

Out of Sync

Reflections on the Culture of Diversity in Private Practice

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L'auteure enquête sur la place de la "culture" à l'intérieur de la pratique privée du droit et son impact sur les personnes de couleur en général et les avocats noirs en particulier.

It took me a while to even want to recall, let alone write about, some of the experiences I had in practice. While this process has been cathartic, I realize that much of my unwillingness to revisit these experiences stemmed from a self-protective posture so necessary for many women working in the corporate world; we develop a tough, non-stick, resilience that allows us to "roll with the punches." I convinced myself that I had to develop a tougher skin as "they" were not going to change, so I had better get used to the culture of practice.

What is the culture of the legal profession? How does the legal profession look, think, and act? Is the culture of the legal profession a function of who the members of the legal profession are? Can we put a "face" to the profession? In my view, the "face" of the legal profession, especially those most powerful within the profession, is still predominantly White and male.¹ But how is this possible, given increasing racial and sexual diversification of law school students and graduates?

While the face of the law student is also predominantly White, there has been a significant increase in the numbers of women and people of colour enrolled in law schools over the last 30 years (see Wilkins and Gulati). An obvious part of this success has been the conscious attempt of many law schools to diversify its student body. While the doors to the inner sanctums of the elite bar continue to creak open slowly, a large percentage of Black students² will, like their White counterparts, spend at least some of their careers in large law firms or the legal departments of large corporations (Wilkins). I, too, have benefited from this reality. I joined a large firm as a litigation associate immediately after having finished the bar admission course.

My personal experiences, as well as the existing literature, reveals that attempts to diversify elite-firm practice have not been as successful as in law schools generally.³ My focus shall be the large elite firm as despite hiring significant numbers of students of colour, a surprisingly small number of minorities, particularly Blacks, become and remain associates with such firms.

The percentage of lawyers of colour in the United States has increased in recent decades from approximately 1.3 per cent in 1970, to 5 per cent in 1980 and 7 per cent in

1990 (Kornhauser and Revesz). The situation in Canada is remarkably similar (Canadian Bar Association). However, despite a substantial increase in the number of Black students attending law school over the last 40 years, Blacks still constitute a very small percentage of the associates and partners in the largest firms in Canada and the United States (Wilkins and Gulati).⁴ Although there has been growth in the absolute number of Black lawyers in elite firms, the percentages remain shockingly small and have remained relatively constant over the last 15 years (Wilkins and Gulati).⁵ Moreover, in many areas these percentages lag behind those achieved in both the public sector and the private sector (Wilkins and Gulati).⁶ Additionally, a large percentage of these associates, especially Blacks, leave elite firms prior to making partner.⁷

Elite practice

I practised at one of the largest Canadian law firms. At the time I entered practice I was the only Black lawyer within the firm. Of course there were numerous (by comparison) Black support staff. However, of the lawyers, I was alone. Not that being the only one is the sole criteria by which I judge the culture of elite practice or a minimal appreciation of diversity concerns. In fact, my firm recognized this problem—the inability to hire and keep lawyers of colour was an issue of concern. Additionally, I recognize that I was privy to benefits as "the only one"—specifically, I had the opportunity to shape policy in matters previously dealt with on an *ad hoc* basis by the firm, i.e., attendance and membership in Black professional associations. The other side of this privilege, however, is that I bore the burden of becoming the barometer of Race for the firm. Specifically, questions or concerns about the racial implications of decisions were often brought to me, even on an informal basis.

I do not point the finger at my firm alone. Indeed, based on the 1997 *Canadian Law List*, there were approximately 23 Toronto firms that could be classified as "elite." These

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23 firms were comprised of 3,117 lawyers, of whom only 20 were Black. This represents six-tenths of one per cent. Further, of those 3,117 lawyers there is only one Black partner (Baxter). The recent Canadian Bar Association report addressing racial equality in the Canadian legal profession, cites equally disturbing data.

Clearly, my firm was just one, among many firms, that is not reflective of the composition of graduating lawyers, let alone the racial diversity of the Canadian community

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at large. Even during the 1980s, when the largest law firms experienced unprecedented growth in both size and profitability, the percentage of Blacks barely increased. By way of comparison, the percentage of women in large firms increased significantly during the same period. In fact, there is ample evidence to suggest that Black lawyers in elite law firms face greater barriers to entry—and even more clearly to advancement—than their White contemporaries (see Bates and Whitehead).

Some are quick to respond by saying that this discrepancy reflects either the scarcity of qualified Black applicants or a disinterest

amongst Black applicants. I disagree, however, as there is considerable evidence of a qualified pool of candidates. Indeed, there is evidence of a significant flow of Blacks into and out of elite firms. Therefore, I attribute these discrepancies to the “culture” of private practice generally.

