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**Combating Racial Discrimination:
Aboriginal Peoples' Access to the Legal Profession**

By

Carla Baumgartner Di Giusto, B.A. Honours

**A thesis submitted to
The Faculty of Graduate Studies and Research
In partial fulfillment of
The requirements for the degree of**

**Master of Arts
Department of Law**

**Carleton University
Ottawa, Ontario
August 29, 2001
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**Combating Racial Discrimination:
Aboriginal Peoples' Access to the Legal Profession**

Submitted by **Carla Baumgartner Di Giusto, B.A. Honours**
in partial fulfillment of the requirements for

the degree of Master of Arts

Thesis Supervisor

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August 29, 2001

ABSTRACT

In the years 1999 and 2000, three reports, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*, *The Challenge of Racial Equality: Putting Principles into Practice*, and *Virtual Justice: Systemic Racism and the Canadian Legal Profession* were created for legal associations in order to address the barriers Aboriginal peoples face in the legal profession and make recommendations for overcoming the barriers. This thesis explores the issues and recommendations made within the reports, and evaluates their potential effectiveness in addressing racial discrimination. In conducting my analysis of the reports, two conceptual frameworks, critical race theory and *Aboriginal perspectives*, were used; in most ways the two conceptual approaches support the reports. While the reports are supported by the approaches (and therefore have the potential for having a positive impact in addressing racism), I argue that the reports are only one *step* and not a final solution for addressing the barriers Aboriginal peoples face in the legal profession. Racial discrimination in the profession has existed for many decades and will continue for years to come. Therefore, in continuing to address and fight racial discrimination, the profession must continue to develop effective measures to fight this discrimination.

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CHAPTER ONE: INTRODUCTION

Canadian Aboriginal peoples¹ have experienced racial discrimination since European people first came to the 'New World'. This history underlies many of the barriers Aboriginal peoples face in society today and has led to an unequal relationship between Aboriginal and non-Aboriginal people. Efforts have been taken in recent years, however, to ameliorate this relationship and promote greater equality in society. The legal profession is one discipline within society where steps have been, and are being taken to address Aboriginal peoples' discrimination and unequal treatment. In recognizing and working to eliminate many of the discriminatory barriers Aboriginal peoples face within the legal profession, the legal profession is striving to promote greater equality and (indirectly) re-build Aboriginal and non-Aboriginal relationships in society. Given that Aboriginal peoples have long faced discriminatory barriers and many of these barriers persist today, it is important to examine the legal profession's efforts and address the question of whether such efforts will be effective in overcoming these barriers.

There have been many attempts over the years by the profession, its associations and individual members to redress ongoing discrimination in the field. I will examine three recent and important reports dealing with racial discrimination and the legal profession: *Addressing Discriminatory Barriers Facing Aboriginal Law*

¹ Throughout this project I use the term Aboriginal peoples in referring to status and non-status Indian, Inuit and Metis peoples. I also use the word 'peoples' because I recognize that there are many different Aboriginal people, hence peoples. I also use the terms Aboriginal people, First Nations and Native. All terms will be used interchangeably. I do, however, recognize that First Nations, Aboriginal and Native are broad terms that can falsely categorize all Aboriginal peoples into one homogenous group. I recognize that there are many distinct Aboriginal communities within Canada.

Students and Lawyers (hereinafter referred to as *Addressing Barriers*) written for the Law Society of British Columbia, and *The Challenge of Racial Equality: Putting Principles into Practice* (hereinafter referred to as *Challenge Report*), and *Virtual Justice: Systemic Racism and the Canadian Legal Profession* (hereinafter referred to as *Virtual Justice*), written for the Canadian Bar Association² (CBA). In evaluating these reports, I will use two frameworks of analysis to assess and analyze them: critical race theory and *Aboriginal perspectives*. The primary purpose of this project is to analyze the reports for their ultimate value in addressing the racial barriers Aboriginal peoples face in accessing and participating in the legal profession.

The reports I have chosen represent important stances on issues at the national level; this is particularly true of the two CBA reports. The CBA is a national association representing lawyers in Canada. I have not included all aspects of these reports in my research, however, because neither report was written specifically for Aboriginal peoples. *Challenge Report* and *Virtual Justice* were written about all ethnic/minority and Aboriginal groups, and the racial discrimination they experience surrounding the legal profession. However, Aboriginal peoples are one of the main groups that the reports focus on.

I chose to examine *Addressing Barriers*, the report commissioned by the Law Society of British Columbia, because it deals specifically with Aboriginal peoples and their experiences with the legal profession. It is therefore central to my study. I do recognize, however, that the report was written for the province of British Columbia. While I have noted that I am interested in issues on a national level, I have included

² *Challenge Report* and *Virtual Justice* together are titled *Racial Equality in the Canadian Legal Profession*.

this report in my study because of its specific focus on Aboriginal issues and the applicability of these issues to the rest of the country.

In addition to looking at the reports themselves, I conducted qualitative research examining the barriers the reports detail. This research will be used to provide an understanding about Aboriginal peoples' history and discrimination and will also be used to provide further background information to the reports. I also interviewed several key people who had either worked closely with the reports or were knowledgeable about the reports. The interviews provided data that will supply background and additional information that the reports were not able to give and that the research material could not provide and, as a result, they add an important dimension to this project.

I chose two conceptual frameworks to evaluate the reports. The first framework is critical race theory. It will be secondary to my study in that I use it as a springboard to define and understand concepts dealing with race and racism. The second framework is what I have labeled *Aboriginal perspectives*. In my attempt to address concepts dealing with Aboriginal peoples, I discuss Aboriginal people as 'peoples' and their relationship with European 'white' settlers. I use the label '*Aboriginal perspectives*' cautiously because as I have learned in my previous studies³ and in doing research for this project, it is not possible to find a body of work labeled *Aboriginal theory*⁴. I chose this framework of analysis because *Aboriginal*

³ I took a First Nations theory course during my undergraduate degree and my professor stated that she had a hard time finding material to include for the course because theory can mean so many different things for Aboriginal peoples.

⁴ I have tried to use as many Aboriginal writers as I can within the *Aboriginal perspectives* section, though I do recognize that there are a number of non-Aboriginal writers who bring important insights into discussing Aboriginal issues. It is for this reason that I have also included them.

perspectives works to give Aboriginal people a voice in my project. While I label the second conceptual framework *Aboriginal perspectives*, I recognize that there is no 'one' homogenous Aboriginal perspective⁵, this framework identifies Aboriginal peoples perspectives and understandings.

Thesis Outline

Chapter two of this thesis takes a historical approach and discusses 'Indian' people's history with the Canadian federal government. The chapter identifies the tension that existed between the government and Indian people over controlling Indian peoples' lives. This relationship between the government and Indian people provides a context to understanding Aboriginal peoples' lives. I have chosen to dedicate an entire chapter to this history (and not simply discuss these issues in one or two paragraphs) because this history is vital to understanding Aboriginal peoples' lives. Indian and Aboriginal peoples have cultural, spiritual, and political ties to their history and in many ways, it is this history that has led to Aboriginal peoples' current realities.

Chapter three examines the barriers Aboriginal peoples experience in accessing and participating in the legal profession. The chapter provides a context for understanding the recommendations the reports *Addressing Barriers, Challenge Report* and *Virtual Justice* make to address and combat these barriers.

⁵ According to the 1991 Aboriginal Justice Inquiry, generalizations must not be made that depict all people within a group as identical, because this leads to stereotyping. The report further states that what can be noted, however, is a group's cultural ethic (or what I have labeled perspectives or worldviews). Cultural ethics are not behaviours but are understandings.

Chapter four examines the two conceptual frameworks, critical race theory and *Aboriginal perspectives*, that I discussed above. These conceptual approaches will be used to examine and analyze the reports for their potential to address and make recommendations for combating racial discrimination.

Chapter five provides a picture of what is being proposed to combat racism in the legal profession. The chapter begins by looking at the three reports' origins and objectives and then discusses the recommendations that emerged from the reports. Connections are then made between the reports' recommendations and the frameworks discussed in chapter four. For example, do the recommendations coincide/differ from the conceptual frameworks? What implications/importance does this have for combating racial discrimination? This chapter works to answer such questions.

The sixth and final chapter discusses issues that followed the release of the reports and conclusions that I draw from my research. This chapter examines what happened after the reports were produced, and what happened to the recommendations that were made. This will include criticisms and comments from the interview subjects, legal associations and members of the legal community.

CHAPTER TWO: *INDIAN* PEOPLE AND THE CANADIAN STATE

Introduction

The primary purpose of this thesis is to examine the value of what the legal profession is doing to fight racial discrimination, as this applies to Canadian Aboriginal peoples. In order to examine what is being done, it is important to understand the origins of Aboriginal peoples' racial discrimination and therefore examine their history. For the purposes of this thesis, I will give a brief examination of Indian people's relationship with the Canadian State⁶. This history provides a background to the systemic discrimination Aboriginal peoples have faced in society and surrounding the legal profession.

Another reason for discussing Indian people's history is to recognize Aboriginal peoples' connection to the past. As Monture-Angus states in her book *Journeying Forward: Dreaming of First Nations' Independence*, for Aboriginal peoples, "the past is not simply the past" (1999, p. 23). Aboriginal peoples do not consider history linear, where one experience happens, is then over, and is then followed by another experience. For Aboriginal peoples, the past affects the present and also the future. The past "is carefully interwoven with the present" (Lindberg, 1997, p. 312). Aboriginal peoples' present-day lives are connected to the past and

⁶ While throughout this thesis I will refer to *Aboriginal peoples* in referring to all Canadian Indigenous peoples (status and non-status Indian, Metis, and Inuit peoples), within this chapter I will focus specifically on *Indian* people's history in order to limit the scope of this chapter and to provide one example of Aboriginal peoples' struggles with the Canadian government.

their present day realities are linked to their past colonial relationship with the Canadian State⁷.

Indian people's history has been intricately connected with the Canadian State and this chapter will discuss some of these connections. It is not my intent to address all of the areas where Indian people's lives intersect with the Canadian State, but merely to introduce and provide an overview of key policies that are a part of Indian people's history. The focus of this chapter will be on the Canadian government's policies⁸ regarding Indian people and the tension that has existed between the government and Indian people surrounding these policies. I believe that by examining particular areas within Indian people's past, this history will provide a context and background for understanding some of the barriers Aboriginal peoples face today in Canadian society. Understanding this history will also provide a context for understanding and analyzing the three reports which I examine later in this thesis.

This chapter is divided into four sections. The first section discusses treaties and addresses their creation and meanings. The second section addresses the 1876 Indian Act and the policies that preceded it. The third section discusses the actions and changes that followed the Indian Act. The fourth and final section will look at the 1969 White Paper. This section addresses ideologies behind the White Paper and the responses that followed. In each section I will address how the particular policies have impacted Indian people's lives and at the end of this chapter I will discuss their overall impact.

⁷ Further references to the Canadian government will also be 'government' or 'State'.

⁸ I will begin my look at policies in the 1600s with the creation of treaties and end in the 1970s with responses to the White Paper.

Treaties

I begin my look at Indian people's history by addressing treaties because treaties represent the earliest agreements entered into between Indian and non-Indian people. Treaties⁹ were agreements entered into between the British Crown¹⁰ (and later the Canadian government) and Indian people. In the 1670s, some of the first treaties were signed, called "Friendship and Peace Treaties" (Frideres, 1998, p. 44). These treaties were made between the representatives of the British government and Indian people. These pre-confederation treaties had to do with military and political relations (Frideres, 1998). For example, the Crown entered into treaties with Indian people in the Maritime area to create military and political alliances with them. After Confederation, the responsibility for these agreements, which were originally made with the British Crown, were turned over to the Canadian government.

The 1763 *Royal Proclamation* formally established the treaty-making process. In one section of the 1763 *Royal Proclamation*, the British Crown established a policy in response to white people's settlement on Indian land. Williamson writes that the policy stated, "no one could approach Native peoples for land identified as Native-owned, with the exception of the Crown or representatives of the Crown" (1999, p. 90). White settlers could therefore not approach Indian people to purchase 'Indian land'. The British Crown, in essence, adopted an authoritarian role in deciding how Indian land would be transferred and how Indian people would be compensated for this land being transferred (Williamson, 1999). As a result of this,

⁹ There are three categories of treaties: pre-confederation treaties, the numbered treaties and modern treaties (Williamson, 1999). For the purposes of this thesis I will only be addressing pre-confederation and the numbered treaties. Modern treaties were agreements established in and after 1973.

¹⁰ I will also refer to the British Crown/government as the 'Crown'.

the Crown's influence over Indian people's land increased and Indian people's influence over their land was minimized.

Treaties established the rules for transferring Indian land. Frideres states that treaties were set up to "give recognition to Indian interests in the land, to provide compensation, and to establish an orderly transition of land ownership from one group to another" (1998, p. 43). Treaties recognized Indian title or 'rights' to the land and provided a method and rules for transferring the land from Indian people to the Canadian government. In signing the agreements, Indian people gave up their land to the government in return for compensation.

The government and Indian people had different objectives and intentions for entering into treaties. The government's objective in signing the numbered treaties (treaties signed between the 1870s and 1920s) was to free up land for incoming settlers. Treaty agreements would provide land to be used for settlement and development by incoming white settlers. The agreements also worked to satisfy and secure peace with the Indians (Frideres, 1998). Frideres states that when the government signed the treaties, they "intended that whatever title the Indians might possess should be extinguished" in signing the agreements (1998, p. 51). This meant that Indian people would have no claim over the land they were surrendering. The government also saw treaties as "providing transitional protection" for Indian people until they could be assimilated (Gibbins, 1997, p. 30). Through treaties, the government would grant Indian people services to help them adjust and integrate into mainstream Canadian society, until such a time when they no longer needed the government's protection and aid.

Indian people's objectives and intentions in signing the treaties differed from the government's. As Olive Patricia Dickason states, the numbered treaties were seen as giving Indian people a means "to adapt to the demands of the contemporary world within the frameworks of their own traditions" (1992, p. 275). Services agreed upon within the treaties were not to infringe upon Indian people's cultural traditions but were intended to help Indian people adapt to the changing economic and political environment.

Indian people argue that the treaties were signed between two equal partners, that Indian people and the Crown entered into treaties as equal nations (Cardinal, 1999). This meant that each side recognized the other as a partner, with each side having respect for the other. Cardinal states that to Indian people, the treaties "represent or imply principles that are intrinsically part of the concept of justice and respect for other men's property" (1999, p. 29). Treaties represent Indian values of justice and respect.

Another point of disagreement surrounds fulfilling the treaties. Indian people argue that the federal government has not lived up to its side of the treaty agreements. The written treaties do not include oral promises that were made during treaty negotiations, and many of these oral promises have not been kept (Frideres, 1998). For example, while verbal agreements promised that Indian people's traditional hunting, fishing and trapping rights would not be infringed upon; these promises have not been upheld as Indian people have faced barriers in exercising their traditional hunting, fishing and trapping rights¹¹ (Cardinal, 1999). Indian people also argue that written promises have not been kept. For example, in the late 19th and early 20th

¹¹ For one example, see *R. v. Sparrow* [1990] 3 C.N.L.R. 127 (S.C.C.)

centuries, the government did not provide Indian people with agricultural assistance, as agreed upon within the treaties¹² (Frideres, 1998).

Treaties mark the beginning of an unequal relationship between Indian and non-Indian people. While Indian people believed that treaties were entered into between two equal nations, the outcome of treaty agreements has been skewed. The federal government increased their participation and influence in Indian people's lives. At the same time, this worked to lessen Indian people's input into and control over their own affairs.

The Indian Act and its Inception

Between 1763 and 1830 no legislation or policies were passed regarding Indian people (Williamson, 1999). After the 1830s, however, a number of laws were passed concerning Indian people¹³. In 1839, legislation was passed in Upper Canada that declared Indian reserves to be Crown land (Royal Commission on Aboriginal Peoples [RCAP], 1996). This law established measures to protect Indian lands and meant that incoming white settlers were not permitted to settle on Indian lands and the lands would be reserved for Indian people. In 1857, the British Crown passed the Gradual Civilization Act which was intended to remove all legal distinctions between Indian and non-Indian people and *absorb* First Nations peoples into colonial Canadian society (RCAP, 1996). Under this Act, Indian people with 'good character' could voluntarily give up their Indian status and acquire the same rights as non-Indian

¹² See Carter, S. (1989). Two Acres and a Cow: 'Peasant' Farming for the Indians of the Northwest, 1889-97. *Canadian Historical Review* 70 No. 1, 27-52.

¹³ The legislative changes I note are only a sample of all the laws that were passed concerning Indian people.

people¹⁴. The government's objective in passing the act was to *civilize* Indian people, sever their spiritual connections to the land, encourage the European capitalist economy, and promote colonial Canadian society (Hamilton & Sinclair, 1991). The consequences of these actions worked to disconnect Indian people from their spirituality, culture and connection to their land.

In 1869, just after Confederation, an act was passed that differentiated between Indian men and women. The 1869 Gradual Enfranchisement Act was the first law to deny Indian status to an Indian woman who married a non-Indian man.

Dickason writes that

[i]f a registered Amerindian man married a non-Indian woman, she acquired her husband's status, which was passed onto their children. In contrast, the Amerindian wife of a non-Indian lost her right to annuity payments, to be a member of a band, or even to be an Amerindian within the meaning of the Act (1992, p. 259).

If an Indian woman married a non-Indian man, she and her children would lose their rights as 'Indians'. If a non-Indian woman married an Indian man, she and her children would gain 'Indian' status.¹⁵ This Act worked to divide Indian people as Indian men were given different status rights than Indian women; it was later incorporated into the 1876 Indian Act.

In 1876 the Indian Act was passed and was meant to consolidate all previous legislation dealing with Indian people. Dickason states that the Indian Act

¹⁴ The Royal Commission on Aboriginal Peoples notes that only one man, Elias Hill, volunteered to enfranchise following the two decades after the Act was introduced.

¹⁵ After much lobbying by organizations on behalf of Aboriginal women's rights this act was later modified in 1985 with thousands of Indian women and children regaining their Indian status and band membership (RCAP, 1996). The law was modified so that anyone with one quarter Indian blood could be classified as an Indian. However, in the case of an Indian woman, with one quarter Indian blood, who married a non-Indian man, she would retain her Indian status but her children could not claim Indian status (Dickason, 1992).

“consolidated and revamped pre-Confederation legislation of the Canadas into a nation-wide framework that is still fundamentally in place today” (1992, p. 283). The Act brought previous laws such as the land acts of the 1830s, the Gradual Civilization Act in 1857, and the 1869 Gradual Enfranchisement Act into one comprehensive Act that applied strictly to Indian people.

Gibbins describes the Act as a “total institution” (1997, p. 21). The Act had an impact on every aspect of Indian people’s lives and created and maintained powers over an Indian person from his or her birth until death (RCAP, 1996). The Act also imposed restrictions on all areas of Indian people’s lives from “criminal law to education and religious expression, from hunting to agriculture, from voting to the use of lawyers” (Hamilton & Sinclair, 1991, Vol.1Ch.3).

The Indian Act defined who was and was not an *Indian* under the Act. The 1876 Act defined an Indian as “any male person of Indian blood reputed to belong to a particular band, any child of such person, and any woman who is lawfully married to such a person” (Gibbins, 1997, p. 21). The Act determined who was considered an Indian based on kinship and the male head of the family (Chartrand, 1991). Those who were excluded from this definition were individuals who had lived outside of the country for five years or more, women who married non-Indian men, and, in some cases, illegitimate children (Gibbins, 1997). The Act not only defined who was an Indian but also re-created the ‘Indian’ identity. The impact of this was that the Indian Act defined who an Indian was; Indian people no longer had the power and influence to define their own identity.

The Indian Act also set out to 'protect' Indian lands. Williamson states that the government set out to protect Indian lands by establishing "Indian agents" who were in charge of carrying out the terms of the Act (1999). The Indian agents were non-Native people who lived near the Indian land and were in an authority role within the community (Williamson, 1999). Indian (reserve) land was also 'protected' by being held in trust by the State. This land could not be mortgaged and could not be surrendered without the Indian band's consent (Dickason, 1992).

The legislation also gave the State increased 'authority' over Indian people's lives. The law dictated that Indian people were forbidden to possess or consume alcohol (RCAP, 1996). Williamson states that "sellers of alcohol to Natives could also have faced legal consequences and, if caught selling alcohol to a Native, they could have received up to six months in jail" (1999, p. 132). The law punished Indians who possessed alcohol and those involved in selling alcohol to Indians.

The Indian Act also re-introduced previous enfranchisement laws. Enfranchisement laws were established to remove a person's 'Indian identity' and integrate Indians into mainstream Canadian society. Under this system, an Indian person had to first receive permission from his band if he wanted to enfranchise (Williamson, 1999). Then, the individual had to demonstrate that he understood and had adopted European traditions (Gibbins, 1997). If he succeeded in demonstrating these qualities, he was no longer deemed an Indian or restricted to laws applying to "Indians" but was considered a Canadian citizen. He was then to receive an allotment of land that was subdivided from the portion of his reserve (Gibbins, 1997). The implications for this law were that if an Indian did enfranchise, he would be giving up

his Indian culture and traditions. Also, once the person was enfranchised, he would take his allotment of Indian land with him and this would break up the reserve land and impact the entire community.

The Indian Act also imposed rules on Indian children's education. The law required that Indian children were to attend school until the age of 16 (Williamson, 1999). Indian children were to be educated in residential and industrial schools. Four churches ran these schools: the Roman Catholic, the Anglican, the United and the Presbyterian (Williamson, 1999). Indian children were to attend only recognized 'Indian schools'. This meant that Indian school children were not allowed to attend a public school, for example, unless their parents wished for them to become enfranchised and give up their Indian status. From the early-mid 1800s, Indian children would attend schools during the day and return home in the evenings (Miller, 1989). Years later, however, some of the schools were changed to keep "Native children in isolation and in limited contact with their families and communities, as well as other Canadians" (Williamson, 1999).

Dickason states that the government's objective in passing the Indian Act was to "assimilate Amerindians" (1992, p. 284). The Act was devised to increase the number of Indian people who were integrated into mainstream Canadian society. Williamson also points to the government passing laws that increased the government's control over Indian people's lives as evidence of their assimilationist goals (1999).

