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CURRENTS

READINGS IN RACE RELATIONS

Volume 8, No. 2
**The Justice System:
Is It Serving or
Failing Minorities?**



URBAN ALLIANCE ON RACE RELATIONS

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Readings in Race Relations

Volume 8, Number 2
The Justice System:
Is it Serving or Failing Minorities?



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The Urban Alliance on Race Relations is an educational agency and an advocate and intermediary for racial minorities. It works towards encouraging better race relations, increased understanding and awareness among our multicultural, multiracial population through programs of education directed at both the private and public sectors of the community. It focuses its efforts on the institutions of our society including educational systems, employment, government, media, legislation, police, social service agencies and human services, in order to reduce patterns of discrimination and inequality of opportunity which may exist within these institutions.

The work of the organization is carried out through committees such as: education, employment, media and judicial.

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Editorial**Wilson Head**

This issue of Currents is dedicated to the memory of Wilson Head, a founder and past President of Urban Alliance on Race Relations and member of the editorial committee of Currents who died on October 7, 1993. I first met Wilson when he was director of research and planning for the Metro Social Planning Council and have since been touched by him in many ways through his work at the Urban Alliance, as past President of the National Black Coalition of Canada, a member of the Metro committee on Race Relations and Policing, at York University and in the numerous other capacities that Wilson pursued with energy, enthusiasm and leadership. As a friend, advisor and mentor, Wilson will long be remembered for his fight against racism through his activities and the example of his life.

In examining the pursuit of racial equity in Canada today, it is instructive to reread Wilson's article in Volume 1, No. 1 of Currents written over ten years ago:

"First," he said, "it is necessary to clear away many of the misconceptions and myths which many Canadians so ardently accept and believe... Any significant change in this situation must of necessity be based on awareness of racial problems on the national agenda." Rather than be encouraged to believe in the myths of racial harmony, there continues to be a need for Canadians to be more aware of the nature of the violence upon people of colour. We need far more precise data on the nature of racial injustice in Canada.

"Second," said Wilson, "a clearer definition of the goals and methods of organizational activity must be achieved. Considerable confusion still exists regarding the short and long term goals of specific program activities. For example, is a specific activity ... working to improve the relationship between the police and local citizens a goal in itself, or is it merely one step in a more comprehensive goal?" Too many activities continue to be pursued in the race relations field that are far more removed from actually pursuing measurable improvement in racial equity. Any anti-racism initiative must show definable results that reduce in a measurable way racial injustices.

"Third," argued Wilson, "progress in eliminating or even seriously reducing prejudice and racial discrimi-

nation in Canadian society will depend on a much clearer awareness of the basic value system of Canadian society." Developing appropriate responses to racism continues to raise moral as well as other fundamental questions regarding the nature of Canada as a democratic society. The refusal to acknowledge racism is frequently a contest over meanings. Discussion about the racism of the majority society is still frequently informed by the idea that racism means only the overt acts of bigots. If racism is denied, it becomes not only impossible to identify but also to confront. Racist doctrines and dogmas, laws and language, policies and practices, which have shaped and defined Canadian social, cultural, political and economic institutions for over 200 years are not easy to obliterate. Let us accept that the ideology of democratic liberalism and the principles of fairness and equality is not yet fact but has to be pursued with great vigour and honesty.

This new format for Currents has been necessitated by the realities of finance. However, it also permits greater flexibility in overall size and the length of articles which reflects some of the concerns expressed in the survey of readers of Currents carried out last year.

Tim Rees

Focus on Racism
Legal Perspectives from a Black Experience*

By Esmeralda M.A. Thornhill

Racism is an indelible blot on the daily agendas of every Black person living in Canada. It is not a novel phenomenon. A cursory overview of our History reveals how the roots of Racism, deeply embedded in Canada's past, have bequeathed to today's institutions a legacy of Racism. Law has not escaped unscathed. Yet, our Justice System, along with Canadian society would continue playing ostrich to the ongoing patterns of Racism as a material reality. The stroke of the Legislator's pen abolishing slavery in 1833 did not succeed in banning the attendant collective mind set which, through unwritten consensus, would dictate Black people's proper place. Despite a general conspiracy of silence and denial, the prevalence of Racism in Canadian Legal Culture today is demonstrable. The manifest uncomfotability that persons of the dominant group feel when compelled to address racism does not cancel out the important leverage the factor of POWER plays in the equation of Racism.