Private practice and the cultural context

Given the legacy of discrimination, in all its many unfortunate forms, it is not surprising that the legal profession would fall victim to the same prejudices as does society generally. Accordingly, many of my comments are relevant to other discourses and disciplines which have equally been shaped by patriarchal and colonial ideals of subjectivity. Certainly, overt racism still exists. As numerous studies have illustrated, there are still a substantial number of Whites who hold (consciously or unconsciously) discriminatory and stereotypical views about Blacks.⁸ However, perpetrators these days are generally far more sophisticated and, as such, racism often manifests itself in less visible, structural forms. Accordingly, obvious acts of racism are, thankfully, less frequent; however, systemic racism is still well entrenched. Much of what persons of colour experience on a daily basis is a bombardment of what has been referred to as “micro aggressions” (Davis). That is, a myriad of insults, threats, and indifference which constitute “subtle, minor, stunning, automatic assaults by which persons of colour are unremit-

tly stressed and kept on the defensive, as well as in a psychologically reduced condition” (Pierce).

Racism in the legal profession, like society generally, is experienced in a panoply of ways including exclusions, omissions, seemingly innocuous comments with devastating results, mockery, jokes, assessments, attitudes, scrutinies, curiosities, assumptions and of course, words, deeds, and actions (Canadian Bar Association). The fake Jamaican accents, curiosity about one’s hair or body-type, the “soul-man handshakes,” and attempts to “talk Black” in one’s presence are simple, not-so-subtle examples taken from my few years in practice. I did not deal with these situations by naming racism directly. It has been my experience that once a Black person tells a White person that what they just said or did was racist, all dialogue stops and denial begins. Instead, my strategy was to either use humour to diffuse the situation or to simply ask the person “what they meant by that.”

Considering that racism is often covert and one-on-one, only the victim and the perpetrator are privy to it. The subtlety of offence and abuse are often such that even the victim may come away from the exchange questioning the nature of the incident. Even when there were numerous White witnesses to racist conduct or comments, my experience in practice revealed a tendency of even “sympathetic” Whites towards silence or the easy route of “after the fact support.” I can recall numerous instances when partners and associates came into my office, closed the door and asked in exasperation “I cannot believe (s)he just said that!” or “you handled that well—I was just so mad I couldn’t say anything...” While there were numerous “conscious” or sympathetic White lawyers in my firm and in practice generally, few were willing to openly address racism in the heat of the moment. Their refusal to acknowledge the larger institutional pervasiveness of racism often left me feeling more alone and vulnerable.

Further, through insensitivity, ignorance, or wilful blindness, perpetrators may be unaware of the racist character of their own words and actions (Delgado 1988). Thus, racism resembles other offences against humanity, whose structures are so deeply embedded in culture as to prove extremely resistant to being recognized as forms of oppression (Williams). The law firm and lawyers generally, are part of and, hence, not immune to this culture.

One does not have to believe that overt racism is widespread in elite firms to conclude that these often subtle predispositions are sufficient to provide the grist for the dynamic described by institutional racism theories. Moreover, to the extent that some of the hiring and promotion policies followed by certain corporate firms bear little or no relation to the substantive qualifications of performing the job of a lawyer, one can legitimately ask whether these practices actually serve a more insidious purpose (Wilkins and Gulati).

It is precisely this “culture” of racism that is so hard to fight, both in and outside private practice. Like all culture,

we are assimilated into its practices and it is easy, even for people of colour, to fall prey to the tides of conformity. While practising I quickly became aware of how lethal to one's career and tiresome it was to be the only one constantly raising issues, to be the only one who does not wish to participate in an activity, or to be the only one who questions the approach to a given problem or the language used. A simple example is taking issue to the use of the word "niggardly" in a legal document or discomfort with the expectation that I, too, would uncritically applaud theatre such as *Showboat* and *The Al Jolson Story*.⁹ It was even more disconcerting to be placed in the situation of having to refuse to be on a case when it appears that the only reason for your involvement is your colour.

Even if a person of colour is encouraged or seconded in their effort to resist racism, those offering support often have no personal stake in the outcome. It is, thus, easier for them to divest themselves of these issues and their results. When push comes to shove, it is often the sole responsibility of the person of colour to advocate for change or to face the consequence of the lack thereof. It is simply easier to hold one's tongue, particularly if one has ambitions of becoming a partner: easier but equally, if not more, debilitating.

The effects of having no validation or positive feedback should not, however, be underestimated. It is often through conformity or silence that one eventually caves into the culture of discrimination or makes silent plans to move elsewhere where the culture of discrimination is not so imbedded, or is at least acknowledged and/or resisted. It is my sense that much of the high attrition rate for Black lawyers has to do with precisely this culture.

