



Western  
Law



Final Report

# Anti-Racism Working Group

Faculty of Law, Western University

March 2023

Law school is not the bridge  
into the profession. It's the gate.  
It is there to keep people out.  
It's there to make sure poor  
people, women, Indigenous  
Peoples, single parents and other  
marginalized people do not make  
it through. It is designed by and  
for wealthy single white males.

Harold Johnson<sup>1</sup>

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<sup>1</sup> Harold R Johnson, *Peace Order and Good Government: The Case for Indigenous Justice in Canada* (Toronto: McLelland & Stewart, 2019).

# LAND ACKNOWLEDGMENT

The Faculty of Law's Anti-Racism Working Group acknowledges that Western University is located on the traditional lands of the Anishinaabek, Haudenosaunee, Lūnaapéewak and Chonnonton Nations, on lands connected with the London Township and Sombra Treaties of 1796 and the Dish with One Spoon Covenant Wampum. We recognize the longstanding relationships that Indigenous Nations have to this land, as the original caretakers. We acknowledge historical and ongoing injustices that Indigenous Peoples (First Nations, Métis and Inuit) endure in Canada, and we accept responsibility as the law faculty at a public institution to contribute to identifying and correcting miseducation as well as renewing respectful relationships with Indigenous communities through our teaching, research and community service.



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I want people to understand that even those who support doing away with racism – those who believe that racism is bad – are themselves caught up in a system that almost forces them to continue to adhere to policies and beliefs that they don't understand. It comes from a history of racism, and until we address that and learn from it, we can't even begin to fix it.

Senator Murray Sinclair, 2020<sup>2</sup>

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<sup>2</sup> Senator Murray Sinclair says dismantling systemic racism will be a long fight | CBC Radio (31 July 2020).

# I. INTRODUCTION

Racism has been, and remains, a persistent reality in Canadian society, in Canadian law and at Canadian universities and law schools. Demonstrations in Canada and internationally in recent years have highlighted the many inter-connected struggles against racism, including antisemitism and Islamophobia, and other forms of inequality and discrimination. The Black Lives Matter movement, the Indigenous demonstrations against colonialism and land alienation, the voices of migrant labourers and the economic disparities and unequal outcomes grounded in race, colour and place of origin have sharpened our social understanding of the prevalence of systemic racism in our society and reminded us of the distance we have yet to travel to create a society and a legal system worthy of our rich diversity.

We recognize the rise of antisemitism across university campuses, in Canadian society and beyond, as well as its devastating impact on members of Jewish communities. As Western Law moves forward with implementing the ARWG's recommendations on addressing racism, we expect and encourage that antisemitism is a priority in this work, and that consultations take place with affected groups on how best to do this.

It is past time that this increased awareness of racism in all its forms be transformed into increased action to fight racism.

This report summarizes the work of the Anti-Racism Working Group ("ARWG") at Western Law and maps out an action plan for beginning and sustaining a comprehensive strategy to address and eliminate racism in the context of our law school. The report has been developed from an acknowledgment and recognition that systemic racism exists in our society, the legal profession, the law itself and our law school.

The presence of racism and its pernicious effects have been acknowledged by the Western Law Dean's Office and the Western University administration. In 2020, the President's Anti-Racism Working Group ("President's ARWG") released its final report on the climate at Western. That report concluded that "there are systemic problems embedded within the university's colonial history, traditions, structures, practices and policies that normalize 'whiteness,' that 'other' racialized groups and that perpetuate racism."<sup>3</sup> It also underscored the presence of an "institutional culture that privileges certain groups over others."<sup>4</sup> These findings are applicable to the law school. As Dean Chamberlain noted, and as recent events have made abundantly clear, "[t]he experience of students at Western Law is no exception."<sup>5</sup>

While the focus of this report is on racism at the law school, we recognize that discrimination and inequalities based on race are interconnected with other kinds of discrimination, including those based on sex/gender, sexual orientation and gender expression, disabilities, age, immigration status, creed/religion and other grounds and identities. Addressing racism effectively requires taking an intersectional approach to recognize the overlap and interconnections between forms of inequality.<sup>6</sup> In other words, racism is not an inequality separate from other forms, and some people experience multiple inequalities in a way that is uniquely compounded.

The 53 recommendations in this report are not exhaustive. Our hope is that this report will serve as a starting point for increased attention to the issue of racism, and to efforts to achieve broader systemic change towards ushering in a new, more diverse, equal and inclusive era for Western Law.

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<sup>3</sup> President's Anti-Racism Working Group, "Final Report" (2020) at 4, online (pdf): *Western University, Office of the President* <<https://www.president.uwo.ca/pdf/arwg-final-report-to-president-shepard-fnl.pdf>> ["President's ARWG Report"].

<sup>4</sup> *Ibid.*

<sup>5</sup> Email from Dean Erika Chamberlain to Western Law faculty, staff and students (22 June 2020).

<sup>6</sup> For a brief, albeit somewhat dated, introduction to intersectionality, see Ontario Human Rights Commission, "An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims" (9 October 2001), online (pdf): <[https://www3.ohrc.on.ca/sites/default/files/attachments/An\\_intersectional\\_approach\\_to\\_discrimination%3A\\_Addressing\\_multiple\\_grounds\\_in\\_human\\_rights\\_claims.pdf](https://www3.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_Addressing_multiple_grounds_in_human_rights_claims.pdf)>. For a more nuanced description of how intersectionality is to be used in anti-racism work, see David Gilborn, "Intersectionality, Critical Race Theory, and the Primacy of Racism: Race, Class, Gender, and Disability in Education" (2015) 21:3 *Qualitative Inquiry* 277, concluding that "an intersectional understanding of the social can be a distinct advantage when trying to understand how particular inequities are re/made in places like schools" but racism must remain the primary focus.

## II. The Anti-Racism Working Group (ARWG) Mandate

In the Fall of 2020, Dean Erika Chamberlain created the ARWG. The ARWG is composed of three faculty members (one of whom is also an alumnus), two JD students,<sup>7</sup> two staff members, one graduate student, and one alumnus (who is also an adjunct faculty member). The ARWG elected two co-chairs: one faculty member and one JD student. A list of the members of the ARWG is set out in Appendix C.

Dean Chamberlain asked the ARWG to develop “short and longer-term strategies for Western Law in areas including student and faculty recruitment, curriculum options, mentorship and student supports.”<sup>8</sup>

This purpose was further refined in the ARWG’s Terms of Reference, which were approved by Dean Chamberlain:<sup>9</sup>

To ensure that Western Law can and will employ its very best efforts to identify and eradicate racism and exclusion at the Faculty.

The Terms of Reference also articulate the responsibilities of the ARWG:<sup>10</sup>

1. Reviewing University policies and statements related to race and racism, including the President’s Anti-Racism Working Group Final Report (2020).
2. Gathering and analyzing information: listening to the perspectives and experiences of members of the Western Law community—particularly racialized students, staff, faculty and alumni—on racism and exclusion in all its forms;
3. Examining best practices to combat racism and exclusion from other universities, law schools and relevant institutions;
4. Surveying law school courses to identify opportunities in Western Law’s curriculum, programs, and practices to address racism and acknowledging how the legal system perpetuates racism, as well as develop programs and courses that will aim for positive change within the Western Law community;
5. Examining practices related to the recruitment of diverse faculty and the student body, including reducing financial barriers to admission and attendance, with the aim of ensuring a faculty, staff and student body that better reflects the diversity of Canada; and,
6. Providing a report in 2021<sup>11</sup> with recommendations to the Faculty Council that aims to enact systemic change as it relates to race, racism and exclusion at Western Law.

The purpose and responsibilities of the ARWG, along with the commitment to “enhance and support the diversity of our student body” found in the Updated Strategic Plan,<sup>12</sup> provided direction for the ARWG.

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<sup>7</sup> The Working Group consisted of 3 JD students from its inception until 2022 when one JD student was unable to continue for personal reasons.

<sup>8</sup> Email from Dean Erika Chamberlain to Western Law faculty, staff, and students (19 September 2020).

<sup>9</sup> The ARWG’s Terms of Reference are attached to this report as Appendix B.

<sup>10</sup> *Ibid.*

<sup>11</sup> This deadline was extended by Dean Chamberlain at the request of the Anti-Racism Working Group’s co-chairs.

<sup>12</sup> Western Law, “Update to Strategic Plan: Fall 2019” (2019) at 3, online (pdf): Western Law < [https://law.uwo.ca/about\\_us/PDFs/StrategicPlan\\_Update\\_FINAL.pdf](https://law.uwo.ca/about_us/PDFs/StrategicPlan_Update_FINAL.pdf) > [“Updated Strategic Plan”].

The ARWG also sought to implement the pertinent recommendations outlined in the President's ARWG Report and the relevant Calls to Action in the Truth and Reconciliation Commission of Canada's Final Report.<sup>13</sup>

In conducting its work, the ARWG also considered the unique role that the law has historically played, and continues to play, in the domination, subjugation and oppression of marginalized people. In doing so, the ARWG sought to ensure this report was consistent with the heightened responsibility that we, as members of the legal community, have in combatting racism.

In advance of this Final Report, and at Dean Chamberlain's request, the ARWG submitted 23 interim recommendations to the Dean on September 24, 2021. The interim recommendations represented those which, in the view of the ARWG, had "immediate financial implications" that necessitated the Dean receiving them prior to preparing the law school's budget for the next fixed academic year. The interim recommendations are now included in the list of final recommendations in Appendix A.<sup>14</sup>

The ARWG is grateful to have had the support of three research assistants in conducting its work: Nadim Mansour, JD '21; Valerie Cheng, JD '23; and Hannah Joseph, MA '22, BA '20.

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<sup>13</sup> Truth and Reconciliation Commission of Canada: Calls to Action (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 3,5-6 ["TRC Calls to Action"]. Specifically, the ARWG sought to ensure the implementation of Call to Action #28 (which specifically calls upon law schools) and, to a lesser extent, Call to Action #50.

<sup>14</sup> The precise wording of the recommendations may have changed since being delivered to the Dean. Nonetheless, the substantive content remains essentially the same.

## III. BACKGROUND WORK AND METHODS

The ARWG assigned members to work in three “streams”: (1) the Survey and Listening Stream; (2) the Pedagogy and Curriculum Stream; and (3) the Policies, Practices and Procedures Stream (“the 3P Stream”).

### A. SURVEY AND LISTENING STREAM

The Survey and Listening Stream was responsible for soliciting feedback from Indigenous, Black and other racialized members of the Western Law community for the purpose of gaining a better understanding of their experiences with racism at Western Law. The Survey and Listening Stream also conducted informal yet informative consultations on its own.

#### *i. The Senomi Report*

After considering several potential consultants, Western Law retained Senomi Solutions Inc (“Senomi”), a third-party consultancy with expertise in anti-racism work at universities, to “design, conduct and publicize the results of focus groups and surveys of faculty, staff, students and/or alumni.”<sup>15</sup> Senomi reported directly to the ARWG.

In late March 2022, Senomi distributed a survey to all law faculty, all current law students and a cross section of 3,542 alumni. The survey received a total of 211 responses. The 211 responses to the survey, according to Nicole Kaniki, “reflect sufficient engagement and feedback.”<sup>16</sup>

Senomi also conducted two focus groups with a total of 9 participants (combined). Three participants attended the two scheduled focus groups, and a group of five requested a separate group session.<sup>17</sup> The virtual focus group sessions did not have as much engagement. Nonetheless, Senomi indicates that “the insights shared provided important guidance to recommendations and future considerations.”<sup>18</sup>

Senomi’s findings are set out in the firm’s independent report.

#### *ii. Informal Consultations*

In addition to the work done by Senomi, the Survey and Listening Stream hosted an informal “town hall” meeting for students to provide feedback and suggestions on how racism can be addressed at Western Law. The ARWG also conducted an informal survey of faculty members to better understand whether, and if so, how, anti-racist teachings are included in course content and delivery.

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<sup>15</sup> ARWG Interim Recommendation #33, Final Report Recommendation 52; Senomi Solutions Inc., “Western University Faculty of Law Anti-Racism Report” (20 October 2022) at 2. [“Senomi Report”].

<sup>16</sup> Senomi Report, supra note 15 at 4. Nicole Kaniki elaborates as follows: “My subjective comment [about the good response rate] was based on knowing that there are not that many Indigenous and racialized students/faculty/staff and so the fact that 30% of 211 respondents were, and the number 211 compared to public availability numbers of 534 students and faculty +/- 39, brings me to a subjective conclusion of ‘good.’ We are not seeking perfect participation for exercises like these”: Correspondence from Nicole Kaniki with the ARWG.

<sup>17</sup> As is detailed in the Senomi Report, “The survey was launched 24th March 2022 and closed on 24th April 2022 with a total 211 respondents. Members were invited to participate in one of five targeted virtual focus groups: students (2), alumni, faculty and staff, and faculty and staff management/leadership. Members were also invited to contact the lead consultant to schedule one-on-one interviews. One participant requested a one-on-one interview, three participants attended two (two at focus group alumni, one at focus group staff/faculty) of the offered focus groups, and a group of five individuals requested a separate group session (total n=9).”

<sup>18</sup> *Ibid* at 43.

## B. PEDAGOGY AND CURRICULUM STREAM

The Pedagogy and Curriculum Stream compared the integration of anti-racist pedagogy and curriculum in the Western Law JD Program to that of other law schools in Canada and other professional programs at Western. The Pedagogy and Curriculum Stream performed a review of other law schools' course offerings and curricula and conducted virtual consultations with leaders and experts in the field of anti-racist education.

### *i. Review of Other Schools' Course Offerings and Curricula*

The Pedagogy and Curriculum Stream, with the support of some of the ARWG's research assistants, studied the anti-racism course offerings of other law schools in Canada. They compared the publicly-available course listings from other law schools to the list of courses offered at Western Law. Further research on how other law schools incorporate anti-racist teachings was conducted by the 3P Stream during virtual consultations with faculty from other law schools. This is discussed in Part C below.

### *ii. Virtual Consultations with Leaders in Anti-Racist Education*

The Pedagogy and Curriculum Stream also consulted with experts from Western. They met with Aisha Haque, director of the Centre for Teaching and Learning, who has expertise in “anti-racist, decolonial and intercultural pedagogies.”<sup>19</sup> Another virtual consultation was held with professor Nadine de Gannes, then associate faculty director of the Honours Business Administration (HBA) Program at the Ivey Business School. Erin Huner, Ivey's director of culture and inclusion, identified professor de Gannes as the faculty member leading Ivey's anti-racism initiatives in the classroom. The Survey and Listening Stream's final virtual meeting was with Candace Brunette-Debassige, special advisor to the provost for Indigenous initiatives.

## C. POLICIES, PRACTICES AND PROCEDURES STREAM

The 3P Stream conducted research on anti-racism best practices at other institutions, held virtual consultations with law and professional school anti-racism leaders, and examined how the recommendations of the President's ARWG and the TRC Calls to Action could be implemented at Western Law.

### *i. Research on Best Practices*

The 3P Stream, aided by the ARWG's research assistants, conducted a review of the publicly available anti-racism policies, practices and procedures at the following institutions: (1) all Canadian law schools; (2) all Canadian law societies;<sup>20</sup> (3) the Canadian Bar Association; (4) the Ontario Bar Association; (5) the Government of Ontario; (6) the Government of Québec; (7) the federal government; and (8) all human rights commissions and tribunals in Canada.

Along with the broader ARWG, the 3P Stream considered whether the various policies, practices and procedures identified through this research could and should be adopted to advance the anti-racism goals of Western Law.

### *ii. Interviews with Leading Schools and Faculties*

The 3P Stream identified Canadian law schools and second-entry professional schools at Western that are leaders in anti-racism. The ARWG also identified law schools similar to Western Law that could be used as direct comparators.<sup>21</sup> The 3P Stream then met with individuals leading anti-racism efforts at each of these institutions to learn whether and how Western Law could learn from, and potentially adopt, some of their anti-

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<sup>19</sup> “Aisha Haque”, online: Western University Centre for Teaching and Learning <<https://teaching.uwo.ca/centre/people/aisha-haque.html>>.

<sup>20</sup> Including the Barreau du Québec.

<sup>21</sup> University of Toronto, Queen's University, the University of Calgary and Dalhousie University. These schools were selected based on size, areas of focus, geographic location and other factors.

racism policies and best practices. These individuals are:

- From the University of Toronto Faculty of Law: Alexis Archbold, assistant dean of the JD program.
- From Queen's University Faculty of Law, all of whom were co-chairs of the Queen's Law Anti-Racism Working Group: professor Lisa Kelly; professor Sabine Tsuruda; and professor Noah Weisbord.
- From the University of Calgary Faculty of Law: professor Jennifer Koshan, chair of the equity, diversity, and inclusion committee.
- From the Schulich School of Law at Dalhousie University: acting Dean Richard Devlin, FRSC; professor Michelle Williams, Dalhousie African Nova Scotian strategy lead; Kelsey Jones, director of the Indigenous Blacks and Mi'kmaq Initiative (IBMI); and professor Aldo Chircop, Canada Research Chair in Maritime Law and Policy.
- From the MD Program at the Schulich School of Medicine and Dentistry (Western): Dr. Tisha Joy, assistant dean of admissions for the MD program.
- From the DDS and Internationally Trained Dentists programs at the Schulich School of Medicine and Dentistry (Western): Dr. Bertha Garcia, acting vice dean and director, and special advisor on anti-racism to President Alan Shepard.
- From the Faculty of Education at Western: Dean Donna Kotsopoulos; professor Goli Rezai-Rashti, chair of the faculty's equity committee; Associate Dean (Research) Perry Klein; Associate Dean (Graduate Programs) Pam Bishop; and Associate Dean (Teacher Education) Kathy Hibbert.
- From the Ivey Business School (Western): Erin Huner, director of culture and inclusion.