Indian commentators and critics have described the Indian Act as a legislative "straightjacket" (RCAP, 1996, Ch.1s.1). The Act has not only imposed restrictions

that have worked to control all aspects of Indian people's lives, but it has also worked to weaken the treaties. Cardinal states that "now it is from the *Indian Act* that the legal position of the Indian primarily stems, rather from the treaties themselves" (1999, p. 37). Whereas the treaties were the base from which Indian people's rights originated, the Indian Act replaced the treaties as the source for Indian people's legal position.

The Indian Act went further than treaties to increase the government's influence and power over Indian people's lives. This influence had a direct impact on Indian people's lives. The Indian Act (and acts preceding it) proceeded to control and define Indian identity, restrict their actions, divide them as a people, and disconnect them from their culture and land.

Amendments to the Indian Act

Amendments to the original 1876 Indian Act began soon after its enactment (Williamson, 1999). In 1880 an amendment to the Indian Act was made to further promote enfranchisement. An Indian person was required to enfranchise if he or she had earned a university degree. If an Indian person attained a professional degree, such as a law, teaching or medical degree, he or she could be enfranchised immediately, without having to go through a probationary period¹⁶ (Tobias, 1983). Attaining a university education proved that the Indian person had "demonstrated his acceptance of Euro-Canadian values and his ability to function in Canadian society"

¹⁶ I should note (because this thesis deals with the legal profession) that if an Indian person attained a law degree, he or she would be forced to enfranchise under this law and therefore would have to give up their Indian status. I have not been able to find any information about any Indian person who did this, however.

(Tobias, 1983, p. 44). In 1920, further legislation regarding enfranchisement was passed. The legislation gave the government power to enfranchise Indian persons who the government felt were qualified without the Indian person making a request (Gibbins, 1997). This meant that if the government deemed an Indian person qualified to fit into Canadian society, the individual could be enfranchised without his or her consent. The person no longer had the choice of whether or not to enfranchise, and could be forced to give up their Indian identity.

Later amendments to the Indian Act were made to give the federal government increased control over Indian people's affairs. Past government-imposed rules required that Indian bands *elect* band council representatives (RCAP, 1996). This pushed Indian people to abandon their traditional ways of selecting band representatives and instead adopt the Euro-Canadian model of electing representatives. In 1886, the Indian Advancement Act was passed, which gave government officials increased control over band affairs; it gave Indian agents control over such issues as calling and presiding over band elections and band meetings (Tobias, 1983).

Laws also restricted Indian cultural practices. Traditional Indian practices such as Sundances, Potlatches, and Give Away Ceremonies, were prohibited (Tobias, 1983). In 1884 the Potlaches, which were practiced by the Indians of the North West Coast, were banned (Dickason, 1992). In 1895, Sundances, practiced by Indians of the prairies, were banned (Dickason, 1992). These and other dances and practices associated with religious and supernatural rituals were outlawed. These laws further

pushed Indian people to rid of their traditional practices and cast away their traditional cultures.

Further amendments to the Indian Act gave the government increased control over Indian lands as government agents were given increased power to make decisions about Indian lands. In 1884 and later in 1894, “the Superintendent General was empowered to lease undeveloped reserve lands without taking a surrender or obtaining band consent” (Dickason, 1992, p. 323). This meant that the government could surrender land that was reserved for Indians to settlers, without requiring Indian people’s consent. In the early 1900s an amendment to the Indian Act also allowed for reserve land to be surrendered for public use. Portions of reserve land could be relinquished to municipalities for public uses, such as roads or railways (Dickason, 1992).

In 1880, Sir John A. Macdonald, Prime Minister of Canada at the time, stated that the government’s goal, in reference to Indian people, was to “wean them by slow degrees, from their nomadic habits, which have become almost an instinct, and by slow degrees absorb them on the land. Meantime they must be fairly protected” (Gibbins, 1997, p. 25). The government passed laws that restricted Indian people’s traditional practices in order to persuade Indian people to abandon their traditional ways and to conform and adapt to mainstream Canadian society. This worked to disconnect Indian people from their past ways.

Resistance

Indian people have, in many ways over the years, resisted the Indian Act's legislation (and the government's assimilationist goals). While many laws were established to entice Indian people to enfranchise, Indian people did not readily accept enfranchisement. Between 1857 and 1920, only 250 people became enfranchised (Tobias, 1983). Indian people resisted having to give up their Indian identity, culture and traditions.

Indian people also resisted the government's attempts to control band affairs. The Royal Commission on Aboriginal Peoples notes that Indian bands did not readily accept the elective band council system, which was imposed in 1869 (1996). Two years after Indian bands were to use the elective band council system, Deputy Superintendent Spragge stated that the Indian people had not adopted the system (RCAP, 1996). They resisted the government-imposed system and attempted to retain their traditional leadership systems.

In the 1840s and early 1850s, Indian people supported the missionaries establishing day schools and other efforts to educate their children (Miller, 1989). Indian people were in favour of education because they saw education as the key to the future of their children and schools were viewed as essential for Indian people's continued survival (RCAP, 1996; Miller, 1989). With more and more settlers inhabiting Canada, Indian people saw education as a way for their children to learn new skills that would be essential for their future well being.

In the mid 1850s, Indian people began protesting what they saw as forced assimilation, associated with sending their children to the church-run schools (Miller, 1989). Indian people began to resist sending their children to distant schools, a

practice which isolated the child from his or her parents and culture (Tobias, 1983). Many Indian parents refused to send their children to residential schools but government legislation compelled Indian people to comply. In 1894, parents were jailed if they prevented their children from attending the government-established residential schools (Hamilton & Sinclair, 1991). These laws put restrictions on how Indian people chose to raise their children and worked to lessen Indian people's influence in their children's lives. Indian people also resisted bans on their cultural practices. Dickason states that in the late 1800s when a ban was placed on Indian dances and ceremonies, Indian people did not cease to practice their dances and ceremonies when the practices were deemed illegal; these practices instead went underground (1992).

Recent Changes

In 1951 the Indian Act was revamped. Changes were made to the act that lessened the government's influence over Indian people's affairs. Some of the restrictions that had been placed on Indian people's lives were lifted. Bans that had been placed on traditional dances and ceremonies (such as Potlaches, Sundances, and Give Away ceremonies) were lifted (RCAP, 1996). Indian people were now allowed to purchase and consume alcoholic beverages (Williamson, 1999). Another significant event that occurred in the early 1960s, after this amendment, was that Indian people were given the right to vote in federal elections (Williamson, 1999). Each of these changes worked to restore Indian people's influence and control over their own lives.

While the government's influence in Indian people's affairs may have lessened, they still exercised a great degree of intrusion into Indian people's lives. Into the mid 1950s, Indian agents still controlled aspects of Indian communities "even to the point of issuing temporary passes from the reserves" (Williamson, 1999). Indian people were still impacted greatly by the government's policies.

Gibbins argues that, like its predecessors, the 1951 amendment to the Indian Act was framed to encourage Indian people to assimilate and integrate into mainstream Canadian society (1997). Aspects of the Indian Act that promoted assimilation did not change. For example, enfranchisement policies were not altered (Williamson, 1999). Policies concerning education were changed to promote integration; there was a shift from segregated residential schools to integrated education and Indian children were now integrated into schools with other non-Indian children (Miller, 1989).

While many of the restrictions were removed from the 1951 Indian Act amendment, fundamentally the Indian Act did not change its thrust and direction. The government still had great influence over Indian people's lives. As Gibbins and Williamson have argued, the government's focus continued to be to remove Indian people from their traditional culture and ways, and to integrate them into mainstream Canadian society.

1969 White Paper

In 1968, with Pierre Trudeau's newly elected Liberal government, a change came for Indian policy – the government promised to shape Canada into a "just

society” (Gibbins & Ponting, 1986, p. 32). The political climate at this time focused on the “question of national unity” (Weaver, 1981, p. 4). All Canadians were to be treated equally, with no one person or group having any more rights than another. Indian people were not to be treated differently from other Canadians (Weaver, 1981). Emphasis was to be put on individual equality and freedom instead of “outmoded historical constraints” (Weaver, 1981, p. 54). It was from this ideology that the 1969 ‘Statement of the Government of Canada on Indian Policy’ (The White Paper) developed.

The purpose of the White Paper was to eliminate much of the discrimination that Indian people faced in Canadian society. The White Paper stated that discrimination was rooted in the fact that Indian people were treated differently; they did not have the same opportunities as other Canadians but were given special rights. These special rights were the source of problems and Indian people were handicapped in their interactions in Canadian society. To be an Indian was to “lack power – the power to act as owner of your lands, the power to spend your own money and, too often, the power to change your own condition” (Canada, 1969, p. 3). In making this claim, the Minister of Indian Affairs at the time, Jean Chretien, implied that because Indian people lived on reserves and technically did not own their own land, they did not have power and control over their own lives.

The government noted that the only way to stop this discrimination was to change the legislation that segregated Indian people from Canadian society. The constitutional basis of discrimination was to be removed (Gibbins & Ponting, 1996). Dickason writes that the White Paper was “designed to break ‘the pattern of 200

years' and to abolish the existing framework of Amerindian administration, widely criticized for setting Amerindians apart and hindering their development" (1992, p. 385). Indian people needed to break from the past and to no longer be dependent on segregating factors (Canada, 1969). The White Paper proposed to abolish the Indian Act. Indian status and treaties would end and reserve land would be eliminated (Williamson, 1999). They would no longer have a land base. This also meant that all government support that had been given to Indian people would cease. While many of the 'restrictions' Indian people faced would disappear with the introduction of the White Paper, their 'Indian' identity (as formally recognized) would also disappear. In essence, the White Paper (similar to the Indian Act and its amendments) worked to disconnect Indian people from their traditional culture and traditions.

The government's objective with introducing the White Paper was to 'treat all people alike'. By revoking all policies dealing with Indian peoples, it was believed that Indian people would be supposedly freed from the restraints that set them apart from other Canadians and that they therefore would have the opportunity to become full members in Canadian society (Dickason, 1992). It was stated that "Indian people must be persuaded . . . that this path [would] lead them to a fuller and richer life . . . [Only then can they] realize an immense human and cultural potential that will enhance their own well-being" (Canada, 1969, p. 5). Competition would lead to feelings of dignity and self-confidence that a man must have if he is to walk with his head held high and anything opposed to this would be an argument for discrimination, isolation, and separation (Canada, 1969).

Indian people resoundingly rejected the policies of the White Paper. Gibbins cites Harold Cardinal describing the White Paper as “ ‘ . . . a thinly disguised programme of extermination through assimilation’ ” (1997, p. 32). Through exterminating or getting rid of the ‘Indians’, Indians would be forced to assimilate into mainstream Canadian society. But Indians did not want to be ‘regular citizens’ as the White Paper detailed. They wanted their “special rights honoured and their historical grievances, particularly over lands and treaties, recognized and dealt with in an equitable fashion” (Weaver, 1981, p. 4). Indian people wanted meaningful participation in policy making. They wanted their needs and wants listened to and to be included in policies that concerned them.

There was a great deal of fervor against the government’s proposal. One response, called the “Red Paper”, by the Indian Chiefs of Alberta, rejected all of the White Paper’s proposals. In their response to the federal government, the Indian Chiefs of Alberta stated that by turning all control over to local governments they would “los[e] their culture via the eventual process of individuals selling off portions of the reserve” (Friesen, 1997, p. 232). The “Red Paper” objected to the basis of the White Paper and proposed counter ideas. The Red Paper proposed increasing the amount of money for economic and social programs and argued that local bands should have the power to control this money (Friesen, 1997). Another response, labeled the “Brown Paper”, by the Union of British Columbia Indians, concurred with the “Red Paper” stating “Indian reserves constitute the basis of cultural preservation and as such should be preserved” (Friesen, 1997, p. 232).

The White Paper was formally withdrawn in March 1971. Williamson states that the White Paper was dropped “due to consciousness raising and banding together of First Nations peoples in protest over this paper” (1999, p. 139). Initiatives such as the Red Paper and Brown Paper expressed Indian people’s discontent over the White Paper’s aims and pushed for its retraction. The White Paper marked a pivotal point in the history of the government’s Indian policy. Gibbins states that

[f]ormally, at least, the page was being turned on what had been the central theme of First Nation policy over the previous one hundred and thirty years. The rejection of the white paper, therefore opened up a new and confused policy era; the direction of First Nation policy was up for grabs (1997, p. 32).

This meant that a change was occurring for Indian policy. The government’s past assimilationist goals were no longer to dominate Indian policy. Indian people united to block the White Paper and, in turn, assimilation. This rejection closed an epoch of Indian policy.

For the purposes of this thesis I conclude my examination of Indian people’s history with the Canadian State with the White Paper because it marked the end of an era for government - Indian relations. Frideres states that after the White Paper was introduced Indian people began to take a stronger role in their affairs; they were no longer going to stand back and let the government have the primary role (1998). A number of Indian organizations, such as the ones that produced the Red Paper and Brown Paper, began to take charge in Indian - non-Indian relations and they adopted pro-active strategies for addressing the government’s interference in their affairs.

While the White Paper may have marked the end of an era for Indian policy, the government’s past policies have had a great impact on Indian people’s lives. Past

policies worked to marginalize Indian people from their traditional ways by putting restrictions on such issues as their control over band affairs, cultural practices, and how they raised their children. This worked to disconnect Indian people from their traditional culture, identity, and ways. As stated in the beginning of this chapter, the past “is interwoven with the present” (Lindberg, 1997, p. 312). These past events are linked to Indian people's lives today.

Frideres states that the social and economic ills Indian people face today are due to past historical events (1998). Many Indian people have lost their traditional language and culture. For example, only 18% of urban Aboriginal people¹⁷ over the age of 15 are able to speak their traditional language (RCAP, 1996). Indian people are affected by a general increase in social problems that decrease their quality of life. They face high rates of suicide, violent death, and alcohol abuse (Frideres, 1998). They face high poverty rates; according to the 1991 census data from Statistics Canada over 60% of Aboriginal households live below the poverty line and unemployment rates are double those of non-Aboriginal people (RCAP, 1996). This is only a very small sample of many of the socio-economic issues that plague Indian people's lives.

Conclusion

According to the historical evidence from treaty agreements to the Indian Act to the White Paper, it is apparent that the government's Indian policy has had a direct negative impact on Indian people's lives; government policies have affected a broad

¹⁷ Indian, Metis, and Inuit

spectrum of Indian people's lives. The restrictions that were placed on all areas of Indian people's lives marginalized Indian people from their traditional ways and pushed them to abandon their Indian culture and identity. The impact of these policies has led to many of the barriers Indian people face today in Canadian society. In the next chapter, I will further address some of the societal and discriminatory barriers Aboriginal peoples face in society and explain how these issues contribute to Aboriginal peoples' restricted access to and participation in the legal profession.

CHAPTER THREE: ABORIGINAL PEOPLES AND THE LEGAL PROFESSION

Introduction

Not only have Aboriginal peoples faced significant social, legal and cultural barriers in the past (as detailed in chapter one), but they also face a great many current barriers. This chapter examines the specific barriers Aboriginal peoples face in relation to the legal profession. In particular, it looks at the relationship Aboriginal peoples have with the legal profession by examining the barriers they experience both in accessing the legal profession and within the profession¹⁸. This information will provide a context for understanding Aboriginal peoples' under-representation within the legal profession, and for discussing what has been recommended to decrease the barriers Aboriginal peoples face regarding the legal profession (in working towards equality within the legal profession), as well as for underpinning my analysis of these recommendations. Both the recommendations and my analysis will be discussed in chapter four.

This chapter is partitioned into seven sections. The first section is entitled access to law school and addresses Aboriginal peoples' under-representation within the legal profession and the barriers Aboriginal peoples face in accessing law school. The second section addresses the law school environment. I will evaluate problems

¹⁸ Within this section I examine information from the three reports: *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*, *The Challenge of Racial Equality: Putting Principles into Practice*, and *Virtual Justice: Systemic Racism and the Canadian Legal Profession* and additional information regarding the barriers Aboriginal peoples experience surrounding the legal profession.

for both Aboriginal students and professors within law school. The third section, legal curriculums, discusses how Aboriginal issues are largely excluded in the law school curriculum and the bar admissions course curriculum. The fourth section addresses the barriers Aboriginal peoples face accessing the legal profession and evaluates Aboriginal peoples' experiences obtaining articling positions and advancing in the legal profession. In the fifth section, I deal with issues surrounding Aboriginal peoples' experiences within the legal profession. I also draw parallels between issues within law school and issues within the profession. In the final two sections, I address barriers Aboriginal peoples face in participating in the judiciary and in the Canadian Bar Association.

Accessing Law School

Before I begin my discussion about Aboriginal peoples' access to law school, it is important to note that Aboriginal peoples are under-represented in the legal profession. According to *Challenge Report*, in 1988 there were 115 law school graduates of Aboriginal ancestry (Working Group on Racial Equality in the Legal Profession [Racial Equality], 1999). Almost a decade later, in 1997, there were only approximately 500 Aboriginal lawyers in Canada (Law Society of British Columbia [LSBC], 2000). While the number of Aboriginal lawyers increased, Aboriginal lawyers continue to be under-represented in the profession. According to *Addressing Barriers*, "[i]f the Aboriginal population were proportionately represented in the profession, there would be approximately 1,500 Aboriginal lawyers in Canada"

(LSBC, 2000, p. 4), indicating that more Aboriginal lawyers are needed in order for Aboriginal peoples to be proportionately represented in the legal profession.

One reason why Aboriginal peoples are under-represented in the profession is because of the obstacles they face in accessing law school¹⁹. For many Aboriginal peoples, there are *societal barriers*²⁰ that prevent them from entering the legal profession. For example, Aboriginal peoples face socio-economic barriers that may hinder their chances of entering the legal profession (LSBC, 2000). These barriers can make it difficult for Aboriginal peoples to afford the costs of university and later law school.

There is a large wage gap between Aboriginal and non-Aboriginal peoples' incomes. Aboriginal peoples make considerably less money than non-Aboriginal people. According to a 1995 Statistics Canada profile of Canada's Aboriginal population, nearly 25% of Aboriginal peoples had no income, while only 10% of other Canadians had no income (Frideres, 1998). Aboriginal peoples who reported having an income made considerably less money than the average Canadian. In 1990, the income for Aboriginal peoples was 70% of that of other Canadians (Frideres, 1998). According to the 1991 Census, half of the Aboriginal population had an income of less than \$20 000 (Frideres, 1998). With Aboriginal peoples facing greater socio-economic problems than non-Aboriginal peoples, they are more likely to experience financial difficulties that prevent them from attending university (or law school).

¹⁹ If students are unable to attend law school, they are unable to enter the legal profession.

²⁰ In referring to 'societal barriers' I am referring to barriers that not specific to the legal profession but do have a direct impact on Aboriginal peoples' access to and within the legal profession.

Many Native people also face academic barriers that limit their opportunities of going to law school. Aboriginal peoples have low education levels. According to a 1996 Statistics Canada report, only 4% of Aboriginal peoples were university graduates (LSBC, 2000). A lack of higher education levels prevents Aboriginal peoples from considering law as a career option. Entrance into the legal profession is through a very narrow door: law school (Racial Equality, 1999). In order to apply for law school, an individual ordinarily needs to have at least some post-secondary education, and in most cases a post-secondary degree in order to be accepted into law school (LSBC, 2000). With so few Aboriginal people having post-secondary degrees, the pool of Aboriginal applicants is limited for those who can apply to law school. The structure of law school is thus a very real barrier for most Aboriginal students. Aboriginal students therefore face a double disadvantage in trying to get into law school; they face lower education levels, and the barrier of needing a post-secondary degree before even applying to law school.

Most Aboriginal peoples must leave home in order to attend law school (Ross, 1992). This can be difficult because an Aboriginal person's family and community represent a great support system (Hamilton & Sinclair, 1991). Family members rely on each other for support and depend on each member's contribution to the family (Ross, 1992). If a person leaves the community, not only does the individual who is leaving lose the support of the community, but the community also loses the help of that member. Keeping these community ties can be difficult for Native law students. One student stated that she felt "so terribly guilty for not committing any time to

social or cultural concerns [as she had done before attending law school]” (Lindberg, 1997, p. 323).

There are also *discriminatory barriers*²¹ that prevent Aboriginal peoples from entering law school. One barrier preventing Aboriginal peoples from seeing law as a possible career option is the negative impact the law has had on Aboriginal peoples’ lives. Law is often seen as a destructive force within Aboriginal peoples’ lives (LSBC, 1998). The legal system is “not viewed as a protector of what they [Aboriginal peoples] hold dear, but rather an enforcer of non-Aboriginal law upon them” (Canadian Bar Association [CBA], 1988, p. 11). As detailed in chapter one, laws have been used to suppress Aboriginal peoples’ rights, and their rights have been ignored and disregarded, leading Aboriginal peoples to poverty and powerlessness (Hamilton & Sinclair, 1991).

Aboriginal peoples also see (Euro-Canadian) law as a foreign system representing “white man’s laws” (LSBC, 1998, p. 3). The Canadian justice system continues to “reflect many of the values of our predominantly European heritage” (CBA, 1988, p. 11). Canadian law is a system that works to preserve ‘white man’s’ rules and does not often reflect the values and needs of Aboriginal peoples. The law instead continues to be an instrument of colonialism, pervaded with racist assumptions regarding Aboriginal peoples (Monture-Angus, 1999). The law continues to stereotype and degrade Aboriginal peoples and their values, and it is not surprising then that Native students are *not* attracted to law, and are instead pushed away from choosing law as a career.

²¹ In referring to ‘discriminatory barriers’ I am referring to barriers that are based on biases or prejudices.

Aboriginal peoples may also feel pressure from their community against going to law school. One lawyer reported that she received negative remarks from members of her community when they found out that she would be attending law school. She was labelled as “becoming too white” (LSBC, 1998, p. 4). There is an assumption by community members that Aboriginal students who go to law school will become like non-Native people – those who have oppressed Aboriginal peoples in the past.

Societal and discriminatory factors (acting individually or in combination) create barriers for Aboriginal people to enter law school and subsequently the legal profession. Societal barriers (such as socio-economic and academic issues) impact upon Aboriginal peoples’ opportunities to go to law school while discriminatory barriers (such as viewing law as oppressive) may limit Aboriginal peoples from seeing law as a possible career choice.

Law School Environment

Within law school, Aboriginal students continue to face very real barriers. Aboriginal law students face family and community situations that are different from non-Aboriginal students and which present barriers to attending law school. According to a 1989 Indian and Northern Affairs Canada report, there are twice as many Aboriginal single-parent families than the Canadian average. Females living off-reserve head the majority of these single-parent families (Frideres, 1998). Aboriginal people also have larger families than the average Canadian family (Frideres, 1998). In attending university, Aboriginal students often have many family responsibilities in addition to their required schoolwork.