Law should be emancipatory and liberatory for everyone. And although for Black people, Law in Canada has so often operated against us and so seldom worked for us, Law remains too valuable a tool for us ever to abandon.

Introduction

Canada is a former colony of France and Great Britain, two European colonial powers who have left their mark indelibly stamped on our institutions, especially our legal institutions. These Mother Countries — to use the misnomer — remained steadfastly silent on issues of equality and the right to nondiscrimination. To their colonies they offered neither response nor remedy for the problem of Racism¹. And indeed, how could this be otherwise? For, equality and the right to not be discriminated against was in diametrical opposition to the philosophy and inimical to the economic interests of these two powers². Consequently, down through the years, our 1867 Canadian Constitution, the British North America Act, (BNA), a very cut and dry administrative bill emanating from the British Imperial Parliament, merely mirrored, maintained, and perpetu-

ated the self same conspiracy of silence within our Canadian legal tradition and culture.

Even today, in 1994, a full decade after the repatriation of our Constitution with its entrenched Charter of Rights, this denial and erasure bequeathed to us by colonialism are in part responsible for the seemingly gaping "legal void" of our Law when it comes to dealing with Racism or the right to nondiscrimination.

Our Canadian legal tradition has been wilfully blind³ and/or insidiously complicitous before the litany of flagrant acts of racial discrimination that punctuate the history of this country:

- systematic and legalized subjugation of First Nations Peoples⁴;
- enslavement of Black and Native Peoples⁵;
- eugenic Immigration policies grounded on the principle, "White if possible"⁶;
- a discriminatory Head Tax imposed on the Chinese⁷;

** To the Memory of Julia Alanna Thornhill 1960-1992. The combined fruits of many reflections inform this article. The text represents the essence of my verbal deposition as expert witness before the November 1988 Royal Commission of Inquiry into the Prosecution of Donald Marshall Jr., as well as the synthesis of many lectures subsequently delivered in a variety of academic, legal, governmental and public forums. As an educator, I welcome this opportunity to acknowledge the numerous unnamed individuals who with courage and*

candour, and of their own free will decided to react and shared with me their spontaneous feelings of discomfort, incomprehension, trivialization, anger, and resistance to change... all of which were invaluable in helping me to better hone and focus on the message I wanted to communicate with clarity, precisions and efficacy. I remain particularly grateful to my colleagues, Dominique Kouka-Ganga and Lydya Assayag, who generously shared with me their critical insight and rigour.

- confiscation of their property, internment in concentration camps, and the quasi civil death of Canadians of Japanese origin⁸;
- the turning back at the doorstep of boatloads of hopeful Indians waiting to immigrate to Canada⁹;
- the denial of requests for asylum of Jewish refugees fleeing the Nazi terror of World War II¹⁰;
- the dynamic and steadfast refusal of the Supreme Court of Canada to take a stance on Racism and settle definitively this question of national interests¹¹.

This is merely the tip of the iceberg. For Racism is to be a cloying feature of the Canadian legal landscape and it stars the moment to moment existence of each Black, Native, or Asian person living in this country. Despite a few timid efforts¹², our Canadian courts have yet to take judicial notice of what is a source of public notoriety in so many non-White communities across Canada.

Thanks to the racist ideology attendant on European colonialism, and Black and Native enslavement, we here in this Western hemisphere still live in a world dominated by "race" and skin colour¹⁴. On sometimes deliberate, oft' times unconscious... little does it matter, Black people are nonetheless obliged to face and resist Racism, unrelentingly¹⁵. On the other hand, many White people, reluctant, uncomfortable, embarrassed and ashamed, neither recognize nor denounce Racism. Consciously, the masses of White people puzzle in unsettling wonderment and resentment as to why Black people are forever bringing up the "race issue"¹⁶. For, admittedly, while White people rarely see acts of flagrant or subtle Racism; people of colour are experiencing them all the time.

Here in Canada we do not go so far as to call it "apartheid", nevertheless, individually, collectively and institutionally, we continue in this country to act in manners that do condone Racism and racial discrimination and in legitimate policies of exclusion, discrimination and preference.

