggregated racial categories are recommended for capturing distinctive experiences of racialization between racialized groups, in circumstances where the disaggregation would allow for specific individuals within an organization to be identified, the Anti-Racism Data Standards call for aggregation: "Units of analysis (categories) must be aggregated if doing so is necessary to protect individual privacy and does not affect findings of racial inequalities." This may entail, for instance, that an organization disaggregate data according to the race categories when collecting data across the entire institution, but use the aggregate category 'racialized' when reporting on the experiences of respondents within a particular faculty. This privacy consideration must be balanced with the value of uncovering specific racial barriers within an institution which may be unique to a particular faculty, program or discipline. As stated by Henry et al. "where racialized and Indigenous faculty members are to be found in universities must be of concern" (2017: 313).

The Anti-Racism Data Standards also enable the collection of intersecting categories of analysis (such as gender identity, age, disabilities or sexual orientation): "Additional units of analysis may include categories of other personal information (if collected or used for the purpose set out in the Act) for intersectional analyses with Indigenous identity, race, and religion or ethnic origin." Similarly, the OHRC advises that "To better understand the potential impact of multiple identity factors, or intersectionality, when collecting and analyzing data about a group of interest, it may be helpful to consult with communities, and review applicable research and other relevant documents that highlight how the dynamic of discrimination and disadvantage can play out in a practical way for persons identified by Code and non-Code grounds" (OHRC, Count Me In, 2010). The significance of intersectionality does not preclude the use of single-variable analyses (e.g. specific focus on race), but instead draws attention to "erasures and silences across diverse identities and relations of power" (Henry et al., 2017: 16). The Anti-Racism Data Standards maintain that "an intersectional analysis enables better understanding of the impacts of any one particular systemic barrier by considering how that barrier may be interacting with other related factors." Utilizing multiple intersecting categories of analysis can risk producing identifiable information about survey respondents and so must be collected in such a way as to protect individual privacy.

5.5 Utilizing Data for Equity Purposes

In a 1990 Policy Statement, George Brown College (GBC) committed to "the on-going collection of data necessary to advance the implementation of the Race and Ethnic Relations Policy." This purpose is consistent with the human rights rationale set out by the Ontario Human Rights Commission (OHRC) and anticipates the requirements of the Ontario Anti-Racism Act (ARA), which has the ability to require that public service organizations collect race-based data. The ARA further establishes standards for the collection of race-based data for the purpose of addressing systemic racism and advancing racial equity, as well as provides guidance for how to utilize race-based data for identifying, preventing, removing and mitigating systemic racism barriers.

The institutional collection of race-based data is useful for identifying and addressing racial disparities and disproportionalities, which may indicate the presence of systemic racism barriers. The Anti-Racism Data Standard offers the following definitions:

- Racial disparity: is unequal outcomes in a comparison of one racial group to another racial group.
- Racial disproportionality: the over-representation or under-representation of a racial group in a particular program or system, compared with their representation in the general population.

An example of a racial disparity could be a difference in the graduation rates of racialized students compared to White students. An example of racial disproportionality could be the under-representation of Indigenous faculty compared to the number of Indigenous PhD holders in the Canadian workforce. While these examples may indicate the presence

of a systemic barrier, they do not in themselves prove racial discrimination. That said, an organization invested in advancing racial equity should work to identify racial disproportionalities and disparities in order to determine if there are indications of institutional barriers and in order to develop programs that promote the inclusion of historically excluded groups.There may also be instances where the presence of a racial disparity does not necessarily warrant correction. For instance, if bursaries are won more frequently by racialized students than by White students this may reflect a conscious effort to make financial support available to groups who have faced structural or historical exclusion. Accordingly, analysis of racial disparities and disproportionalities should be contextualized within social and historical relations of power.

