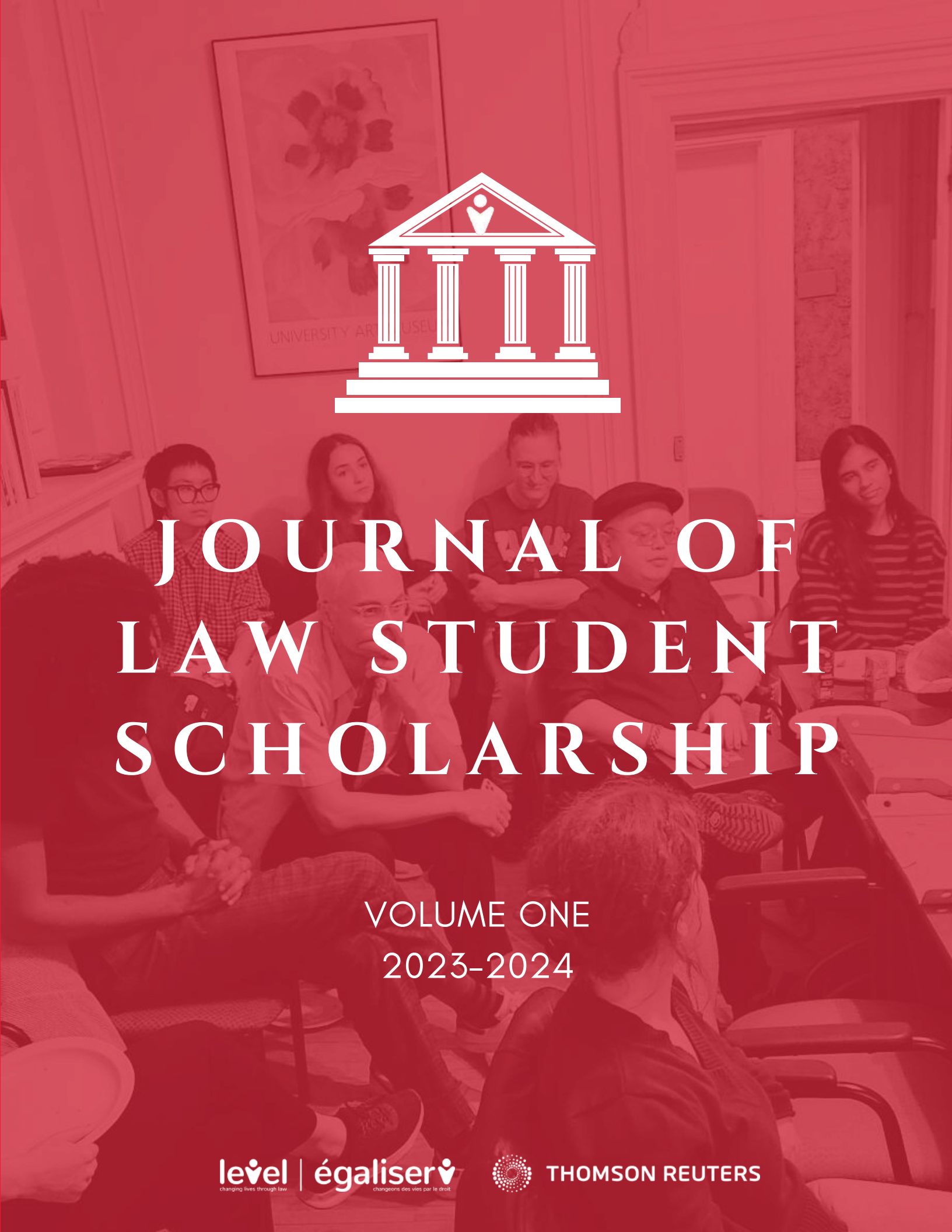

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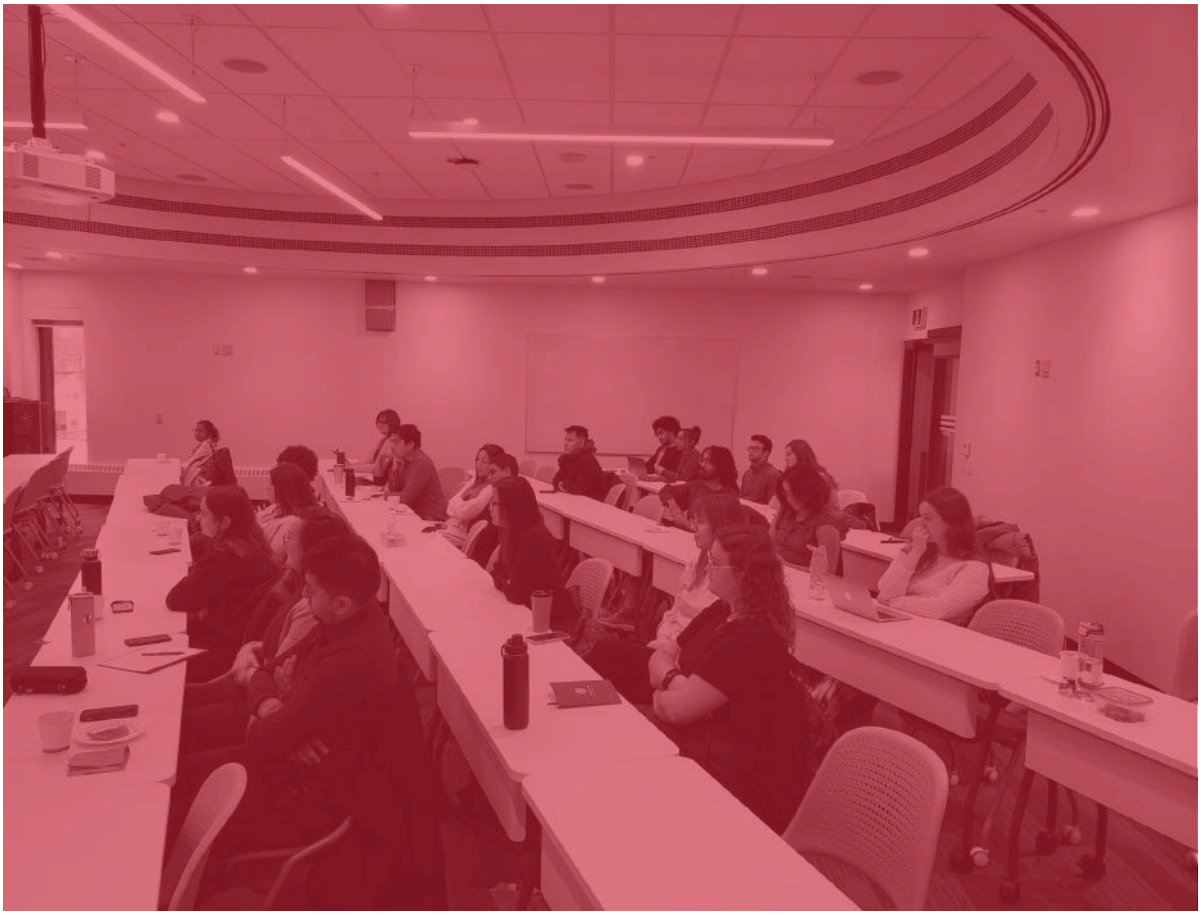

ABOUT OUR PUBLICATION

This publication was developed to showcase scholarship developed during Level's Social Justice Fellowship Program. As part of the program, Level recruited, trained, and funded seventeen law students that worked on social justice projects of their own designs. The following scholarship is a result of their efforts over the 2023-2024 school year. Level is proud to present their work in this current academic publication. We would further like to thank Thomson Reuters for sponsoring this program.

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REFERENCE RE: AN ACT RESPECTING FIRST NATIONS, INUIT AND METIS CHILDREN, YOUTH AND FAMILIES: A POTENTIAL PATHWAY TO SELF-GOVERNANCE

A Research Report by Kafela Campbell and Shahene Patel
Lincoln Alexander School of Law, Toronto Metropolitan University

Armed with a human rights degree and a passion for justice, Kafela Campbell decided to go to law school in furtherance of that passion. Now in her final year, Kafela can't wait to help affect change. In her spare time, Kafela can be found watching horror movies, cuddling her cats, or drinking coffee.

Shahene Patel is currently an IPC Student at Beamish Law as well as a third-year law student at the Lincoln Alexander School of Law at Toronto Metropolitan University (TMU). She is a government relations specialist and experienced policy analyst who came to law school to advocate for fairness, equality, and equity through the law. Shahene cares about advancing human rights and social justice issues in an effort to address access to justice problems.

Introduction

In 2019, *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families* (the "*Act*") was enacted by Parliament. With the ambition of fulfilling Canada's obligations to the Truth and Reconciliation Commission (the "TRC") calls to action, the *Act* guaranteed Indigenous peoples' inherent right to self-governance, including jurisdiction over their own child, youth, and family services ("CYFS"). The *Act* affirmed Indigenous peoples are the most qualified to assess and serve the Best Interests of the Child (the "BIOC") and govern child welfare practices, which is a major pillar of the TRC's calls to action.

The Government of Quebec put forward a reference question to the Quebec Court of Appeal (the "QCA") on the validity of the *Act*. The QCA held that the *Act* was constitutionally valid except for ss. 21 and 22(3). The Attorney General of Quebec appealed this decision to the Supreme Court of Canada (the "SCC"). This report will explore the SCC decision and the precedent it could set for greater Indigenous self-governance and, more broadly, truth and reconciliation.

Procedural History - Reference at the QCA

The Government of Quebec argued that the *Act* was not constitutional. They argued that it was legislated in contravention of the *Constitution Act*, 1867 (the "*Constitution*"), which divides federal and provincial powers in sections 91 and 92. Section 92(13) of the *Constitution* delegates CYFS to a provincial responsibility under property and civil rights.[1] As such, the Attorney General argued that Parliament[2] was dictating on a matter that falls squarely within the provincial jurisdiction and, in so doing, was effectively amending the *Constitution*.[3]

Further, section 91(24) assigns responsibilities related to "Indians, and Lands reserved for the Indians" to the Parliament of Canada, and the *Indian Act* serves as the legislative framework through which Parliament can implement their policies and regulations concerning Indigenous peoples.[4] Section 88 of the *Indian Act* provides that provincial laws of general application, such as CYFS, are applicable to Indigenous peoples regardless of the federal government's constitutional responsibilities.[5]

[1] *Constitution Act*, 1867, section 92(13).
[2] In this report, we refer to the Parliament of Canada and the federal government interchangeably to denote the legislative and executive branches collectively responsible for governance at the federal level in Canada. This usage reflects the overlapping functions and shared authority between these branches in the Canadian political system.
[3] *QCA decision* at para 8.
[4] *Constitution Act*, supra note 2 at section 91(24).
[5] *Indian Act*, R.S.C., 1985, c. I-5, at section 88.

Even with section 35 of the *Constitution*, which recognizes and affirms the pre-existing rights of Indigenous peoples, the Attorney General of Quebec's position was that the federal government should not be able to unilaterally expand the scope of the section to include an Indigenous right to self-government beyond a case-by-case basis.[6] However, as the Attorney General of Canada argues it is necessary to analyze the *Act*'s pith and substance to determine its constitutionality.[7] From their perspective, "there are three separate effects of the *Act* that must be taken into account: it will help maintain the cultural connection of Aboriginal children to their communities; it will reduce the number of children in the care of government agencies; and it will improve the effectiveness of the services provided [...] the pith and substance of the Act is therefore "to protect and ensure the well-being of Aboriginal children, families and communities"" captures the pith and substance of the *Act*.[8]

In 2021, the QCA ultimately held that the *Act* was not *ultra vires* Parliament's jurisdiction, with the exception of sections 21 and 22(3). Per the *Act*, s. 21 confers to Indigenous-made laws the same force of power as federal law, while s. 22(3) resolves conflicts between provincial law and Indigenous law in favour of the latter. In the Court's view, these provisions "[alter] the fundamental architecture of the *Constitution*".[9] In its decision, the QCA held that:

> When an Aboriginal governing body attempts to enter into a coordination agreement with a government and, in accordance with the *Act*, enacts legislation in relation to child and family services, s. 21 of the *Act* specifies that the legislation has "the force of law as federal law" [...] In this regard, the provision alters the fundamental architecture of the *Constitution* and is ultra vires. [...] The legislative texts in question here, however, are not enactments of the federal government, but rather enactments of Aboriginal governing bodies exercising the s. 35 Aboriginal right of self-government of their peoples. Only s. 35, as interpreted by the courts, could confer precedence on such legislative texts [...] The same is true of s. 22(3) of the Act [...] By giving absolute priority to the Aboriginal regulation of child and family services and setting aside the reconciliation test specific to s. 35 of the *Constitution Act*, 1982, s. 22(3) violates this principle.[10]

This particular determination made by the QCA was echoed later by the Attorneys General of Alberta, Manitoba, and Northwest Territories, who each expressed that their legislative powers would be undermined by enacting these sections of the *Act*.[11]

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[6] *Supra* note 5, *QCA decision* at para 289
[7] *Ibid* at para 293
[8] *Ibid* at paras 294-295
[9] *Ibid* at para 64.
[10] *Ibid* at paras 64-65.
[11] Please see the various facta of the intervenors submitted to the SCC by the AGs Alberta, Manitoba, and Northwest Territories, available online here: <https://www.scc-csc.ca/case-dossier/info/af-ma-eng.aspx?cas=40061>

The Attorney General of Quebec and the Attorney General of Canada both appealed the QCA's ruling to the SCC. Quebec's appeal, which sought a determination that the entirety of the *Act* was *ultra vires*, was dismissed.

Procedural History - Reference at the SCC

The Attorney General of Canada's appeal to the SCC, which sought to determine whether the *Act* was constitutionally valid in its entirety, was allowed. On February 9th, 2024, the SCC released its decision, *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families* ("*Reference*").[12] The SCC ruled that the *Act*, as a whole, was not ultra vires Parliament's jurisdiction, including sections 21 and 22(3). In its decision, the SCC determined that the pith and substance of the *Act* is to protect the well-being of Indigenous children, which is within the scope of Parliament's power. Further, the Court held that the *Act* plays an important role in Canada's obligations to reconciliation with Indigenous communities, the TRC Calls to Action, and the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP").[13] While Canada's pathway to reconciliation is ongoing and long overdue, through the *Reference*, the SCC has set a precedent that has the potential to help lead towards further cooperative reconciliation and allows us to imagine a tenable future for Indigenous sovereignty free from Crown intervention.

The *Act* on a National Stage

Outside of the courts, the *Act* was both lauded as an important achievement for Indigenous communities across Canada, as well as rightfully criticized for being not enough. In addition to being drafted in consideration of the BIOC, the *Act* served to promote cultural connectedness, which, in and of itself, is an important factor when considering the BIOC in Indigenous communities. For example, the importance of preserving cultural identity in Indigenous children was a significant aspect of the *Act*: "Indigenous worldviews hold that a child's wellness is a function of the wellness of the child's family and community, and [...] promote resilience and serve as buffers that mitigate negative impacts of historical and continuing injustices affecting Indigenous peoples."[14] The president of the Otipemisiwak Métis Government, Andrea Sandmaier, has said about the *Act* and the *Reference* decision, "We are extremely pleased that the Supreme Court of Canada was unanimous in upholding this forward-looking, innovative and reconciliation-based piece of legislation. [It] affirms that our inherent right to self-government includes the power to make our own laws to protect our children, youth, and families."[15]

[12] Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5 ["the *Reference*"].
[13] *Ibid* at paras 3, 5, 21, 41, and 79.
[14] Jessica Ball and Annika Benoit-Jansson, "Promoting Cultural Connectedness Through Indigenous-led Child and Family Services: A Critical Review with a Focus on Canada" (2023) 18:1 First Peoples Child & Family Review, 34 at page 42
[15] https://albertametis.com/news/metis-nation-within-alberta-applauds-supreme-court-ruling-on-bill-c-92/

Meanwhile, the Yellowhead Institute released multiple reports in response to the *Act*, stating that "more than "good faith" is required to ensure Indigenous children's relationships with their families, communities, cultures and territories are prioritized, nurtured and maintained".[16] Others have responded by saying that the *Act* does not recognize the inherent sovereignty of First Nations, that consultations were not carried out in good faith, that there are concerns with regards to funding, and that there still needs to be further understanding of the ultimate issue of chronic over-representation of Indigenous children in child welfare.[17] As of 2016, more than half of children under the age of fifteen in Canada's foster care system were Indigenous, despite representing only 7.7% of the country's total population. This figure has likely grown since.[18] There were, as a result, many shortcomings to the *Act*.

Per the *Act*, though, several Indigenous communities have already given notice to signal their intent to exercise jurisdiction and/or submitted requests to enter into coordination agreements under ss. 20(1) and 20(2). What this means is that the Indigenous groups choosing to administer their own CYFS have identified an Indigenous Governing Body ("IGB") to act on their behalf to either:

1) Give notice to the Federal Minister of Indigenous Services and the government of each province and territory in which the Indigenous community or group is located that they plan to exercise their own CYFS laws by enacting their own legislation[19]; or
2) Make a request to enter into a negotiated and agreed upon coordination agreement with the federal and relevant provincial governments.[20]

This seems to indicate that, in spite of the just criticisms, many Indigenous communities are opting to seize this opportunity for sovereignty. Western notions of family and BIOC are not and have never been an adequate substitute for Indigenous knowledge and self-governance.

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[16] Yellowhead Institute, "*An Act respecting First Nations, Inuit, and Métis Children, Youth and Families* Does Bill C-92 Make the Grade?", online: <https://yellowheadinstitute.org/wp-content/uploads/2019/03/does-bill-c-92-make-the-grade_-law-professors-weigh-in.pdf> at page 7.

[17] https://fpcfr.com/index.php/FPCFR/article/view/367/299
https://manitobachiefs.com/press_releases/amc-not-impressed-with-new-act-for-first-nations-family-and-children-will-continue-work-for-full-jurisdiction/
https://yellowheadinstitute.org/wp-content/uploads/2019/07/the-promise-and-pitfalls-of-c-92-report.pdf

[18] Child and Youth "Protection" OHRC, "Interrupted Childhoods: Over-representation of Indigenous and Black children in Ontario child welfare", online: <https://www.ohrc.on.ca/en/interrupted-childhoods#:~:text=Overall%2C%20the%20proportion%20of%20Indigenous,%2DIndigenous%20(mainstream)%20CASs.>.

[19] Indigenous Child & Family Services Directors Our Children Our Way Society, "The paths to jurisdiction," online: <https://ourchildrenourway.ca/indigenous-jurisdiction/the-paths-to-jurisdiction/>

[20] The AFN has prepared a letter template addressed to the Minister of Indigenous Services Canada as a reference for IGBs seeking to give notice or submit a request under ss. 20(1) and 20(2) of the *Act*. See: http://www.afn.ca/wp-content/uploads/2021/02/Models-Giving-Notice_EN.pdf

Inherent Right to Self-Governance, Legislative Reconciliation, and sections 21 and 22(3) of the *Act*

Indigenous persons in Canada have an inherent right to self-governance, as affirmed by section 35 of the *Constitution*. This means that Indigenous people have a right to govern themselves, including, but not limited to, matters relating to and integral to their communities, cultures, identities, traditions, and land.[21] At common law, Lamer CJ held in *R v. Van der Peet* that:

> [...] the doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.[22]

As such, *Van der Peet* was a pivotal decision in affirming Aboriginal rights through the context of the *Constitution*. While there are significant shortcomings to the *Van der Peet* test and the burden of proof on Indigenous peoples to prove their Aboriginal rights, the inherent right to self-governance and Aboriginal rights are integral to Indigenous sovereignty.

In the *Reference*, the SCC dismissed the QCA's decision that sections 21 and 22(3) of the *Act* are *ultra vires* Parliament's constitutional powers by extending the doctrine of federal paramountcy. The SCC held that section 21 is valid because Parliament has the constitutional authority to incorporate anticipatory language.[23] It was also held that section 22(3) was a mere "legislative reinstatement of the doctrine of federal paramountcy," and it is for the courts to determine any conflicts between federal and provincial laws.[24] However, the SCC was silent on explicitly stating that Indigenous persons' section 35 rights are protected with respect to child and family services.

Despite this, the SCC's response to Quebec's argument and the QCA's finding that sections 21 and 22(3) of the *Act* alter the *Constitution* is notable. Terry Teegee, the Regional Chief of the BC Assembly of First Nations, applauded the SCC's decision by stating that the decision "reaffirms that Canada has an obligation to uphold international law and to act in ways that maintain the honour of the Crown. Under those obligations, Canada must fully

[21] *R v Van der Peet*, 1996 2 [SCR] 507 at para 56.
[22] *Ibid* at para 30.
[23] *Supra* note 14, the *Reference*, at para 130.
[24] *Ibid* at para 132.

recognize our inherent Indigenous right to self-determination".[25] Cindy Blackstock of the First Nations Child and Family Caring Society of Canada said that while the SCC's decision is a step forward to reconciliation, governments must act in a way that honours this decision to uphold Indigenous child welfare laws.[26] The *Reference* decision plays an important role in the reaffirmation of Indigenous persons' inherent right to self-governance under the *Constitution*. Inherent self-governance is solidified in the law but also by the courts, which could act as a signifier to Indigenous communities everywhere that self-governance can be actualized.

In the decision, the SCC makes reference to legislative reconciliation, meaning that Parliament has a clear intention vis-a-vis the *Act*, to work together with Indigenous governing bodies to "remedy the harms of the past and create a solid foundation for a renewed nation-to-nation relationship in the area of child and family services, binding the Crown in its dealings with the country's Indigenous peoples".[27] Legislative reconciliation is about enacting legislation that would further Indigenous inherent right to self-governance.[28] This is important for acknowledging that Indigenous communities have the jurisdiction to govern themselves. For example, Bill C-61, *An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands*, could be another example of legislative reconciliation to affirm the Indigenous right to govern in "relation to water, source water, drinking water, wastewater and related infrastructure on First Nation lands".[29] Perhaps there is a future where Indigenous communities will have sovereignty over policing, health services, or education.

The *Reference* decision, however, may not have as strong of an impact as initially thought. In many Indigenous communities, drug trafficking is a significant issue. Many First Nations are calling on the provincial government to require Ontario Provincial Police ("OPP") officers to enforce First Nations' by-laws on their communities.[30] OPP officers have refused to enforce their laws and instead enforce provincial or federal laws on First Nations reserves, which completely runs contrary to the *Indian Act* and section 35 of the *Constitution*. This has the potential to undermine First Nations' law and by-laws and the ultimate sovereignty that First Nations have over governing their own affairs. There needs to be greater respect and perhaps even legislative reconciliation in order to guarantee that Indigenous peoples' right to self-governance is protected and not curtailed in favour of non-Indigenous laws.

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[25] https://www.ubcic.bc.ca/supreme_court_of_canada_upholds_the_act_respecting_first_nations_inuit_metis_children_youth_and_families

[26] https://www.cbc.ca/news/indigenous/supreme-court-c92-child-welfare-ruling-1.7110141

[27] *Supra* note 14, the *Reference*, at para 20.

[28] *Ibid* at para 17.

[29] https://www.sac-isc.gc.ca/eng/1697555066364/1697555089256

[30] <https://www.thestar.com/politics/provincial/the-opp-doesnt-have-to-enforce-first-nations-laws-indigenous-leaders-say-thats-outrageous-and/article_259ed138-e61a-11ee-8400-cf2f54a9d07d.html>

The *Indian Act*, TRC Calls to Action, and the Future of Indigenous Self-Determination in Canada

While the *Reference* decision was generally regarded as significant for Indigenous communities everywhere, there are a few shortcomings. As mentioned, the decision does not undergo a section 35 analysis (i.e. the inherent right to self-governance).[31] The larger issue, however, is the limiting nature of the *Indian Act* itself. Indigenous communities may not ever have full autonomy to govern themselves because of section 91(24) of the *Constitution,* which states that the federal government has exclusive jurisdiction to govern over "Indians, and lands reserved for the Indians".[32] In general terms, the *Indian Act* limits the full autonomy of Indigenous peoples as per section 91(24) of the *Constitution* because the federal government has exclusive power over all matters relating to "Indians". Many would argue that the *Reference* case is indicative of Parliament's power per section 91(24), not necessarily that Indigenous communities are exercising their inherent right to self-governance.

With that said, however, we do believe that the *Reference* decision was pivotal for addressing the TRC calls to action, specifically numbers 1 to 4. The SCC references call to action number 4, which:

> "…call[s] upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
>
> > i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
> >
> > ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
> >
> > iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate."[33]

The *Act* will, of course, not address all the TRC calls to action. In fact, we believe that there is very little the federal government can do to address the calls fully. This will be ongoing work that will never be enough. However, the *Act* and the SCC affirming the Act in the *Reference* decision is a start. The federal government has a long way to go in addressing and implementing the TRC calls to action, but the *Reference* decision could set a precedent for the other calls to action as well.

[31] See para 117 of the *Reference* decision.
[32] Constitution Act s. 91(24).
[33] *Supra* note 14, the *Reference*, at para 13.

Conclusion

The *Act* is an important statute affirming Indigenous rights regarding CYFS. The challenge to the Act at the QCA speaks to a larger discomfort institutions have with forfeiting power and jurisdiction. However, the *Reference* decision was monumental in re-affirming Indigenous inherent right to self-governance, sovereignty, and paving the way for truth and reconciliation. There are many areas of law where Indigenous communities may gain greater sovereignty, such as policing, health services, or education. However, how likely are the federal or provincial governments likely to cede autonomy to Indigenous communities? And what about Indigenous peoples living off reserves? There are still many unanswered questions.

What is true, however, is that the *Reference* decision was an important step towards addressing some of the TRC Calls to Action. While, of course, reconciliation and addressing even some of the Calls is a never-ending journey, the *Reference* decision has the potential to pave the way to signal not only to Indigenous communities that their inherent rights and sovereignty are protected but also to the provincial and federal governments that their powers are not necessarily absolute.

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BREAKING BARRIERS AND EMBRACING REAL-WORLD EXPERTISE: A CALL FOR LAW SOCIETIES AND SCHOOLS TO ACKNOWLEDGE AND EMPOWER THOSE WITH SEX WORK EXPERIENCE

A Report by Kate Winiarz & Jenna Mollison
Faculty of Law, University of Ottawa

Kate is a student and researcher in the University of Ottawa's Common Law program from Winnipeg, Manitoba. Her work focuses on the experience of highly-surveilled communities, privacy rights, digital identities and the gentrification of digital spaces. She brings with her 15+ years in sex worker rights activism, advocacy, and organizing - including with the Sex Workers of Winnipeg Action Coalition.

Jenna is a second year student with the Faculty of Law at the University of Ottawa. She has spent all of her post-secondary years in Ottawa, but before that, she bounced around a lot of provinces due to her mother being in the military. She always knew that she wanted to do something with her life that was social justice based and she always loved the law and its flexibility, so a social justice-focused legal career felt like the perfect path for her. If she's not studying or working, you can find her hanging out with her friends, painting, or reading.

Introduction

To ensure sex work law and policymaking respect the human rights of sex workers, their voices must be at the table.[1] Sex workers have valuable lived experiences – including entrepreneurship, negotiation skills, navigating the legal system through statutory interpretation, knowledge translation, human rights advocacy, and more. Yet laws are consistently made about them without their input, resulting in the criminalization of their workspaces, reducing their safety, and inviting systemic violence into their daily lives. This process needs to end.

Law school and the process of entering the legal profession require access to capital. Not every student has connections to enough money or credit, either through family or extended periods of work previous to entering law school. Nor does every student desire to live in debt for extended periods of time. Sex work is a low-barrier way to make money (though low-barrier does not mean easy) used by between 2-7% of university students.[2] Despite its frequency, the legal profession has reinforced societal stigma by subjecting prospective and current lawyers to good character hearings and fostering a culture of fear for practicing lawyers who currently, or have in the past, engaged in sex work. This kind of treatment fosters a climate of fear and can keep these candidates from pursuing a legal career - locking them out of professional and policymaking spaces and continuing the cycle of exclusion and bad lawmaking.

Sex work is work.[3] Sex workers, both current and former, must be able to choose to disclose their experience and have that work recognized as legitimate, valuable, and relevant when applying to law schools, law societies and as they move through their legal careers. Yet, owing to hostile attitudes in the profession at large, many sex workers either do not disclose their history or may simply avoid the profession altogether. The legal profession itself has encouraged that response through opaque good character investigation processes.

The profession should work to create a welcoming environment for those with lived experience. As such, we propose a norms-shifting policy centred on education, declaration of sex worker support, and community dialogue to encourage sex worker participation in the legal profession. Welcoming sex workers to the legal profession will bring their experiences and strengths directly to where they can make the most difference. Further,

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[1] Sarah Allen, Jill Chettiar & Darcie Bennett, *My Work Should Not Cost Me My Life: The Case Against Criminalizing the Purchase of Sex in Canada* (Beaconsfield, QC: Gender and Sexual Health Initiative, 2014) at 17.
[2] Aaron Brown & Elizabeth Buckner, "Student Sex Work is Happening, and Universities Need to Respond with Health Services" (7 October 2021), online: *The Conversation* <theconversation.com/student-sex-work-is-happening-and-universities-need-to-respond-with-health-services-167767>.
[3] Global Network of Sex Work Projects, "Policy Brief: Sex Work as Work" (2017), online(pdf) at 1: *Global Network of Sex Work Projects* <www.nswp.org/sites/default/files/policy_brief_sex_work_as_work_nswp_-_2017.pdf>.

inclusion and support of sex workers has the potential to combat harassment of all women, transgender, and queer people in the workplace. To encourage social change lawyering, the profession must reject the norms and remove barriers that keep sex workers out of positions of power. These suggestions are in line with calls for decriminalization by the United Nations, Amnesty International, and, importantly, sex workers themselves.[4] Decriminalization means simply treating sex work as work and recognizing the labour rights of those in the industry.

This norms-based policy proposal is made up of four broad sections. The first section explains our reason for choosing this topic: expulsion and firing of students and professionals with sex work histories, giving rise to the myth that former and current sex workers don't belong in the profession. Next, the second section reviews the current state of sex work in Canada, including the current legal context and subsequent stigma faced by sex workers. The intersections between race, gender, and class, including the phenomenon of whorephobia, are reviewed. By analyzing these intersections, the barriers erected by non-acceptance of sex work experience are underscored.

The third section explains the current processes for admission into the legal profession, including both law school and law society admission processes. At law schools, the process is dependent on the school's admissions selection committee. Law societies, on the other hand, still rely on good character investigations. As such, we examine the criteria used to determine if an applicant requires a good character investigation to practice in their respective province and identify how intersections of stigma may be present depending on the makeup of hearing panels.

The final section presents policy recommendations directed at law schools and law societies centred on destigmatizing sex work in their application and assessment processes for recognizing sex work experience in their applicants. By refusing recognition of the lived experiences of sex worker lawyers and law students, law and policymaking focused on sex work is often based on whorephobic stereotypes and misplaced concerns about human trafficking, criminalizing elements of the industry with devastating effects.[5] To truly

[4] United Nations Human Rights Special Procedures, "Eliminating discrimination against sex workers and securing their human rights" (October 2023), online: <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf>; Amnesty International, "Amnesty International Policy on State Obligations to Respect, Protect, and Fulfill the Human Rights of Sex Workers" (26 May 2016), online: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>; *Canadian Alliance for Sex Work Law Reform v. Attorney General*, 2023 ONSC 5197.

[5] See also Elena Argento et al, "The Impact of End-Demand Legislation on Sex Workers' Access to Health and Sex Worker-Led Services: A Community-Based Prospective Cohort Study in Canada" (2020) 15:4 PLoS ONE 1 at 8; Jennifer McDermid et al, "How Client Criminalisation Under End-Demand Sex Work Laws Shapes the Occupational Health and Safety of Sex Workers in Metro Vancouver, Canada: A Qualitative Study" (2022) 12 BMJ Open 1; Centre for Gender and Sexual Health Equity, "Harms of End-Demand Criminalization: Impact of Canada's

embrace the notion of "nothing about us without us," these recommendations are to be sex worker-led and intersectionally informed.

To Disclose or Not to Disclose: An Individual's Choice

Stigma against sex work is alive and well in Canada. There are many reasons a sex worker may not wish to disclose their experiences - be it because of risk posed to family and intimate relationships,[6] employment,[7] housing, or any other factor. An individual's decision to disclose is their own, but those who choose to disclose should not be subject to discrimination because of it.

The crux of this piece is not that everyone with sex work experience must disclose it. That would create a mandatory disclosure system that would likely exacerbate harm by imposing sanctions on those who do not report their experience. Instead, we suggest that if an individual chooses to disclose sex work experience, it should be treated as any other work experience. While the goal is to end sex work stigma, it must be on terms set by workers themselves.

Whether out about their experiences or not, there are both current and former sex workers in all law schools, on all alumni lists, in all law societies, and in all application piles. Their ability to fully advocate for sex worker rights, access health care, or report assault or harassment hinges on their ability to be honest about their pasts or presents, if they so choose, without the worry of removal from the legal profession. If a sex-working law student comes out to their doctor in order to get proper STBBI testing, they may be worried that word will get out in the community and they could be disciplined or expelled. If a sex-working lawyer wants to speak about their experiences with discrimination, they may be concerned about encountering even more of that discrimination from their colleagues. Recognizing sex work as work at the law school and law society level can alleviate those concerns and ensure that workers can fully participate in the profession and access the same support as any other lawyer or candidate.

You Don't Belong Here: The Far-Reaching Cost of Whorephobia

The current climate of stigma and association of sex work with criminality means sex workers can be actively discouraged from entering both law school and the legal

PCEPA Laws on Sex Workers' Safety, Health & Human Rights" (December 2019), online(pdf): *Centre for Gender & Sexual Health Equity* <www.cgshe.ca/app/uploads/2019/12/Harms_2019.12.16.v1.pdf>.

[6] Mikael Jansson at al, "Challenges and Benefits of Disclosure of Sex Work to Intimate Partners" (2023) 60:6 J Sex Research 890.

[7] EJ Dickson, "Fired for Doing Porn: The New Employment Discrimination" (30 September 2013), online: *The Salon* <www.salon.com/2013/09/30/fired_for_doing_porn_the_new_employment_discrimination/>.

profession by law societies' good character investigation process. This is exacerbated both by negative or scandalous media narratives about those who do make it into the profession and the expulsion and firing of sex workers in multiple professions. It's also likely that stigma against sex workers keeps women, racialized, and 2SLGBTQ* individuals out of the profession regardless of their involvement in sex work.

Sex Workers' Experience with Good Character Investigations

Because many sex workers, particularly in-person workers, including escorts, strippers, massage parlour workers, and especially street-based workers, are subject to higher levels of police surveillance, sex workers may have a criminal record.[8] This is even truer when analyzed through an intersectional lens of over-surveilled communities of colour and associated racism in policing.[9] When applicants to a law society have a criminal record, they can be subject to a good character investigation when applying to law societies.

Lawyer Naomi Sayers has been vocal about the good character process, highlighting the trauma of reliving criminalization as an Indigenous woman.[10] She has detailed the mental anguish of the investigative process, driving her close to suicide. While she did not have to advance to the hearing portion of the investigative process, the anguish of the process was nonetheless traumatic. This traumatic nature stems from the framing of good character itself.

The good character process aims to investigate "criminal convictions, academic dishonesty, and dishonesty towards the law society, as well as a *failure to rehabilitate or* ***repent*** with respect to same."[11] The focus is on *character*, not on ethics and fitness to practice the law.[12]

Another good character investigation saw a prospective lawyer have to apologize for her "horrendous behaviour," including time as an escort, in hopes of being able to

[8] Scott W Stern, "Rethinking Complicity in the Surveillance of Sex Workers: Policing and Prostitution in America's Model City" (2020) 31:2 Yale JL & Feminism 411.
[9] Jordana Wright, Robert Heynen & Emily van der Meulen, "'It Depends on Who You Are, What You Are': 'Community Safety' and Sex Workers' Experience with Surveillance" (2015) 13:2 Surveillance & Society 265 at 272, online: https://doi.org/10.24908/ss.v13i2.5230.
[10] Naomi Sayers, "The Trauma of Proving My Good Character" (4 September 2018), online: *Canadian Lawyer* <www.canadianlawyermag.com/news/opinion/the-trauma-of-proving-my-good-character/275404>.
[11] Alice Woolley, "Tending the Bar: The 'Good Character' Requirement for Law Society Admission" (2007) 30:1 Dal LJ 27.
[12] *Ibid* at 73.

practice law in Ontario.[13] While this lawyer did have convictions for fraud, her consensual escort experience was lumped in with criminal activity in the LSO's decision:

> "She had made full and frank disclosure to Dr. Ben-Aron and to the Law Society, including her activity as an escort. She was candid and open in her examination and cross-examination before the panel. It was an acceptance of responsibility for her past without any rationalization and an acknowledgment that it was wrong, ***legally and morally***.[14]
>
> …
>
> We… reach our conclusion that, ***despite her horrendous behaviour*** in the past, she has come to grips with all of the reasons that propelled her to act so badly and has made a commitment to herself and others to conduct herself with honesty and integrity."*[15]*

The decision highlighted that Ms. Smithen had participated in an activity that was both legally *and morally* wrong. The message is that while escorting is not illegal, it may be considered *immoral* enough to factor into good character investigations. That her character was flawed and that her time as an escort factored into that assessment.