In short, in the words of former Supreme Court Justice Emmet Hall: "Canadians are consciously and unconsciously permitting Racial Discrimination to continue with disavowals of the practice."¹⁷

Racism is a word that we Canadians, generally would prefer to associate with other countries and places where relations between Black and White people have been polarized... places like South Africa and the United States. However, with increasing urgency, current events are pushing Racism onto the business agenda of many institutions and policy-makers across Canada. For example:

- Public concern over police excesses and irregularities in Black and Native Communities are at present responsible for the numerous formal investigations into the Administration of Justice in the provinces of Manitoba, On-

tario, Quebec, Nova Scotia, Saskatchewan and Alberta.

- After more than 40 years of tenacious struggle, Canadians of Japanese origin have been successful not only in gaining compensation for their World War II forced removal and internment, but more important, in forcing Canada to acknowledge that this country is capable of labelling and imprisoning a whole group of people solely on the basis of their racial identity.
- The ongoing and unflagging efforts of the Chinese Community of Canada to seek redress for the discriminatory Head Taxes imposed on them earlier this century is still unfinished business.
- The almost commonplace conflicts and flare-ups in our public schools... whether in Montreal North, Quebec, or in Cole Harbour, Nova Scotia... far from being simply symptomatic of "racial tension", signal us that there exists at school a hidden curriculum of learning which demands our immediate attention.
- A growing number of universities, as Employers, are caught up in the contractual compliance net of Employment Equity. They have become unwitting, and perhaps unwilling, partners, contractually obligated to implement Affirmative Action Programmes that target, among others, Visible Minority and Native People¹⁸.
- Whether Vancouver or Victoriaville, Halifax or Hochelaga-de-Maisonneuve, the ongoing highly charged national debate on Immigration, on who is entitled to come to Canada, carries a crescendoing subliminal refrain that still choruses: "White if possible"¹⁹.

The increasingly strident insistence of such conjunctural imperatives is demanding that we create agenda space - meaningful agenda space to deal with the material reality of Racism,²⁰ which is a harsh operant, every day in every aspect of life, in Canada.

Racism: A Daily Reality²¹

For the Black father enroute from work one afternoon, stunned to discover on his car phone that his toddler son has been taken to the station by two police officers who insist that the tricycle the youngster was riding did not belong to him... Racism is his reality.

The tiny Cambodian tot, barred from group games by other daycare youngsters, self-esteem devastated, begins to withdraw from the group only to find himself labelled "introverted", "antisocial", "immature" "stand-offish" and "deviant"... Racism is his reality.

The twelve year old Black girl who, with full assent of School authorities is taken away to the police station following an "incident" in which she retaliated, after a teacher physically restrained her from re-entering the school during recess to use the washroom facilities... Racism is her reality.

The Black teenager repairing the broken window pane of his parents' suburban home who finds himself hauled off by police to the station on suspicion of "breaking and entering"... Racism is his reality.

The internationally known Black American feminist writer and Yale University Professor on lecture tour in Canada who finds herself accused in a boutique of having stolen a pair of black slacks which the sales clerk herself had in fact removed... Racism is her reality.

The Cri Elder, aged grandmother, who while riding the escalators in a large Canadian city is suddenly shoved to the ground by a White man who spits out: "Move! Paki Bitch!"... Racism is her reality.

The Black High School male teacher and published writer who, happening upon two Metro constables manhandling a Black youth and former pupil, decides as a precautionary measure to stop and observe the incident and is threateningly ordered to: "Move on!"... Racism is his reality.

The Black mother, verbally abused by the store owner, is refused service when she tries to purchase a sale item. She appeals to a nearby patrolling officer who dismisses her with a shrug advising her: "Madame, go and buy it elsewhere"... Racism is her reality.

The well turned out Black female attorney, briefcase in hand, who briskly making her way to the lawyers' locker room and lounge area in the basement of the local courthouse is aggressively accosted by a security guard who barks out: "Hey you! Where do you think YOU are going?"... Racism is her reality.

The Jewish family who, outraged by the desecration and vilification of the family tomb with hate-filled graffiti, is further cut to the quick by the seemingly complacent powerlessness of public authorities... Racism is their reality.