During our conversations with the above law faculties and other professional faculties at Western about their EDI and anti-racism initiatives, the following best practices from their experiences were discussed:

### **1. University of Toronto Faculty of Law**

- The Black Future Lawyers program, which is designed to encourage undergraduate Black university students to consider studying law. It includes substantive law workshops, career fairs, a mentoring program, annual conference, and admissions information and guidance. Partners include Black law students, alumni, professors, law firms and other members of the legal profession.
- A free LSAT preparation course for low-income, Black, and Indigenous students, taught by law students.
- The Indigenous Initiatives office, which has three key mandates: (i) recruit Indigenous students; (ii) support Indigenous students in law school; and (iii) take a leadership role in cultural competency work at the law school.
- The Elder-in-Residence program, which supports an Elder to have office hours several times during the week. The Elder is available to lead ceremonies at the law school and provide cultural support to Indigenous law students.
- Mandatory first-year anti-racism and anti-oppression training during orientation week, in which students discuss power and privilege. The training continues throughout the first year of studies through incorporation in first-year ethics training. Incoming students are required to read a book from a reading list about Indigenous legal issues or colonialism in Canada and meet with an Elder during the first semester to discuss and reflect on these learnings.
- Intentional searches for Black, Indigenous and racialized faculty and staff hirings.

- Curriculum review through a more critical lens, where faculty are introducing significant components in their classes to show the law as the product of a white colonial society.
- Understanding that equity costs money: funding from the Law Foundation has helped the faculty finance its equity, diversity, inclusion, accessibility and decolonization (“EDIA-D”) programming. Other avenues of fundraising should also be explored. The faculty also shares funding with the university’s central administration for Black, Indigenous and racialized hiring.
- Planning for tough conversations about privilege and supremacy.
- The law school is about to embark on a strategic planning process that will look at embedding EDI principles in every aspect of its work. This will begin in the academic planning process.

## **2. *Queen’s University Faculty of Law***

- Creating separate Black and Indigenous student applicant streams.
- Creating a faculty equity/EDI Office, which would provide student support for Black, Indigenous, racialized and 2SLGBTQ+ students and students with disabilities, and ensure that every appropriate issue at the faculty is viewed through an EDI lens.
- Planning a Race and the Law class, likely in first year.
- Establishing a standing anti-racism committee comprised of faculty, students, staff and alumni, which would work closely with the equity office and oversee the implementation of existing recommendations and the development of new ones.
- Addressing unconscious bias in admissions and hiring.
- Hiring new professors with diversity in mind, particularly Indigenous and Black scholars, which is a high priority.

## **3. *University of Calgary Faculty of Law***

- Developing an effective complaints process on EDI issues that respects due process, confidentiality and safety.
- Creating a standing EDI committee with broad representation from students, faculty, staff and alumni, which includes equity-deserving student groups.
- Building a critical race theory component into September and January block courses. Students are also interested in a mediation component.
- Offering EDI and anti-racism training for faculty, staff and students.
- Building funding for EDI training initiatives into the annual budget.
- Developing a Black Students Admissions Process in addition to an existing Indigenous Students Admissions Process.

## **4. *Dalhousie University Schulich School of Law***

Dalhousie has a long history of EDI and anti-racism initiatives, beginning after the 1990 Donald Marshall inquiry, which concluded that racism was deeply embedded in the Canadian and Nova Scotian legal systems. These initiatives include:

- Building up its offerings in Indigenous law courses.
- Closely collaborating with leaders in the African Nova Scotian and Mi’kmaq communities to receive advice and direction about the ongoing needs and requirements of those communities.
- Creating a standing EDI committee currently focused on implementing actions set out in a “Black Lives Matter” Faculty motion, and a Truth and Reconciliation committee.

- Reviewing curriculum on an ongoing basis to determine how racism and discrimination can be addressed in the curriculum. The EDI Committee has undertaken that task in relation to anti-Black racism and African Nova Scotian legal issues in particular.
- Encouraging the creation and growth of vibrant student organizations.
- Recognizing the importance of appointing specific faculty members as advisors to students or student organizations.
- Recognizing that equity requires resources: funding comes from the university, the Law Foundation, the law school's fundraising and the provincial government. Much effort is required to acquire and sustain that funding. Law firms have not been a reliable source of funding for these initiatives.
- Creating a peer educator program where upper-year students mentor first- and second-year law students.
- Engaging in culturally sensitive counselling: an external counsellor is used for some of this work. That culturally specific counselling is currently provided to Indigenous students connected to the IBMI, and Black students.
- Building a tradition of listening to Black, Indigenous and racialized students, including seeking specialized evaluations from them to measure progress and fresh thinking.
- Achieving equity is the result of a lot of hard work. Schools must be willing to experiment, make mistakes and learn from them. Writing reports and improving admissions and hiring is important, but it is not nearly enough to succeed.
- Offering a certificate in Aboriginal/Indigenous Law.
- Introducing mandatory first-year courses on African Nova Scotians/Critical Race Theory and Aboriginal and Indigenous Law in Context.
- Dedicating an annual professional development day to EDI issues and convening it at the Black Cultural Centre in Cherrybrook, one of the province's African Nova Scotian communities.

##### **5. *Western University – Schulich School of Medicine***

- Collecting data during the admissions process on race, community size and socio-economic status, and identifying barriers before and during the admissions process. Creating data collection is vital. What does not get measured does not get done.
- Finding out which communities are not well-represented in medicine and at the faculty, in order to ultimately develop strategies to improve representation.
- Being mindful of geography: proximity to a Black, Indigenous and racialized student's community is a significant factor in their choice of where to study.
- Strategic advertising: recent efforts include more focused advertising and outreach to specific underrepresented communities, as it is important to advertise a welcoming environment.
- Visiting elementary and high schools: Schulich's Indigenous liaison regularly visits Indigenous communities and high schools with large Indigenous populations. The results from these visits take five to ten years.
- Setting aside specific seats: five seats are set aside annually for Indigenous students. Filling all five seats is challenging and that goal has not yet been met.
- Fundraising: it would be helpful if a generous alumni donation could be secured to fund scholarships and bursaries for Black and Indigenous students.

## **6. *Western University – Schulich School of Dentistry***

- Creating an EDI Office, which will be staffed by an associate dean.
- Reviewing student complaints, most of which come from the Learner Equity Office's online reporting tool, which determined that up to 70 per cent of student complaints stemmed from racism rather than harassment.
- Improving representation in the student body: while approximately 50 per cent are racialized, Black and Indigenous students are under-represented.
- Attempting to recruit more Black, Indigenous and racialized faculty.
- Asking all faculty members to engage in EDI service work.
- Developing both formal and informal complaint procedures for complaints about faculty members, as students have concerns about confidentiality: this raises concerns about better EDI training for faculty members and staff. It is important to be proactive and preventative, rather than rely on reactive measures.

## **7. *Western University – Ivey Business School***

- Recognizing the importance of quantitative data: reliable and regular data is necessary in order to tell us who our faculty, students and staff are. Without data, it is impossible to create and measure strategies for addressing racism.
- Recognizing the need for learning and unlearning: it is vitally important to find methods that work, but it cannot be overstated how necessary these initiatives are in building collective appreciation and buy-in for success in the gritty work of combatting racism and discrimination.
- Practising inclusive and respectful language: everyone must be given the tools and skills to openly discuss racism, discrimination, privilege, harassment and oppression. Understanding one's position ensures that community members understand the position from which they speak, which enables everyone to be better at listening. Some people can identify racism, but do not know what to do when it happens. For others, they are not equipped to notice. Learning how to respond is part of the awareness.
- Finding the financial and human resources: this is a major project, but keep in mind the cost of *not* addressing inequity, exclusion and racism.
- Realizing that admissions is an important place to reshape culture: thinking deeply about the role of race and socio-economic status in how professionalism and leadership are understood in society. Expand the pathway for others to participate and be open to other definitions and understandings of leadership.
- Considering the development of summer pre-university programs with other faculties for Black, Indigenous and racialized students, to improve their chances of success.
- Building and maintaining a critical mass of Indigenous and Black students, which is one of the very best ways to ensure equity success. Once that critical mass has been reached and sustained, more will come on their own, provided that those who are here feel a sense of belonging.

#### **8. Western University – Faculty of Education**

- Recognizing the vital importance of university and faculty leadership regularly messaging the importance of EDI, explaining what the problem is and identifying what must be done. This includes actively engaging in developing the strategy, pointing out successes, acknowledging failures and challenges, finding the right tone and conveying optimism without hiding the difficulties.
- Expanding scholarships and bursaries for under-represented students including Black, Indigenous and other racialized students.
- Requiring an integrity module: graduate education students must complete a pass/fail module before beginning their program, which covers anti-racism, the provincial code of conduct and EDI.
- Encouraging faculty members to engage in EDI research, for which additional funding is being sought.

Further details from these meetings are set out in more detail as necessary under Part B - Specific Findings and Recommendations.

The 3P Stream also worked to determine how the law school can best implement the recommendations in the President's ARWG Report. While many of those recommendations are specific to the central administration of the university, they can and should be adapted to apply at the faculty level. Refining and adapting the university-wide recommendations may provide an anti-racism response that is more sensitive to the specific needs of the law school and will demonstrate a heightened commitment to this important work.

Other recommendations in the President's ARWG report require action at the faculty level for successful and sustainable implementation. Increasing the number of courses in areas of anti-racism, hiring racialized faculty working in the area of EDIA-D research, and embedding anti-racism in special student programming (such as Orientation Week and Homecoming) are initiatives that would be properly handled internally at the law school.

#### *iii. Implementing the Truth and Reconciliation Commission's Calls to Action*

The 3P Stream reviewed the TRC Calls to Action to determine if any could be adapted for, or supported by, Western Law. The ARWG identified that Western Law could have a significant role in supporting the implementation of Call to Action #28 (regarding a mandatory course in Aboriginal people and the law), which is explicitly directed at law schools, and Call to Action #50 (regarding establishing an Indigenous law institute). These are discussed in more detail in Section B. iii.

Nowadays in Canada, overt acts of racism are rare. Instead, the subtle ones tire you out and wear your sense of belonging. They happen more often, more insidiously. These acts of discrimination can be more detrimental than blatant racism or sexism. It's easier to point out prejudice when someone is overtly racist. Organizations have policies and procedures for reporting explicit racism and sexism. Others, hearing your story, are suitably outraged. But the underground cracks, passive-aggressive dismissals, the ghostly put downs, are harder to mark.

Hadiya Roderique, 2017<sup>22</sup>

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<sup>22</sup> H. Roderique, "Black on Bay Street: Hadiya Roderique had it all. But still could not fit in", *Globe and Mail*, 4 November 2017.

## IV. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The following is a summary of our findings. It would be virtually impossible to synthesize all our findings over the past two years into a single report. Instead, we provide an overview of what we view to be our most significant findings and highlight those upon which we have relied to create our recommendations.

### A. OVERVIEW OF FINDINGS

In this section, we explain that while progress has been made in some areas, racism remains a serious problem at Western Law. The school's anti-racism efforts do not reflect the position of Western Law as a leading Ontario law school. To improve the experience of Indigenous, Black and other racialized community members, Western Law must act quickly to combat racism and more vigorously promote equity, diversity, inclusion, accessibility and decolonization.

#### *i. Recognizing Progress To Date*

We begin this summary of our findings by acknowledging that Western Law has already undertaken significant steps to address racism in that it has developed and implemented anti-racist initiatives on several fronts. These initiatives align with recommendations in the President's ARWG Report, and include the following:<sup>23</sup>

- Scholarships that enhance diversity at Western Law, which include the Violet King Award, the Osler, Hoskin & Harcourt Diverse Scholars Award, the Gurmukh Family Bursary in Law, the Robert Ninham Entrance Scholarship, the Clarke-Osborne Family Entrance Scholarship and the Lorna Cuthbert Bursary in Law.
- Financial support for incoming Indigenous law students to complete the University of Saskatchewan Indigenous Law Centre summer program. Credit is also granted towards first-year Property Law.
- Financial support for five Black undergraduate students annually to support the law school application process, which includes an OUAC fee voucher, a Western Law fee waiver, and a commercial LSAT preparation course.
- A free LSAT preparation course for "high-potential Black, Indigenous and low-income students or graduates who intend to apply to law school in the near future."<sup>24</sup>
- Courses that "integrate anti-racist content and pedagogies"<sup>25</sup> or focus on the study of and scholarship by Indigenous people and racialized groups, including Racial Profiling in Policing, Hate Speech in Canada, Indigenous law, Aboriginal law and Canadian human rights law.
- "[R]esearch initiatives that advance anti-racism, equity and inclusion and intersectional analysis,"<sup>26</sup> including the Hidden Racial Profiling Project.<sup>27</sup>

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<sup>23</sup> Many of these initiatives are found in the Western Law 2023-2024 Prospectus, online (pdf): Western Law <[www.law.uwo.ca/future\\_students/jd\\_admissions/prospectus.html](http://www.law.uwo.ca/future_students/jd_admissions/prospectus.html)>.

<sup>24</sup> *Ibid* at 11.

<sup>25</sup> President's ARWG Final Report, *supra* note 3 at 21.

<sup>26</sup> This follows from a recommendation made by the President's Anti-Racism Working Group: *ibid* at 22.

<sup>27</sup> Western Law, "Influential human rights lawyer partnering with Western Law to conduct Hidden Racial Profiling Project" (20 August 2020), online: Western Law <[https://law.uwo.ca/news/2020/influential\\_human\\_rights\\_lawyer\\_partnering\\_with\\_western\\_law\\_to\\_conduct\\_hidden\\_racial\\_profiling\\_project.html#:~:text=%E2%80%9CThe%20Hidden%20Racial%20Profiling%20Project,national%20impact%2C%E2%80%9D%20she%20said.>](https://law.uwo.ca/news/2020/influential_human_rights_lawyer_partnering_with_western_law_to_conduct_hidden_racial_profiling_project.html#:~:text=%E2%80%9CThe%20Hidden%20Racial%20Profiling%20Project,national%20impact%2C%E2%80%9D%20she%20said.>)>; Rachel Mendleson & Steve Buist, "How Torstar found 600 cases of police violating fundamental rights when no one is tracking this national problem" (13 June 2022), online: Toronto Star <<https://www.thestar.com/news/investigations/2022/06/09/how-torstar-found-600-cases-of-police-violating-fundamental-rights-when-no-one-is-tracking-this-national-problem.html>>.

Since the inception of the ARWG, progress has also been made to improve the racial diversity of Western Law. The number of Black and Indigenous students in the JD program has increased considerably. Black people make up 4.7 per cent of Ontario's population.<sup>28</sup> There were no Black students among the class of 2023,<sup>29</sup> but they now make up four per cent of the class of 2024.<sup>30</sup> Indigenous people make up 2.8 per cent of Ontario's population.<sup>31</sup> There were no Indigenous students among the class of 2023 admitted in September 2020,<sup>32</sup> but they now make up two per cent of the class of 2024.<sup>33</sup>

In addition, an Indigenous programs coordinator position (with Western's Faculty of Information and Media Studies) has been approved and applications are in the process of being reviewed. Though a full-time position within the Faculty of Law remains preferable, this is a positive first step. Finally, the Dean's office's continuing financial commitment to the Student Legal Society Diversity Committee activities is encouraging. While we are also cautiously optimistic about trends in faculty hiring, which in recent years have begun to improve the diversity of our faculty, our work makes clear that more must be done.

The school has also improved the diversity of the new Western Law Advisory Council,<sup>34</sup> which faced heavy criticism for a lack of diversity at its inception.<sup>35</sup> The group is now more reflective of the diversity of our alumni community<sup>36</sup> and their work will be complemented by the more diverse Young Alumni Advisory Council.<sup>37</sup> This 11-member Council consists of committed and knowledgeable leaders in the legal profession, up to 15 years since graduation. They will lend their varied perspectives and experiences to further the mission and objectives of the faculty, particularly as they relate to the faculty's mandate to strengthen areas reflecting equity, diversity and inclusion.

## *ii. Racism and its Effects at Western Law*

The Dean's statement that there is systemic racism in our community<sup>38</sup> has been decisively corroborated by the results of our work and Senomi's work.

We first learned about students' experiences with racism through an informal town hall hosted by the ARWG in the Spring of 2021. In the meeting, attended by over 30 Black and racialized students, and which went 30 minutes over schedule, JD students shared their experiences with racism within our law school community. Incidents, which ranged from constant microaggressions to overt racist statements to unintentional ignorant comments, occurred in classrooms, in common spaces, in virtual spaces, at social events and in private conversations. Approximately a dozen students raised concerns about the difficulty faced by Black, Indigenous and racialized students connecting with (mostly white) professors and securing research assistant positions. Students also indicated there are no safe spaces in which to have conversations about their experiences with racism. One student shared that they routinely visited an adjunct professor and cried during their office hours

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<sup>28</sup> Statistics Canada, "Census Profile, 2016 Census, Ontario and Canada (online): Statistics Canada <[www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/Page.cfm?Lang=E&Geo1=PR&Code1=35&Geo2=&Code2=&Data=Count&SearchText=Ontario&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=35](http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/Page.cfm?Lang=E&Geo1=PR&Code1=35&Geo2=&Code2=&Data=Count&SearchText=Ontario&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=35)>.