Advocating race consciousness is unthinkable among some White liberals unless their own self-interests are somehow engaged. Tragically, this is sometimes the case for persons of colour as well. However, in terms of power and resources the impact of White complacency is particularly devastating. Whites often define their position on the continuum of racism by the degree of their commitment to colour-blindness. Accordingly, the more certain one is that race is never relevant to any assessment of individual abilities or achievements, the more certain one is that racism has been overcome (Flagg). Of course, this is a matter of practice and principle, as well as a product of historical experience.

Given the historical legacy of race-specific classification which was primarily used as a means of maintaining White supremacy, many liberal Whites react with "colour-blindness" in order to equate racial justice with the disavowal of race-consciousness criteria or classification. While this is an understandable oversimplification, the pursuit of colour-blindness progressively reveals itself to be an inadequate social policy if the ultimate goal is substantive racial justice (Flagg). Indeed, advocating for colour-blindness is tantamount to advocating for the status quo of racial inequality since inevitably colour-

blindness means maintenance of eurocentric ideals of subjectivity.

As evidenced by various reports from Canadian and American bar associations, Blacks and other persons of colour continue to inhabit a very different position in the legal profession than Whites. Accordingly, racial justice cannot be attained absent the recognition of the social significance of race. Therefore, Whites' increased colour-conscious attention to racialized perspectives and experiences are a crucial ingredient in the effort to eradicate the negative difference which colonial conceptions of race have made in this society. Whereas Whites often take White skin privileges for granted, and thus, do not inquire into the fact that they are neither "raceless," nor perspectiveless, for many people of colour, if not most, "race mediates every aspect of our lives" (Lopez 3). There were not many days in my practice when I was not made aware of my colour: whether that was being mistaken for a secretary, questioned about my presence in the barristers gowning room, recognizing the surprise on the opposing lawyers' faces when I walked into discoveries, or even being congratulated on my obvious achievement in the face of adversity.

There is a tendency to align race-consciousness with consciousness of Blackness or of one's consciousness as a minority. Barbara Flagg notes that the most striking characteristic of Whites' consciousness of Whiteness is that most of the time, they do not have any. She calls this the transparency phenomenon: the tendency of Whites not to think about Whiteness, or about norms, behaviours, experiences, or perspectives that are White-specific.¹⁰ This tendency to focus attention in matters of race upon the racialized is another element in the myriad of factors which comprise racist behaviours and attitudes. It is akin to the phenomenon widely known as "blaming the victim" as the focus is placed upon those who bear the brunt of the aggression and abuse. Little, if any, attention is paid to the character, emotions, motives, past or present, of the perpetrator or their families. Hence, the perpetrator is not dissected, analyzed, and revealed in the same way as are victims of racism. Instead of recognizing their functions within the structures of racism, such perpetrators are today regarded as somehow aberrational, a surprising and totally randomized actor. The way this played out in practice was simply the tendency to dismiss racist conduct as the singular deviance of a particular lawyer and not to recognize that in a given department, for instance, there seemed to be a preponderance of such deviance. Instead, I as the victim, was often tutored on how to deal with a

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problematic partner or told to avoid certain individuals.

This transparency is often the mechanism through which White decision-makers, who disavow White supremacy, impose White norms on Blacks and other persons of colour. Transparency inevitably requires assimilation, even when pluralism and substantive racial justice are the articulated goals. Specifically, I was expected and encouraged to deal with my racist peers or bosses on their terms—they were not taught how to deal with me on any level.

Together with colour-blindness, transparency creates a culture of silence around race and racism. It is my sense that this culture of silence is the norm within the legal profession. This “don’t ask, don’t tell” approach to racism results in a “if you don’t rock the boat you’ll be alright” philosophy. Therefore, if my colour is never a factor implicit in how I am judged, and if everyone else is White, and if their Whiteness does not have any significance, then any concern over the role of race will rarely be voiced and if voiced, will seldom be understood. White-skin privilege must be recognized and addressed if the culture of private practice is going to change towards greater diversity.

Along with transparency is the tendency for Whites to analogize racism to other forms of discrimination, for instance, sexism, with which they may be more familiar. This has been described as the unconscious tactic of taking centre stage, thereby directing attention away from the concerns of persons of colour and instead focussing on one’s own concerns (Grillo and Wildman). While, for those less familiar with racism, drawing such analogies may be helpful in understanding the nuances of race, Whites must be cautious in their use of such comparisons as these tendencies operate to take the voice away from victims of racism while at the same time minimizing the experiences of persons of colour. Without fail, whenever I mentioned race at my firm, the immediate response was that the firm used to be a hard place for women too, but that the situation had greatly improved over the years. Inevitably the lawyer would recount who the first female partner was and detail how a significant number of women were practising and had families too. These inclinations to change the focus or speak for others, even if well intentioned, may result in silencing and censure. In addition, such comparison does not account for the compounded marginalization experienced by lawyers who are, for example, Black and women. In the context of elite-firm life such censure takes on an added burden given the other mechanisms by which associates are silenced (for example, fear of not making partner, exclusion from files or functions, decreased client contact, and exclusion from networks).

