



BLACK LEGAL ACTION CENTRE

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Executive Director and General Counsel
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LAND ACKNOWLEDGEMENT

We are on the Ancestral Traditional Territories of the Ojibway, the Anishnabe and, in particular, the Mississaugas of the Credit. This territory is part of the Dish with One Spoon Treaty. It is also covered by the Upper Canada Treaties.

Today, Tkaronto, the traditional Mohawk name of this area called Toronto, and its surrounding areas, are still home to Indigenous people. I am grateful to have the opportunity to live and work on this land.

I also acknowledge the many people of African descent who are not settlers, but whose ancestors were forcibly displaced as part of the transatlantic slave trade, brought against their will, and made to work on these lands.

Indigenous sovereignty is deeply and inextricably linked to Black liberation and I will continue to mobilize and take action in solidarity with Indigenous people and communities.

INTRODUCTION

OVERVIEW

1. Introduction
2. Key Terms
3. Historical Context
4. Present-Day Reality
5. Anti-Black Racism & The Law

BLACK LEGAL ACTION CENTRE

BLAC is a not-for-profit corporation set up under the laws of Ontario in 2017.

BLAC's mission is to educate, advocate, and litigate to combat and eradicate individual and systemic anti-Black racism in Ontario.

BLAC provides free legal aid services to low and no income Black people in Ontario who are facing a legal issue directly related to anti-Black racism.

KEY TERMS

**RACE: “RACE” IS A MYTH BUT
RACISM IS REAL.**

**RACIALIZATION: EVERYONE IS
RACIALIZED -- YES, WHITE
PEOPLE TOO.**

**RACISM: RACISM = RACIAL
PREJUDICE + POWER**

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

Intersectionality is the way in which people's lives are shaped by their multiple and overlapping identities and social locations, which, together, can produce a unique and distinct experience for that individual or group, for example, creating additional barriers, opportunities, and/or power imbalances.

Systemic discrimination has been defined as “discrimination that results from the simple operation of established procedures ... none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of ‘natural’ forces.”

- “[A] complex underlying social process which is revealed by incidents, acts and consequences and is recognized by its impact on specific classes of people”.
- “insidious and by very nature as difficult to define as it is to pinpoint”
- “a continuing phenomenon deeply rooted in history and societal attitudes.”
- established through the use of statistics and social fact evidence

HISTORICAL CONTEXT

ANTI-BLACK RACISM IN CANADA

1629 - Earliest documented occurrence of slavery in Canada.

1834 - Under the *Slavery Abolition Act*, the British abolish slavery in all colonies, including Canada.

1783 - 3,000 Black Loyalists who have been emancipated in the American colonies, in exchange for supporting the British, enter Canada as “free” persons. They encounter blatant discrimination and are exploited as a source of free labour.

1850 - Ontario introduces the *The Common Schools Act*, which allows for the segregation of African-Canadians.

ANTI-BLACK RACISM IN CANADA

1911 - The Canadian government drafts an Order in Council prohibiting the landing of "any immigrant belonging to the Negro race." This is in response to Black Oklahoman farmers expressing interest in immigrating.

1946 - Viola Desmond, a Black Canadian woman from Nova Scotia, is arrested for sitting in the white section of a movie theatre; she spends the night in jail and is fined.

1930 - About 75 members of the KKK in Oakville ON, force themselves into the home of a white woman and her Black fiancé. They take her to the nearby Salvation Army, burn a cross in front of their home and warn him to never "consort" with a white woman again.

1983 - The last segregated school in Canada closes.

PRESENT-DAY REALITY

ANTI-BLACK RACISM IN POLICING

Police are more likely to stop and search Black people.

Police are more likely to charge Black people.

Police are more likely to arrest Black people.

Police are more likely to use force against, seriously injure and kill Black people.

ANTI-BLACK RACISM IN BAIL

Judges and Justices of the Peace are more likely to hold legally innocent Black people in pretrial detention (i.e. to deny bail).

Judges and Justices of the Peace are more likely to hold legally innocent Black people in pretrial detention for longer periods of time.

ANTI-BLACK RACISM IN SENTENCING

Black people make up 3.5% of the Canadian population but 8.1% of the federal prison population.

In Ontario, in 2010-2011, Black adults made up 3.9% of the population but accounted for 17.7% of admissions to custody in the province.