<sup>29</sup> According to self-reported data.

<sup>30</sup> Western Law, Diversity Survey Results Comparative Chart Class of 2020 to Class of 2024 at "Ethnicity", online: Western Law, [www.law.uwo.ca/future\\_students/jd\\_admissions/Diversity-Survey---Five-Year-Comparative-Profile-for-PDF-and-Website\\_v3.pdf](http://www.law.uwo.ca/future_students/jd_admissions/Diversity-Survey---Five-Year-Comparative-Profile-for-PDF-and-Website_v3.pdf)

<sup>31</sup> Statistics Canada, Focus on Geography Series, 2016 Census, online: Statistics Canada, <[www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-PR-Eng.cfm?TOPIC=9&LANG=Eng&GK=PR&GC=35](http://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-PR-Eng.cfm?TOPIC=9&LANG=Eng&GK=PR&GC=35)>.

<sup>32</sup> According to self-reported data.

<sup>33</sup> Western Law, Diversity Survey Results Comparative Chart Class of 2020 to Class of 2024 at "Ethnicity", online: Western Law, <[www.law.uwo.ca/future\\_students/jd\\_admissions/Diversity-Survey---Five-Year-Comparative-Profile-for-PDF-and-Website\\_v3.pdf](http://www.law.uwo.ca/future_students/jd_admissions/Diversity-Survey---Five-Year-Comparative-Profile-for-PDF-and-Website_v3.pdf)>.

<sup>34</sup> This 15-member Council is comprised of senior leaders within the Western Law alumni community who are viewed as experienced legal industry professionals and leaders within their fields. Their role is to serve as advisors for Western Law, through the Dean, on issues that have significant impact on the accomplishment of the faculty's strategy and objectives.

<sup>35</sup> Rebecca Sandbergen, "Why is Western University's new law advisory council so white?" (15 December 2021), online: Canadian Broadcast Corporation <<https://www.cbc.ca/news/canada/london/why-is-western-university-s-new-law-advisory-council-so-white-1.6284980>>; Dean Erika Chamberlain, "Message from the Dean: Western Law Advisory Council" (16 December 2021), online: Western Law <[https://law.uwo.ca/about\\_us/blog/message\\_from\\_the\\_dean\\_western\\_law\\_advisory\\_council.html](https://law.uwo.ca/about_us/blog/message_from_the_dean_western_law_advisory_council.html)>.

<sup>36</sup> Western Law Advisory Council, online: Western Law <[https://law.uwo.ca/about\\_us/advisory\\_council/index.html](https://law.uwo.ca/about_us/advisory_council/index.html)>.

<sup>37</sup> Western Law Young Alumni Advisory Council, online: Western Law <[https://law.uwo.ca/about\\_us/young\\_alumni\\_advisory\\_council/index.html](https://law.uwo.ca/about_us/young_alumni_advisory_council/index.html)>

<sup>38</sup> Email from Dean Erika Chamberlain to Western Law faculty, staff and students (22 June 2020).

about constantly having to bite their tongue. Many students explained that their experiences with racism contributed to a sense of isolation and hopelessness. Even in this short informal session, the ARWG gained an understanding of the unspoken impacts of racism at the faculty.

In the Senomi survey, most racialized respondents disagreed that “Western Law is an inclusive faculty for members from racialized and culturally diverse groups.”<sup>39</sup> Similarly, nearly 50 per cent of racialized respondents disagreed that “Western Law values diversity.”<sup>40</sup> This may be explained, at least in part, by the racist harassment witnessed by nearly 30 per cent of Western Law community members.<sup>41</sup>

Survey results also reveal a disturbing difference in how racialized and white community members feel at Western Law. Racialized respondents reported a weaker sense of belonging<sup>42</sup> and had a significantly lower level of satisfaction with their experience at Western Law.<sup>43</sup> A majority of white respondents indicated that they thought “Western Law values diversity,” whereas a majority of racialized respondents did not.<sup>44</sup> Similarly, while a majority of white respondents agreed that “Western Law provides an environment that allows conversation on issues of race in an open and supportive environment,” a majority of racialized respondents did not.<sup>45</sup>

Qualitative data further supports our finding of a culture of racism, or at least a culture that is tolerant of racism, at Western Law.<sup>46</sup> Responses to qualitative survey questions indicated that community members feel that Western Law needs to improve its diversity, incorporate anti-racism into the curriculum, increase supports for racialized community members, create transparent accountability mechanisms, monitor equitable practices for student opportunities and stop burdening student groups of colour with EDIA-D work.<sup>47</sup> The two focus group sessions revealed similar negative sentiments. The three participants thought that Western Law “bring[s] in diverse students and then ignore[s] the fact that the environment is not safe for them;” that there is a “lack of individual responsibility” for perpetrators of racist actions; that Western Law’s commitment to EDIA-D is purely performative; and that the faculty lacks diversity.<sup>48</sup>

As the ARWG was finalizing this report, an incident occurred at the law school which generated a powerful statement from the Black Law Students Association (BLSA).<sup>49</sup> In a criminal law class a white professor read aloud to the class a quote from an Inquiry report which included the N-word. There was no advance discussion about reading this word aloud, nor was there any acknowledgement (at the time)<sup>50</sup> of having used this word, of its racist history and profoundly derogatory meaning, or of its damaging individual and systemic impacts. We support the BLSA in identifying the significant harm caused and in urging the law school to move forward quickly and decisively on addressing anti-black racism on all fronts. Indeed, there is also alignment between some of BLSA’s recommendations and those in this report.

As the BLSA points out, “the reality for students, faculty and staff who identify as Black, Indigenous and people of colour is that at Western Law, they enter daily a world that is normalized to whiteness.”<sup>51</sup> As Dean Chamberlain acknowledged almost two years ago, Western Law’s “slowness to take action against both overt and surreptitious prejudice has caused some members of our community to experience hurt and isolation.”<sup>52</sup>

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<sup>39</sup> Senomi Report at 14.

<sup>40</sup> *Ibid* at 11.

<sup>41</sup> *Ibid* at 29-30.

<sup>42</sup> *Ibid* at 20-21.

<sup>43</sup> *Ibid* at 21-22.

<sup>44</sup> *Ibid* at 11.

<sup>45</sup> *Ibid* at 13.

<sup>46</sup> *Ibid* at 43-46.

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid* at 43.

<sup>49</sup> Statement by Jaidyn McEwen, President, on behalf of the Black Law Students Association Western (28 September 2022).

<sup>50</sup> The professor apologized to the students in the next class and Dean Chamberlain also attended that class. The professor subsequently apologized in writing to the Western Law community.

<sup>51</sup> Senomi Report, *supra* note 15 at 48.

<sup>52</sup> Email from Dean Erika Chamberlain to Western Law faculty, staff, and students (19 September 2020).

Additionally, Western Law's "slowness to take action" has resulted in our school falling behind other law schools in Ontario, and therefore, means that our environment is less inclusive. Western Law is a leader in many areas; EDIA-D is not one of them. This represents a serious competitive disadvantage and an opportunity for development. A welcoming and diverse environment is conducive to the recruitment, retention and development of students, faculty and staff from Indigenous, Black and other racialized communities, and will enhance the strengths of Western Law.

There is strong support within our community for anti-racist initiatives and action. Most survey respondents – both racialized and white – are "concerned" about "the impact of racism at Western Law."<sup>53</sup> Western Law prides itself on being a collegial and close-knit community; therefore, addressing and ending racism is critical to making this community more equal and inclusive. Anti-racist action, specifically the recommendations set out in our report, should be implemented without delay.

## **B. SPECIFIC FINDINGS AND RECOMMENDATIONS**

In this section of the report, we set out specific findings of how racism – in both systemic and overt forms – impacts members of our community. We then outline our recommendations for how racism should be addressed at Western Law.

We organize our findings and recommendations into ten categories. While the rationale for individual recommendations can normally be found under the same heading, many recommendations are also justified by findings described under a different heading. The recommendations are also listed in Part IV, Summary of Findings and Recommendations.

### *i. Real, Non-Tokenistic Action*

Anti-racism action taken by Western Law should be genuine. Racialized and Indigenous community members repeatedly shared with the ARWG that they feared this work will not result in actual change. They identified a trend of inaction where Western Law makes public overtures and statements about the importance of EDIA-D, but nothing further is done. Racialized community members understandably worry that any steps taken by the law school will be performative only, not initiating real and meaningful change.

Tokenization is also a significant fear among racialized community members. One survey respondent indicated that Western Law needs to "[s]top pushing the narrative that tokenization is the path forward."<sup>54</sup> Another wrote that the school is often guilty of "tokenizing the students at Western for the particular fact that they represent a minority."<sup>55</sup> The importance of avoiding tokenization was also highlighted by Alexis Archbold, assistant dean (JD program) at the University of Toronto.

The belief that the trend of inaction will continue and nothing substantive will be done is also widely held among racialized community members. A participant in a listening session for the President's ARWG shared, "We want to see action. What will actually happen?"<sup>56</sup> This concern was repeated by many participants in the ARWG's informal town hall. In its report, Senomi shared that our community members "feel that Western Law talks about the importance of diversity, but they do not do anything about it that reflects this commitment."<sup>57</sup>

Western Law must work to earn the trust of Indigenous, Black and racialized community members. This is possible only if it commits to making the necessary changes, even if difficult or uncomfortable. In order to ensure that meaningful action is taken in response to this report, the ARWG recommends that Western Law, with the support of the Western administration:

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<sup>53</sup> Senomi Report, *supra* note 15 at 19-20.

<sup>54</sup> *Ibid* at 41.

<sup>55</sup> *Ibid*.

<sup>56</sup> President's ARWG Final Report, *supra* note 3 at 4.

<sup>57</sup> Senomi Report, *supra* note 15 at 44.

Publicly acknowledge systemic racism in all its forms at Western Law and its impact on Indigenous, Black and other racialized members of the Western Law community (faculty, staff, students and alumni). Combatting antisemitism must be an ongoing part of anti-racism work at the law school. The process of addressing racism in all its forms should begin with consultations with affected persons and groups.

Commit the resources necessary to implement these recommendations.

Create and publish a multi-year anti-racism action plan, within one year, which incorporates the recommendations of the ARWG, includes timelines for their implementation, and sets out accountability measures.

While these recommendations alone will not gain the trust of all Indigenous, Black and racialized community members, they are a critical first step.

## ii. *Improving EDIA-D Leadership*

The leadership of EDIA-D and anti-racism matters within the law school should be vested in someone with a position of authority who is invested with a specific mandate to address EDIA-D issues. This work should not fall on the shoulders of racialized and Indigenous community members who are already overburdened with unpaid EDIA-D work.

The ARWG proposes that this work should be done by a staff or faculty member in a full-time leadership position at the assistant dean or director level, supported by a committee of community members from marginalized backgrounds. This is in line with the strategies adopted by other law schools and other professional schools at Western. For example, this past June the University of Toronto's Faculty of Law appointed an assistant dean of equity, diversity and inclusion.<sup>58</sup> Queen's Law recently hired a full time director of Indigenous initiatives and equity, diversity and inclusivity, a "senior leader at the law school" whose job is to "serve as [an] advocate to ensure that students from equity seeking groups and communities are equipped for success at all stages" of law school and to "provide both cultural and academic support to students, particularly Indigenous, racialized and marginalized people."<sup>59</sup> At the Lincoln Alexander School of Law at Toronto Metropolitan University, Tanya (Toni) De Mello serves as the assistant dean of student programming, development and equity. De Mello, who is "considered an expert on equity and inclusion in Canada," works to foster an environment that prioritizes equity, diversity, and inclusion.<sup>60</sup>

Closer to the law school, the Schulich School of Medicine and Dentistry has appointed Dr. Sukhveer Bains as Acting Associate Dean, Equity, Diversity, Inclusion, and Decolonization.<sup>61</sup> The Ivey Business School recently hired Erin Huner as its director of culture and inclusion.<sup>62</sup> Huner is supported by Ivey's Equity, Diversity and Inclusion Advisory Council.<sup>63</sup>

<sup>58</sup> Ada Maxwell-Alleyne, "Experience" (June 2022), online: LinkedIn < <https://www.linkedin.com/in/ada-maxwell-alleyne-aba48a17/> >.

<sup>59</sup> Amanda Jerome, "Queen's Law announces alum as new EDI programs director" (22 June 2021), online: *The Lawyer's Daily* < <https://www.thelawyersdaily.ca/articles/27659/queen-s-law-announces-alum-as-new-edi-programs-director> >.

<sup>60</sup> Dean Donna E. Young, "Toni De Mello appointed assistant dean, student programming, development and equity" (23 April 2020), online: *Lincoln Alexander School of Law* < <https://www.torontomu.ca/law/news-events/2020/04/appointment-of-toni-de-mello/> >.

<sup>61</sup> Schulich School of Medicine and Dentistry, "Announcement: Dr. Sukhveer Bains, appointed Acting Associate Dean, Equity, Diversity, Inclusion, and Decolonization" (September 2022), online: Western University < [https://www.schulich.uwo.ca/about/news/2022/september/announcement\\_dr\\_sukhveer\\_bains\\_appointed\\_as\\_the\\_acting\\_associate\\_dean\\_equity\\_diversity\\_inclusion\\_and\\_decolonization\\_edid.html](https://www.schulich.uwo.ca/about/news/2022/september/announcement_dr_sukhveer_bains_appointed_as_the_acting_associate_dean_equity_diversity_inclusion_and_decolonization_edid.html) >. See also Schulich School of Medicine and Dentistry, "School to open Office of Equity, Diversity and Inclusion" (25 March 2021), online: Western University < [https://www.schulich.uwo.ca/about/deans\\_office/deans\\_office\\_communication/march\\_25\\_2021.html](https://www.schulich.uwo.ca/about/deans_office/deans_office_communication/march_25_2021.html) >.

<sup>62</sup> EDI Advisory Council, "Erin Huner", online: *Ivey Business School* < <https://www.ivey.uwo.ca/about/edi/edi-advisory-board/erin-huner/> >.

<sup>63</sup> Sharon Hodgson, "Action Plan EDI 2.0" (12 October 2021), online: *Ivey Business School* < <https://www.ivey.uwo.ca/about/edi/edi-at-ivey/action-plan/> >.

Many American law schools also have associate or assistant deans of EDI (or faculty leaders with similar titles). This includes, to name a few, Georgetown Law,<sup>64</sup> the University of Pennsylvania Carey School of Law,<sup>65</sup> the Gould School of Law at the University of Southern California,<sup>66</sup> the University of Wisconsin Madison,<sup>67</sup> the University of Virginia School of Law,<sup>68</sup> the Pritzker School of Law at Northwestern University,<sup>69</sup> Albany Law School,<sup>70</sup> and the Washington College of Law at American University.<sup>71</sup>

Additionally, the University of Calgary's Faculty of Law has revived its standing committee on Equity, Diversity and Inclusion<sup>72</sup> and the University of Toronto Faculty of Law has a Gender, Accessibility and Diversity Committee that makes recommendations to the Dean and reports to the Faculty Council.<sup>73</sup> Windsor Law also has an Equity and Diversity Committee<sup>74</sup> and an Anti-Black Racism Committee.<sup>75</sup> The Schulich School of Law at Dalhousie University recently constituted their inaugural Equity, Diversity and Inclusion Committee with a mandate to implement the "Black Lives Matter" motion that gave rise to the creation of the EDI Committee.<sup>76</sup>

In addition, specific leadership is needed to advance Indigenous initiatives within the law school. This is an area in which Western Law has fallen far behind. The University of Toronto's Faculty of Law has a salaried full-time manager of Indigenous descent to lead its Indigenous Initiatives Office.<sup>77</sup> A somewhat analogous position exists at Dalhousie, with a full-time director running its Indigenous Blacks & Mi'kmaq initiative.<sup>78</sup> The Bora Laskin School of Law at Lakehead University appointed a director of Indigenous relations.<sup>79</sup> The Lincoln Alexander School of Law aims to hire a director of Indigenous education and reconciliation initiatives.<sup>80</sup> The University of Victoria also has a director of Indigenous initiatives,<sup>81</sup> and the University of Calgary Faculty of Law has a coordinator of Indigenous initiatives and reconciliation.<sup>82</sup>

To ensure that the EDIA-D efforts of Western Law are spearheaded by a dependable and accountable leader, the ARWG recommends that Western Law, with the support of the Western administration:

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<sup>64</sup> Office of Equity & Inclusion, "Meet the Staff", online: *Georgetown Law* <<https://www.law.georgetown.edu/your-life-career/diversity-inclusion/equity-inclusion-office/meet-the-staff/>>.

<sup>65</sup> Penn Law, "Associate Dean for Equity and Inclusion Monica Monroe to become the new Dean of Harvard Law School's Office of Community Engagement, Equity, and Belonging" (2 February 2022), online: *University of Pennsylvania* <<https://www.law.upenn.edu/live/news/14446-associate-dean-for-equity-and-inclusion-monica>>.

<sup>66</sup> Leslie Ridgeway, "New Assistant Dean of Diversity, Equity and Inclusion envisions a path to healing" (23 August 2021), online: *USC Gould School of Law* <<https://gould.usc.edu/about/news/?id=4885>>.