Tokenism

Given the small scatterings of persons of colour working as lawyers throughout the legal profession, our presence

draws attention to a past in which we were completely absent and to a present in which we are virtually absent. This is one of the most obvious and disturbing aspects of the “culture” of elite-firm practice. This limited presence manifests certain attitudes, rationales, perceptions, and actions to which these “chosen few,” as I shall call them, are subjected. Curiosity, scrutiny, tokenism, and censure are but a few elements of the “culture” of elite practice. Additionally, persons of colour who are practising in once homogeneous environments face a culture lacking recognition of the intersectionalities of social subjectivities.

“Limited inclusion of persons visibly different from the dominant group is the essence of tokenism” (Greene 84). This begs the question of whether it is worse to be the only one or for there to be none at all. I think the answer to that question is obvious. Hopefully, with increased dialogue, acceptance, and understanding, the legal profession will advance towards racial equality and we can expect to see a significant change in the representativeness of the profession. People of colour have, however, been hoping for this for sometime.

Currently, there are few law firms, other than smaller firms operated and owned mainly by persons of colour, which employ more than a few persons of colour as lawyers. This reality requires explanation. It tarts those operating within the context of the larger firms or government offices with implicit or explicit questions about the legitimacy of their presence (Greene). These questions are asked by our fellow community members, by our colleagues and, worst of all, by ourselves. In fact, the culture of elite-firm practice causes some persons of colour to forgo even attempting to join such firms or results in the hasty departure of junior associates. While elite-firm practice undoubtedly carries numerous benefits and perks, some would-be candidates, from all walks of life, opt out of a culture of practice that they consider too conservative.

Thus, there is a recurrent problem of the high attrition rate of minorities, particularly Blacks, from private practice (Segal). Virtually all the Blacks who start at elite law firms leave before becoming partner (Wilkins; Segal). I think a good part of this stems from a “culture clash” which has also been described as simply “... not fitting into a predominantly White law firm” (Stiles qtd. in Segal 55). Surely, it also stems from the added stress of being virtually alone and culturally isolated in one’s work environment. Of course, there is also cynicism about the prospects of making partner, given the dominant culture and the “face” of the partnership.

The reality must be stark indeed for such traditionally conservative institutions as the Law Society of Upper Canada to report the existence of “systemic discrimination and inequality within the legal profession.” Similarly, the Canadian Bar Association recently reported on racism in the legal profession after having struck a working group to investigate this pressing issue. The American Bar Association has also formed commissions on minorities with

the hope of increasing elite-firm hiring and retention of minority lawyers. Additionally, at least 13 states, county, and municipal bar associations have launched similar efforts (Committee on Minority Employment).

The high visibility of the “chosen few” results in these individuals bearing, or perceiving that they bear, more performance pressure than members of the dominant group (Greene). Accordingly, the culture of elite practice has added pressures and pitfalls, as well as responsibilities, for persons of colour. We are also keenly aware that our performance may impact on the ability of other persons of colour to enter and be accepted into the profession, or the specific firm in question. There is recognition among many persons of colour that the reality of racism includes the tendency to paint with a broad brush and to generalize between and within groups. A simple example of the tendency to generalize was the need felt by many of the lawyers in my firm to explain away the fact that there were no other Black lawyers in our firm. They would tell me of the “deficiencies” and “shortcomings” of the previous Black students, who were not hired back, and warn me against making the same mistakes. I was never cautioned about following in the footsteps of the White students who had not been retained. As such, many of us are aware, even on a subconscious level, that we are not functioning only for our *own* self-interests, but also for those who may follow. We also pay homage to, and try to live up to, those who have come before, for they paved the way, and also since we will be judged against those same pioneers.

The presence of token individuals masks sexism, racism, and just about any other “ism” at issue. With regard to race, the limited presence of “the chosen few” enables the rationalization and justification that there is a “coloured” presence within the criticized firm or department. Again, it is this culture which prevents some persons of colour from even thinking of joining elite firms—fear of being referred to, verbally or otherwise, as the proverbial “Black friend” whose association is used to deflect and qualify racist conduct. Being paraded for recruitment, progressive functions and other impressive, self-congratulatory occasions inevitably becomes tiresome. While I was always happy to speak with students of colour who were being interviewed, my role was never as official interviewer, but instead as unofficial racial consultant. In this way, I was routinely brought into the process to alleviate students’ concerns and to speak with them about my own experiences in practice. I was never, however, given the opportunity to officially participate in the selection process.