Aboriginal students report facing racist remarks by fellow non-Aboriginal students. For example, one student stated that she heard a non-Native student say, “I had to move to Saskatchewan because an Indian, who barely passed the LSAT, got my seat in my home province” (Lindberg, 1997, p. 325). Some non-Aboriginal students have stated that students who received special treatment are “not as bright or gifted as white students” (Racial Equality, 1999, p. 6). Certain white students feel that because many Aboriginal students are accepted into law school through special admissions procedures, under which Euro-Canadian students are not eligible to apply, Aboriginal students are not as intelligent or as qualified to be in law school as Euro-Canadian students.

Professors, while less frequently than students, have also made racist comments towards Aboriginal students (St. Lewis, 1999). One respondent of the 1996 *Report on the Survey of Aboriginal Law Graduates in British Columbia* (hereinafter referred to as 1996 Survey Report) stated that a law professor who taught the real estate course “told me when I went . . . for assistance that my problem was that I thought like an Indian and once I stopped that, I would be fine” (LSBC, 1996, p. 9). The professor acknowledged that if the student wanted to succeed in law school, she would have to become like other (non-Indian) students, disregard her Indian identity and values, and embrace Euro-Canadian world views.

Stereotypical assumptions are too often made about Aboriginal law students. One Aboriginal student stated that non-Aboriginal students make assumptions about people with “brown skin. We [Aboriginal students] are all affirmative action, we are all from reserves, we are all paid to come to school” (Lindberg, 1997, p. 307).

Lindberg notes that Aboriginal peoples in law school are grouped together and not seen as individuals with different backgrounds.

Myths have ensued, suggesting that Aboriginal students do not face the same rigorous law school experience as other non-Aboriginal students. There are also myths that Aboriginal students do not take the same exams as non-Aboriginal students, and that Aboriginal students are marked differently on exams and assignments than non-Aboriginal students (St. Lewis, 1999). These myths have worked to further stigmatize Aboriginal students.

Aboriginal law students find themselves “under attack ideologically, emotionally, and psychologically” (CBA, 1993, p. 35). They have to battle the racism, stereotypes, and disrespect of Aboriginal culture and continually prove their right to be in the legal profession. One student described her situation: “I constantly feel as though I am trying to prove myself . . . and that everyone is watching me, waiting for me to fail” (LSBC, 1998, p. 12). It is a constant struggle for Aboriginal peoples to succeed in the legal profession against stereotypes that Aboriginal peoples are not qualified to be in law school.

In conclusion, Aboriginal students often feel unwelcome and ‘targeted’ because of racial discrimination in law school. Law school can be seen as a cold environment that labels Aboriginal students and does not recognize the discriminatory barriers they face. Not only do Aboriginal law students feel excluded from the law school environment, but they also feel they must continually prove themselves and their right to be in law school.

Legal Curriculums

Another aspect to legal education considered problematic is the legal curriculum. I have included two types of legal curriculums in this section: the law school curriculum and the Bar Admissions Course curriculum²². Both the law school and Bar Admissions Course curriculums have been criticized for not addressing Aboriginal issues or perspectives²³ (St. Lewis, 1999; LSBC, 2000). Contrary to what law schools state, Aboriginal law students report that there have been a minimal amount of Aboriginal issues incorporated into law school courses (LSBC, 2000). At one law school, for example, tax law is taught with no references to, or concern for, Aboriginal tax laws in Canada (CBA, 1993). Many Aboriginal peoples face tax laws that are different from other Canadians but these differences are not taught in many law school courses.

Some law school courses are reported to conflict with Aboriginal students' understandings of Canadian law. Some Aboriginal law students do not accept what is being taught in *regular* property law courses, for example, because the information being taught is different from what they understand property law to be (CBA, 1993). One Native law student from Saskatchewan stated, "established rules of land management and nurturing are essential for Aboriginal people" (Lindberg, 1997, p. 317). If an Aboriginal student has experienced something different from what is taught in the property law class, he or she might disregard what is being taught

²² The Bar Admissions Course is a course law students take after completing their law degree and articling position (an articling position is where a law student works for a period of time under a practicing lawyer). The course focuses on "lawyering skills" and is a bridge between law school and life experiences. The course varies in length depending on the province that administers the course. In Alberta, for example, the Bar Admissions Course is eight weeks long, consisting of a three week skills session and a five week core practice session.

²³ Continuing Legal Education courses (courses that lawyers take in the course of their legal careers) have also been criticized for not addressing Aboriginal issues (LSBC, 2000).

because it does not coincide with that student's personal experiences. In some ways, it is difficult if not impossible for Aboriginal students to study and comprehend property concepts when they are devoid of Aboriginal concepts of property (Lindberg, 1997).

Legal curriculums have been criticized for failing to meet Aboriginal students' needs. Both the law school curriculum and Bar Admissions Course curriculum have been condemned as being culturally insensitive (LSBC, 2000). *Different* perspectives are, in many cases, left out of legal curriculums. Legal education is based on Euro-Canadian world views and legal curriculums are based on a "white patriarchal middle-class system of values that 'disappears' or erases other world views in an unquestioned belief in the 'unchallenged' universality of the dominating Euro-centric experience" (Thornhill, 1995, p. 815). Legal curriculums are based on 'white' world views only and this assumes that all students have the same perspectives and values, beliefs and history (Monture-Angus, 1995). Not all people in law school come from the same backgrounds and hold similar beliefs, however. In teaching and assuming only one 'truth', legal education often discards Aboriginal peoples' world views or any other perspective contrary to Euro-Canadian perspectives (Monture-Angus, 1995).

Legal curriculums also present barriers for Aboriginal students by teaching that they should detach themselves from their cultural background. Canadian law school courses teach students to be *neutral* and *objective* in order to find the *truth* (Monture-Angus, 1995). Aboriginal students are taught that they must cast away their identity and past experiences in order to be *objective*.

In many ways, it is impossible for Aboriginal students to detach themselves from their world views and fully integrate themselves into legal education.

Aboriginal law students experience a “something missing feeling” (Monture-Angus, 1995, p. 97). A number of Native law students and lawyers have stated that legal education is “ ‘non-spiritual’ [and] . . . ‘unnatural’ ” (LSBC, 1998, p. 11).

Aboriginal world views see the world as a web of relationships, with all things connected (Ross, 1996). Law school does not focus on creating interconnectedness but instead on dissecting concepts (Lindberg, 1997). Aboriginal peoples can be alienated from legal education because of different cultural world views.

In summary, for many Aboriginal students, legal curriculums can be viewed as ignoring their distinctive realities. While they may teach one reality – white cultural and legal experiences – they exclude Aboriginal issues and perspectives. This works to alienate Aboriginal peoples from legal education and creates further barriers to Aboriginal students finding *their place* in law.

Gaining Access to the Legal Profession

After students complete their legal education, they enter the legal profession. Both Aboriginal articling students (who enter the legal profession to work under a lawyer as part of their schooling) and Aboriginal lawyers have stated that they face discriminatory practices that hamper their access to the legal profession. It is often very difficult for Aboriginal students to obtain articling positions and many Aboriginal students do not have the same “marketability” as other non-Aboriginal students (St. Lewis, 1999, p. 73). This means that many Aboriginal students do not

have the same past experiences and qualities law firms are looking for when hiring articling students. For example, many Aboriginal students have limited summer work experience and this can hinder their 'marketability' (St. Lewis, 1999). Students who cannot find an articling position may be forced to work for free or for a very small wage in order to fulfill the articling requirement (Racial Equality, 1999).

Aboriginal lawyers may also experience job barriers because of not having had a "well-rounded articling position" (Racial Equality, 1999, p. 19). Aboriginal lawyers who did not have a well-rounded articling experience (learning and experiencing various legal areas) face greater difficulties in finding a job than non-Aboriginal lawyers with more comprehensive work experience.

Aboriginal law students have also reported discrimination in trying to obtain articling positions and have reported facing discrimination in hiring processes and during interviews. One respondent of the 1998 report *Summary of the Discussion of the Aboriginal Law Graduates Focus Group* (hereinafter referred to as 1998 Summary Report) stated that when she was applying for articling positions, firms " 'simply did not hire Indians, even the firms that practised Native Law' " (LSBC, 1998, p. 22). During interviews, Aboriginal students have been asked inappropriate questions or assumptions have been made based on a student's skin colour (Racial Equality, 1999). Law firms will often justify hiring a certain individual by simply stating that he or she "fits" with their group. A description using the word " '[f]it' is often a reflection of personal or cultural assessments based upon perceptions of shared values and experiences with candidates rather than a comparison of skills" (St. Lewis, 1999, p. 76).

Native lawyers also report being denied the opportunity to advance in their careers. They have been denied equal opportunities given to non-Native lawyers due to barriers in hiring processes, promotions, and salaries (LSBC, 1996). Native lawyers in both private firms and government departments are “denied opportunities to move up the corporate ladder to partner or senior management positions” (Racial Equality, 1999, p. 18).

To conclude, while Aboriginal articling students and lawyers have overcome many barriers in having access to and completing law school – to arrive at the point of entering the legal profession – there is a whole new set of obstacles that stand in their way in accessing the legal profession itself. Too often, Aboriginal peoples’ life situations and experiences are not valued but instead they are judged and condemned for not having the *proper* background and experience. These judgments block Aboriginal peoples’ access to the legal profession and subsequently hinder their advancement in the profession.

Working in the Legal Profession

Aboriginal peoples also face obstacles while working in the legal profession. Many of the barriers Aboriginal students face in the legal profession parallel the barriers they face in law school. Aboriginal articling students and lawyers have reported racist comments by coworkers, employers and judges (Racial Equality, 1999; LSBC, 1998; LSBC, 2000).

Law firms have made negative assumptions about Aboriginal peoples and their use of equity programs. Aboriginal students (even those with high grades) face

extra scrutiny when they apply for articling positions because of the assumption that Aboriginal students are given special treatment in law school (St. Lewis, 1999). The same (inferior versus superior) labels that plague Aboriginal students in law school also exist when Aboriginal peoples try to find jobs. Aboriginal individuals who use equity programs are seen as inferior compared to non-minority students who do not use such programs.

Assumptions are also made about the quality of work of Aboriginal articling students. They have been barred from handling Aboriginal legal issues because the firm believed that an Aboriginal student would be biased in dealing with Aboriginal issues and some firms believed that Aboriginal students would not be able to deal with Aboriginal issues *objectively* (CBA, 1993).

Aboriginal lawyers face discrimination in other areas of their legal career. They receive an insufficient number of referrals from Legal Aid, for example, and only a small number of referrals from the "Native Court Worker and Counseling Association" (LSBC, 1998, p. 27). Aboriginal lawyers face opposition that suggests that they are *less qualified* than non-Aboriginal lawyers. As well, even some Aboriginal Tribal organizations will not retain Aboriginal lawyers, and if Aboriginal lawyers are hired, they are expected to work for lesser pay (LSBC, 1996).

Aboriginal lawyers must continually prove themselves as lawyers. The 1998 Summary Report noted that court service and staff workers have challenged Aboriginal lawyers' credentials in order to enter lounges strictly reserved for lawyers (LSBC, 1998). Judges too often treat Aboriginal lawyers differently from non-Aboriginal lawyers and some judges "don't give [Aboriginal lawyers] 'full credit' for

being lawyers. They'll talk to white lawyers differently than they talk to us; they'll take them at their word, make allowances" (LSBC, 1998, p. 25). Judges have been found to make exceptions for white lawyers but not for Aboriginal lawyers. Aboriginal lawyers not only have to prove that they are lawyers, but they must continually compete to be treated the same as non-Aboriginal lawyers.

In summary, the legal profession can be characterized as an arena that neither trusts nor welcomes Aboriginal lawyers. Aboriginal lawyers face racist rhetoric and continually have their abilities tested and questioned by employers, colleagues and judges. These barriers not only negatively impact an Aboriginal lawyer's career but also, on a broader level, they impact an Aboriginal person's relationship with the legal profession.

Judiciary

As in other areas of the legal profession, Aboriginal peoples are under-represented within the judiciary. *Challenge Report* notes that any reason that prevents Aboriginal peoples from becoming lawyers or advancing in their legal career also prevents individuals from becoming judges (Racial Equality, 1999). In order to become a judge, an individual must have been a lawyer and have practiced as a lawyer for a period of time (usually ten years). Therefore, all the systemic barriers Aboriginal people face within the legal profession limit an Aboriginal person's chances of becoming a judge.

Political connections can play an important role in the judicial appointment process. There have been numerous studies which point to the fact that appointments

too often are given to individuals who represent the same backgrounds and support the views of the ruling political and social classes²⁴. Given the disadvantaged status and lack of elite connections of so many Aboriginal peoples in Canada, and the low number who actually make it into the legal profession, it becomes clear why there are so few Aboriginal judges on the bench today.

Canadian Bar Association

While the Canadian Bar Association is the national voluntary organization for lawyers in Canada, many Aboriginal lawyers are not members of the CBA (Racial Equality, 1999). One reason is because the CBA does not address many of the issues Aboriginal lawyers face; it represents perspectives and views that usually differ from Aboriginal peoples' realities (Racial Equality, 1999). Another reason many Aboriginal lawyers are not members of the CBA is because membership – which requires paying fees and volunteering their time for outside organizations – cut into the costs of running a small firm (St. Lewis, 1999; Racial Equality, 1999).

Conclusion

This chapter has provided a background for understanding the very real and substantive barriers Aboriginal law students and lawyers experience surrounding the profession, from entering law school to working and advancing in the profession, and

²⁴ See, for example, Chapter 3 of Olsen, D. (1980). *The State Elite*. Toronto: McClelland Stewart Ltd. and Russell, P., & Ziegel, J.S. (1990) *Federal Judicial Appointments: An Appraisal of the First Mulroney Government's Appointments and the New Judicial Advisory Committees*. *University of Toronto Law Journal*, 41, 4-37.

how this has limited their access and participation (and therefore representation) in the legal profession. Many of these barriers are compounded. For example, many non-Aboriginal law students and lawyers have a negative view of Aboriginal law students and lawyers' abilities because of equity initiatives that target Aboriginal law students. These assumptions exist in law school, in accessing the legal profession, and within the profession.

The three reports *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*, *The Challenge of Racial Equality: Putting Principles into Practice*, and *Virtual Justice: Systemic Racism and the Canadian Legal Profession*, detail many of the barriers discussed within this chapter. The reports do not stop there, however; they go further and make concrete recommendations for addressing these barriers. It is these recommendations that will be discussed and analyzed in chapter four. But first, in the next chapter I examine two conceptual frameworks. These conceptual approaches will be used to examine the three reports' recommendations and their value in addressing the barriers discussed in this chapter.

CHAPTER FOUR: EXAMINING CONCEPTUAL FRAMEWORKS

Introduction

This chapter focuses on two frameworks of analysis: critical race theory (hereinafter CRT) and *Aboriginal perspectives*. These frameworks will be used in the next chapter to analyze the recommendations made by the three reports: *Addressing Barriers, Challenge Report* and *Virtual Justice*. For the purposes of this thesis I employ CRT to examine the reports because of its value in defining and explaining race and racism as socially constructed and proposing models that can be used to combat racism. I also employ another framework of analysis, adapted from other works, which is specific to Aboriginal peoples; *Aboriginal perspectives* focuses specifically on Canadian Aboriginal peoples and the racism/eurocentrism they experience. This conceptual framework also proposes models for combating racism and re-building Aboriginal-non-Aboriginal relations²⁵. I discuss CRT in 2 sections: the first section examines the concept of race/racism and the second section examines the concept of whiteness.

Critical race theory provides a clear and comprehensive analysis of race and racism, as well as providing a coherent definition of race/racism. According to CRT, racism works to empower certain people and disempower others by creating

²⁵ For other theories that apply to Aboriginal peoples and issues see:
Anderson, R. (1998). Economic development among the aboriginal peoples in Canada; the hope for the future. North York: Captus Press.
Elias, P.D. (1991). Development of aboriginal people's communities. North York: Captus Press.
Satzewich, V., & Wotherspoon, T. (2000). First nations : race, class and gender relations. Regina: Canadian Plains Research Center.

hierarchies. Racism is complex and can exist in many forms and situations; each of these areas will be detailed further within the chapter. Another area within critical race theory is the concept of 'whiteness'. What is white/whiteness and how is it connected to race and racism? In this section I examine what 'white' is and how it privileges white people over non-white people.

The second framework of analysis included in this chapter, is *Aboriginal perspectives*²⁶. In my search for applicable frameworks in which to analyze this project, it was not only important to search for race/racism issues, but also how racism affects Aboriginal peoples specifically. This framework focuses on how Aboriginal peoples are affected by issues in the legal profession and I therefore needed a conceptual approach that addressed Aboriginal peoples' understandings. *Aboriginal perspectives* works to give a picture of who Aboriginal peoples are, their communities, history and relationships to non-Aboriginal people.

I have divided *Aboriginal perspectives* into three parts. In the first part, I explain how Aboriginal peoples cannot be defined solely by race. Aboriginal peoples are 'peoples'; they are distinctly different from ethnic/minority groups within Canada. The second part discusses how Aboriginal peoples have a unique history that differs from other groups of people in Canada. This area expands on some of the ideas discussed within critical race theory. The third and final part included within *Aboriginal perspectives* looks at renewing relationships between Aboriginal and non-Aboriginal people.

²⁶ As I stated in the Introduction of this thesis I use the term *Aboriginal perspectives* cautiously. By this term, I do not intend to represent 'all' Aboriginal peoples' perspectives.

Critical Race Theory

Race/Racism

According to CRT, in order to understand and define racism, we must understand what 'race' is. A person's 'race' has been described as biological (Flagg, 1997). This means that people who have similar physical characteristics (such as similar skin or hair colour) are thought to be part of the same race. But further studies of common characteristics between races show that there is no such thing as a *pure race* – one race that shares all the same characteristics (Flagg, 1998; Haney Lopez, 1995). People have different physical characteristics and there are no common genetic characteristics particular to one race.

In fact, CRT states that race is not biologically determined; it is a socially constructed phenomenon (Haney Lopez, 1995). Racism creates dichotomies where one group is compared to another (Mahoney, 1997); 'race' is used to categorize people. People have created the notion of race and racial hierarchies to imply that certain races are superior to other races and this categorizing of one group over another benefits the group labelled 'superior' over the group labelled 'inferior' (Flagg, 1998).

It is from this categorizing that 'racism' exists. CRT notes that there are many forms and definitions of racism. Racism can occur between individuals; it can include a "person who regards individuals of another race as inferior beings, or who believes that their own culture is superior to that of other races" (Flagg, 1998, p. 26). Racism can also exist within an institution, which systematically discriminates in

favour of one group of people over another (Flagg, 1998). In both individual and institutional racism people are categorized and ranked based on race.

CRT recognizes that racism is complex and exists in different forms in our society. Racism may be conscious or unconscious (Flagg, 1998). This may mean, for example, that people may be either aware or unaware of their prejudices towards others. Racism can also be overt or covert (Razack, 1998). Patricia Williams notes that today racism disguises itself “in drag” (Powell, 1999, p. 143). Racism is made to appear as though it does not exist; it is ‘masked’. It can also change or adapt to different situations. Race is a “plastic, sociopolitical phenomenon; its meaning responds to changes in time, place, and circumstance” (Flagg, 1998, p. 22). Race/racism is not a solid, unchanging state, but is a concept that is ever changing, based on societal forces (Haney Lopez, 1995). As one group tries to claim its superiority over another group, racism must be manipulated to aid in this construction. Racism and its forms change in order to keep racial hierarchies in tact.

Racist stereotypes have become part of the “larger social fabric of society” (Haney Lopez, 1995, p. 198). According to CRT, most of us are unaware that racism is embedded in the dominant Canadian society and culture. Racism is entrenched in Canadian history, laws, government institutions, and Canadian ideologies, media and language (Monture-Angus, 1999; Ross, 1997). As Professor Charles Lawrence explains, “[w]e do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions” (Ross, 1996, p. 50). Not only is racism hidden within the dominant society, but it is also concealed in our own lives and daily actions. When we succumb to

these public ideologies, then racism is embedded in each of us (Ross, 1996). These ideologies shape our relationships with other people and other aspects of society.

In moving forward and working to recognize each of the above-mentioned areas dealing with racism, racism must be identified. Small states that in order to combat racism the dominant society must be conscious of the social construction of racism and that racism creates hierarchies to benefit one group of people over another (1999). In recognizing these issues, the dominant society acknowledges that racism is not biological but created. It, therefore, can be uncovered and dismantled. Images, ideologies and institutions should be examined for “racialized” relationships (Small, 1999, p. 60). By examining the underlying meanings and origins of ideologies in structural, cultural, and economic aspects of the dominant society, racial hierarchies, which may adversely affect certain groups of people, can be uncovered.

Racism is constantly changing and exists in many spheres. Racism does not work on only one level of society; it exists at both the public and private levels, and may manifest itself differently for each. In order to uncover all aspects of racism, it is necessary to examine racism at each level and examine each level together (Small, 1999). Examining areas separately and together works to understand racism’s connections. Small also suggests using multiple factors to uncover racism because this gives a more pluralistic picture of how different groups of people may experience the structure (1999). Razack advises examining aspects using cultural considerations (1998). Reviewing a structure using cultural considerations or with perspectives central to the oppressed group, may shed light on the context through which oppressed groups experience the structure.

Powell states that through the dominant society recognizing rather than ignoring racial issues, racism can be dismantled. One opposing approach to identifying and labeling racism is known as colour-blind approaches. Colour-blind approaches state that all people should be treated equally and attention should not be given to one race or another (Powell, 1999). This approach believes that racism intensifies when attention is paid to racial issues. CRT refutes this claim, however (Flagg, 1998; Haney Lopez, 1995; Small, 1999; Ross, 1996; Powell, 1999). Powell, for example, states that the dominant society's awareness in combating discrimination is rooted in acknowledging racism and dismantling many of racism's 'masks' and origins in the dominant society's ideologies (1999). To accept colour-blind approaches is to suggest that racism does not exist. In order to combat racism, all the intricacies of race/racism must be identified.