In 2011-2012, Black youth made up only 3% of the province's youth population but accounted for 24.1% of admissions to custody in Ontario.

ANTI-BLACK RACISM IN PRISON

Correctional Service Canada is more likely to place Black prisoners in maximum security prisons.

Staff in prisons are more likely lay disciplinary charges for discretionary charges (e.g., disrespect toward staff) against Black prisoners as opposed to offences that require factual proof (e.g., possession of contraband).

Correctional Service Canada releases Black inmates later in their sentence (lower parole grant rates) and is less likely to grant them temporary absences.

Staff in prisons are more likely to place Black prisoners in segregation.

ANTI-BLACK RACISM IN EDUCATION

Black children are overrepresented among the number of students who are suspended and expelled.

In the Toronto District School Board (TDSB), Black students made up 11% of the student population, but 34% of all students who were expelled.

In the Peel District School Board (PDSB), Black students were 2 to 5 times less likely to not graduate; more likely to be in applied, as opposed to academic, courses; and 2.5 times more likely to be suspended.

ANTI-BLACK RACISM IN EDUCATION

Approximately 78% of the PDSB's secondary school suspensions did not fit the parameters of the Ministry of Education's definitions for other incident codes between 2013 and 2019. Approximately 40% of the PDSB's suspensions of elementary students did not fit within the parameters of the Ministry of Education's definitions for other incident codes between 2013 and 2019.

ANTI-BLACK RACISM IN CHILD WELFARE

Black children and families are overrepresented in child welfare systems relative to their proportion in the general population. For example, a 2018 report by the Ontario Human Rights Commission found that “the proportion of Black children admitted into care was 2.2 times higher than their proportion in the child population.”

A 2016 report found that despite experiencing similar rates of neglect, and of physical, sexual and emotional abuse as white children, Black children are 40% more likely to be investigated, 18% more likely to have their abuse substantiated, 8% more likely to be transferred to ongoing services, and 13% more likely to be placed in out-of-home care during investigations.

ANTI-BLACK RACISM & THE LAW

R v. MORRIS, 2021 ONCA 680

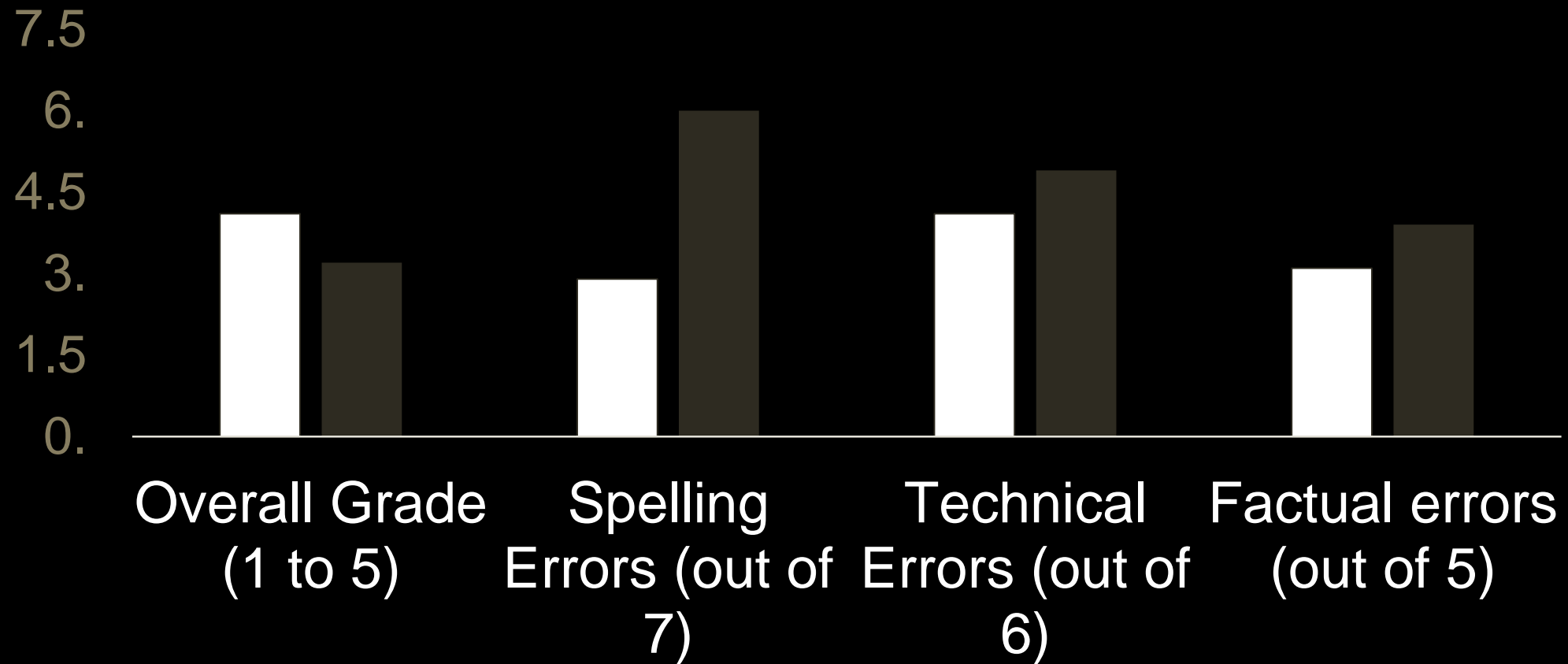
[1] It is beyond doubt that anti-Black racism, including both overt and systemic anti-Black racism, has been, and continues to be, a reality in Canadian society, and in particular in the Greater Toronto Area. That reality is reflected in many social institutions, most notably the criminal justice system. It is equally clear that anti-Black racism can have a profound and insidious impact on those who must endure it on a daily basis ... Anti-Black racism must be acknowledged, confronted, mitigated and, ultimately, erased.