I do not wish to suggest that there are no benefits that accrue to the “chosen few” and their communities from breaking down barriers and being present and visible within an organization; working from within as well as outside, infusing the firm with one’s own personality, community, and history. In fact, it is often cause for great celebration. Additionally, I recognize the privileged societal position that lawyers generally occupy, let alone lawyers in

elite firms. Admittedly, change has to start somewhere and small steps are better than no steps at all. However, the token presence of racialized groups simultaneously symbolizes inclusion and virtual exclusion and, accordingly, the chosen few bear extraordinary performance burdens to rebut presumptions of inferiority and to justify their presence. This also results in the reinforcement of homogeneous notions of Blackness as underrepresented lawyers are called upon to “speak for their race.” Admittedly, these burdens might operate within our own psyches as we often place more pressure on ourselves than others could ever place upon us (Baxter). Perceived or real, however, such pressure is tangible and oppressive.

Curiosity and scrutiny

One of the inevitable ramifications of the underrepresentation of Blacks in elite firms is the curiosity and scrutiny which our presence engenders. Ironically, “we are the object of curiosity and scrutiny whenever we are present, and the subject of rationalizing explanations when we are not” (Greene 82).

There is much anecdotal evidence of the exaggerated scrutiny, hyper-curiosity, and political tests to which the “chosen few” are subjected (Post). For instance, it is not uncommon for racialized legal professionals to be engaged in conversations concerning controversial or non-controversial topics alike. In this way, the “chosen few” are often forced to participate in discussions and debates which they would otherwise not choose to be a part of, given the context or the nature of the person who engaged them in conversation. These conversations are often not-so-subtle attempts to test the person of colour, to glean their commitment or opposition on subjects relevant to race. Often such exchanges lead to unhappy resolutions for the person of colour as the situation and context presents little opportunity for true exchange and understanding. A very simple analogy would be the “here we go again” dread felt when I was engaged in conversations about the O. J. Simpson criminal law verdict or when asked to answer for any number of “black crimes.” I felt similar reluctance to participate when prompted by a partner about his observations of Jamaican women having children out of wedlock, or another partner’s justification of his wife’s fear of Black men. These are but a few everyday examples, spoken with sincerity and no mal-intent on the part of the White lawyers involved.

Admittedly, there is a fine line between collegiality and open discussion. However, the burden which is placed upon the “chosen few” in responding to such requests for comments and “answers” can be stressful and frustrating. Given the context in which the “chosen few” operate, true freedom of expression in assessing certain topics is not possible, especially if the topic is controversial and/or personal in that it impacts directly on the person of colour and their community.

This withdrawal of oneself relates to censure and the inevitable "spirit-murdering" (Williams) which results. By spirit-murdering, I mean the psychologically reduced state identified by scholars which results when persons of colour battle to maintain their perspective and themselves. Specifically, at times the racialized person's day-to-day persona in the professional sphere is not necessarily who they might be in the comfort and safety of their communities. Due to demand, the "chosen few" may find it more convenient to leave their true selves at home, as one learns to keep that which is not understood, nor necessarily valued, nor seen elsewhere locked away in a safe place. The profound sense of alienation and isolation which results is inevitable when one is forced to "disappear each morning in order to re-appear at work as the lawyer devoid of race, gender, sexuality, and history" (Guinier 95). The experience of being Black in a predominately White firm can be isolating and one often experiences the phenomenon of being an inside-outsider.

In the culture of the elite law firm "who you are" matters very much when you are in a position of being the "only one" or one of "the chosen few." Questions about educational background, employment history, and/or "what one's parents do" from associates and partners alike illustrate the scrutiny brought to bear upon the qualifications of persons of colour. Upon joining the firm I recall numerous questions which sought out my socio-economic status and confirmation of my "fit"—"what does your father do?" "did your father attend university?" "where were you born?" "you have no accent, when did you move to Canada?" "what does your husband do?" "did your sisters go to university?" The entrenched patriarchy was revealed through a lack of desire for information about my mother.

This phenomenon has been noted by McCristal Culp who stated that, as a Black law professor, on the first day of classes, he was typically greeted with the question of "where did you go to law school?" which he translated as "what gives you the right to teach this course to me?" (543). Therefore, after having analyzed the greater scrutiny which he had to endure from his students, McCristal Culp concluded that who we are matters as much as what we are and what we think.