The young Black woman applying for a learner's permit to drive, who, in proffering her Canadian passport as a valid identification document is flabbergasted by the attending clerk who snaps: "Where is your pink paper?" and with chilly restraint responds in icy tones: "Instead of looking at the colour of my skin, you should look at the Canadian passport you are holding in your hand. Since when does a Canadian citizen need a pink slip to show that he or she has entered Canada legally?"... Racism is her reality.

Contrary to widespread popular belief, wishful thinking, or endemic wilful blindness, Racism is a daily reality for people of colour living in Canada.

Racism: An Historical Fact

As Black People, we are absent from Canadian histories, and, more importantly, our life experiences, past and present, individual and collective, are ignored and negated²². We have been erased completely, and with erasure goes any consciousness of Racism as an ongoing integral part of the collective living Canadian experience²³.

A cursory overview of Canada's history suffices to reveal how deeply embedded the roots of Racism lie in this country's past. Significant signposts stand out:

- the enslavement of Black and Native Peoples in New France under both the French and English Regimes²⁴;
- the Indian Act with its reservations, reputed to have inspired the architects of South Africa Apartheid²⁵;
- Canadian Immigration Policy with its enforced "colour bar" of "White if possible" which applied the thesis of "climatic unsuitability"²⁶ and legitimized it as a criterion;
- the Record of Debates of the House of Commons which reveals how in 1911 free land was offered to prospective settlers of Canada's West, provided they were not Black²⁷;
- the ratification and enforcement of overtly discriminatory legislation that resulted in a Chinese Head Tax and the internment of Canadians of Japanese origin²⁸;
- the unabashedly exploitative Government-sponsored Domestic Schemes of 1911 and the 1950s that targeted hundreds of young, healthy, educated, "single" Caribbean Black Women as cheap labour²⁹;
- Jim Crow or segregationist union policies whose exclusionary practices forced Black railroad porters to organize apart and on their own as the Brotherhood of Sleeping Car Porters³⁰;
- gentrification and destruction of entire Black Communities such as Africville in Halifax, Nova Scotia, and Little Burgundy in Montreal, Quebec³¹;
- a Canadian civil service whose hiring practices did not embrace Blacks³²;
- multiple Court rulings in public services which held that the overriding principle was freedom of commerce, the liberty to contract freely with whomever one desired, thus dismissing the right of Black members of the Canadian public to nondiscriminatory treatment in housing, employment, and public services³³.

These salient facts and others have combined to bequeath to today's Canadian institutions a legacy of Racism. Law is no exception. Yet, our legal institutions along with Canadian society as a whole, would appear to be "playing ostrich" - indulging in an obdurate form of endemic "wilful blindness" which refuses to recognize that de facto and de jure societal practices continue to legitimate Racism.

American Judge Honourable Leon A. Higginbotham rightly questioned and I would affirm that, "too often have we as a society disregarded our legal history to keep from our full consciousness the extraordinary insensitivity and brutality of our past".³⁴ This must end. If not, we falsify the perspective in which we analyse and evaluate the present state of affairs.

Slavery with its concomitant value system remains the principal factor which predetermines and limits the

role that Blacks could and can play on the Canadian scene. For, although slavery as an institution was legally abolished on paper,³⁵ yet the Legislator's pen stroke did not succeed in obliterating the attendant collective mind set which spawns social attitudes and practices that continue to equate Black skin with servitude, with exploitation, with inferiority. The ensuing result? An unwritten social consensus emerged then — and endures today — that presumes to dictate the "proper place" of Black and Native people. This tacit consensus would appear to determine: (i) Which rights a Black or Native person is entitled to claim; and (ii) How these rights can be exercised.

This "unwritten law" is determinant. It can give full meaning to, or sap total meaning from our written codes that were intended to be democratic. It would almost appear that by some unspoken societal consensus an all-pervasive "negativeness" towards Blackness would persistently link Black skin to "criminal-ness", to criminality, to crime. As a result, all too frequently, Black skin colour becomes the initiating catalytic factor which jettisons Black people into the Criminal Justice System. It is also Black pigmentation that preconditions and plots the pace and quality of the trajectory of Blacks through a System seemingly inimical to our interests. For, to Black offenders the Justice System doles out uncommonly harsh punishments; and to Black beneficiaries it grudgingly grants, if not denies, redress or reparation.