Sexual morality and taste alone should not factor into decisions on law society membership. This fosters a climate of fear for anyone with past or present sex work experience and can keep them from pursuing a legal career. It sends a message to sex workers that they do not belong in the legal profession unless they atone for their choices, locking them out of essential policymaking spaces.

Termination and Expulsion: Sex Worker Law Students and Lawyers in the Media

It is a challenge to know how many law students and lawyers have been forced out of the profession. There is a general lack of data on terminations from employment positions, but especially a gap in data to show how much stigma against sex workers has factored into individuals' decisions to attend post-secondary institutions in general. Further, because many sex workers may not be comfortable disclosing their experience, it's difficult to know how many sex workers there actually are in the profession. We were able to find a selection of news media headlines that illustrated the "outsider" identity of sex workers in the legal profession.

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[13] Ravina Aulakh, "Law Society Accepts Former Escort as Lawyer" (1 June 2011), online: *Toronto Star* <www.thestar.com/news/gta/law-society-accepts-former-escort-as-lawyer/article_94f14889-5872-52a0-ba9a-da40a460a1c6.html>.
[14] *Kathryn Leah Smithen v. Law Society of Upper Canada*, 2011 ONLSHP 44 at para 37.
[15] *Ibid* at para 51.

Media coverage of a selection of law students and lawyers who have been out (or outed) about their sex work experience has reflected an opinion of sex workers as salacious, often doxxing sex workers by publishing their legal names and pseudonyms together.[16] One Canadian lawyer with a history of sex work experience was reported on as a "legal nymph" and "seductress lawyer" in headlines.[17] The same was true of Wendy Babcock, a sex worker and activist enrolled at Osgoode Hall in 2009. Headlines about her included "From Prostitute to Law Student," designed to highlight the perceived absurdity of the change in profession.[18] While media coverage can increase visibility and help other sex workers see themselves attending law school or becoming lawyers, it can also send the message that sex workers in professional spaces are exceptional and do not belong.

In recent years, headlines have been changing. Worldwide, we are starting to see successful legal challenges against firings and expulsions in various industries that were based on student or employee sex work histories. As part of the decriminalization of sex work, Victoria, Australia, made it illegal under its Equal Opportunity Act to discriminate in employment against sex workers.[19] In America, sex workers who have been outed to their universities or employers in many industries have been forced out of their programs or professions are winning discrimination cases.[20] Law schools and societies should be the leading forces behind this social shift toward inclusion for the benefit of all.

Upholding Whorephobia at the Expense of Victims of Sexual Assault

Bias against sex workers is not simply a harmless narrative used to keep sex workers themselves out of positions of power. It also harms countless others, including victims of sexual assault or abuse who don't work in the industry. While anti-sex work advocates often claim that women experience violence because sex workers exist or that sex work itself is violence, we argue that the opposite is true, and anti-sex work stigma actually excuses much of the violence that women do experience.[21]

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[16] Victoria Chan, "The Criminal Lawyer Who Was Outed As A Sex Worker" (11 October 2019), online: *Huck Magazine* <www.huckmag.com/article/nadia-guo-the-criminal-lawyer-who-was-outed-as-a-sex-worker>.
[17] *Ibid.*
[18] Erin Hatfield, "From Prostitute to Law Student" (19 November 2009), online: *Toronto* <www.toronto.com/news/from-prostitute-to-law-student/article_0cfa8295-9254-587c-b403-caa7ae0ba497>.
[19] *Equal Opportunity Act 2010* (Vic), 2010/16, s 6(la).
[20] Samantha Cole, "How a Former Porn Performer Sued Her School for Discrimination - and Won" (25 July 2022), online: *Vice* <www.vice.com/en/article/93ab8d/former-porn-performer-sued-her-school-for-discrimination>; Andrew J Stillman, "Former Gay Adult Actor Wins Lawsuit Against University That Fired Him" (6 March 2023), online: *Out Magazine* <www.out.com/news/ruggero-freddi>; Jo Faragher, "Bank Worker Who Advertised Sex Work Online Wins Unfair Dismissal Case" (9 August 2023), online: *Personnel Today* <www.personneltoday.com/hr/natwest-vs-ahmed/>.
[21] See: European Women's Lobby, "Prostitution is violence against women - let's refuse to be any part of it!" (Accessed 15 April 2024), online (pdf): <https://www.womenlobby.org/IMG/pdf/ewl_article_-

Sex work-as-violence attitude stems from racist and sexist concepts that emphasize the sexual purity of white women and can be traced back to the *International Agreement for the Suppression of White Slave Traffic* of 1904, to which Canada was a signatory.[22] The concept of white slavery was motivated by Victorian ideas of white women's sexual purity.[23] In this construction, involvement in sex work was forced on women as a form of violence, making them necessary victims. But at the same time, women's own behaviour was blamed for "forcing" white women into sex work. Black and racialized women's involvement in the industry was seen as natural, owing to an inherent lack of purity.[24] Their involvement was seen to encourage white women to be trafficked into the industry, justifying criminalizing their work.

Even white working-class women who went on dates with men and had sex outside of marriage were criminalized for "encouraging" trafficking.[25] This idea of protecting women's sexual purity actually created space to criminalize and subjugate women if their performance of femininity, whiteness, and purity was inadequate. This framing still underlies the normative ways we view femininity and sexuality today.[26]

Clinging to these attitudes necessarily disadvantages women who perform femininity improperly, including racialized women, 2SLGBTQ+ people, sex workers, and yes, even victims of sexual abuse. Considering that women are increasingly leaving the legal profession due to sexual harassment and discrimination, breaking down the stigma against women's sexual autonomy, including the choice to work in sex work, is essential for the maintenance of safe and equal workplace cultures.[27]

Much of the concept of women occupying space as lawyers is, in itself, performing femininity improperly. These are women with careers, speaking firmly and passionately. And yet, when lawyers experience sexual abuse, we have tended to rely on these anti-sex work purity myths to discipline them for the poor choices that led them to be victimized. For example, in Manitoba in 2010, the Associate Chief Justice of the Court of Queen's Bench

_prostitution_is_violence_against_women.pdf>; (Melissa Farley et al, "Prostitution in five countries: violence and post traumatic stress disorder" (1998) 8 Feminism and Psychology.

[22] *International Agreement for the Suppression of the White Slave Traffic* (18 May 1904), online (pdf): *United Nations* <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-8.en.pdf>.

[23] Katrin Roots & Ann De Shalit, "Evidence that Evidence Doesn't Matter: The Case of Human Trafficking in Canada" (2015/2016) 37.2:1 Atlantis 65 at 66.

[24] Erin Gallagher-Cohoon, "The Dirt on 'White Slavery': The Construction of Prostitution Narratives in Early Twentieth-Century American Newspapers" (2013) 5:1 Constellations 36.

[25] Roots & De Shalit, *supra* note 23 at 71.

[26] *Ibid* at 70.

[27] Robert Cribb & Emma Jarrett, "Sexual Harrassment, Discrimination Forcing Women Lawyers to Quit. Some Say the Profession Needs Its 'Me Too' Movement" (18 February 2024), online: *Toronto Star* <www.thestar.com/news/investigations/sexual-harassment-discrimination-forcing-women-lawyers-to-quit-some-say-the-profession-needs-its-me/article_89175f9e-cc18-11ee-8577-33d7f11e0967.html>.

of Manitoba was suspended from her duties, owing to the non-consensual distribution of intimate images of her, posted without her knowledge in 2003 by her then-husband. The subsequent investigation was based on the notion that the photos brought into question the "image and concept of integrity of the judiciary."[28] Even though the Associate Chief Justice had her consent violated and was not the distributor of the images, the mere fact that the photos existed was enough to bring the "integrity" of the judiciary into question.

The Associate Chief Justice had to relive the situation for years, knowing that her peers were supplied the photos and scrutinized them as evidence. She compared the experience to "repeated rape."[29] It's important to remember that none of this happens in a vacuum. The legal profession and society at large watched this play out and formed opinions on what the "integrity" of the justice system looks like. To them, it doesn't look like women who have been the victims of non-consensual intimate image distribution. The association of (particularly women's) sexuality and a lack of integrity is actively harmful and leaves space for abusers to hold power over anyone.

This victim-abuser narrative has been given further life in horrific examples like GirlsDoPorn.com, which was run by a now-convicted sex trafficker. After coercing women to appear in explicit films that were later publicly released, many of the women themselves were disowned by their families or were rejected by communities. Many had to move to new cities, change their names, or go into hiding.[30] Some were forced to step down from positions of leadership, and the images have been sent by colleagues and strangers alike to their bosses for years - an attempt to shame them for the "choice" of having been sexually assaulted. And it works because society holds so tightly to whorephobic stigma.

Sex Work Law and Norms in Canada: Criminalization and Resulting Stigma

An understanding of the history of sex work criminalization in Canada is necessary to get to the root of the continued stigma faced by sex workers today. When discussing sex work, this policy proposal refers to a broad range of occupations centred on the exchange of money or goods for sexual services, including full-service sex workers, cam performers, massage parlour workers, adult film performers, escorts, and sugar-dating.[31] Each specific area of sex work comes with its own set of privileges and risks, with street-level sex

[28] Glenn Kauth, "Behind the Headlines" (4 January 2016), online: *Canadian Lawyer* <www.canadianlawyermag.com/news/general/behind-the-headlines/270024>.
[29] *Ibid.*
[30] Samantha A Cole, *How Sex Changed the Internet and the Internet Changed Sex* (New York City, NY: Workman Publishing Company, 2022) at 237-239.
[31] UNAIDS, "The Legal Status of Sex Work: Key Human Rights and Public Health Considerations" (February 2014), online(pdf) at 1: *Global Network of Sex Work Projects* <www.nswp.org/sites/nswp.org/files/sexwork_brief-21feb2014.pdf>.

workers often encountering the most risk and least privilege.[32] Sex workers identify across the gender spectrum and inhabit a range of incomes and lived realities.

The way Canada has chosen to legislate sex work feeds into the stigma that all sex workers experience. The country's sex work laws either have equated all sex work with exploitation and place the blame for that exploitation on sex workers themselves for creating the demand for sexual services or treated it as a nuisance to be stopped at all costs. This narrative strips workers of agency and encourages a victim-and-abuser identity that permeates into societal conceptions of sex workers themselves. The laws also make working conditions and spaces so unfavourable, through over-policing, that workers are pushed out of safe working spaces and forced to either work in less visible spaces or risk criminalization.[33]

Having worked in sex work is not, in itself, illegal. Specifically, the sale of sexual services in Canada is not illegal.[34] However, in attempts to control the "nuisance" of sex work or "end exploitation," laws have attempted to prevent sex workers from working together, hiring support staff, advertising, communicating with clients in public, and, nowadays, criminalization of the purchasers of sexual services. Elements of the industry that are central to workers' safety are criminalized such that, in practice, much of the day-to-day operations of in-person sex work are treated as criminal.[35] As a result, sex workers still experience criminalization. Despite framing the laws as targeting exploitation and protecting workers,[36] sex workers themselves are charged with offences under laws that are purported to keep them safe.[37] This is why sex workers tend to advocate for models of decriminalization of their work.

Thus, while it is possible that sex workers applying to law schools or law societies may not have criminal records, it is also possible that they will, based on working in a highly stigmatized, surveilled and policed industry. Both realities must be considered, and any applicant's criminal record should be situated in the context of the intersection of

[32] Wright, *supra* note 9.
[33] Judy Fudge et al, "Caught in the Carceral Web: Anti-Trafficking Laws and Policies and Their Impact on Migrant Sex Workers" (2021), online(pdf): *HIV Legal Network* <www.hivlegalnetwork.ca/site/caught-in-the-carceral-web-anti-trafficking-laws-and-policies-and-their-impact-on-migrant-sex-workers/?lang=en>.
[34] *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 4 [*Bedford*].
[35] Bronwyn McBride et al, "Protection or Police Harassment? Impacts of Punitive Policing, Discrimination, and Racial Profiling Under End-Demand Laws Among Im/Migrant Sex Workers in Metro Vancouver" (2022) 2 SMM - Qualitative Research in Health 1 at 2.
[36] *Protection of Communities and Exploited Persons Act*, SC 2014, c 25, Preamble, para 1 [*Protection Act*]
[37] Global Network of Sex Work Projects, "Policy Brief: The Decriminalisation of Third Parties" (2016) at 6, online(pdf): *Global Network of Sex Work Projects* Projects<www.nswp.org/sites/default/files/Policy%20Brief%20The%20Decriminalisation%20of%20Third%20Parties%2C%20NSWP%20-%202016.pdf>.

criminalized behaviours, identities, external stigma, and surveillance that affects sex workers' ability to go about their work safely.

Calls for the decriminalization of sex work are aligned with and inform the thesis of this proposal. Treating sex work as work and repealing all laws relating to sex work will help to shift the normalistic view of sex work as a nuisance or necessary exploitation and leave paths for recognition of sex work experience.[38] We understand that full decriminalization of sex work is out of the purview of these policy recommendations, but law schools and societies have the chance to lead by example in the decriminalization-centred policy.

In-Person Sex Work and the Law

Sex work laws in Canada are traditionally centred on preventing the nuisance of sex work in public and, today, on the assumption that all sex work is exploitation. Both approaches have the same central mechanism: criminalizing elements of the profession with the goal of putting an end to sex work. From banning loitering to communicating about available sexual services to impeding traffic on the street, sex work laws have long targeted the visibility and mere existence of the profession.[39] Drawing back to the history of white slavery in Canada, this focus has resulted in a high rate of surveillance and criminalization of sex workers themselves, especially those who work outdoors, racialized women, and 2SLGBTQ+ communities.[40]

Canada's nuisance-focused sex work laws were challenged in a 2013 Supreme Court of Canada case, *Bedford v Canada ("Bedford")*.[41] The Court found that laws prohibiting sex workers from working together in an indoor space (s.210; keeping or being found in a bawdy house), hiring support staff (s.212(1)(j); living off the avails of prostitution), and communicating for the purpose of prostitution (213(1)(c)) were unconstitutional for violation of section 7 of the *Charter of Rights and Freedoms*. Specifically, the court found that the impugned provisions violated sex workers' right to security of the person. The court further identified that workers were forced to work in unsafe conditions in the name of keeping them from bothering decent society.

[38] The Victorian Equal Opportunity and Human Rights Commission in Australia does not allow employers to discriminate against sex workers for their work history. This is the root of the policy proposal contained in this paper. See Rachel Clayton, "Former Sex Industry Worker Challenges Employer Over Claims She Was Fired Due to Her Past" (26 March 2024), online: *ABC Network Australia* <www.abc.net.au/news/2024-03-27/sex-work-discrimination-laws-victoria-employment-vcat/103632868>.
[39] *Criminal Code*, RSC 1985, c C-46, s 213(c), as repealed by *Protection of Communities and Exploited Persons Act*, SC 2014, c 25, s 15.
[40] McBride, *supra* note 35 at 4.
[41] *Bedford*, *supra* note 34 at para 4.

It is important to keep in mind the context at the time. The *Bedford* trial began in 2009, only three years after the start of the trial of a serial killer who preyed on sex workers from the Downtown East Side (DTES) of Vancouver.[42] Robert Pickton was charged with or implicated in the murders of 33 sex workers - though the number of his total victims is still unknown.[43] He targeted sex workers, and Indigenous sex workers in particular, precisely because they are seen as a nuisance - as people who chose their paths and deserve any violence that they encounter on the job. As though sex workers themselves have made choices that make them disposable. The result was a prolonged trial that picked apart the victims, their lifestyles, and choices.[44]

Empowered by these sex work-as-nuisance views, organizations that attempted to keep workers safe from predators like Pickton were shuttered despite keeping street-based sex workers safe in the DTES. Grandma's House was such a safe haven specifically for those working in the DTES. Jamie Lee Hamilton, a sex work advocate, was the space's founder. She was charged by Vancouver Police for keeping a "common bawdy house" after a raid on Grandma's House in 2000.[45] The space was a safe house specifically established by sex worker activists in response to missing workers. There, sex workers could access harm reduction supplies like condoms and rent spaces to meet clients safely.[46] It gave street-based sex workers a safe place to work, where they could access help if they needed it. Unfortunately, it was shut down in 2000 under the bawdy house provisions.[47]

While the Court recognized that it was within Parliament's power to regulate against the nuisance of sex work, it must not come at the cost of health, safety, or the lives of those working in the industry.[48] The bawdy house provisions carried those costs, forcing

[42] CBC News, "Pickton Trial Timeline" (30 July 2010) online: *CBC News* <www.cbc.ca/news/canada/pickton-trial-timeline-1.927418>.
[43] Lori Culbert, "True Crime Byline: Families Knew 'Horrible Creature' was Taking Vancouver Women Long Before Police Did" (24 June 2022) online: *Vancouver Sun* <vancouversun.com/news/true-crime/true-crime-byline-families-knew-horrible-creature-was-taking-vancouver-women-long-before-police-did>.
[44] Yasmin Jiwani & Mary Lynn Young, "Missing and Murdered Women: Reproducing Marginality in News Discourse" (2006) 31 Canadian Journal of Communication 896 at 898-900.
[45] The Canadian Press, "Police 'Humiliated' Prostitute, Says Victim's Sister" (27 February 2012) online: *CBC News* <www.cbc.ca/news/canada/british-columbia/police-humiliated-prostitute-says-victim-s-sister-1.1240557>; Matt Robinson & Scott Brown, "'Fierce and Undaunted': Vancouver Sex Workers Advocate Jamie Lee Hamilton Dies at 64" (23 December 2019), online: *Vancouver Sun* <vancouversun.com/news/local-news/cancer-claims-vancouver-sex-workers-advocate-jamie-lee-hamilton>.
[46] Lauren Samson, "'The Obscenities of this Country': Canada v. Bedford and the Reform of Canadian Prostitution Laws" (2014) 22 Duke J Gender L & Pol'y 137 at 138.
[47] The Canadian Press, "Police 'Humiliated' Prostitute, Says Victim's Sister" (27 February 2012), online: *CBC News* <https://www.cbc.ca/news/canada/british-columbia/police-humiliated-prostitute-says-victim-s-sister-1.1240557>.
[48] *Bedford*, *supra* note 34 at para 136.

sex workers into unsafe and dangerous working conditions in the misguided interest of keeping sex work out of view. Chief Justice Beverly McLachlin importantly stated that:

> "A law that prevents street prostitutes from resorting to a safe haven such as Grandma's House while a suspected serial killer prowls the streets, is a law that has lost sight of its purpose."[49]

A unanimous Court declared all challenged provisions unconstitutional and gave Parliament one year to develop a new set of laws. Under Stephen Harper, the Conservative government of the day, then worked to develop a new legislative framework to fix the constitutional holes in the laws. The result was the *Protecting Communities and Exploited Persons Act* (PCEPA), which received royal assent in 2014.[50]

To avoid a *prima facie* duplication of previous unconstitutional sex work legislation, PCEPA shifted away from treating sex work as a nuisance and instead defined all sex work as exploitation.[51] This framework is referred to as the "end demand" or Nordic model of sex work criminalization. Instead of heeding the advice of the Court, PCEPA created new criminal code offences that have similar effects on sex workers as the former legislation.[52] Its foundation is that no one chooses to be in sex work, that everyone in the industry is experiencing exploitation at the hands of pimps and johns, and that the entire industry must be ceased. In this sex work-as-necessary-exploitation framework, sex workers are incapable of agency in their choice of work and yet are simultaneously guilty of creating the demand for sex. In removing this autonomy, sex workers' ability to define their own realities is completely stripped.

PCEPA seeks to end the demand for sex work by cutting off the flow of benefits to sex workers – criminalizing the purchase of sexual services or communicating for the purpose of purchasing.[53] In criminalizing one side of the transaction, PCEPA, for the first time in Canada, made the exchange of money for sex illegal. It also maintained the traditional pattern of criminalizing activities associated with sex work, including

[49] *Ibid.*
[50] *Protection Act*, *supra* note 36.
[51] Department of Justice, *Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act* (Ottawa: Department of Justice, 1 December 2014) at 3.
[52] Centre for Gender and Sexual Health Equity, "Harms of End-Demand Criminalization: Impact of Canada's PCEPA Laws on Sex Workers' Safety, Health & Human Rights" (December 2019) at 13, online(pdf): *Centre for Gender & Sexual Health Equity* <www.cgshe.ca/app/uploads/2019/12/Harms_2019.12.16.v1.pdf>.
[53] Maria Perrotta Berlin & Giancarlo Spagnolo, "The Nordic Model of Prostitution Legislation: Health, Violence and Spillover Effects" (21 April 2019), online: *Free Network* <freepolicybriefs.org/2019/04/21/the-nordic-model-of-prostitution-legislation-health-violence-and-spillover-effects/>.

communicating in public and third-party criminalization of advertising, material benefits, and procuring.[54]

Today, just as in 2013, laws keeping workers from working together in safe spaces, having the time to negotiate boundaries, or hiring drivers or other support staff create an atmosphere that actively enables violence against sex workers. Indeed, Grandma's House would likely still be shut down under PCEPA's s. 286.2(1) of the *Criminal Code* for receiving compensation from sexual services just as they were under the unconstitutional nuisance-based laws.

PCEPA, in its conflation of sex work and exploitation, actually works to create a situation where sex workers are both victims and abusers when trying to work safely. In response, the Ontario Superior Court stated in a decision on a constitutional challenge of PCEPA's provisions that sex workers simply misunderstand the laws.[55] Meanwhile, sex workers continue to be arrested under them. It is to be noted that this is by design. Anti-sex work movements typically present all sex work as a type of sexual exploitation or human trafficking - a social ill of their own.[56] In this, a distaste for sexual labour is pitched as a distaste for exploitation, in which calls to end exploitation are actually calls to end all sex work(ers).

This proposal is not ignorant of the fact that exploitation and human trafficking are serious issues. Human trafficking and exploitation affect many industries, including agriculture, food service, manufacturing, construction, restaurants, and the sex industry alike. However, by directing policing efforts to surveillance and arrest of consensual sex workers trying to keep themselves safe, no one comes out safer. Over-criminalization and potential deportation of im/migrant sex workers, for example, create an impossible-to-navigate trap that denies sex workers' ability to consent, hold agency in their own lives, or employ basic workplace safety measures like using condoms.[57]

Criminalization Stigmatizes All Sex Workers

The sex-as-exploitation narratives that have made in-person sex work dangerous extend to all forms of sex work, including adult film performers, strippers, cam workers, sugar dating, and other forms of work. All these professions are legal work in Canada but

[54] HIV Legal Network, "The Perils of 'Protection': Sex Workers' Experiences of Law Enforcement in Ontario" (27 March 2019) online: *HIV Legal Network* <www.hivlegalnetwork.ca/site/the-perils-of-protection/?lang=ent>.
[55] *Canadian Alliance for Sex Work Law Reform v Attorney General*, 2023 ONSC 5197 at para 243.
[56] Ran Hu, "Problematizing the Educational Messaging on Sex Trafficking in the US "End-demand" Movement: The (Mis)Representation of Victims and Anti-Sex Work Rhetoric" (2022) 37:3 Affilia 448 at 460-461.
[57] Judy Fudge et al, "Caught in the Carceral Web: Anti-Trafficking Laws and Policies and Their Impact on Migrant Sex Workers" (2021), online(pdf): *HIV Legal Network* <www.hivlegalnetwork.ca/site/caught-in-the-carceral-web-anti-trafficking-laws-and-policies-and-their-impact-on-migrant-sex-workers/?lang=en>.

bear a similar brunt of stigma and prejudice because of the above-outlined sex work-as-exploitation narratives that support criminalization.

In a criminalization model, sex workers of all stripes are dehumanized into objects that experience violence, not fully formed human beings capable of creating and enforcing boundaries.[58] This trap creates a necessary victim of abuse, the sex worker, who has been coerced with no choice or agency. Yet the sex worker is simultaneously labelled an abuser and blamed for the consequences of the "choices" she is incapable of making, disbelieved if she is assaulted, and arrested if she tries to keep herself safe.[59] Under this line of thinking, if sex workers are abusers, locking them out of access to elements of society like the legal profession is justified. However, it also locks workers out of access to health care, support services, community, and access to help if things go wrong on the job.

Gender, Class, and Race: Increasing Stigma Around Sex Workers

Sex workers consist of a wide range of individuals originating from all races, classes, sexualities, and genders. However, a significant percentage of individuals involved in Canadian sex work are female.[60] Indigenous women, specifically, make up a large part of the industry, ranging from 14-60% of all Canadian sex workers across various regions.[61] Coupling the reality of surveillance and criminalization of sex workers with this demographic reality, Indigenous women are put at significant risk of criminalization.

Stigma is a pervasive phenomenon that can impact individuals, organizations, and even entire industries, leading to exclusion and discrimination.[62] At its worst, it can result in violence and death. Those involved in stigmatized industries like sex work may have concerns that regular social interactions will result in public shaming or negative social evaluations of them when it is revealed that they engage in sex work.[63]

There are different pathways of occupational stigma: physical stigma, where an occupation is either directly associated with effluence or is thought to be performed under dangerous conditions; social stigma, which is the associations with stigmatized people and

[58] Bond Benton & Daniela Peterka-Benton, "Truth as a Victim: The Challenge of Anti-Trafficking Education in the Age of Q" (2021) 17 Anti-Trafficking Rev 113.
[59] We acknowledge that people of all genders are sex workers. The pronoun choice in this sentence is intentional, as women are disproportionately impacted by the criminalization of sex work. See Merrit Stueven, "Regulating Sex Work: Competing strategies to minimize harm and maximize social welfare for sex workers" (26 October 2021), online: *Harvard Kennedy School* <www.hks.harvard.edu/centers/wappp/news-and-events/regulating-sex-work>.
[60] Lynn Kennedy, "The Silent Majority: The Typical Canadian Sex Worker May Not Be Who We Think" (2022) 17:11 PLoS ONE 1.
[61] Canadian Public Health Association, "Sex Work in Canada" (December 2014), online(pdf): *Canadian Public Health Association* <www.cpha.ca/sites/default/files/assets/policy/sex-work_e.pdf>.
[62] Madeline Toubiana & Trish Ruebottom, "Stigma Hierarchies: The Internal Dynamics of Stigmatization in the Sex Work Occupation" (2022) 67:2 Administrative Science Q 515.
[63] *Ibid.*

the lasting perceptions of them; and moral stigma, speaking to the supposed immorality of the activity.[64] The sex work industry is considered by many scholars to be highly stigmatized because of the combination of all three pathways of stigma that are associated with the profession.[65] The stigma faced by sex workers is very real, pervasive, and embedded in Canadian society, contributing to their continued harassment, discrimination, violence, and even death. The laws and policies in place simply reflect and exacerbate this stigma and the harms that flow from it.[66]

One of the critical ways to view the experiences of stigma is through the lens of intersectionality. Intersectionality is the framework used to explain the interlocking experiences of oppression stemming from multiple identities that a person may have, including their race, class, and gender.[67] This can help to examine the ways that these distinct spheres of race, gender, and class can all influence and structure the lives and experiences of people, regardless of how much weight a person may put on these identities.[68]

It follows that stigma is felt the most by sex workers who have less access to capital, BIPOC, and 2SLGBTQ folks - and especially at their intersections. There are further considerations on im/migrant sex workers and international students. Very high international tuition costs coupled with the possibility of deportation experienced by surveilled im/migrant sex working populations makes this group particularly vulnerable.[69] These stigmatized identities do not exist in a vacuum. In relation to sex workers specifically, who come from a vast array of backgrounds, the issues and interconnectedness of sexism, racism, classism, and colonization need to be acknowledged in how this industry is policed and regulated.[70]

Slut-Shaming and Whorephobia

The term "slut-shaming" is defined as a way to embarrass or humiliate women and girls based on their appearance or for real or perceived sexual behaviour that is not

[64] *Ibid*; Blake E Ashforth & Glen E Kreiner, "'How Can You Do It?': Dirty Work and the Challenge of Constructing a Positive Identity" (1999) 24:3 Academy of Management Rev 413 at 414-15.
[65] Toubiana, *supra* note 62.
[66] EGALE, "Sex Work in Canada: Research Brief" (April 2021), online(pdf): *Our Commons* <www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11602461/br-external/EgaleCanada-e.pdf>.
[67] Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" in Alison M Jaggar, ed, *Living with Contradictions: Controversies in Feminist Social Ethics* (New York, NY: Routledge, 1994) 39.
[68] Jean Ait Belkhir, & Bernice McNair Barnett, "Race, Gender and Class Intersectionality" (2001) 8:3 Race, Gender & Class 157 at 158.
[69] McBride, *supra* note 35 at 4.
[70] Robert Nonomura, "Trafficking at the Intersections: Racism, Colonialism, Sexism, and Exploitation in Canada" (2020) at 7, online: *Centre for Research & Education on Violence Against Women Learning Network* <www.vawlearningnetwork.ca/our-work/briefs/briefpdfs/Brief-361.pdf>.

considered to be socially acceptable in a sexist, patriarchal society.[71] It works as a way to control and constrain women's behaviour. From the idea of slut-shaming emerged the "good girl privilege" and "bad girl stigma."[72] Good girl privilege accepts the patriarchal messaging that certain women deserve respect, and some women do not based on how they dress and how they present themselves.[73] This term shows that some women can benefit from their appeal to men and can judge other women based on the "classy" woman's superiority.[74] Race and class play heavily into this good girl/bad girl idea because white, middle-class women have historically, economically, and socially always been seen as "good girls" who need protection, and they often use this to their advantage.[75]

This form of stigmatization of the individual is reflected in social and relational consequences, such as rumours or insults.[76] It is informed by and born of a longstanding rejection of sex workers, known as whorephobia. Whorephobia means the hatred, dehumanization, and stigmatization of some women, sex workers or not, because of their sexual activity.[77] It empowers people to shame, look down upon, and marginalize women who do not conform to traditional gender roles, such as selling sex for money, wearing revealing clothing, enjoying sex, or having nail extensions. In a whore-phobic society, sex workers are viewed as either victims or delinquents and treated as "other."[78] When it is revealed that someone is a sex worker, often people will employ reductive attitudes that see the person as an object as opposed to an equal.[79]

There have been numerous instances of violence against sex workers purely because of hatred against them. Our above-mentioned example of a serial killer in the Vancouver region targeting sex workers is an extreme example of the results of this lack of basic human respect. Another recent example is Eustachio Gallese, who murdered sex worker Marylène Levesque while he was out on parole in 2020.[80] Despite having to report any relationships with women while he was on parole, he was allowed to have "his needs

[71] Meredith Ralston, *Slut-Shaming, Whorephobia, and the Unfinished Sexual Revolution* (Montreal: McGill-Queen's University Press, 2021) at 5.
[72] *Ibid* at 49.
[73] *Ibid* at 34.
[74] *Ibid*.
[75] *Ibid* at 40.
[76] Margot Goblet & Fabienne Glowacz, "Slut Shaming in Adolescence: A Violence against Girls and Its Impact on Their Health" (2021) 18:1 Intl J Environmental Research & Public Health 6657.
[77] Ralston, *supra* note 71 at 51.
[78] Chris Bruckert & Frédérique Chabot, *Challenges: Ottawa Area Sex Worker Speak Out* (Ottawa: Prostitutes of Ottawa-Gatineau Work Educare and Resist (POWER), 2014) at 79.
[79] Melrose Michaels, "A Woman Tried to Publicly Slut-Shame Me. She Wasn't Prepared For My Response" (14 September 2021), online: *Huff Post* <www.huffpost.com/entry/melrose-michaels-nudes-sex-work_n_613b75cde4b0640100a464fc>.
[80] Sabrina Jones, "Ankle Monitor for Parolee Could Have Prevented Brutal Murder of Quebec City Woman: Coroner" (9 November 2021) online: *CBC News* <www.cbc.ca/news/canada/montreal/quebec-coroner-report-marylene-levesque-1.6242243>.

met" by sex workers.[81] Sex workers are routinely used as a swap for civilian women to deflect any violence from the "good girls" or women in the general population. Viewing sex workers as "bad people" justifies the marginalization of those who participate in the industry. From this marginalization, the probability of abuse and violence against this group grows.[82] Whorephobia allows mainstream society to dismiss sex workers and view them as different and disposable because of their choices and life experiences.[83] All while sex work-as-necessary-exploitation narratives insist sex workers are incapable of choosing to work in the industry.

The cycle of the dehumanization and stigmatization of sex workers must be broken. It serves no one. One direct action that can be taken is to break down the barriers that impede sex workers from entering the legal profession so that workers themselves have access to the law and policymaking institutions that are often used against them. These barriers include whorephobia in law school admissions processes and good character assessments for admission to law societies.

Process for Law School Admissions

The application process for Canadian law schools is relatively standard across the board. One submits an application that includes their undergraduate transcripts, Law School Admissions Test (LSAT) score, various academic or professional reference letters, and a personal statement. The first two requirements are purported to gauge the applicant's intellect and ability to succeed in a tough learning environment like law school. The last two requirements speak to the applicant's character, past, and overall commitment to entering the legal profession.

For sex workers looking to join the legal field, the personal statement aspect of the application process is arguably the most daunting part. They can choose to disclose their sex work experience and risk stigmatization from the admissions committee, or they can choose not to disclose their past but live in fear that a future classmate may "out" them and face stigma from their peers and faculty.[84] The two law schools focused on in this project are the University of Ottawa's Faculty of Law and Osgoode Hall Law School of York University. Both schools emphasize diversity in their admissions processes, which significantly benefits those applying from under-represented communities. This section will address each school's processes, bylaws, and admissions committees.

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[81] *Ibid.*

[82] Ralston, *supra* note 71 at 9.

[83] *Ibid* at 50.

[84] While often used to describe disclosure of 2SLGBTQ+ identity, the term outing is also used in reference to disclosure of sex work experience. See: Juliana Friend, "Digital Privacy is a sexual health necessity: a community-engaged qualitative study of virtual sex work and digital autonomy in Senegal" (20 November 2023) 31:4 Sexual and Reproductive Health Matters at 2, online: <https://doi.org/10.1080/26410397.2023.2272741>.

The University of Ottawa's law school admissions process is fairly subjective. The admissions committee views applicants' personal statements by looking for people who can reflect on their past experiences and how those experiences can be reflected or translated into their legal learning. The approach focuses on the applications' substance rather than categorizing people based on their quantitative factors. The University of Ottawa's Faculty of Law Admissions committee is made up of professors and third-year students.[85] Due to the presence of students on the committee, at least part of its membership is in place on a rotating basis. This means that there can be a change in the viewpoints brought to the admissions team from year to year. For example, if there is a shift in on-campus recognition of sex workers as a whole, this perspective may potentially be introduced into the admissions committee. For those selected to be part of the committee, the Faculty created a self-directed online learning module for members to raise their awareness of discrimination and unconscious bias that may present itself in their determinations of admissions decisions.

The University's website emphasizes seeking for the diverse strengths of its applicants.[86] One of the University of Ottawa Law's By-Laws confirms this, stating that:

> "the Common Law Section shall not discriminate in admissions, in access to any of its programs or facilities, or in employment or advancement, and in particular shall not discriminate on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, receipt of public assistance, irrelevant record of offences, family status or disability."[87]

This By-Law gives a small piece of mind that sex workers applying to this law school will not be denied simply because of their work experience. However, it is unknown how many of the University of Ottawa's applicants have disclosed sex work experience because the university does not publish transparent admissions data. It is unclear what kind of reaction the admissions committee would have to an applicant disclosing their experience as a sex worker. Will they be greeted by implicit bias amongst the committee members that sex workers do not belong in their faculty because they are sluts? Will they be met by a committee that welcomes their lived experiences as a colourful addition to their school? These questions are serious considerations a sex worker must take into account if they choose to disclose their prior or current involvement in sex work and if they wish to "out" themselves in their admissions profile. The University of Ottawa's Faculty of Law makes it unclear how these questions are answered in its admissions process. The Faculty is clearly

[85] University of Ottawa, "Evaluation of Admissions" (last accessed 5 January 2024), online: *University of Ottawa - Faculty of Law* <www.uottawa.ca/faculty-law/common-law/admissions/evaluation-applications>.
[86] *Ibid.*
[87] University of Ottawa Faculty of Law, *By-law Number Four*, 30 May 1990, at 1.

making efforts to view applications holistically, but because holistic selection processes are still subject to the biases of those making the decisions, there may still be work to be done.