Identifying evidence of racial inequities requires careful consideration of the appropriate benchmark. The Anti-Racism Data Standards describe a benchmark as "a baseline against which outcomes may be compared or assessed." Selecting appropriate benchmarks requires attention to the geographic and sectoral context of the institution. For instance, if an institution is located in racially-diverse Toronto it would be inappropriate to set the institutional workforce composition benchmark based on cross-Canada workforce statistics. An educational institution that is committed to being reflective of the community it serves, might set its representational benchmark against the racial composition of its student body. Henry et al. (2017) are critical of how the reliance on overall census figures of racialized and Indigenous faculty misrepresents the numbers relative to workforce availability since the percentage of 'visible minorities' holding PhD degrees indicates a much higher representation gap. Benchmarks should be selected in the interest of advancing racial equity, rather than in the interest of presenting the semblance of diversity.

Finally, the Anti-Racism Data Standards require that public service organizations publicly report on the data they collected, while ensuring that the data is de-identified. Data should be shared in a manner that fosters community trust and accountability, and ensures meaningful engagement with those most adversely impacted by racism. Engagement with racialized and Indigenous members of the institution is necessary to contextualize data findings within lived experiences and provide opportunities for feedback and response.

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Biographies

Nicole Bernhardt, M.A., PhD Candidate

• PhD Candidate, Political Science at York University
• B.A in Philosophy, Queen's University
• M.A in Philosophy, Queen's University
• Award recipient of York University's Abella Scholarship for Studies in
  Equity, 2015

Nicole is an experienced trainer, investigator and mediator in the fields of equity, anti-harassment, and human rights. She is currently completing a PhD at York University, conducting research into the efficacy of systemic equity-driven change efforts within the framework of human rights. She has worked as an investigator with the Ontario Human Rights Commission and as a Conflict Resolution and Human Rights Consultant with the Ontario Public Service. Nicole has led equity-driven organizational change projects within the Ontario Public Service and has acted as an Equity Specialist for professional and community organizations. She also holds an Honours Bachelor of Arts Degree and a Master of Arts in Philosophy from Queen's University. She won a Canada-wide internship competition, with the Sheldon Chumir Foundation; a Calgary-based organization that seeks to promote ethics and leadership in public life. She has presented papers and workshops on equity throughout Canada as well as internationally.

Sharmeen Shahidullah, iBBA, MBA

• MBA, Schulich School of Business, specializing in Organizational
  Behaviour & Business Sustainability
• Team Dynamics and Business Communication lecturer, Schulich
  School of Business
• Investigator Certification, Rubin Thomlinson Workplace Training
  and Consulting Inc.
• Certified in Social Impact Analysis

Sharmeen Shahidullah is a Corporate Social Responsibility professional with over nine years of experience in evaluating and promoting organizational culture through her knowledge in team dynamics, crisis and change management issues. She has an MBA from the Schulich School of Business, York University with a specialization in Organizational Behaviour and Business Sustainability. She has worked at the United Nations Global Compact in New York to develop their Business Partnerships strategy. After which she was at TD Bank Group as the Social Responsibility and Impact Analyst to develop TD's 2016 Social Responsibility Report. Sharmeen has worked extensively on Negotiations and Conflict Management research; and is a part-time Organizational Behaviour lecturer for Masters students at the Schulich School of Business. Currently, Sharmeen works as the Human Rights Advisor at George Brown College's Diversity, Equity and Human Rights Services. She also works independently as a business consultant to develop strategic implementation plans for both public and private sector organizations. Sharmeen is also a Climate Reality Leader, trained by Former U.S Vice President Al Gore (Pittsburgh, PA).

Audrey Rochette, Indigenous Relations Specialist

- M.A. University of Toronto (2019)
- Junior Fellow Massey College
- Canada Graduate Scholarship Recipient (2017)
- President's Awards for Outstanding Indigenous Student of the Year, University of Toronto (2016)
- Hons BA, University of Toronto (2016)
- Aboriginal Award of Excellence, University of Toronto (2015)

Audrey is Anishinaabe from Whitesand First Nation. She is an Indigenous Relations Consultant. Her passion for Indigenous relations was cultivated through her roles in the Indigenous community as the Senior Development Officer with Indspire, an Indigenous-led registered charity that invests in the education of Indigenous People and imagineNATIVE Film + Media, the largest Indigenous film festival in the world. She currently holds a research fellowship position with the University of Toronto specializing in Indigenous research. In 2017, she gave birth to her second son while working on her Masters. Her Masters research focuses on decolonizing museums, focusing on Indigenous voices, language and ceremony in museums.