White Consciousness

Another area examined within critical race theory is that of 'whiteness'. 'White' is considered to be the racial norm from which all other races are to be compared; 'white' is considered to be *raceless* or *transparent* (Flagg, 1997). While white is not deemed a race, it is still connected to race/racism; white is deemed the standard from which every other 'race' is measured. Ruth Frankenberg notes that 'white' is the *standpoint* from which white people look at themselves, others and society (Mahoney, 1997). Therefore, to speak of 'race' is to speak of someone of colour or in relation to someone of colour, and not to speak of someone who is white. Because 'white' is considered to be the norm, ideologies within the dominant society

will coincide with what white people dictate (Small, 1999). All other aspects that do not correspond with these white (dominant) ideologies will not be considered part of the norm and therefore labelled deviant.

Flagg notes that with 'white' comes privilege. In Canadian society or other societies where white people are economically and politically dominant, white people are privileged because they can externalize race (Flagg, 1998). White people have the option in society to choose whether or not to think of themselves in racial terms, while non-white people do not have this option because society views them as non-white (Grillo & Wildman, 1997). White people do not have to see themselves as a particular race or cultural group if they do not want to, and can choose to see themselves as the norm or choose to be unaware of their *whiteness*.

The concept of whiteness is integral to CRT. An analysis of whiteness works to situate race and racism in comparison to whiteness. Jones uses the example of a circle to illustrate the dichotomies used in racism between white and non-white. Individuals considered to be on the inside of the circle are "good, decent, normal, and white" (Jones, 1997, p. 74). White is considered the focal point or can be seen as the center of the circle. Inside the circle are all aspects that *belong* and are normal; these aspects are good and right. Individuals outside the circle are considered "criminals, deviants, and savages" (Jones, 1997, p. 74). Non-white or labeled races are considered outside the circle and anything outside the circle is considered bad, wrong, different, and not part of the norm. Understanding whiteness works to connect whiteness with race and therefore develop a deeper understanding of race.

Aboriginal Perspectives

‘Peoples’

Aboriginal perspectives goes further than critical race theory to focus on understanding Aboriginal peoples specifically. While critical race theory focuses on issues of race, literature dealing with Aboriginal issues acknowledges that Aboriginal peoples cannot be defined by racial characteristics alone (RCAP, 1996; Chartrand, 1999b). Aboriginal people are “peoples” (Kymlicka, 1995, p. 77). They are unique and cannot be categorized with ethnic/minority groups within Canada. Immigrants to Canada have brought their own languages and history from their homelands with them to Canada, and have come to Canada as “individuals or families” and adapted to the political institutions of the country (Kymlicka, 1995, p. 77). Aboriginal peoples, on the other hand, have not immigrated to Canada. They are the original inhabitants of Canada and have been in Canada (as many Aboriginal peoples state) since time *immemorial* (RCAP, 1996). Aboriginal peoples’ homeland is Canada.

Unlike immigrants who have come to Canada as “individuals”, Aboriginal peoples are united by their communities. Community is an important aspect to many Aboriginal peoples’ lives. There are between 35-50 distinct Aboriginal nations in Canada (Chartrand, 1999a). Each nation has its own customs, practices, and traditions (Chartrand, 1999b) and Chartrand states, “it’s through the community that peoples have their personal self, their identity, their self-confidence, which is necessary to pursue happiness” (1999a, p. 90). Community for many Aboriginal peoples, then, is more than just a group of people. Community, in this context, is, what I consider, ‘the center’; it is where a person starts. This is where an Aboriginal

person learns about himself or herself, and from there, learns about how they are to relate to the outside world.

Unique History

Aboriginal peoples have a unique history that distinguishes them from other non-Aboriginal peoples within Canada. Their history is intricately linked with Euro-Canadians who immigrated to Canada. Howard Adam states in his book *A Tortured Peoples: the Politics of Colonization*, “Aboriginal history cannot be understood without understanding ‘white settler’ colonialism and its relationship to Aboriginals” (1995, p. 30). Europeans’ colonialism has affected Aboriginal peoples’ history. Colonialism can be defined as a dominant group (Euro-Canadian immigrants) exploiting an internal colony (Aboriginal nations) (Frideres, 1998). Euro-Canadians are seen as the colonizers/oppressors while Aboriginal peoples are seen as the colonized/oppressed and it is this colonial relationship that premises Aboriginal-non-Aboriginal relations in Canada.

Colonialism is based on eurocentrism. Eurocentrism “is the view that Europeans’ have of themselves as being culturally and politically superior to all other peoples in the world”, including Aboriginal peoples (Adams, 1995, p. 26). This idea parallels critical race theory’s definition of racism – where one group of people sees themselves as superior to another group of people (Flagg, 1998). Europeans used this ‘superior’ view they had of themselves to conquer and control other nations (Monture-Angus, 1999).

Eurocentrism is similar to racism in that it works to justify one group's actions to benefit themselves over another group. Chartrand notes that the Canadian federal government saw Aboriginal peoples as "racial minorities" and not "nations" in order to deny their "legitimate political autonomy in Canada" (1999b). By not acknowledging Aboriginal peoples as nations (similar to themselves) Aboriginal peoples were seen as different, they were 'disadvantaged' (Chartrand, 1993). Europeans saw themselves as superior to Aboriginal peoples and therefore justified their actions against Aboriginal peoples.

The Canadian government imposed restrictions on Aboriginal peoples and increased control over their lives. Eurocentrism fuelled the government's policies towards Aboriginal peoples. Frideres states "racism is undeniably the underlying ideology of the manifest policies regarding Aboriginal-White relations throughout the history of Canada" (1998, p. 9). The Canadian government also imposed restrictions on Aboriginal peoples lives; for example, Section 91 (24) of the 1867 Constitution Act gave the federal government the power to control the everyday lives of Aboriginal peoples (Chartrand, 1993). It stated that the government was in control of 'Indians and lands reserved for Indians'.

While Euro-Canadian peoples worked to gain control over Aboriginal peoples lives, Aboriginal peoples were disempowered by this arrangement. Acoose states that Aboriginal communities and culture, which once were thriving, "were stripped of their legitimacy and authority by white christian males, who imposed ideologically contrasting hierarchical structures" (1995, p. 47). According to European imposed

ways, previous Aboriginal ways of doing things were considered wrong and traditional ways were to be changed to coincide with Euro-Canadian practices.

Another way the colonizer attempts to exert control over the colonized is through 'naming'. Different legislative acts have worked to 'name' Aboriginal peoples. In the 1876 Indian Act, for example, the Canadian government defined who was and who was not an Indian within the Act (Chartrand, 1993). The government controlled the *naming* of Aboriginal peoples, or how Aboriginal were to be referred to. The government was easily able to manipulate Aboriginal peoples' identities with this naming (Chartrand, 1991). For example, section 35 of the 1982 Constitution Act replaced the word *Indian* with the generic term *Aboriginal*. *Aboriginal* was to include the three types of recognized Aboriginal peoples: Indian, Inuit, and Metis (Chartrand, 1991). Categorizing all three groups of peoples together as one further diminished any power or recognition each group had as distinct peoples.

Racism also works through ideologies. Adams explains:

[t]he colonizer, with the help of the state media, stresses and promotes racial conflict to isolate and segregate indigenous people. Racism creates myths and stereotypes that are extremely hard to shake, because they become entrenched cultural-ideological stereotypes. Even when some racial groups have risen above their previous economic deprivation, the dominant culture persists in viewing them in terms of narrow cultural-ideological myths (1995, p. 164-165).

Myths and stereotypes created by the dominant society work to degrade Aboriginal peoples. These stereotypes become embedded into the dominant societies' ideologies and it is often difficult for Aboriginal peoples to escape these narrowly defined labels.

Beginning in the 1500s, Europeans used stereotypes to label Aboriginal peoples. Acoose notes that Amerigo Vespucci viewed Aboriginal women from an

ethnocentric male-bias point of view. Vespucci stated, when he saw naked Aboriginal women, that they were “lustful and promiscuous” (Acoose, 1995, p. 39). In the 1850s, William Duncan, a prominent Protestant Missionary, stated to the Lytton Indians that they were unclean, idle and involved themselves in many evil practices (York, 1990, p. 31).

In the late 1800s and into the 1900s Aboriginal peoples continued to be negatively stereotyped. Aboriginal peoples were depicted with images seemingly contrary to European people; they were described as backwards, shadowy, and drunken (Acoose, 1995, Chartrand, 1991; York 1990). While these stereotypes worked to degrade Aboriginal peoples, they also provided justification for Europeans to exert control over Aboriginal peoples lives. First Nations women were called “squaws” or “sluts” and of value only to satisfy the European men’s lustful needs (Acoose, 1995, p. 49). First Nations women were labeled *promiscuous* and *lustful* to justify the European settlers ‘quick’ relationships with First Nations women (Acoose, 1995).

Adams explains that ideological domination is a means for the oppressor to gain control over the oppressed (1995). Stereotypes become embedded within the dominant Canadian society. The notion of Europeans’ superiority became “ingrained in the fabric of Canadian society” and the stereotype of Aboriginal peoples as inferior also became embedded in the dominant society and as part of many Aboriginal peoples’ consciousnesses (Monture-Angus, 1999, p. 44). Racial stereotypes were a part of the dominant society’s ideological systems. Many Aboriginal peoples, as “subordinate masses,” submitted to the dominant society’s ideologies because they

had “little choice” (Adams, 1995, p. 38). For many Aboriginal peoples, hearing these ideologies over and over and being taught these racial stereotypes reinforced the ideologies. It was difficult for many Aboriginal peoples to turn away from these systems and believe something other than what the dominant culture proclaimed. Acoose goes further to explain that many First Nations peoples accepted and internalized the labels Europeans placed upon them because they did not have the “political consciousness or strength of spirit” to challenge the ideologies (1995, p. 29). In some cases it was easier for First Nations peoples to accept the labels, and to try and deal with them and move forward, than to try to oppose a dominant, widely held ideology.

Renewing Relationships

New relationships can only be formed by recognizing past wrongs. It is not enough for society to state that ‘the past is past’ and that society only examine present relationships (Monture-Angus, 1999, p. 23). Aboriginal societies (present and future) are connected to their past experiences and the consequences of these experiences affect Aboriginal peoples today. In order to forge new and positive relationships between Aboriginal and non-Aboriginal peoples, past and present relationships must be examined to move beyond colonial relations (Monture-Angus, 1999, p. 22).

Aboriginal peoples and their communities have suffered because of colonialism. Frideres notes that an attribute of colonialism is its “destructive effect on the societal and cultural structures of the indigenous group” (1998, p. 3). Aboriginal peoples have been plagued by the inter-generational consequences of

colonialism, consequences that include “suicide, conflict with the criminal justice system, child welfare apprehensions and intrusions, violence against women and children, [and] sexual abuse” (Monture-Angus, 1999, p.11). The effects of colonialism have damaged Aboriginal relations and have been passed on to generations of Aboriginal peoples.

A renewal of Aboriginal – non-Aboriginal relations requires the acknowledgment of power imbalances. Canadians must accept that they are not superior to Aboriginal peoples (Monture-Angus, 1999). Monture-Angus also states that society should work for a day when Aboriginal and non-Aboriginal people can walk side by side (1995). Instead of one group of people seeing themselves as better than another, Aboriginal and non-Aboriginal peoples need to recognize and respect each other’s differences.

Moving past colonial relations requires a deconstructing and decolonizing of images. In order to move beyond colonial labels, there must be a re-naming and re-defining by First Nations peoples of names and “so-called truths” (Acoose, 1995, p. 57). This means that the origins of systems and structures within the dominant society be examined for the concepts they were built on (Monture-Angus, 1995). What do these origins tell us? In deconstructing these structures, unjust systems, laws and processes can be identified (Acoose, 1993). Aboriginal and non-Aboriginal people built their relationship on these systems. In identifying and examining the origins of these systems, meanings that worked to harm Aboriginal people will be uncovered. Once they are uncovered Aboriginal and non-Aboriginal people can

begin to re-build or re-define these systems (in order that they do not support racism) and this will work to rebuild Aboriginal and non-Aboriginal relations.

Deconstructing images also includes Aboriginal peoples telling their stories, which will enable them to “reclaim their history” (Adams, 1995, p. 35). In the past, Aboriginal peoples were not the ones telling their stories, others (Europeans) wrote about their history (Monture-Angus, 1995). In doing so, Aboriginal peoples’ thoughts and values were excluded. Aboriginal writers started coming forward, however, to challenge white peoples’ writing about them and began “speaking out” (Acoose, 1993). They are no longer being silenced, but choosing for their stories to be heard. Beth Brant states that in 1892 Pauline Johnson, a Mohawk woman, wrote an article critiquing the portrayal of Aboriginal women by non-Aboriginal fiction writers of the day, Charles Mair and Helen Hunt Jackson (1994). Johnson criticized their depictions of Native women as having ‘weak character’ (Brant, 1994). Brant goes on to state that Pauline Johnson “walked the writing path clearing the brush for us to follow” (1994, p. 7-8). As more and more Aboriginal peoples tell their stories, Aboriginal peoples’ history will be ‘reclaimed’ or taken back, and this makes room for more Aboriginal peoples to come forward and tell their stories.

Recognition of Aboriginal peoples participation in new relationships requires incorporating Aboriginal issues and material into the dominant society. Chartrand states that the dominant society needs to develop “an institutional vision of Canada in which these historical indigenous nations *matter* and they’re *included*” (1999a, p. 90). This means that issues and values that are important to Aboriginal peoples be addressed in the dominant Canadian society.

Finally, rebuilding relationships between Aboriginal and non-Aboriginal people requires Aboriginal peoples' active involvement. The "principle of participation . . . is the appropriate remedy for the illegitimacy of the unilateral exercise of State power, historically, and continuing" (Chartrand, 1999a, p. 97). Aboriginal peoples' participation in working to re-new Aboriginal-non-Aboriginal relations works to remedy many of the 'past-wrongs' between Aboriginal and non-Aboriginal peoples. Monture-Angus states that for there to be a true 'First Nations process', people within the community must be involved (1999). Participation means that not only members from Aboriginal communities be involved but also community values be included, which represents what the community believes and what binds the community. This will include understanding traditional values such as sharing, truth, harmony, respect for all life forms and spirituality (Monture-Angus, 1999; Sioui, 1992; Pobihushchy, 1992). Onondaga Chief Oren Lyons states

[w]e have lost our old ways, but the principles that we go by are not old: peace is not old, justice is not old, equity is not old, it's what everybody aspires to. Those [things] are ours . . . Old is in the mind of the person, old is in their education (Sioui, 1992, p. 31).

Incorporating Aboriginal values means not only accepting Aboriginal peoples' past and present issues, but also traditional values that are still a part of communities.

Conclusion

Critical race theory and the conceptual Aboriginal framework, *Aboriginal perspectives*, work to provide a context for understanding the issues and problems surrounding the treatment of and policies toward Aboriginal peoples in Canada, both

in the past and today. Critical race theory and *Aboriginal perspectives* recognize that racism/eurocentrism is socially constructed in order to empower Euro-Canadians and disempower Aboriginal peoples. In order to get past old stereotypes and practices, the origins of structures, which were built on a superior versus inferior ideology, need to be examined. Uncovering and naming these inequities and working to incorporate Aboriginal peoples' past history, values and present issues, works to rebuild Aboriginal- non-Aboriginal relations. These frameworks of analysis will be used in the next chapter to evaluate recommendations aimed at addressing and combating racism in the legal profession.

CHAPTER FIVE: COMBATING RACIAL DISCRIMINATION IN THE LEGAL PROFESSION

Introduction

The previous three chapters have examined the obstacles Aboriginal peoples have faced in their history and in regard to the legal profession. This chapter examines the origins, and objectives of the three reports *Addressing Barriers*, *Challenge Report*, and *Virtual Justice*, and their recommendations for addressing the barriers Aboriginal peoples experience accessing and participating in the legal profession. This chapter also evaluates the value and possible impact these recommendations may have on addressing these barriers.

There are two main parts to this chapter. The first part is based primarily on data I received from the interviews I conducted; it introduces and describes the three reports' origins and objectives and provides an understanding of the genesis of the reports and what they hoped to achieve. The second part of this chapter is divided into four sections: Equity Initiatives, Law School and Legal Profession Environment, Support for Aboriginal Law Students and Lawyers, and Education and Aboriginal issues. These sections represent the main themes I have discerned from the reports' recommendations. For each section I first go through the reports' recommendations²⁷ and then analyze how these recommendations address the problems Aboriginal

²⁷ It is not my intention to review every recommendation the reports make. For the purposes of this thesis I have chosen to review a sample of recommendations that are specific to Aboriginal peoples and that relate to the barriers I addressed in chapter 3. There are definite similarities between the three reports' recommendations. To try and reflect these similarities, I have in some cases directly cited a recommendation and in other cases, summarized and combined the recommendations to reflect their overall meaning.

peoples face. My analysis will link the recommendations to the two conceptual frameworks, critical race theory and *Aboriginal perspectives*, which I discussed in the previous chapter. My analysis addresses such questions as: Are the recommendations supported by the frameworks? What implications do the recommendations have for addressing the barriers Aboriginal peoples face? This part of the chapter evaluates the reports' recommendations as to their worth in addressing and combating the barriers Aboriginal peoples experience surrounding law school and the legal profession.

Background to the Interviews

I turned to several key people for information, which I then used to supplement the information from the reports themselves. The first section within this chapter details the information I obtained from these interviews²⁸. In beginning my research, I applied for and was granted ethics clearance from Carleton University's Ethics Committee to conduct structured interviews. I contacted nine individuals whom I wished to interview as they either worked closely with producing the reports or they were knowledgeable about the reports, represented the legal profession in some way and were able to give an Aboriginal voice²⁹ to the study.

In total, I ended up interviewing five people: **Judge Graydon Nicholas**, provincial court judge for the province of New Brunswick, who represented

²⁸ I chose to conduct interviews in order to obtain a more complete picture of the reports' origins, objectives, and outcomes as a contribution to addressing racism within the legal profession.

²⁹ Many times non-Aboriginal people conduct reports concerning Aboriginal peoples. A criticism of this is that often Aboriginal peoples are not able to voice their opinions about the research or study. I interviewed Aboriginal peoples who worked closely with the reports or individuals who worked closely with Aboriginal peoples in attempting to include Aboriginal peoples' perspectives and voices.

provincial court judges in his participation with the Working Group for Racial Equality – which produced *Challenge Report*; **Gerry Ferguson**, Law professor at the University of Victoria and chair of the committee that produced *Addressing Barriers*; **Larry Chartrand**, Law professor at the University of Ottawa and a member of the Implementation Committee for the Canadian Bar Association's resolutions, which represents a synthesis of *Challenge Report* and *Virtual Justice*'s recommendations; **Margaret Froh**, who is the Aboriginal Issues Coordinator for the Law Society of Upper Canada and the first person to be employed by a Canadian law society to work specifically with Aboriginal issues and the legal profession; and finally, another individual who has chosen to remain anonymous, and who, for the purposes of this thesis, I have named '**Individual who is knowledgeable about *Challenge Report***' (hereinafter referred to as 'Individual'). These interviews took place in May and June 2001, (over the phone) and lasted approximately 60 minutes with each interviewee being asked ten structured questions³⁰. These interviews have provided data for the discussion below.

Origins and Objectives

The interviews consisted of the following questions about the reports' origins and objectives:

1. **What do you think led to the creation of the report(s)? How were these initiatives similar to or different from other initiatives in the past? What do you think were the objectives of the report(s) as they related to Aboriginal membership in the legal education or the legal profession?**

³⁰ See Appendix A for a complete list of the interview questions.

2. **What role do you think the surrounding environment (e.g. commissioning body, time lines, budget, research methodology, approving body, implementing bodies, jurisdictional issues) had in shaping the research, content and recommendations made?**
3. **How were issues facing Aboriginal persons in legal education and the legal profession conceptualized in the work and report(s) (e.g. was a racism framework adopted, an anti-colonial framework or some other way of thinking about the problems facing these aboriginal persons and communities?)**
4. **How did the committees working on the report(s) develop their recommendations? What criteria were used?**

The reports *Addressing Barriers*, *Challenge Report* and *Virtual Justice* all stem from earlier initiatives dealing with inequality. For example, in 1988 the Law Society of British Columbia, which later commissioned *Addressing Barriers*, had already started looking at gender bias within the legal profession (G. Ferguson, personal communication, May 30, 2001). *Challenge Report* also followed a report addressing women's equality within the legal profession and such reports as the Royal Commission on Aboriginal Peoples, and other such commissions and task forces (G. Nicholas, personal communication, May 30, 2001). While the reports grew out of issues that have 'been around for a long time' (M. Froh, personal communication, June 27, 2001), including such issues as the low numbers of Aboriginal lawyers and systemic barriers to entering the profession (Individual, personal communication, May 22, 2001), they have been spurred on by more than just on-going discrimination issues. As Froh further states, in the past few years, there has been a growing "critical mass" of people who want to understand why such situations exist and to explore what can be done to address these issues. *Addressing*

Barriers, Challenge Report and *Virtual Justice* had similar objectives when they were produced: their mandates were to identify the barriers that Aboriginal law students and lawyers experienced in the legal profession and to develop recommendations to address these barriers. Larry Chartrand, a law professor at the University of Ottawa, states that *Challenge Report* and *Virtual Justice* were written in order to educate the legal profession on Aboriginal peoples' under-representation within the profession and to encourage law schools to be more diverse and culturally sensitive (personal communication, June 19, 2001). *Addressing Barriers*' mandate was to identify the issues Aboriginal law students and lawyers face and then make 'real' changes. The working group (comprised of the chair, seven lawyers and two law students³¹) worked together with an advisory group, representing legal education and court institutions, to identify the concerns Aboriginal law students and lawyers have and to act upon these concerns in a very "pragmatic" way (G. Ferguson, personal communication, May 30, 2001). It was believed that having a working group and advisory group collaborate in their efforts would develop more effective recommendations and solutions.

While the three reports have similar objectives, they differ in their approaches. *Addressing Barriers* is very 'grounded' and empirically based (M. Froh, personal communication, June 27, 2001; G. Ferguson, personal communication, May 30, 2001). The report is comprised of personal testimonies and statistics and the data were used as a basis for identifying and then working to address problems.

Addressing Barriers developed out of two previous reports: the 1996 Report on the Survey of Aboriginal Law Graduates in British Columbia, which provided

³¹ All members of the working group were Aboriginal, except for the chair.

information gathered from a survey distributed to Aboriginal law graduates regarding their experiences in law school, during articling and in the legal profession, and the 1998 report Summary of the Discussion of the Aboriginal Law Graduates Focus Group, which included “a series of focus group sessions to obtain more detailed data” on possible solutions to combat the barriers Aboriginal peoples experience in legal education and in the legal profession (LSBC, 1996; LSBC, 1998, p. i). *Addressing Barriers* combined and evaluated the information from the 1996 and 1998 reports in order to prepare its own recommendations (LSBC, 2000).

