

## Access to Justice

# Addressing systemic racism in legal profession | Angelique EagleWoman

By **Angelique EagleWoman**



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(January 4, 2019, 11:36 AM EST) -- In the legal profession, we are often concerned about access to justice and ensuring equal justice for all. For Indigenous peoples, a variety of past policies and attitudes impact what is experienced today in legal actions and processes. One of the challenges facing the legal profession today is understanding what is systemic racism and how to bring about positive change to realize true justice.

As a legal educator, I have recently delivered several presentations titled, "Introduction to Cultural Competency for Lawyers." Over the past 15 years, the definition of cultural competency has been refined. Key components of cultural competency for lawyers include: 1) examination of an individual's own attitudes and values; 2) understanding the need for cross-cultural communication and appropriate action; 3) the ability to respect and honour the language, beliefs, interpersonal styles and behaviours of those from a different cultural background; and 4) the requirement of ongoing learning due to the variety of cultural interactions possible in the legal profession.

As lawyers, the *Rules of Professional Conduct* in each jurisdiction add another layer of obligation. For example, the Law Society of Ontario Rule 3.1 Competence requires the ability to ascertain client objectives; advise the client on appropriate courses of action; and communicate effectively which all relate to effective cross-cultural communication when a client is of a different culture. Further, the judge or opposing counsel may also differ culturally which further underscores the need for this type of skill.

In examining one's own attitudes and values, it is important to start from the idea that all humans have forms of conscious and unconscious bias which informs preferences, hobbies, attitudes, interests and social interactions. Family socializing, media images and reports, movies, songs, literature and all types of societal messages can form unconscious biases and stereotypes. Biases may include any number of categories, such as cultural background, race, gender identity, physical ability, age, language proficiency, weight and religion.

Biases can work both positively and negatively for others. If you have the unconscious bias that you hire based on a feeling of familiarity, then your unconscious bias will positively impact applicants who make you feel comfortable or like your own family. For the applicant of a different cultural background, this unconscious bias will negatively impact his/her chances of being hired. Only by bringing your own unconscious biases to light will you have the ability to make a change and open up employment opportunities you are engaged in.

When negative biases toward a particular group of people are based on beliefs about the group's characteristics as a race are taken to an action level, then systemic racism is the result. In the 1995 Report of the Commission on Racism in the Ontario Criminal Justice System, the following definition was provided for systemic racism: "By systemic racism we mean the social production of inequality in decisions about people and in the treatment they receive."

Further, the commission highlighted that "[r]acial inequality is neither natural or inherent in

humanity.” The report identified the framework holding systemic racism in place as threefold: 1) racialization of others by believing that races are unequal and racial differences are real; 2) structural supports when “norms, processes and service delivery” are effective for one group, but not others; and 3) the discretion of personnel in applying harsher or differing penalties due to their beliefs against another racial group.

As educated people, we should all know racial differences are based on social constructions and are not real. Cultures and religions exhibit different beliefs and practices. It is not possible to view someone else and know the observed person’s beliefs, merit, education level, experiences, religion, values etc. Therefore, racism acts as a justification to treat others differently, when the others are perceived to be of a different race. This has often led to negative treatment for Indigenous peoples when blanket judgments on racial characteristics have been assigned to them. Systemic racism is the experience where a normative group has the power, tools and ability to discriminate against another group based on race.

As an educator, it is my firm belief that education is the way to dismantle systemic racism and all forms of racism. The Truth and Reconciliation Commission (TRC) has laid out a blueprint in the 94 Calls to Action issued in 2015 to begin changing the level of knowledge in mainstream society about Indigenous peoples. TRC Call to Action No. 28 is aimed at legal education and provides: “We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.”

As lawyers, we have ongoing legal education requirements to update our skill sets. The TRC Call to Action No. 27 is addressed to practising lawyers: “We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.” It is up to individual lawyers to seek out and attend legal workshops and trainings to fulfil this call to action.

Finally, for those seeking reliable resources, there is the May 2018 “Guide for Lawyers Working with Indigenous Peoples” jointly authored by The Advocates’ Society, the Indigenous Bar Association and the Law Society of Ontario.

Another worthwhile read is from former Chief Justice Lance Finch, British Columbia Court of Appeals, and is titled, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice (2012).”

There is much cross-cultural learning to do and we each have a responsibility to do the work.

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