The second law school reviewed within this project is Osgoode Hall Law School ("Osgoode"), which prides itself on its holistic admissions policy, seeking to admit those with varied achievements and sustained engagement who can positively contribute to the legal profession.[88] They do not have a set formula or weight for assessing applications but prefer to view all components of the application holistically to paint a more accurate depiction of the applicant. If there are any aspects of the written documentation that the admissions committee feels need further clarification or explanation, they will invite some applicants to be interviewed. This will reassure the committee that the applicant would be able to meet the academic rigour of the law program, and it can also help to personalize the process, as opposed to a strictly written application approach.

The Osgoode admissions committee is also made up of faculty members and law students. The faculty is selected based on the courses they wish to teach and the services they wish to work with. As a result, many of the admissions committee members are there on a voluntary basis. The students on the admissions committee are nominated by the student government and are required to sign a confidentiality agreement. These students can be of any year.[89] A mix of faculty and students with varying levels of legal education brings a fulsome and diverse set of perspectives to the decision-making process.

Osgoode Hall Law School has a particular relationship with admitting students with sex work histories. Wendy Babcock, a former sex worker and activist, was admitted to the school in 2009.[90] Newspapers ran headlines about the "prostitute turned law student."[91] Wendy struggled with mental health issues and, like Sayers above, had previously attempted suicide. The world sadly lost her voice in her third year to an accidental overdose. The school, however, has kept her legacy - and its acceptance of sex workers alive through the Wendy Babcock Social Justice Award and Wendy Babcock Drag Show. The result has been an open dialogue on sex worker involvement in law schools and the normalization of sex work experience.[92]

While it is beyond the scope of this proposal to analyze how each Canadian law school's admissions process operates, there does seem to be more of an emphasis placed

[88] Osgoode Hall Law School, "Holistic Admissions Policy" (last accessed 5 January 2024), online: *York University - Osgoode Hall Law School* <https://www.osgoode.yorku.ca/programs/juris-doctor/juris-doctor-admissions/holistic-admissions-policy/>.
[89] *Ibid.*
[90] CBC News, "Sex Worker Turned Law Student Dies" (11 August 2011), online: *CBC News* <www.cbc.ca/news/canada/toronto/sex-worker-turned-law-student-dies-1.1011073>.
[91] Hatfield, *supra* note 18.
[92] Priyanka Sharma, "Celebrating Wendy Babcock" (11 February 2020), online: *Obiter Dicta* <obiter-dicta.ca/2020/02/11/celebrating-wendy-babcock/>.

on a holistic approach to reviewing admission applications. For example, the University of Windsor's Law Faculty has become one of the more diverse law schools in Canada through their conscious effort to holistically view applicants and make their faculty more representative of the Canadian population.[93]

Any law school applicant will likely be concerned with how an admissions committee perceives them as a potential student of their school. A sex worker applying to become part of a profession that has a history of being hostile to sex workers may feel so concerned that they are deterred from disclosing their past or even applying at all for fear of re-stigmatization. There is still a long way to go before sex workers feel like they belong within the legal profession, but more law schools viewing admission files holistically shine a small light at the end of the tunnel for these prospective students.

Process for Law Societies

Once the schooling and practical requirements are met, prospective lawyers must then follow the licensing process of the law society of their respective province in order to be called to the Bar. This typically will include writing the barrister and solicitor examinations, experiential training, and the good character requirement. Because of the above-outlined societal climate of whorephobia, potential exposure to criminalization, and other sex workers' experience with good character investigations, the process poses a hurdle for current and former sex workers. Since our research focuses on Ontario, we will examine the Law Society of Ontario's good character requirement. Despite there being very little evidence demonstrating that the good character process actually protects the public, it is still used today.[94] The process, on its face, conflates integrity with the lack of a criminal record, which does not reflect the reality of over-surveilled populations like sex workers, BIPOC, and 2SLGBTQ* folks vs. other relatively non-surveilled populations.[95] However, it is possible for good character hearings to be implemented in a manner that can minimize this risk of conflation.

The LSO explains that the good character requirement is intended to protect the public and uphold high ethical standards by ensuring those who are licensed as Ontario lawyers show respect for the rule of law and conduct themselves with honesty and

[93] The Globe and Mail, "Holistic Approach Underpins Law School's Diveristy Efforts" (10 October 2023), online: *The Globe and Mail* <www.theglobeandmail.com/life/adv/article-holistic-approach-underpins-law-schools-diversity-efforts/>.
[94] Woolley, *supra* note 11.
[95] Gabriel L Schwartz, Jaquelyn Jahn & Amanda Geller, "Policing sexuality: Sexual minority youth, police contact, and health inequity" (2022) Population Health 20 at 7, online (pdf): <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9707003/pdf/main.pdf>.

integrity.[96] In their application for licensing, below are the main questions asked to discern the good character of the applicant:

1. Have you ever been found guilty of, or convicted of, any offence under any statute?
2. Are you currently the subject of criminal proceedings?
3. Has judgment ever been entered against you in an action involving fraud?
4. Have you ever been discharged from any employment where the employer alleged there was cause?
5. Have you ever been suspended, disqualified, censured or otherwise disciplined as a member of any professional body?
6. Have you ever been refused admission as an applicant or member of any professional body?
7. Have you ever been disciplined by an employer?
8. While attending a post-secondary institution, credentialing program or professional course of study, have allegations of misconduct ever been made against you or have you ever been suspended, expelled or penalized by a postsecondary institution or credentialing program provider for misconduct? [97]

These questions are designed to gauge the applicant's "integrity." If any of these questions are answered in the affirmative, it is flagged by the Intake and Resolution Department of the LSO, which determines if the issues disclosed are significantly serious enough to warrant further review by the Professional Regulation Division.[98]

Should this occur, three things can happen within this Division. (1) The good character issue is "cleared," meaning it does not require additional review and is not sufficiently serious to need investigation into the applicant's character; (2) the issue is resolved by requesting additional information, allowing the issue to be cleared; or (3) if it is determined that further review is needed for the good character issue, the application will

[96] Law Society of Ontario, "Good Character Requirement" (last accessed 4 January 2024), online: *Law Society of Ontario* <https://lso.ca/becoming-licensed/lawyer-licensing-process/good-character-requirement>.
[97] Law Society of Ontario, "Lawyer Licensing Process: Good Character Amendment Form" (last amended August 2022), online(pdf): *Law Society of Ontario* <lawsocietyontario.azureedge.net/media/lso/media/becoming-licensed/lp05frmgoodcharacteramendment.pdf>.
[98] *Ibid.*

be transferred to the Investigation Department. The investigation process will gather information from the applicant, reference letters, and third parties if applicable.[99] At the conclusion of the investigation, the department will determine whether the application should be heard in front of a Tribunal or returned to the licensing process for approval. It is noted on the Law Society of Ontario's website that only a small percentage of applicants are referred to a good character hearing.[100]

The Hearing Division of the Law Society Tribunal is not an independent tribunal. It is made up of LSO benchers, public members, and appointed people. The selection process for public members is not transparent, so it is unknown how the government chooses who becomes part of the LSO. Further, public members are selected by the provincial government, with their backgrounds, classes, and statuses unknown.[101]

The Tribunal does not require people who have received any diversity training and knowledge, except for previous experience with tribunals. It is primarily made up of Ontario lawyers who were elected to be part of the LSO's governance and a small proportion of paralegals and laypeople.[102] This implies that individuals of more privileged backgrounds are being selected to decide disciplinary issues within the profession. Additionally, the training provided for these Division members is general adjudicator training, as mandated by the National Discipline Standards for Law Societies. There is no confirmed specific training provided by the LSO on diversity, inclusivity, or sensitivity issues.[103]

There are no transparent criteria for selecting a good character panel. The Chair of the Tribunal selects who sits on the panel for a good character hearing, with at least one lawyer and a public member sitting on the panel of three.[104] Importantly, who is selected for the panel will be a strong factor in how an individual's case lands. Some panel members may respond differently to someone being a current or former sex worker, creating uncertainty for those undergoing the process. This goes back to the idea that there may be implicit or unconscious bias of the panel members towards sex workers and the fear that the applicant has of being re-stigmatized for their previous or current occupation. It can't be known if a panel member will sit on a current or former sex worker's good character hearing and already possess the belief that the legal profession is no place for a "slut" to

[99] *Supra* note 96.
[100] *Ibid.*
[101] *Law Society Act*, RSO 1990, c L 8, s 23.
[102] Law Society Tribunal, "Adjudicators" (last accessed 9 April 2024), online: *Law Society Tribunal* <lawsocietytribunal.ca/adjudicators/>.
[103] Federation of Law Societies of Canada, "National Discipline Standards" (14 October 2023) at 4, online(pdf): *Federation of Law Societies of Canada* <flsc.ca/wp-content/uploads/2024/02/NDS-Eng-Oct-2023.pdf>.
[104] *Law Society Act*, RSO 1990, c L 8, s 49.21(2); *Hearings Before the Hearing and Appeal Divisions*, O Reg 167/07.

practice in. These biases and stigmas will continue to be a risk until all Tribunal members receive sensitivity and inclusivity training to target and reverse these beliefs.

The intention of a good character hearing is to determine whether the applicant will be able to conduct themselves with integrity and honesty in the legal profession. Depending on the person sitting on the panel before them, the stigma around sex work may cloud the panel member's judgment and determine that the applicant's integrity is in question because of their choice of work. It must be understood that involvement in sex work has no bearing whatsoever on a person's integrity and honesty within a legal profession.

Criminalization on the basis of involvement in sex work plays a significant role in whether a licensing applicant will be faced with a good character hearing.[105] A good character hearing may occur if the applicant has previously been convicted of a criminal offence, and the applicant's integrity must be determined. There may be an inaccurate determination of integrity based on the fact that the applicant has worked in sex work and was thus disproportionately surveilled, policed, and criminalized for keeping themselves safe by working in a collective. The legal framework that disproportionately targets sex workers is a result of unearned stigma relying on whorephobic biases. Thus, the stigma is the underlying cause and must be extinguished. The stigma that follows sex workers is one that needs to be extinguished and changed if the legal profession attempts to expand to include differing perspectives.

A Way Forward: Policy Recommendations

Sex work is real work and must be acknowledged as such through awareness training for selection committees and LSO benchers and via on-campus education materials and events.[106] Change can only occur once the profession recognizes that not everyone who enters the legal field needs to come from the same background or perspective. The continued exclusion of sex workers from institutions of power, including the legal profession, supports the idea that only those from dominant classes, genders, or races should enter legal spaces.[107]

To be clear, the awareness-centred policy suggestions are just that. This proposal does not suggest preferential treatment of sex worker applications. On the contrary, it is asking for steps that will reduce stigma such that sex work experience is seen as equally valid as any other similar type of work experience.

[105] If someone is found to be of "bad character," there will be reasons provided to them and the evidence relied on by the panel will be provided to the applicant.
[106] Dr Tlaleng Mofokeng, "Why Sex Work is Real Work" (26 April 2019), online: *Teen Vogue* <https://www.teenvogue.com/story/why-sex-work-is-real-work>.
[107] Nonomura, *supra* note 70; Belkhir, *supra* note 68.

Recommendations - Law Schools

We recommend that law schools implement a two-pronged training and informational approach. Both prongs centre on the inherent rights of sex workers and the validity of the sex work experience. The first prong includes programs offering training to staff, faculty, and students on admissions committees of law schools. This training would be sex-worker lead and foster opportunities for discussions on how to make the admissions process less intimidating for applicants with sex work experiences. The second prong is focused on providing accessible information and learning tools for all students. Each student possesses a specific attitude toward sex work, and ensuring all students have information and tools available to address harmful whorephobic myths will assist in dismantling stigmatization within the profession.

Admissions and Training

Most Canadian law schools have begun to take a holistic, rounded view of applicants, taking into account non-academic experiences and non-traditional admissions criteria. However, there still needs to be an emphasis on promoting equity, diversity, and inclusion (EDI) through the considerations of admission files to engage the committee members in viewing files truly holistically.[108] This emphasis can be accomplished through specific training on EDI and how to ensure committee members' internal biases come through in the consideration of a file. We also recommend that law school admissions committees develop public declarations of inclusivity for those with sex work experiences to demonstrate that applicants should not be deterred from applying due to their previous employment. Having transparency for current and former sex workers wishing to apply to law schools will provide peace of mind to these applicants and some assurance that they will not be punished for disclosing their occupation.

Within the admissions committees themselves, law schools should seek to add student members to bring new perspectives into the admissions decisions. For example, Osgoode Hall Law School's admissions policy is holistic. Part of the way they achieve this is through the engagement of current students to bring attention to varying perspectives present within the school and to bring down barriers and biases to applicants who may not be seen as your "traditional law school student." The presence of student members from diverse backgrounds on the admissions committee can positively guide the view of the entire committee. Wherever possible, we recommend that law school admissions committees should seek to engage students with sex work experience for positions on their admissions committees. This would allow for a student with a similar lived experience to guide the discussion and focus on what would make an applicant a good student, not to

[108] The Globe and Mail, "Holistic Approach Underpins Law School's Diveristy Efforts" (10 October 2023), online: *The Globe and Mail* <https://www.theglobeandmail.com/life/adv/article-holistic-approach-underpins-law-schools-diversity-efforts/>.

pass judgment on them based on their disclosure of sex work. The only way this can happen is if the academic environment and law society community feel secure enough to allow sex worker applicants and students to disclose their experiences.

On-Campus Dialogue

To begin dismantling the view that sex workers do not belong in the legal profession and encourage them to apply, there must be an increase in the on-campus discussions on the topic. This was shown above in Osgoode Hall's ongoing recognition and tribute to Wendy Babcock. While there is still much work to do, Wendy's legacy encourages the acceptance of sex workers in a setting that has long been unwelcoming to them. It shows us how necessary it is for sex workers to feel welcome, safe, and supported in their law school careers.

Another example comes from Swansea University in Wales. Swansea implemented a thorough sex worker rights education programme developed after consultation with sex-working students.[109] The program is aimed at ensuring that sex worker students have access to health care, academic services, and success at university. Despite this study being completed in the United Kingdom, recommendations within it can apply directly to Canadian law schools. The biggest one being that "at university level, a coordinated approach towards student sex work is recommended."[110] Promoting the on-campus discussions that sex work is real, valid work can assist in eliminating the existing stigma that some law students may feel towards sex workers, which in turn brings down these internal barriers that sex workers may face when applying to law schools.

Unfortunately, these on-campus discussions are few and far between. There needs to be more effort and initiative taken by various Canadian law schools to make their faculties a more welcoming environment for their sex worker students. In order to achieve this, there needs to be more discussion facilitated about sex work. Some recommendations law schools can consider to create more discussion around this industry and its validity would be:

1. Law faculties can engage with local and national sex work advocacy groups to organize panel discussions or events on how to make a more welcoming environment for their students and potential applicants. Below is a small list of local and national non-profit organizations dedicated to the advocacy of sex worker's rights:

[109] Dr Tracey Sagar et al, "The Student Sex Work Project: Research Summary" (March 2015), online(pdf): *Swansea University* <https://www-2018.swansea.ac.uk/media/Student%20Sex%20Work%20Report%202015.pdf>.
[110] *Ibid* at 8.

a. Canadian Alliance for Sex Work Law Reform: sexworklawreform.com;

b. Chez Stella (Montreal): chezstella.org;

c. Sex Professionals of Canada: www.spoc.ca;

d. Maggie's Toronto Sex Workers Action Project: www.maggiesto.org;

e. Butterfly Asian and Migrant Sex Workers Support Network: www.butterflysw.org.

2. Law schools can create events to show support for sex-working students within their community and demonstrate to hopeful students that they encourage and welcome those with sex work experience. This can foster on-campus discussions among students and staff. As mentioned above, Osgoode Hall holds a yearly drag show for Wendy Babcock to raise money for the Wendy Babcock Social Justice Scholarship. This ongoing event shows the school's commitment to an on-campus discussion of sex workers and their belonging within the legal profession.

3. Have public and accessible information for all students and staff on sex workers' rights and how to address and reverse internal biases around this industry;

4. Information for students with sex working pasts on how to find varying pillars of support for those involved, such as access to healthcare, social support, and academic support. A lack of support for these students can be a big determination to feel that there is no welcoming environment for them.

5. A public statement by the law school on inclusivity for those with sex work experiences and the school's commitment to facilitating an open dialogue around this industry and providing support for its students.

Law schools must set an example and stand by their students with sex work histories, as they themselves have the power to ensure positive outcomes for sex worker lawyers. Law school is where the profession begins, and schools have an enormous role in shaping the attitudes of their graduates. This two-pronged approach would ensure that, at all stages of a law school cycle, students with sex work experience feel welcomed and supported, as opposed to having them fear re-stigmatization by their peers.

Recommendations - the Law Society of Ontario

Our recommendations for the LSO are centred on two actions: (1) making sex worker-led training materials available to benchers, paralegals, and public members, and (2) increasing the transparency in the selection of the LSO's tribunals.

Training Materials

We recommend that the LSO make available training on sex worker rights and experiences to all of its elected and appointed benchers, paralegals, and public members. This training would include discussions of marginalized sex workers such as Queer, Trans, Black, and Indigenous People of Colour (QTBIPOC) in order to promote their visibility and safety in the profession. The LSO itself states as its mission to serve the public that it "seeks to ensure that law, the practice of law and the provision of legal services are reflective of all peoples in Ontario by actively participating with Aboriginal, Francophone, and equity-seeking groups, through consultations, meetings and public education activities."[111] The training would directly assist this mission statement through sex-worker-led education, which has the potential to make the legal profession attainable and approachable for current and former sex workers.

We recommend that any LSO bencher or other member who conducts investigations or sits on good character hearings be given the opportunity to receive training on sex worker rights and access to justice. Training for LSO benchers should, just as for law schools, be provided by groups with lived sex work experience and should not conflate sex work and human trafficking, as outlined above.

This training would entail:

1. Tips to identify and challenge implicit biases and stereotypes that may arise when conducting oneself with others of varying backgrounds and experiences, especially with those with current or former sex work experience;

2. Anti-oppression towards those from marginalized and vulnerable communities, as many Canadian sex workers come from these backgrounds; and

3. How to engage sex workers' perspectives and experiences in their dealings in order to halt the perpetuation of harmful stigmas and stereotypes

[111] Law Society of Ontario, "About LSO" (last accessed 9 April 2024), online: *Law Society of Ontario* <https://lso.ca/about-lso>.

Transparency in Selections

We recommend that the LSO's Hearing Tribunal make the selection process for good character panels transparent to the public. The Chair of the Hearing Tribunal has absolute discretion over who hears what case during a good character hearing.[112] The only requirements that are known to the public are that they must select three members, with at least one lawyer and a layperson sitting on the panel.[113] While this "diversity" in panel members can allow for some varying perspectives for the file, there are no known criteria for how the Chair selects who sits on a particular panel.

This raises obvious concerns because if a prospective lawyer who was a former sex worker is brought before a good character panel based on something in their application, depending on the make-up of the panel and their implicit biases, the direction of a case can sway unfavourably. One would hope that the panel's composition would attempt to reflect the applicant before them, but the appointment process for a particular panel is a complete mystery. If a panel member carries this stigma towards sex workers and has all these misconceptions about that profession, it is more likely that it will show within the hearing itself than a panel member who understands this background and how sex work is real work.

As an administrative body, we would hope that the LSO would be clearer and more transparent about appointing good character panels. But this power is squarely in the hands of the Chair of the Tribunal. Any glimmer of transparency is better than nothing. Knowing the criteria that are used when selecting these panels would give more peace of mind to an intimidating and confidential process.

Conclusion

While there is likely to be some resistance to sex worker rights-led training at both law schools and law societies by those who believe the industry is inherently exploitative, we should carefully analyze that resistance. After all, these suggested policies are about making sure that sex workers, both current and former, can enter another profession if they desire. The stigma and deterrence that both sex workers and those who have experienced exploitation encounter keep them away from professions like the law. So, even to those who hold anti-sex work views, should the goal not be to ensure that there are available opportunities for employment outside of sex work?

Drawing back to ideas of whorephobia that run so deep as to cause harm to both sex workers and those who experience exploitation, we must consider what the decision to

[112] *Law Society Act*, RSO 1990, c L 8, s 49.23(2).
[113] *Hearings Before the Hearing and Appeal Divisions*, O Reg 167/07, s 1.

abstain from welcoming sex workers into the profession means for everyone. Relying on whorephobia encourages situations like the one described above about Manitoba's Associate Chief Justice in 2010. It maintains the power that abusers hold over (largely) women by keeping them out of positions of power. All just to make sure that sex workers don't have a voice or agency.

There is much work to do, and the legal profession can be a leader in ensuring sex workers, both current and former, have access to basic human rights. Further work will need to be done to ensure that, once in the profession, sex workers have access to support and are not discriminated against.[114]

[114] Thank you to everyone who gave their time, comments, and critiques on this report, especially Glenn Stuart from the Law Society of Ontario and Katy X and Dallas X of the Sex Workers of Winnipeg Action Coalition.

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A POLICY REPORT ADDRESSING MENTAL HEALTH STIGMA WITH THE LAW SOCIETY OF SASKATCHEWAN

A Policy Report by Fatima Ahmed
College of Law, University of Saskatchewan

Fatima Ahmed is currently completing the following degrees: J.D degree the University of Saskatchewan, M.Ed. degree with a dual specialization in Indigenous Education and Social Justice Education; and an associate degree in computer science. Aside from the degrees she is currently undertaking, Fatima has also completed a B.A. in Peace and Conflict Studies (including an academic term in Sweden); a Bachelor of Education; a Masters in Disaster Risk Management and Climate Change; and a M.Sc. in Educational Leadership and Innovative Technologies.

Introduction

This submission proposes a legal reform of the Law Society of Saskatchewan's ("LSS") regulations pertaining to the disciplinary proceedings against members with mental health challenges. I am suggesting reform to the LSS' regulations around how the disciplinary proceedings against members with mental health challenges are treated.

Problem Identification

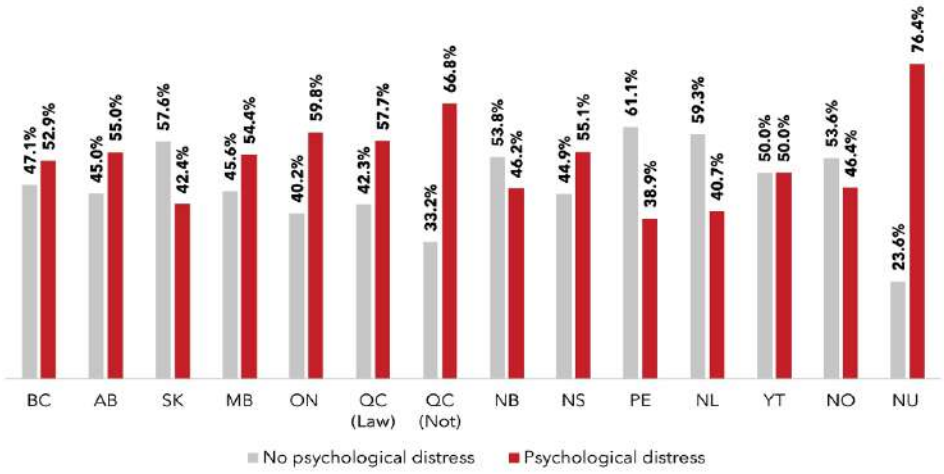
First, to prove that this is topical, this report cites the *National Study on the Health & Wellness Determinants of Legal Professionals in Canada*[1] which introduces readers to the dire situation of mental health amongst legal professionals.[2] Legal professionals are more likely to suffer from poor mental health due to some of the following factors: High Stress and Workload; Adversarial Nature of the Job: Isolation and Loneliness; High Expectations and Perfectionism; Substance Abuse; and, Lack of Work-Life Balance[3,4,5]. Resultingly, the significance of this report can be best understood through the words of the study sponsors, who write that:

> "Healthy legal professionals are happier, more productive and better able to achieve positive outcomes for their clients. Yet stress, depression and substance use are often linked to the rigours of a career in law. We all know this anecdotally but have needed a better understanding of the extent, causes and specific dimensions of the problem in order to take steps toward meaningful change. Measurement is unquestionably the first step" (p. 11).

Thus, this comprehensive national study was a response to growing concerns about how legal professionals have been shown to be at higher risk of stress, anxiety, depression, and substance abuse compared to other professions. Phase 1 of this study aims to identify the scope of mental health issues, understand regional differences, and explore the underlying causes of mental health challenges within the legal field.

[1] https://flsc.ca/wp-content/uploads/2022/10/EN_Preliminary-report_Cadieux-et-al_Universite-de-Sherbrooke_FINAL.pdf
[2] To understand the severity of the issue, I reviewed Law Society of Saskatchewan's disciplinary cases going back to beginning of 2011 in detail. These cases are publicly available on https://www.lawsociety.sk.ca/regulation/hearings-decisions-and-rulings/discipline-decisions/. None of the disciplinary records cited mental health as a reason for unprofessional or unbecoming conduct. However, this lack of attribution might simply be because mental health is not yet a suggested explanation for disciplinary decisions, and this might change once something like Manitoba's Health Recovery Program is introduced.
[3] https://www.psychologytoday.com/us/blog/luminous-things/202007/the-good-and-the-ugly-in-the-practice-of-law
[4] https://www.psychologytoday.com/au/blog/psymon-says/202304/why-are-lawyers-at-greater-risk-of-suicide
[5] https://www.psychologytoday.com/us/blog/building-resilient-minds/202203/why-the-legal-system-needs-prioritize-attorney-wellbeing

While the extensive study has many relevant graphical representations, this paper calls attention to Graph 3 Proportion of psychological distress among legal professionals by province and territory (n = 6,651)[6] found on p. 30 of the study. This following graph illustrates the following patterns: the highest proportion of psychological distress is present in Nunavut, Ontario, and Quebec. The lowest proportion of psychological distress was reported in the Maritim Provinces, Saskatchewan and Northwest Territories. This graph is specifically highlighted because it states that the legal profession in Saskatchewan has a comparative strength since their proportion of psychological distress is lower than others; thus, this strength can also be seen as opportunity to serve as a model for and leader amongst other Canadian law societies to help decrease the psychological distress that lawyers face in other provinces and territories.



To better understand the current mechanism in place at the LSS to assist those with mental health challenges, I conducted multiple informational interviews with LSS staff.

Methodology

The staff were chosen after a general inquiry was submitted to the LSS, to inquire who would be the best staff person to speak about this topic. Thus, the staff chosen for the conversation were those suggested by the LSS themselves. The series of informational interviews took place over the fall 2023 and winter 2024 term, and the duration of each call lasted from 20 – 45 minutes. The prompts given to the LSS staff member was a brief description of the fellowship and that the interviewer desired to understand how LSS ensured that practicing lawyers were not penalized professionally for experiencing mental health struggles.

[6] https://flsc.ca/wp-content/uploads/2022/10/EN_Preliminary-report_Cadieux-et-al_Universite-de-Sherbrooke_FINAL.pdf

Research Results

These conversation with the LSS resulted in the following findings:

> The question of mental health and mental illness arises at two instances: one in the pre-call stage and the other in the post-call stage.
> In the pre-call stage, the Bar admissions process is where mental illness or mental health can disadvantage an applicant. There is no distinction made between applications based on mental health status. Applicants must demonstrate a baseline or threshold competency level, and no other information is gathered around mental health in assessing competency. Accommodation is provided for individual needs so that the playing field can be equalized. The CPLED accommodations page lists the accommodation policy; at no point does the policy require disclosure of diagnosis. The accommodation ensures that the student isn't disadvantaged. In fact, the accommodations recognize that any underlying mental health issues can be further triggered due to the additional stress of the bar admission process. That said, the onus to seek out accommodations does still fall on the applicant. Therefore, LSS works with medical practitioners to provide accommodation. The articling process usually does not require accommodation as students are protected by health and labor laws. It is reiterated that there is no desire to vet applicants based on mental health.
>
> In the post-call stage, the LSS is actively trying to break down the stigma around mental health and the assumption that a correlation exists between the mental health of lawyers and their competency as professionals. In fact, the CPD program titled *Free Virtual Seminar – Mental Health and the Legal Profession: Improving Lawyer Well-being (CPD 367),* hosted recently on October 4, 2023, addressed this topic. The LSS tries to address the worry of licensed professionals that seeking help for their mental health might impact their ability to practice. LSS offers an expanded practice advisor program which is a free and confidential service that attempts to provide help in resolving practice related issues. There is lots of development in regulatory space. For instance, a wellness working group is being created so that the LSS can look at the regulatory responses to wellness. There is a successful diversion program in Manitoba that LSS is looking to follow. This diversion program looks to examine the cause of errors or violations. Thus, it asks if the reported action was bad practice or if it was due to a mental health problem. If latter, then this matter is moved from the discipline stream to the diversion stream[7].

Our LSS contact said that further developments are anticipated soon. While this report initially wanted to bring light to these developments, they have not yet taken place.

[7] Informational Interview with Kiran Mand

Thus, the report examines in detail Manitoba's Health Recovery Program ("HRP") and the Health Recovery Program Framework ("Framework").

The HRP introduces itself in the following words:

> "Offering an alternative to the discipline process by providing members with comprehensive healthcare treatment options to support them in the safe practice of law. The Health Recovery Program enables lawyers to receive healthcare treatment and prevent practice problems when a health issue arises. The program offers a positive alternative to discipline where a lawyer's conduct or competence issues are linked to health conditions, such as addiction, depression, or other mental health issues."[8]

Within the Framework, the objectives of HRP are defined in the following words,

> The objectives of the program are:
> 1. Early identification, referral and treatment for a member who has a health issue that has the potential to adversely affect the member's ability to practice law safely;
> 2. Adoption of a remedial approach for a member who has health issues where the member is cooperative in the process, has insight into their own health issues, and is compliant with treatment and rehabilitation; and
> 3. Collaboration with a member who has health issues and the member's care givers with the goal of creating an environment in which the member can practice law safely.[9]

The Framework lists the following as HRP's guiding principles: confidentiality; voluntary; without risk; and maintaining public interest. The Framework elaborates in detail how it is different from other Law Society support services, how the program is administered and who pays for the costs of the program. The Framework lists the following as potential reasons why people enter the HRP program: "(a) To prevent practice issues; (b) As an alternative to potential discipline; (c) A hybrid of the two above reasons; and, (d) To potentially mitigate the consequences of a discipline proceeding."[10] The Framework also delineates the following intake pathways:

- Intake Process in Non-Disciplinary Situations
- Intake Process if the Program is an Alternative to Discipline
- Intake Process if the HRP can help mitigate the consequences of a Discipline Proceeding

Now, it is necessary to examine the current LSS rules. A search of the LSS Rules[11] enables us to see that psychiatric assessment is mentioned only three times within the 156-page

[8] https://lawsociety.mb.ca/for-lawyers/supports-for-lawyers/health-wellness/health-recovery-program/
[9] Health Recovery Program Framework by the Law Society of Manitoba
[10] p. 7 of Framework
[11] https://www.lawsociety.sk.ca/wp-content/uploads/LawSocietyofSaskatchewanRules.pdf

document. As it stands right now, the following are the contents of rules 1108; 1111; and 1112, all of which mention the phrase "psychiatric assessment".

Action by Chairperson

1108(1) Upon completion of the review mentioned in Rules 1106 and 1107, the Chairperson of the Competency Committee shall do any or all of the following:

(c) request that the member:

(vi) obtain a psychiatric or psychological assessment or counselling, or both, and if the Chairperson requests, provide a report on that assessment or counselling to the Chairperson;

(vii) obtain a medical assessment or assistance, or both, and if the Chairperson requests, provide a report of that assessment or assistance to the Chairperson;

Resignation in the Face of Discipline

1111 (4) The Conduct Investigation Committee may hear an application to resign in the face of discipline and may:

(e) prior to any application for reinstatement, require the member to:

(i) complete a remedial educational program;

(ii) undertake to refrain from practicing in specified areas of law;

(iii) obtain one or more of:

(A) a psychiatric assessment;

(B) a psychological assessment; and

(C) an addictions assessment;

(iv) obtain one or both of:

(A) a medical examination; and

(B) a medical opinion respecting the member's capability to practise law;

Resignation Instead of Continued Proceedings

1112 (3) The Conduct Investigation Committee or the Chairperson of the Competency Committee may:

(e) prior to any application for reinstatement, require the member to:

(i) complete a remedial educational program;

(ii) undertake to refrain from practicing in specified areas of law;

(iii) obtain one or more of:

(A) a psychiatric assessment;

(B) a psychological assessment; and

(C) an addictions assessment;

(iv) obtain one or both of:

(A) a medical examination; and

(B) a medical opinion respecting the member's capability to practise law;

The HRP program in Manitoba, recommended as a possible model by the LSS contact person, has the potential to catch instances of questionable or poor performance before they are diverted onto the Discipline stream. Unfortunately, the LSS does not take such proactive stances, and as the rules above illustrate, a psychiatric assessment is only considered once the complaint has escalated to the disciplinary mechanisms as established by the LSS. That a psychiatric assessment is conducted only upon complaint escalation is a very curious decision by the LSS – I do not how a psychiatric diagnosis alleviates the issue, unless the goal is only to find out if the legal professional in question has a mental illness diagnosis. Rather than pathologizing mental health, it would make sense to redirect a legal professional struggling with mental health to a counsellor or psychologist rather than trying to assess if there is a mental illness diagnosis. In fact, the psychiatric assessment might contribute further to the stigma surrounding mental health, and might further discourage legal professionals from seeking help even when they are struggling.

Moving Forward

Thus, this report advises the LSS to adopt Law Society of Manitoba's approach and to introduce a program like the HRP under a framework similar to Manitoba's Framework. Given that we have the example available from Manitoba, the project submits that proposal contained within is also realistic.

Upon questioning with the Law Society of Manitoba about what changes were made to the legislation and/or rules in order to implement the Health Recovery Program, this report found out that the benchers passed amendments to the Law Society of Manitoba Rules in order to implement the Health Recovery Program. The changes were categorized as high-level and minimal. A contact at the LSM describes these changes in the following words:

> "Rule 5-66 describes the possible actions the chief executive officer may take after the investigation of a complaint against a member. Likewise, Rule 5-74(1) describes the possible actions the Complaints Investigation Committee ("CIC") may take after considering a complaint which was referred to it. Both of these rules were amended to allow the chief executive officer, or the CIC, as the case may be, to recommend that the member obtain "healthcare treatment".

and

> "Rule 5-63(3) was also amended. Typically, if a complaint against a member is found to have no merit or if a complaint is addressed by the Society in a manner that does not result in referring the complaint to CIC, the complainant is given the opportunity to request an independent review of the decision by the Complaints Review Commissioner ("CRC"). However, if a member is referred to the Health Recovery Program, the complainant would simply be notified that the member is receiving healthcare treatment and that there is no further opportunity to have the decision reviewed. Accordingly, Rule 5-63(3) was amended to provide that the CRC cannot

review a decision where the chief executive officer recommended that the member obtain healthcare treatment."

Thus, it is concluded that if the proposed reform was introduced, no amendments to the legislation would be required; rather, only the Rules would be altered.

Conclusion

The mental health challenges which legal professionals face are multifaceted, stemming from factors such as: High Stress and Workload; Adversarial Nature of the Job: Isolation and Loneliness; High Expectations and Perfectionism; Substance Abuse; and, Lack of Work-Life Balance. The National Study on the Health & Wellness Determinants of Legal Professionals in Canada attempts to measure and document the degree of, and the causes behind mental health struggles experienced by legal professions; it also aims to measure the problem so that it can provide recommendations in a follow-up report. Given this unanimous recognition that legal professionals are more likely to face mental health changes, and less likely to receive support, there, it is essential for the LSS to better support members with mental health issues – one of the ways to support members is to reform LSS' disciplinary regulations.