Challenge Report and *Virtual Justice*, on the other hand, are more theoretically based. *Challenge Report* takes primarily an anti-racism approach (M. Froh, personal communication, June 27, 2001; L. Chartrand, personal communication, June 19, 2001). This approach focuses on critical race theory and identifies race and racism issues. One critique Chartrand gives of this approach, however, is that *Challenge Report* categorizes Aboriginal peoples as another “racialized” group (personal communication, June 19, 2001). While Aboriginal people and issues are addressed within their own section of *Challenge Report*, they are, for the most part, grouped together with other ‘racialized’ groups in identifying problems and making recommendations. Grouping Aboriginal peoples and issues together with all ‘racialized’ groups fails to recognize that Aboriginal peoples are different from other ‘racialized’ groups. While *Virtual Justice* also uses an anti-racism approach, both Froh and Chartrand concur that the report incorporates an anti-colonialism framework for the section dealing with Aboriginal issues (personal communication, June 27, 2001; personal communication, June 19, 2001). Within

Virtual Justice, the section dealing with Aboriginal peoples acknowledges that Aboriginal peoples are different from other minority groups in Canadian society, with their own history, problems, and goals.

Various influences and restrictions impacted upon the reports. There were time obstacles in completing the reports. Ferguson notes that while there was not a strict timeline for finishing the “Addressing Barriers” project consisting of all three reports – the 1996 Survey Report, 1998 Summary Report and *Addressing Barriers* – it took years to finish because volunteers created the reports (personal communication, May 30, 2001). There were also time obstacles in creating *Challenge Report* and *Virtual Justice*. Judge Nicholas stated that often it was difficult for members working on *Challenge Report* to get together because they had lives outside the work they did for the report (personal communication, May 30, 2001). Another restriction included financial barriers. For example, Judge Nicholas states that the working group for *Challenge Report* was unable to meet in person because of the cost of flying in working group members living across the country to meet in one place (personal communication, May 30, 2001). The group would instead communicate through conference calls, making interactions more difficult.

In a sense, *Addressing Barriers* was restricted because of its ‘pragmatic approach’. There were two groups – a working group and an advisory group – that worked together to produce *Addressing Barriers*. While the working group could make suggestions for the report, the advisory group, made up of representatives from legal institutions, would advise on whether or not the recommendations would be feasible for their institution (G. Ferguson, personal communication, May 30, 2001).

Therefore, in keeping with *Addressing Barriers*'s 'pragmatic' approach, the working and advisory groups were restricted in their recommendations because both groups had to collaborate and agree on recommendations they felt could be implemented.

In spite of restrictions and obstacles in producing the reports, there were still interest in and expectations from producing the reports. Judge Nicholas states that he chose to be involved with *Challenge Report* because it represented an avenue for him to contribute in a positive way. It was a way for him to help educate and sensitize legal professionals to Aboriginal issues (G. Nicholas, personal communication, May 30, 2001). He stated that once people are aware of Aboriginal issues, they could begin to understand that Aboriginal peoples are not a "threat" to them but simply have different goals (G. Nicholas, personal communication, May 30, 2001). Gerry Ferguson also states that he hoped *Addressing Barriers* would identify the "real concerns" Aboriginal peoples have and work to address these issues (personal communication, May 30, 2001). If the report could articulate the barriers Aboriginal peoples experience accessing and participating in the legal profession, there would be a better chance of finding solutions for these problems.

Aboriginal peoples were very much involved in producing the reports. For example, nine out of the ten people on the working group for *Addressing Barriers* were of Aboriginal descent (the tenth member being the chair) (LSBC, 2000). Aboriginal peoples were also very much a part of developing *Challenge Report* and *Virtual Justice*. Aboriginal peoples submitted their opinions and experiences regarding legal education and the profession in order to explain the kind of impact the barriers had on their lives (G. Nicholas, personal communication, May 30, 2001).

While Addressing Barriers, Challenge Report and *Virtual Justice* do not represent completely new initiatives – having continued on from earlier reports dealing with inequality – the reports are unique in their approach; they focus specifically – though not exclusively – on Aboriginal peoples and their access and participation in the legal profession. The reports and their subsequent recommendations are also unique in that they identify and draw attention to the problems Aboriginal peoples experience in the legal profession and work to provide real solutions for addressing many of the barriers Aboriginal peoples face.

Examining the Recommendations

Equity Initiatives

Recommendations

- a. Law Societies, CBA, Attorney-Generals and law schools together create an outreach strategy to increase the number of Aboriginal applicants and Aboriginal admissions
- b. The Canadian Council of Law Deans establish an Aboriginal Advisory Committee to evaluate, promote and expand pre-law programs³²
- c. Create a system to track Aboriginal students' access in law school
- d. Canadian Council of Law Deans create and apply equity initiatives in law school (and review these initiatives periodically)
- e. Encourage equity hiring for articling students and lawyers
- f. Federal and provincial Attorneys General keep statistics on the number of Aboriginal federally and provincially-appointed judges
- g. Federal Government examine its judicial appointment process and create a strategic plan to increase the number of Aboriginal judges at the appellate level

³² Pre-law programs are programs Aboriginal students can take before entering law school. These programs work to increase Aboriginal peoples' chances of succeeding in law school by teaching students the academic and cultural skills needed for law school. *Addressing Barriers* recognizes two pre-law programs for Aboriginal peoples: The Program of Legal Studies for Native People, at the University of Saskatchewan, and the Aboriginal Legal Education Certificate Program, at Laurentian University.

- h. CBA develop a recruitment strategy (with the assistance of Aboriginal law students and lawyers) to attract more Aboriginal lawyers to the association

Analysis

In most ways, the recommendations – to encourage and support equity initiatives, whether they be an outreach strategy, pre-law programs, equity hiring initiatives or keeping statistics of Aboriginal law students or Aboriginal judges – are consistent with the claims of critical race theory and *Aboriginal perspectives*. Both the recommendations and conceptual frameworks support initiatives that will better Aboriginal peoples' access to law school and areas within the legal profession.

One way the recommendations to support equity initiatives reflect *Aboriginal perspectives* is through recognizing Aboriginal peoples' unique colonial history. The framework states that Aboriginal peoples history is intricately linked to and has been affected by 'white settler' colonialism (Adams, 1995). The reports recognize that because of this history, Aboriginal peoples have faced barriers in society, which have led to barriers surrounding the legal profession. This has resulted in Aboriginal peoples being disproportionately under-represented within the legal profession. Promoting equity initiatives works to increase Aboriginal peoples access to law school and the legal profession. For example, pre-law programs help to increase the number of Aboriginal students who are able to go to law school and equity hiring initiatives programs help to increase the number of Aboriginal lawyers working in law firms. These initiatives strive to increase Aboriginal peoples' representation and therefore participation in the legal profession. In essence, by the reports recognizing

and supporting equity initiatives as important, the legal profession recognizes the past wrongs Aboriginal peoples have faced.

Another way the framework supports the 'equity' recommendations is by including Aboriginal peoples in initiatives. *Aboriginal perspectives* states that Aboriginal peoples must participate in order for Aboriginal-non-Aboriginal relations to be renewed (Chartrand, 1999a). The reports note that Aboriginal and non-Aboriginal people are not equally represented within the legal profession; Aboriginal peoples are disproportionately under-represented (LSBC, 2000). An unequal relationship therefore exists – with more non-Aboriginal peoples than Aboriginal peoples participating in all areas of the legal profession. As equity initiatives work to increase the number of Aboriginal peoples in the profession, they also work to level the playing field. This means that with more Aboriginal peoples entering the profession, more will be able to become involved in all areas of the profession and this will work to even out the representation imbalance that exist within the profession.

A consequence of increasing the number of Aboriginal lawyers is that racial hierarchies may start to disappear. This is another area that the conceptual frameworks address. Critical race theory states that racism creates dichotomies. Jones used the example of the circle to explain this dichotomy; those on the inside of the circle are predominantly white, included and part of the norm, while those on the outside of the circle are not-white, excluded and outside the norm (1997). This same example can be used to view the legal profession. For the most part, those within the legal profession have been white, while non-white people have been largely excluded

from the profession. As more and more Aboriginal people become lawyers, become part of the legal profession, and start occupying similar jobs to those of non-Aboriginal peoples, the power behind racial hierarchies will not have the same influence. Aboriginal peoples will start to be included 'in the circle'. They will occupy the same positions as non-Aboriginal people and their ideas and views will start to be voiced within the profession. As this happens, the stereotypes and myths, which are used in creating and maintaining the racial dichotomies, will not have the same power.

Aboriginal perspectives recognizes that Aboriginal peoples were disempowered because of their colonial history. The consequence of this history is that barriers have worked to disempower Aboriginal peoples; they have disconnected them from their identity, culture, values and traditional ways. This impacts on a person's self-esteem and confidence. In order to move beyond their colonial history, Aboriginal peoples need to be 're-empowered'. Pre-law programs, for example, work to empower Aboriginal students. The programs give Aboriginal students the academic and non-academic tools needed to succeed in law school. They teach Aboriginal students the means to succeed in law school, and help re-empower the students (by giving Aboriginal peoples the power that was taken away from them). In turn, students will believe in themselves and their abilities, and this will help them succeed in law school.

Other equity initiatives also work to empower Aboriginal students and lawyers. For example, special procedures for law school admissions give Aboriginal students, who probably would not have been admitted to law school under regular

admissions procedures, a 'chance' to enter and succeed in law school. Being 'given a chance' empowers a student. A student's self-confidence is boosted when he or she has the opportunity to succeed. It is the same for equity hiring. In many cases Aboriginal peoples may not be hired for a position because they do not have the 'proper' qualifications. With equity hiring procedures, however, Aboriginal lawyers are empowered; they are given the opportunity to succeed.

The conceptual frameworks recognizes that racial stereotypes have been used to degrade Aboriginal peoples; in order to combat racism, all forms of racism need to be identified (Acoose, 1995; Small, 1999). Pre-law programs teach Aboriginal students about racial stereotypes and to identify racism. In this way, the recommendation to support pre-law programs reflects the frameworks of analysis. For example, pre-law programs alert students to possible stereotypes that they may face when they go to law school and this identifies racism as an issue and a problem. This exposes Aboriginal students to how racial hierarchies work to empower one group of people over another. Pre-law programs disempower these stereotypes by alerting students to their presence. If Aboriginal students are aware that they may face these issues, they are then better prepared to deal with the stereotypes and not let them influence their life.

Aboriginal perspectives notes that community is an important aspect in Aboriginal peoples' lives. The recommendation to support pre-law programs reflects this claim in that an important part of such programs is encouraging Aboriginal students to 'network'. While many Aboriginal students may be separated from their families in order to attend law school, and subsequently do not have the community

support, pre-law programs create another type of community. 'Networking' means that Aboriginal students meet with other Aboriginal students who are in similar situations. This helps create bonds and the knowledge that Aboriginal students are not alone in their journey.

Aboriginal perspectives supports the recommendations that the federal government should examine the judicial appointment system. The approach states that to move beyond colonial labels, the origins of systems within the dominant system should be examined as to the concepts on which they were built (Monture-Angus, 1995). By examining the origins of the judicial appointment process, it will be revealed how Aboriginal peoples may experience the process and what, if any, efforts could be taken to promote equality within the system. This examination could reveal barriers Aboriginal peoples face in the appointment process and subsequently steps could be taken to eliminate these barriers.

While *Aboriginal perspectives* supports *examining* systems, it does not support the recommendations on how systems should be *tracked*. The recommendations state that Aboriginal students' access to law school should be tracked. This means that access issues would be monitored or watched over. Critical race theory differs from this approach and states that structures should be examined using cultural considerations in order to shed light on how oppressed groups experience the structure. According to the conceptual approach, then, to simply monitor Aboriginal students' access to law school is passive and not enough. The conceptual framework reflects a pro-active approach whereby each access area that Aboriginal peoples experience is examined for possible barriers they may face.

There are different consequences for tracking versus examining structures.

While tracking may alert one to the discriminatory barriers Aboriginal peoples experience, these barriers will only be apparent *after* Aboriginal peoples have experienced them. The examining approach, however, has the advantage of identifying possible barriers Aboriginal students may experience before they happen. If these barriers are identified through examining the structure, it is possible to warn students about these barriers and it is possible to work on solutions to these barriers so that future students will not have to experience these barriers.

There are also other areas where the recommendations are not supported by the frameworks of analysis. According to *Aboriginal perspectives*, in order to rebuild Aboriginal-non-Aboriginal relationships, both Aboriginal and non-Aboriginal people should be involved in rebuilding the relationship. Pre-law programs do not address (actively) renewing Aboriginal-non-Aboriginal relations. Pre-law programs only target Aboriginal people³³ (I do recognize, however, that this is their focus); non-Aboriginal peoples are not involved in pre-law programs. For example, when Aboriginal peoples are learning about and subsequently dismantling racial hierarchies (through being warned about possible stereotypes they may face and how to handle these situations) non-Aboriginal peoples are left out of the equation. Non-Aboriginal people are not taught about racial hierarchies and how and why they exist.

Aboriginal perspectives states that Eurocentrism is the belief that Europeans are superior to other people (Adams, 1995). In order to combat this belief, and the stereotypes that exist because of this belief, both Europeans and non-Europeans need

³³ I am not stating that non-Aboriginal students should be a part of pre-law programs. I am simply noting that non-Aboriginal students may benefit from some of the pre-law programs' teachings.

to address this issue. If non-Aboriginal students were taught about racial stereotypes, this may work to disempower the stereotypes and, as Monture Angus states, help non-Aboriginal people accept that they are not superior to Aboriginal peoples (1999).

Overall, the recommendations within this section are consistent with each other. Pre-law initiatives work to increase the number of Aboriginal students in law school, equity hiring initiatives are suggested to increase the number of Aboriginal faculty members, articling students, lawyers and members of the judiciary. Because the recommendations are consistent in encouraging equity policies in all areas of the legal profession, they should have a strong impact and clear message.

Law School and Legal Profession Environment

Recommendations

- a. A report be presented annually at the Benchers³⁴ meeting about Aboriginal issues in the law school environment
- b. A report be presented annually at the CBA's annual conference about Aboriginal issues/barriers within the legal profession
- c. Law schools meet with Aboriginal student organizations to identify and discuss concerns Aboriginal students may have
- d. Law schools promote an anti-racism and anti-discrimination environment within law schools and that policies and practices within law schools conform to human rights legislation
- e. Law Societies, law schools, the CBA and Aboriginal lawyer associations meet together to create a "model employment equity policy" to ensure that Aboriginal lawyers do not experience discriminatory barriers in the practice of law, or in the hiring process - including a 'model hiring policy'³⁵

³⁴ Benchers are the board of directors of a Law Society. They work to promote the work of the Law Society in accordance with the Legal Profession Act. They also establish the Law Society's policies and oversee Law Society programs being carried out.

³⁵ This means that a certain 'standard' for hiring procedures would be kept in order for the procedures to be fair for everyone. For example, this would include a list of unacceptable interview questions that employers could not ask interviewees because the questions may discriminate against certain individuals.

- f. CBA, Justice Departments, and Attorneys-General monitor the degree of compliance with employment equity policies in law schools and in the legal profession
- g. CBA remove barriers that prevent Aboriginal lawyers from being members of their association

Analysis

The general theme of these recommendations – to support equality throughout the law school and legal profession environment – is consistent with critical race theory. CRT argues that racism exists in many spheres and in order to uncover all aspects of racism, it must be examined at each level and the levels should be examined together (Small, 1999). The recommendations adopt such an approach. In stating that a ‘model equity policy’ should exist for the law school and legal profession environment, racism is acknowledged in these areas and there is a commitment to addressing racism within them. Once racism is acknowledged at these different levels, this opens up opportunities for addressing these issues – examining how racism exists at each level and how the levels interact – and creating solutions for combating racism.

The recommendations state that Aboriginal issues be presented annually at Benchers’ meeting and that Aboriginal concerns be identified through meetings between Aboriginal student organizations and law school personnel. These recommendations are consistent with critical race theory’s claims; CRT argues that the first step to combating racism is identifying and exposing racism (Small, 1999). The recommendations do this by bringing Aboriginal issues to the forefront. Both the Benchers’ meeting and meetings between students and law school administrators are positive first steps that work to identify and educate others on Aboriginal concerns.

Aboriginal perspectives states that while in the past Aboriginal peoples were often not allowed to express their views and participate in issues that affected them, today, Aboriginal peoples need to take part and participate in these areas in order to remedy Aboriginal peoples' exclusion (Chartrand, 1999a). These meetings give Aboriginal peoples an opportunity to voice their concerns, which empowers Aboriginal peoples, and the opportunity to educate others who may not normally have been aware of Aboriginal issues. Similar to the recommendation suggesting a 'model equity policy', this recommendation also suggests a commitment to addressing racism.

The recommendations that Aboriginal issues should be addressed at various time intervals reflect CRT. For example, one recommendation states that Aboriginal issues should be brought forward *annually* at the Benchers' meeting. Critical race theory states that racism changes "in time, place and circumstance" (Flagg, 1998, p. 22). Racism is therefore not static, but changes and adapts to situations. By addressing Aboriginal issues annually at the Benchers' meeting, there is a commitment to addressing racism as it changes over time.

Another of the recommendations supports and promotes an anti-racism and anti-discrimination law school environment. Critical race theory supports this recommendation, in that it argues that racism and discrimination are very real, exist in many forms, and are continually changing (Haney Lopez, 1995). By supporting and promoting an anti-racism and anti-discrimination environment, law schools acknowledge that racism exists and is continually changing.

While CRT argues that racism exists, its claims are not reflected in the recommendation on *how* to support an anti-racism/anti-discrimination environment. For example, the recommendation makes a very general statement that law schools should support an anti-racism environment. This recommendation is vague; while it implies that racism will not be supported, it does not state what would happen if racism were to be identified or what, if any, actions would be taken to address these issues. Critical race theory, on the other hand, is more specific and takes a pro-active approach on how to deal with racism. It states that racism must be uncovered, or *named* (Small, 1999). Through naming racism, its power is taken away. This approach implies that if racism were to be labeled, action would be taken and there would be consequences (i.e., naming) for these actions. This approach shows a commitment to fighting racism. While CRT supports a pro-active approach for addressing racism, the recommendations to support and promote an anti-racism/anti-discrimination environment do not take pro-active steps to identify and redress racism.

Another area where the recommendations do not reflect CRT is in identifying possible barriers Aboriginal peoples may experience. The recommendations state that a model hiring policy should be in place to ensure that all people experience equal hiring opportunities. One example given is the 'model hiring policy' where a list would be created of inappropriate interview questions. Critical race theory takes a different approach than the recommendation and states that racism is ever changing, is based on societal forces, and is entrenched in Canadian institutions, ideologies and language (Haney Lopez, 1995; Monture-Angus, 1999). If racism is embedded in

the language and is constantly changing, then it is not enough to simply post a list of unacceptable interview questions in the hope of combating racism. Such a list of inappropriate questions will identify only one form of racism. It does not take into consideration that racism may exist in other questions an employer may ask an interviewee, in employers' ideologies, or within the whole interview structure, for example. By failing to acknowledge or address racism in other areas, Aboriginal people are still vulnerable to racial discrimination.

Overall, the recommendations within this section make very general submissions; this differs from what CRT's claims promote. As stated in the previous paragraph, CRT supports that racism be uncovered or named and subsequently dismantled (Small, 1999). In reference to the recommendations in this section, this means understanding and labeling each of the areas where Aboriginal peoples face discriminatory barriers and then making a commitment to dismantle the racism. The recommendations do not go far enough in making specific submissions on what actions could be taken to address racism. For example, recommendation (e) in this section states that an equity policy be created to ensure that Aboriginal lawyers do not experience discriminatory barriers in the practice of law. What specifically does this mean? What kind of procedures should be developed to ensure that Aboriginal lawyers do not experience discriminatory barriers in the practice of law? Recommendation (g), which states that barriers which prevent Aboriginal lawyers from being members of the Canadian Bar Association be removed, is another example that does not identify any specific issues nor does it propose any particular actions for dismantling racism. While both recommendations' overall intentions are

good – that Aboriginal lawyers not experience discriminatory barriers – these recommendations do not get to the root of the barriers nor do they address any specific actions to be taken to fight these barriers.

While the recommendations support an anti-racism/anti-discrimination environment, they do not mention supporting or promoting an anti-colonial environment. The *Aboriginal perspectives* framework, on the other hand, states that Aboriginal peoples faced colonialism and that colonialism is not ‘part of the past’, but is still a part of Aboriginal peoples’ lives. It is “ingrained in the fabric of Canadian society” (Monture-Angus, 1999, p. 44). In order to move beyond colonial relations, society must embrace an anti-colonial approach. By committing to an anti-racism/anti-discrimination approach but not specifically an anti-colonial approach, the reports do not recognize Aboriginal peoples as “peoples” with a unique colonial history and experiences that separate them from ethnic/ minority groups. Instead, they are generally categorized as a part of ethnic/minority groups.

One final way the recommendations do not reflect *Aboriginal perspectives*’ intentions is in how Aboriginal issues should be addressed. The recommendations state that Aboriginal issues should be discussed at a Benchers’ meeting and in meetings between law school representatives and Aboriginal law students. Both of these examples imply that Aboriginal issues would be discussed in a ‘small meeting atmosphere’ characterized by only a small group of people attending the meeting and the meeting being held behind closed doors. *Aboriginal perspectives* supports a contrary claim on how Aboriginal issues should be addressed. Chartrand states that Aboriginal issues “matter” and should be incorporated into the dominant society

(1999a, p. 90). This implies that members of the dominant society should hear about and be exposed to Aboriginal issues. With Aboriginal issues being discussed in meetings of only a few people, the dominant society is not hearing about Aboriginal issues. The message being portrayed is that Aboriginal issues do not matter, are only to be discussed in a closed off atmosphere, and are therefore not concerns for the general public.

While for the most part the recommendations are consistent with each other, there are a few inconsistencies in how the recommendations should be implemented. The recommendations are consistent in that they all propose a better environment for Aboriginal students and lawyers. They do not agree, however, on how to go about doing this. Three of the recommendations for example, state that issues should be discussed with Aboriginal people, while two other recommendations (to promote an anti-racist/anti-discrimination environment and to remove barriers within the CBA) do not propose any specific method to obtain the goal. The recommendations are weakened in their overall impact to create a better environment for Aboriginal law students and lawyers because of their different approaches.