WHICH KINDERGARTENER IS THE TROUBLEMAKER?

“Teachers looked more at the black children than the white children, and they looked specifically more at the African-American boy.”



WHICH LAW STUDENT IS MORE CAPABLE?



WHAT ABOUT JUDGES?

1. Judges hold implicit racial biases
2. Biases can influence decision-making processes
3. Biases can be corrected where:
 - a) judges are internally motivated to avoid making biased decisions, and
 - b) race is explicitly identified and racial context is sufficiently clear (i.e., when materials explicitly identified race, “the white judges probably engaged in cognitive correction to avoid the appearance of bias”)

INTERPRETING AMBIGUOUS EVIDENCE



REMEMBERING FACTS

Participants read two stories -- a fistfight, involving either William (white) or Tyrone (Black); and a termination of employment, involving either Brenda (white) or Keisha (Black).

Participants misremembered relevant and probative facts (including false memories) in a racially biased manner.



R v. STEPHAN, 2019 ABQB 715

"His ability to articulate his thoughts in an understandable fashion was severely compromised by: his garbled enunciation; his failure to use appropriate endings for plurals and past tenses; his failure to use the appropriate definite and indefinite articles; his repeated emphasis on the wrong syllables; dropping his Hs; mispronouncing his vowels; and the speed of his responses."

ELIAS RESTAURANT v. KEELE SHEPPARD PLAZA INC., 2020 ONSC 5457

[33] Generally speaking, a trier of fact can take judicial notice of facts that are “so notorious or generally accepted as not to be the subject of debate among reasonable persons”. To this I would add the observation that, “The existence of anti-black racism in Canadian society is not the subject of debate among reasonable people.

[34] The Landlord’s counsel takes some umbrage at the allegation of racism against his clients, and submits that there is nothing in the record to establish that the Landlord or Manager were racially motivated. Motivation, however, is not the point here. Identifying a family-run restaurant as not family-friendly, and impugning a restaurant-bar for serving “liquor” and having smokers stand outside the premises, all point to a mindset that condemns the minority population for what is considered normal behaviour for the majority population. On this point, the Court of Appeal has observed that although racial stereotyping may not be conscious, it is nevertheless real: “For some people, anti-black biases rest on unstated and unchallenged assumptions learned over a lifetime. Those assumptions shape the daily behaviour of individuals, often without any conscious reference to them.”

RULES OF PROFESSIONAL CONDUCT

- Section 2.1 – Integrity
- Section 3.1 – Competence
- Section 3.2 – Quality of Service
- Section 3.2-2A – Language Rights
- Section 3.2-9 – Client with Diminished Capacity
- Section 5.1 – The Lawyer as Advocate
- Section 6.3 – Sexual Harassment
- Section 6.3.1 – Discrimination

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate ... with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

QUESTIONS