The current situation and the current LSS regulations only allow LSS to respond reactively to mental health concerns i.e. there is no clear intervention until and unless problems have escalated to a disciplinary process. LSS is missing the opportunity for early intervention and support, which would ensure many issues could be triaged and resolved prior to reaching a disciplinary stage. The Health Recovery Program (HRP) of the Law Society of Manitoba is an excellent alternative, recommended to us by the LSS staff themselves. The HRP is a proactive, supportive framework that attempts to recognize mental health for what they are – thus, the HRP tries to integrate healthcare treatment into the professional regulation process. Through this program lawyer can get the help they need by addressing the underlying health issues that is impeding their ability to practice safely. Thus, HRP is an excellent example of an alternative to a punitive approach towards legal professionals; the remedial approach is what the legal system is always trying to move towards, in its aim to increase access to justice.

Through this report, I hope to encourage and echo LSS desire to adopting a similar model to Manitoba's HRP. To adopt such a model, only adjustments to existing rules are required. The fact that legislative amendments are not needed is an excellent reason which further augments the need for such a reform and to actualize it in an efficient and effective manner. LSS has the potential to become a true leader in supporting the mental health of legal professionals and I hope LSS grasps the opportunity arising from its strengths. Through such legal reform, LSS can hope to increase the overall health of the legal profession in

Saskatchewan and all of Canada. If our legal professionals are well, we can be assured that we can produce better outcomes for clients and the justice system.

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BEYOND TRADITION: MAKING CASTE A PROTECTED HUMAN RIGHTS GROUND

A Research Report by Nikisha Thapar
Faculty of Law, University of Western Ontario

Nikisha graduated with a B.A. in Gender and Social Justice Studies from Trent University in 2021. During her time at Trent, she served as a Guide for her university's Rebound Program for students facing academic challenges, and as an Equality Commissioner within her university's student government. Currently pursuing her legal education at Western Law with an expected 2024 graduation, Nikisha is deeply committed to social justice. She actively engages in various equality and access to justice initiatives.

Introduction[1]

Caste is a type of hierarchical social system found in various societies, with the oldest and most well-known originating in India. However, with the rise of globalization and immigration, the caste system's influence is no longer confined to India and South Asia but rather impacts socioeconomic structures and legal frameworks in countries around the world. While Canada is still in its infancy in addressing this issue under the law, recent legal developments have shed light on the impact of caste discrimination within the South Asian diaspora.

However, since caste is not currently codified as a protected ground under Canadian human rights law, existing remedies against caste discrimination often hinge on claims being pursued under existing and analogous grounds such as race or religion. As a result, remedies risk falling short of recognizing and addressing the sociocultural nuances and unique challenges specific to caste.

This report will explore the origins of the caste system in ancient Hindu doctrine and discuss how it manifests in contemporary Canadian society. The report will also review recent case law and legislation related to caste discrimination in Canada before presenting arguments for why caste should be made a separate protected ground under Canadian human rights law. To do so, this report will compare between caste and other analogous protected grounds, highlighting the limitations of using these grounds as approaches to combat caste discrimination and the need to recognize caste on its own terms within the Canadian legal system.

What is Caste?

Caste systems are comprised of closed, endogamous and hereditary systems of groups that are ranked against each other in a rigid hierarchical structures[2] that afford those in higher castes more privilege than those in lower castes, regardless of the amount of individual power and wealth a lower-caste member may have.[3] The word "caste" is now also widely used to describe not only the general conception of social stratification but also exclusion based on certain traits.[4]

[1] Sincerest thanks go to Professor Manish Oza from Western University Faculty of Law for his invaluable support and guidance throughout the course of this research, as well as to Fatima Ahmed and the team at Level Justice for their encouragement and support through the Social Justice Fellowship Program.

[2] Hugo Gorringe & Irene Rafanell, "The Embodiment of Caste" (2007) 41:1 Sociology 97 at 98 [*Gorringe*].

[3] BBC News, "What is India's caste system?", BBC News (25 February 2016), online: <bbc.com/news/world-asia-india-35650616> [perma.cc/UL5E-N3H4].

[4] Terry Gross, "It's More Than Racism: Isabel Wilkerson Explains America's 'Caste' System", *NPR* (4 August 2020), online: <npr.org/2020/08/04/898574852/its-more-than-racism-isabel-wilkerson-explains> [perma.cc/422P-DQWN] [*Gross*]; for the purposes of this discussion, we will be referring to caste using the former definition.

Caste systems can be found all over the world and are rooted in sociocultural and economic frameworks of different societies. However, the oldest and most famous of these, and the one currently and most actively influencing Canadian law, originated in the Hindu religion. That being said, it is far from exclusive to the faith as it is upheld by adherents to most major religions. While it is primarily associated with India, it is also found across South Asia and throughout the South Asian diaspora.[5]

Where Does Caste Come From?

Based in ancient Hindu legal texts, the caste system is grounded in the belief that from birth, individuals are assigned a caste, or *varna,* and responsibilities based on where their ancestors emerged from the body of the god Brahma.[6] While the Brahmin priests and teachers originated from Brahma's head, the warrior and ruler Kshatriyas and the farmer and merchant Vaishyas emerged from his arms and legs, respectively.[7] Finally, the Shudras - classified as general labourers and servants - were said to have emerged from Brahma's feet.[8]

Ultimately, the caste system operates on a hierarchical measure of perceived purity and proximity to the Divine, with castes emerging from body parts closer to the mouth being considered more spiritually pure and worthy of privileges than those emerging from areas further away.[9]

Historically, the South Asian caste system worked by way of using the obligatory labour of one caste, the Shudra, to uplift the three higher, "twice-born" (once physically, once spiritually) castes.[10] This rigid structure has worked to perpetuate socio-economic disparities and hinder the advancement of these marginalized groups for generations.

[5] European Parliament, *A human rights and poverty review: EU action in addressing caste based discrimination* (Belgium: European Union, 2013) at 14.
[6] Anonymous, *The Rig Veda*, translated by Wendy Doniger (London: Penguin Book Ltd, 1981) at 11-12 [*Rig Veda*].
[7] *Ibid.*
[8] *Ibid.*
[9] Anonymous, "The Laws of Manu", (1500) at 1.92, 1.98-1.100., online (pdf): <constitutii.files.wordpress.com/2014/06/the-laws-of-manu.pdf> [perma.cc/JM9A-B6A8].
[10] David Keane, Caste-based Discrimination in International Human Rights Law (Aldershot: Ashgate Publishing Ltd, 2007) at 33 [*Keane*].

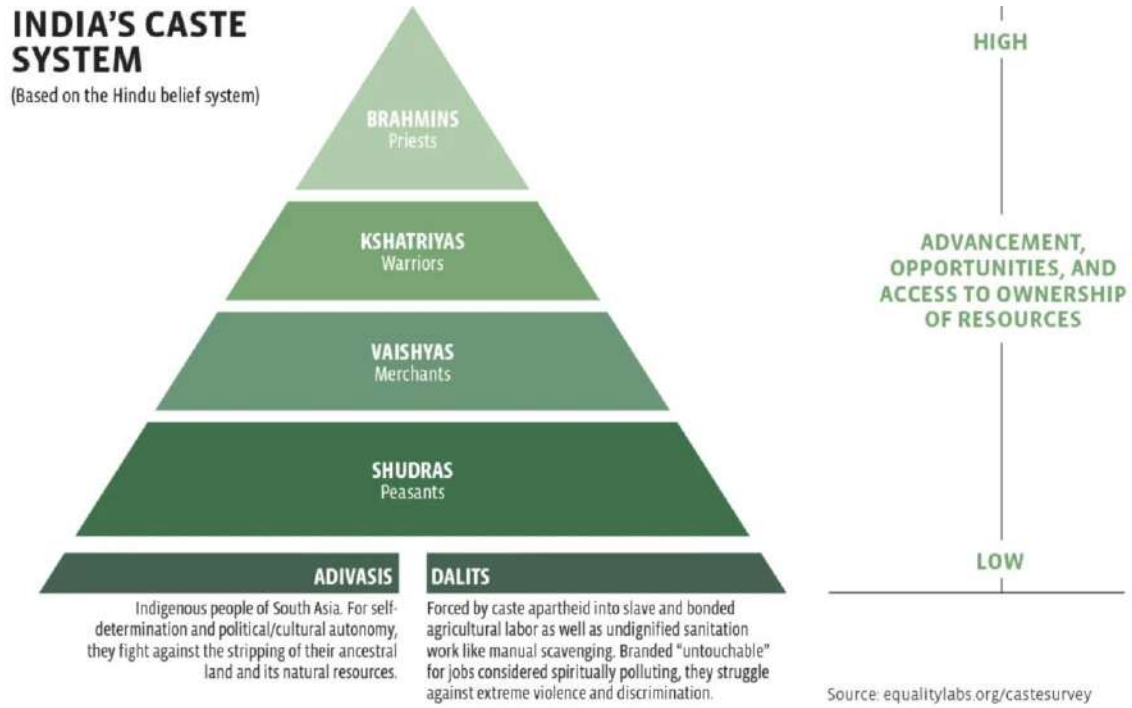

Fig.1 - *The Caste System, illustrating the four* varnas *and the two groups now protected under law under the "Scheduled Tribes" (adivasis) and "Scheduled Castes" (Dalits) designations*[11]

Naturally, with any express specification of social classes and the privileges entitled to them, an additional class emerges in itself - those who, by virtue of their exclusion from these specifications of privilege and class, accord no entitlements and as a result inhabit the lowest stations in the social hierarchy. These castes are today collectively referred to in Indian law as "Scheduled Castes", "Scheduled Tribes" (reflecting the descendants of the Indigenous people of what is now known as India before Aryan migration) and "Otherwise Backwards Castes" (or OBCs, used to refer to non-Scheduled Caste members low in the social hierarchy, including most Shudras and converts to non-Hindu religions from Scheduled Castes).[12]

Those in the Scheduled Caste designation identify as belonging to a group referred to more widely as "Dalits" (otherwise known as "Untouchables", with discrimination against them based on beliefs of spiritual pollution referred to as "Untouchability").[13] "Dalit" is not

[11] Sonali Kolatkar, "Confronting Caste", (2022), online: <https://www.yesmagazine.org/issue/bodies/2022/11/21/confronting-caste> [perma.cc/47EW-67D7].
[12] Department of Social Justice and Empowerment, "About the Division", (n.d.), online: <socialjustice.gov.in/common/31548> [perma.cc/BPU8-92FL] [*Government of India*].
[13] Hillary Mayell, "India's 'Untouchables' Face Violence, Discrimination", (2 June 2003), online: <nationalgeographic.com/pages/article/indias-untouchables-face-violence-discrimination> [perma.cc/5VM5-UW2R].

an official caste term, but rather one of self-identification most closely associated with Dalit rights activists Jotirao Phule and B.R. Ambedkar meaning "crushed" or "broken" in the Marathi language, signifying the long history of political oppression faced by Dalits and communicating opposition to Brahminical supremacy in Indian society.[14]

Despite caste discrimination being constitutionally abolished in India in 1950,[15] it continues to systemically oppress those in historically marginalized castes - both within India and in overseas diaspora communities, including in Canada. Canada is in its infancy in developing legal frameworks to tackle this issue. Caste is not yet recognized as a separate protected ground of discrimination under the law, however recent legal developments have accelerated the recognition of caste discrimination within the Canadian legal system. These developments address the challenges marginalized castes face in their cultural communities as they strive to fully participate in Canadian society. However, they also demonstrate a growing awareness of how making the law more culturally pluralistic is necessary to adapt to the needs, concerns and desires of a diverse populace.

How Can You Determine Someone's Caste?

While caste may not be visually apparent, certain cultural markers identify one's caste for the purposes of discrimination. The most prominent and well-known indicator of one's caste is a person's surname, as certain last names are affiliated with specific castes.[16] Caste markers also include "family deities, rituals, wedding bands, customs and ceremonies, belief systems, food habits or diet, accent, dialect, area of origin, ancestry, and descent."[17] Dress and traditional occupation may also indicate caste background, however these markers are considered less reliable.[18] Since access to education, economic opportunities, and the freedom to build generational wealth is still very divided along caste lines, socioeconomic status has also historically been a cue of caste background.[19]

[14] Minority Rights Group, "Dalits", (19 June 2015), online: <minorityrights.org/minorities/dalits/> [perma.cc/KG3Y-JXQS].
[15] *Ibid.*
[16] Simranjeet Singh & Aarti Shyamsunder, "Bringing Caste into the DEI Conversation", (5 December 2022), online: <hbr.org/2022/12/bringing-caste-into-the-dei-conversation> [perma.cc/H9WK-U9EX].
[17] Ontario Human Rights Commission, "OHRC's Policy position on caste-based discrimination", (26 October 2023), online: <ohrc.on.ca/en/news_centre/ohrc%E2%80%99s-policy-position-caste> [perma.cc/4FD9-GQQY] [*OHRC*].
[18] *Gorringe*, *supra* note 1 at 103.
[19] Rajesh Raushan, Sanghmitra S Acharya & Mukesh Ravi Raushan, "Caste and Socioeconomic Inequality in Child Health and Nutrition in India: Evidences from National Family Health Survey" (2022) 3:2 CASTE / A Global Journal on Social Exclusion 345 at 346.

What Does Caste Discrimination Look Like in Canada?

i. Recent Case Law

a. Sahota and Shergill v. Shri Guru Ravidass Sabha Temple

The complainants in this case alleged discrimination by the Shri Guru Ravidass Sabha Temple (the "Sabha") based on ancestry, race, and religion in denying them formal membership in the temple.[20] The Sabha, established as a result of discrimination faced by the Dalit Ravidassa community in other Sikh temples, restricted formal membership to individuals from the caste.[21] Since the complainants did not belong to this caste, they were excluded from formal membership.[22]

The Tribunal dismissed the complaint on the grounds that the organization was "purely social, religious and cultural" as opposed to economic, and therefore the British Columbia *Human Rights Code* did not apply in this case.[23] As a result, the Tribunal left the question of how to adjudicate caste and its intersection with religion unanswered.

b. Bhangu v. Dhillon

On March 15th 2023, The British Columbia Human Rights Tribunal awarded $9755.81 to Manoj Bhangu, a Dalit taxi driver who claimed that brothers Inderjit and Avninder Dhillon discriminated against him contrary to s.13 of British Columbia's *Human Rights Code* based on caste.[24] However, Bhangu and the tribunal chose to classify these acts under the protected classes of ancestry, place of origin and race.[25] Having moved to Canada to escape the rampant caste discrimination in India, Bhangu became the target of physical violence, threats of death and derogatory slurs historically aimed at Dalits in his workplace, resulting in him experiencing "feelings of insult, humiliation, embarrassment, worry and death."[26]

One of the respondents claimed that their actions failed to meet the requirement of a discrimination claim, with regard to caste or any other protected ground, due to their membership in the Jatt caste (ie. *jati*) since, according to him, "...the Jatt caste is not higher than the Slur caste."[27] Co-founder of the Poetic Justice Foundation Anita Lal, on the other hand, disputed this claim, stating that Jatts are part of a higher caste of farmers and

[20] *Sahota and Shergill v. Shri Guru Ravidass Sabha Temple*, 2008 BCHRT 269 at para 7-8 [*Sahota*]
[21] *Ibid* at para 10.
[22] *Ibid* at para 5.
[23] *Ibid* at para 34.
[24] *Bhangu v. Dhillon*, 2023 BCHRT 24 at para 5 [*Bhangu*].
[25] *Ibid* at para 4.
[26] *Ibid* at para 39.
[27] *Ibid* at para 52.

landowners in Punjab that carry much influence in society that has continued to hold in Canada with the rise of overseas diaspora.[28]

Bhangu was also able to demonstrate the profound effect of emotional distress and humiliation these incidents had on him, especially when compounded with the physical attacks and his experiences with caste discrimination in India.[29] The tribunal ordered the Dhillons to pay him $6,000 in damages and cover $3,755.81 for his case's costs.[30]

ii. Jurisdictions and Organizations that Have Recognized Caste Discrimination

a. Toronto District School Board

Following reports of caste discrimination and oppression in communities across Ontario and within Toronto schools, the Toronto District School Board became the first jurisdiction in Canadian history to acknowledge the existence of caste discrimination and seek a formal mechanism for reporting and addressing this form of discrimination.[31] Boasting 235,000 students, South Asians account for approximately 22% of the total student population.[32] On March 8th 2023, the Board voted to [ask] the Ontario Human Rights Commission (OHRC) to "assess and provide a framework for addressing caste oppression" in public schools.[33]

b. Burnaby, BC

Following the TDSB's recognition of caste as a basis of discrimination and the British Columbia Human Rights Tribunal ruling in *Bhangu*, the City of Burnaby unanimously voted to pass Resolution 2023-180 on April 24th 2023.[34] This resolution authorized the inclusion of caste as a protected ground in the municipal Equity Policy and the creation of a policy framework to train city employees and councillors on caste-based discrimination.[35]

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[28] Arrthy Thayaparan, "B.C. Human Rights Tribunal awards man more than $9K in case of caste-based discrimination" (27 March 2023), online: <cbc.ca/news/canada/british-columbia/caste-discrimination-taxi-decision-1.6783267> [perma.cc/P5DX-85RV].

[29] *Bhangu*, *supra* note 139 at paras 38-39, 103.

[30] *Ibid* at para 5.

[31] Isabel Teotonio, "TDSB wants to ban caste-based discrimination. Here's why people are divided", (9 March 2023), online: <thestar.com/news/gta/tdsb-wants-to-ban-caste-based-discrimination> [perma.cc/H7YZ-PK4Z].

[32] *Ibid.*

[33] *Ibid.*

[34] City of Burnaby, "City of Burnaby - Council Meeting Minutes" (24 April 2023), online (pdf): <pub-burnaby.escribemeetings.com/FileStream.ashx?DocumentId=70259> [perma.cc/WH3F-TCNG].

[35] Shilpashree Jagannathan, "Burnaby council votes unanimously to include caste as a protected category", *New Canadian Media* (26 April 2023), online: <newcanadianmedia.ca/burnaby-council-votes-unanimously-to-include-caste-as-a-protected-category/> [perma.cc/8T5Y-QBZJ].

c. Brampton, Ontario

Brampton City Council unanimously passed Resolution C128-2023 on May 17th 2023 to become the third Canadian jurisdiction and second municipality to recognize the existence of caste discrimination.[36] The motion charges the Council to work alongside the Ontario Human Rights Commission to develop a framework, similar to that which the Toronto District School Board was seeking.[37] The motion acknowledges that "caste-based oppression is experienced by various faith communities in South Asia, the Caribbean and parts of Africa and East Asia," and that "there are documented cases of caste-based discrimination in the diaspora in Canada.[38] Caste may be identified by, but not limited to an individual's last name, family occupation, diet and area of origin and self-identification can be unsafe when caste-based discrimination is not recognized."[39]

d. Ontario Human Rights Commission

On October 26th 2023, the Ontario Human Rights Commission released its official policy statement on caste discrimination in Ontario. Defining the caste system as "a social stratification or hierarchy that determines a person or group's social class or standing, rooted in their ancestry and underlying notions of 'purity' and 'pollution'", the statement acknowledged the effect that casteism has on all aspects of life, especially in social and economic spheres - ranging from the denial of promotions or housing opportunities to harassment and bullying against those in marginalized castes.[40] The Commission also recognized the designation of casteism as a violation of human rights throughout the international community, citing the conclusion contained in the United Nations Report of the Special Rapporteur on Minority Issues that such discrimination is a "global problem."[41]

While the Commission acknowledges their lack of jurisdiction to create protected grounds under the Ontario *Human Rights Code* (the "Code"), they acknowledge that the Human Rights Tribunal of Ontario as well as the courts "must take a liberal and progressive interpretation of the *Code*" in tackling this issue, stating that they believe existing grounds provide for the necessary protections to deal with caste discrimination "that can be covered under any combination of ancestry, creed, colour, race, ethnic origin, place of origin, family status, or possibly other grounds, under Ontario's *Code*."[42]

The policy statement ends with articulating the legal obligation of Ontario organizations to ensure that environments within them are free from discrimination or

[36] The Corporation of the City of Brampton, "Minutes City Council Wednesday May 17 2023" (17 May 2023) at 13.1, online (pdf): <pub-brampton.escribemeetings.com/FileStream.ashx?DocumentId> [perma.cc/HH5P-BZ64].
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] *OHRC*, *supra* note 36.
[41] *Ibid.*
[42] *Ibid.*

harassment based on caste or any of the protected grounds, and that such claims must be responded to and investigated under complaint procedures put into place barring caste discrimination in the organization.[43] However, the statement also detailed that application of the *Code* is limited to discrimination in services, housing accommodation, employment, vocational associations and contracts.[44] It also stated, citing *Sahota*, that exceptions within the *Code* exist "permit[ting] a religious group and other organizations to limit membership, participation and potentially the employment of individuals based on a *Code* ground as long as they primarily serve the interests of people from the group and meet other requirements of the *Code.*"[45]

e. University of Toronto and CUPE 3902

As part of ongoing negotiations with CUPE 3902, the University of Toronto agreed in January 2024 to codify caste as a ground upon which discrimination is prohibited.[46] While the entire collective agreement has yet to be finalized and ratified by the union, this development would mark the first instance of a Canadian post-secondary institution codifying caste discrimination regulations in their policies and regulations.[47]

Why Should Caste Be Made a Protected Ground Under Canadian Human Rights Law?

i. Introduction

In contemplating our ever-developing understanding of "multiculturalism," we confront the emerging trend of cultural groups seeking recognition and accommodation of their cultural differences under the law and remedies for unique challenges in their communities that are uniquely specific to their cultural context.

Caste, as seen in the legal developments spanning this past year, is at the forefront of this movement in Canadian law. While some argue that caste is best understood as a purely cultural or community matter as opposed to one based on systemic inequality befitting to be addressed under the law, this not only overlooks the historical and social context of caste discrimination as a systemic issue in India, but also how it uniquely impacts the ability of those in marginalized castes to participate in all areas of society fully. As Canada's South Asian population has grown, and Canadian law has come to this realization, the question now being asked is what the best way to tackle this issue would be under the law.

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[43] *Ibid.*
[44] *Ibid.*
[45] *Ibid.*
[46] Pratikshit Singh, "University of Toronto Adds Caste as Protected Category", *The Mooknayak* (27 January 2024), online:<https://en.themooknayak.com/india/university-of-toronto-adds-caste-as-protected-category#:~:text=> [perma.cc/Q4DD-TU86].
[47] *Ibid.*

On October 7th, 2023, California Governor Gavin Newsom vetoed a bill that would have prohibited discrimination based on caste in the state.[48] Governor Newsom justified this decision by saying that this measure was "unnecessary" due to existing bans on discrimination based on "sex, race, colour, religion, ancestry, national origin, disability, gender identity, sexual orientation and other characteristics" that are mandated to be "liberally construed" under state law.[49] The tribunal in *Bhangu*, similarly, chose to award remedies for caste discrimination under the existing grounds of place of origin, ancestry, race and religion - due to both the lack of a separate enumerated ground for caste, and the belief that this method would adequately compensate the claimant for the harm suffered.[50]

The line of reasoning that justifies tackling caste discrimination by using other, already codified, protected grounds is understandable and acts as a very positive start to combatting caste discrimination. However, as a long-term solution, it does not go far enough. To put it simply, while these concepts and protected grounds may *overlap* with caste, they cannot simply be said to be the same as caste. In the context of the South Asian caste system, while concepts like race, religion and descent draw differences between different groups of people based on faith, ancestry, genotypic and phenotypic traits, caste is a system of organization that places certain groups above or below one another and decides the privileges and resources entitled to each in a way that may be *informed* by these grounds, but are not *determinative* by them.

In speaking of the definition of "caste" as it relates to the traditional social structure in India, to classify caste discrimination under broader and less specific terms such as "intraracial" or "intrareligious violence" would be to give little to no regard for the specific cultural nuance – that of caste – that drives the violence and conflict in the first place. It downplays the discussion on how discrimination can and does manifest *within* a religion or race, and wrongly portrays these conflicts as simple interpersonal matters that fall outside of the purview of human rights law. Therefore, this discussion posits that caste should be codified as an additional protected ground under provincial and federal human rights law going forward in order to ensure equitable treatment and uphold the principles of social justice for all members of society regardless of their caste background.

ii. Caste vs. Race

Though both are systems of social stratification, they differ significantly in origin and how they manifest and impact society. Race is a concept only arising within the last 500 years and around the time of the transatlantic slave trade,[51] often relies on genetic differences that manifest as visible physical characteristics, such as hair texture and skin colour, to be able to

[48] Harmeet Kaur & Duster Chandelis, "California governor vetoes bill that would ban caste discrimination", *CNN* (9 October 2023), online: <cnn.com/2023/10/09/us/california-caste-discrimination-bill> [perma.cc/XZ7Y-JELX].
[49] *Ibid.*
[50] *Bhangu*, *supra* note 139 at para 4.
[51] *Gross*, *supra* note 3.

determine one's racial identity. Meanwhile, the concept of caste originated thousands of years ago and is deeply rooted in religious doctrine to divide people into a hierarchy based on factors such as ancestry, occupation, and social status.[52] In addition, caste is a much more complex social construct to discern, with possible indicators including surnames, dialects, and regional origin.[53]

Caste as a system of oppression is able to transcend the boundaries of race to oppress people based on their place in the hierarchy, thereby illustrating the distinctiveness of caste as a social construct and emphasizing that while they intersect, caste and race cannot be equated or considered synonymous. While the "multilayered caste structure" of the West necessitates thinking in terms of racial identities (i.e. Blackness), "back where [immigrants from outside the West] are from, they do not have to think of themselves as Black, because Black is not the primary metric of determining one's identity."[54] Therefore, to think of such groups under the homogenous label of "Black" is to gloss over the nuanced distinctions that are integral to interactions between these groups, thereby failing to get at the root of the discrimination affecting those in marginalized castes and risk failing to remedy the harm they have suffered at the hands of caste discrimination.

Attempting to equate caste with race oversimplifies complex societal structures and historical conflicts. While caste discrimination may intersect with racial biases and colorism, it represents a distinct system of social, economic, and spiritual hierarchy. Failure to grasp these nuances risks misinterpretation and impedes efforts to address social inequality effectively.

iii. Caste vs. Religion

Like caste and race, caste and religion represent distinct but interconnected facets of societal organization in South Asian contexts. Religion pertains to complex systems of beliefs and ethics derived from faith in some supernatural force, while caste deals with hierarchical social structures built with the aim of maintaining social order. Caste can (and in the case of the Indian system, does) have religious origins, however the caste hierarchy extends beyond its religious basis to intersect with various social, economic and political factors that shape individual lives while limiting their upward mobility.[55]

Equating caste discrimination with religious discrimination overlooks critical distinctions and fails to acknowledge caste as a phenomenon that can occur both within and outside religious frameworks. Legal decisions, such as the Tribunal's ruling in *Sahota*, highlight the challenges of applying existing anti-discrimination laws to caste-based discrimination, particularly in cases involving religious settings or employment disputes. As

[52] *Ibid.*
[53] *OHRC*, *supra* note 16.
[54] *Gross*, *supra* note 3.
[55] *Gross*, *supra* note 3.

a result, ensuring clarity and specificity in legal definitions is crucial in preventing cases like *Sahota* from slipping through the cracks in addressing caste discrimination. In helping to bridge this gap between recognition and effectively addressing this issue, our legal system can further develop to ensure equal treatment and opportunities for all individuals regardless of caste or religious affiliation.

iv. Caste vs Descent

"Descent" or "ancestry" in human rights law closely aligns with the definition of caste discrimination since the concept of caste is rooted in the idea of purity as being genetically inherited. In the current absence of caste discrimination protections in Canadian human rights law, descent can be considered a fitting ground for seeking remedies in the absence of specific caste protections in Canadian law. International law recognizes discrimination based on descent as encompassing caste-based stratification,[56] acknowledging its impact on equal enjoyment of human rights and freedoms across various fields of public life.

However, despite the close alignment between these two concepts, existing definitions of descent in Canadian law fail to fully capture caste's economic and spiritual dimensions, ultimately making it insufficient to adequately address the systemic discrimination faced by caste-affected communities. For example, acknowledging caste solely through the dimension of descent may not provide a Tribunal with the necessary context of caste's origins in beliefs in spiritual impurity that in turn affect occupational prospects and discrimination in employment. As a result, any decision or remedy emerging from this understanding of caste may be incomplete in its nature in accounting for the harm suffered by someone of a marginalized caste.

Acknowledging these dimensions of caste discrimination in Canadian human rights law alongside using descent as a protected ground could adequately address caste discrimination, providing an avenue for remedies and guidance for adjudicators in cases involving caste-based discrimination in diaspora communities.

v. Why Choose? Combining Protected Grounds to Combat Caste Discrimination

In light of all these comparisons between caste and other protected grounds, the question arises as to whether simultaneously seeking remedies under multiple protected grounds would effectively account for all the deficiencies each protected ground carries in representing caste, thereby allowing for remedies to be granted more effectively. In answering this question, it should be noted that in order to pursue a caste discrimination claim, claimants would have to use legal tools that were developed for other purposes - such as protected grounds of religion, race or descent - in order to pursue a patchwork of legal

[56] *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UNTS 660 at 1 (entered into force 4 January 1969).

remedies that, even when combined, fail to fully capture the true nature of their systemic oppression in a system already rife with barriers to accessing justice.

The distinction of caste as a separate protected ground would not only recognize the vast number of ways where caste discrimination can manifest, but it would also acknowledge how caste itself is an inherently intersectional form of discrimination and shapes an individual's personal experience within a specific cultural context. To attempt to separate caste into some of the relevant protected grounds of which it is constituted is to leave out the essential interactions between these grounds that can only be found when they are considered together in their proper context.

To only address this issue by putting it into terms we have seen before, instead of understanding how recognized systems of oppression can and do intersect and blend to create other forms of oppression entirely – even ones that are unfamiliar to us - is to not adequately address the issue or give it its full credt for how it creates inequity and inequality.

In summation, consideration of the role of caste in these instances of discrimination allows us to consider a crucial dimension to the complex dynamics of discrimination and identity that underlie these social issues. Addressing the unique role that caste discrimination plays in society will allow us to create remedies that will adequately address the harm experienced by victims and develop our understanding of what a more equitable society looks like.

Conclusion

As evidenced by recent legal developments in Canadian human rights law, there is a growing recognition that caste discrimination must be addressed somehow within the Canadian legal framework. However, it is important to acknowledge this is not an area that can simply be addressed solely through existing protected grounds. While these categories do intersect with the concept of caste, this push for caste to be recognized separately in Canadian human rights law stems from the understanding that caste discrimination is not adequately addressed by existing legal frameworks, as all other existing remedies, in some way, fail to acknowledge some important element of the issue and thereby fall short of explaining the oppression that marginalized communities experience and bar them from seeking the full extent of the remedies available to them under the law. By codifying caste discrimination as a protected ground, Canadian law can better equip itself to address the systemic injustices faced by individuals in marginalized castes in Canada and diaspora communities. Continuing to advocate for this change will not only ensure greater legal protections for individuals facing caste discrimination but also affirm Canada's commitment to upholding principles of justice for all members of society.

EXPLORING DIVERSITY THROUGH ADMISSIONS: A CROSS-COMPARATIVE ANALYSIS OF HOLISTIC ADMISSIONS PROCESSES AND STUDENT PROFILE DIVERSITY AT TWO CANADIAN LAW SCHOOLS

A Research Report by Chukwuma Nwajei and Eden Prisoj
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Introduction

The legal profession is unique amongst others in that it is more malleable than others in responseto social change. In the event of a societal or cultural shift, it is probable that legislation will follow suit and precedent will thereafter be established that upholds the newly pervasive attitude.It is for this reason that Canadian law is frequently referred to as a "living tree," a dynamic organism capable of evolving and expanding over time in response to social change.[1] It is therefore incredibly ironic that the legal profession has remained virtually unaltered in respect ofthe demographics of practitioners.[2]

As at the industry's inception, the profession remains comprised of predominantly white male attorneys, especially among higher-ranking individuals in the field.[3] Unsurprisingly, diversity groups have been demanding change within law firms, such that discriminatory hiring practicesand promotional processes be increasingly regulated and sanctioned.[4] Calls for equity and diversity training are similarly commonplace within firms, as well as requests for more transparent communications in regard to sharing diversity metrics and employee feedback.[5]

While these efforts are incredibly valiant and valuable, importantly, they comprise "band-aid", or superficial solutions to a problem that is vastly more complex and requires redress at an earlier stage; namely, at the phase of law school admissions. Akin to the legal field, law schools have been renowned for their uniformity, be it of faculty as well as student compositions.[6] While these educational institutions have historically and continueto taut commitments to diverse practices, these do not appear to be regularly implemented in application. Despite overall enrollment of minority applicants having steadily increased, admission of Black, Indigenous, and Latinx students has either remained stagnant or decreased inrecent years.[7] Numerous explanations for this consistent disparity have been put forward, with many academics endorsing a pipeline theory – namely, that the education system is inherently flawed in that it disadvantages minority students and exaggerates the

[1] Miller, Bradley W. "Beguiled by metaphors: The 'Living tree' and originalist constitutional interpretation in Canada" (2009) 22:2 Canadian Journal of Law & Jurisprudence 331.
[2] Sybil Dunlop & Jenny Gassman-Pines, "Why the legal profession is the nation's leastdiverse (and how to fix it)" (2020) 47:1 Mitchell Hamline L Rev 129.
[3] Kimberly Jade Norwood, "Gender bias as the norm in the legal profession: It's still a[white] man's game" (2020) 62 Wash U J L & Pol'y 25.
[4] David B. Wilkins & G. Mitu Gulati, "Why are there so few black lawyers in corporatelaw firms—an institutional analysis" (1996) 84:3 Cal L Rev 493.
[5] Eli Wald, "A primer on diversity, discrimination, and equality in the legal profession or who is responsible for pursuing diversity and why" (2011) 24:4 Geo JLegal Ethics 1079; *ibid*.
[6] McDuffie, Shaniqua Lynee. "Recognizing another black barrier: The lsat contributes to the diversity gap in the legal profession" (2021) SSRN Electronic Journal.
[7] US Department of Education. "Advancing diversity and inclusion in Higher Education", (2016), online: <https://www2.ed.gov/rschstat/research/pubs/advancing-diversity-inclusion.pdf>.

gaps between white and Asian students in contrast to peers of underrepresented minorities.[8] Too few students belonging to the latter group are succeeding through the pipeline and applying for law school, with fewer still achieving LSAT scores and GPA values that would make them competitive candidates for admission.[9] Thus, the paucity of diversity amongst law school student bodies persists.

Our hypothesis is that a relationship will be discerned between diversity in admissions processes and consequent variety in class compositions. This belief is grounded in a multitude of rationale.To begin, by placing an emphasis on extracurricular experiences and accomplishments, law schools would likely be incentivizing students of unique cultural backgrounds and who have pursued non-traditional paths to apply for admission. Further, such holistic admissions criteria are better equipped to promote equity by mitigating the severity and effects of systemic barriers and varied inequalities that disproportionately impact upon minority individuals. The LSAT, for instance, poses a hefty obstacle for minority students, and is singularly onerous for test-takers ofcolour.[110] Thus, by controlling for these biases and other forms of differential treatment, the inevitable result is likely to be a more inclusive student body. In addition, by having diversity considerations at the forefront, this can facilitate a learning environment characterized by greaterinclusivity, which would be particularly appealing for law students hailing from underrepresented groups.

This project is unique in that the link between comprehensive admissions criteria and resulting diversity of law school students has yet to be studied in the Canadian context. Should our research question be answered in the affirmative, it is our aspiration that these findings be used in the future to guide law schools and encourage the diversification of admissions criteria to reduce the current level of homogeneity across class profiles. This is imperative due to the rolesthat legal professionals uphold in society of gatekeepers and guardians of the overarching legal system.[11] These individuals are responsible for vindicating the rights of individuals and ensure that all subjected to the rule of law in a democratic and reasoned manner. They are additionally tasked with altering the regulatory landscape and upholding the principles of justice. Given thatthey occupy respected positions of leadership, it is critical that access to this profession is madeaccessible to individuals regardless of their demographic. Especially since attorneys of underrepresented backgrounds possess invaluable firsthand experience, they can better represent and advocate for the rights and interests of such populations.