Support for Aboriginal Law Students and Lawyers

Recommendations

- a. Law Societies, and the CBA increase financial support (bursaries and scholarships) for students who wish to attend pre-law programs and law school.
- b. The CBA and provincial licensing bodies with major financial institutions develop a funding strategy to aid Aboriginal lawyers (from socio-economically disadvantaged backgrounds) establish law practices
- c. Support Aboriginal law student activities (i.e. support circles)

- d. Native Law Student Associations, law faculties, Aboriginal lawyer associations and the CBA establish a mentoring system in law school and that this be carried forward to articling
- e. Law Societies appoint an “Articling Liaison Officer”
 - i. to help articling students look for articling positions
 - ii. to promote fair access/eliminate discriminatory barriers to articling opportunities
 - iii. to help provide financial support for needing articling students
- f. The CBA establish a confidential system for law students and lawyers to come forward with concerns about discrimination in hiring policies
- g. “Aboriginal Advisory Group” encourage Aboriginal lawyers to apply for judicial appointments

Analysis

Similar to the two previous sections, in many ways critical race theory and *Aboriginal perspective*’s claims support the recommendations within this section. For example, *Aboriginal perspectives* supports the recommendations to provide support for Aboriginal law students and lawyers. The conceptual approach states that Aboriginal peoples have suffered because of their colonial history. Colonialism has had devastating effects on Aboriginal peoples’ cultures and communities (Frideres, 1998). Monture-Angus further states that Aboriginal peoples have been plagued by negative inter-generational consequences of colonialism (1999). Recommendations that support and assist Aboriginal law students and lawyers recognize Aboriginal peoples’ history, its effects and current connections. Support for Aboriginal law students and lawyers works to break colonialism’s inter-generational cycle and free Aboriginal peoples from its effects.

Aboriginal perspectives also supports the recommendation to increase financial support for Aboriginal law students and lawyers. Aboriginal peoples face

socio-economic barriers that stem from their colonial history³⁶. The recommendations to provide financial support for Aboriginal law students and lawyers' addresses this history, and helps Aboriginal peoples break away from colonialism and its debilitating effects.

Another positive consequence of supporting and assisting Aboriginal law students and lawyers is that it gives them the opportunity and therefore the power to be in control of their own lives. *Aboriginal perspectives* recognizes that in the past Aboriginal peoples were disempowered in relation to their communities, their identity and their beliefs (Chartrand, 1993, Adams, 1995). They did not have control over their communities, the Canadian government defined who was and was not an Indian, and the dominant culture portrayed Aboriginal peoples as 'subordinate people'. *Aboriginal perspectives* notes, however, that Aboriginal peoples can be empowered through participating in issues that affect them (Chartrand, 1999a). The recommendations that support Aboriginal law students and lawyers are intended to provide Aboriginal peoples with opportunities. For example, with financial support, an Aboriginal person may be able to attend law school. It is this support that fosters opportunities and empowers Aboriginal peoples to control their own lives.

Another recommendation within this section, to support a mentoring program, reflects *Aboriginal perspectives*. The conceptual framework argues that community is an important aspect to many Aboriginal peoples' lives; it helps develop a person's identity and self-confidence (Chartrand, 1999a). Similar to the recommendation to support pre-law programs within the equity initiatives section, establishing a mentoring program also creates a sense of community. Often in law school and in

³⁶ This is detailed in Chapter Two.

finding an articling position an Aboriginal law student feels alone in their journey.

There may not be a lot of other Aboriginal law students in his or her class or he or she may not have the right 'contacts' when searching for an articling position. Creating a mentoring program, however, builds a sense of community by letting the student know that he or she is not alone and that a support system exists for them. A mentor supports and aids a student in law school and in the student's search for an articling position. Having this connection helps a person's self-confidence and self-esteem, and supports the student, similar to members of the community supporting each other.

Establishing an "Articling Liaison Officer" also represents the same sense of community as a mentor. Within communities, members help each other out and look out for each other's best needs. This is primarily what the articling liaison officer job is about. The officer helps Aboriginal law students in their job pursuits and promotes fair access to articling positions. Similar to a mentor, a liaison officer can support an Aboriginal student in looking for jobs. This lets the student know that he or she has support, and is not alone in his or her efforts.

The recommendations state that a confidential system should be created for Aboriginal law students and lawyers to come forward to voice their concerns about discrimination within the hiring process. *Aboriginal perspectives* supports this suggestion and states that Aboriginal peoples need to be able to speak out about 'their stories' (Acoose, 1993). In the past, Aboriginal peoples were not the ones telling their stories, Europeans were. But as Brant describes, only once Aboriginal peoples are able to tell their stories, will their history be reclaimed (1994). This means that only once Aboriginal peoples feel that they can come forward and talk about issues

that have affected them will these issues be brought to light. Therefore, in creating a confidential system where Aboriginal law students and lawyers feel safe in talking about their experiences, will these experiences be uncovered. And, only once these issues are uncovered will society be able to address them.

Aboriginal perspectives supports the recommendation that Aboriginal peoples should be encouraged to apply for judgeships. *Aboriginal perspectives* states that in the past Euro-Canadian society used ideological domination to gain control over Aboriginal peoples. For example, Aboriginal peoples were continuously told that they were inferior to Euro-Canadian people and for many Aboriginal peoples it was easier to accept these ideologies than to continuously fight against them (Adams, 1995). In order to move past these racist ideologies the conceptual framework argues that positive ideologies that portray Aboriginal and non-Aboriginal peoples as equals should be supported (Monture-Angus, 1995). This means that Aboriginal peoples should be encouraged to be active in all areas non-Aboriginal peoples are involved in. The recommendation to encourage Aboriginal peoples to apply for judicial appointments affirms this. This recommendation directly opposes past ideologies that Aboriginal peoples were inferior to non-Aboriginal peoples and works to empower Aboriginal peoples in advancing in the legal profession and supports their participation alongside non-Aboriginal peoples as judges.

While many of the recommendations reflect *Aboriginal perspectives*, there are examples where they do not reflect framework's claims. *Aboriginal perspectives* states that in order to understand a problem, the structures and systems origins should be examined in order to understand their underlying concepts (Monture-Angus,

1995). This means that the origins of discrimination in articling must be examined to understand the underlying concepts and how Aboriginal peoples are affected. In understanding, we often get to the root of the issue. The recommendations, on the other hand, do not completely reflect this claim. For example, while establishing an “Articling Liaison officer” is a positive step for supporting Aboriginal students, it only indirectly gets to the root of discrimination in articling – by trying to eliminate the barriers Aboriginal law students face accessing the legal profession. The liaison officer’s other duty – helping Aboriginal law students find articling positions – is a superficial remedy to addressing the racial discrimination Aboriginal law students face in obtaining articling positions. Only through examining the articling process at its origins, is it possible to promote a more equitable environment.

Overall the recommendations within this section are similar to recommendations within the equity initiatives section. Both sections recognize Aboriginal peoples’ history and the past wrongs that have been inflicted upon Aboriginal peoples, and they work to do something about this. The sections *together* work to help Aboriginal peoples, and they take action in working to get past colonial relations. Equity initiatives are the first step in working to get past colonial relations and provide Aboriginal peoples with opportunities, whether the opportunity is to enter into law school or the legal profession. The second step, support initiatives, provide Aboriginal peoples with assistance through such things as financial support or mentoring programs. Both of these sections working together strengthen the recommendations within each individual section and provide greater support for Aboriginal peoples than if either one of the two sections were to exist alone.

The recommendations within this section are consistent in their advice to provide support for Aboriginal law students and lawyers. One example that spans pre-law school, law school, articling and within the practice of law is the recommendation for financial support. As a result of recommending financial support for all the areas, support within this section is emphasized and therefore strengthened.

Education and Aboriginal Issues

Recommendations

- a. Law schools educate incoming law students about the need for equity initiatives
- b. Law schools inform and prepare incoming Aboriginal students about culture-shock and social isolation they may experience at law school
- c. Law societies establish an Advisory Group made up of Aboriginal lawyers and law students to ensure that Aboriginal material and perspectives be included (and where there are included – expanded) in law school courses, and in Bar Admissions courses
- d. CBA and law societies create/expand cross cultural education programs for members of the legal profession regarding Aboriginal issues
- e. A committee be established with Aboriginal representation to conduct a feasibility study, and design and implement a “First Nations” law school
- f. The National Judicial Institute and its provincial equivalents include materials with a critical race theory analysis and promote a greater understanding of Aboriginal/legal issues in judges’ social context education programs

Analysis

The general theme of the recommendations within this section reflects *Aboriginal perspectives*. The conceptual framework argues Aboriginal peoples have been subjected to a colonial history whereby Europeans were seen as superior and Aboriginal peoples as inferior (Adams, 1995). This has skewed Aboriginal-non-Aboriginal relations and created a power imbalance. One of the ways *Aboriginal*

perspectives suggests to renew and rebuild Aboriginal-non-Aboriginal relationships is for Aboriginal issues to be incorporated into the dominant society (Chartrand, 1999a). Recommendations that support educating law school students and members of the legal profession about Aboriginal issues help rectify power imbalances and portray Aboriginal and non-Aboriginal peoples as equals.

The recommendations state that incoming law students should be educated about the need for equity initiatives for Aboriginal peoples; this reflects the *Aboriginal perspectives* framework. The framework purports that Aboriginal-non-Aboriginal relations can be re-built by recognizing power imbalances that privileged non-Aboriginal peoples over Aboriginal peoples (Monture-Angus, 1999). By educating incoming law students about the objectives and need for equity programs, law schools are in essence acknowledging that non-Aboriginal people have been privileged and have benefited from ideologies that cast non-Aboriginal people as superior to Aboriginal people and that actions (such as equity initiatives) are needed to remedy these inequities.

Addressing the need for equity initiatives also has a great potential for eliminating many of the racist comments and stereotypes Aboriginal students face at the hands of non-Aboriginal students. If society acknowledges that racial hierarchies (systems that support that one 'race' is superior to another 'race') are falsehoods and that Aboriginal and non-Aboriginal are equals, for example, then stereotypes that work to strengthen racial hierarchies will lose their effectiveness. In other words, by understanding and dismantling racism, stereotypes and racist comments used against Aboriginal peoples will decrease.

The conceptual framework also supports the recommendation to educate Aboriginal students on possible barriers they may experience in law school.

Aboriginal perspectives states that Aboriginal peoples were disempowered because of their past history. They were “stripped of their legitimacy and authority” within their own communities (Acoose, 1995). To get past this history, Aboriginal peoples need to be re-empowered. Similar to the recommendation to support pre-law programs, the recommendation to warn Aboriginal students of possible culture-shock and social isolation they may experience in law school gives students the tools to identify and be prepared for racial discrimination; this helps prepare students, gives them the knowledge and forewarns of possible barriers they may experience, and therefore better prepares them for handling these issues.

Aboriginal perspectives also supports the recommendations to bring Aboriginal issues to the forefront and to incorporate Aboriginal issues and perspectives into legal curriculums. The conceptual framework argues that Aboriginal peoples must be seen first as “peoples” who are distinct from racial minorities with their own culture, values, traditions and history, second, that their past and present relationships are connected and vital, and third, that Aboriginal issues should be *included* in the dominant society to acknowledge that these issues ‘matter’ (Chartrand, 1999b; Monture-Angus, 1999; Chartrand, 1999a).

Each of these three areas *Aboriginal perspectives* adopts support the recommendations to include Aboriginal issues and perspectives in legal curriculums. The recommendations recognize Aboriginal peoples as “peoples” who are different from racial minorities, by specifically addressing Aboriginal issues. Also, to include

and address Aboriginal issues within legal curriculums means that Aboriginal peoples' past issues will also be included, because the past and present are linked. Therefore, when Aboriginal issues are taught, references will be made to past/present connections. The final way the recommendation reflects the conceptual approach is in incorporating Aboriginal issues into the dominant society. Incorporating Aboriginal issues and perspectives into legal curriculums means that both Aboriginal and non-Aboriginal people will be exposed to Aboriginal issues.

Introducing Aboriginal issues and perspectives into legal curriculums has great consequences for renewing Aboriginal-non-Aboriginal relations. One possible consequence is that power imbalances will decrease. For example, once non-Aboriginal people start to learn about and understand Aboriginal issues, they can move past the superior versus inferior (or hierarchical) ideologies that have pervaded dominant society, and instead respect each other's cultural differences. Another possible consequence of Aboriginal issues being brought forward into the dominant society is that non-Aboriginal people (many of whom are unaware of Aboriginal issues) will be made aware of Aboriginal peoples' history and its subsequent consequences. Understanding Aboriginal issues also helps identify racism. As Monture-Angus states, racism is entrenched in Canadian history, laws, institutions, ideologies, media and language (1999). Through understanding Aboriginal issues, connections can be made from racism within Aboriginal peoples history, for example, to racism embedded in the dominant society's systems. Racism is being labeled through creating these connections and can subsequently be dismantled.

Other recommendations within this section support cross-cultural education, which also reflects the *Aboriginal perspectives* framework. These recommendations are similar to the recommendation and analysis to include Aboriginal issues in the legal curriculums. Cross-cultural education programs for the legal profession and education programs for judges introduce more and more people within the dominant society to Aboriginal peoples' issues and perspectives. This further brings Aboriginal issues out into the open, exposes racism, and begins its dismantling.

A final recommendation within this section is to establish an Aboriginal law school. This too reflects *Aboriginal perspectives*' claims. While this recommendation parallels the intent and consequences of incorporating Aboriginal issues into legal curriculums, this recommendation goes much further. *Aboriginal perspectives* states that for there to be a true "Aboriginal process", that fully incorporates Aboriginal perspectives and empowers Aboriginal peoples, Aboriginal community values need to be present within a structure. The structure will therefore need to represent and incorporate such issues as sharing, truth, harmony, respect for all life forms and spirituality (Monture-Angus 1995; Sioui, 1992; Pobiushchy, 1992). The recommendation to create and support an Aboriginal law school recognizes and supports these issues. This is because Aboriginal peoples, their values, and issues would form the basis of an Aboriginal law school. By Aboriginal peoples being central to establishing this structure, Aboriginal values would also be central to the structure.

There are great consequences associated with establishing an Aboriginal law school. One consequence is that there would be a greater sense of community for

Aboriginal peoples. Each of the students, for example, would be Aboriginal and would have experienced similar racial barriers in their lives. Knowing that others are similar to you creates a sense of community and belonging. Euro-Canadian law schools have been criticized as separating Aboriginal peoples from their identity and heritage. This creates a sense that Aboriginal peoples do not 'belong'. An Aboriginal law school, on the other hand, would not separate Aboriginal people from their identity and heritage but instead connect these issues because Aboriginal peoples who understand these issues would create the school.

While the recommendations within this section primarily reflect the frameworks of analysis, there is one way the recommendations do not reflect CRT. Critical race theory argues that addressing issues of race or racism is to address non-white issues. This is because white is considered *raceless* and is the norm or standpoint from which race/racism is judged (Mahoney, 1997). This means that all explanations of racism will exist in comparison to a white example. Another aspect the CRT addresses is that with white comes privilege. White people are privileged because they can externalize race, whereas someone who is labeled non-white cannot; they will be classified via their 'race'. While CRT states that understanding and teaching about *whiteness* are important, the recommendations do not address these areas. For example, nothing is suggested for incorporating teaching about whiteness in legal curriculums.

Understanding *whiteness* is integral to understanding how racism is constructed. The impact of not addressing whiteness in legal education is that no commitment is being made to understanding and dismantling racism. To not address

such issues is to ignore racism's origins, leave racial hierarchies intact and therefore not support methods to eliminate racism.

Within the Education and Aboriginal Issues section there is a major inconsistency within the recommendations. On one hand, a recommendation supports incorporating Aboriginal issues in law school curriculums. On the other hand, another recommendation supports designing and creating an Aboriginal law school. These recommendations have different objectives. Incorporating Aboriginal issues into the current law school environment brings Aboriginal issues into a Euro-Canadian institutional tradition, while creating an Aboriginal law school establishes an Aboriginal structure. While both recommendations have the overall intention of addressing the racial discrimination Aboriginal peoples face in law school, because the recommendations are so different in their proposals and objectives, their overall impact is weakened. Supporting two opposing approaches (even though they may have the same intentions) lessens the effectiveness of either one.

Overall, the recommendations within this section are similar to the recommendations within the Law School and Legal Profession Environment section. Both sections support positive relations between Aboriginal and non-Aboriginal people. Within this section, for example, educating incoming students about equity initiatives helps students understand why equity initiatives are important and necessary and therefore promote better Aboriginal-non-Aboriginal relations. The Law School and Legal Profession Environment section also supports positive relations by promoting an equal environment for Aboriginal and non-Aboriginal people.

There are distinct differences among the four sections I have identified. The Equity, Support, and Educating sections' recommendations are more pro-active than the Environment section's recommendations. For example, the recommendations of the above-mentioned three sections state the need to create an outreach strategy, to increase financial support for Aboriginal students, and to educate incoming students about the need for equity initiatives. These recommendations are very action-based in that they suggest something that can be achieved and measured. The Environment section, on the other hand, is not as 'active' and is more subjective. For example, one recommendation states that an anti-racist and anti-discrimination environment should be promoted within law schools. While the recommendation states what is needed, it is unclear how to go about achieving this goal. Not knowing how exactly to achieve this goal weakens its impact. If the implementing bodies are left to decide how they should promote an anti-racist environment, for example, it is unclear what measures would be taken to address the issue and whether or not they would be effective. The Equity, Support and Education sections' recommendations, on the other hand, are much stronger in their impact and more likely to succeed in their goal to combat the barriers Aboriginal peoples face because they are more specific and focused in their goals.

Summary of Analysis

In the few areas where the recommendations do not reflect the conceptual frameworks, the major critique is that the recommendations were too general and did not go as far as the frameworks of analysis. In this light, the recommendations can be

seen as incomplete and not going as far as they should to fight the barriers Aboriginal peoples face in the legal profession. Overall, however, critical race theory and *Aboriginal perspectives* support the legal reports' recommendations for addressing racial discrimination towards Aboriginal peoples. If these recommendations were to be implemented, they would provide a step forward in addressing and working to eliminate discriminatory barriers.

Conclusion

While the interview data reveal that the reports do not represent a new framework and instead have grown out of past initiatives, there were still expectations that the reports would be a positive step for addressing and combating racism. It was hoped that the reports would expose the 'real' barriers Aboriginal peoples experience in accessing and participating in the legal profession, and that Aboriginal peoples would be involved in developing the reports. According to my analysis, the reports meet these objectives in that they, for the most part, reflect critical race theory and *Aboriginal perspectives*, which address these issues. First, the recommendations recognize the 'real' barriers Aboriginal peoples experience. For example, they work to expose racism and its many manifestations and recognize Aboriginal peoples' history and the consequences of this history. Second, the recommendations work to combat the barriers Aboriginal peoples face; they promote bringing issues to the forefront and providing opportunities for Aboriginal peoples to participate in the legal profession. And finally, the recommendations also work to promote Aboriginal peoples' participation. They advocate Aboriginal peoples having opportunities to

voice their opinions and concerns, and therefore work to re-build Aboriginal-non-Aboriginal relations.

While in most ways the recommendations reflect the conceptual frameworks, they still do not go as far as the frameworks' claims. For example, the conceptual frameworks argue for a pro-active approach for getting to the root of racism. The recommendations fall short in addressing this claim and in cases only provide a superficial remedy to addressing the issue. In the next chapter I address further comments and critiques of the reports and make overall observations and conclusions about the research as a whole.

CHAPTER SIX: ONGOING ISSUES

Introduction

This chapter examines the comments and criticisms of the reports. It provides information on what occurred following the release of the reports and examines the possible impact the reports may have on addressing and combating the racism Aboriginal peoples experience in the legal profession. A second objective of this chapter is to make some observations and conclusions about the issues presented in this thesis.

There are two main parts to this chapter. The first part is based primarily on data I received from the interviews and will discuss how the reports were received, what they achieved, what, if any, actions have followed since the reports were produced, and any future implications. The second part of the chapter addresses different themes arising from the research.

Comments and Critiques

The following questions were asked of the interviewees regarding how the reports were received:

- 1. To what extent do you think the Report(s) addressed the issues facing Aboriginal persons in legal education and the legal profession?**
- 2. What did you hope the Report(s) would achieve in addressing these issues and how? (e.g. did you think they were a first step or an overall framework for resolving the problems?)**

3. **What is your view of how the Report(s) have been received by the approving and implementing bodies? What do you think may be the implications of this reception?**
4. **To what extent have the recommendations made in the Report(s) been implemented? How do you feel about (any) progress made in response to the Report(s)? What do you see as the next steps? Are there any other related developments, which may have an impact?**
5. **What do you see as the short and long term impacts of the Reports on Aboriginal peoples and their relationship with legal education and the legal profession?**

Overall, each of the individuals I interviewed agreed that the reports successfully addressed the fundamental issues and barriers Aboriginal peoples experience in accessing and participating in law school and the legal profession. Gerry Ferguson stated that he feels *Addressing Barriers* addressed Aboriginal peoples' real experiences (personal communication, May 30, 2001). Generally, the interviewees felt that the reports provide a good and broad picture of the main issues Aboriginal peoples' experience in the legal profession (M. Froh, personal communication, June 27, 2001; L. Chartrand, personal communication, June 19, 2001).

For the most part, it was also agreed that the reports are a positive *step* in the overall process of working to eliminate racism towards Aboriginal peoples in the legal profession. The reports openly identify the barriers Aboriginal peoples experience in the legal profession in order for society to understand these issues (M. Froh, personal communication, June 27, 2001; Individual, personal communication, May 22, 2001). This is important because the more society recognizes the issues, the closer it moves towards working out solutions to these issues. The reports also

provide proof about Aboriginal peoples' experiences. Identifying statistics and evidence on the barriers Aboriginal peoples experience in the legal profession helps support future efforts that address these issues (L. Chartrand, personal communication, June 19, 2001). Ferguson further states that while the reports are broadly based, they can be seen as more than just a step in addressing racial discrimination because they propose real recommendations that provide a mandate on how to overcome these issues (personal communication, May 30, 2001).