<sup>67</sup> Law School News, "UW Law School Names Michael States the Inaugural Associate Dean of Diversity, Equity, and Inclusion" (14 September 2021), online: *University of Wisconsin-Madison Law School* <[https://apps.law.wisc.edu/newsletter/Features/UW\\_Law\\_School\\_Names\\_Michael\\_Stat\\_2021-09-14](https://apps.law.wisc.edu/newsletter/Features/UW_Law_School_Names_Michael_Stat_2021-09-14)>.

<sup>68</sup> Mary Wood, "Mark Jefferson Named Inaugural Assistant Dean for Diversity, Equity and Belonging" (8 March 2021), online: *University of Virginia School of Law* <<https://www.law.virginia.edu/news/202103/mark-jefferson-named-inaugural-assistant-dean-diversity-equity-and-belonging>>.

<sup>69</sup> NLaw News, "Northwestern Pritzker Law Appoints Mike Burns as Associate Dean for Diversity, Equity, Inclusion, and Engagement" (16 June 2022), online: *Northwestern Pritzker School of Law* <<https://news.law.northwestern.edu/northwestern-pritzker-law-appoints-mike-burns-as-associate-dean-for-diversity-equity-inclusion-and-engagement/>>.

<sup>70</sup> Albany Law School, "Jermaine Cruz joins Albany Law School as New Assistant Dean for Diversity and Inclusion" (4 October 2021), online: *Albany Law School* <<https://www.albanylaw.edu/about/news/jermaine-cruz-joins-albany-law-school-new-assistant-dean-diversity-and-inclusion>>.

<sup>71</sup> Washington College of Law, "Office of Diversity, Inclusion and Affinity Relations", online: *American University* <<https://www.wcl.american.edu/here/student-life/diversity/>>.

<sup>72</sup> This was shared with us by professor Jennifer Koshan.

<sup>73</sup> Faculty of Law, "Inclusivity and Diversity at the Faculty of Law", online: *University of Toronto* <<https://www.law.utoronto.ca/about-law-school/inclusivity-and-diversity-faculty-law>>. Students, faculty, and staff sit on the Committee. The Committee meets five times per year.

<sup>74</sup> Faculty of Law, "Equity and Diversity Committee", online: *University of Windsor* <Equity and Diversity Committee>.

<sup>75</sup> Charles C Smith & Birgit Rohde, "Independent Review on Anti-Black Racism for the University of Windsor's Faculty of Law" (March 18, 2022) at 8, online (pdf): <[https://www.uwindsor.ca/law/sites/uwindsor.ca/law/files/final-report-windsorlaw\\_17mar2022-2.pdf](https://www.uwindsor.ca/law/sites/uwindsor.ca/law/files/final-report-windsorlaw_17mar2022-2.pdf)>.

<sup>76</sup> This was shared with us by professor Richard Devlin.

<sup>77</sup> Faculty of Law, "Indigenous Initiatives Office", online: *University of Toronto* <<https://www.law.utoronto.ca/programs-centres/programs/indigenous-initiatives-office>>.

<sup>78</sup> We met with the current director, Kelsey Jones, in 2021.

<sup>79</sup> "Robin Sutherland", online: *Lakehead University* <<https://www.lakeheadu.ca/users/S/rmsuther/node/39112>>.

<sup>80</sup> Lincoln Alexander School of Law, "Director of Indigenous Education and Reconciliation Initiatives" (May 2021), online (pdf): *Toronto Metropolitan University* <[https://www.torontomu.ca/content/dam/law/documents/law\\_response\\_TRC\\_report.pdf](https://www.torontomu.ca/content/dam/law/documents/law_response_TRC_report.pdf)>.

<sup>81</sup> Faculty of Law, "Staff Directory", online: *University of Victoria* <<https://www.uvic.ca/law/facultystaff/staffdirectory/index.php>>.

<sup>82</sup> UCalgary News, "UCalgary Law welcomes new Indigenous Initiatives Coordinator" (1 June 2021), online: *University of Calgary* <<https://www.ucalgary.ca/news/ucalgary-law-welcomes-new-indigenous-initiatives-coordinator>>.

Appoint an assistant dean or director of EDIA-D. This individual will be responsible for the full implementation of these recommendations and the advancement of anti-racism, diversity and inclusion initiatives across all areas of the law school. The hiring process must involve the engagement and consultation of groups with lived experiences, including, but not limited to, the Black Law Students Association, the South Asian Law Students Association, the East Asian Law Students Association, the Middle Eastern and North African Law Students Association, OUTLaws, the Gender and the Law Association, the Jewish Law Students Association, Western Women in the Law, Black faculty members, Indigenous faculty members, other racialized faculty members, Black alumni, Indigenous alumni, other racialized alumni, the Student Legal Society, the Western Indigenous Initiatives Office and, if needed, the office of the Vice President of Equity, Diversity and Inclusion.

Establish an EDIA-D Committee, chaired by the assistant dean or director EDIA-D, to continue the work begun by the ARWG. The Committee should include Indigenous, Black and other racialized people from faculty, staff, JD students, graduate students and alumni.

Retain external consultants as necessary to support the work of the assistant dean or director of EDIA-D and the EDIA-D Committee.

Establish special programs, as authorized under the Ontario Human Rights Code<sup>83</sup> to hire a full-time Indigenous staff member to coordinate Indigenous initiatives in the office of the assistant dean or director of EDIA-D.

### iii. Truth and Reconciliation – Indigenous Peoples and the Law

Western Law, and the legal profession in general, have important roles to play in advancing truth and reconciliation. It has been well documented by Indigenous communities,<sup>84</sup> the TRC,<sup>85</sup> the National Inquiry into Missing and Murdered Indigenous Women and Girls,<sup>86</sup> Canadian courts,<sup>87</sup> and government officials<sup>88</sup> that the law has been used as a tool for the oppression, colonization and genocide of Indigenous peoples. The impacts

<sup>83</sup> The *Human Rights Code of Ontario* protects programs specially designed to promote equality of opportunity and to address disadvantage. See: *Human Rights Code*, RSO 1990, c H-19, s 14(1) reproduced below:

*Special programs*

14 (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I. R.S.O. 1990, c. H.19, s. 14 (1).

<sup>84</sup> See for example: Assembly of First Nations, "Submission of the Assembly of First Nations (AFN) on Free Prior Informed Consent (FPIC) for the Expert Mechanism on the Rights of Indigenous Peoples" (last visited 6 September 2022) at 6, online (pdf): *Office of the United Nations High Commissioner for Human Rights* <[https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/AssemblyFirst-Nations\\_Canada.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/AssemblyFirst-Nations_Canada.pdf)>; *Assembly of First Nations*, "Dismantling the Doctrine of Discovery" (January 2018) at 2-3, online (pdf): *Assembly of First Nations* <<https://www.afn.ca/wp-content/uploads/2018/02/18-01-22-Dismantling-the-Doctrine-of-Discovery-EN.pdf>>; Kerry Benjoe, "Canada's History with Indigenous people is cruel and unfair, but we need to own up to it" (1 July 2020), online: *CBC News* <<https://www.cbc.ca/news/canada/saskatchewan/point-of-view-kerry-benjoe-racism-george-floyd-canada-indigenous-1.5632918>>.

<sup>85</sup> Truth and Reconciliation Commission of Canada, "Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada", (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 1, 3, 54-55, and 202-207. See especially page 202 at which the Commission writes that, "Until recently, Canadian law was used by Canada to suppress truth and deter reconciliation. Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the residential school system. In addition, Canada's laws and associated legal principles fostered an atmosphere of secrecy and concealment."

<sup>86</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women, Volume 1A" (last visited 6 September 2022), at 10 and 53, online (pdf): MMIWG-FFADA <[https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)>.

<sup>87</sup> See: *R v Desautel*, 2021 SCC 17 at para 33 (citing *Report of the Royal Commission on Aboriginal Peoples*, vol. 1, *Looking Forward, Looking Back* (1996), at pp. 139-40); *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc*, 2022 BCSC 15 at paras 175-178 and 587. See also: Sean Fine, "Chief Justice says Canada attempted 'cultural genocide' on aboriginals" (28 May 2015), online: *The Globe and Mail* <<https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>>.

<sup>88</sup> See: Catharine Tunney, "Trudeau says deaths and disappearances of Indigenous women and girls amount to 'genocide'" (4 June 2019), online: *CBC News* <<https://www.cbc.ca/news/politics/trudeau-mmiwg-genocide-1.5161681>>; Mary Jane McCallum, "Oppression, Privilege and the Myth of the Rule of Law: Senator McCallum" (5 March 2020), online: *Senate of Canada* <<https://sencanada.ca/en/sencaplus/opinion/oppression-privilege-and-the-myth-of-the-rule-of-law-senator-mccallum/>>.

of this are still felt strongly. Moreover, the law continues to oppress and marginalize Indigenous people. The overrepresentation of Indigenous people in the criminal justice<sup>89</sup> and child protection<sup>90</sup> systems are only a few examples of how colonial violence is still perpetuated by our legal systems.<sup>91</sup>

In response to this, many legal institutions have taken steps to improve relationships with Indigenous peoples with a view to promoting reconciliation. For example, the Law Society of Ontario worked with the Indigenous Bar Association and the Advocates Society to develop a Guide for Lawyers Working with Indigenous Peoples. Questions related to truth and reconciliation are also included on the Law Society's licensing examinations.

In its final report, the TRC included calls to action specifically directed at legal institutions and law schools. Call to Action #27 asks that the Federation of Law Societies of Canada "ensure that lawyers receive appropriate cultural competency training."<sup>92</sup> Call to Action #50 seeks the establishment of "Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada."<sup>93</sup> Call to Action #28 specifically calls upon law schools:

We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

In its strategic plan, Western Law has committed to implementing Call to Action #28.<sup>94</sup> In fact, Western has repeatedly expressed a commitment to implement the TRC Calls to Action and advance reconciliation in other meaningful ways. Western's strategic plan, *Towards Western at 150*, includes as two important goals "advancing reconciliation with Indigenous communities" and "creating a more equitable and inclusive Western."<sup>95</sup> The university has adopted an Indigenous Strategic Plan that further outlines Western's commitment to truth, reconciliation and justice.<sup>96</sup> The Western Law strategic plan also acknowledges reconciliation as part of the "changing context" in which the school finds itself and includes a commitment to "[e]xpand the number and range of opportunities for our students to gain knowledge of Indigenous laws, perspectives, and experiences."<sup>97</sup>

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<sup>89</sup> See e.g. *R v Gladue*, [1999] 1 SCR 688 at paras 58-65; *R v Ipeelee*, 2012 SCC 13 at para 62; *R v CK*, 2021 ONCA 826 at para 59 (it is a "notorious and indisputable fact that Indigenous persons are overrepresented generally in the criminal justice system"); Scott Clark, "Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses", Department of Justice Canada, 2019 CanLII Docs 4415; Nate Jackson, "Aboriginal Youth Overrepresentation in Canadian Correctional Services: Judicial and Non-Judicial Actors and Influence", 2015 CanLII Docs 78; Lisa Monchalin, *The colonial problem: an indigenous perspective on crime and injustice in Canada* (Toronto: University of Toronto Press, 2016) at 143-145; Charbel Saghbini, Angela Bressan and Lysiane Paquin-Marseille, "Indigenous People in Criminal Court in Canada: An Exploration Using the Relative Rate Index", Department of Justice Canada, 2021 CanLII Docs 2425.

<sup>90</sup> *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 126-136 ("The overrepresentation of Aboriginal children in youth protection services is part of a sad historical continuity. Despite the many warning signs given over the decades and the initiatives aimed at stemming the problem, it is still very much present throughout Canada. This is an indisputable reality"); Truth and Reconciliation Commission of Canada, *Final Report*, vol 5, at 11; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report*, vol. 1a, p. 339; Vandna Sinha, Nico Trocmé, Barbara Fallon *et al.*, *Kiskisik Awasisak: Remember the Children. Understanding the Overrepresentation of First Nations Children in the Child Welfare System*, Ottawa, Assembly of First Nations, 2011, pp. 17-19; Cindy Blackstock, "Residential Schools: Did They Really Close or Just Morph Into Child Welfare?"; (2007) 6:1 *Indigenous L.J.* 71, pp. 76-77; *Winnipeg Child and Family Services v K LW*, 2000 SCC 48 at para 72; Ontario Human Rights Commission, *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare* (Toronto: Ontario Human Rights Commission, 2018), at 27-28.

<sup>91</sup> See generally Sébastien Grammond, *Terms of coexistence: Indigenous peoples and Canadian law* (Toronto: Carswell, 2013); Jim Reynolds, *Aboriginal peoples and the law: a critical introduction* (Vancouver, BC: Purich Books, 2018); Robert P C Joseph, *21 things you may not know about the Indian Act* (Vancouver, British Columbia: Page Two Books, 2018); Elaine Gardner-O'Toole & Wendy Moss, *Aboriginal people: history of discriminatory laws*, Rev. ed. (Ottawa: Library of Parliament, Research Branch, 1992).

<sup>92</sup> TRC Calls to Action, *supra* note 13 at 3.

<sup>93</sup> *Ibid* at 5-6.

<sup>94</sup> Updated Strategic Plan, *supra* note 12 at 2.

<sup>95</sup> Western University, "Towards Western at 150: Western University Strategic Plan" (2021), online (pdf): *Western University* <<https://strategicplan.uwo.ca/pdf/Western-Strategic-Report.pdf>> [Towards Western at 150].

<sup>96</sup> Western University, "Indigenous Strategic Plan" (6 October 2016), online (pdf): *Western University* <<https://indigenous.uwo.ca/initiatives/docs/Indigenous-Strat-Plan--Final.pdf>>.

<sup>97</sup> Updated Strategic Plan, *supra* note 12 at 2, 4.

Western's Office of Indigenous Initiatives ("OII") has also taken significant steps in recent years to develop resources for faculty members across campus to help further these calls to action. For example, Candace Brunette-Debassige has led the development of *Maatookiying gaa-miinigoowiziying* (Sharing Our Gifts), which is "a digital repository of Indigenous curriculum resources available for Western instructors across disciplines."<sup>98</sup> These resources can be integrated into existing courses with the support of the OII's Indigenous curriculum and pedagogy advisor.

We also acknowledge and commend Western Law's significant steps towards advancing Call to Action #28. Beginning in January 2021, the faculty introduced a compulsory course in Indigenous law for upper-year students. Professor Jeffrey Warnock, a citizen of the Métis Nation of Ontario and a recently hired full-time faculty member, is currently the instructor for this course, which provides students with an introduction to Indigenous legal traditions. The course addresses a range of topics, including much of what is discussed in Call to Action #28. This is a critical first step. The faculty's continued participation in the Kawaskimhon Talking Circle Moot is also encouraging.

Nonetheless, Western Law could be doing more to build relationships with local Indigenous communities and to further its commitment to truth and reconciliation. Western Law should look for guidance and inspiration from other law faculties who have made progress in this area. Dalhousie's Schulich School of Law has deep connections with local Mi'kmaq peoples through its Indigenous Blacks & Mi'kmaq Initiative.<sup>99</sup> The University of Victoria's law school is home to an Indigenous Law Research Unit and offers a professional undergraduate degree in Indigenous Legal Orders (JID).

Many schools offer expanded course offerings in Indigenous law, with the University of Victoria and Dalhousie again at the forefront. Currently, more learning opportunities in Indigenous law are being offered at the University of Toronto Faculty of Law, the Lincoln Alexander School of Law, the Bora Laskin School of Law, Queen's Law, and the University of Ottawa than at Western Law.<sup>100</sup> Schools with Indigenous law course offerings comparable to Western Law, such as Osgoode Hall, have committed to increasing their scope.<sup>101</sup>

Indigenous law course offerings at other law schools often include land-based learning opportunities and practical learning opportunities. Western Law has in the past offered opportunities for land-based learning. Over the past several years (prior to COVID-19), Western Law students and faculty have had the opportunity to learn first-hand about Indigenous law at a series of Anishinaabe law camps. In the past these camps have taken place in partnership with the Chippewas of the Thames First Nation and Walpole Island First Nation.

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<sup>98</sup> ([https://indigenous.uwo.ca/initiatives/learning/indigenous\\_learning\\_bundles.html#:~:text=The%20Indigenous%20Learning%20Bundles%20are%20digitally%20archived%20and%20housed%20on.video%20links%20and%20instructor%20guides.](https://indigenous.uwo.ca/initiatives/learning/indigenous_learning_bundles.html#:~:text=The%20Indigenous%20Learning%20Bundles%20are%20digitally%20archived%20and%20housed%20on.video%20links%20and%20instructor%20guides.))

<sup>99</sup> See generally Ryan McNutt, "Breaking Barriers, 30 Years Later" (2019), online: *DALMAGAZINE* <<http://dalmag.dal.ca/blog/2019/11/19/breaking-barriers-30-years-later/>>. The school has also developed close connections with African Nova Scotian (Indigenous Black) people and communities.