Prior literature has demonstrated that undergraduate programs employing more

[8] *Supra*, note 6.
[9] *Ibid.*
[10] LaTasha Hill, "Less talk, more action: How law schools can counteract racial bias of lsat scores in the admissions process" (2019) 19:2 U Md LJ Race, Religion, Gender & Class 313.
[11] Kim, Sung Hui. "Do lawyers make good gatekeepers?" (2022) The Cambridge Handbook of Investor Protection 283.

comprehensive admissions processes tend towards greater resulting student diversity in contrast with those that utilize a traditional review process that emphasizes objective actuarial data, such as standardizedtest scoring and grade point average values.[12] Holistic admissions may take into consideration, inaddition to academic metrics, the following: professional work experience, community or volunteer work, leadership opportunities, personal sociodemographic characteristics, and adversity.[13] Thus, dimensions such as character, leadership, athletic accomplishments, volunteer involvement, and contextual factors (relating to school and family, for instance) are given equal or greater consideration in comparison with academic achievements.[14] When admissions policies consider an applicant's non-academic background (i.e., admissions officers carry out a "whole- person" review of the student), the result is a student body with a greater proportion of minority-identifying applicants.[15] Importantly, the research in respect of law school admissions is more nascent, and this paucity of academia is thereby seeking to be redressed by the present article. In particular, owing to the fact that the LSAT has not been found to predict law school success beyond one's first year of study, and this standardized test has historically been held to disadvantage test-takers of underrepresented background (including African American, Indigenous, Hispanic and Latinx students), this correlation appears well-supported.[16] By reducing the importance attributed to a student's quantifiable application components, a substantive barrier to entry into the legal discipline is effectively removed, furthering EDI initiatives in the field. Thus, by integrating admissions processes that are more holistic in nature, this would improve the likelihood that lawyers from vulnerable or minority backgrounds will occupy these fundamental roles in the future and bolster the authority and integrity of the justicesystem overall.

What Constitutes "Holistic" Admissions Criteria?

For the purposes of this research endeavour, "holistic" admissions processes are those that give considerable weight to qualifications beyond mere academic performance (i.e., grade-point average) and standardized testing (LSAT) scores. A more holistic set of criteria would therefore place significance on qualifiable aspects of applications that is either equal to or greater than the numerical values aforementioned. Such factors include, but are not limited to, personal statementessays, professional or educational letters of recommendation, and autobiographical sketches or general involvement in extracurricular activities and workplace experience. Some law schools will demonstrate their commitment to EDI initiatives by accounting applicant socioeconomic status, race, ethnicity, religion, or other

[12] Hal R. Arkes & George W. Dent Jr., "Holistic review in race-conscious universityadmissions" (2020) 25:1 Tex Rev L & Pol 89.
[13] Bastedo, Michael N et al. "What are we talking about when we talk about holistic review? Selective college admissions and its effects on low-SES students" (2018) 89:5 The Journal of Higher Education 782.
[14] *Ibid.*
[15] *Ibid.*
[16] *Supra*, note 6.

demographic data. Such schools may then afford minority applicants the opportunity to write supplementary essays or diversity statements, apply for unique merit-based scholarships, or other similar practices.

Methodology

The samples used in this study were the 2022 and 2023 class compositions from the Universityof Windsor and the University of Alberta Faculties of Law.[17] From the University of Windsor Law's "Student Diversity Summary Report" of 2023, 264 pupils were surveyed.[18] Conversely, the University of Alberta Faculty of Law's 2022 "Data Report" sample consisted of 226 respondents.[19] These responses were gathered from students across years and program offerings at each respective school (i.e., JD, LLM, combined-degree). It is important to note that the response rate regarding these surveys was approximately equivalent between the two law schools, at around 40%.[20] The surveys were disseminated via email, with each student belongingto the incoming JD cohort receiving a link to complete their respective self-identification diversity questionnaire during their orientation week.[21]
This study will implement a correlational research design which will examine both the degree and direction of the relationship between the two relevant variables in the absence of establishing a causal link. The variables of interest are admissions criteria (the independent variable) and class profile diversity (the dependent variable). Data will be collected from the respective law school websites, as these are publicly accessible and extensive, as well as from the Black Law Students' Association Report of 2022, as this offers a more thorough view of the relevant data involving black and racialized law students in Canada.[22]

Law School Selection

We have selected the University of Windsor Faculty of Law as the JD program's admissions process places equity and diversity considerations at the forefront. Notably, we had initially sought to study the Lincoln Alexander School of Law, based at Toronto Metropolitan University (formerly "Ryerson University"). This was because they endorse an approach to

[17] University of Windsor Faculty of Law. "Student diversity", (2024), online: University of Windsor Faculty of Law <https://www.uwindsor.ca/law/1089/diversity>; University of Alberta Faculty of Law. "Law student demographic survey - 2022", (2023), online: University of Alberta <https://drive.google.com/file/d/1ikN91GqUHnS5n_WX4F2-OZxHJgCnvFvI/view>
[18] University of Windsor Faculty of Law. "2023 diversity survey", (2024), online: University of Windsor Faculty of Law <https://www.uwindsor.ca/law/1089/diversity>.
[19] *Supra*, note 17.
[20] *Supra*, note 17.
[21] University of Windsor Faculty of Law. "Diversity survey faqs", (2020), online: University of Windsor Faculty of Law <https://www.uwindsor.ca/law/1089/diversity>.
[22] Black Law Students' Association of Canada. "Black law student census report 2022 - 2023", (2023), online:Black Law Students' Association of Canada <https://indd.adobe.com/view/234705c0-1395-4c24-b226- 45e673868ea1>.

admissions criteria that highlights qualitative elements of applicants and offer additional access categories for individuals of particular demographic backgrounds.[23] Racialized, mature, Indigenous, and LGBTQ2S+ law school hopefuls therefore can apply to this law within unique streams.[24] However, this report opted to perform a case study on the University of Windsor's law school instead, as Toronto Metropolitan University does not publicize its law school class compositiondata and this report was unable to find a point of contact at the school that would provide the critical information concerning class profiles. Thus, the University of Windsor's school of law was selected as an alternative, but it is by no means a lacking substitute. The latter school has achieved recognition on a global scale for its ongoing commitment and efforts towards enhancing student diversity and providing a learning environment that nurtures its pupils regardless of their demographic background.[25] The law school whose admissions process was the least holistic on the basis of our above-mentioned definition was the University of Alberta's Faculty of Law. At present, the admissions committee does not consider application components beyond the commonly requested quantitative measures (that is, GPA and LSAT scoring).[26] Further, the law school offers only one separate access category, which is exclusively reserved for Indigenous applicants.[27] All other law school hopefuls will be assessed via the Regular stream of applications, with no option to submit supplementary essays for equity-seeking applicants and limited scholarships for potentialstudents of a visible minority background.[28]

Case Study #1 – University of Windsor Faculty of Law

Approach to Admissions

The University of Windsor Faculty of Law has a five-part application procedure, which begins with the standard OLSAS application for students seeking admission to a law school within Ontario.[29] The remaining requirements include a Personal Statement, all official transcripts fromone's undergraduate institution, a current LSAT report as well as all reported scores from the previous five years, ad two letters of reference (one academic and one non-academic).[30] Notably,the Personal Statement is to be made up of responses to four questions, and there is an optional additional question for equity-seeking applicants to address if they

[23] Lincoln Alexander School of Law. "Our pillars", online: Lincoln Alexander School of Law <https://www.torontomu.ca/law/about/our-pillars/>.
[24] *Ibid.*
[25] "Holistic approach underpins law school's diversity efforts", (10 October 2023), online: The Globe and Mail <https://www.theglobeandmail.com/life/adv/article-holistic-approach-underpins-law-schools-diversity-efforts/>.
[26] University of Alberta Faculty of Law. "Admissions", online: UAlberta Law <https://www.ualberta.ca/law/programs/jd/admissions/index.html>.
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*
[30] *Ibid.*

desire.[31] These questions are designed in order for students to speak to their particular experiences, whether they be academic or extra-curricular, cultural, work-related, and so forth.[32]

This JD program is unique in its approach to student admissions, as their criteria is seven-fold and comprises of the following aspects: University program, work experience, community involvement, personal accomplishments, career objectives, personal considerations, and LSAT score.[33] Students may apply through one of two application category streams: General and Indigenous.[34] Diversity and inclusion initiatives are at the forefront of their admissions considerations, and these, as well as their overarching commitment to improving access tojustice, are reflected in their mission statement.[35]

University Program: Applicants are initially assessed relative to their undergraduate grade-point average and overall academic performance trends across years, whilst taking in account pertinentconsiderations and accommodations pertaining to students.[36] At this step, the admissions committee also takes note of any scholarship awards, bursaries, prizes, or any other honours bestowed upon the applicant. The undergraduate program itself will also be assessed in respect of various factors, including its nature, content, length, and intensity. The particular level of degree or diploma earned will considered at this initial stage, as well.

Work Experience: The law school admissions committee also asks that applicants submit information regarding their part- or full-time work history, including any summer jobs they hadheld over the course of their undergraduate program.[37] Professional, vocational, or additional work experience of a specialized nature will also be reviewed. Overall, the committee assessesthese experiences in relation to the organizational or administrative abilities these may have fostered in students, including initiative, responsibility, collaborative skills, and so forth.

Community Involvement: This may take several forms, such as commitments to one's particular municipality/town, university, religious institution, etc.[38] The length and quality

[31] *Ibid.*
[32] *Ibid.*
[33] *Ibid.*
[34] University of Windsor Faculty of Law. "Our admissions criteria", (2024), online: University of Windsor Facultyof Law <https://www.uwindsor.ca/law/343/our-admissions-criteria>.
[35] University of Windsor Faculty of Law. "Admissions faq", (2024), online: University of Windsor Faculty of Law <https://www.uwindsor.ca/law/1163/windsor-law-admissions-faq#:~:text=Windsor%20Law%20currently%20has%20a%20General%20and%20Indigenous%20application%20category>.
[36] University of Windsor Faculty of Law. "Our mission, vision, and values", (2024), online: University of Windsor Faculty of Law < https://www.uwindsor.ca/law/1311/our-mission-vision-and-values>.
[37] *Supra*, note 17.
[38] *Supra*, note 17.

of the student's participation in such organizations or clubs will specifically be appraised. It is recommended thatletters from the particular institution be provided to supplement a student's application in order to verify their contributions.

Career Objectives: An applicant's unique aspirations in respect of their career will be duly considered, such as in what manner they intend to apply their legal education upon the completion of their degree.[39]
Personal Considerations: Personalized factors that impacted an applicant's academic performance or other qualifications during the completion of their undergraduate degree program (including illness, bereavement, specialized familial obligations, etc.) will be recognized at this phase of the admissions process.[40]

Law School Admissions Test (LSAT) Scores: At this final stage, the admissions committee will take note of the LSAT scores earned by the applicant in the five years prior to the academic year of application.[41]

In regard to scholarships and bursaries, the law program offers several to applicants of various underrepresented backgrounds.[42] In the previous academic year, Windsor Law awarded upwardsof $1.2 million in aid to incoming students to facilitate the development of their legal career. 350students across years will receive scholarships or bursaries, each valued between $500 to $17,500.[43] Specific award opportunities are reserved for particular groups, including Indigenous,Black, and visible minority students.[44] Presently, there are 14 unique entrance awards for incoming legal scholars of ancestral Aboriginal backgrounds, as well as nine bursaries and scholarship awards for Black-identifying students.[45]

Class Composition

The 2023 Student Diversity Survey indicates that 58% of the Class of 2026 identifies as being ofa racialized background, with 28.1% of the group being a first-generation Canadian (i.e., one or both of their parents had immigrated to Canada).[46] Notably, English was a first language for only 29% of scholars. 1% of students identify as having an Indigenous background, whereas 6% self- identify as Black. In regard to gender, 64% of the current group of 1L students self-identify as women. There are also a considerable number of mature students, as 62.88% of the present studybody are between 15 – 24 years of age. Various

[39] *Supra*, note 17.
[40] *Supra*, note 17.
[41] *Supra*, note 17.
[42] University of Windsor Faculty of Law. "Scholarships, awards and bursaries", (2024), online: University of Windsor Faculty of Law < https://www.uwindsor.ca/law/Scholarships-Awards-Bursaries>.
[43] *Ibid*.
[44] *Ibid*.
[45] *Ibid*.
[46] *Supra*, note 17.

students additionally indicate having been diagnosed with a mental or physical disability or another form of chronic health condition – 21%, to be precise. From a religious perspective, there is apparent diversity of students from various religious affiliations, with 33% identifying as Christian, 18% atheist, 13% Muslim, 11% agnostic, 5% Jewish, and so forth. The prior year's 2022 Student Diversity Survey demonstrates that a majority of students identified as female (65%) and heterosexual (85%).[47] 72% of students reported their age as beingbetween 20 -24 years of age, with 27% therefore identifying as mature students. 71% responded and indicated their country of birth was Canada. While 47% of the student body noted that their racial or ethnic identify was White, a majority were therefore of racialized, minority backgrounds, with 3% noting they were of Indigenous ancestry. 94% of students primarily spokeEnglish In respect of their spirituality, responses were highly varied: 38% Christian, 26% identifying as non-religious, 12% Muslim, 7% Jewish, etc. Approximately 29% of law students noted having a physical, learning, or mental health disability. Once again, 84% were the first in their family to attend law school, with 15% of respondents indicating they were the first to receive a post-secondary education.

Case Study #2: University of Alberta Faculty of Law

Approach to Admissions

Regular Applicant Stream: The University of Alberta Faculty of Law is a law school with an admissions criterion that focuses heavily on LSAT test scores and undergraduate GPA.[48] The admissions process for the University of Alberta faculty of law consists of two main streams: theregular applicant stream and the Indigenous applicant stream.[49] Students who apply to the schoolare first assessed under the regular applicant stream. Under their criteria for regular applicants, admission is based on the LSAT score and pre-law academic record of the applicant, with the Admissions Committee adjusting the weighting of these scores on an annual basis.[50]

Indigenous Applicant Stream: The second stream for admissions at the University of Alberta Faculty of Law is the Indigenous applicant stream. This secondary stream is for people of indigenous status, with indigenous students who may not be eligible under the regular stream being able to be assessed under this holistic stream.[51] This stream differs from the regular applicant stream, as the main emphasis remains on LSAT score and undergraduate GPA, but applicants have an opportunity to submit a personal statement.[52] This personal statement has a limit of 1,000 words and consists of candidates speaking on their

[47] *Supra*, note 17.
[48] *Supra*, note 26.
[49] *Ibid*.
[50] *Ibid*.
[51] *Ibid*.
[52] *Ibid*.

contributions to their community, personal challenges that they have faced, difficulty and quality of their undergraduate program and social, economic, political, or other factors.[53] Applicants under thisstream can also speak on exceptional circumstances that have had an effect on their academic performance, responsibilities that they have held and personal as well as professional achievements and work experience which demonstrate an ability for law school.[54] In having this personal statement which allows for indigenous students to speak on their experiences, the indigenous stream is a more holistic process than that of the regular stream. The purpose of this isto increase the representation of indigenous peoples in the profession of law. This is demonstrated through the Admissions Committee being directed by three goals when reviewing personal statements. These goals include: (1) 'ensuring access to legal education for underrepresented groups, minorities and individuals who have faced extraordinary life circumstances; (2) ensuring a diverse range of perspectives and backgrounds to enrich the studentbody and ensuring wide-ranging forms of excellence within the student body'; and (3) ensuring wide-ranging forms of excellence within the student body.'[55] Applicants under this stream also must submit their resume and two letters of reference.[56]

As can be seen from their two main categories of admissions, the University of Alberta Faculty of Law have an approach to admissions that can be considered holistic to a lesser extent. Their regular stream of admissions, which is their main admissions stream, focuses solely on quantifiable variables of GPA and LSAT score. Their Indigenous applicant stream, which is a secondary holistic stream, makes their approach to admissions holistic to a lesser extent as it looks beyond quantifiable variables and assesses indigenous students as a whole. Notably, a representative of the school has stated on record in the 2022-23 BLSA Census Report that 'thereis currently no holistic admission process but a comprehensive review of their admissions processes is currently underway.'[57] Although not explicitly stated, it is believed that this applies specifically to there being no holistic admission process for prospective Black law applicants.

Diversity Initiatives

There have been a few different diversity initiatives that have been conducted at the faculty. Onesuch initiative is that of the EDI Committee, which is a standing committee of Law Faculty Council.[58] This committee consists of students, faculty and staff and is in operation to create an inclusive environment for all members. The faculty also has a specific Indigenous Support

[53] *Ibid*.
[54] *Ibid*.
[55] *Ibid*.
[56] *Ibid*.
[57] *Supra*, note 22.
[58] University of Alberta Faculty of Law. "Indigenous initiatives and equity, diversity, and inclusion", (2024), online: University of Alberta Faculty of Law < https://www.ualberta.ca/law/about/ii-edi.html>.

Officer.[59]

Another initiative that has now been in operation is the ELITE program, which is a two-day program aimed at connecting prospective Black law students with mentors in order to encouragethem to pursue a legal career at the law school.[60] There is also a mentorship program available tocurrent Indigenous students at the school to support their law school career.[61]

Financial Aid and Scholarships

Regarding scholarships and bursaries, the University of Alberta Faculty of Law have these available for students of diverse backgrounds.[62] The faculty awards more than $1.4 million dollars each year in scholarships, bursaries, and prizes to help support students.[63] Currently, thefaculty has 221 faculty of law awards available for students. In regard to Black-identifying students, a representative of the school confirmed in the 2022-23 BLSA census report that the school has five different scholarships and bursaries that prioritise Black law students.[64] The faculty also has specific awards for students of indigenous backgrounds and students withdisabilities.[65]

Class Composition

The 2022 Law Student Demographic Survey had 227 respondents out of a possible 552, entailinga response rate of less than 50%.[66] Students responded to this survey virtually by following a linksent via email to each incoming JD pupil. 27. 3% were the first in their family to attend university. This survey indicated that 27.8% of respondents were members of a visible or racialized minority. Additionally, out of 217 respondents, 55.3% identified as being female, with 41% identifying as male and 3.7% identifying as other which included non-binary and transgender. Notably, 7.1% of respondents identified as being an Indigenous person with 36.3% identifying as Metis and 64.7% identifying as others. Approximately, 16% of students respondedas being a person living with a disability.

In comparison, the 2021 Law Student Demographic Survey had 255 respondents out of a

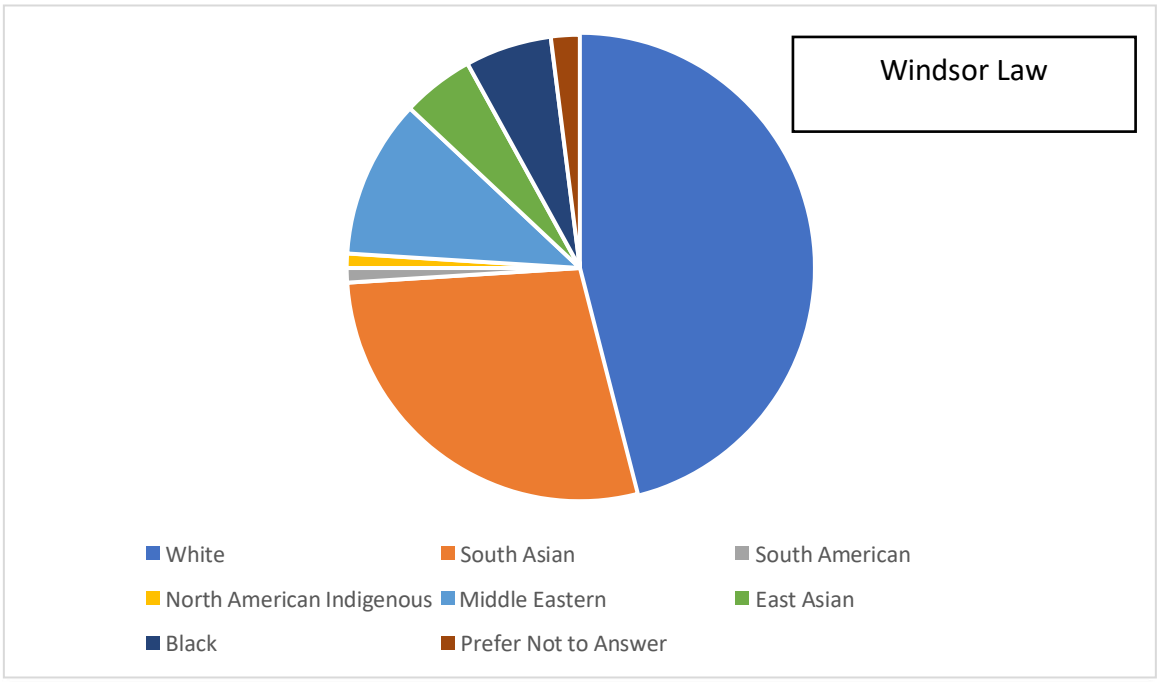
[59] *Ibid*.
[60] Kent, Sarah. "Elite program for black youth hosts new program at faculty of law", (15 August 2023), online: UAlberta Law <https://www.ualberta.ca/law/about/news/2023/7/new-program.html>.
[61] Rojas, Carmen. "Mentorship program supports indigenous students on their law school journey", (5 January 2024), online: UAlberta Law <https://www.ualberta.ca/law/about/news/2023/6/justice-arcand-kootenay.html>.
[62] University of Alberta Faculty of Law. "Scholarships and awards", (2024), online: University of Alberta Faculty of Law: < https://www.ualberta.ca/law/programs/jd/scholarships-and-awards.html>.
[63] *Ibid.*
[64] *Supra*, note 22.
[65] *Supra*, note 62.
[66] *Supra*, note 26.

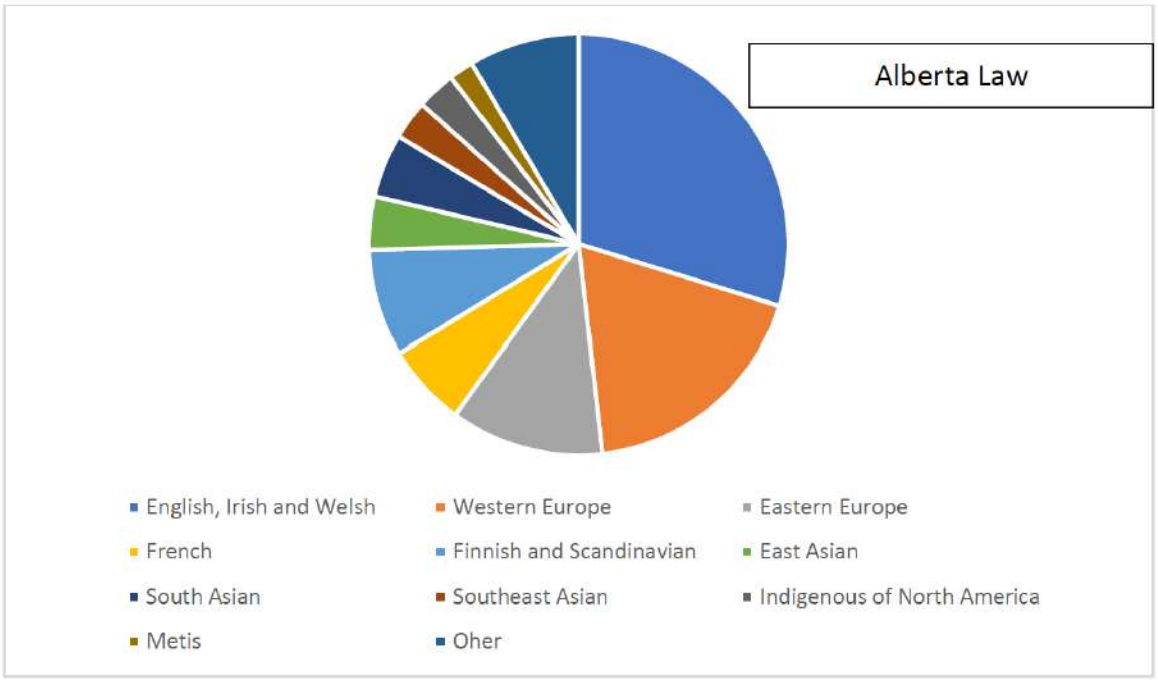
possible 546.[67] In this survey, a similar number of students to the 2022 survey reported as being a memberof a visible or racialized minority with 27.2% identifying as such. Females were also still the dominant gender with 57% identifying as female out of 249 responses. Males represented 39% with 4% identifying as other. There was an increase in the number of indigenous students in 2022, as in 2021 6% identified as being indigenous. 62.5% identified as being Metis with 37.5% identifying as other. There was also an increase in students living with a disability as 11.4% reported being a person living with a disability in 2021 compared to 16% in 2022. There was a slight decrease in the number of students who were the first to attend university in their family at 24.3%.

Results and Discussion – Relationship between Holistic Admissions and Diversity

From an observational lens, it appears that there may be a positive correlational relationship between these variables. While the strength of this relationship cannot be inferred in the absence of sophistical statistical programming software and additional research, from a strictly superficialperspective, a correlation seemingly emerges. Regarding racial and ethnic background, Windsor Law undoubtedly has the upper hand, as a slight majority of students in both of the two previous application cycles hail from a racialized or visible minority background, whereas that number is closer to a quarter with respect to the University of Alberta's Faculty of Law. Specifically, while there are more students who self-identify as Indigenous at the University of Alberta (7% versus 3% in the 2022 cycle, respectively), less than 1% of students identified as Black within Alberta'slegal faculty, in contrast to 5% at Windsor Law.

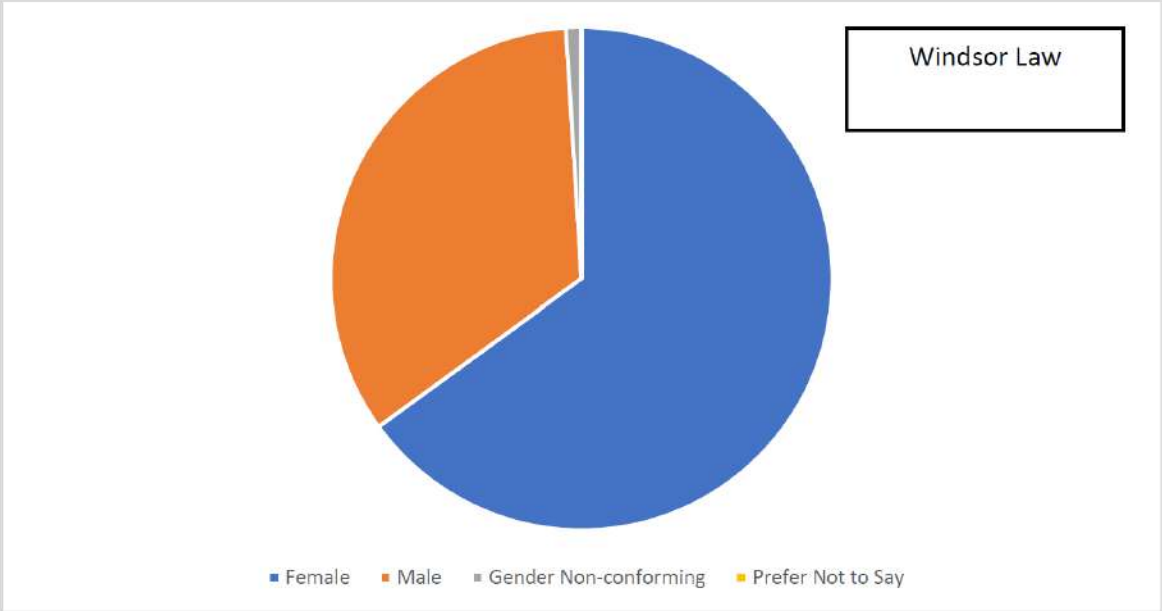
[67] University of Alberta Faculty of Law. "Survey of law student data report – 2021", (2021), online: University of Alberta Faculty of Law <https://drive.google.com/file/d/1gHaFWkHqaYWG6fStiGqffxVfGM9seOfB/view>.



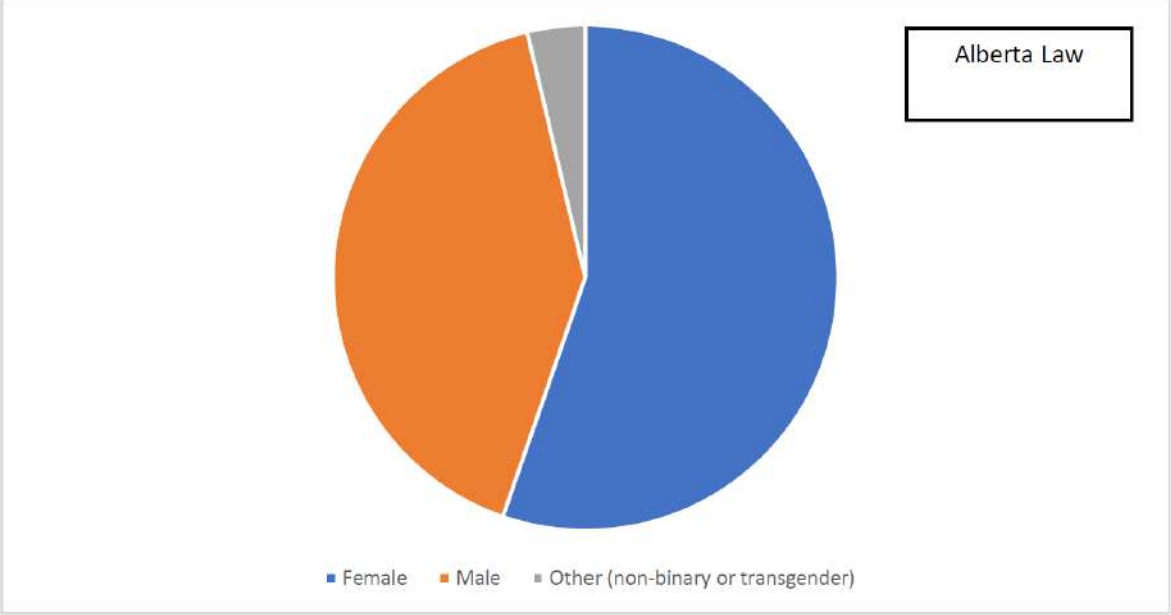


There appears to be a lesser difference in respect of gender, as both faculties have more female- identifying students that comprise their student body, but Windsor Law still has a greater percentage of such scholars in attendance (specifically, 65% in comparison to 55.3%). This is a promising finding, given the historical lack of gender inclusivity that

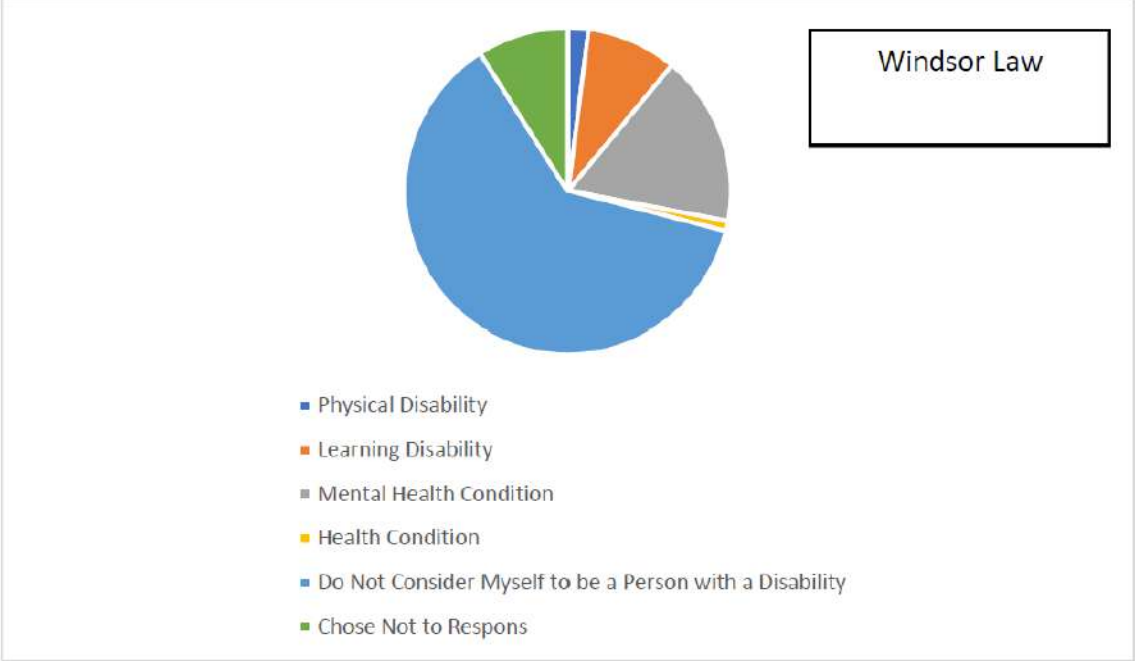
characterized the legal profession until recent decades.[68] Further, this area has been ripe with gender-based discrimination, evidenced by a persistent pay disparity for comparable business, less representation in respect of occupying positions of power (i.e., underrepresentation across partnership roles, delayed career progression, and so forth), "maternal wall bias", and sexual harassment.[69] These factors have stifled retention and career progression for women lawyers forseveral years, with widespread dissatisfaction and withdrawal from the field altogether being theresult for many.[70] Given that both law schools indicate similar numbers of women enrolled, and women make up a majority of the student body, it is the hope of these authors that such statistics convey implicitly that an institutional shift is to unravel in the proximate future. With greater enrollment in legal education, it would logically follow that women will occupy a greater proportion of legal professional roles going forward, and subsequently, they will endeavour to remove the discriminatory practices, policies, and prejudicial opinions that have pervaded the legal sphere.