In our legal system, service users and victims seeking reparation will find the quality of access and response available to them very much commensurate with the "place" to which Society has relegated them.

Racism and Legal Culture

The expression "legal culture" is much broader than laws and legislation. Legal culture, an inclusive term encompassing behaviour, values, and assumptions, compels us to address unwritten law. Unwritten law that is entrenched by social convention and customary practice itself predetermines whether discretionary prerogative will prove benign or adverse.

Racism in Canadian legal culture today is demonstrable even though a general conspiracy of silence operates not only to obfuscate the issue of Racism, but also to deny its very existence. This denial eliminates the possibility of addressing Racism and of implementing imperative corrective measures that would eliminate racial discrimination. For example:

Our Canadian Legal Tradition

Our Canadian legal tradition is characterized by a conspicuous dearth of efficacious "precedents" which identify and deconstruct Racism or issues of racial discrimination. Also conspicuous is an ingrained and even "congenital" tendency on the part of Law to train its blindfolded gaze on issues of race and colour.³⁶

Law School

In our Law Schools, there is a dearth of positive role models for non-white students to emulate. In Law

School throughout their course of study, Black and other students of colour fall victim to social alienation and become the objects of a range of exclusionary mechanisms which penalize³⁷ them while conferring on their White classmates numerous "in-group bonding" and networking advantages such as: (a) note-sharing and note-swapping; (b) group study; (c) team projects; (d) advice, recommendations, and "tips" for internships, articling, and job placement; (e) professional encadrement, mentoring, or supervision; (f) summer jobs and contractual work; (g) eventual permanent gainful employment.

In a nutshell, we are talking about paving the way and constructing a network of "contacts" — that professional "network" so indispensable to the daily survival of every practitioner in the legal field.

In general, Law School teaching is devoid of any racial perspective³⁸ Yet, Racism should also inform the teaching of: Constitutional Law; Administrative Law; Human Rights Law; Immigration Law; Law of Contracts; and Property Law.

Concrete facts that would assist us in providing the proper critical perspective in which to teach contemporary Law should include: the destructive effects of colonialism; the Indian Act; various disguised and discriminatory legislation targeting Chinese, Japanese Canadians and Canadians and other Asians; Immigration Policy; the overriding primacy given to the right to contract freely against the right to nondiscrimination; and restrictive covenants of a racial nature.

Articling and the Job Market

When looking for placement in the job market, holders of resumes on which appear the applicants' affiliations with Black groups or Black Community advocacy work must often run a gauntlet of reactions: ranging from open intimidation and naked hostility, through barely contained amusement, to subtly veiled contempt and cynicism — all of which impact adversely on the hopeful job seeker.

Legal Scholarship

Right now, nowhere in their curriculum do provincial Bar Schools across Canada offer Racism awareness courses, or consciousness-raising courses on the multiracial and multicultural Canadian reality, or any substantive courses on Racism or racial discrimination.

For the most part, law professors, researchers, jurists, lawyers, arbitrators, and judges are uninformed of the de facto role Law and the legal apparatus have historically played in the real day to day lives of Black and Native Peoples in Canada.

Analyses and Treatises on Rules of Evidence have not yet even begun to question the applicability or appropriateness of certain standards and notions such as "burden of proof", "weight of presumption", the "probative value of circumstantial evidence", the utility of resorting to "Intervenors" for "Contextualization", the role and value of "Victim Impact Statements", and the usefulness of "expert witnesses"...

Despite certain timid attempts, mentioned above, critical legal scholars to date have failed to incorporate into their discourse the authentic experience of minorities of colour in North America³⁹. This failure to take account of the historical and existential needs of non-white peoples expresses itself in ideological paradigms and organizational practices inimical to the interests of minority persons.

Techniques and Devices

Faulty tools vitiate the end result. Our arsenal of legal devices is sorely in need of repair when it comes to Racism and racial discrimination:

The Index to Canadian Legal Periodical Literature - the last time checked - still comported no category or heading labelled "Racism" or "Racial Discrimination",⁴⁰ thus from the outset, incontrovertibly, limiting the body of doctrine available to practitioners and to the Courts to help them assess Racism.

We have no published collection of case commentaries assembling decisions involving incidents with racial overtones or other similar published body of doctrine.