<sup>100</sup> Western Law offers a mandatory course in Indigenous Law and an elective course in Aboriginal Law. The University of Toronto offers six courses related to Indigenous peoples and the law: Aboriginal Law and Policy; Indigenous People and the Constitution of Canada; Indigenous Laws and Jurisdiction of Children and Families; a Clinical Legal Education Externship with Aboriginal Legal Services; an Indigenous Law Journal course; and an Aboriginal Law Practicum. In addition to courses that indirectly address issues of colonialism and the oppression of Indigenous peoples (e.g., Law and Injustice, Critical Race Theory), the Lincoln Alexander School of Law at Toronto Metropolitan University offers three courses related to Indigenous peoples and the law: Indigenous and Aboriginal Law (mandatory); Indigenous Legal Theory; and Legal Issues in Indigenous Economic Development. The Bora Laskin School of Law offers six courses related to Indigenous peoples and the law: Indigenous Legal Traditions (mandatory); Indigenous Perspectives (mandatory); Aboriginal Law (mandatory); Intellectual Property and Indigenous Knowledge; Aboriginal Law in the North; and Federal and Aboriginal Law of Work. Queen's Law offers six courses related to Indigenous peoples and the law: First Nations Negotiations; Indigenous Perspectives of Indigenous Law; Aboriginal Child Welfare; Indigenous Law in Practice; Indigenous Governance and Environmental Law; and Aboriginal Law. Finally, the University of Ottawa offers at least nine courses related to Indigenous peoples and the law across its common law and civil law programs: Aboriginal Peoples and the Law / Les autochtones et le droit; Droit des autochtones; Aboriginal Legal Mechanisms; Studies in Aboriginal Law; Problèmes choisis de droit autochtone / Selected Problems in Aboriginal Peoples and the Law (bilingual); Advanced Aboriginal Law; Comparative Indigenous Rights; L'ordre juridique Innu; and Traditions juridiques autochtones.

<sup>101</sup> Osgoode Hall Law School, "Strategic Plan 2021-2025" (2021), online (pdf): *York University* <[https://www.osgoode.yorku.ca/wp-content/uploads/2021/04/2021-2025\\_Strategic-Plan\\_FINAL.pdf](https://www.osgoode.yorku.ca/wp-content/uploads/2021/04/2021-2025_Strategic-Plan_FINAL.pdf)> at 10 [Osgoode Strategic Plan].

In addition to pedagogical and curriculum changes needed to advance the goals of truth and reconciliation, Western Law must also recruit and retain more Indigenous community members. In the classes of 2020 and 2021, Indigenous students made up no more than one per cent of the class. Across the classes of 2022 and 2023, there was only one Indigenous student. Of the class of 2024, two per cent of students self-identified as Indigenous.<sup>102</sup> Recruiting Indigenous students must be a top priority.

Supports must also be established to ensure these students understand they are valued and safe in our community. Other law schools in Canada and professional programs at Western provide strong support for Indigenous students. Many, including the University of Toronto Faculty of Law, have an Indigenous Initiatives Office. The University of Ottawa's common law program had an Elder in Residence and special advisor to the Dean on reconciliation, Claudette Commanda, until she was appointed chancellor of the university.<sup>103</sup> Others, such as the Schulich School of Law at Dalhousie and the University of Toronto Faculty of Law have retained an Elder in Residence to support Indigenous law students. In its most recent Strategic Plan, Osgoode Hall has committed to doing the same.<sup>104</sup> In a similar vein, Western's Schulich School of Medicine and Dentistry has appointed an Indigenous Leader in Residence. At the University of New Brunswick's Faculty of Law, The Honourable Nicholas Graydon, a "Wolastoqey Elder, lawyer, judge, social worker, and activist" originally from Tobique First Nation, has been appointed as Wihkwatacamit.<sup>105</sup> Wihkwatacamit is a Wolastoqey word meaning "the person who loves to tell stories."<sup>106</sup> He will serve as "a mentor and resource for students and faculty as they engage with subjects related to the Indigenous experience in Canada."<sup>107</sup>

Another way in which other law schools are pursuing reconciliation is through the establishment of Indigenous Legal Institutes in line with TRC Call to Action #50, described above. The University of Victoria<sup>108</sup> and the Bora Laskin School of Law<sup>109</sup> have each established such institutes and Osgoode Hall<sup>110</sup> has indicated in its strategic plan a desire to launch such an institute.

Western Law should emulate the leadership demonstrated by other law schools in this regard. In light of the foregoing, we recommend that Western Law, with the support of the Western administration, do the following:

In the spirit of TRC Call to Action #50, establish a committee dedicated to the development of an Indigenous law centre at Western. This will require working with Indigenous groups, federal, provincial and local governments, as well as other faculties that have begun this work, such as Lakehead University and the University of Victoria. This Indigenous law centre would be focused on the development, use and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Indigenous peoples.

Build upon the steps that have already been taken to implement TRC Call to Action #28. The mandatory course in Indigenous law is an important step but even more can be done to ensure that both JD and graduate students are receiving instruction about the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. To that end, Western Law should immediately review options for expanding upon the Indigenous law course and consider additional options such as:

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<sup>102</sup> Western Law, Diversity Survey Results Comparative Chart Class of 2020 to Class of 2024 at "Ethnicity", online: Western Law, <[www.law.uwo.ca/future\\_students/jd\\_admissions/Diversity-Survey---Five-Year-Comparative-Profile-for-PDF-and-Website\\_v3.pdf](http://www.law.uwo.ca/future_students/jd_admissions/Diversity-Survey---Five-Year-Comparative-Profile-for-PDF-and-Website_v3.pdf)>.

<sup>103</sup> Newsroom, "Claudette Commanda becomes 1st Indigenous Chancellor of the University of Ottawa" (23 June 2022), online: *uOttawa* <<https://www2.uottawa.ca/about-us/media/news/claudette-commanda-becomes-1st-indigenous-chancellor-university-ottawa>>.

<sup>104</sup> Osgoode Strategic Plan, *supra* note 101 at 10.

<sup>105</sup> Ed Bowes, "UNB Law welcomes Graydon Nicholas as Wihkwatacamit" (30 August 2021), online: UNB Law <<https://blogs.unb.ca/unblaw/2021/08/unb-law-welcomes-graydon-nicholas-as-wihkwatacamit.php>>.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> Information on the Indigenous Law Research Unit at the University of Victoria can be found at <https://ilru.ca/>.

<sup>109</sup> Lakehead University, "Lakehead University's Bora Laskin Faculty of Law launching Indigenous Law and Justice Institute", online: Lakehead <<https://www.lakeheadu.ca/about/news-and-events/news/archive/2021/node/63455>>.

<sup>110</sup> Osgoode Strategic Plan, *supra* note 101 at 10.

(1) developing and offering a cluster of courses on Indigenous legal issues, where students are expected to complete a certain number of credits in courses that focus primarily on these issues. This would require funding for dedicated faculty to develop and teach these course offerings on a yearly basis;

(2) including a cultural competency course as part of the first-year curriculum that offers both course content and skills-based training;

(3) developing a course that incorporates elements of both Canadian Aboriginal law as well as Indigenous legal traditions; and/or

(4) identifying opportunities to address Indigenous legal issues throughout the curriculum, including in constitutional law, criminal law, family law, international law, human rights law, property law, etc. Once these opportunities have been identified, the next step would be to ensure faculty or guest speakers could deliver this content within the context of these courses.

Establish a committee whose mandate would include:

(1) continually evaluating the faculty's pedagogical approach to teaching Indigenous content;

(2) assessing which courses could be engaging Indigenous content moving forward and what that engagement might look like;

(3) offering recommendations on how the law school should adapt/refine its current curriculum to further implement Call to Action #28. This committee could be comprised of current law students (JD, graduate); representatives from the law faculty; representatives from the Indigenous Studies program; the OII's curriculum and pedagogy advisor; and representatives from the local Indigenous communities.

Work in partnership with the OII to promote the use of the Indigenous learning bundles (and other resources) by the faculty, perhaps through the use of faculty workshops held throughout the year.

Continue to collaborate and build partnerships with local Indigenous Peoples including the Chippewas of the Thames First Nation, Walpole Island First Nation, Oneida Nation of the Thames, the Delaware Nation at Moraviantown, the Thames Bluewater Métis Council and others.

Provide funding to host events like the Anishinaabe law camps in the future and commit to providing students and faculty with opportunities to engage in land-based learning by continuing to hold these camps on a regular basis.

Establish special programs under the Human Rights Code to appoint/hire an Elder in Residence to support Indigenous law students and to advise the faculty on issues of reconciliation. This individual should receive a stipend as compensation.

The work already done by Western Law is encouraging, but it is not enough. Swift and complete implementation of these recommendations, in consultation with local Indigenous groups, will bring our school closer to achieving its goal of reconciliation.

#### *iv. Greater Diversity in Faculty and Staff*

The faculty members at Western Law do not reflect the diversity we aspire to have in our community. This was specifically highlighted in the Senomi report. This must change.

The impact of the lack of diversity is felt strongly by community members and hampers the development of a more inclusive culture. Students feel as if there are "no faculty members who look like them [Black] or

understand their experiences of racism in the classroom at Western Law.”<sup>111</sup> This leads to students feeling “isolated and alone.”<sup>112</sup> Students in the ARWG’s informal town hall described having more difficulty connecting with their professors than their white peers did.

The lack of diverse faculty members also impedes learning. Students cannot truly gain a holistic understanding of our legal system if the perspectives and experiences of equity seeking groups are not represented in our faculty. As one listening session participant explained in the context of criminal law, “not hiring Black faculty you can’t really expect to get the full understanding of criminal law and how it relates to racialized individuals when it’s always being taught by someone who is white.”<sup>113</sup> Community members feel that Western Law keeps “hiring white faculty when there is opportunity to put their commitments [to anti-racism] into action. There are many diverse faculty at other institutions yet Western keeps making excuses about hiring more faculty of color when they have opportunities to do so.”<sup>114</sup>

The lack of diversity is even more evident at the leadership level. Currently, the Dean, associate deans, assistant dean and directors at the law school are all white. Members of our community have “observed that decision-making settings at Western Law often only have one token person or no diversity at all and it is just white men with the same narrow perspectives making final decisions that impact the faculty.”<sup>115</sup>

Hiring Black, Indigenous and racialized persons will only bring Western Law in step with our competitors and other comparator institutions. In our consultations with anti-racism experts and leaders at other schools, many mentioned that they had prioritized the hiring of Black, Indigenous or racialized faculty members. When Dr. Bertha Garcia joined the Schulich Dentistry Program, a “university record” of 16 faculty members were hired in 19 months, 70 per cent of whom were either racialized, women, or racialized women. Western’s Faculty of Education has indicated it has increased the diversity of its faculty and staff. At the University of Toronto Faculty of Law, a focus is being placed on hiring Black, Indigenous and racialized professors. The Dean of Law at Dalhousie University, Richard Devlin, indicated that diversification of staff and faculty were a priority. A survey of the faculty directories of other law schools readily demonstrates that Western Law has the least diverse faculty of any law school in the province. The law school also has moved backwards on gender inclusion and diversity; 27 members of the faculty are men while only 13 are women, and recent hiring trends at the law school have only further entrenched and exacerbated this stark racial and gender imbalance.

It is imperative that Western Law improve the diversity of its faculty and staff, and promote the retention of Black, Indigenous, and racialized faculty and staff. “More than half of all [ARWG Survey] respondents agree that Western Law needs to improve recruitment and hiring of Black faculty, Indigenous faculty, and faculty of color.”<sup>116</sup> To facilitate this, the ARWG recommends that Western Law, with the support of the Western administration:

Establish special programs under the Human Rights Code to recruit full-time Black, Indigenous and racialized professors, with a particular emphasis on Black and Indigenous professors and racialized women.

Establish special programs under the Human Rights Code to recruit Black, Indigenous and racialized clinical faculty and supervising lawyers.

Retain an equity, diversity and inclusion consultant with anti-racism expertise to review the recruitment, retention and promotion processes for faculty and staff, subject to the relevant collective agreements.

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<sup>111</sup> Senomi Report, *supra* note 15 at 44.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid* at 45.

<sup>114</sup> *Ibid* at 44.

<sup>115</sup> *Ibid* at 45.

<sup>116</sup> *Ibid* at 37.

Review the application process and requirements to be hired, appointed, promoted or granted tenure as faculty and staff from an anti-racism and anti-oppression lens, and publish the review's findings to the extent permitted by the relevant collective agreements.

Require, to the extent permitted by the relevant collective agreements, that all individuals assessing applications for faculty appointments have completed unconscious bias and anti-racism training.

Require, to the extent permitted by the relevant collective agreements, that all individuals assessing applications for promotion and tenure have completed unconscious bias and anti-racism training.

Our faculty needs to better reflect the vibrant diversity of our communities.

#### *v. Improving Admissions and Student Life*

Just as Western Law must improve the recruitment and retention of Black, Indigenous and racialized faculty, it must improve the recruitment and retention of Black, Indigenous and racialized students. This is true at both the undergraduate (JD) and graduate levels.

We note that significant improvements to the recruitment of Indigenous and racialized students have been made in recent years. The JD classes at Western Law are more representative of the diversity of Ontario than they have ever been. Efforts should be made to sustain this progress. Although to a lesser extent than ever before, Black and Indigenous students remain underrepresented in our school. Moreover, diversity alone does not ensure that racism is addressed. Black, Indigenous and racialized students who choose to attend Western Law still contend with an unwelcoming environment of racism and hostility.

“Enhanc[ing] and support[ing] the diversity of our student body” is a cornerstone of Western Law’s most recent strategic plan.<sup>117</sup> Moreover, Western Law’s lack of diversity and the prevalence of racism in our community can be a concern for prospective students, and can negatively affect our recruitment efforts. As one focus group participant explained, “Before I came to Western, I was told actually not to go to Western by a lot of my Black mentors.”<sup>118</sup> This puts Western Law at a serious competitive disadvantage. It also highlights the importance of simultaneously addressing the recruitment and retention of Black, Indigenous and racialized students. Western Law will continuously struggle to attract Black, Indigenous and racialized students so long as their peers experience racism and hostility at Western Law.

To be clear, students are experiencing racism at Western Law. The statement from BLSA in September 2022 highlighted this. This was also acknowledged by the President’s ARWG and Dean Chamberlain, and reaffirmed by the ARWG’s survey and listening stream’s work. Most racialized/visible minority survey respondents disagreed that “Western Law is welcoming for Black, Indigenous and people from diverse racialized and ethno-cultural groups.”<sup>119</sup> Racialized respondents had a significantly weaker sense of belonging at Western Law<sup>120</sup> and significantly lower satisfaction with their overall experience at Western Law.<sup>121</sup> In addition, most respondents did not agree that “Western Law is an inclusive faculty for members from racialized and culturally diverse groups” or that “Western Law fosters an anti-racist environment.”<sup>122</sup> In total, 30 per cent of survey respondents reported that they had witnessed racism at Western Law.<sup>123</sup>

At the student town hall, the ARWG heard about students’ experiences of racism in recruitment for positions (e.g. faculty council committees, clinical positions, and SLS-supervised organizations), students’ concerns that

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<sup>117</sup> Updated Strategic Plan, *supra* note 12 at 3.

<sup>118</sup> Senomi Report, *supra* note 15 at 45.

<sup>119</sup> *Ibid* at 10.

<sup>120</sup> *Ibid* at 20-21.

<sup>121</sup> *Ibid* at 21-22.

<sup>122</sup> *Ibid* at 26.

<sup>123</sup> *Ibid* at 29, 30.

they didn't have a space to share their experiences with racism, feelings of isolation in a predominately white setting, racist harassment on school-run social media pages, and other ways in which racism has made the community less inclusive for Black, Indigenous and racialized students.

Students also spoke of a lack of accountability for perpetrators of racist action and a lack of an effective reporting method for incidents of racism. These sentiments were also reflected in our survey results. To report racism at Western Law, students must go through Western's central administration, specifically, the Human Rights Office. Students feel that this tool is ineffective, does not hold perpetrators accountable, and is too removed from the law school. Students overwhelmingly prefer reporting processes and accountability measures that are unique to the law school. Implementing these processes would not be unprecedented. The independent reviewers retained by the University of Windsor's Faculty of Law recommended that the law school "[develop] a stand-alone Student Code of Conduct that reflects the specific professional requirements of Law students and extends to social media run by student associations who are part of the campus."<sup>124</sup>

These recent experiences demonstrate that despite the progress that has been made, Western Law must still sustain, improve and build on its recruitment and retention of Black, Indigenous and racialized students. To do so, the ARWG recommends that Western Law, with the support of the Western administration:

Establish diversity goals, so that students, staff and faculty better represent the diversity of Ontario as much as possible, as soon as possible, and commit to annual public reporting on these goals and their attainment.

Establish special programs under the Human Rights Code to increase the representation of Black, Indigenous and racialized students, with a particular emphasis on Black and Indigenous students.

In consultation with an expert in equity, diversity, inclusion and anti-racism, review the application process and requirements to be admitted as a JD student and graduate student from an anti-racism and anti-oppression lens, publish the review's findings, and implement the review's recommendations.

Enhance communication and outreach programs that aim to increase access for students and encourage them to consider study at Western Law. "Provide appropriate pathways that will facilitate their admission and support their success once enrolled." (See Institutional Communications recommendation (d) from the President's ARWG Report.)

"Clarify reporting avenues, processes and expected outcomes for complaints of racial discrimination" from students, staff and faculty, including over social media. "Develop a strategy to communicate clear pathways for how individuals can obtain help and/or report incidents." (See Institutional Communications recommendation (e) from the President's ARWG Report.)

"Create a 'zero tolerance' promotional campaign that raises the profile of anti-racism" at Western Law. (See Institutional Communications recommendation (c) from the President's ARWG Report.)

"Embed equity and inclusion in the development and execution of special student-facing events and programming, such as OWeek." (See Institutional Communications recommendation (d) from the President's ARWG Report.)

Commit at least \$5,000 annually to the Student Legal Society Diversity Committee to facilitate student-run EDIA-D programming.

Improve the community outreach that connects students interested in the law with alumni and law students.