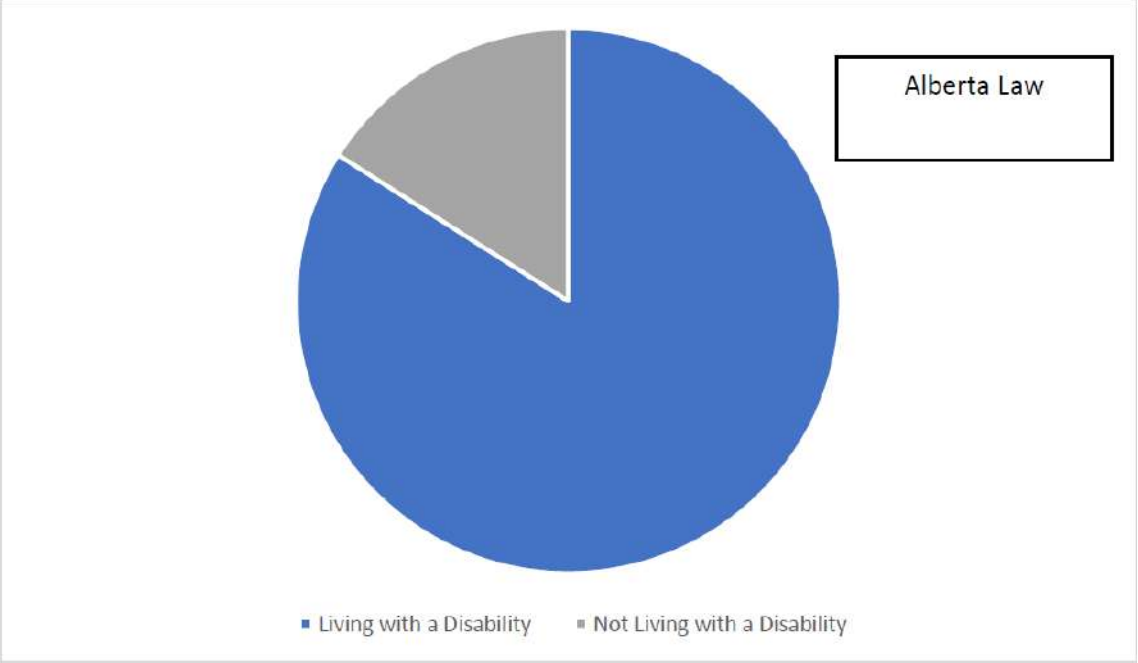


[68] *Supra*, note 3.
[69] *Ibid*; Lauren T. Katz, "Tearing down the maternal wall in the legal profession: Aperspective inspired by difference feminism" (2020) 22:1 Geo J Gender & L 213.
[70] *Ibid.*

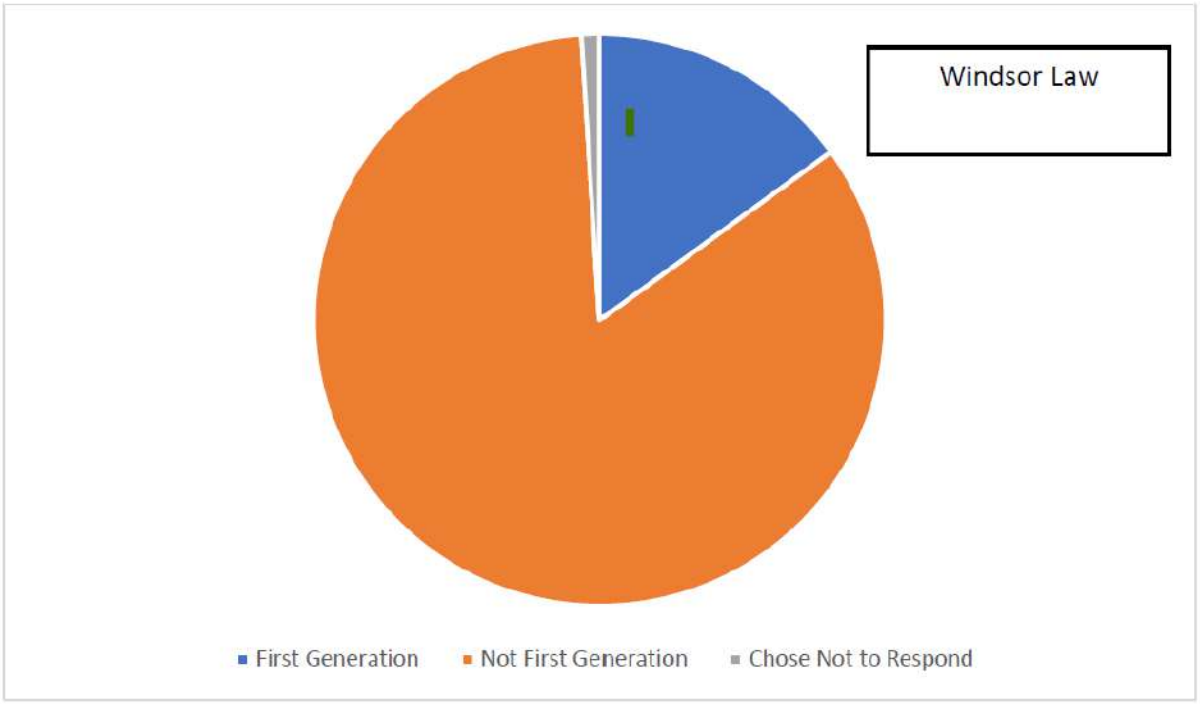


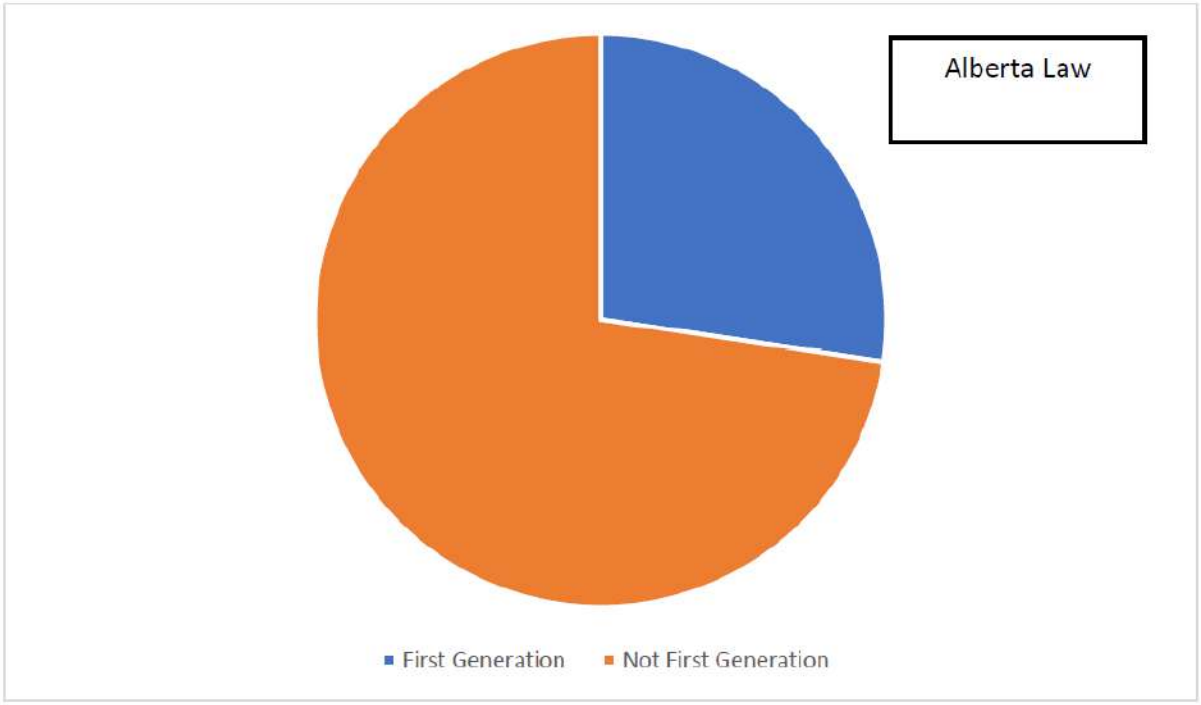
A distinction arose with respect to students living with disabilities, regardless of the nature of thelimitation. At the University of Windsor Faculty of Law, 29% of students reported having been diagnosed with a disability or disorder in 2022, whereas 16% noted the same at Alberta's law school. While that number dropped slightly in the 2023 admission cycle to 21% at Windsor Law,it still remained higher than the latest statistical equivalent at Alberta Law.





Lastly, there were insignificant differences among the students in regard to first-generation students as well as those were the first to attend university in their families (i.e., those applicantswhose parents did not attend post-secondary schooling).





It therefore appears that our research question is most accurately answered in the affirmative – that is, a more holistic admissions process and criteria translates to greater diversity in respect ofthe resulting class profile.

Limitations

On the basis of these research findings, it would appear that a more holistic approach to admissions by law schools does indeed enhance the diversity of its resulting class profile, there are various limitations to this data that require addressing. To begin, we are studying a data set and deriving relationships that are merely correlational in nature. While correlations are utile in respect of allowing for predictability, they cannot be used to infer causal conclusions.[71] As such, future research would be required in order to verifiably establish if more holistic admissions processes *cause* greater diversity with respect to a law school's class composition.

Additionally, owing to the fact that the results are correlational in nature, there is a risk that another third variable that was previously unidentified that is responsible for the appearance of a relationship between the dependent and independent criteria.[72] For instance, geographic location may be partially informative, such that the lack of diversity amongst law students in the Prairie provinces is simply a by-product of the demographic makeup of these regions. Specifically, sincefewer minorities tend to reside outside of urban regions, they would be deterred from relocating from metropolitan areas to a rural law school.[73] This would also be a costly shift, as out-of- province students tend to pay higher tuition relative to students within a province.

Further, it could be that other practices unique to Windsor Law that call the attention of equity- seeking applicants, such as a more diverse faculty complement, varied course offerings, experiential learning opportunities such as externships, career development support programs, and so forth.[74] These factors may be more appealing for law school hopefuls of minoritybackground, and therefore drive admissions amongst these students, resulting in a more heterogenous student body.

An additional consideration that may be influencing the appearance of a relationship between therelevant variables is that of time. More specifically, the University of Alberta legal faculty alleges that they have been planning to implement an admissions process that is more holistic in nature, such that a novel access category was made available and EDI targets were afforded greater significance than in years prior.[75] While the results of this

[71] Rohrer, Julia M. "Thinking clearly about correlations and causation: Graphical causal models for observational data" (2018) 1:1 Advances in Methods and Practices in Psychological Science.
[72] Yu, Qingzhao & Bin Li. "Third-variable effect analysis with multilevel additive models" (2020) 15:10 PLOS ONE.
[73] Mitchell, Travis. "Demographic and economic trends in urban, suburban and rural communities", (22 May 2018), online: Pew Research Center <https://www.pewresearch.org/social-trends/2018/05/22/demographic-and-economic-trends-in-urban-suburban-and-rural-communities/>.
[74] *Supra*, note 33.
[75] Cummings, Madeleine. "U of A has one of the lowest percentages of black law school students in the country,

development were underwhelming in respect of the most recent application cycle, it may simply be the case that more time would be required for this change or word of it to spread amongst applicants.

Moreover, it is important to note that Windsor Law differs from Alberta Law – and all other Canadian law schools – in that they offer a Dual JD program that permits scholars to concurrently acquire a Canadian (Ontario-based) JD degree and an American (Michigan-based)JD degree.[76] This is incredibly appealing for many law school hopefuls, as this would permit graduates to acquire two qualitative law degrees within a three-year period. Further, this dual degree program makes available to students opportunities in regard to judicial internships, externships, and additional clinical or external placements that they would not otherwise be ableto apply for.[77] This would be especially appealing for law students who aspire to expand their practice in the United States, as they could garner practical experiential experience in the legalsector in Detroit and therefore expand their knowledge of American law.[78]

Lastly, the mere cost of pursuing legal education may be a substantive barrier barring access for minority applicants who simply cannot afford to take on the financial burden associated with applying and, if accepted, funding the three-year graduate degree. Sitting fees for the LSAT are continually rising, with the costs of preparative courses and written resources consequently increasing.[79] So, too, are the application fees for law school admission on the rise, which is only worsened by the fact that there is no flat rate for applications; one must pay an additional fee for every school they apply to.[80] Moreover, while Canadian law school tuition is not unique in its cost relative to that of other graduate degree programs, the problem is that there are too few Canadian law schools relative to the number of applicants. Subsequently, candidates, in particular those whose scores on quantitative measures are not competitive, may have to considerapplying internationally. This may increase their chances of acceptance, but they will experienceheftier tuition packages subsequently.

Conclusion

As previously noted, the findings of this research study will bridge the gap in the existing

report shows | CBC News", (22 February 2023), online: CBCnews <https://www.cbc.ca/news/canada/edmonton/black-students-law-schools-canada-representation-1.6755742>.
[76] University of Windsor Faculty of Law. "Canadian & American dual JD program", (2024), online: University of Windsor Faculty of Law <https://www.uwindsor.ca/law/370/canadian-american-dual-jd-program>.
[77] *Ibid.*
[78] *Ibid.*
[79] Kuttab, Tawfiq. "How much does the LSAT cost in Canada?", (18 August 2023), online: LSAT Flow <https://lsatflow.com/lsat-cost-in-canada/#:~:text=In%20fact%2C%20the%20cost%20of,LSAC%20and%20other%20partial%20data.>.
[80] Ontario Law School Application Status. "Olsas - fees", (14 August 2023), online: *Ontario Universities' Application Centre* <https://www.ouac.on.ca/guide/olsas-fees/>.

literature on the relationship between holistic admissions processes in law schools and the subsequent diversity of their respective student bodies. On the basis of this research, it becomesreadily apparent that more comprehensive admissions processes that look beyond quantifiable variables translate to a more well-rounded, diversified student body.

Should these results be affirmed with future research, then we anticipate that these findings be used to facilitate change within the legal sphere, in particular owing to the nature and significance of legal decision-making in society at large. The legal profession has as its objectives the promotion of justice and equality; yet, it remains the least diverse of all fields, and this applies to legal education, as well. In order for this industry to meet the demands of a societywhose demographics are ever-changing and is becoming continually more diverse, so, too, must the legal realm change to account for these shifts. One such necessary alteration would be in respect of law school admissions. While most Canadian law schools assert their pursuit of diversity as a normative goal, the first step towards implementing this objective would be to ensure that their student bodies are reflective of broader societal changes. Due to the level of responsibility associated with the legal profession and the role of practitioners as guardians of thelaw at large, it is imperative that all whom are subject to the law have equal access to the profession, as well. We hope that these findings signal the commencement of a much-needed discussion on this topic and that verifiable change will arise herefrom.

JOURNAL OF LAW STUDENT SCHOLARSHIP

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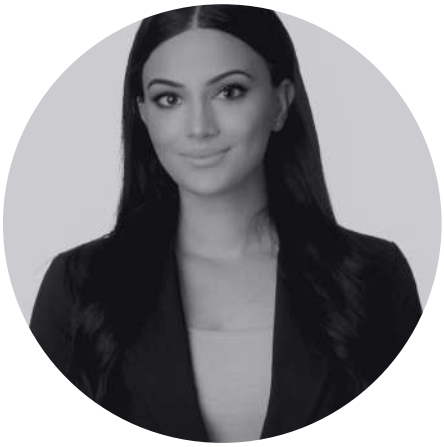
PEER-LED RELEASE PLANNING IN BRITISH COLUMBIA CORRECTIONAL FACILITIES

A Policy Report by Alyssa Collins and Maham Keshvani
Faculty of Law, Thompson Rivers University

Alyssa is a second year student at the Thompson Rivers University Faculty of Law and has a background in Criminal and Social Justice. She has experience working in youth justice, crisis intervention, and children's rights advocacy.



Maham Keshvani, a second-year law student at Thompson Rivers University, has acquired valuable insight into the criminal court system through her multifaceted roles within the Ministry of Attorney General. During her most recent position as a Criminal Court Clerk at the Provincial Court of British Columbia, she engaged in a close collaboration with the Judiciary and court staff to facilitate various in-court procedures.

Statistics from the BC Corrections profile indicate an existence of 1,600 incarcerated individuals in 2022. Over 60% of these incarcerated individuals are diagnosed with mental health and substance use issues, and on average, remain in a correctional facility for 80 days.[1] The Correctional Services of Canada (CSC), reported in 2020 that 20.5% of those incarcerated were designated as maximum security risks.[2] Correctional and Probation officers work with incarcerated individuals, pre and post release, to discuss reintegration efforts, but a power imbalance between the individual and the officer, a lack of adequate preparation, and barriers to collaboration with community based services all create challenges to successful reintegration.[3] One can therefore argue that the individual agencies within the criminal justice system do not provide incarcerated individuals with the necessary support, resources, and skills that help reintegrate them within the community.[4] In the absence of well-tailored pre-release reintegration initiatives, inmates bear the burden of being released back into society with inadequate access to resources and support networks, thereby compromising their ability or attempt to successfully reintegrate.

This report argues that BC Corrections should implement a formal standardized policy for pre-release planning that includes peer support, adequate education and programming, and reduced barriers to successful rehabilitation. By the term 'pre-release planning for community reintegration', this report refers to the process of having inmates undergo a coordinated and thoughtful planning process to identify, address, and resolve challenges they may face when released back into the community upon the completion of their sentences. Research on peer-led pre-release planning initiatives is significantly lacking given the high number of incarcerated individuals, and there is a pressing need for increased emphasis in this area. Nevertheless, despite the limited research available, it's worth noting that a government funded In-Reach Program was previously established to support individuals with life sentences, and peers in the community on parole would return to meet with those still incarcerated to assist in preparing them for release.[5] The primary goal of the LifeLine In-Reach program was to assist inmates with judicial reviews and parole hearings, release planning, community support, and public education.[6] The program unfortunately met its end in 2012 due to the federal government's Deficit Reduction Action Plan. However, there is a widespread recognition of the need to reinstate such programs because "there is a

[1] Government of British Columbia Website. https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/corrections/reports-publications/bc-corrections-profile.pdf
[2] Public Safety BC Website. Available at: https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2020/index-en.aspx#sc12
[3] Rose Ricciardelli, and Adrienne M.F. Peters. "After Prison : Navigating Employment and Reintegration", (2017) Wilfrid Laurier University Press, at 128-129.
[4] Terry Skolnik, "Criminal Justice Reform: A Transformative Agenda" (2022) 59:3 *AB L Rev* 631 at 640.
[5] Sarah Heath "Life(r)'s Work: An Historical Analysis and Evaluation of a Program for Life Sentenced People in Canada" (2017), Peerlife Collaborative at 23.
[6] *Ibid.*, 13.

continuing and demonstrated need to bring back an initiative that helps prepare offenders to safely reintegrate back into society after serving a sentence behind bars."[7]

In the book *After Prison: Navigating Employment and Reintegration: An Introduction*, previously incarcerated individuals were interviewed claiming that inconsistencies in education and employment based programs, prior to release, did not adequately set them up to succeed within the community.[8] This is due in part to programs only being available post-release or to those serving long term sentences, and a lack of coaching on how to frame conversations that address their incarceration.[9] Individuals also expressed feeling "pressure to reintegrate back into society as quickly as possible", and often "before they were ready", by officers, since oftentimes their release is tied to a condition of gaining employment.[10]

All correctional facilities across British Columbia should implement standardized policies that promote collaborative efforts with significant inmate driven and peer supported planning. Assistance from correctional officers, probation officers and community-based support workers should be included in facilitating this goal in a structured and timely manner. Ultimately, the main objective should be to provide the inmate with the opportunity to personally invest time into their own reintegration plan and simultaneously receive support from another individual with lived experience. Additionally, correctional and probation officers should be open to collaborating with community-based services at the request of, and with the consent of the inmate, which may involve sharing information, documentation, facilitating access and communications. Stakeholders in the community have raised concerns about a lack of cooperation related to information sharing, telephone use, the pick-up of inmates at time of release and transportation of the inmate to the needed community services, thus further reinforcing the obstacles to successful reintegration.

It is crucial to recognize that delegating all aspects of release planning solely to correctional and probation officers can be harmful, impacting both the inmate and the institution of law enforcement as a whole. At present, it is known, and research corroborates this in many provincial institutions especially, discharge planning which prepares inmates to reintegrate into the community after prison is deficient[11]. Taking this point into account, and considering the multifaceted responsibilities of law enforcement, the added duty of coordinating pre-release reintegration plans may pose challenges despite the allocation of resources and extensive training that law enforcement may receive.

While correctional and probation officers may possess an expertise in leasing with incarcerated individuals, there are several compelling reasons to consider shifting their

[7] *Ibid.*, 23.
[8] Ricciardelli and Peters, *supra*, 117-118.
[9] *Ibid.*, 119.
[10] *Ibid.*, 124.
[11] Terry Skolnik, "Criminal Justice Reform: A Transformative Agenda" (2022) 59:3 *AB L Rev* 631 at 641.

responsibility to a peer-led support system. Firstly, the said officer may lack perspective and the inability to draw a common ground and empathize with certain challenges due to circumstances that arise for incarcerated individuals post-release. Secondly, due to the expansive nature of the correctional system, where officers are tasked with managing various responsibilities simultaneously, there are limitations on the extent of care and attention that can be dedicated to each inmate approaching their release. As a result, insufficient quality time may be allocated to individual inmates, thereby impeding the development of a comprehensive release plan that takes into account their unique circumstances and needs. For example, a release plan for a terminally ill or elderly inmate should take into account retirement financial planning, and the management of personal affairs, such as making a will and planning for the end stages of life.[12] Because such elements of release planning are so niche and appropriated to a small subset of the incarcerated population, it is easy for it to be overlooked.

Arriving at a robust release plan which addresses niche concerns as such, requires the time and attention which correctional officers may be unable to provide to each individual. Since correctional officers have power and authority over the inmates, they are not well positioned to successfully support the inmates in planning. Finally, the lack of connection between the individual and the officer becomes an impeding factor which will likely hinder the successful post-release reintegration of an inmate. To ensure inmates succeed in attaining a comprehensive pre-release plan, it is imperative that they have access to resources on a level playing field. Such resources would be inclusive of access to individuals with the same lived experiences who can then tailor a peer-led pre-release plan with the inmate.

The goal of the peer-led pre-release planning model is to transition the responsibility from correctional officers and, instead, promote collaboration between incarcerated individuals and community supports, with the ultimate objective being to support the individual's smooth reintegration into society. The reintegration of inmates back into society is a task that is essential for both the well-being and safety of the individual as well as the overall cohesion and functionality of society as a unified entity. As such, meaningful steps must be taken to address the gaps which have been identified in order to achieve the proposed goals and ensure the success of inmates' release into society.

In a 2022 press release, the Ministry of Mental Health and Addictions announced an expansion of post release supports through the use of Community Transition Teams.[13] These teams have been, and will continue to be, supporting individuals upon release from every provincial correctional center, and include supports from social workers, nurses, peer support workers, Indigenous patient navigators. This report highlights that the government recognizes the importance of peer support workers when it comes to the successful

[12] Canadian Human Rights Commission, "Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody" (2019) CHRC at 64.
[13] https://news.gov.bc.ca/releases/2022MMHA0063-001465

reintegration of the individual when they are released from a correctional facility. Waiting until the individual is released, to find adequate support services, housing, employment, and treatment facilities is putting things off too late. Community resources are available to help make arrangements while the individual is still in prison but have challenges communicating with inmates while they are still in the correctional facility. In the preparation of this report, we toured multiple facilities and spoke with a variety of contracted service workers responsible for supporting inmates while still on the inside, in addition to community-based organizations that provide their support through peers with lived experience serving prison sentences.

One of the stakeholders we met with was the St. Leonard's House Windsor to discuss their PeerLife Collaborative (PLC) which was established after the LifeLine Program lost its funding in 2012. The PLC utilizes two In-Reach Workers who themselves have previously served sentences in a Canadian correctional facility, and experienced successful reintegration on parole.[14] These workers understand what it was like living inside for longer periods of time, as their program primarily supports those serving indeterminate or life sentences and are therefore better suited to support and assist inmate in planning for life after release.

In their 2023 Annual Report, In-Reach worker Liana MacDonald expressed how important it was to work with someone who has been where they are now, because when individuals are serving a life sentence, it is easy to lose hope; "you don't see the light at the end of the tunnel until you see your PeerLife IRW coming in". In the 2022-2023 season the PLC supported over a hundred individuals serving sentences, which is an enormous feat considering they only have two workers. Other statistics included in their 2023 Annual Report document that the PLC received over 700 phone calls, facilitated 32 group strategy sessions, and made referrals to other community services 184 times, yet still report challenges of access due to security concerns.[15]

Having workers who have served sentences and successfully reintegrated back into the community then go back into correctional facilities to support workers is an evidence-informed service that the PeerLife Collaborative is continuing to promote.[16] Working alongside the Correctional Service of Canada and Public Safety Canada, efforts are made to expand the "Lifer Resource Strategy" (LRS) across the country for life-sentenced individuals. While the PLC focuses their resources on those serving longer term and life sentences, all inmates could benefit from peer-led planning support simply because they would be

[14] Catherine Brooks, St. Leonard's Windsor House, Annual Report 2023. URL: https://stleonardswindsor.com/wp-content/uploads/2023/09/annual-report-2023.pdf
[15] Catherine Brooks, St. Leonard's Windsor House, Annual Report 2023. At page 20. URL: https://stleonardswindsor.com/wp-content/uploads/2023/09/annual-report-2023.pdf
[16] https://peerlife.ca/

supported by someone who understands the realities of serving a sentence in a correctional facility and trying to move on from that upon release.

Another community-based resource we met with was Unlocking the Gates (UTG), a non-profit organization that helps individuals who are released from correctional facilities in British Columbia. Similar to the PeerLife Collaborative, Unlocking the Gates models their support around peer mentorship in meeting inmates basic needs upon community reintegration.[17] Upon meeting with UTG, a clear difference between the two programs is the ability of the support workers to meet with inmates pre-release. Unlocking the Gates has not had the federal or provincial support that enables their workers to enter correctional facilities and support the individuals in person. This provides a significant barrier to building a relationship despite numerous of requests of individuals currently serving sentences who have asked for their help.

The UTG Peer Mentors reported experiencing difficulties firsthand when attempting to connect with inmates, explaining that the Correctional Officers and Community Reintegration Workers contracted inside the facilities to support the individuals are unable to maintain open communication. Privacy concerns are often cited when UTG Peer Mentors are attempting to support individuals inside the facilities, despite the individual requesting and consenting to their assistance. One of the practical services UTG provides is picking up the individual when they are released from prison, yet even when coordinating an individual's release, it is challenging to have open communication from corrections staff, which often leaves the individuals in the correctional facilities longer than they need to be.

Support for release planning within British Columbia's correctional facilities typically falls to one or two contracted support workers alongside correctional officers. We were unable to find any policy-based guidelines or requirements for the process of release planning, and our conversations with the workers and correctional officers we spoke with were not aware of any standardized format or even best practices. Feedback reported to us was that the procedures relied on were developed within each facility, or even "made up as they went along", and were typically recommended to inmates but never mandated, requiring voluntary participation. Though it was mentioned at two facilities that they were aware of efforts being made to introduce a more standardized process. When canvassing job postings for reintegration support workers who would be required to support individuals serving sentences in a correctional facility, we came across postings from Connective Community services, Provincial Health Services Authority, and the Elizabeth Fry Society. Of those postings reviewed, most required at least a certificate or diploma in a social service, only the PHSA posting mentioned lived experience with the criminal justice system as a qualification.

[17] https://unlockingthegates.org/

The contracted workers we spoke with reported not being aware of any others who advertised that they had lived experience, though due to social stigma and risks associated with their jobs it is possible they would not be comfortable disclosing. A few staff members with BC Corrections mentioned having peer mentorship groups that are conducted on occasion, typically through chaplain services, but those usually were made up entirely of currently incarcerated individuals rather than including individuals who had successfully reintegrated after release. Most facilities toured or contacted had between one and three support workers total working on contract, and all reported being overwhelmed with the number of inmates who require their assistance.

Group sessions are conducted as part of programming, these typically focus on developing life skills in a general sense as opposed to specific planning for the individuals release. Life skills programming includes anger management, budgeting, conflict resolution, etc. Inmates use a first come first serve sign-up sheet to receive one on one meetings with the support worker or correctional officer, and release planning appeared to be most successful when the worker had a chance to build an ongoing and consistent relationship with the individual but this wasn't possible with everyone. Challenges that were commonly discussed were difficulties planning for reintegration when release dates were tentative, due to the nature of court scheduling it wasn't always possible to plan around specific timeframes, and often times they would have very little notice of the release.

Another is that the majority of funding and social services available in the community seem to require substance abuse or mental health issues which isn't always the case for every inmate. Workers noted that in their experience housing specifically seemed to be exclusively reserved for only those with more severe addictions and mental health concerns, but even then, were hard to come by. This is consistent with a general housing crisis across the province and country, that seems to be exasperated post COVID-19. Along with housing, other community services post pandemic seem to have closed their doors or changed their mandate, possibly in an effort to accommodate altered funding and accessibility issues. Making the calls was another barrier the corrections staff noticed, since phone calls are charged to the inmates themselves, and not all of them have the funds available to use the phones for release planning purposes, choosing instead to talk to friends or family for support. Many inmates rely on their lawyers to make arrangements for them since many times release planning is required to fulfil court ordered conditions, and often use mail as a means of accessing external support services, such as Unlocking the Gates, but we heard reports of mail being added to belongings they wouldn't have access to until post release.

Every worker we spoke with reported challenges with building a trust-based relationship with clients, though that was brought up more often with BC corrections staff specifically. Most recognized the difficult power imbalance even if they felt they had good rapport with the individuals, citing a lack of trust in government officials or government processes. Practical issues such as lining up transportation, filing taxes, accessing income assistance,

obtaining government issued identification are requests that are commonly received, and workers reported having to address specialized issues such as substance abuse and mental health issues with little to no training required or offered.

When asked about possible solutions, the BC corrections staff members cited addressing systemic issues such as housing and the opioid crisis, more direct solutions mentioned were to make release planning mandatory, offer limited telephone use free of charge, more transparent and coordinated contact with external support services, and increasing the number and training of staff members who could assist with release planning and programming. When asked what the BC Corrections staff members thought about the use of peer led release planning from those who had lived experience and successfully reintegrated back into the community, most agreed that the benefits would be significant, though some had concerns about security and conflicts for them to re-enter the facilities. All agreed that some kind of standard practice would be helpful to serve as a guideline but underscored the unique nature of each individual, their location, and their criminal history required some flexibility to be accounted for.

As such, we are recommending that release planning within all BC Corrections facilities be standardized across the province to include peer support from those who have lived experience successfully leaving a correctional facility and reintegrating back into the community. We recommend that the province of British Columbia follow the models of Unlocking the Gates and the PeerLife Collaborative to assist in this transition. In addition to this process, we recommend that pathways for communication between internal and external services be improved to coordinate reintegration upon release, and that limited use of telephones and computers be allowed to facilitate the individuals own release planning efforts.

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MIGRANT ADVOCACY 101: TRAINING WORKSHOP MATERIALS FOR VOLUNTEERS

A Special Project by Fatima Beydoun and Channelle Lajoie
Faculty of Law, McGill University

"We would like to extend a special thanks to Level Justice for creating a space for us and for providing a platform for this research. Their commitment to fostering engagement within the legal community and advancing social justice is and has been invaluable.

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On March 18th, 2024 at 6PM EST, Level's fellowship cohort at McGill University hosted a Migrant Advocacy 101 Workshop at the Institute for Gender, Sexuality, and Feminist Studies (IGSF). There were a total of 21 attendees at the workshop that included university students, community stakeholders, and legal professionals. Below is a reproduction of the information as it was delivered to the attendees. This information is included here with the hopes that it can serve as a helpful tool for others hoping to do the same.

Indigenous Solidarity Statement

This event is taking place on the traditional territory of the Kanien'kehá:ka. The island called "Montreal" is known as Tiotia:ke in the language of the Kanien'kehá:ka and Mooniyang in Anishinaabemowin, and it has historically been a meeting place for other Indigenous nations who are a part of the Haudenosaunee confederacy. We recognize that any pursuit of liberation must include solidarity with Indigenous peoples across Turtle Island pursuing self-determination.

The importance of forming solidarity between Indigenous Peoples and migrants allows for growing alliances between nations and communities affected by settler-colonial governments and their implementation of violent borders.

We must stand firmly with Indigenous resistance across Turtle Island to demand an end to the ongoing theft of indigenous lands, massive resource extraction and environmental devastation, as well as an end to the colonial and gendered violence against Indigenous women, girls and two spirit people.

We encourage people to support the Mohawk Mothers in their stand against McGill University by donating, signing their petition, or buying their book. The Mohawk Mothers have been engaged in a legal challenge against McGill to stall the New Vic project, the site of the former Allen Memorial Institute where medical experiments occurred during the 1950s and 60s, so that proper archaeological investigations for undiscovered evidence and unmarked graves can be conducted according to the Great Law of Peace protocols.

McGill's foundations in African enslavement, from James McGill's enslavement of Black and Indigenous people to the University's sponsors' such as Redpath and Macdonald who earned their wealth through southern slave plantation economies. There is also a long-standing legacy of critical resistance from Black students and faculty in relation to this university, which continues today both on our campus broadly and in our faculty.

About Level and Pinay

Level is a national justice education and human rights charity dedicated to advancing equity and justice in our communities. Through collaboration with communities, the organization

strives to remove barriers to human rights and promote inclusivity. Level works towards inspiring leadership, empathy, and inclusion through our programs tailored for youth, law students, and professionals in the legal sector.

One of the goals is to provide transformative learning experiences and volunteering opportunities within the legal sector. Level aims to foster humility and encourage engagement in knowledge-sharing on crucial topics such as intersectionality, inclusion, empathy, and anti-colonial and anti-racist actions and practices.

One of the flagship initiatives is the Social Justice Fellowship Program (SJFP), designed to empower law students to become advocates for social justice. As Social Justice Fellows, we serve as Level's representatives and ambassadors within our respective law schools, and our primary responsibility is to champion Level's mission within our school communities by implementing long-term projects focused on social justice issues of their choice.

As fellows, we have been tasked with addressing a social justice issue close to our hearts. Inspired by the vibrant migrant justice organizing culture in Montreal, we have chosen to raise awareness about the challenges and vulnerabilities faced by migrant workers under the Temporary Foreign Worker Program (TFWP). We also want to take a moment to thank our sponsor for both this event and for the Social Justice Fellowship program, Thompson Reuteurs.

PINAY, founded in 1991, is a Filipino women's organization that empowers and organizes Filipino women in Quebec, particularly Filipino domestic workers. Most of our members are migrant workers within the Live-In Caregiver Program (LCP). For over two decades, PINAY Quebec has brought domestic workers and supporters together in their struggle for basic rights and welfare.

Goal Setting of the Session

Our goals for the session will be as follows:

- Explaining the legal and policy dynamics of migrant labour in Canada (TFWP and closed work permits)
- Providing an overview of the issues impacting migrant communities here in MTL.
- Demonstrating the vibrant organizing/community aid culture here in MTL
- Demonstrating what we all can do to support as migrant advocates and establishing an ongoing network of migrant advocates

Issues/Problems: Systemic Exploitation through Law & Policy

Migrant workers often face challenges within a system that fails to protect them – resulting in exploitation and a lack of justice. To start with some context, global economic migration

refers to the movement of people across borders in search of better economic opportunities. Many individuals from developing countries are drawn to countries like Canada due to the prospect of higher wages, better working conditions, and career advancement opportunities. Remittances, or the money sent by migrant workers back to their home countries, play a significant role in global economic development.

For many developing countries, remittances are a vital source of income that helps alleviate poverty, improve living standards, and stimulate economic growth. The Temporary Foreign Worker Program (TFWP), which we will come to dissect throughout this presentation, exists within the broader context of global economic migration and aims to address labour market needs while also contributing to the flow of remittances.

The TFWP is a mechanism through which Canada can address labour market imbalances by recruiting foreign workers to fill temporary positions in sectors with a demonstrated need for additional labour. At the same time, the TFWP provides a legal pathway for migrants to come to Canada and earn an income, where they can send remittances to their families and communities, thereby contributing to poverty reduction and economic development in their home countries.

I. Canada's History

Two pivotal periods have significantly shaped Canadian immigration policy, each reflecting distinct historical contexts and ideological underpinnings.

The first period, extending from the late 19th century until the Second World War, was characterized by the endorsement of scientific racism, commonly referred to as the "White Canada" or "Keep Canada White" era. During this time, immigration policies overtly favoured British and European immigrants to uphold Canada's White British cultural identity. Despite this preference, labour projects such as the construction of the Canadian Pacific Railway relied heavily on non-White labour, particularly Chinese workers who were perceived as cheap and readily available. However, discriminatory policies, exemplified by the Chinese Immigration Act of 1885, imposed restrictions such as head taxes and exclusionary measures targeting Chinese immigrants and their families. Similar discriminatory measures were applied to immigrants from Japan and India, further underscoring the racialized and discriminatory nature of Canadian immigration policies during this period.

The second period emerged in the aftermath of the Holocaust, decolonization, and the rise of global human rights advocacy, coinciding with the international rejection of racism. This era witnessed the introduction of the points system and temporary migrant programs, reflecting a shift towards more merit-based and humanitarian immigration policies.

However, reforms during Trudeau's tenure, like those under Harper, primarily focused on Canada's labour market outcomes while overlooking the experiences of migrants themselves. The controversy surrounding imported temporary labour, particularly through the Temporary Foreign Worker Program (TFWP), stemmed from the perception that it primarily affected low-skilled migrants, leading to tensions with Canadian nationals.

Modern capitalist immigration policies manage labour mobility and perpetuate globally unequal production relations. By prioritizing "human capital" and offering more opportunities for higher-skilled migrants, Canada benefits from both high-skilled and low-skilled labour without fully integrating socially. However, this approach garners support from a national constituency seeking to protect perceived national interests, resulting in policies that restrict migration of low-wage labour from the Global South.

Understanding Canadian immigration policy requires contextualizing it within a global historical framework. Historical instances of racialized labour exploitation, such as the exploitation of Chinese labourers during the construction of the transcontinental railroad, highlight the intersection of race and class within immigration policies.

The disparity in wages between countries, rooted in global capitalism's uneven development, contributes to a privileged working class in core nations like Canada, often at the expense of oppressed nations, particularly Indigenous populations.

Contemporary Canadian immigration policies, despite embracing multiculturalism outwardly, still bear traces of racialization and violence. The resurgence of xenophobia prompts a re-evaluation of imperialism and the labour aristocracy in understanding Canadian immigration policy's evolution and its humanitarian veneer.

II. TFW program + Closed work permits

a. Overview of what it is
b. The common issues/gaps
c. Proposed reforms

The TFWP, a federal initiative in Canada, is designed to help employers address short-term and regional labour demands by recruiting workers from other countries, thereby addressing temporary labour shortages in specific industries and regions across the country. This program enables Canadian employers to hire foreign workers for temporary positions when Canadian citizens or permanent residents are unavailable.

The second, and main topic we will be speaking to today is the Labour Market Impact Assessment Program (or the LMIA), which is run by Employment and Social Development Canada (ESDC) and focuses primarily on labour market considerations.

Essentially, employer companies have to pay a fee of 1000$ to sponsor research to show that the industry the company is a part of is experiencing a shortage in labour, therefore demonstrating a justification for needing to hire temporary foreign workers instead. The program is primarily driven by the needs of Canadian employers who demonstrate that they are unable to find suitable Canadian workers to fill job vacancies.

The LMIA confirms that hiring a foreign worker will not negatively impact the Canadian labour market, essentially acting as a green light for being able to employ migrant workers as opposed to Canadian citizens or persons with permanent residency status. Employers must obtain a positive LMIA from Employment and Social Development Canada (ESDC) before hiring foreign workers.