Existing collections like the Index, carry no heading which addresses Racism and racial discrimination nominally. Indeed, it would seem that one must perforce conclude that the editors of legal materials do not yet perceive such a public need. This omission is a tacit denial of any social responsibility.

We can boast no solid track record of having exploited the technique of calling expert testimony to prove racism. With such testimony the Courts would be forced to take judicial notice of what is already public notoriety for so many sectors of the Canadian population.

When establishing the quantum in cases of racial discrimination and Racism, the deterrent value of punitive and exemplary damages is woefully under-used. The piffling amounts established utterly fail to reflect the social gravity of racism and end up trivializing its egregious nature. These negligible compensations do little more than conjure up the stereotypic spectre of that old time American "3/5 clause" which, during slavery, deemed a Black man to be worth no more than three-fifths (3/5) of a White man.⁴¹ The damages currently awarded in Race/Colour cases continue to reinforce the notion of Black people being inferior.

We do not understand Racism. We employ no operational definition or conceptual framework to examine Racism. We fail to acknowledge the determinant factor of POWER - institutional power within the equation of Racism.⁴² Chaos reigns. We confuse "impartiality" with "neutrality". We fail to grasp the added dimension inherent in Racism as opposed to other blameworthy misconduct such as brutality, abuse of power, excessive and even deadly force.

In Court

The contrived invisibility of our Black experience both in Legal Culture and in the History of Canada con-

tributes to misinformation about and misdiagnosis of Blacks. Take for example, code-switching in the courtroom, or "Who-says-what-and-how".

Let us examine "Eyeballing"! Eyeballing or steady unwavering visual contact for some is indicative of rudeness, lack of deference; for others, truthfulness, innocence. If rated successful, eyeballing can lead to exoneration; if not, it can lead to inculcation.

Another illustration is the "Question-Answer" practice where a terse and concise style can lead to acquittal while a "rambling" or convoluted response can be decoded to imply evasion or guilt. Too often, these conclusions are predicated on narrow value assumptions that leave little room for cultural differences.

In court, if a Black person responds to a courtroom manifestation of Racism with barely contained icy anger, or attempts to be assertive, he/she runs the risk of seeing his/her responses misinterpreted as signifying hostility, scorn, arrogance, insubordination, and contempt of court. And, frequently, he/she is further penalized by the imposition of punitive measures in the form of secondary or minor charges which, more often than not, the authorities will decide to drop later on.

A disproportionate number of Black women and men are "roughed up" by police and then themselves charged with criminal offences. So much so, that the terms "obstruction of justice" and "assault of a police officer" have become charges (that are) inherently suspect to many Black members of the Canadian public.

A disproportionate number of Black people experience "run-ins" and "hassles" with private security guards and the police. And frequently, when Blacks attempt to assert their rights and/or confront and verbalize the reality of Racism, they are labelled "lippy", "uppity", "arrogant", or "insubordinate", and, more often than not, are charged with "mischief" of some sort.

An alarming number of Black Youth are entering the Youth Protection System. At a 1986 Quebec Black Community Conference⁴³ both Black and White practitioners in the Juvenile System identified significant cultural bias operating to define those young people "in need of protection".

Prisons and Correctional Institutions

Racism is also a fact of life behind the bars of our penal institutions.⁴⁴ Racist behaviour and attitudes in correctional institutions beg the question as to the possibility of Black or Native inmates ever receiving meaningful rehabilitative treatment and parole. Punitive actions taken against Black inmates seriously stunt their participation in the shops, in the trade and education classes, and in the recreational and self-improvement programmes. Racist behaviour impacts negatively on parole decision-making, assessment, and evaluation since it affects profoundly the Black inmate's conduct, performance, and productivity which in turn become the criteria assessed for parole. Also, in Transitional or Halfway Houses, the conduct, performance, and productivity of Black and Native residents is significantly influenced by the racial climate that prevails.

Delivery of Services

There is a general inclination for every incident with racial overtones to be treated as a new, singular, isolated, and unrelated occurrence. This tendency offends a collectivity acutely aware of the pivotal role legal institutions have played in our lives.⁴⁵ This trivializing tendency outrages a People whose critical consciousness of the Law is informed, moulded, and finely honed by the continuum of lived experiences⁴⁶ and the streams of consciousness passed on by grandparents, fathers, mothers, sisters, uncles, aunts, cousins, friends, neighbours, Community of kinship...