Establish special programs under the Human Rights Code to increase the scholarship and bursary funds allocated specifically for Black, Indigenous and other racialized students, and ensure that

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<sup>124</sup> Smith & Rohde, *supra* note 75 at 51.

these students – both current and prospective – are made aware of the scholarships and bursaries available to them.

Provide financial support and assistance to the Western chapter of Black Future Lawyers.

“Create annual anti-racism awards and social justice awards to recognize students who distinguish themselves academically or otherwise in areas of social justice, anti-racism and community leadership.” (see Scholarship recommendation (d) from the President’s ARWG Report.)

Review the Faculty of Education’s pilot project adopting the CASPer® situational judgment test for admissions and consider if using CASPer® testing in admissions would improve diversity and inclusion in our community.

As indicated earlier in this report, the issues these recommendations seek to address were identified as problems by survey respondents.

*vi. Anti-Racism Curriculum, Pedagogy, Scholarship and Awareness*

Academics lie at the heart of Western Law. It is necessary that anti-racism be reflected in the classroom as much as it is embodied outside the classroom. Western Law needs a curriculum that reflects a diversity of views and amplifies those voices that are too often marginalized. The incorporation of anti-racist perspectives should primarily be done in three ways: (1) incorporating anti-racist and decolonizing perspectives in all courses; (2) offering specific courses and research initiatives that allow students and faculty to directly study the intersection between race and the law; and (3) adopting anti-racism training for all members of our community.

Community members who responded to our survey largely believe that Black perspectives are not adequately addressed in courses at Western Law.<sup>125</sup> A similar trend was seen when respondents were asked if they agreed that “Western Law includes curriculum that has anti-racist and other race-related content.”<sup>126</sup> This is understandable given that, in a survey of faculty members distributed by the ARWG, most faculty members said they did not seek to include the perspectives of Black, Indigenous or racialized persons in their courses. This may be attributable to another important finding from the faculty survey: professors do not feel equipped to address these subjects properly in the classroom. This is significant; a failure to address subjects of race and racism in a sensitive, trauma-informed manner can have adverse consequences for racialized students.

As indicated above, it is also important to have specific courses that deal directly with issues of racism and the law. While course offerings have improved at Western Law – the new Racial Profiling and Hate Speech courses represent a strong step in the right direction – other Ontario law schools consistently offer more courses directly addressing anti-racist topics than Western Law. Law schools at the University of Toronto, York University, Queen’s University, the University of Ottawa and Toronto Metropolitan University all offer more courses in relevant areas than Western Law.<sup>127</sup>

Specific course offerings should be complemented by research opportunities – for faculty and students – that promote the study of racism and the law. Evidence of the value of this can be found within Western Law itself.

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<sup>125</sup> *Ibid* at 16.

<sup>126</sup> *Ibid* at 17.

<sup>127</sup> In addition to its Indigenous-focused courses and human rights law courses, Western Law will offer two courses focused on racism in the 2022-2023 Academic Year: Racial Profiling and Hate Speech. Osgoode Hall offers four courses directly related to racism and the law: Critical Race Theory; Advanced Criminal Law (Race & Racism); Equality; and Multiculturalism and Intra-Group Vulnerability. Queen’s Law offers five courses directly related to racism and the law: Racism & Canadian Legal Culture; Equality Rights and the Charter; Law and Poverty (“Throughout the term, students will be invited to engage in a sustained interrogation of the significance of the relationship between the state, law, and social policy, with a focus on gendered, racialized, and class relations, as well as Indigenous and marginalized communities”); International Refugee Law; Racism and Canadian Legal Culture. The University of Ottawa offers six courses directly related to racism and the law across its common law and civil law programs: Theory and Practice of Social Justice Law / Théorie et pratique en droit et justice sociale; Race, Racism, and the Law; Studies in Legal Theory (Critical Race); Critical Race Theory; Advanced Constitutional Law and Equality Rights; and Profilage racial. The Lincoln Alexander School of Law offers five courses directly related to racism and the law: Critical Race Theory; Law and Injustice; Public Interest Litigation; The Charter of Rights and Freedoms; Refugee Law.

The Hidden Racial Profiling Project has been a resounding success. Its work has been featured on the front page of the Toronto Star and in the two years since the research began, five Western Law students have gained valuable experience studying how law intersects with race. Research like this will also help to attract Black, Indigenous and racialized scholars and students.

Finally, anti-racism training is an important part of not only building a more inclusive environment, but also developing competent professionals. Other law schools in Canada and other professional schools at Western have adopted anti-racism training for community members. To name only a few, the University of Calgary Faculty of Law, the University of Toronto Faculty of Law, the Schulich School of Medicine and Dentistry, and the Ivey Business School have all introduced mandatory anti-racism training or an equivalent.<sup>128</sup>

There is strong desire among community members to make Western Law more inclusive and welcoming. Anti-racism training will help ensure that all community members are equipped with the tools necessary for an equitable, diverse, inclusive, accessible and decolonized environment to thrive.

For the foregoing reasons, the ARWG recommends that Western Law, with the support of the Western administration:

Develop and offer anti-racism and anti-oppression education for all students, faculty and staff at Western Law as called for by the President's ARWG and the BLSA. "Content should be tailored for each role, with a consistent focus on teaching anti-racism and decolonization, anti-discrimination, anti-bullying, cultural competency, equity, diversity and inclusion." Training should be offered by someone who is Black, Indigenous or racialized and should include topics related to "understanding power/privilege, intersectionality, racial microaggressions, how to have difficult conversations, and how to intervene and respond to incidents of racism. Training should be mandatory for new students during Orientation Week and new-hire orientations. Training should continue as ongoing refreshers for staff/faculty and be tied to performance reviews. For students, it should be scaffolded/required for acceptance into leadership roles, learning abroad/exchange, etc." (See Curriculum, Education, Training & Programming recommendation (a) from the President's ARWG Report). The training should also provide bystanders with the tools to get involved when they witness racism, in order to alleviate the burden that falls on Black, Indigenous and racialized students.

Expand the number of courses and programs focused on the study of and scholarship by Black, Indigenous and racialized persons or groups, anti-racism, critical race theory, EDIA-D issues and related fields. (See Curriculum, Education, Training & Programming recommendation (b) from the President's ARWG Report).

"Create research initiatives that advance anti-racism, equity, and inclusion and intersectional analysis in research" across legal disciplines (i.e., provide seed research funding, conference funding, etc.) (See Scholarship recommendation (b) from the President's ARWG Report).

Encourage the integration of Indigenous content, anti-racist and decolonization content, and critical race theory in the teaching of all courses at Western Law.

Organize regular workshops and seminars to allow faculty members to understand the supports available for the integration of anti-racist and decolonization materials and content into their courses. This may include presentations from Western's OII and/or the Centre for Teaching and Learning.

Establish special programs under the Human Rights Code to provide funding for faculty members to offer to Black, Indigenous and other racialized guest speakers.

Incorporate content regarding unique challenges facing racialized clients and teachings from the Law Society of Ontario's "Guide for Lawyers Working with Indigenous People" into the mandatory legal ethics course.

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<sup>128</sup> Ivey has introduced a foundations curriculum and programming on practicing Equity.

In consultation with Western's OII, introduce cultural competency programming for all first-year students. Such programming could include the KAIROS blanket exercise, the PATH modules, or other programs offered through the OII.

Establish special programs under the Human Rights Code to invite Black, Indigenous and racialized scholars to teach during the January intensive period. These scholars may, but are not required to, teach in areas relating to anti-racism.

The ARWG is confident that these recommendations will not only make our school more inclusive, but will enhance the academic and career success of all Western Law students.

#### *vii. Clinical, Experiential and Practical Education: The Role of Lawyers*

Lawyers have a particular duty to defend and advance human rights in our society. The Law Society of Ontario's Rules of Professional Conduct state: "A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario."<sup>129</sup> Within the legal community, law faculties have their own special responsibility to the profession to demonstrate leadership and vision in addressing human rights and combatting racism. Law faculties training the next generations of lawyers must recognize that it is insufficient to simply speak about the existence of racial discrimination and racial privilege; we must also commit as academic institutions, as a profession and as individuals, to combatting racism in all its many forms.

A specific area of teaching and learning at Western Law in which anti-racism does not feature as prominently as it should is in clinical, experiential and practical education. Western Law has committed to offering "a diverse range of opportunities for students to apply their learning in clinics, internships, complex simulations and advanced research projects" as part of its goal of providing "an academically rigorous and relevant legal education."<sup>130</sup> As these aspects of legal education at Western Law continue to grow, the school must incorporate diverse and anti-racist perspectives.

Anti-racism is strongly aligned with the values already espoused and embodied by Western Law's legal clinics and experiential programs. Community Legal Services, in particular, works to support marginalized and low-income populations. The Western Law Internship Program also offers placements with human rights organizations that seek to advance the same anti-racist goals as Western Law.

Despite this alignment of values, however, Western Law has not done as much as competitors to expose students to practical anti-racist legal education. The University of Toronto Faculty of Law offers specific "Clinical Legal Education" externships with the Black Legal Action Centre, Aboriginal Legal Services, the Human Rights Commission: Human Rights and Indigenous Peoples, and the Downtown Legal Services Refugee & Immigration Law Clinic.<sup>131</sup> Osgoode Hall offers an Intensive Program in Indigenous Lands, Resources & Governments, an Anti-Discrimination Intensive Program, and an Anishinaabe Law Camp.<sup>132</sup> The Lincoln Alexander School of Law at Toronto Metropolitan University is establishing a new Indigenous Economic Development Clinic. They are "also pursuing opportunities within Aboriginal Legal Support Services of Legal Aid Ontario to have students assist through clinical opportunities, and have partnered with Level Justice to allow students to participate in the Indigenous Youth Outreach Program and to create a new chapter."<sup>133</sup>

To maintain competitiveness and incorporate anti-racism into Western Law's clinical, experiential and practical education programs, the ARWG recommends that Western Law, with the support of the Western administration:

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<sup>129</sup> Law Society of Ontario, *Rules of Professional Conduct*, s. 6.3.1-1.

<sup>130</sup> Updated Strategic Plan, *supra* note 12 at 4.

<sup>131</sup> This information was obtained from the University of Toronto Faculty of Law's publicly available course list, available online: <<https://www.law.utoronto.ca/academic-programs/course-calendar>>.

<sup>132</sup> This information was obtained from Osgoode Hall's publicly available catalogue of courses and seminars, available online: <<https://www.osgoode.yorku.ca/courses-and-seminars/>>.

<sup>133</sup> Lincoln Alexander School of Law, "Indigenous Initiatives and Responses to the TRC Report: Lincoln Alexander School of Law, Ryerson University" (May 2021), online (pdf): *Toronto Metropolitan University* <[https://www.torontomu.ca/content/dam/law/documents/law\\_response\\_TRC\\_report.pdf](https://www.torontomu.ca/content/dam/law/documents/law_response_TRC_report.pdf)> [Lincoln Alexander Indigenous Initiatives].

Establish a Western Human Rights Clinic or new group within Community Legal Services that provides services in anti-discrimination law and Aboriginal law for racialized persons and First Nations local to London.

Create additional opportunities for students to gain experience with talking circles and other forms of dispute resolution developed by Indigenous legal communities.

Establish externship opportunities for students to address racism. This may include externships with clinics and other social justice organizations, including Aboriginal Legal Services, Black Legal Action Centre, South Asian Legal Clinic of Ontario, or the Chinese and Southeast Asian Legal Clinic. This may also include local organizations that address racism.

These recommendations are an important first step towards achieving equity in all areas of teaching and learning at Western Law.

### *viii. Career and Professional Development*

It is well-documented that Black, Indigenous and racialized law students and lawyers face unique challenges in their careers. Despite the belief purportedly held by some Western Law professors that racialized students are “the newest trend,”<sup>134</sup> Black, Indigenous and racialized members of the legal profession face barriers to their advancement and development at every stage of their careers. This was laid out powerfully by Hadiya Roderique in her widely circulated 2017 Essay “Black on Bay Street.”<sup>135</sup> More than two years after Roderique’s essay, the *Globe and Mail* followed up and concluded that there were still very few Black lawyers on Bay Street.<sup>136</sup> In 2016, the Law Society of Upper Canada’s Challenges Faced by Racialized Licensees Working Group found that “[a] review of statistical data, research findings and anecdotal evidence suggested that, notwithstanding their increase in representation, racialized lawyers face challenges in the practice of law.”<sup>137</sup> The micro-aggressions, the struggle to relate to mostly white interviewers, and trying to fit in at firms with very few people like them are only some of the challenges that Western Law’s Black, Indigenous and racialized students will face in the early stages of their legal careers. Currently, the Career and Professional Development Office (CPDO) needs additional resources in order to enhance their ability to support these students.

Several other schools have taken important steps to support their students and alumni professionally. The University of Windsor’s Faculty of Law hired a career counsellor to explicitly assist students from equity-seeking communities.<sup>138</sup> The University of Ottawa’s Common Law program appointed a Black Legal Mentor in Residence. In this role, she will “provide one-on-one and group academic and career mentorship to Black law students and will provide expertise in the development of supportive programming and anti-racism initiatives.”<sup>139</sup>

Another way in which Black, Indigenous and racialized students can be supported is by connecting them with lawyers – preferably Western Law alumni – from similar racial backgrounds. These lawyers provide practical advice from a relatable perspective. In 2020, Western Law’s Student Legal Society and McMillan LLP organized a Black, Indigenous and racialized students Mentorship Program. The program was subsequently expanded to include Black, Indigenous and racialized lawyers from other firms and, during the 2021/22 academic year, more than 80 lawyers signed up to mentor 85 students. A clear demand exists among Black, Indigenous and racialized students for career advice from individuals with similar lived experience.

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<sup>134</sup> Senomi Report, *supra* note 15 at 45.

<sup>135</sup> Hadiya Roderique, “Black on Bay Street: Hadiya Roderique had it all. But still could not fit in” (4 November 2017), online: *Globe and Mail* <<https://www.theglobeandmail.com/news/toronto/hadiya-roderique-black-on-bay-street/article36823806/>>.

<sup>136</sup> Christine Dobby, “Why are there still so few Black lawyers on Bay Street?” (17 July 2020), online: *Globe and Mail* <<https://www.theglobeandmail.com/business/article-why-are-there-still-so-few-black-lawyers-on-bay-street/>>.

<sup>137</sup> Challenges Faced by Racialized Licensees Working Group, “Working Together For Change: Strategies to Address Issues of Systemic Racism in the Legal Professions” (22 September 2016), online (pdf): Law Society of Ontario <<http://lawsocietyontario.azureedge.net/media/Iso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>>.

<sup>138</sup> Smith & Rohde, *supra* note 75 at 37.

<sup>139</sup> Dean Adam Dodek, “Appointment of Samantha Peters as Black Legal Mentor-in-Residence” (7 October 2020), online: *University of Ottawa* <<https://commonlaw.uottawa.ca/en/news/appointment-samantha-peters-black-legal-mentor-residence>>.

To best support Black, Indigenous and racialized students throughout the recruitment process, the ARWG recommends that Western Law, with the support of the Western administration:

Establish special programs under the Human Rights Code to hire a Black, Indigenous or racialized career counsellor to assist students from equity-seeking groups. This may be done with the support of the Student Legal Society.

Establish special programs under the Human Rights Code to appoint a Black Lawyer in Residence to provide mentorship and career support to Black law students. This individual should be a practising lawyer and should receive a stipend as compensation.

Establish and maintain a mentorship program that connects Black, Indigenous and racialized students with lawyers and other professionals who have similar lived experiences.

With these supports in place, Western Law can provide value to students not just while at law school, but once they have entered the profession.

#### *ix. Anti-Racism and Physical Spaces*

An often-overlooked area of anti-racism is the manifestation of racism in how physical spaces are designed. Recently, Western and other universities have looked at ways in which the physical spaces where we work and study can be changed to be more inclusive.

At Western, the construction of the new Indigenous Learning Space reflects a renewed focus on how anti-racism and decolonization can be advanced through changes to physical spaces. The President's ARWG also suggested "dedicating actual physical space" to "promote diversity, counter racism, and drive constructive change."<sup>140</sup>

At Dalhousie University's Schulich School of Law, students in the Indigenous Blacks & Mi'kmaq Initiative have access to a dedicated physical space in which they can feel safe and comfortable. Placing a similar emphasis on anti-racism in physical spaces, in a May 2021 statement on Indigenous Initiatives and Responses to the TRC Report, the Lincoln Alexander School of Law included an entire section on "Indigenizing Law School Space."<sup>141</sup> They explained that they "established the Indigenous Space Sub-Working Group (ISSWG) – a sub-working group of the university's [Truth and Reconciliation] working group – to identify how the space can effectively represent Indigenous peoples and cultures and provide a welcoming space for Indigenous students and faculty."<sup>142</sup> The University of Toronto Faculty of Law has dedicated physical space, an Indigenous garden, to grow medicinal plants and hold ceremonies.<sup>143</sup>

This is an area in which Western Law needs to improve. The law building stands as a monument to whiteness. Black, Indigenous and racialized community members walk through a building adorned with photographs, portraits and names of prominent alumni, jurists and lawyers – community members we value – almost none of whom look like they do. To someone entering the law building, it would seem that Western Law only values white people. The achievements and excellence of Black, Indigenous and racialized community members may look different than those of their white peers, but they are no less worthy of celebrating.