Finally, elite-law firm culture also scrutinizes the physical appearance of Blacks. I have spoken with numerous would-be candidates for legal positions in law firms struggling to "whiten" their Black features or attributes i.e. "should I take my braids out?" "what will they think of my shaved head" "I guess my dreadlocks will not go over well." This is yet another form of silencing—the attempt to appear "neutral" (i.e. white) and the disappearance of self.

Censure

The desire of persons of colour to confront and critique

society's norms is plainly at odds with our historical roles and status and with the culture of the elite law firm (Greene). Indeed, it is often at great risk to our personal, social, and professional lives that we choose or are forced to speak up—either for our own sake or the sake of others. That is but one aspect of "censure."

Another aspect of censure which derives from the context of the elite law firm is self-censure. By this I mean the challenge and difficulty faced in speaking up, "acting differently," and watering down ones observations due to the inevitable realities of the culture of the firm. Of course, one's observations and reflections on context are crucial to this "self-censure." Indeed, it is very easy to question one's own observations and assessments of situations when you are the only person who interprets a situation in a manner which would call racism on its face.

I recall telling an associate colleague that I was concerned at suddenly being put on a case where it appeared to me that the only reason for my attendance was the combination of my race and sex. The response was that my refusal to participate in the case had really insulted and hurt the feelings of the partner involved. Similarly, when I spoke to an associate about the hollowness of my victory in obtaining a dismissal of a case brought by a young black unrepresented female plaintiff in a civil file, the response was an irritated "Blacks file frivolous suits too you know!" Another form of censure, which is quite persuasive in the legal profession, is the requirement that the offended not offend the offender. By this I mean the reality which exists for many racialized professionals which requires that they react "appropriately" to racism. In this way, the person of colour is forced to react, or not react, in a way which does not ruffle the feathers of the perpetrator or create discomfort for those who might have witnessed the "incident."

In these circumstances the culture of the firm mandates that a victim of an "ism," racism in particular, not wear the scars or tears of the assault on her sleeve, face, or anywhere else where the perpetrator, or his colleagues may notice and, hence, be discomforted by it. The comfort of Whites is thus placed above the pain of the victim, even to the point of becoming a criterion of employment. I have witnessed incidents where a Black lawyer's reaction to offensive comments from a White lawyer was deemed inappropriate as the reaction was too obvious and angry for the White witnesses. Had the victim allowed the comments to pass or laughed at the comments the response would not have become the object of scrutiny. Instead the question was asked, "How would this person be able to deal with racist clients?" In this way the racism of the perpetrator and the hypothetical client was not problematized, but the reaction to the offensive comments was. Instead, the question should be asked, "how can we, the firm, support our lawyers of colour in dealing with racist clients?"

Consciousness-silencing

The culture of elite law firms encourages what Guinier calls “self-protective silence.” Indeed, Guinier’s assessment of what I like to call “speaking two languages” is insightful and indicates how persons of colour often lead dual lives in their struggle to perform well on the job, without losing themselves entirely in that struggle:

I revealed myself in context, talking about my family, my colleagues, my adversaries and my clients. In all my professional roles, I experience what Mari Matsuda called “multiple consciousness,” meaning the bifurcated thinking that allows one to shift back and forth between one’s personal consciousness, and the White male perspective that dominates the legal profession. Multiple consciousness allows us to operate within mainstream discourse and “within the details of our own special knowledge” so within our special knowledge, producing both *madness and genius*. (Guinier 96)

Clearly this process can be psychologically and spiritually debilitating. Such bifurcated thinking is not unusual—many of us have been doing it since childhood—shifting back and forth between our consciousness as persons of colour (mainly reserved for oneself and one’s support group) and the White consciousness required for survival in our professional lives. Unless specifically called upon to reveal our “perspective,” we rarely expose that part of ourselves which we know may not “fit” within the culture of what is acceptable in the legal profession at large or the firm in particular. Accordingly, “even while performing insider roles, many still function as outsiders. Thus, elite-firm culture often results in insider privileges existing in conjunction with outsider consciousness” (Guinier 96). This, in turn, fuels the elite-firm culture of colour-blindness, as assimilation, and leaving a part of ourselves at home, increases the level of acceptance of persons of colour—an acceptance based on similarity, not on acceptance or appreciation of difference from the norm. Indeed, the model of diversity most practised at elite firms seems more based upon adding colour to the mix, rather than creating mutual respect, cultural dialogue, or true diversity. Therefore, due to the pressures of racism, racialized persons often become complicit in their own oppression.

Failure to appreciate intersections

The issue of intersectionality can be summed up from the title of the well-known Black women’s studies book, *All the Women are White, All the Blacks are Men, But Some of Us are Brave*. Specifically, there is a tendency in firm culture to treat race and gender as mutually exclusive categories of experience and analysis.