The TFWP covers various industries and occupations, including agriculture, hospitality, construction, healthcare, and information technology. Depending on the type of work and the skill level of the position, different requirements and procedures may apply. As the name suggests, the program is intended for temporary employment only. Originally,
Applications were exclusively made from outside Canada, meaning that one would apply from within their country of origin, and the Canadian employer would be responsible for covering their travel to Canada and back to their home country upon the permit's expiration.

However, since the pandemic, Canada has implemented a temporary measure which allows for people already within Canada on temporary resident visa/tourist visas to be able to apply for the program from within. This has become an increasingly popular phenomenon. Foreign workers hired under the TFWP are typically issued closed work permits for a specified period by a border agent, after which they are expected to return to their home countries.

There are two crucial aspects to point out with this, the first being how the worker may only work for the employer listed on the permit and only in the role/occupation listed on the permit that they receive at the border. This will become important to keep in mind when we talk about the abuses.

The TFWP is subject to regulations and compliance measures to ensure that foreign workers are treated fairly and that the program does not negatively impact the Canadian labour market. Employers must adhere to certain conditions regarding wages, working conditions, and recruitment practices. Regrettably, this is often far from the reality. Common abuses made possible by the nature of the closed work permit: Wage theft; Workplace psychological Harassment (discriminatory treatment on the basis of status); Dangerous working conditions; Inadequate/insecure housing/lodging arrangements; Employers not honouring their obligations or following due process; Reprisals; Sick leave + other benefits withheld; and more.

b. Common issues with the program:

The closed work permit scheme through the TWFP in Canada has been criticized for several shortcomings that affect migrant workers. Some of these shortcomings include:

Dependence on Employers- Since TFWs are often tied to specific employers through work permits, it can lead to exploitation and abuse. Because of this dependency and for not being able to easily work in another occupation elsewhere without applying to a new closed wort permit (which would again have to be tied with an LMIA-approved employer), migrant workers are more susceptible to experiencing labour and human rights violations out of fear of not being able to work at all should they lose their work opportunity.

Migrant workers are often hesitant to report workplace violations or seek alternative employment due to fears of losing their status in Canada, and the latter can be a lengthy process that has obvious financial ramifications. This can result in financial insecurity and difficulty making ends meet, especially in regions with high living costs.

Temporary foreign workers may receive lower wages and fewer benefits compared to Canadian workers in similar positions. Despite this being an illegal practice, it is all too common. There are also numerous accounts of workers not being given proper health insurance that they are entitled to, and run into trouble if they become ill or injured and see to access the health care system.

For fear of reprisal from an employer, migrant employees can be made to silently oblige with violations that include inadequate pay, poor treatment, an unsafe/hazardous working environment, a lack of proper training, being made to do undesirable tasks that are beyond the scope of the work contract, and so much more.

Another aspect pertains to the limited pathways to permanent residency with this program. Many temporary foreign workers enter Canada with the hope of eventually obtaining permanent residency.

However, temporary foreign workers' pathways to permanent residency are often limited and competitive. This can result in uncertainty and instability for migrant workers who may be unable to secure permanent status in Canada.

Workplace Health and Safety Concerns: Migrant workers may face unsafe working conditions and inadequate protections for their health and safety. Language barriers and lack of awareness of their rights can further exacerbate these concerns, putting migrant workers at risk of workplace injuries and accidents.

Social Isolation and Integration Challenges: Due to their temporary status and limited opportunities for community engagement, TFWs may experience social isolation and challenges integrating into Canadian society. This can negatively impact their mental health and well-being.

Family Separation: Many temporary foreign workers are separated from their families for extended periods due to the requirements of the program. This can lead to emotional distress and strain on family relationships.

III. Open Work Permits for Vulnerable Workers

One interim remedy for TFWs that are in situations of abuse are the Open work permits for vulnerable workers, which is a special type of work permit offered by the Canadian government to individuals who are in vulnerable situations and may be at risk of exploitation or abuse in the workplace. These permits are designed to provide greater flexibility and protection to workers who may face challenges in traditional employment relationships.

Vulnerable workers who may be eligible for open work permits include: Victims of domestic violence or abuse; Victims of human trafficking or forced labour; Temporary foreign workers who are experiencing abuse or exploitation by their employers; and Workers who have lost their work permits due to employer non-compliance or other reasons.

The aims of the OWPVWs are to offer migrant workers facing abuse, or at risk of abuse, an avenue to leave their current employer by allowing them to seek work authorization with other employers. This allows for a minimization of vulnerability faced by migrant workers in Canada who leave their employment due to abusive circumstances and subsequently engage in irregular work (i.e., unauthorized) to sustain themselves, and enables engagement of migrant workers experiencing or at risk of abuse in any pertinent inspections involving their former employer, recruiter, or both.

OWPVWs allows individuals to work for any employer in Canada, rather than being tied to a specific employer. This flexibility enables workers to leave abusive or exploitative work situations without losing their legal status in Canada. It also allows them to seek employment opportunities that are more suitable and conducive to their well-being.

However, there are two downsides. The first is that if successfully acquired, the permit only lasts one year, after which the worker will need to return to a closed work permit with an LMIA-approved employer. The second is that it is only available to people who previously had a closed work permit, excluding individuals who are victims engaged in a labour relationship with the false promise of a permit from the company but were essentially victims of labour trafficking.

IV. Campaigns Across the Country for Justice:

1. Push for Open Work Permits for all;
2. Regularization and Status for All; and
3. Overview and Common Demands.

Ways forward include raising awareness about the lived experience of migrant workers include applying political pressure for reform and amplifying local organizations engaged in migrants mutual aid and advocacy work.

Case Study: Centre de travailleurs et travailleuses immigrants c. Newrest Group Holding S.A. et. al.

The Immigrant Workers Centre (IWC) (a labour education and campaign center for vulnerable immigrant and migrant workers in Quebec) and a group of migrant workers have launched a campaign and filed a class action lawsuit alleging violations of fundamental human rights at the Montreal airport. The lawsuit targets a placement agency called Trésor and its client company Newrest, a multinational company that provides catering services to major airlines at Pierre Elliott Trudeau Airport. Hundreds of workers seek damages for violating their rights, as they were allegedly misled into working under false pretenses.

Trésor purportedly exploited a 2020 change in federal immigration policy, encouraging workers to come to Canada on visitor visas with promises of stable employment while their work permits were being processed. However, many workers never received valid permits. The IWC is supporting these workers and advocating for their rights, calling for the abolition of the closed work permit system and urging the government to regularize the status of those living without immigration status. The IWC has notified government authorities and labour agencies of the situation and is committed to assisting all affected workers.

V. Continuation of Ways Forward

Advocating for the termination of the TFWP isn't sufficient without acknowledging the importance of granting permanent status, ensuring full access to services, and upholding human and labour rights to safeguard the rights and well-being of migrant workers. Canada should contemplate admitting more immigrants as prospective citizens rather than relying heavily on temporary migrant workers. It's essential to redirect the focus of immigration policy towards prioritizing permanent residency over temporary status.

#statusforall movement advocates for granting permanent residency or status regularization to undocumented migrants, temporary foreign workers, or other non-status individuals living in Canada. The call for regularization for all emphasizes principles of

human rights, dignity, and social inclusion, often calling for reforms to immigration policies to ensure that all individuals have equal access to rights and protections regardless of their immigration status.

Applying political pressure on government departments to increase employers' accountability measures so that they expand the protections of TFWs. ESDC is the entity that provides an employer with the slots of allowed closed work permits, so they have a responsibility to not do so negligently, especially given the increasing number of fraud and misrepresentation of available work that many workers have fallen victim of.

Guiding Questions for the Future

1) Why does local organizing matter for the migrant justice movement?
2) What are some values that drive this work?

Organizing to Mobilizing

What is community organizing?

- Often workplace- or neighbourhood-based approach where people with shared interests come together to identity and pursue shared goals through building collective power and developing strategy.
- Goals and benefits of organizing locally?
- Mobilize existing community
- Get a seat at the table
- Build community trust and credibility
- Develop local leaders
- Influence key decision makers
- Build & demonstrate community power

Getting Involved

Getting involved with local organizations like the Immigrant Workers Center, Solidarity Across border, Pinay, the migrant justice centre and more to be able to support in lobbying needs, as well as more direct actions.

National:
Migrant Rights Network
Migrant Workers Alliance for Change

Montreal Organizations:
Immigrant Workers Centre (IWC)

PINAY
Welcome Collectif
Solidarity Across Borders
The Refugee Centre
Migrant Justice Clinic
Le Quebec c'est nous aussi
Migrante Quebec

Photos

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ADMISSION STREAMS FOR BLACK LAW STUDENTS IN CANADIAN LAW SCHOOLS: A 2024 REPORT

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ADMISSIONS STREAM FOR BLACK LAW STUDENTS

IN CANADIAN LAW SCHOOLS

A 2024 REPORT

IN COLLABORATION WITH:
Level Justice & Thomson Reuters

ORGANISED BY:
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Purpose of Report

This report is a significant step towards addressing a longstanding issue in the legal profession: the underrepresentation of Black lawyers in Canada. By compiling information about what each law school in the country is doing to tackle this issue, we aim to provide prospective Black law students with invaluable insights into their options.

The purpose of this document is twofold. Firstly, it aims to centralize information that is often scattered or difficult to find, making it easier for students to compare different institutions' efforts to support Black students. Secondly, it seeks to empower these students to make informed decisions about where to pursue their legal education, ensuring they choose a school that not only aligns with their academic and career goals but also prioritizes diversity, equity, and inclusion.

The ultimate goal of this document is to contribute to the diversification of the legal profession in Canada. By providing Black students with the information they need to make well-informed choices about their education, we are not only increasing their chances of success but also fostering a more inclusive and representative legal community. Additionally, by highlighting the initiatives and resources available at various law schools, we're encouraging institutions to continue or expand their efforts in this regard.

This document is not only a resource; it's a catalyst for change. By shedding light on what law schools are doing to address underrepresentation, we are not only providing valuable information to prospective students but also holding institutions accountable for their diversity and inclusion efforts. It's a tool for empowerment, advocacy, and progress, and its existence is essential in the ongoing effort to create a legal profession that reflects the diversity of Canadian society.

Law school In Canada

- Bora Laskin Faculty of Law Lakehead University
- University of Calgary, Faculty of Law
- University of Manitoba, Faculty of Law
- University of New Brunswick, Faculty of Law
- Queen's University, Faculty of Law
- University of Saskatchewan, College of Law
- Thompson Rivers University, Faculty of Law
- TMU, Lincoln Alexander School of Law
- McGill University, Faculty of Law
- University of Ottawa, Faculty of Law
- Western University, Faculty of Law
- Dalhousie, Schulich School of Law
- University of Windsor, Windsor Law
- University of Alberta, Faculty of law
- University of British Colombia, Allard School of law
- University of Toronto, Faulty of Law
- University of Victoria, Faculty of Law
- York University, Osgoode Hall Law School

In Canada, we're fortunate to have a diverse array of educational institutions offering legal programs, with a total of 18 law schools spread across the country. These schools are located in various provinces and territories, each contributing to the legal education in Canada. The figure above visually represents the geographical distribution of these law schools, with each color indicating the location of a specific institution.

Despite the abundance of options, aspiring Black law students often face challenges in accessing comprehensive and centralized information about these institutions. The dispersion of information across different platforms and the lack of standardized reporting can make it difficult for students to find the specific details they need to make informed decisions about their legal education journey. By compiling all this information in one place, we're streamlining the research process for aspiring Black law students, eliminating the need to sift through multiple sources to find what they're looking for.

Research Outline

To achieve our goal, we're meticulously researching and tracking various factors for each institution, ensuring that our report is thorough and informative.

Here's an outline of the factors we're researching and tracking for each school:

Admissions Process

We're delving into the admissions process of each law school, including requirements, and any specific considerations or pathways for Black applicants. Understanding the admissions process is crucial for prospective students to navigate their application effectively.

Entrance Scholarships for Black Law Students

We're identifying whether each law school offers entrance scholarships specifically aimed at Black law students. These scholarships can play a significant role in making legal education more accessible and affordable for underrepresented groups.

Specific Features for School

We're documenting any specific features, programs, or initiatives that each law school has in place to support Black students. This could include mentorship programs, affinity groups, cultural events, or diversity-focused curriculum elements. Highlighting these features helps prospective students assess the level of support and community they can expect at each institution.

Other Comments from the School

We're also noting any additional comments or statements from the schools regarding their commitment to diversity, equity, and inclusion. This includes initiatives beyond what's explicitly listed in their admissions materials. Understanding the school's stance on diversity can provide valuable insight for prospective students.

Methodology

In our pursuit of compiling comprehensive information for each law school in Canada, we've taken proactive steps to gather data from multiple sources.

1

Direct Communication

We initiated direct communication by reaching out to each school via email and, in some cases, through video calls. This direct interaction allowed us to inquire about specific initiatives, admissions processes, and support mechanisms tailored for Black law students.

2

Online Research

We conducted extensive online research to complement the insights gained from our direct engagements with the schools. This research involved exploring official websites, reviewing available documentation, and scrutinizing any relevant publications or announcements pertaining to diversity and inclusion efforts within each institution.

By combining these methods we're ensuring that our report is founded on a robust and multi-faceted understanding of each law school's offerings and commitments to supporting Black law students. This comprehensive approach enhances the reliability and usefulness of our resource, empowering prospective students to make informed decisions about their legal education journey.

Executive Summary

Section	Percentage
Schools that have a specific Black Stream	27.7%
School that have scholarships for students	77.7%
School that have specific resources for Black students	77.7%
Schools that have 10+ BLSA members	61.1%

EXECUTIVE SUMMARY

Schools are based on these 3 categories, separate stream for Black student, scholarship for Black students and support specifically for Black students.

RED = School has 1/3 categories **YELLOW** = School has 2/3 categories **GREEN** = School has 3/3 categories

Bora Laskin Faculty of Law Lakehead University
University of Calgary, Faculty of Law
University of Manitoba, Faculty of Law
University of New Brunswick, Faculty of Law
Queen's University, Faculty of Law
University of Saskatchewan, College of Law
Thompson Rivers University, Faculty of Law
TMU, Lincoln Alexander School of Law
McGill University, Faculty of Law
University of Ottawa, Faculty of Law
Western University, Faculty of Law
Dalhousie, Schulich School of Law
University of Windsor, Windsor Law
University of Alberta, Faculty of law
University of British Colombia, Allard School of law
University of Toronto, Faulty of Law
University of Victoria, Faculty of Law
York University, Osgoode Hall Law School

Lakehead UNIVERSITY

No specific stream for Black Law Student Applicants

Admissions Categories:

1. **General**
2. **Mature**
3. **Indigenous**
4. **Equity, Diversity, Inclusion & Accessibility (EDIA).**

The EDIA category is designed to identify outstanding applicants whose skills, abilities and experiences may not be fully recognized in the General category. For example those who have faced obstacles and inequities that may have affected their academic history, including, but not limited to, socio-economic factors, mental and/or physical disability, culture, creed, race, sexuality, family status and gender, among others.

Entrance Scholarships for Black Students

NONE

Comments from the Admissions Committee:

"Black and racialized applicants may encounter challenges in establishing a traditional connection to our mandate areas of law. As a result, we have revised our Personal Statement prompt to incorporate this acknowledgment."

For more information:

- ***Admissions Information for Juris Doctor Program***

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The Bora Laskin Faculty of Law at Lakehead University stands as one of Canada's newest legal institutions officially opening in September 2013. The law campus, sits overlooking Lake Superior and the Sleeping Giant, embodies a commitment to fostering a unique learning environment. The campus is known for its unwavering dedication to providing the highest standard of legal education, the faculty merges theoretical knowledge with practical application. Its focus on the realities of Northern living and working distinguishes it, emphasizing Aboriginal and Indigenous Law, Natural Resources and Environmental Law, and small firm practice through the Integrated Practice Curriculum (IPC).

Features for Students

- Maamawi Bimosewag (They Walk Together) Indigenous Law and Justice Institute: focuses on revitalizing Anishinaabe and Métis law, engaging in land-based learning, and fostering research in Indigenous law. It offers a unique platform for Black students to engage with Indigenous legal traditions and contribute to the discourse on justice.
- With intimate class sizes, professors and staff provide personalized attention and support. Their passion for teaching ensures a stimulating learning environment, challenging and engaging students of all backgrounds.
- The faculty houses two legal clinics, offering students opportunities to engage with real-world legal issues under the supervision of experienced lawyers. The Integrated Practice Curriculum (IPC) emphasizes practical skill development, preparing students for various legal roles upon graduation.

Read More Here:
History of Bora Laskin Faculty of Law

University of Manitoba | Faculty of Law

No specific stream for Black Law Student Applicants

Admissions

Catergory

1. Index Score Category AKA Regular
2. Individual Consideration Category
3. Canadian Indigenous Category

Entrance Scholarships for Black Students

Name: David Sowemio Law

Purpose: To encourage Black students to enroll in the Faculty of Law at the University of Manitoba)

Amounts: $6000

Comments from the Admissions Committee:

"Our Individual Consideration category is for mature students and for students who, notwithstanding the age requirement, have faced barriers to education for reasons related to equity, inclusion and diversity including lived experiences pertaining to disabilities, persons with lived experiences that relate to goals of fostering equity, diversity, and inclusion, and building towards Truth and Reconciliation."

For more information:

- ***Application Information Bulletin***

University of Manitoba | Faculty of Law

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

Established in 1914, the University of Manitoba's Faculty of Law, located in Robson Hall by the Red River, is one of Western Canada's oldest law schools. Grounded in critical thinking and advocacy, it offers exceptional legal education. Rooted in the ancestral lands of Indigenous peoples, Robson Hall embraces innovative approaches to legal education, evolving its curriculum to meet societal needs. Renowned for its dynamic teaching methods, the faculty emphasizes experiential learning through clinical programs, clerkships, and moot competitions. Its scholarly publications, such as the Canadian Journal of Human Rights, contribute significantly to Canadian legal scholarship.

Features for Black Students

For Black students considering applying to University of Manitoba's faculty of Law, it offers various resources and supports to ensure their success. The Student Services team at the university is dedicated to providing comprehensive assistance, from academic guidance to personal support. Additionally, the university's commitment to diversity and inclusion is reflected in its counseling resources and student support services. Black students can also find a sense of community and belonging through student groups and associations such as BLSA, fostering connections with peers who share similar experiences and aspirations.

Sources:
University of Manitoba's Faculty of Law

Admissions
Catergory

1. General
2. Indigenous Peoples
3. Black Student
4. Access Category

Black Student Category

To be competitive in the Black Student category admission process, you should have at least a B+ average (GPA of 3.5) in the top 2 years of your undergraduate degree program at a full course load and an LSAT score of at least 155. They may consider other evidence of academic ability in addition to these academic standards.

Entrance Scholarships for Black Students

None

No Comment from the Admissions Committee Provided

For more information:

- ***Admissions Process***

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

Established in 1957, Queen's Faculty of Law has been a trailblazer in Canadian legal education. Initially founded by J.A. Corry, the school had humble beginnings with just 25 students. Since then, it has flourished, marked by significant milestones such as the establishment of the Queen's Law Journal in 1968 and the creation of QUIC-LAW, the world's first computerized law database, in 1972.

Renowned for its commitment to academic excellence and innovation, Queen's Law is recognized for its dynamic teaching methods and forward-thinking programs. The faculty offers the option of a Juris Doctor (JD) program, with additional opportunities for combined degrees and specialized studies. Notably, Queen's Law has expanded its offerings to include a PhD program, international law programs, and online undergraduate courses in Canadian law.

Features for Black Students

At Queen's Law, a comprehensive support system is in place for Black students. This includes the formation of an Anti-Racism Working Group, dedicated to addressing issues of race and racism in legal education with a focus on Anti-Black Racism and fostering inclusivity. Additionally, the faculty provides confidential counseling services to support Black students' mental health and academic challenges. Various student organizations offer spaces for Black students to connect, access mentorship, and engage in advocacy

Sources:
Queen's Faculty of Law
Anti-Black Racisms

No specific stream for Black Law Student Applicants

Admissions

Catergory

1. Regular Category
2. Discretionary Category
3. Indigenous category

Entrance Scholarships for Black Students

Name: Abraham Walker Scholarship

Purpose: To promote and recognize excellence and diversity in the first year class

Amounts: $5000

Comments from the Admissions Committee:

None

No Comment from the Admissions Committee Provided

For more information:

- ***Admissions of First Year Students***

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

Founded in 1892, the University of New Brunswick's Faculty of Law, situated in Fredericton, Canada, stands as the second-oldest university-based law faculty in the Commonwealth. Over its illustrious history, it has graduated premiers, cabinet ministers, and judges, including those of the Supreme Court of Canada. Renowned for its intimate learning environment, UNB Law provides a supportive atmosphere with limited enrollment and small class sizes. Students develop close relationships with peers and professors, fostering professional networks that extend beyond graduation. The curriculum emphasizes fundamental principles and skills, ensuring graduates are well-equipped for diverse legal challenges. Notably, UNB Law boasts high articling placement rates and prestigious clerkship opportunities.

Features for Black Students

UNB Law is committed to supporting Black students through various initiatives. An Anti-Racism Working Group addresses issues of race and racism in legal education, focusing on Anti-Black Racism and fostering inclusivity. The faculty provides dedicated counseling services for mental health and academic challenges. Additionally, student organizations offer spaces for connection, mentorship, and advocacy. Faculty and staff provide individual attention, mentorship, and guidance to ensure Black students feel valued and supported. Access to academic resources and community engagement activities further enrich the student experience.

Sources:

University of New Brunswick's Faculty of Law

Anti-Black Racism Statement

UNIVERSITY OF SASKATCHEWAN
College of Law
LAW.USASK.CA

Entrance Scholarships for Black Students

NONE

Admissions Catergory

Category 1 — **General**

Category 2 — **Discretionary**

Category 3 — **Indigenous**

Discretionary Category is for applicants who may experience educational disadvantages including Barriers resulting from ethnic or racial background

No Comment from the Admission Committee Provided

For more information:

- ***Program Information***

UNIVERSITY OF SASKATCHEWAN
College of Law
LAW.USASK.CA

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The University of Saskatchewan's College of Law founded in 1912, boasts a rich history and a commitment to providing a comprehensive legal education in a supportive environment. Established with a vision of being the "People's University," it has evolved from its early days to become a prominent institution known for its academic rigor and contributions to the legal profession and public service. From its inception, the College of Law focused on providing a holistic legal education, blending theoretical knowledge with practical skills. The institution also gained recognition for its contributions to legal research and scholarship. The College also fostered a tradition of public service, with students, faculty, and alumni actively engaging in initiatives addressing societal issues and advocating for justice.

Features for Black Students

For prospective Black students, the College of Law at the University of Saskatchewan offers a supportive and inclusive environment to pursue legal education. With a focus on student well-being and comprehensive support services, including mental and emotional health resources, the College prioritizes the success and holistic development of its students.

Without specific information or updates on the College of Law's response to Statement on Anti-Black Racism in 2020, it's challenging to determine whether these promises have been fully kept. However, typically, evaluating the fulfillment of such commitments would involve examining changes in curriculum content, the introduction of new programs or initiatives aimed at addressing racism, improvements in student support services, updates in faculty hiring practices to promote diversity, and increased engagement with the broader legal community on issues related to racism and social justice.

Sources:
University of Saskatchewan's College of Law Response to Statement on Anti-Black Racism

THOMPSON RIVERS UNIVERSITY | Faculty of Law

No specific stream for Black Law Student Applicants

Admissions

Catergory

1. Regular
2. Indigenous Canadian
3. Special Consideration

Special Consideration Applicant can include disability or special needs, financial disadvantage, age, membership in a historically disadvantaged group, residency in a small and/or remote community, or injuries and illness.

Entrance Scholarships for Black Students

Name: Future Black Lawyer Award

Purpose: To incoming student enrolled at TRU Law who is Black and has overcome hardship to attend law school

Amounts: $5000

Comments from the Admissions Committee:

"Apart from what we have on the website, we have 2 local lawyers in Kamloops who serve as mentors to incoming and current Black students through our TRU Law Chapter of BLSA."

For more information:

- ***Admissions***

THOMPSON RIVERS UNIVERSITY | Faculty of Law

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The Faculty of Law at Thompson Rivers University (TRU) was established in 2011, marking a significant milestone in legal education in Canada. Over the past decade, TRU Law has garnered a reputation for excellence, innovation, and inclusivity. TRU Law places a high value on oral advocacy, providing students with opportunities to participate in moot court competitions and develop their advocacy skills. The school also offers a vibrant student community, playing an active role in representing student interests and organizing events and activities.

Features for Black Students

For prospective Black students, the College of Law at the University of Saskatchewan offers a supportive and inclusive environment to pursue legal education. With a focus on student well-being and comprehensive support services, including mental and emotional health resources, the College prioritizes the success and holistic development of its students.

Sources:

Faculty of Law, Thompson Rivers University

UNIVERSITY OF CALGARY
FACULTY OF LAW

Admissions

Catergory

1. General
2. Indigenous
3. Black Students
4. Accessibility
5. English Language Proficiency

The Black Student Equitable Admissions Process is an optional opportunity for applicants who self identify as being of Black African descent. It is intended to address the under representation of Black students within our law school and the larger legal community

Entrance Scholarships for Black Students

Name: Faculty of Law Undergraduate Award of Excellence for Indigenous, Black and Racialized Persons.
Amount: $10,000

Name: Inter Pipeline Awards
Amount: $10,000

Comments from the Admissions Committee:

"The BSEAP, launched for Fall 2021 admissions in partnership with the UCalgary BLSA, aims to enhance diversity in our student body to better serve our diverse community's legal needs. We're dedicated to promoting equity, diversity, and inclusion in all our processes."

For more information:

- ***Application Information***

UNIVERSITY OF CALGARY
FACULTY OF LAW

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

UCalgary Law stands as Canada's foremost innovative law school, pioneering education for the legal landscape of tomorrow. Founded in 1976, the Faculty of Law emerged as a result of Calgary's successful campaign for a university and marked the city's first 50 years of transformative community impact. In 2017, the institution launched its Energy-Innovation-Impact strategic plan, aiming to position itself at the forefront of legal education globally. Offering exceptional JD and graduate programs, including joint ventures with the Haskayne School of Business and the School of Public Policy, UCalgary Law ensures students receive hands-on, practical experience through expanded clinical programs and new legal practice courses. With its strategic location in Calgary, known as Canada's energy capital and home to major corporate headquarters, UCalgary Law provides students unparalleled access to top legal experts and a robust articling placement rate.

Features for Black Students

The feature provided to Black law students at the University of Calgary's law school is the Black Student Equitable Admissions Process (BSEAP). This process was introduced in response to the Calls to Action released by the UCalgary Chapter of the Black Law Students' Association (BLSA) in June 2020. The BSEAP is an optional opportunity for applicants who self-identify as being of Black African descent or multi-racial students identifying with their Black ancestry.

The Faculty of Law also recognizes the importance of educating students and faculty members about systemic racism and promoting anti-racist practices. Various initiatives, such as mandatory Foundations classes with components addressing the uneven application of the legal system and anti-racism workshops. Additionally, they are committed to extending its efforts by providing anti-racism training and resources to the public. By offering targeted educational programs and utilizing profits to fund scholarships for racialized students, the faculty seeks to promote broader societal change and increase access to legal education for marginalized communities.

Sources:

UCalgary Law
Anti-Black Racism
UCalgary BLSA Calls to action

Toronto Metropolitan University

Lincoln Alexander School of Law

No specific stream for Black Law Student Applicants

Admissions Category

1 **General**

2 **Access**

3 **Indigenous**

Access Candidates can include a Black person (African Canadians, Afro-Caribbean, African American, etc.)

Entrance Scholarships for Black Students

Name: The Black North Initiative Scholarship (Renewal)

Purpose: To self-identify as Black, have high academic standing, financial need, and demonstrate a commitment to their community.

Amounts: $5000

Comments from the Admissions Committee:

"Applying through the Access Category allows students to also identify intersecting identities, as they can indicate if they feel more than one access category is applicable to them by selecting all relevant subcategories."

For more information:

- ***Application Process***

Toronto Metropolitan University
Lincoln Alexander School of Law

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The Lincoln Alexander School of Law at Toronto Metropolitan University (TMU) opened its doors to the first cohort of students in September 2020. The Lincoln Alexander School of Law is a pioneering institution that aims to revolutionize legal education. Rooted in a commitment to diversity and inclusion, the school prepares students to serve diverse communities, including historically marginalized groups. With a focus on increasing legal representation and access to justice, students are equipped to address societal challenges. The curriculum integrates innovation and entrepreneurship, ensuring graduates are experts at navigating technological advancements. Through its Integrated Practice Curriculum (IPC), the school provides a blend of theory and practical skills, preparing students for the evolving legal landscape.

Features for Black Students

The Lincoln Alexander School of Law is dedicated to fostering a diverse and inclusive learning environment. With over 50% of its students identifying as racialized, the school actively embraces equity, diversity, and inclusion as core values. This commitment not only ensures representation within the legal profession but also enriches the educational experience by fostering a vibrant and multicultural community. Additionally, the Racial Justice Initiative at the Lincoln Alexander School of Law offers Black students a supportive and empowering environment where their voices are heard, their experiences are valued, and their contributions are celebrated. Through education, advocacy, and legal reform, the initiative paves the way for a more just and equitable society for all Canadians.

Sources:
Lincoln Alexander School of Law at Toronto Metropolitan University
Racial Justice Initiative

University of Victoria

Admissions Categories:

1. General
2. Inclusive
3. Indigenous Students
4. Black Students

The Black Admission Stream was created to respond to the historic and ongoing inequities within the Uvic Law community, and the profession more broadly, by intentionally seeking to admit more Black students. Students who self identify as Black may, but are not required to, apply through our Black Admission Stream and submit a Black Admissions Statement

Financial Fund Programs

Name: BIPOC Professional Development Fund

Target: Black, Indigenous or students of colour who plan to attend conferences may apply for a portion of this fund to offset costs associated with attending conferences

Amount: Total fund available is $5,000

No Comment from the Admissions Committee Provided

For more information:

- ***Black Admission Stream***

University of Victoria

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The Faculty of Law is known for it's strengths in indigenous law, environmental law, constitutional law, international law, criminal law, legal theory and economic regulation. The Faculty prides itself in the beliefs' that shape the work they do in that the law must speak to all members of society, including those in marginalized communities. The University is also notable for it's collaborative, inclusive and accessible learning environment. The small class sizes allow for students to build a strong community and forge strong connections. The class size is around 110 students per year having around 436 students in total, 11 of which are Black students.

Features for Black Students

The University of Victoria, Faculty of Law has various supports under the Amicus Program. This program provides academic, student and counselling support for all students, however within this program the faculty has provided resources to address anti-racism and anti-oppression; this includes books, online resources and an equity and human rights page. For more details on these resources, please visit the Amicus Program webpage located on the University of Victoria's website.

Sources:
LSAC
University of Victoria
BLSA Report

PETER A. ALLARD SCHOOL OF LAW

No specific stream for Black Law Student Applicants

Admissions Catergory

Category 1	Category 2	Category 3
General	**Discretionary**	**Indigenous**

Discretionary Category is for applicants who may not satisfy some of the requirements set out in the General category but have other relevant experiences and achievements. This category can include members in a historically disadvantaged group.

Entrance Scholarships for Black Students

Name: The St.Pierre, Romilly, Nathanson Entrance Award in Law for Black Students

Target: This award is for three domestic students who identify as Black, demonstrate financial need and have a history of community service or volunteerism. Preference is given to students who have demonstrated an interest in criminal law.

Amount: $15,000 available for three students

There are more available scholarships for second and third-year Black Law students. For more information please visit here

No Comment from the Admissions Committee Provided

For more information:

- ***Admission Program Eligibility and Requirements***
- ***Entrance Scholarships***

PETER A. ALLARD SCHOOL OF LAW

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The Allard School of Law allows students to specialize in various areas of law within their JD program, these areas include a specialization in Aboriginal Law, Business Law, Law & Social Justice and Environmental & Natural Resource Law. The University of British Columbia is also partnered with the University of Hong Kong and Melbourne Law School, allowing law students to complete a joint degree.

Allard School of Law has 200 course spots per year. In 2022-2023, there was 26 Black law students out of the 574 students enrolled in the JD program, making 4.53% of the faculty's student body.

Features for Black Students

In addition to the St. Pierre, Romilly Nathanson Entrance Award in Law for Black Students scholarship, the Law Faculty has several other awards, many of which are new to the school. These awards include The Afreen Ahmed Memorial Award in Law, The Alexander Won Cumyow and Gordon Won Cumyow Memorial Award in Law, The Catherine Chow Award in Law for IBPOC Students, The Diane Nhan Award in Law for IBPOC Students, The Edwards, Kenny & Bray Award in Law for IBPOC Students, The Kevin B. Westell Award in Law for IBPOC Students, The Peter A. Allard School of Law Diversity, Equity and Inclusion Award and the Peter A. Allard School of Law Award. To learn more about these awards pleas visit Allard School of Law's website.

Sources:

LSAC
Allard School of Law
BLSA Report

uOttawa

No specific stream for Black Law Student Applicants

Admissions

Catergory

1. General
2. Special Circumstances
3. Access
4. Mature
5. Indigenous

Black applicants may apply as Access & Equity Applicants.

Entrance Scholarships for Black Students

Name: Black Student Law Scholarship

Target: to award a scholarship to Black students enrolled in their first year of the JD program

There are available scholarships that give *preference* to Black Law Students. Click here for full list of scholarships,

No Comment from the Admissions Committee Provided

For more information:

- ***Black Applicant Information***

uOttawa

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The University of Ottawa's Faculty of Law was founded in 1953. The school offers both common law and civil law programs with the civil law section taught entirely in French. The common law program offers specializations in dispute resolution, environmental law, international trade, business and human rights law, social justice and technology law, public law and aboriginal law. The English Common Law Program class size is approximately 280 students and the French Juris Doctor program's class size is approximately 80 students. The University of Ottawa is notable not only for it's offerings in both English and French, but also for JD National Program, which allows students to obtain a JD at an accelerated rate for those who already hold a civil law degree from a Canadian University. For more information regarding the University of Ottawa's programs, please visit their website.

The total number of students in the law faculty was 1140 in 2023, with 55 Black Students, making the representation about 4.82%.

Features for Black Students

The faculty of law curriculum offers various courses surrounding racial injustice including law and society: A Legal History of Racism; Race, Gender and Legal Culture and Equal Justice Advocacy. The University of Ottawa also has a BlSA chapter that helps administer the Julius Alexander Issac Moot in collaboration with various law firms, law schools and community organizations. Beyond BLSA there is a Black Student Support Group that exists for all faculties that is facilitated by psychotherapists of colour and counsellor support who are also members of the BIPOC community. While the Black Student Law Scholarship is highlighted above, the University of Ottawa has many other scholarships that Black Law students can avail of. Some of these scholarships include Common Law Black Students Entrance Scholarship, Dorothea Dadson Scholarship for Student from Racialized community, Perley Robertson, Hill & Mcdougall LLP Diversity and Inclusion Bursary, Jon and Rosa Lim Scholarship, Newton Rowell Scholarship, Durocher Smith Assistance Fund, Law Society of Upper Canada Education Equity Bursary, and the Vincent Gardner Memorial Scholarship. To learn more about University of Ottawa, Faculty of Law entrance scholarships for Black law students, please visit their website.

Sources:
LSAC
uOttawa- Programs
BLSA Report

UNIVERSITY OF ALBERTA

No specific stream for Black Law Student Applicants

Admissions Category

1 **Regular**

2 **Indigenous**

Scholarships for Black Students

Name: Robert L Philips KC Award in Law

Amount: Awarded to two students for $2,500

Name: Violet King Henry Law School Award

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Amount: Available amount of $20,000

No Comment from the Admissions Committee Provided

For more information:

- Scholarships & Awards
- Admissions

UNIVERSITY OF ALBERTA

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The University's faculty is a leader in the use of technology in the classroom from smart classrooms to computerized exams, the law school takes full advantage of available technological resources. The university also offers various unique opportunities with students through the Alberta Law Reform Institute, the Centre for Constitutional Studies, the Health Law Institute and the Wahkohtowin Law and Governance Lodge. The Faculty of Law admits around 185 students every year. In 2022-2023 the total of students between all the year's were 547 students- 4 of which were Black law students. This leaves a total of 0.73% representation of Black students when the provincial residency rate totals a 4.26%.