All too frequently, cavalier treatment by police officers is expressed in a dismissive attitude towards Black victims. All too often, they respond with misunderstanding, reluctance, and even with hostility. All too often, police operate from a guilty-until-proven-innocent standpoint when dealing with a suspected Black offender. They too often respond with over-enthusiasm, unwarranted assumptions, excessive and even deadly force. A cloying "immigrancy status" is unrelentingly conferred on Black skin and played out in Legal Culture with dire effects. A spontaneous, synchronized collaboration among the "guardians of order" operates with clockwork precision between private security guards and police ... between metro constables and police... between Immigration officials and police... when Blacks are involved.

Conclusion

Today, about 158 years after the abolition of slavery, many citizens continue to suffer from the discriminatory attitudes and practices that infect our economic system, contaminate our cultural and political institutions, and taint the daily interpersonal relations between individuals. Today, more than 22 years after the adoption of an official policy of Multiculturalism, this policy as heretofore defined, still has not served to eradicate Racism. The problem of Racism is being skirted and buried amidst folk dances, ethnic costumes, exotic dishes, and intercultural studies flavoured with a good dose of "Love-one-another", "Aimez-vous-les-uns-les-autres"... the brotherhood approach. Folkloric festivals from time to time, accented by a weekend intercultural buffet here and there, are not an appropriate response to Racism⁴⁷.

The past failure of our legal institutions to repair the wrongs of Racism and racial discrimination clearly teaches all and sundry that the right to Equality is not a principle which necessarily applies to everyone. Through omission and commission, our current legal culture transmits the implicit message that it is not necessary to respect the humanity of certain persons or groups of persons.

Yet, we People of African Descent, we too are Significant Humanity. And Law for Us should also be liberatory and emancipatory;⁴⁸ should sustain us; and should enhance our existence as a People. Despite the

fact that in this country we have more than ~~enough~~ the oppressive heel of Law, particularly in the area of Racism and racial discrimination, Law remains an obvious a tool for us to abandon, ever.

We must act resolutely.

When will we admit that a socially constructed Race-Colour lens filters the administration of justice in Canada?

At what point will we be able to see, articulate, and deconstruct the ongoing patterns of Racism that leap out at us?

When will we stop using studies, reports, and task forces investigating the existence and extent of discrimination as buffers, pacifiers, and substitutes for direct action to eradicate Racism?

When will we set about becoming "Racism-literate", and bring the Sociology of Race to Law? When will the category of "Racism" figure as a topical heading in our doctrinal and Case Law publications?

Which pioneers among us will innovatively clear the pathways so that day-to-day Law Teaching becomes enriched by the coloration and texture of Race and Colour?

When will defense counsel routinely make applications to have arbitrators, adjudicators, and judges step down if they have reasonable grounds to believe a Bench is biased and will disadvantage their client?

When will we grasp the utility of systematic ethnic monitoring of all sentencing decisions on a Court by Court basis?

When will we spell out in Law and articulate into rights the specific complexity of Race-Gender discrimination and the accrued vulnerability faced continually by women who are not White?

At what point will the notions of "legal presumption" and "burden of proof" begin to reflect the reality of Racism.

Who among us will begin to tease out the new presumptions in Law that Racism cases should automatically trigger?

How will we set about exploiting and maximizing the value of "Standing"... "Interest"... "Intervenor status"... "Expert witness"... and the credibility and organizational experience of "Self-Help groups", when it comes to matters of Racism?

In short, when will our Canadian Courts take judicial notice of the material reality of Racism, which itself is already of rampant public notoriety? We must act, resolutely.

Recommendation

Racism exists as a material reality in Canada and even in our legal institutions. Racism is palpable and provable. It is high time we recognize and acknowl-

edge the existence of Racism as a social problem, a societal problem crying out for a place on the Legal Public Policy Agenda:

"Our Criminal Code already recognizes, condemns, and sanctions attacks against persons and property. The time has come for the Canadian Criminal Code to recognize, condemn, and sanction Racism and Racial Discrimination. From now on, the Criminal Code should explicitly stipulate that any crime against persons or property of a racial nature should constitute aggravated offences and should make provision for stiffer penalties."⁴⁹

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