Kimberle Williams Crenshaw states that “because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated” (140). Failure to appreciate intersections in elite-firm culture results in the requirement of choosing, for example, whether one is Black or a woman. The result is a culture which requires a denial of a part of one’s person; an attempt to carve neatly from one’s holistic experience a discreet and fragmented explanation for what and why one has been subjected to discrimination. The point is that Black women, and women of colour generally, experience discrimination in any number of ways which are distinct or magnified beyond the “isms” generally experienced by white women.

Elite-firm culture must come to grips with the fact that Black women, for instance, can experience discrimination in ways that are both similar to and different from that experienced by White women and Black men. I recall speaking with a colleague about a lawyer that I believed was being sexually inappropriate with me due to my race. My colleague was puzzled and thought it was a clear instance of sexual harassment. It was, however, more complicated as the language used by the lawyer clearly implicated my “racial” difference by articulating colonial stereotypes of Black female sexuality.

Black women sometimes experience discrimination in ways similar to White women’s experiences; sometimes, they share very similar experiences with Black men. Yet often they experience double-discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex, and sometimes they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women. (Crenshaw 154)

The particularly insidious discrimination experienced by women of colour is reflected in the dismal statistics concerning our entry into practice. The reality for Black women in elite firms is particularly stark. According to the 1998 American Bar Association Report, *Miles to Go: Progress of Minorities in the Legal Profession*, 85 per cent of minority women leave predominantly White firms before their seventh year of practice (qtd. in Segal 56). This is compared to approximately 75 per cent of all associates who similarly leave (Segal 56).

Furthermore, Black women in elite firms face the same challenges as their Black male and White female counterparts—difficulty generating business, lack of mentoring, and isolation. These problems are reflected in the data which indicates that only “47 per cent of minority women law graduates enter firms, compared with about 52 per cent of minority men, and 57 per cent of Whites” (Segal 56).

Failure to mentor Black lawyers

Black lawyers frequently complain about the absence of mentors. Such relationships are critically important to the success of any associate, let alone persons of colour.

A good mentor will look out for you, guide you and counsel you. Most importantly, your mentor will ensure that you receive the essential training required to succeed in [elite law firms]. *This is key.* You cannot succeed in [elite firms] if you have not received the necessary training. By the time an associate comes up for partnership, the associate must have acquired the necessary skills to function as a partner. The associate must have been exposed to a variety of challenging assignments that allowed him or her the opportunity to develop an area of expertise, sound legal judgement and the ability to take charge of matters. Most importantly, the associate must have been exposed to clients to develop the necessary client-relations skills. Is this unique to Black associates? No. It is true for all associates, regardless of colour. (Baxter 277; emphasis in original)

The difficulty for Black associates is that mentors often choose to mentor people with whom they feel most comfortable. The culture of the elite firm, however, is such that Black lawyers challenge the comfort level of White lawyers. Partners rely on a combination of their own subjective judgements to determine who to mentor and train. Therefore, the problem is that for Blacks, the path to partnership breaks down when connections within the predominantly White hierarchy are not built up. "To succeed you need relationships of power, influence, and control" (Henderson qtd. in Segal 54). Informal selection processes operate to deny certain associates access to the best training. Just as the culture of the elite firm makes it more difficult for Black associates to be hired in the first place, so too is this nourishment and support withheld.

Conclusion

I do not mean to underestimate the complex factors that run into and out of racism in the legal profession and in society at large. Additionally, I acknowledge the complex intersections of race, class, sexual orientation, and gender which I have merely alluded to. The factors which call for study and exposition are numerous and voluminous; books could, and undoubtedly will, be written on discrimination in the Canadian legal system. I hope I have identified, despite brevity, some of these factors.

As noted by Delgado, much of the analyses are summarized by the trite question, which many of us have been asked naively or almost incredulously, "do you really, in this day and age, suffer on account of your race?" (1987, 304–305). This question, simple as it seems, encapsulates

the belief of many Whites that racial problems have been resolved. The posing of the question itself, however, evidences a subtle form of racism. When faced with this question, I have often found it difficult to respond as one does not know where to start—I have often used the analogy of trying to explain that the earth is round to someone who believes that it is flat. Where does one commence one's explanation—why must one explain? How does one explain to someone who obviously is starting from a wholly different and opposite perspective that their assumption is unfounded and not based in my/our reality. The temptation to throw up one's hands and ask, "why bother" is challenging to overcome at times.