To prevent this, the ARWG recommends that Western Law, with the support of the Western administration:

Create more opportunities and spaces that promote diversity, counter racism and drive constructive change at Western Law. "This might include dedicating actual physical space, increasing diverse representation in communications, creating additional affinity groups, mentorship programs, networks, counselling groups, anti-racism caucuses and/or communities of practice, etc.... This initiative should also include the creation or expansion of cultural and religious spaces for

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<sup>140</sup> President's ARWG Report, *supra* note 3 at 21.

<sup>141</sup> Lincoln Alexander Indigenous Initiatives, *supra* note 133.

<sup>142</sup> *Ibid.*

<sup>143</sup> This was shared with us by Assistant Dean Alexis Archbold.

international students, staff and faculty.” (See Hiring and Supports recommendation (b) from the President’s ARWG Report.)

Display photos of notable racialized alumni, scholars and legal figures, and artwork by racialized artists, around the law school to create a more inclusive physical space.

x. *Continued Collection of Disaggregated Data and Surveys*

As we have emphasized throughout this report, our recommendations represent only a first step in combatting racism in our community. Creating a more equitable, diverse, inclusive, accessible and decolonized Western Law will take continued effort. To direct that effort and determine the efficacy of measures that have already been implemented, data must be continually collected. Without disaggregated data collected on a regular basis, Western Law will have no way of determining whether anti-racism initiatives have been successful or what more is needed to support Black, Indigenous and racialized community members. Recognizing this simple truth, the University of Toronto Faculty of Law conducts triennial surveys assessing the climate at the law school.<sup>144</sup> The Independent Review on Anti-Black Racism for the University of Windsor Faculty of Law also recommended that the law school uses “surveys to measure responses to anti-racism initiatives.”<sup>145</sup>

Western Law should adopt a similar approach. We recommend that Western Law, with the support of the Western administration:

Retain an EDI consultant to design a comprehensive system to collect, analyze and publish race-based and other human rights related disaggregated data on:

1. Admissions, achievement and graduation of JD and graduate students.
2. Career progression of JD and graduate students.
3. Recruitment, selection and promotion of staff and faculty.

Retain an EDI consultant to design, conduct and publicize the results of focus groups and surveys of faculty, staff, students and/or alumni.

Use the collection of disaggregated data, surveys and focus groups for the purpose of, among other things:

1. Identifying, monitoring and addressing racism at Western Law and its impact.
2. Creating a plan to remove or mitigate the effects of barriers created by systemic racism.
3. Supporting the recruitment and retention of students, faculty and staff.
4. Evaluating Western Law’s multi-year anti-racism action plan.
5. Measuring progress.
6. Obtaining suggestions for further change.

With these data collected on a regular basis, Western Law can ensure that positive change will continue for years to come.

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<sup>144</sup> This was shared with us by Assistant Dean Alexis Archbold.

<sup>145</sup> Smith & Rohde, *supra* note 75 at 10, 55.

Few concerns can be as central to the concept of a free and democratic society as the dissipation of racism, and the especially strong value which Canadian society attaches to the goal must never be forgotten in assessing the effects of an impugned legislative measure.

Chief Justice Brian Dickson, 1990<sup>146</sup>

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<sup>146</sup> *R v Keegstra*, [1990] 3 SCR 697 at 787.

## V. CONCLUSION

The long history of racism in our country has been abetted and supported by legislation, laws and the courts, which have dispossessed and left unprotected Indigenous Peoples, Black Canadians and people of colour.<sup>147</sup> It entrenched and justified territorial theft and the residential schools, exclusionary immigration laws, employment segregation, lawful discrimination and deep social disparities. This is the grim history of the law, which we must first acknowledge, then identify and finally challenge, in order to move beyond it.<sup>148</sup>

But the law also possesses the capacity to be an instrument for change, a vessel for dignity, a platform for rights. When laws truly reflect our deepest values and our highest aspirations, it can open the doors to changing the ways we think, behave, love, protect, lift up, welcome and accommodate. Our Charter and our human rights laws proclaim equality; it is up to us in the legal community to do our share in bending this arc of history towards a more just, inclusive and shared future.

Western Law's recognition of the presence of systemic racism within its policies, practices and structures represents a positive first step towards eliminating barriers and systems of power that promote disparity of treatment of Black, Indigenous and other racialized peoples. Following the President's ARWG Report, Western Law created the first Law-faculty-based ARWG with the purpose of advancing the work of anti-racism at the law school. The recommendations we offer are consistent with best practices in the field.

ARWG members thank the commitment of the Dean, experts, consultants, students, staff and faculty members who supported the ARWG's efforts by voicing their experiences with racism and concerns to eradicate it. The ARWG accepts and endorses the "fundamental observation" of the Senomi team: "Western Law requires intentional and meaningful implementation of anti-racist strategies that are systemic and structural, and not tokenistic."<sup>149</sup>

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<sup>147</sup> See generally: C. Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (University of Toronto Press, 1999); and J.S.G. Walker, *"Race", Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Osgoode Study Books, 1997).

<sup>148</sup> See the recent rulings by the Supreme Court of Canada which identify the embedded patterns of racism within Canadian and its criminal justice system: *R v Ahmad*, 2020 SCC 11; *R v Le*, 2019 SCC 34; and *R v Barton*, 2019 SCC 33.

<sup>149</sup> Senomi Report, *supra* note 15 at 48.

# APPENDIX A

## ARWG RECOMMENDATIONS

### ***REAL, NON-TOKENISTIC ACTION***

1. Publicly acknowledge systemic racism in all its forms at Western Law and its impact on Indigenous, Black and other racialized members of the Western Law community (faculty, staff, students and alumni). Combatting antisemitism must be an ongoing part of anti-racism work at the law school. The process of addressing racism in all its forms should begin with consultations with affected persons and groups.
2. Commit the resources necessary to implement these recommendations.
3. Create and publish a multi-year anti-racism action plan, within one year, which incorporates the recommendations of the ARWG, includes timelines for their implementation, and sets out accountability measures.

### ***IMPROVING EDIA-D LEADERSHIP***

4. Appoint an assistant dean or director of EDIA-D. This individual will be responsible for the full implementation of these recommendations and the advancement of anti-racism, diversity and inclusion initiatives across all areas of the law school. The hiring process must involve the engagement and consultation of groups with lived experiences, including, but not limited to, the Black Law Students Association, the South Asian Law Students Association, the East Asian Law Students Association, the Middle Eastern and North African Law Students Association, OUTLaws, the Gender and the Law Association, the Jewish Law Students Association, Western Women in the Law, Black faculty members, Indigenous faculty members, other racialized faculty members, Black alumni, Indigenous alumni, other racialized alumni, the Student Legal Society, the Western Indigenous Initiatives Office and, if needed, the office of the Vice President of Equity, Diversity and Inclusion.
5. Establish an EDIA-D Committee, chaired by the assistant dean or director EDIA-D, to continue the work begun by the ARWG. The Committee should include Indigenous, Black and other racialized people from faculty, staff, JD students, graduate students and alumni.
6. Retain external consultants as necessary to support the work of the assistant dean or director of EDIA-D and the EDIA-D Committee.
7. Establish special programs, as authorized under the Ontario Human Rights Code to hire a full-time Indigenous staff member to coordinate Indigenous initiatives in the office of the assistant dean or director of EDIA-D.

### ***TRUTH AND RECONCILIATION – INDIGENOUS PEOPLES AND THE LAW***

8. In the spirit of TRC Call to Action #50, establish a committee dedicated to the development of an Indigenous law centre at Western. This will require working with Indigenous groups, federal, provincial and local governments, as well as other faculties that have begun this work, such as Lakehead University and the University of Victoria. This Indigenous law centre would be focused on the development, use and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Indigenous peoples.
9. Build upon the steps that have already been taken to implement TRC Call to Action #28. The mandatory course in Indigenous law is an important step but even more can be done to ensure that both JD and Graduate students are receiving instruction about the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous

Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. To that end, Western Law should immediately review options for expanding upon the Indigenous law course and consider additional options such as:

- (1) developing and offering a cluster of courses on Indigenous legal issues, where students are expected to complete a certain number of credits in courses that focus primarily on these issues. This would require funding for dedicated faculty to develop and teach these course offerings on a yearly basis;
- (2) including a cultural competency course as part of the first-year curriculum that offers both course content and skills-based training;
- (3) developing a course that incorporates elements of both Canadian Aboriginal law as well as Indigenous legal traditions; and/or
- (4) identifying opportunities to address Indigenous legal issues throughout the curriculum, including in constitutional law, criminal law, family law, international law, human rights law, property law, etc. Once these opportunities have been identified, the next step would be to ensure faculty or guest speakers could deliver this content within the context of these courses.

10. Establish a committee whose mandate would include:

- (1) continually evaluating the faculty's pedagogical approach to teaching Indigenous content;
- (2) assessing which courses could be engaging Indigenous content moving forward and what that engagement might look like;
- (3) offering recommendations on how the law school should adapt/refine its current curriculum to further implement Call to Action #28. This committee could be comprised of current law students (JD, graduate); representatives from the law faculty; representatives from the Indigenous Studies program; the OII's curriculum and pedagogy advisor; and representatives from the local Indigenous communities.

11. Work in partnership with the OII to promote the use of the Indigenous learning bundles (and other resources) by the faculty, perhaps through the use of faculty workshops held throughout the year.

12. Continue to collaborate and build partnerships with local Indigenous Peoples including the Chippewas of the Thames First Nation, Walpole Island First Nation, Oneida Nation of the Thames, the Delaware Nation at Moraviantown, the Thames Bluewater Métis Council and others.

13. Provide funding to host events like the Anishinaabe law camps in the future and commit to providing students and faculty with opportunities to engage in land-based learning by continuing to hold these camps on a regular basis.

14. Establish special programs under the Human Rights Code to appoint/hire an Elder in Residence to support Indigenous law students and to advise the faculty on issues of reconciliation. This individual should receive a stipend as compensation.

### **GREATER DIVERSITY IN FACULTY AND STAFF**

15. Establish special programs under the Human Rights Code to recruit full-time Black, Indigenous and racialized professors, with a particular emphasis on Black and Indigenous professors and racialized women.

16. Establish special programs under the Human Rights Code to recruit Black, Indigenous and racialized clinical faculty and supervising lawyers.

17. Retain an equity, diversity and inclusion consultant with anti-racism expertise to review the recruitment, retention and promotion processes for faculty and staff, subject to the relevant collective agreements.
18. Review the application process and requirements to be hired, appointed, promoted or granted tenure as faculty and staff from an anti-racism and anti-oppression lens, and publish the review's findings to the extent permitted by the relevant collective agreements.
19. Require, to the extent permitted by the relevant collective agreements, that all individuals assessing applications for faculty appointments have completed unconscious bias and anti-racism training.
20. Require, to the extent permitted by the relevant collective agreements, that all individuals assessing applications for promotion and tenure have completed unconscious bias and anti-racism training.

### **IMPROVING ADMISSIONS AND STUDENT LIFE**

21. Establish diversity goals, so that students, staff and faculty better represent the diversity of Ontario as much as possible, as soon as possible, and commit to annual public reporting on these goals and their attainment.
22. Establish special programs under the Human Rights Code to increase the representation of Black, Indigenous and racialized students, with a particular emphasis on Black and Indigenous students.
23. In consultation with an expert in equity, diversity, inclusion and anti-racism, review the application process and requirements to be admitted as a JD student and graduate student from an anti-racism and anti-oppression lens, publish the review's findings, and implement the review's recommendations.
24. Enhance communication and outreach programs that aim to increase access for students and encourage them to consider study at Western Law. "Provide appropriate pathways that will facilitate their admission and support their success once enrolled." (See Institutional Communications recommendation (d) from the President's ARWG Report.)
25. "Clarify reporting avenues, processes and expected outcomes for complaints of racial discrimination" from students, staff and faculty, including over social media. "Develop a strategy to communicate clear pathways for how individuals can obtain help and/or report incidents." (See Institutional Communications recommendation (e) from the President's ARWG Report.)
26. "Create a 'zero tolerance' promotional campaign that raises the profile of anti-racism" at Western Law. (See Institutional Communications recommendation (c) from the President's ARWG Report.)
27. "Embed equity and inclusion in the development and execution of special student-facing events and programming, such as OWeek." (See Institutional Communications recommendation (d) from the President's ARWG Report.)
28. Commit at least \$5,000 annually to the Student Legal Society Diversity Committee to facilitate student-run EDIA-D programming.
29. Improve the community outreach that connects students interested in the law with alumni and law students.
30. Establish special programs under the Human Rights Code to increase the scholarship and bursary funds allocated specifically for Black, Indigenous and other racialized students, and ensure that these students – both current and prospective – are made aware of the scholarships and bursaries available to them.
31. Provide financial support and assistance to the Western chapter of Black Future Lawyers.
32. "Create annual anti-racism awards and social justice awards to recognize students who distinguish themselves academically or otherwise in areas of social justice, anti-racism and community leadership." (see Scholarship recommendation (d) from the President's ARWG Report.)

33. Review the Faculty of Education's pilot project adopting the CASPer® situational judgment test for admissions and consider if using CASPer® testing in admissions would improve diversity and inclusion in our community.

#### **ANTI-RACISM CURRICULUM, PEDAGOGY, SCHOLARSHIP AND AWARENESS**

34. Develop and offer anti-racism and anti-oppression education for all students, faculty and staff at Western Law as called for by the President's ARWG and the BLSA. "Content should be tailored for each role, with a consistent focus on teaching anti-racism and decolonization, anti-discrimination, anti-bullying, cultural competency, equity, diversity and inclusion." Training should be offered by someone who is Black, Indigenous or racialized and should include topics related to "understanding power/privilege, intersectionality, racial microaggressions, how to have difficult conversations, and how to intervene and respond to incidents of racism. Training should be mandatory for new students during Orientation Week and new-hire orientations. Training should continue as ongoing refreshers for staff/faculty and be tied to performance reviews. For students, it should be scaffolded/required for acceptance into leadership roles, learning abroad/exchange, etc." (See Curriculum, Education, Training & Programming recommendation (a) from the President's ARWG Report). The training should also provide bystanders with the tools to get involved when they witness racism, in order to alleviate the burden that falls on Black, Indigenous and racialized students.
35. Expand the number of courses and programs focused on the study of and scholarship by Black, Indigenous and racialized persons or groups, anti-racism, critical race theory, EDIA-D issues and related fields. (See Curriculum, Education, Training & Programming recommendation (b) from the President's ARWG Report).
36. "Create research initiatives that advance anti-racism, equity, and inclusion and intersectional analysis in research" across legal disciplines (i.e., provide seed research funding, conference funding, etc.) (See Scholarship recommendation (b) from the President's ARWG Report).
37. Encourage the integration of Indigenous content, anti-racist and decolonization content, and critical race theory in the teaching of all courses at Western Law.
38. Organize regular workshops and seminars to allow faculty members to understand the supports available for the integration of anti-racist and decolonization materials and content into their courses. This may include presentations from Western's OII and/or the Centre for Teaching and Learning.
39. Establish special programs under the Human Rights Code to provide funding for faculty members to offer to Black, Indigenous and other racialized guest speakers.
40. Incorporate content regarding unique challenges facing racialized clients and teachings from the Law Society of Ontario's "Guide for Lawyers Working with Indigenous People" into the mandatory legal ethics course.
41. In consultation with Western's OII, introduce cultural competency programming for all first-year students. Such programming could include the KAIROS blanket exercise, the PATH modules, or other programs offered through the OII.
42. Establish special programs under the Human Rights Code to invite Black, Indigenous and racialized scholars to teach during the January intensive period. These scholars may, but are not required to, teach in areas relating to anti-racism.

#### **CLINICAL, EXPERIENTIAL AND PRACTICAL EDUCATION: THE ROLE OF LAWYERS**

43. Establish a Western Human Rights Clinic or new group within Community Legal Services that provides services in anti-discrimination law and Aboriginal law for racialized persons and First Nations local to London.

44. Create additional opportunities for students to gain experience with talking circles and other forms of dispute resolution developed by Indigenous legal communities.
45. Establish externship opportunities for students to address racism. This may include externships with clinics and other social justice organizations, including Aboriginal Legal Services, Black Legal Action Centre, South Asian Legal Clinic of Ontario, or the Chinese and Southeast Asian Legal Clinic. This may also include local organizations that address racism.

### **CAREER AND PROFESSIONAL DEVELOPMENT**

46. Establish special programs under the Human Rights Code to hire a Black, Indigenous or racialized career counsellor to assist students from equity-seeking groups. This may be done with the support of the Student Legal Society.
47. Establish special programs under the Human Rights Code to appoint a Black Lawyer in Residence to provide mentorship and career support to Black law students. This individual should be a practising lawyer and should receive a stipend as compensation.
48. Establish and maintain a mentorship program that connects Black, Indigenous and racialized students with lawyers and other professionals who have similar lived experiences.

### **ANTI-RACISM AND PHYSICAL SPACES**

49. Create more opportunities and spaces that promote diversity, counter racism and drive constructive change at Western Law. "This might include dedicating actual physical space, increasing diverse representation in communications, creating additional affinity groups, mentorship programs, networks, counselling groups, anti-racism caucuses and/or communities of practice, etc.... This initiative should also include the creation or expansion of cultural and religious spaces for international students, staff and faculty." (See Hiring and Supports recommendation (b) from the President's ARWG Report.)
50. Display photos of notable racialized alumni, scholars and legal figures, and artwork by racialized artists, around the law school to create a more inclusive physical space.