While the reports were seen to address many of the main issues Aboriginal peoples experience, there were still critiques of the reports' focus. One critique is that because the reports focus on the 'big picture', they overlook Aboriginal peoples' everyday experiences. For example, the reports do not address issues at the community level – what does it mean to be the first person in your community to go to law school, or university for that matter, and how does the community see you or treat you because of this (M. Froh, personal communication, June 27, 2001)?

Challenge Report has also been criticized for grouping Aboriginal peoples with minority groups. Chartrand states that *Challenge Report's* recommendations are inaccurate because the report groups Aboriginal peoples and minority groups together by making only one set of recommendations (personal communication, June 19, 2001).

Other criticism address the fact that the reports' recommendations omit certain issues. For example, one critique is that the recommendations do not focus enough on Aboriginal peoples' experiences and the barriers they face *inside* law school and the legal profession, and changes that could be made to address some of these issues

(Individual, personal communication, May 22, 2001). Judge Nicholas states that the reports were also not specific enough in addressing the differences among Aboriginal peoples; because of *Challenge Report*'s focus on all "racialized communities" (Aboriginal and minority groups together), the report did not address Metis peoples' concerns, Aboriginal peoples in the north, in the east or on the west coast, for example, and their differences (personal communication, May 30, 2001).

The Law Society of Upper Canada (hereinafter referred to as LSUC) produced a formal response to *Challenge Report* and *Virtual Justice*. While the response described the reports as "provid[ing] a timely array of arguments and recommendations essential to addressing racism and racial equality in the Canadian legal profession", it also criticized the two reports (LSUC, 1999, p. 12). The LSUC response criticized the reports for not providing a background on critical race theory, such as a literature review, in order to provide the reader with a context for understanding racism and the barriers associated with racism. Another criticism is that neither *Challenge Report* nor *Virtual Justice* provided substantial demographic data to support their conclusions³⁷ (LSUC, 1999). The response states that demographic data provide important evidence for comparing different peoples' experiences.

The reports have been, for the most part, well received by their implementing bodies. The response to *Addressing Barriers* in particular has been very positive. The University of British Columbia (hereinafter referred to as UBC), the University of Victoria, the British Columbia Bar Admissions Course and the Continuing Legal

³⁷ *Addressing Barriers* provides much stronger demographic data to support the discriminatory barriers Aboriginal peoples experience in law school and the legal profession.

Education Society were all receptive to the report's recommendations. For example, UBC was receptive to incorporating many of the report's recommendations pertaining to law schools. In a letter from Joost Blom, Dean of the University British Columbia's Faculty of Law, to Anna Fung of the Law Society of British Columbia's Equity and Diversity Committee, it stated that UBC was committed to addressing the discriminatory barriers Aboriginal students face in law school, and would take into consideration and review many of the recommendations pertaining to law schools (personal communication, November 30, 2000). Ferguson states that the response to *Addressing Barriers* was very positive because of the reports' pragmatic approach (personal communication, May 30, 2001). Because a working group and an advisory group (representing different legal institutions) worked together in creating the recommendations, the recommendations represented what each of the institutions felt could be achieved. Another sign of *Addressing Barriers*' positive reception was that the Benchers of the Law Society of British Columbia passed all but two of the recommendations³⁸.

For the most part, *Challenge Report* and *Virtual Justice* were also well received. The CBA passed almost all of the reports' recommendations³⁹. There were a few Canadian Bar Association members who opposed the reports and there was also

³⁸ The Benchers did not pass one of the recommendations dealing with articling because a task force had been established to look at the whole articling process. The other recommendation that was not passed was to set up a permanent Aboriginal advisory committee. The Benchers did not pass this recommendation because it was felt that this was already part of the Equity and Diversity committee's mandate.

³⁹ In August 1999, at their annual meeting, the Canadian Bar Association passed 13 resolutions from *Challenge Report* and *Virtual Justice*'s recommendations (CBA, 1999). In February 2000, at their mid-winter meeting, the CBA passed 47 resolutions from *Challenge Report* and *Virtual Justice*'s recommendations (CBA, 2000). While I stated that *almost* all of the recommendations were passed, it is difficult to tell, and the people I interviewed concurred, which recommendations the CBA did not pass because the ones that were passed seem very close to all those the reports proposed.

some concern because two reports were produced when only one was to be created⁴⁰(Individual, personal communication, May 22, 2001; G. Nicholas, personal communication, May 30, 2001). While the CBA is still in the initial stages of addressing the resolutions, there has been some progress in implementing these resolutions. An implementation committee has been established to implement the CBA's resolutions, and in July 2000 a subcommittee was established to oversee implementing the resolutions pertaining specifically to Aboriginal peoples (L. Chartrand, personal communication, June 19, 2001). Some of the law schools and law societies have also tried to address resolutions that pertained to them⁴¹(Individual, personal communication, May 22, 2001; M. Froh, personal communication, June 27, 2001).

Even though most of the reports' recommendations have been passed and some small steps have been taken to implement them, many of the people I interviewed were still skeptical that these initiatives will make a difference in addressing the barriers Aboriginal peoples experience. One person I interviewed stated that the recommendations have not at all (according to his/her knowledge) been implemented in the private sector (Individual, personal communication, May 22, 2001). Another concern is that the reports will simply be 'shelved', meaning that while many areas have been identified within the reports, they will not be dealt with as time passes (Individual, personal communication, May 22, 2001; M. Froh, personal

⁴⁰ It was first decided that one report would be created about "racialized" peoples' experiences in the legal profession but during the process of developing the report there was some disagreement about how the report was developing, and Joanne St. Lewis subsequently decided to write her own report, *Virtual Justice*.

⁴¹ One of the interviewees stated, though no specific details were provided, that the Law Society of Upper Canada, for example, is already engaging in many of the issues that the resolutions mention.

communication, June 27, 2001). Another concern involves elected bodies such as the CBA. Whatever actions are taken to address these issues will depend on who the elected CBA officers are and their beliefs (G. Nicholas, personal communication, May 30, 2001). Therefore, if the CBA executive board is made up of people who do not have the same attitude as those that supported these resolutions, the resolutions will not have the same impact in the future as what was intended when they were passed.

Overall, there are mixed reviews about the reports' possible impact. There is some optimism because actions have already started; those involved in *Addressing Barriers* have been successful in getting the support of legal institutions (G. Ferguson, personal communication, May 30, 2001). But another view is that the reports will not make a lot of difference in the end. For example, there are still many issues that Aboriginal peoples experience at the community level that prevent them from entering the legal profession; there are important socio-economic barriers within Aboriginal communities, and issues surrounding Aboriginal peoples not graduating from high school (L. Chartrand, personal communication, June 19, 2001). Others state that there are possibilities for change if all Aboriginal peoples are able to be involved in the process. This means that Aboriginal students need to be active in addressing these issues and Elders should also have a role in working to overcome barriers (M. Froh, personal communication, June 27, 2001).

Each of the people I interviewed agreed that the reports alone will not 'fix' the barriers Aboriginal peoples experience in the legal profession and further actions are needed. For example, more attention is needed on the barriers Aboriginal peoples

face in private practice and in being appointed to the judiciary (Individual, personal communication, May 22, 2001). Addressing these issues is a continuous process that both Aboriginal and non-Aboriginal parties need to be involved in. And once the dominant society starts to realize that Aboriginal issues are not going away, the better off it will be (G. Nicholas, personal conversation, May 30, 2001). Acknowledging and identifying these issues is the start to redressing them.

Observations and Conclusions

My analysis in chapter five noted that the reports, for the most part, reflect critical race theory and *Aboriginal perspectives*. This implies that the recommendations also reflect the barriers Aboriginal peoples experience and work to get beyond these issues, and thus have real potential for addressing and fighting the racial discrimination Aboriginal peoples experience accessing and participating in the legal profession. What is revealed in this chapter, however, is that even though the reports may reflect Aboriginal peoples' experiences and make many valid suggestions for overcoming these barriers, there is still skepticism about whether the reports will be fully implemented by the appropriate legal institutions. Therefore, even though the reports have good intentions and may reflect the realities Aboriginal peoples face, if they are not implemented, they will not be effective in addressing these problems.

Another reason for the skepticism is that racism, as detailed in chapter four, is constantly changing in its forms and shapes. As the reports and interview data acknowledge, this is not an issue that will simply go away. While the reports may have some success in addressing and decreasing racism's effects, racism will not

simply disappear overnight. Society must continue to address and examine issues of racism, and develop new frameworks of analysis and action plans for getting to the root of racism.

One of the major themes throughout this thesis has been that Aboriginal peoples have a distinct history marked by racial discrimination. This history, however, does not simply exist in the past; it is very much connected to Aboriginal peoples' current experiences and realities. The consequences of this history persist today and in many ways have led to the barriers Aboriginal peoples face in accessing the legal profession. This also was one of the main reasons *Addressing Barriers*, *Challenge Report* and *Virtual Justice* were produced. What is important to note, is that while the reports were created to address and reduce many of the barriers Aboriginal peoples experience, this history will not disappear. It is a part of Aboriginal peoples' lives and will continue to be so in the future.

Another key theme throughout the thesis is re-building relations between Aboriginal and non-Aboriginal people. Chapter four – dealing with conceptual framework issues – provided illustrations of the tension that has existed between Aboriginal and non-Aboriginal peoples in the past; to overcome this tension both Aboriginal and non-Aboriginal peoples need to be aware and involved in addressing this issue. While the reports make recommendations for promoting an 'equal' environment for both Aboriginal and non-Aboriginal people, I would argue that the reports do not go far enough in making recommendations to involve non-Aboriginal people in combating racism. As was stated in chapter four, to speak of race or racism is often to speak of non-white people and their experiences. I find that this has also

been the case for the reports, in addressing racism. For the most part, the reports involve Aboriginal peoples in exposing and addressing racism, but efforts are not being taken to involve non-Aboriginal people. Because racism exists as a relationship between different groups of people, to involve Aboriginal people and not non-Aboriginal people in addressing and fighting racism, we are only addressing half of the issue. It is vital to involve non-Aboriginal people, educate them about racism, its effects, and how to fight it.

A subtler theme within the thesis is the concept and practice of 'community'. In chapter four, dealing with conceptual frameworks, it was shown that community is very important in Aboriginal peoples' lives. This theme was expanded in chapter five where I stated that pre-law programs, and mentor programs, for example, represent a sense of community. Community means more than this, however. Chapter four states that community means involving and including members within the community and therefore community members are *active* participants. The interviewees also recognize this issue in stating that barriers exist within communities and that community members need to be involved in addressing these barriers. This is one area, however, which I would argue the reports do not adequately address. For example, how or where can community members partake in the law school environment? This may be one area that can be researched further – developing effective ways for the community to be part of initiatives that work to overcome the barriers Aboriginal peoples experience.

Another important point to make is that addressing the racism Aboriginal peoples experience in the legal profession is still very much a sensitive and

controversial issue. One example of this is that one of the people I interviewed for this thesis chose to be anonymous and not identified with this work. It might be argued that many individuals fear repercussions for speaking out about racism in the legal profession. Racism is still not often discussed openly and opposition still exists to initiatives that work to combat racism.

At the time I was writing this thesis there had been inquiries about a law school being developed in Nunavut, called Akitsiraq Law School. Questions have also arisen about whether or not such a school represents an “Aboriginal law school” as the reports describe – for Aboriginal peoples and representing Aboriginal values and culture. According to the interviews I conducted, while the law school being developed in Nunavut will incorporate Inuit social and cultural aspects into the curriculum, it is not a true “Aboriginal law school”. The program, which commences September 2001, is designed to educate *one* class of Inuit people over a period of four years in order for them to be lawyers for the North. Law professors will be brought in from the University of Victoria and other law schools across Canada to teach the students a similar legal curriculum to other Canadian law schools in the south. Inuit students will take their courses at the Nunavut Artic College and in completing this program will earn a Bachelor of Laws degree from the University of Victoria (University of Victoria). Considering that the Akitsiraq Law School is a one-time program, open only to Inuit students and taught predominantly by University of Victoria law professors, it can hardly be argued that the program represents a true ‘Aboriginal law school’.

Future Research

One important area that should be examined further is how gender adds another barrier to Aboriginal women's access to and participation in the legal profession, and what is being done to address this particular issue. While not addressing gender issues is problematic, it was also outside the scope of this thesis to do so and does not affect my overall discussion and conclusions. In my research, however, I encountered many areas where gender was seen as adding another barrier to the many existing barriers Aboriginal peoples experience surrounding the legal profession, and I believe that this is an important area that needs to be examined further.

Conclusion

While the previous chapter outlined the possible positive impacts the reports could have in addressing and fighting racial discrimination, this chapter is more skeptical of the overall impact the reports will have for making change. Aboriginal peoples have faced racism for hundreds of years and it is highly probable that initiatives to combat racism will take many more years. This means that efforts must continue in order to recognize and work to reduce racism. Both Aboriginal and non-Aboriginal people need to be involved in these efforts and racism needs to be discussed openly and forthrightly. We must also expand how we address the meanings and forms of racism, as this recognizes how racism changes and evolves.

Aboriginal peoples have faced a history of racial discrimination. This history does not lie dormant in the past, however. Consequences of this history and

discrimination are prevalent today and have created very real barriers that limit Aboriginal peoples' access to and participation in the legal profession. Recent reports such as *Addressing Barriers*, *Challenge Report* and *Virtual Justice* reflect Aboriginal peoples' history and the barriers Aboriginal peoples face in the legal profession, and are thus positive steps for identifying and proposing changes for overcoming racial discrimination. However, while the reports are concrete steps for overcoming racism, they are by no means a solution to the problem. Future efforts must continue to identify and combat racism in order to promote the overall goal of greater equality within the legal profession and in society.

APPENDIX A: Informed Consent Form

To: _____

I, Carla Di Giusto (the researcher), invite you, (the interviewee) to participate in my research project. This research project is an essential part of my work on my thesis required to complete my Masters of Arts in Legal Studies degree at Carleton University.

The aim of this project is to understand and shed light on the racial discrimination Aboriginal⁴² peoples experience in relation to membership in the legal profession, and the initiatives being taken to address and eliminate racism in order to promote equality within the legal profession. Participation in this project will involve me asking you ten structured questions together with unstructured follow-up questions as our conversation evolves in the course of a telephone interview. The interview questions will be provided to you at least one week before the interview date. We will agree on a time for the telephone call in advance. It is anticipated that the interview will last approximately 30 – 60 minutes. While there are no foreseen risks associated with the interview, you can choose, for any reason, not to answer one or all of the interview questions. You also have the right to withdraw from the interview or choose, after completing the interview, not to be included in the study.

Each interviewee will be asked whether or not he or she agrees to be named within the study. If the interviewee decides that he or she does not wish his or her name to be disclosed as part of the research, the interviewee's name will be coded. The interviewee will be simply named as a member of a certain group or association. In referring to the name of the group or association from which the interviewee belongs, the interviewee will not be directly named within the study and his or her identity will be kept confidential. For any interviewee who chooses not to be labeled in the study, only myself and my faculty supervisor for this project, Professor Ron Saunders⁴³, will have access to his or her name and interview responses.

You will be asked whether you wish to receive a copy of the summary of research results. I will also give you a final copy of the completed research project if requested.

Any questions regarding this research project can be addressed to Professor Ron Saunders, the principal faculty supervisor of the project, at phone number (613) 520-2600 ext. 8069, or email r_p_saunders@carleton.ca. You may contact him at any

⁴² The words 'First Nations' in the original Informed Consent Form have been replaced with 'Aboriginal' for the purposes of this thesis.

⁴³ This name has changed from the original Informed Consent Form. Part way through this thesis I changed my thesis supervisor. The name change reflects the new supervisor.

time. Any complaints regarding this research can be made to Professor Michael MacNeil, Chair of the Law Department at Carleton University, at phone number (613) 520-2600 Ext. 3684, or email michael_macneil@carleton.ca.

In signing this document, I, _____, the interviewee, agree to participate in the research project and affirm that I was informed of the research and what the research would entail.

Dated: _____ Signed: _____ (interviewee)

Dated: _____ Signed: _____ (Carla Di Giusto,
researcher)

APPENDIX B: List of Interview Questions

The following questions relate to three reports dealing with racial discrimination in the legal profession and all recommendations, which followed the reports. The three reports are:

1. *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* by the Aboriginal Law Graduates Working Group (2000)

Racial Equality in the Legal Profession, consisting of the two distinct reports:

2. *The Challenge of Racial Equality: Putting Principles into Practice* by the Working Group of Racial Equality in the Legal Profession (1999)
3. *Virtual Justice: Systemic Racism and the Legal Profession* by Joanne St. Lewis, co-chair of the Working Group on Racial Equality in the Legal Profession (1999)

All questions are targeted at the relationship between the Reports and their recommendations and the involvement of Canadian Aboriginal peoples⁴⁴ in legal education and the legal profession.

1. Please tell me about your involvement in, or connection to, either or both of the recent Report(s) on Aboriginal membership in legal education and the legal profession.

⁴⁴ The words 'First Nations' in the original questions have been replaced with Aboriginal for the purposes of this thesis.

2. What do you think led to the creation of the Report(s)? How were these initiatives similar to or different from other initiatives in the past? What do you think were the objectives of the report(s) as they related to Aboriginal membership in legal education or the legal profession?
3. What role do you think the surrounding environment (e.g. commissioning body, time lines, budget, research methodology, approving body, implementing bodies, jurisdictional issues) had in shaping the research content and recommendations made?
4. How were issues facing Aboriginal persons in legal education and the legal profession conceptualized in the work and Report(s) (e.g. was a racism framework adopted, an anti-colonial framework or some other way of thinking about the problems facing these aboriginal persons and communities?)
5. How did the committees working on the Report(s) develop their recommendations? What criteria were used?
6. To what extent do you think the Report(s) addressed the issues facing Aboriginal persons in legal education and the legal profession?

7. What did you hope the Report(s) would achieve in addressing these issues and how? (e.g. did you think they were a first step or an overall framework for resolving the problems?)
8. What is your view of how the Report(s) have been received by the approving and implementing bodies? What do you think may be the implications of this reception?
9. To what extent have the recommendations made in the Report(s) been implemented? How do you feel about (any) progress made in response to the Report(s)? What do you see as the next steps? Are there any other related developments which may have an impact?
10. What do you see as the short and long term impacts of the Reports on Aboriginal peoples and their relationship with legal education and the legal profession?

APPENDIX C: Summary Of Recommendations From “Addressing Barriers”⁴⁵

Pre-law school programs

1. That the Saskatchewan Native Law Centre consider, perhaps through a specially funded study, the pedagogical and financial feasibility of offering its Program of Legal Studies for Native People, in whole or in part, on a distance education basis as an option for those who cannot attend the on-site program.
2. That the UBC Law Faculty consider granting course credit for first-year property to students who successfully complete the Saskatchewan program.
3. That the Law Society, as part of its equity mandate, develop a strategy (through staff and an ad hoc committee appointed for that purpose) to ensure that all Aboriginal students who have received an offer of admission to a B.C. law school and who wish to attend the Saskatchewan program are provided with adequate financial means to allow them to do so. Such a strategy may include action plans for creation of a Law Society bursary fund, for lobbying the federal and provincial government, the Law Foundation, law firms and the private sector to create or contribute to similar bursary funds, and an action plan for working with Aboriginal organizations to pursue these objectives.
4. That the Law Society’s funding strategy be extended to and support any other appropriate pre-law Aboriginal program that may be developed in the future such, as a one or two-week preparatory course immediately prior to first-year law school.
5. That the Law Society express its support for Recommendation 24 of the *CBA Racial Equality Report* that suggests that the Canadian Council of Law Deans establish an Aboriginal advisory committee with representatives from the Indigenous Bar Association, the CBA Aboriginal Law Section, the Native Law Centre and the Aboriginal law students associations to do the following:
 - a) conduct on-going evaluation of pre-law programs for Aboriginal students;
 - b) promote the recognition of pre-law programs among law faculties; and
 - c) expand pre-law programs to other areas of the country so that they are more readily accessible to Aboriginal students.

Law schools

⁴⁵ These recommendations have been cited directly from *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*.

6. That the Law Society, the B.C. Branch of the CBA, the B.C. Ministry of the Attorney General (Special Advisor on Equality) and UVic and UBC law schools join forces and resources in an effort to create and administer a coordinated outreach plan or strategy designed to increase the number of Aboriginal applicants and Aboriginal admissions into law school. The Admissions Outreach Strategy should include a range of Aboriginal career development activities throughout the province. The Strategy Document should also formulate action plans for the development of bursaries or other forms of financial aid to ensure that Aboriginal students who qualify for admission to law school are not discouraged from attending because of their financial need.
7. That the Law Society take the lead in approaching the CBA and the two law schools to see if they are willing and able to work toward the development and implementation of a co-ordinated Aboriginal Admission Outreach Strategy.
8. That the UVic Law Faculty consider increasing its discretionary admissions positions for Aboriginals from five to at least eight or perhaps 10.
9. That the Law Society request the Deans of the two B.C. law schools to present a report annually at a Benchers meeting to summarize the Aboriginal initiatives concerning curriculum and law school environment in their respective law faculties. Such a report will not only serve as a useful internal audit for the law faculties, but will help to keep the Law Society and legal profession up-to-date on law school developments and challenges in Aboriginal programming. The Working Group also hopes that such a report will act as a catalyst for the Law Society and the legal profession to offer its expertise and resources to help to sustain and enhance these Aboriginal initiatives.
10. That the Law Society promote the expansion of Aboriginal material and components in law school courses by offering an Aboriginal Curriculum Enhancement Grant (for example, \$5,000 annually to each law school) to hire research students to prepare such course components.
11. That CLE⁴⁶ and PLTC⁴⁷ provide copies of their Aboriginal course materials or components to the Deans of the two law faculties on an on-going basis to further facilitate the expansion of Aboriginal materials in the law school curriculum.
12. That the two B.C. law faculties continue to identify and respond to the discriminatory barriers experienced by Aboriginal law students by:

⁴⁶ CLE refers to Continuing Legal Education Society

⁴⁷ PLTC refers to Profession Legal Training Course

- (a) formalizing an annual meeting between the Native Law Students Association and appropriate law school representatives for the express purpose of identifying Aboriginal concerns, discussing possible responses and monitoring existing Aboriginal initiatives;
- (b) finding better ways to educate incoming law students as to the rationale and justification for the discretionary admissions category and the qualifications and contributions that discretionary admission category applicants make to the law school and legal profession;
- (c) informing and preparing incoming Aboriginal law students for the culture shock and social isolation that they may experience at law school (e.g., through the distribution of written materials and the convening of special meetings to discuss such matters);
- (d) promoting and supporting Aboriginal law student activities, such as support circles, visits by Elders and guest lecture series;
- (e) creating and applying a comprehensive Aboriginal equity policy that sets out equity objectives and activities in the areas of admissions, curriculum, faculty recruitment and law school environment;
- (f) continuing to promote values of anti-racism and anti-discrimination in the law school environment through educational activities both in and outside of the classroom, such as unlearning racism workshops and cultural awareness sessions; and
- (g) finding effective ways to convey to guest lectures and speakers the faculties' concerns for cultural sensitivity.