We must, however, be vigilant in ensuring that principles of diversity, egalitarianism, and humanitarianism continue to be valued and encouraged in the legal profession and, similarly, racism and prejudice confronted and discouraged. In this way, I hope the legal professions' understanding of race and racism will continue to evolve such that addressing racism is no longer analogous to explaining that the earth is not flat.

The legal profession must work towards a recognition of the negative consequences of racism on all of its members, its discourses, and the profession as a whole and act quickly and powerfully to redress such negative behaviour and attitudes. This necessitates an understanding and recognition by Whites of what racism is and how it operates in all its many manifestations. This also requires that all legal professionals accept that they have a role to play in bringing about change. This burden cannot and should not be borne by persons of colour alone.

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¹See Segal; Kornhauser and Revesz; Law Society of Upper Canada; Baxter; Wilkins and Gulati. I recognize race as a social construct, as opposed to a biological and inherent indicator. The reality that terms such as Black and White are social constructs, not genetically distinctive branches of humankind, has been recognized by scholars. Racism, like race, has its genesis and maintains its vigour in the realm of social beliefs. Insofar as I make use of terms such as "Whites" or "Blacks," I use these terms in the sense that they are generally understood.

²The focus of this article is largely upon Black students and lawyers. Accordingly, I do not treat the issues in this article as merely a subset of the problems afflicting minority lawyers, persons of colour or women and minorities generally. There are, of course, numerous similarities and shared experiences—in these instances I have attempted to be more general. However, there are differences as well that necessitate careful scrutiny. See Hacker.

³Of course I recognize that law schools are still not representative institutions, either in terms of faculty or students.

⁴Given the pool of law school graduates, there can be little doubt that Blacks are underrepresented in elite firms. Since the mid-1970s, Blacks have consistently constituted more than six per cent of the students enrolled in American law schools. Even adjusting for the amount of time it takes to enter the legal profession, this percentage is much higher than the current percentage of Black associates and partners in elite firms. For instance, according to the *National Law Journal*, as of 1995, there were more than 1,641 Blacks working in the largest 250 law firms in America, of whom 351 were partners (qtd. in Wilkins and Gulati 497, 504). Students of colour accounted for 8.4 per cent of all law students in 1977, 8.8 per cent in 1980, 10.4 per cent in 1985, 11.8 per cent in 1988, 13.6 per cent in 1990, and 17.9 per cent in 1993 (Kornhauser and Revesz 860).

⁵In 1981, the percentages for Black associates and partners were 2.3 per cent and 0.47 per cent respectively; in 1989, 2.22 per cent and 0.91 per cent; in 1991 2.0 per cent and 1.1 per cent. For instance the April 29, 1996, *National Law Journal* indicates that as of 1995 Blacks constituted just 2.4 per cent of the lawyers in elite firms, and just over 1 per cent of partners in these firms (qtd. in Wilkins and Gulati 502).

⁶For instance, minorities constitute 17.2 per cent of the lawyers employed by federal, state, and local government agencies in the Chicago metropolitan area, as compared to the 3.6 per cent of the attorneys in large Chicago firms. Further, at supervisory levels minority lawyers occupy 19.5 per cent of the supervisory positions in these government offices, as compared to 1.6 per cent of the partnerships at large Chicago firms. Additionally, Blacks occupy 2.5 per cent of all the executive or management level jobs in private sector industries.

⁷Indeed, one might ask whether there continues to be a "glass ceiling" that prevents Blacks from attaining high-status positions within the corporate bar?

⁸See, for example Feagin and Sikes.

⁹Throughout the tenure of both *Showboat* and *The Al Jolson Story* in Toronto, the Black community was vigilant in demanding a critical look at both shows along racial lines.

¹⁰Jerome McCristal Culp Jr. describes this phenomenon as the homogeneity myth—we are all the same with the same essential experience.

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PENN KEMP

Beyond the Pale

So thin a teenager en route
reads nondescript Romance,

flesh stretched across a flat
skeletal structure wrapped

in tight black and revealed
though the crypt is closed.

Cheek bones to die for, this
Egyptian mummy in its case.

At issue: a thin-skinned pal-
impsest of subcutaneous tissue.

Fingers grasping the subway
ceiling strap, hold on, hold fast

to the norm, to the Norms.

Berlin, 1945

Tenderly as a lion licking fresh
kill, she combs her children's cow
licks down, bids them tidy bunks
and toys, they may choose one to
bring along, dress smartly now &

hurry, your father will be back any
minute. There's no time left, none
at all for any of her customary in-
dividual admonishments before

she must administer the spoonfuls
that will lay them all down to sleep
forever. Helga, Holde, Helmut,
Heide, Hedda and Hilde. So pretty

to be raised like porkers, pink for
slaughter.

Penn Kemp's poetry is published earlier in this volume.