Features for Black Students

The University of Alberta, Faculty of Law offers an Elite Program Pathway for Law which is offered to Black undergraduate or high school students who are interested in pursuing a career in law. This program aims to demystify law school and connect aspiring Black law students with mentors, the program is a two-day event that includes an information session, tour of the building, networking reception and career panel featuring Black legal professions. This program is ran and facilitated by Black professors, practicing lawyers and law students. The law faculty also has a BLSA chapter which law students can join upon entering law school.

Sources:
LSAC
University of Alberta

UNIVERSITY OF TORONTO
FACULTY OF LAW

Black Student Application Process Summary:

The Black Student Application Process (BSAP) allows Black applicants to opt into this stream regardless of admissions category (General, Mature, Indigenous). BSAP applicants will have their personal statements reviewed by members of the Black community, including staff, students, faculty and alumni. The goal of this program is to break down barriers that Black students may experience though the law school application process.

Admissions
Catergory

1. General
2. Mature
3. Indigenous
4. Black Student Application Process

Entrance Scholarships for Black Students

- **Fraser Milner Casgrain BBPA Harry Jerome Scholarship for Black Law Students**
- **The Michael Kelly Memorial Award**

There are available scholarships that give *preference* to Black Law Students. Click here for the list of available scholarships

Comments from the Admissions Committee:

Re-affirmed their admissions category and the available resources online.

Important Links & Initiatives

- ***Black Future Lawyers***
- ***Black Student Application Program***

UNIVERSITY OF TORONTO
FACULTY OF LAW

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The Faculty of Law is one of the oldest professional faculties at the University of Toronto. The law school took it's modern form in 1949 building on the foundations of the law school that was established in 1887. The faculty is internationally recognized for academic excellence with a graduating class experiencing the highest rate of employment of all the Ontario law schools. The university is staffed with 57 full-time faculty members and 25 short-term visiting professors from the world's leading law school. The University of Toronto accepts around 200 students each year. The representation of Black law students in the faculty rests at 4.24% with a total of 27 Black students out of 637.

Features for Black Students

The University of Toronto is the founder of the Black Future Lawyer Program. This program aims to support and engage with Black-identified undergraduate students interested in studying law. These supports are also available for current law school students by offering opportunities to participate in special events, conferences, and lectures as well as mentorship and job shadowing. Events under this program can range anywhere from study groups and tours of local law firms to guest speakers, workshops and networking with local-area lawyers. To learn more about the Black Future Lawyers program, please visit their website.

Sources
LSAC
BLSA Report

Western Law

No specific stream for Black Law Student Applicants

Admissions

Catergory

1. General
2. Discretionary
3. Access
4. Indigenous
5. Mature
6. Canadian Forces

Entrance Scholarships for Black Students

Name: The Violet King Award
Target: Self-identifying Black law student entering into Year 1 of the Faculty of Law
Amount: $5,000

Name: Bereskin & Parr LLP
Target: Indigenous or Black students in their first year, preference will be given to STEM applicants.
Amount: $2,000

Comments from the Admissions Committee:

"Western Law is also implementing a Black Applicant admission pathway in the forthcoming (2025) application cycle. Candidates are encouraged to self-identify, and will be given the opportunity (like all of our applicants) to share with us their lived experiences in an optional essay (part of the personal statement). Our goal is to have all Black pathway applications reviewed by at least one racialized member of our admissions committee (among 2-3 reviewers). There will be no caps or quotas as it relates to this admission pathway."

For more information:

- ***Prospective Black law Students***

Western Law

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

Western University, Faculty of Law was established in 1959. As of 2024, the faculty offers combined graduate and undergraduate degrees in a number of disciplines as well as an Extended-Time JD program. Western Law is also notable for its Small Group Program; this entails small group learning where students are introduced to fundamental legal skills facilitated through teaching assistants who conduct hands-on legal research instruction in the library and assist with skills learning. Western University also has a 3-week January intensive learning experience for first year students and again for upper year students through a range of electives. Western Universities class size is around 185 students per year with a total of 600 students in the whole program, 18 of which are Black Law Students

Features for Black Students

TThe law faculty also has a Preparation Course for Black, Indigenous and Low-Income Students that coves some of the law school application fees; five students are selected each year and includes a voucher of $200 for the Ontario University Application Centre, a waiver of Western's Faculty of Law application fee ($115) and Princeton Review's LSAT Fundamentals LSAT Prep Course. For more details about the application process for this course pack, please visit Western Law's website. Western law also has a BIPOC Student Mentorship Program which is run by the Student Legal Society. The goal of this program is to pair current BIPOC law students with practicing legal professionals to help students navigate the unique challenges they may be facing. In this program, each student is paired with a lawyer who can answer questions, offer guidance and share their own experiences. The faculty of law also has an Assistant Dean of Equity, Inclusion and Diversity that specifically offers support for racialized students.

Sources:
LSAC
Western Law
BLSA Report

OSGOODE

OSGOODE HALL LAW SCHOOL

No specific stream for Black Law Student Applicants

Admissions Catergory

Category 1	Category 2
General	**Indigenous**

Entrance Scholarships for Black Students

- Torkin Manes Bursary

Osgoode also has the Scotia Award for Equity, Diversity and Inclusion where preference is given to Black applicants.

Comments from the Admissions Committee:

“Osgoode emphasizes the importance of completing Part B of the personal statement, indicating any impacting diversity factors that applicants have the option of disclosing. If an applicant has self-identified as Black, they are placed into an internal category for consideration.

IBLSA at Osgoode also initiated the Raise the Black Bar program, which is a program for Black high school students across the TDSB. This program will allow young Black secondary students to learn more about their career options in law and to connect with Black law student mentors.”

OSGOODE
OSGOODE HALL LAW SCHOOL

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

Osgoode Hall Law School was founded in 1889 and is one of Canada's largest law schools and is home to the largest law library in Canada. Osgoode was also the first law school to establish a student-staffed community legal service clinic and the first to develop innovative intensives and clinical teaching programs. The faulty also has a legal Professional Development Centre in Canada and is known for their online legal research. Osgoode's mission is to contribute new knowledge about the law and the legal system by being a centre for thoughtful and creative legal scholarship and to provide an outstanding professional and liberal education to their students.

Features for Black Students

Osgoode has one of the largest BLSA chapters in Canada, this BLSA chapter helps facilitate the Raise the Black Bar. This program is targeted towards Black high school students across the Toronto District School Board and aims to provide students with more information about careers in law and connects high school students with Black law student mentors. Osgoode Hall gets approximately 225 applicants out of 3,000 that are self-identified Black applicants. Below is summary chart of the number of Black students accepted over the last 10 years, and the percentage when compared to the total class size.

Students who self-identified as Black on Osgooode's Admissions Survey
For 1L entering class

(Last updated March 2024)

Entering Year	% of 1st Year Entering Class	# Of students
2013	9%	26
2014	6%	18
2015	9%	27
2016	6%	19
2017	7%	22
2018	7%	22
2019	8%	24
2020	6%	17
2021	10%	30
2022	10%	31
2023	9%	29

Sources
LSAC
Osgoode

Windsor Law
University of Windsor

No specific stream for Black Law Student Applicants

Admissions Category

1 **General**

2 **Indigenous**

Windsor University Undergoes a very holistic approach when reviewing applications. There are seven admission criteria set out. These criteria help to address a variety of applicants' perspectives and take things into account such as race and ethnic background.

Scholarships for Black Students

Windsor Law has various scholarships available for Black law students throughout their 3 years of law school.

Some of these include:

- Honourable Julius Alexander Issac Scholarship (Entrance)
- Delos Rogest Davis K.C. Memorial Award
- Enbridge Black Law Student Award

A more exhaustive list can be found here

Comments from the Admissions Committee:

"Windsor Law is home to Canada's first Black Law Student Association (BLSA), The holistic nature of the admissions criteria allows the committee to view various aspects of the candidates' application package- including race. Windsor Law also has a wide array of scholarships available for incoming and existing Black law students."

For more information:

- ***Admission Faqs***

Windsor Law
University of Windsor

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

The University of Windsor Faculty of Law was founded in 1968. Since then Windsor Law has grown, reaching an annual enrolment of approximately 700 students and 36 full-time staff. Windsor has earned it's distinction among other law schools for their emphasis on access to justice, community service and U.S.- Canadian law program. Windsor Law has Degrees and combined degree programs available; the JD Canadian and Canadian and American Dual JD, Masters in Business/JD Program and the Masters in Social Work/JD Program. Through the dual program, students will complete 104 credits in three years while attending both Windsor Law and University of Detroit Mercy School of Law. Successful graduates of this program will receive both their Canadian JD and American JD Degrees allowing them to practice in both Canada and the United States.

Features for Black Students

Windsor Law is home to the founders of BLSA, a community of which has grown over the year's since. The University of Windsor also has an Anti-Black Racism Committee that spearheads various different initiatives. These initiatives include data driven accountability through Anti-Black Racism Task Forces and Radicalized Data Collection; Equity of Opportunity for Black Faculty & Students through the Black Scholars Hiring Initiative, Anti-Black Racism Initiatives Fund, and the Black Student Scholarship Initiative; Building Capacity & Competency for Challenging Racism through Training and Education Frameworks, and lastly; a Review and Revision of Procedures and Policies that entail the restricting of the Office of Student Experience and Student Misconduct Procedure Review, Review of Procedures in line with OHRC Guidelines and EDI Review. While the Anti-Black Racism initiative runs through the whole campus, Windsor Law has its own committee to address Anti-Black Racism throughout the faculty and Windsor Law community. This community is comprised of both students, faculty and professors who are a part of the BIPOC community. For more information on the ant-Black racism I=initiative, please visit the University's website.

Windsor Law also has an array of available scholarships and bursaries for Black and Indigenous students, some of these scholarships include the Howie Sacks & Henry LLP Racialized Student Scholarship, the JD Bridges Bursary, Justice Juanita Westmoreland- Traoré Leadership Scholarship, Scotiabank Scholarship for Law Students the Stewart and Lysaght Dual JD Prize and the Thora Ellis Espinet Bursary. For more information regarding scholarships and bursaries, please visit Windsor Laws website.

McGill | Faculty of Law | Faculté de Droit

No specific stream for Black Law Student Applicants

Admissions

Catergory

1. University Students
2. Mature
3. CEGEP/QFB
4. Advanced Standing
5. Transfer Students
6. Indigenous

While McGill does not have a separate application stream for Black students, there is a holistic review process, and students are encouraged to self-identify in their personal statements

Entrance Scholarships for Black Students

Name: Osler, Hoskin & Harcourt LLP

Target: Awarded to one Black Studnt on the basis of academic achievements

There are available scholarships that give *preference* to Black Law Students. Click here for full list of scholarships,

Comments from the Admissions Committee:

"We have a holistic review process, meaning that all aspects of an application are considered in an admission decision. We encourage Black applicants to discuss this aspect of their identity in their personal statement, and how this may have impacted their decision to apply to law school."

For more information:

- ***Black Applicant Supports***
- ***Applicant Categories***
- ***Tuition and Financial Support***

McGill | Faculty of Law | Faculté de Droit

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

McGill University was founded in 1821, the law faculty was created over 30 years later in 1853. McGill University is located in Montreal Quebec, Canada and teaches both Canadian (common law) and Quebec laws (civil law). McGill is known for its bilingual program and has notable areas of law which they hold strengths, including air and space law, comparative law, international law, conflict of laws, continental private law and human rights law. The class size can vary slightly, with a class size of 182 in 2020 and 179 in 2022. The total number of students in the law program is 583 students, and out of that number, 49 of those students are Black.

Features for Black Students

McGill does not have a separate application stream for Black students however their admissions website emphasis their holistic review process and encourages applicants to self-identify in their personal statements. McGill Law has a Black Law Students' Association chapter that offers personal statement and CV review workships for university, CEGEP and mature applicants. The association also offers mock interviews for those who have been selected along with mentorship opportunities. The law faculty also has bursary programs offered by the JD bridges foundation that covers some of the law school application fees, LSAT and LSAT prep- course fees; this program also assists applicants with personal statements drafting by connecting them with mentors.

Beyond the admission process, several resources are available to Black law students. McGill has highlighted year-round programming offered by BLSAM such as conferences, workshops and more. McGill also makes available the Black Student Network which offer additional social and political events. Beyond these resources, the faculty has courses, moots and other opportunities that can often be of special interest to Black law students; these include a course in Critical Race Theory, participation in the Julius Alexander Diversity Moot (ran by BLSA Canada) and several for-credit legal clinic placements that serve Montreal's Black communities such as Clinique juridique du Grand Montréal and Clinic juriidique de Saint-Michel.

McGill also offers financial assistance through financial aid, bursaries and scholarships; many of the awards within the faculty of law gives preference for Black students or for BIPOC students.

Sources:

LSAC Website

McGill Website

BLSA Report

DALHOUSIE UNIVERSITY | SCHULICH SCHOOL OF LAW

Admissions

Catergory

1. General
2. Indigenous
3. Indigenous, Blacks & Mi'kmaq
4. Historically Underrepresented
5. Work/Life Experience

Indigenous Blacks & Mi'kmaq Category Summary:

The Indigenous Blacks & Mi'kmaq initiative prioritizes the admission of students who are either African Nova Scotians (Indigenous Blacks), Mi'kmaw and other Black individuals who were born and raised in Nova Scotia. Black Canadians who are not Nova Scotian native can apply under the Historically Underrepresented application category.

Scholarships for Black Law Students

Dalhousie Schulich School of Law offers various scholarships for Black law Students. Available scholarships can be found here.

- for more information regarding bursaries and scholarships please visit here.

Comments from the Admissions Committee:

Re-affirmed their admissions category and the already available resources online.

For more information:

- ***Admission Categories & Program Options***
- **Indigenous Blacks & Mi'kmaw Initiative**

DALHOUSIE UNIVERSITY | SCHULICH SCHOOL OF LAW

Background and Legacy

Unveiling the School's Establishment and Historical Significance

Background

Dalhousie University's Schulich School of Law was founded in 1883 and is the oldest university-based common law school in Canada. Schulich is known for various areas of law including marine & environmental law, law and technology, health law and policy, business and tax law, food law, human rights law, international law, legal ethics and restorative justice. The Law Faculty admits around 170 students each year, totalling around 490 students between all year's of the JD program, 37 of which are Black Law Students.

Features for Black Students

Beyond the admissions stream, Schulich School of Law has the IB&M Initiative (Indigenous Blacks & Mi'kmaq). This initiative was established in 1989 to increase representation in the legal profession and reduce discrimination. This initiative involves various activities such as community outreach and recruiting, financial and other supports for students, developing scholarships I n areas of Aboriginal law and African Canadian legal perspectives and promoting the hiring and retention of graduates. Since the IB&M initiative began, over 217 Black and Aboriginal graduates have graduated and pursued careers in private law firms, the judiciary community organizations and government; this IB&M initiative has notably been recognized numerous times as a model for diversity in legal education. To learn more about the IB&M initiative, please visit Schulich School of Law's website.Schulich School of Law also has a mandatory course on African Nova Scotian Legal History & Issues and Critical Race Theory (AN/CRT). All first-year law students are required to take this intensive course which is offered over three days in October and two days in February. This course is aimed to address Anti-Black Racism and other forms of discrimination, critical race theory and practice that can help dismantle racial inequity, the legal distinction African Nova Scotians and how law students can work towards being culturally competent lawyers within the context of lawyers' professional obligations.

Sources:
LSAC
BLSA Report
Schulich School of Law

BLSA OVERVIEW

The Black Law Students' Association of Canada (BLSA Canada) is a national student-run organization founded in 1991. The Association is committed to supporting and enhancing academic and professional opportunities for Black law students in both official languages. This commitment extends to Black high school and undergraduate students and the community generally through our mentorship initiatives and our scholarship program: BLSACares.

BLSA Canada and its chapters at law schools nationwide are concerned with challenges faced by the Black community as they relate to the legal system. Launching various initiatives to promote increased representation of Black students in law schools and assist in facilitating their success are a priority. BLSA Canada is proud to provide opportunities for formal and informal discussions about many subjects including legal policy issues, effective career strategies, evolutions in substantive law and access to justice for marginalized groups.

The Association reflect the diversity of the African/Black/Caribbean experience and welcome allies from all backgrounds who also seek to make a meaningful contribution to the furtherance of justice.

Many law schools across Canada have chapters where volunteers among the student body join either the executive committee of join as a general member to help fulfill the goals of BLSA Canada. The following page highlights the size of the BLSA chapters in each law school.

BLSA MEMBERSHIP 2023-2024

Law school	Number of members
Faculty of Law Lakehead University	5
University of Calgary, Faculty of Law	31
University of Manitoba, Faculty of Law	9
University of New Brunswick, Faculty of Law	3
Queen's University, Faculty of Law	25
University of Saskatchewan, College of Law	N/A
Thompson Rivers University, Faculty of Law	1
TMU, Lincoln Alexander School of Law	36
McGill University, Faculty of Law	36
University of Ottawa, Common/Civil	20/3
Western University, Faculty of Law	12
Dalhousie, Schulich School of Law	29
University of Windsor, Windsor Law	23
University of Alberta, Faculty of law	7
Allard School of law	20
University of Toronto, Faulty of Law	21
University of Victoria, Faculty of Law	8
York University, Osgoode Hall Law School	42

Statistics provided by BLSA Canada

Conclusion

A Letter to the Schools

There has been a huge improvement in creating resources for aspiring Black students. However, Schools still have a responsibility not just to educate, but to create environments where every student feels valued, supported, and empowered to thrive.

One crucial aspect of fostering this inclusive environment is the recognition of unique challenges faced by different groups. While efforts to create special streams for Indigenous students are very commendable, it's essential to extend this support to other marginalized groups, including Black students. Expecting Black students to apply through a "special circumstance" section undermines the need for dedicated streams tailored to their experiences and needs. Just as we prioritize Indigenous streams, we must equally acknowledge the necessity of a Black stream in our application processes.

Moreover, financial barriers often hinder access to education for Black students. By offering multiple scholarships specifically for Black students, we not only alleviate financial burdens but also send a powerful message of support and encouragement. These scholarships serve as tangible manifestations of our commitment to diversity and inclusion, while also motivating Black students to pursue their academic aspirations without the added stress of financial constraints.

Creating safe spaces goes beyond admission processes and financial support; it requires proactive measures to address systemic issues such as Anti-Black Racism. Establishing an Anti-Black Racism committee or incorporating features tailored to the needs of Black students within existing diversity and inclusion initiatives is paramount. These committees can provide a platform for dialogue, advocacy, and the implementation of policies that combat discrimination and promote a culture of respect and understanding.

There are numerous resources and strategies available to support Black students within educational institutions. For instance, mentorship programs pairing Black students with faculty or alumni can provide invaluable guidance and support. Cultural competency training for staff and faculty can foster a more inclusive learning environment. Additionally, initiatives such as peer support groups or affinity networks offer spaces for Black students to connect, share experiences, and access resources tailored to their needs.

Creating safe spaces and opportunities for Black students isn't just a moral imperative; it's essential for fostering a truly inclusive educational environment. By establishing dedicated streams for Black applicants, offering scholarships, and implementing Anti-Black Racism Committees, we demonstrate our commitment to equity and diversity. Let us not only acknowledge the barriers faced by Black students but actively work to dismantle them, creating a future where every student, regardless of race or background, can thrive and succeed.

Conclusion

While this document serves as a guide to incoming Black law students in the application process, we urge law faculties to reflect on the suggestions made in this document and to learn from the success of other faculties' initiatives and resources. As noted on page 8, schools are evaluated based on availability of resources, Black admission streams, and scholarships. However, even the schools in the "green" zone are suggested to grow and expand their resources.

Black Applications: Black applicants are encouraged to use this resource as a starting point and to reach out to admissions committees about opportunities and resources available within the faculty.

Law Schools: Law schools are urged to reflect on this report and evaluate ways in which they can improve their resources to better address the underrepresentation of Black lawyers in Canada.

JOURNAL OF LAW STUDENT SCHOLARSHIP

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DES INFORMATIONS SUR VOS DROITS EN TANT QUE LOCATAIRE / INFORMATION ON YOUR RIGHTS AS A TENANT

A Special Project by Béatrice Lafontaine and Émiliane Rancourt
In collaboration with Le Collectif Juridique
Faculty of Law, Université de Montréal

Béatrice is a third year law student at the Université de Montréal. The things Béatrice enjoys the most about studying law is being able to better understand the world around her a bit more everyday and develop important values such as authenticity, open mindedness, and perseverance.

Growing up, Émiliane always carried a strong sense of justice and a sensibility for those around her. That explains why, as soon as she started studying law at the Université de Montréal, she fell in love with this field, particularly anything relating to social justice. Through many volunteer experiences in legal clinics and various community organizations, she has forged a clear picture of the future lawyer she wants to be.

Que faire si mon locateur refuse d'effectuer les réparations ou travaux nécessaires dans mon logement?

Vocabulaire

Locateur : la personne qui loue un logement à quelqu'un, souvent le propriétaire du logement (mais pas toujours).

Locataire : la personne qui habite le logement en échange d'un loyer.

Les obligations du locateur dans la loi

Selon le Code civil du Québec, le locateur a l'obligation de maintenir le logement dans un bon état tout au long du bail.

Le locateur doit effectuer les réparations et l'entretien nécessaire pour permettre au locataire de jouir paisiblement de son logement et il doit se conformer aux exigences de la loi en matière de sécurité et de salubrité.

Il a l'obligation d'offrir un logement sécuritaire, c'est-à-dire un logement qui ne représente aucune menace pour la santé et la sécurité des locataires.

Étapes de la démarche

1. Communiquer avec le locateur lorsque des réparations ou des travaux d'entretien sont nécessaires;
2. Envoyer une mise en demeure à votre locateur*;
3. Contacter son arrondissement afin qu'un inspecteur vienne inspecter le logement*;
4. S'adresser au Tribunal administratif du logement (TAL), qui peut exiger du locateur qu'il:
   - Effectue des réparations ou des travaux dans le logement;
   - Verse une compensation financière au locataire;
   - Diminue le loyer du locataire.

Le Tribunal pourrait également autoriser un locataire à effectuer les réparations nécessaires dans son logement et obliger le locateur à rembourser les dépenses.

*Voir page 2

514-507-3054
info@lecollectifjuridique.ca

Le Collectif Juridique x level | égaliser THOMSON REUTERS

Que faire si mon locateur refuse d'effectuer les réparations ou travaux nécessaires dans mon logement?

La mise en demeure

La mise en demeure est une lettre adressée à votre locateur lui demandant de se conformer à ses obligations légales. Cette lettre est un moyen de faire une demande claire et d'exprimer le sérieux de la chose. Il s'agit d'un ultime avertissement avant d'entamer des démarches judiciaires. Une lettre de mise en demeure doit mentionner, entre autres :

- La date de l'envoi;
- Le nom et les coordonnées de la personne à qui elle est adressée;
- Un résumé court et précis de la situation problématique et de ce qui est demandé;
- Un délai raisonnable pour que la personne puisse effectuer ce qui est demandé;
- Votre signature.

De plus, la mise en demeure doit être envoyée d'une façon qui vous permet d'avoir une preuve de sa réception, comme par huissier ou par poste recommandée.

L'inspection du logement

Un inspecteur de la ville peut venir évaluer votre logement à votre demande et effectuer un rapport. Ce rapport pourra être mis en preuve si jamais vous décidez d'entreprendre des démarches au TAL. Cela est une démarche qu'il est possible d'effectuer en parallèle des démarches au TAL. Lorsque la ville intervient, celle-ci peut, entre autres :

- Exiger des correctifs;
- Exiger une expertise;
- Imposer des amendes.

Pour en savoir plus, visitez : montreal.ca

514-507-3054
info@lecollectifjuridique.ca

L’aide juridique en matière de logement

L’aide juridique offre un service juridique gratuit ou à prix modique offert aux personnes qui s’y qualifient financièrement. Il est important de vérifier si vous êtes admissible à l'aide juridique. Cela pourrait vous permettre d'être représenté par avocat tout au long de vos démarches.

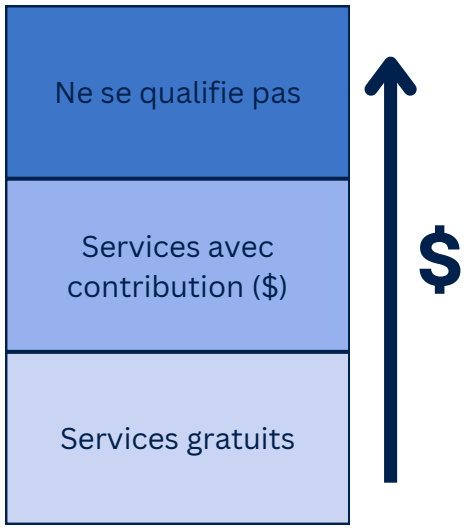
Calcul

Pour déterminer si une personne est financièrement admissible à l’aide juridique, on tient compte de son revenu, incluant le salaire, les bénéfices de programmes gouvernementaux de remplacement de revenus et les revenus de retraite, mais aussi de ses avoirs, comme les propriétés et les économies.

Pour ce calcul, on considèrera :

- soit le revenu de l’année précédant la demande à l’aide juridique;
- soit une estimation du revenu de l’année en cours dans les cas où un changement significatif serait survenu.

Certains montants peuvent être déductibles comme les dettes et les paiements de pension alimentaire.



Représentation par avocat

En termes de représentation, deux options sont possibles :

- Une représentation par un avocat de l’aide juridique; ou
- Une représentation par un avocat en pratique privée de votre choix, qui accepte les mandats de l’aide juridique.

Pour en savoir plus...

Consultez le site web de la Commission des Services Juridiques au csj.qc.ca ou contactez la succursale de Montréal et Laval au 514-864-2111.

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info@lecollectifjuridique.ca

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Le cheminement d'un dossier au Tribunal administratif du logement

Différend

1 Conciliation

Ce service gratuit permet aux parties de négocier une entente en présence d'un tiers impartial, le conciliateur. On y participe sur une base volontaire afin d'éviter de devoir aller en audience. Le processus est confidentiel.

2 Entente

Lorsque les parties parviennent à une entente, elles peuvent la faire entériner par le Tribunal, ce qui la rend alors publique. Une fois l'entente entérinée, elle a la même force exécutoire qu'un jugement rendu suite à une audience. Le dossier est ensuite fermé.

3 Audience

Lorsque aucune conciliation n'a eu lieu ou qu'aucun règlement n'est intervenu suite à la conciliation, le Tribunal tient une audience. Elles sont généralement publiques.

Avant l'audience, le Tribunal envoie par la poste, à toutes les parties, un avis indiquant la date, l'heure ainsi que le lieu de l'audience.

L'audience porte uniquement sur les faits contenus dans la demande. Elle sert à ce que les deux parties puissent présenter toutes les preuves qui soutiennent leurs prétentions.

4 Décision

La décision n'est pas rendue immédiatement après l'audience. Le juge dispose d'un délai de trois mois pour le faire. Elle sera envoyée par la poste à toutes les parties, puis déposée dans le dossier électronique du Tribunal.

Le juge rendra une décision uniquement sur les enjeux qui lui ont été présentés et qui ont été portés à son attention. À noter que le demandeur a la possibilité de se désister en tout temps avant la tombée de la décision.

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L’exécution d’un jugement du Tribunal administratif du logement

Contestation

Il existe plusieurs moyens de contester une décision du TAL. Cependant, certaines conditions doivent être remplies. À ce stade, il est approprié de consulter rapidement un avocat afin de déterminer si une contestation est possible.

1- Rectification
2- Rétractation
3- Révision
4- Appel à la Cour du Québec

Exécution

Une fois que le juge a rendu sa décision, deux choix s'offrent aux parties : se conformer à la décision ou la contester si elles ont des motifs pour le faire. Si personne ne conteste la décision, l'étape de l'exécution débute. La partie à qui la décision ordonne quelque chose (par exemple payer une somme d'argent ou quitter son logement) doit collaborer avec l'autre partie et faire ce que la décision lui ordonne.

Les délais pour s’exécuter volontairement sont variables. Certaines décisions sont exécutoires dès le moment où la décision est rendue et d’autres prévoient un délai allant jusqu’à trente jours. Le délai est déterminé par le juge.

Passé le délai d'exécution volontaire, des démarches peuvent être entamées pour forcer l'exécution de la décision. Ces démarches sont faites auprès d'un huissier de justice et peuvent se solder par une saisie ou une expulsion forcée, par exemple.

Attention ! Lorsque la décision ordonne l'expulsion pour non-paiement de loyer et que le locataire a payé le loyer dû, les frais et les intérêts avant la décision, le locateur ne peut plus entreprendre les procédures d’expulsion forcée.

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info@lecollectifjuridique.ca

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Ressources, conseils et information juridiques

AIDE JURIDIQUE

L'aide juridique offre notamment des services aux justiciables dans les matières suivantes :

- Résiliation de bail;
- Salubrité (moisissures, présence de vermine);
- Réparations majeures;
- Logement subventionné;
- Non-respect des obligations du locateur;
- Augmentation déraisonnable de loyer.

Trouver un point de service

Téléphone : 514 864-2111
aidejuridiquedemontreal.ca

SERVICES JURIDIQUES GRATUITS OU À FAIBLE COÛT

Centre de justice de proximité

Grand Montréal : 514 227-3782 (option 4)
Laval / Laurentides / Lanaudière : 450 990-8071
justicedeproximite.qc.ca

Clinique d'information juridique du Y des femmes

Téléphone : 514 866-9941 poste 293
ydesfemmesmtl.org

Clinique juridique du Barreau

Téléphone : 1 833 997-2527
cliniquejuridiquebarreau.ca

Clinique juridique de Saint-Michel

Téléphone : 514 621-4737
Courriel : info@cjsm.ca
cjsm.ca

Le palier juridique

Montréal : 514 303-2532
Laval : 450 490-4988
lepalierjuridique.com

Le Collectif Juridique

Téléphone : 514-507-3054
Courriel : info@lecollectifjuridique.ca
lecollectifjuridique.ca

Juripop

Téléphone : 1 855 587-4767
juripop.org

VERSION ANGLAISE

What should I do if my lessor refuses to accomplish the necessary repairs or maintenance in my dwelling?

Vocabulary

Lessor: A person, often the owner (but not always!), who rents out a dwelling to someone.
Tenant: The person who lives in a dwelling in exchange for paying rent (can also be called a lessee).

Lessor's obligations in the law

According to the Civil code of Quebec, a lessor must maintain the leased property in a good state throughout the term of the lease.

The lessor must carry out the repairs and maintenance necessary to allow the tenant to peacefully enjoy the leased dwelling and must comply with the requirements of the law regarding safety and health.

The lessor must provide a safe dwelling, which means a dwelling that poses no threat to the health and safety of tenants.

Steps to take

1. Communicate with the lessor as soon as repairs or maintenance work is necessary;
2. Send a letter of formal notice to the lessor;*
3. Contact your borough for an inspector to come and inspect the dwelling;*
4. Make a request to the Tribunal administratif du logement (TAL), who can force the landlord to :
   - Carry out repairs in the dwelling;
   - Pay financial compensation to the tenant;
   - Reduce the tenant's rent.

The Tribunal could also authorize the tenant to carry out the necessary repairs in their dwelling and force the lessor to then reimburse expenses.

*See page 2

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What should I do if my lessor refuses to accomplish the necessary repairs or maintenance in my dwelling?

Formal Notice

A formal notice is a letter addressed to your lessor requiring him to comply with his legal obligations. This letter is a way to make a clear request and express the seriousness of the matter. This is a final warning before taking legal action. A letter of formal notice must mention, among other things:

- The date of sending;
- The name and contact details of the person to whom it is addressed;
- A brief summary of the problematic situation and what is being requested;
- A reasonable amount of time for the person to do what is requested;
- Your signature.

In addition, the formal notice must be sent in a way that allows you to prove its reception, such as by bailiff or registered mail.

Dwelling inspection

A city inspector can come and evaluate your dwelling at your request and produce a report. This report can be put into evidence if you ever decide to take steps at the TAL. This is a process that can be carried out in parallel with the TAL procedures. When the city intervenes, it can, among other things:

- Require that corrective action be taken;
- Require an expert assessment;
- Impose fines.

To find out more, visit : montreal.ca

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Legal aid in housing matters

Legal aid provides a free or low-cost legal service to those who qualify financially. It is important to check if you are eligible for legal aid. This could allow you to be represented by a lawyer throughout your proceedings.

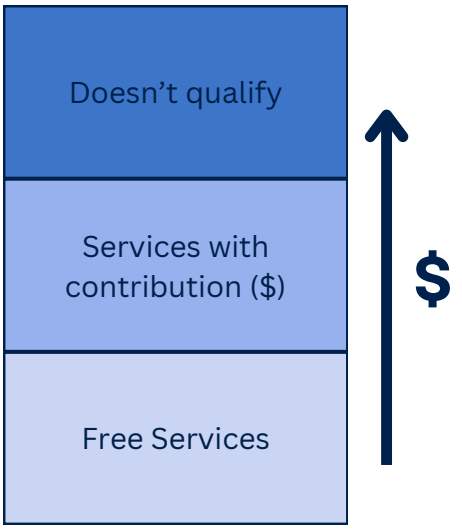
The Calculation

To determine whether a person is financially eligible to legal aid, income is considered, including salary, benefits from government income replacement programs, and retirement income. Assets are also considered, such as property and savings.

The calculation takes into account:

- income from the year preceding the application for legal aid; or
- an estimate of current year income in cases where a significant change has occurred.

Some amounts may be deductible such as debts and support payments.



Representation by lawyer

In terms of representation, two options are possible:

- Representation by a legal aid lawyer; or
- Representation by a lawyer of your choice in the private practice, who accepts legal aid mandates.

To find out more...

Visit the website of the Commission des Services Juridiques at csj.qc.ca or contact the Montreal and Laval branch at 514-864-2111.

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The progress of a file at the Tribunal administratif du logement

Dispute

1 Conciliation

This free service allows the parties to negotiate an agreement in the presence of an impartial third party, the conciliator. Participation is voluntary, to avoid having to go through a hearing. The process is confidential.

2 Agreement

When the parties reach an agreement, they can have it ratified by the Tribunal, which then makes it public. Once the agreement is ratified, it has the same enforceability as a judgment rendered following a hearing. The file is then closed.

3 Hearing

When no conciliation has taken place or no settlement has been reached following conciliation, the Tribunal holds a hearing. They are generally public.

Before the hearing, the Tribunal sends a notice by mail to all parties indicating the date, time and location of the hearing.

The hearing concerns only the facts contained in the request. This allows both parties to present all the evidence that supports their claims.

4 Decision

The decision is not made immediately after the hearing. The judge has three months to do so. It will be sent by mail to all parties and then filed in the electronic file of the Tribunal.

The judge will only decide on things that have been asked of him and that have been brought to his attention. Please note that the applicant can withdraw at any time before the decision is made.

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Execution of a judgment from the Tribunal administratif du logement

Contesting a decision

There are several ways to challenge a decision of the TAL. However, certain conditions must be met. At this point, it is appropriate to promptly consult an attorney to determine whether a contestation is possible.

1- Correction
2- Revocation
3- Review
4- Appeal at the Court of Québec

Execution

Once the judge has made his or her decision, the parties have two choices: comply with the decision or challenge the decision if they have grounds to do so. If no one contests the decision, the execution stage begins. The party who is ordered to do something by the decision (for example, pay a sum of money or move out of their home) must cooperate with the other party and do what the decision orders.

The deadlines for voluntarily complying vary. Some decisions are executory from the moment the decision is rendered and others provide for a period of up to thirty days. The deadline is determined by the judge.

After the voluntary execution period, steps can be taken to force the execution of the decision. These steps are taken with a bailiff and can result in seizure or forced eviction, for example.

Please note: If the decision terminates the lease and order eviction due to non payment of rent and the tenant has paid the rent due, fees and interest before the decision was rendered, the landlord can no longer initiate forced eviction procedures.

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Legal resources, advice and information

LEGAL AID

Legal aid offers services in the following areas:

- Termination of lease;
- Sanitation (mold, presence of vermin);
- Major repairs;
- Subsidized housing;
- Failure to comply with the landlord's obligations;
- Unreasonable rent increase.

Find a service point

By phone : 514 864-2111
aidejuridiquedemontreal.ca

FREE OR LOW COST LEGAL SERVICES

Centre de justice de proximité

Grand Montréal : 514 227-3782 (option 4)
Laval / Laurentides / Lanaudière : 450 990-8071
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Legal Information Clinic of Y des femmes

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Legal Clinic of the Barreau

By phone : 1 833 997-2527
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