Professional Legal Training Course (PLTC)

- 13. That PLTC establish an Advisory Panel(s) of Aboriginal lawyers and non-Aboriginal lawyers with expertise in Aboriginal issues to review the PLTC curriculum and *Practice Material* and to make suggestions for incorporation of Aboriginal legal issues into the curriculum and *Practice Material*.
- 14. That the Director and staff of PLTC work with the Aboriginal Advisory Panel(s) in order to build anti-discrimination components into the course materials and assessments.
- 15. That PLTC instructors should continue to regularly update and refresh their anti-racism and cross-cultural awareness training.
- 16. That PLTC (and CLE) should create appropriate guidelines for volunteer and guest instructors.

17. That PLTC (and CLE) should put effective mechanisms in place to inform guest lecturers what their policy is regarding the treatment of historically disadvantaged groups, including Aboriginal students.
18. That PLTC (and CLE) better advertise their system for responding to complaints; the complaints process should include a mechanism for getting back to the person making the complaint and letting that person know what actions were taken by PLTC (or CLE).
19. That PLTC students should continue to be instructed on the role of the Law Society's Discrimination Ombudsperson in resolving discrimination complaints.

Mentors

20. That the Native Law Student Associations at the law faculties should work with representatives of the Indigenous Bar Association and the Canadian Bar Association to ensure that an effective mentoring system is put in place during law school and carried forward into articling.

PLTC entrance examination

21. That the Equity and Diversity Committee of the Law Society resist the implementation of the proposed PLTC entrance examination, and if such examination is to proceed, that the Equity and Diversity Committee ensure that no barriers are created by the proposed PLTC entrance examination for Aboriginal or other traditionally disadvantaged students.
22. That if a PLTC entrance examination is implemented, that the Law Society make available a system of tutoring by a qualified person, such as the Academic Support Instructor currently employed by PLTC.
23. That PLTC and the law schools work together to make more concerted efforts to inform law students as to the PLTC course content and the courses that PLTC recommends that law students should consider taking as part of their LL.B. program.

Continuing Legal Education Society (CLE)

24. That CLE explore ways of better advertising the existence of the CLE bursary program to Aboriginal lawyers in British Columbia.
25. That CLE reconsider whether the \$25,000 threshold for its bursary program is too low and that it consider increasing access to its courses for the lowest wage earners by raising the bursary threshold income level to \$40,000 or \$50,000, at least on an experimental basis.
26. That CLE establish an Advisory Panel(s) of Aboriginal lawyers and non-Aboriginal lawyers with expertise in Aboriginal legal issues to assist CLE

staff in a review and inclusion of appropriate sections on Aboriginal legal issues in CLE publications and manuals.

27. That CLE programming staff consult with Aboriginal Advisory Panel(s) with a view to including Aboriginal legal issues, where appropriate, in future course programming. That CLE programming staff maintain contact with staff lawyers at the Native Community Law Offices operated by the Legal Services Society in order to identify appropriate Aboriginal law issues for inclusion in future CLE conferences.

Articling

28. That the Law Society appoint an Articling Liaison Officer to promote fair and adequate access to articling opportunities and to help eliminate discriminatory experiences in the articling process. The functions of the Articling Liaison Officer should include:

- working with the two law school Career Placement Officers to ensure that articling data is collected annually from those seeking articles and those who are not;
- working with the Career Placement Officers to keep lists of law students and law firms looking for an articling match;
- keeping a directory of lawyers who are willing to split articles with other lawyers;
- keeping a list of Aboriginal lawyers and law firms who are specifically interested in hiring Aboriginal articling students;
- investigating the creation of financial support programs for Aboriginal students (such as single parents) who cannot financially afford to article;
- helping facilitate greater networking between Aboriginal law students and lawyers through programs such as summer articles, one-on-one mentoring, receptions etc.;
- helping establish an advisory group of Aboriginal lawyers and articling students;
- working with private law firms to encourage the creation of equity hiring programs for Aboriginal and visible minority students;
- acting as a liaison for receiving complaints concerning the articling process;
- undertaking pro-active, equity education activities for law firms in order to minimize the experience of discriminatory treatment that some Aboriginal articling students experience.

Law practice

29. That the Law Society create a comprehensive model employment equity policy for law firms to ensure that Aboriginal lawyers do not experience discriminatory barriers in the practice of law. Such a policy should be

formulated by directing the Equity and Diversity Committee to appoint a working group for that purpose, composed of minority and nonminority lawyers and one or more employment equity specialists.

30. That the Equity and Diversity Committee of the Law Society establish an Aboriginal Advisory Group:

- to assist (with others) in the development of a strategy and action plan to create adequate bursary funding for needy Aboriginal students to attend pre-law programs and law school (see Recommendations 3 and 6);
- to assist (with others) in the development and implementation of an Aboriginal Law School Admission Outreach Strategy (see Recommendations 6 and 7);
- to assist (with others) to set up an Aboriginal mentoring program for Aboriginal law students and articling students;
- to provide advice to the Articling Liaison Officer in regard to articles for Aboriginal students;
- to encourage Aboriginal lawyers to run for Benchers and to put their names forward for appointments to committees by the Law Society;
- to encourage Aboriginal lawyers to apply for judicial appointments;
- to offer assistance to the judicial education committees in planning and including Aboriginal law and perspectives into their education programs;
- to increase law practice opportunities for Aboriginal lawyers; and
- to recommend programs or activities for improving the cross-cultural awareness of members of the legal profession in regard to Aboriginal peoples.

31. That the Aboriginal Advisory Group appointed by the Equity and Diversity Committee be asked to examine ways to encourage and support more Aboriginal applications to the judiciary.

The judiciary

- 32. That the judiciary be encouraged to continue to include and expand the treatment of social context issues concerning Aboriginal peoples and race, culture and gender into their educational programs.**
- 33. That the Equity and Diversity Committee of the Law Society be asked to foster an exchange of information, at least annually, between the Equity and Diversity Committee and the Judicial Education Committees on their educational initiatives concerning issues pertaining to Aboriginal peoples.**
- 34. That the Aboriginal Advisory Group appointed by the Equity and Diversity Committee offer assistance to the Judicial Education Committees in helping them to organize education sessions on Aboriginal issues.**

Follow-up / monitoring

35. That the Law Society direct its Equity and Diversity Committee to report once a year in writing on the extent and progress of the implementation of the recommendations and related matters in this report.

APPENDIX D: Relevant Recommendations From “Challenge Report”⁴⁸

1. We recommend that the Canadian Bar Association host a meeting with law school deans, from both the civil and common law faculties, and with members of associations representing law students and lawyers from racialized⁴⁹ communities to:
 - develop and encourage the implementation of programs that would eliminate the systemic discrimination which deters students from racialized communities from applying to and getting into law schools; and
 - create a national system for tracking the access of students from racialized communities to law schools.
2. We recommend that law school Deans require the editors of the law school student newspaper to review their editorial policies and practices to ensure that they conform to the requirements of provincial/territorial human rights legislation. The editorial policy should include a process for appropriately handling complaints of racist or discriminatory content in the newspaper.
3. We recommend that the Canadian Bar Association request that members offer to mentor students in law schools, where appropriate. The CBA could recognize the contribution of mentors at its Annual Conference and through its publications.
4. We recommend that the Canadian Bar Association conduct a fundraising campaign to raise money for bursaries and scholarships for:
 - students entering and in law school who are disadvantaged because of discrimination; and
 - graduate students studying issues of race and cultural difference and the law.
5. We recommend that the Canadian Bar Association develop and distribute a model policy for articling interviews, which includes:
 - strategies for ensuring all students are given a fair chance to compete for available positions;
 - a list of the types of questions that are unacceptable to ask during interviews; and

⁴⁸ This is not the complete list of recommendations from *The Challenge of Racial Equality: Putting Principles into Practice*. In this appendix I have included only recommendations that are applicable to Aboriginal peoples and their access to and participation in the legal profession.

⁴⁹ This refers to Aboriginal peoples and ethnic/minority groups.

- suggestions for ways to prevent racial bias from infiltrating the interview and hiring process and from affecting the articling experience.
6. We recommend that the Canadian Bar Association's racial equality specialist (see Recommendation 31) set up a system so that law students, lawyers and associations of law students or lawyers can confidentially raise concerns about any lawyers or law firms that are not respecting the principles of racial equality in their hiring practices. The racial equality specialist will seek discreet and appropriate ways to remedy the situation.
 7. We recommend that, if they do not already have a policy in place, the Canadian Bar Association, all the law societies and le Barreau du Québec, and all Justice Departments and all law firms adopt a workplace equity policy, including equitable hiring policies, and that they actively recruit and hire lawyers from racialized communities when there are positions to be filled.
 8. We recommend that the Canadian Bar Association compile and publish a list of all law firms of more than 10 associates who have answered a CBA questionnaire and identified that they have an employment equity policy in place and provided evidence of an on-going commitment to ensuring that the policy is put into practice.
 9. We recommend that the Canadian Bar Association compile and publish a list of all law firms of more than 10 associates who have answered a CBA questionnaire and identified that they have an appropriate system in place for responding to concerns about racial discrimination received from clients, support staff, summer students, articling students, associate lawyers and partners.
 10. We recommend that all Justice Departments adopt a program of contract compliance whereby only those law firms which have demonstrated a commitment to equity through appropriate hiring, retention and promotion policies and practices would be granted government contracts.
 11. We recommend that the Canadian Bar Association meet with federal, provincial and territorial Justice department officials to discuss the mechanisms that will be used to monitor the degree of compliance with these employment equity policies.
 12. We recommend that the Canadian Bar Association's racial equality specialist (see Recommendation 31) prepare an equity awareness training course to offer to law firms across the country. This training course would support the development of employment equity and harassment policies to address, among other matters, recruitment, retention and promotion issues and would

challenge senior managers to remove the barriers that block the advancement of lawyers from racialized communities.

13. We recommend that all Justice Departments recognize the need for representation of people from racialized communities in decision-making and policy-making roles.
14. We recommend that the Canadian Judicial Council and its provincial equivalents enhance their systems of responding to complaints about judges who are perceived as showing racial bias or discourtesy or unfairness to lawyers, clients, witnesses, courtworkers and members of the public from racialized communities, and that Chief Justices and Chief Judges, who have not already done so, establish a protocol for responding to such complaints. The basic elements of the complaints system would include:
 - discussing the complaint with the judge concerned;
 - bringing the complaint to the attention of the Chief Justice or Chief Judge;
 - monitoring complaints over time and when there is a pattern of alleged offensive conduct, having a procedure for taking further action;
 - keeping the complainant informed about the handling of the complaint; and
 - communicating the existence of this system to all members of the Bar and to all users of the judicial system.
15. We recommend that the National Judicial Institute's and provincial court judges' social context education programs include materials and resource people with a critical race theory analysis. These programs should also promote a greater understanding and awareness of the experiences of Aboriginal people as they relate to legal issues involving the courts.
16. We recommend that the federal and provincial Attorneys General implement a comprehensive training program for Crown Attorneys which would focus on incorporating a critical race theory perspective into all aspects of their work, including their exercise of discretion and the impact of their current approaches to legal argument.
17. We recommend that the federal and provincial Attorneys General keep statistics to identify the number of federally and provincially-appointed judges who are from racialized communities.
18. We recommend that each law faculty immediately establish, fund and support an Aboriginal Advisory Committee to design, implement and monitor curriculum changes to ensure compulsory courses include analysis from an Aboriginal perspective. The Committee should also promote compulsory law school community awareness programming concerning Aboriginal matters.

An Aboriginal Advisory Committee should include representatives from Aboriginal faculty, students, lawyers and community organizations.

- 19. We recommend that law faculties, particularly those with a significant number of Aboriginal students or those located in a region with a significant Aboriginal population, develop employment equity strategies for hiring Aboriginal professors in tenure-track positions. These strategies should also seek to eliminate discriminatory barriers in the hiring process for contract, part-time and sessional lecturers.**
- 20. We recommend that the Canadian Council of Law Deans establish an Aboriginal advisory committee with representatives from the Indigenous Bar Association, the CBA Aboriginal Law Section, the Native Law Centre and the Indigenous law students associations to:**
 - conduct on-going evaluations of pre-law programs for Aboriginal students;**
 - promote the recognition of pre-law programs among law faculties; and**
 - expand pre-law programs to other areas of the country so that they are more readily accessible to Aboriginal students.**
- 21. We recommend that the law societies work with the Indigenous Bar Association and the CBA Aboriginal Law Section to examine the content of Bar Admission Course materials from an Aboriginal perspective and to recommend how to eliminate systemic discrimination in Bar Admission Course materials and examinations.**
- 22. We recommend that the Canadian Bar Association take a leadership role, working with its Branches, with the law societies and with the federal, provincial and territorial governments to initiate a dialogue with representatives from racialized communities and lawyers representing clients from racialized communities to:**
 - develop a strategic plan for the creation of specialized legal aid services to better serve the community; and**
 - define an appropriate legal aid program for refugee claimants.**
- 23. We recommend that the Canadian Bar Association, in consultation with lawyers from specialty clinics serving racialized communities, representatives from associations of lawyers from racialized communities, academics and other interested parties, develop a research methodology to assess, from a critical race theory perspective, the positions taken by the federal and provincial Attorneys General in cases involving people from racialized communities.**
- 24. We recommend that the Canadian Bar Association create a full-time position of racial equality specialist to advise the CBA and its members on all matters relating to the elimination of racial discrimination in the legal profession.**

including ways to gather relevant statistics, to measure law firm compliance with employment equity policies, and to monitor the implementation of the recommendations in this Report. This position is to be established for a minimum of 10 years and is to be staffed by a lawyer who has training in equity issues. The position should report to the Executive Director.

25. We recommend that the Canadian Bar Association, at the national and Branch levels, make every effort to remove the particular barriers that impede the participation of members from racialized communities in its committees and structures.
26. We recommend that the Canadian Bar Association, in consultation with law students and lawyers from racialized communities, develop a recruitment strategy and explore changes to its fee structure to attract more members from racialized communities. Changes to the fee structure could include fee reduction incentives and fee scales that recognize fees paid to other associations serving lawyers from racialized communities.
27. We recommend that the Canadian Bar Association Standing Committee on Equality be clearly mandated to promote the implementation of recommendations approved by CBA members and to monitor the implementation of recommendations made by Royal Commissions, inquiries and task forces that concern racial equality in the legal community. In its regular report to the membership, the Committee should strive to increase member awareness of these recommendations and the progress with respect to their implementation.
28. We recommend that the Canadian Bar Association cooperate and exchange information with the Indigenous Bar Association, the Métis Lawyers' Association, the South Asian Lawyers Association, the African Canadian Legal Clinic and other associations which bring together lawyers from racialized communities.
29. We recommend that the Canadian Bar Association Standing Committee on Equality be mandated to assist with the development of the agenda for the Annual Conference and the Mid-Winter meetings to maximize the inclusion of equality perspectives at the meetings and to increase the participation of lawyers and law students from racialized communities.
30. We recommend that a status report on the elimination of racial discrimination within the legal profession be presented at every Annual Conference, orally and in writing.
31. We recommend that the Canadian Bar Association continue to expand the scope of its continuing legal education programs to include more courses on human rights law and anti-discrimination policies and attitudes.

- 32. We recommend that the Canadian Bar Association develop a critical race theory framework which its sections and committees can use to analyze issues from an equality perspective and ensure that their recommendations reflect anti-discrimination principles.**
- 33. We recommend that the Canadian Bar Association demonstrate its commitment to racial equality in the legal profession by ensuring that persons in voluntary and staff leadership positions in the Canadian Bar Association participate in training courses that address the issues of discrimination and harassment in all areas of professional conduct, following Canadian Bar Association Resolution 96-05-M.**

APPENDIX E: Relevant Recommendations From “Virtual Justice”⁵⁰

It is recommended:

- 1. That the Canadian Access to Legal Education Group (CALEG) be given lead responsibility to work in cooperation with the Council of Law Deans to develop:**
 - **model criteria, guidelines for the establishment and monitoring of equity initiatives in Canadian law schools;**
 - **a national review of equality measures and attitudes towards equality in Canadian law schools (to be undertaken every two years to monitor progress towards the elimination of racism in law schools).**
- 2. That the Canadian Council of Law Deans establish a model anti-discrimination policy focused on law school environment issues, and that a committee comprised of both faculty and students be available to assist law schools in the mediation of internal conflicts or to provide counseling and support on a confidential basis to faculty or students. Law schools that have already established internal complaints procedures should include information regarding this body in all their communications.**
- 3. That First Nations legal issues be included as a mandatory component of the law school undergraduate curriculum of every student prior to graduation. Development of the materials should be done in cooperation with the Indigenous Bar Association (IBA)**
- 4. That law schools provide annual reports to the CBA on faculty composition and retention from racialized communities for inclusion in its Annual Report.**
- 5. That the Indigenous Bar Association and the Department of Justice establish a committee with representatives from the Indigenous Bar Association, First Nations governments, and First Nations legal scholars to conduct a feasibility study, and design and establish a First Nations law school.**
- 6. That the federal and provincial Ministers of Justice and Attorneys-General fund and develop roundtables to meet quarterly with the Indigenous Bar Association to discuss the range of justice issues facing First Nations communities.**
- 7. That the Department of Justice take lead responsibility for establishing a strategic planning committee with representatives from other government**

⁵⁰ This is not the complete list of recommendations from *Virtual Justice: Systemic Racism and the Canadian Legal Profession*. In this appendix I have included only recommendations that are applicable to Aboriginal peoples and their access to and participation in the legal profession.

departments, First Nations governments and the Indigenous Bar Association to develop a comprehensive funding protocol for community-focussed First Nations law firms.

8. That the Canadian Bar Association and the Indigenous Bar Association explore sharing resources and expertise through their annual assemblies/meetings. This would provide an opportunity for increased contact and identification of issues of mutual interest.
9. That each law society work together with law schools and racialized lawyer associations (or members) in its jurisdiction to develop and establish permanent equity in practice committees. These committees would consult, coordinate and develop policies on issues related to entry into the profession. To fulfill their mandate, they would:
 - identify the requisite skills and abilities required for admission to the Bar;
 - undertake a curricular and pedagogical review of the Bar Admissions Courses to ensure that they combine the development of professional skills with service to a diverse community;
 - publicize successful equality initiatives undertaken by law firms within their jurisdiction;
 - conduct a longitudinal study of students from equality-seeking communities to determine pattern of participation in the profession from law school, to obtaining articles, to Bar Admissions examinations, to practice and longevity in the profession; and
 - facilitate the exchange of information on equality issues between law schools, law firms and individual lawyers.
10. That the federal and provincial Attorneys-General jointly develop a scholarship and bursary fund for students from equality-seeking communities in three distinct areas: law school, non-funded Bar Admissions Courses and graduate programs. Every effort should be made to encourage the participation of the private bar but their failure to contribute should not preclude the establishment of the fund.
11. That the Federation of Law Societies undertake a review of the Codes of Professional Conduct to ensure that members of the profession are subject to equal standards and remedies regardless of jurisdiction. This review should be undertaken in conjunction with representatives of human rights commissions so that positive measures such as training and education have an equal presence with remedial/punitive actions.
12. That the Federation of Law Societies develop model employment guidelines for its members regarding the interviewing, hiring and retention process. These guidelines would then be incorporated by reference in the Codes of Professional Conduct.

13. That the provincial and federal Attorneys-General work together with the private bar and law schools to establish consistent criteria for the monitoring of workforce and education participation of members of equality-seeking communities in their institutions.
14. That the provincial and federal Attorneys-General prepare annual reports on the workforce participation of persons from equality-seeking communities which would be forwarded to the CBA for publication in its annual *Progress Towards Equality Report*.
15. That the federal Department of Justice provide a list of the successful recipients of work under its contract compliance guidelines to the CBA for publication. Provincial Attorneys-General, who have not yet done so should institute a contract compliance policy for the allocation of its legal work consistent with the demographics of their jurisdictions. Every effort should be made to contract directly with or ensure adequate representation of First Nations lawyers and lawyers from racialized communities in areas which directly relate to their communities.
16. That corporate counsel meet regularly with racialized lawyer associations to discuss how equality issues can be encouraged and implemented through their leadership role as important clients of private law firms.
17. That law societies take steps to eliminate barriers to the participation of members of equality-seeking communities as benchers and encourage their participation at all levels of their organizations.
18. That law societies work together with local human rights commissions to develop programs for identification of systemic barriers within law firms and strategies for removal.
19. That the Canadian Bar Association together, with specialty clinics serving racialized communities and racialized lawyers, their associations and academics, develop a research protocol and, conduct a critical equality analysis of the federal and provincial legal departments role in cases involving equality and the advancement of the *Canadian Charter of Rights and Freedoms*.
20. That the CBA together with provincial licensing bodies in cooperation with major financial institutions develop a funding strategy to assist lawyers from socio-economically disadvantaged backgrounds to establish legal practices.
21. That the federal government examine its judicial appointments process and develop a strategic plan to increase the representation of First Nations and

racialized judges at the appellate level (Court of Appeal, Federal Court of Appeal and Supreme Court of Canada).

22. That the Canadian Judicial Council develop a process for the gathering and maintenance of a profile of the judiciary which could be provided annually to the CBA for publication in its annual report.
23. That the Canadian Judicial Council establish a non-judge advocate or ombudsman to facilitate/assist in the mediation of concerns expressed by lawyers or members of the public regarding issues of discrimination by judges. The advocate would provide an annual report to the Council for its consideration.
24. That the Privy Council Office and its provincial equivalents create an administrative tribunal training program which would provide orientation on basic law and education on social context and the Charter for its appointees at regular intervals during their tenure in office. The model of the National Judicial Institute social context education program should be considered for the development of a permanent training institute for members of Boards and Agencies and the expansion of provincial judges training programmes.
25. That the CBA undertake to conduct a critical analysis of Statistics Canada data on the legal profession every five years and make it publicly available to all interested parties in the annual *Progress Towards Equality Report*.

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