### **CONTINUED COLLECTION OF DISAGGREGATED DATA AND SURVEYS**

51. Retain an EDI consultant to design a comprehensive system to collect, analyze and publish race-based and other human rights related disaggregated data on:
  1. Admissions, achievement and graduation of JD and graduate students.
  2. Career progression of JD and graduate students.
  3. Recruitment, selection and promotion of staff and faculty.
52. Retain an EDI consultant to design, conduct and publicize the results of focus groups and surveys of faculty, staff, students and/or alumni.
53. Use the collection of disaggregated data, surveys and focus groups for the purpose of, among other things:
  1. Identifying, monitoring and addressing racism at Western Law and its impact.
  2. Creating a plan to remove or mitigate the effects of barriers created by systemic racism.
  3. Supporting the recruitment and retention of students, faculty and staff.
  4. Evaluating Western Law's multi-year anti-racism action plan.
  5. Measuring progress.
  6. Obtaining suggestions for further change.

# APPENDIX B

## WORKING GROUP TERMS OF REFERENCE

January 11, 2021

### BACKGROUND:

Racism is a pervasive reality in Canadian society, in Canadian law and at Canadian universities and law schools. The long history of racism and anti-Semitism in Canada has been abetted and supported by legislation, laws and the courts which have dispossessed, discriminated against, and left unprotected Black, Indigenous peoples, and People of Colour. Western Law recognizes that it is insufficient simply to acknowledge the existence of racism, anti-Semitism and racial privilege; we must also commit as an institution, as a community and as individuals, to combatting racism in all its many forms.

Protests in Canada and internationally in 2020 have brought alive the many inter-connected struggles against racism and discrimination. The Black Lives Matter movements, the Indigenous demonstrations against colonialism and land alienation, the voices of immigrant labourers and the support of allies have sharpened our social understanding of systemic racism, and reminded us of the distance we have yet to travel to create a society and a legal system worthy of our rich diversity.

On matters of race and racism, the law has been historically a tool of domination and subjugation. It entrenched and justified territorial theft and the residential schools, exclusionary immigration laws, employment segregation and deep social disparities.

But the law also possesses the capacity to be an instrument for progressive change, and a platform for equal rights. Our Charter and our human rights laws proclaim equality; it is up to us in the legal community to do our share in bending this arc of history towards a more just, equal and inclusive future.

Troubling patterns of racism and exclusion at Western University include insensitive comments in classrooms, insidious attacks in online forums, ugly responses to honest conversations: all of this, and more, demonstrates the urgency of naming and combatting the patterns that marginalize, belittle and exclude Black, Indigenous peoples, and People of Colour at Western. It is our duty as scholars and students, administrators and activists to stand up to racism and to imagine ways of transforming our school, our society and our laws. Recognizing that no faculty is exempt from these patterns or from this responsibility, we are committed to addressing these issues at Western Law.

### PURPOSE:

To ensure that Western Law can and will employ its very best efforts to identify and eradicate racism and exclusion at the Faculty.

### RESPONSIBILITIES

The Working Group will focus its attention on the following:

1. Reviewing University policies and statements related to race and racism, including the President's Anti-Racism Working Group Final Report (2020).
2. Gathering and analyzing information: listening to the perspectives and experiences of members of the Western Law community—particularly racialized students, staff, faculty and alumni—on racism and exclusion in all its forms;

3. Examining best practices to combat racism and exclusion from other universities, law schools and relevant institutions;
4. Surveying law school courses to identify opportunities in Western Law's curriculum, programs and practices to address racism and acknowledging how the legal system perpetuates racism, as well as develop programs and courses that will aim for positive change within the Western Law community;
5. Examining practices related to the recruitment of diverse faculty and the student body, including reducing financial barriers to admission and attendance, with the aim of ensuring a faculty, staff and student body that reflects the diversity of Canada; and
6. Providing a report in 2021<sup>150</sup> with recommendations to the Faculty Council that aims to enact systemic change as it relates to race, racism and exclusion at Western Law.

#### **METHODOLOGY:**

The Working Group will create surveys, and host a series of “listening sessions,” and invite written and spoken comments to gather information about the lived experiences and views of students, staff, faculty and alumni concerning racism and strategies to eliminate it. The Working Group will consider the relationship between legal education and issues of race and racism within legal academia, the legal community and the administration of justice in Ontario and Canada. The Working Group will also review Faculty of Law and university policies addressing racism in order to inform its final report and recommendations.

#### **MEMBERSHIP:**

The Anti-Racism Working Group is composed of 3 faculty members, 3 JD students, 2 staff members, and 1 PhD student. The group has two co-chairs: 1 faculty member and 1 JD student.

#### **FURTHER INFORMATION:**

Members of the Western Law community seeking further information about the Anti-Racism Working Group or who wish to contact the Group are invited to email the group at [lawarwg@uwo.ca](mailto:lawarwg@uwo.ca). All information relayed to the Group will be held in strict confidence and will not be shared with any individual outside the Group without the express consent of all affected individuals.

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<sup>150</sup> As noted above, this deadline was extended by Dean Chamberlain at the request of the Anti-Racism Working Group's co-chairs.

# APPENDIX C

## WORKING GROUP MEMBERS

**Holly Gati** was named director of development at Western Law in October 2018. Prior to her appointment with the faculty, she served as associate director, leadership giving at the Ivey Business School. Holly first joined Western in 2006 and has served in a number of lead fundraising roles across campus, including the Faculty of Health Science, the Schulich School of Medicine and Dentistry and Western's Mustangs Athletics division.

**Sunil Gurmukh** is a human rights lawyer and adjunct professor at Western Law, where he is leading the Hidden Racial Profiling Project. He has worked on significant human rights cases at the Human Rights Tribunal of Ontario and all levels of court, including the Supreme Court of Canada. He has a BComm. from Queen's University (2005) and an LLB from Western (2008). In 2019, he was named one of the country's top 25 most influential lawyers by Canadian Lawyer Magazine.

**Lina Hernandez**, LLB (La Sabana University), LLM (Western), is a Western Law doctoral student and works as a policy analyst at the Department of Justice Canada. Her work for the London Cross Cultural Learner Centre, helping refugees and newcomers, earned her recognition from the London Middlesex Local Immigration Partnership and the Ministry of Immigration, Refugees and Citizenship Canada. In addition, she was recognized in 2020 by Women in International Security as an emerging thought leader in law and security. From 2015-2018, Lina served as a board member of the city of London Diversity, Inclusion and Anti-Oppression Advisory Committee.

**Danielle Lacasse**, LLM, LLB, B.Ed, BA, is the assistant dean (admissions and recruitment) at Western Law. Before joining the faculty in 2012, she served in teaching, legal and administrative roles at two other universities. From 2017 and 2021 she chaired the Ontario Law School Application Service (OLSAS) Working Group. She currently serves as the faculty coach of the Ardup Cup trial advocacy team and the faculty liaison for the Ontario Justice Education Network. She is also a member of Western's Senate Review Board-Academic (SRBA), serving as vice-chair since 2019.

**Michael Lynk** is an associate professor at Western Law where he has taught labour law, constitutional law and domestic and international human rights law. Between 2008 and 2011, he served as associate dean (academic) at the faculty. In March 2016, the UN Human Rights Council appointed him to a six-year term as the 7th Special Rapporteur for the human rights situation in the Palestinian Territories occupied since 1967. He has written widely in the areas of Canadian labour law and domestic and international human rights law, and his works have been regularly cited by Canadian courts and tribunals, including the Supreme Court of Canada.

**Lerabari Nwineh** graduated from Western Law in 2022, after completing a BA in Philosophy and Political Science at the University of Toronto. At Western, he was instrumental in creating a Black Future Lawyers chapter for undergraduate students. He held a host of finance positions during law school, including VP finance for BLSA Western, and VP finance/sponsorship representative then finance chair for "Obiter Dicta," Western Law's annual musical variety charity event. Lera also served as the national treasurer for the Black Law Students' Association of Canada from 2020-22.

**Melanie Randall (co-chair)**, PhD, LLB (JD), BA, is a faculty member at Western Law. Her academic and advocacy work focus on human rights, equality and the law, improving legal and institutional remedies for gender-based violence and discrimination, trauma-informed approaches to law, restorative justice, and the social contexts and neurobiology of victim/survivor responses to sexual violence.

**Rahul Sapra (co-chair)** graduated from Western Law (JD), the Ivey Business School (HBA) and Western Science (BSc) in 2022. He served as Student Legal Society president, editor-in-chief of the Western Journal of Legal Studies and Canada-U.S. Law Journal, representative on the South Asian Law Students Association, and more. Rahul also chaired the Board of Directors of the University Students' Council. In 2022, Rahul was awarded the Honourable Rosalie Silberman Abella Prize by the Royal Society of Canada for his commitment to social justice. Rahul is currently working as an articling student at Blake, Cassels & Graydon LLP.

**Jeffrey Warnock**, LL.M, JD, joined the Faculty of Law in 2021 as a Visiting Professor and was appointed an Assistant Professor in 2022. Jeff's research focuses on aboriginal law, constitutional law, Indigenous legal traditions, and public international law (specifically as it pertains to Indigenous peoples). Jeff is the instructor for the Indigenous law course as well as the coach for Western's Kawaskimhon Talking Circle moot team. Jeff holds an undergraduate degree in Political Science from the University of Waterloo, a J.D. from Western, and an LL.M from Western. Jeff's LL.M examined the UN Declaration on the Rights of Indigenous Peoples and the interpretation of the principle of Free, Prior, and Informed Consent (FPIC), with a particular focus on the relationship between FPIC and Indigenous legal traditions. Jeff is a citizen of the Métis Nation of Ontario and prior to joining Western worked as a litigator, a public policy advisor, and on student programs and diversity outreach initiatives for a large national law firm.

# APPENDIX D

## GLOSSARY OF TERMS

For the sake of consistency, we adopt, where possible, the terminology and definitions used by the President's Anti-Racism Working Group.

**Anti-Black Racism:** "... prejudice, attitudes, beliefs, stereotyping or discrimination directed at people of African descent, rooted in their unique history and experience of enslavement and colonization. Anti-Black racism is deeply embedded in Canadian institutions, policies and practices, to the point that it becomes a part of our systems. Anti-Black racism is micro (as seen in day-to-day interactions) and it is structural (as seen in laws and policies that govern this country)." (Toronto For All, Confronting Anti-Black Racism Initiative: Algonquin College, February 2019.)

**Anti-Indigenous Racism:** the ongoing race-based discrimination, negative stereotyping, and injustice experienced by Indigenous within Canada. It includes ideas and practices that establish, maintain and perpetuate power imbalances, systemic barriers, and inequalities outcomes that stem from the legacy of colonial policies and practices in Canada.

<https://www.ontario.ca/document/data-standards-identification-and-monitoring-systemicracism/glossary>

**Anti-Semitism:** We acknowledge both leading definitions of antisemitism, which have been created by Jewish and Israeli scholars, activists and organizations:

1. The Jerusalem Declaration's definition<sup>151</sup>  
"Antisemitism is discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish)."
2. The International Holocaust Remembrance Alliance's definition<sup>152</sup>  
"Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

These definitions overlap in some ways and diverge in others. We also acknowledge the concerns associated with both definitions, as articulated by the Western Law's Jewish Law Students' Association, and by another group of Western Law students and faculty members. We thank everybody for raising their concerns and providing recommendations. Like Western University, the Western Law ARWG does not adopt either definition of antisemitism.

**BIPOC:** is defined as Black, Indigenous (and) People of Colour (Merriam Webster Dictionary *sub verbo* "BIPOC"). To the extent possible, the ARWG avoids the use of the term BIPOC in our report. We recognize that those persons who make up the "BIPOC" community are incredibly diverse and the amalgamation or simplification of all these persons into a single acronym may amount to a form of erasure. We also recognize that different groups disproportionately face different forms of discrimination. Where appropriate to do so, we seek to specify to the greatest extent possible the particular group most impacted by a particular form of racism.

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<sup>151</sup> The Jerusalem Declaration on Antisemitism, "Definition of Antisemitism" (retrieved in 2022), online: The Jerusalem Declaration <<https://jerusalemdeclaration.org>>

<sup>152</sup> The International Holocaust Remembrance Alliance, "The Working Definition of Antisemitism" (retrieved in 2022), online: The International Holocaust Remembrance Alliance <<https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>>

**Colonization:** The construction of race began with European colonization of other continents (Reading, 2013). Colonization is defined, and the function described in Oxford Dictionaries (n.d.) as “the action or process of settling among and establishing control over the indigenous people of an area” (n.p.). There are two racial groups involved in the colonization of Canada: White Europeans who believed themselves to be superior and the Indigenous Peoples who were believed by the White Europeans to be inferior (Ontario Human Rights Commission, 2005; Reading, 2013; Truth and Reconciliation Commission of Canada, 2015).

The term colonization is not well understood in Canada due to our incomplete and inaccurate public education and warrants more than a simple definition here. This omission is one that the Truth and Reconciliation Commission of Canada has recommended be rectified. Métis scholar Dr. LaRocque (2006) states, Colonization can be defined as some form of invasion, dispossession and subjugation of a people. The invasion need not be military; it can begin—or continue—as a geographical intrusion in the form of agricultural, urban or industrial encroachments. The result of such incursion is the dispossession of vast amounts of lands from the original inhabitants. This is often legalized after the fact. Historically, First Nation peoples (defined as Status Indians by the Indian Act) lost some 98% of their original lands through various legal means such as treaties and the Indian Act. Métis Nation peoples lost some 83% of their Red River lots through the Scrip program. The long-term result of such massive dispossession is institutionalized inequality. The colonizer/colonized relationship is by nature an unequal one that benefits the colonizer at the expense of the colonized. (n.p.)” (Harding, 2018, p.24-25).

**Intersectionality:** a framework for conceptualizing a person, group of people, or social problem as affected by a number of discriminations and disadvantages. It considers people’s overlapping identities and experiences in order to understand the complexity of prejudices they face. (Professor Kimberlé W. Crenshaw’s work has been foundational to the development of this concept.)

**Islamophobia:** “racism, stereotypes, prejudice, fear or acts of hostility directed towards individual Muslims or followers of Islam in general. ... While the term Islamophobia literally signifies “fear” of “Islam”, it is generally held to mean more than this, to include: both individual as well as institutional and systemic forms of intolerance and discrimination; both anti-Islamic (the religion) and anti-Muslim (group of people) sentiments and behaviour.”

[https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20based%20on%20creed\\_accessible\\_0.pdf](https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20based%20on%20creed_accessible_0.pdf)

**Racial discrimination, race, racialized groups, and racism:** Any distinction, conduct or action, whether intentional or not, but based on a person’s race, which has the effect of imposing burdens on an individual or group, not imposed upon others or which withholds or limits access to benefits available to other members of society. Race need only be a factor for racial discrimination to have occurred.

Race is a prohibited ground of discrimination in the Ontario Human Rights Code (the “Code”). The Commission has explained “race” as socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. The process of social construction of race is called racialization: “the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life.”

Recognizing that race is a social construct, the Commission describes people as “**racialized person**” or “**racialized group**” instead of the more outdated and inaccurate terms “racial minority”, “visible minority”, “person of colour”, or “non-White.”

**Racial microaggression or microaggression:** Microaggressions are “subtle attacks and invalidations of Black people that are ‘delivered incessantly,’ and as such, have powerful negative impacts on the mental health of Black people, both individually and collectively” (*R v JG*, 2021 ONSC 1095 at para 30 [citations omitted]); “A microaggression is a small indignity that communicates hostility or prejudice. Failure to address microaggressions contributes to stereotyping and marginalizing minority groups” (*R v Whatcott*, 2021 ONSC 5541 at para 18).

Microaggressions can be sub-divided into three categories: 1) Micro-assaults: conscious and intentional actions or slurs, such as using racial epithets or displaying swastikas; 2) Microinsults: verbal and non-verbal

communications that subtly convey insensitivity and demean a person's racial heritage or identity; 3) Micro-invalidations: communications that subtly exclude, negate or nullify the thoughts, feelings or experiential reality of a racialized person. (Derald Wing Sue 2007).

**Racism:** a wider phenomenon than racial discrimination. While the Code seeks to combat racism through public education and the advancement of human rights, not every manifestation of racism can be dealt with through the current human rights complaint mechanism and process. Nevertheless, racism plays a major role in fostering racial discrimination. Racism is an ideology that either directly or indirectly asserts that one group is inherently superior to others. It can be openly displayed in racial jokes and slurs or hate crimes, but it can be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases, these are unconsciously held and have become deeply embedded in systems and institutions that have evolved over time. Racism operates at a number of levels, in particular, individual, systemic and societal.

<http://www.ohrc.on.ca/en/racial-discrimination-race-and-racism-fact-sheet>

**Structural or Systemic Racism:** A system in which public policies, institutional practices, cultural representations and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with 'whiteness' and advantages associated with 'color' to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead, it has been a feature of the social, economic and political systems in which we all exist.

<https://www.aspeninstitute.org/blog-posts/structural-racism-definition/>

**Xenophobia:** "...attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity." International Organization for Migration (IOM) and Office of the United Nations High Commissioner for Human Rights (OHCHR) (2001, 2). Oksana Yakushko (2009, 44) notes that the term has historically been used to refer to a fear of outsiders but more recently has been "linked with ethnocentrism, which is characterized by the attitude that one's own group or culture is superior to others." (World Refugee Council Research Paper No. 5 — September 2018 Xenophobia toward Refugees and Other Forced Migrants by Sarah Deardorff Miller).