Audrey is committed to positively impacting the under representation of Indigenous students in post-secondary education. Audrey recently served as Co-Chair of the University of Toronto Decanal Working Group on Indigenous Teaching and Learning, mandated to improve the education of faculty, staff and students about Indigenous language and culture. In this capacity, she participated in an extensive yearlong campus wide consultation process and helped author a comprehensive report on ways to strengthen Indigenous partnerships within the University of Toronto and to build curriculum, student research opportunities and co-curricular opportunities taught from an Indigenous perspective and incorporating Indigenous content.

Charles C. Smith, Author

- Pluralism in the Arts in Canada: A Change is Gonna Come (2012)
- Anti-Racism in Education: Missing in Action (2010)
- Conflict, Crisis and Accountability: Law Enforcement and Racial Profiling in Canada (2007)
- Anti-Black Racism in Canada: A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (with Erica Lawson, 2002)

Charles is currently a lecturer in the Arts Administration & Cultural Management program at Humber College. He was formerly a lecturer in cultural theory and cultural pluralism in the arts, at the University of Toronto Scarborough. Charles is an expert with respect to institutional racism and intersectional issues of race, class, gender, sexual orientation and disabilities. His scholarship has critically examined the relationship between education, law enforcement and other systems in which racialized and Indigenous peoples face on-going challenges. He has served as Equity Advisor to the Canadian Bar Association and the Law Society of Upper Canada, as well as a Research Associate with the Canadian Centre for Policy Alternatives. Before joining the Law Society, Charles served as the Manager of the Access and Equity Centre with the City of Toronto and the former Municipality of Metropolitan Toronto where he developed several policies and programs to enable successful implementation of equity and diversity initiatives. Charles has provided advice to numerous organizations interested in developing and implementing equity and diversity policies and programs. Charles is also a published poet, playwright and essayist. He won second prize for his play Last Days for the Desperate from Black Theatre Canada.

Ena Chadha, LL.B., LL.M.

• Called to Bar of Ontario 1994
• B.A.A. Ryerson School of Journalism
• LL.B. University of Saskatchewan
• LL.M. (Research) Osgoode Hall Law School
• Advance Alternae Dispute Certificate
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• Mental Health Law Certificate

In 2018, Ena Chadha was appointed as the Chair of the Board of Directors of the Human Rights Legal Support Centre. She served as a Vice-Chair with the Human Rights Tribunal of Ontario from 2007 to 2015. From 1993-1999, Ms. Chadha practiced privately in the areas of human rights, employment law, immigration and refugee law and also served as counsel to the Ontario Human Rights Commission. In 1999, Ms. Chadha was selected as Director of Litigation of ARCH, a test case disability legal aid clinic. Ms. Chadha has appeared before various administrative tribunals, trial and appellate courts, including prominent constitutional challenges at the Supreme Court of Canada. She has a Bachelors degree in Journalism from Ryerson, received her LL.B. from the College of Law, University of Saskatchewan, and was called to the Ontario Bar in 1994. Ms. Chadha holds certificates in Advance Alternate Dispute Resolution (Negotiations and Mediations); Intensive Trial Advocacy; and Mental Health Law. She received her LL.M. degree (research thesis on disability/human rights) from Osgoode in 2008. Ms. Chadha has spoken widely on human rights issues, including as a guest speaker for the National Judicial Institute. She has taught as an adjunct lecturer at Osgoode Hall Law School and Schulich School of Business. Ms. Chadha has published extensively on equality rights and recently co-authored a chapter on Women with Disabilities in Oxford University Press authoritative textbook The UN Convention on the Rights of Persons with Disabilities. In 2019, the Indo-Canadian Chamber of Commerce honoured Ms. Chadha as the Female Professional of the Year and the Canadian Bar Association recognized Ms. Chadha as a Leader of Change. She volunteers serving as a Co-Chair of the University of Toronto's Trial Division Tribunal presiding over Academic offence hearings.