



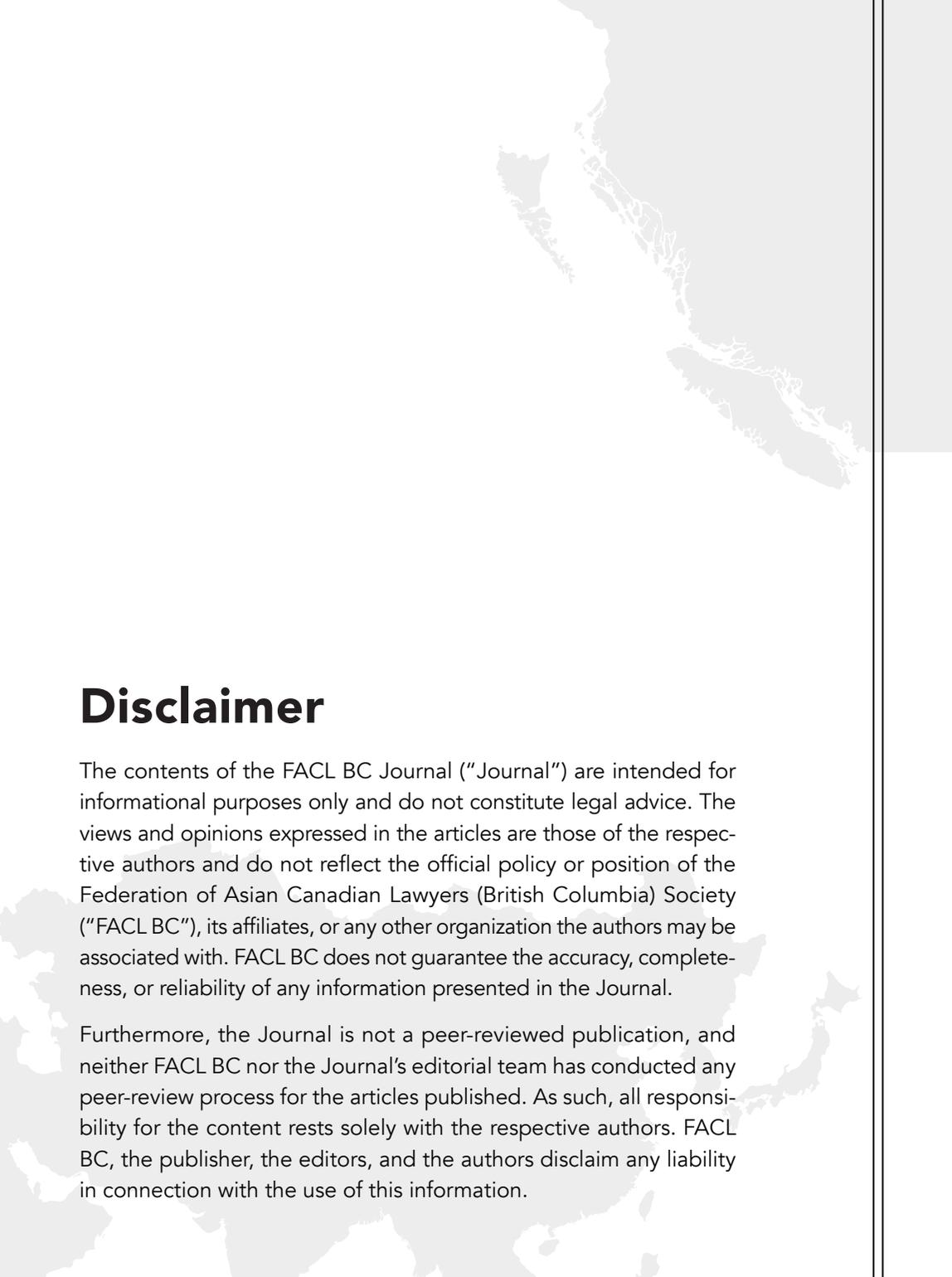
**FACL BC**

FEDERATION OF ASIAN CANADIAN LAWYERS

# FACL BC Journal

## Issue 1

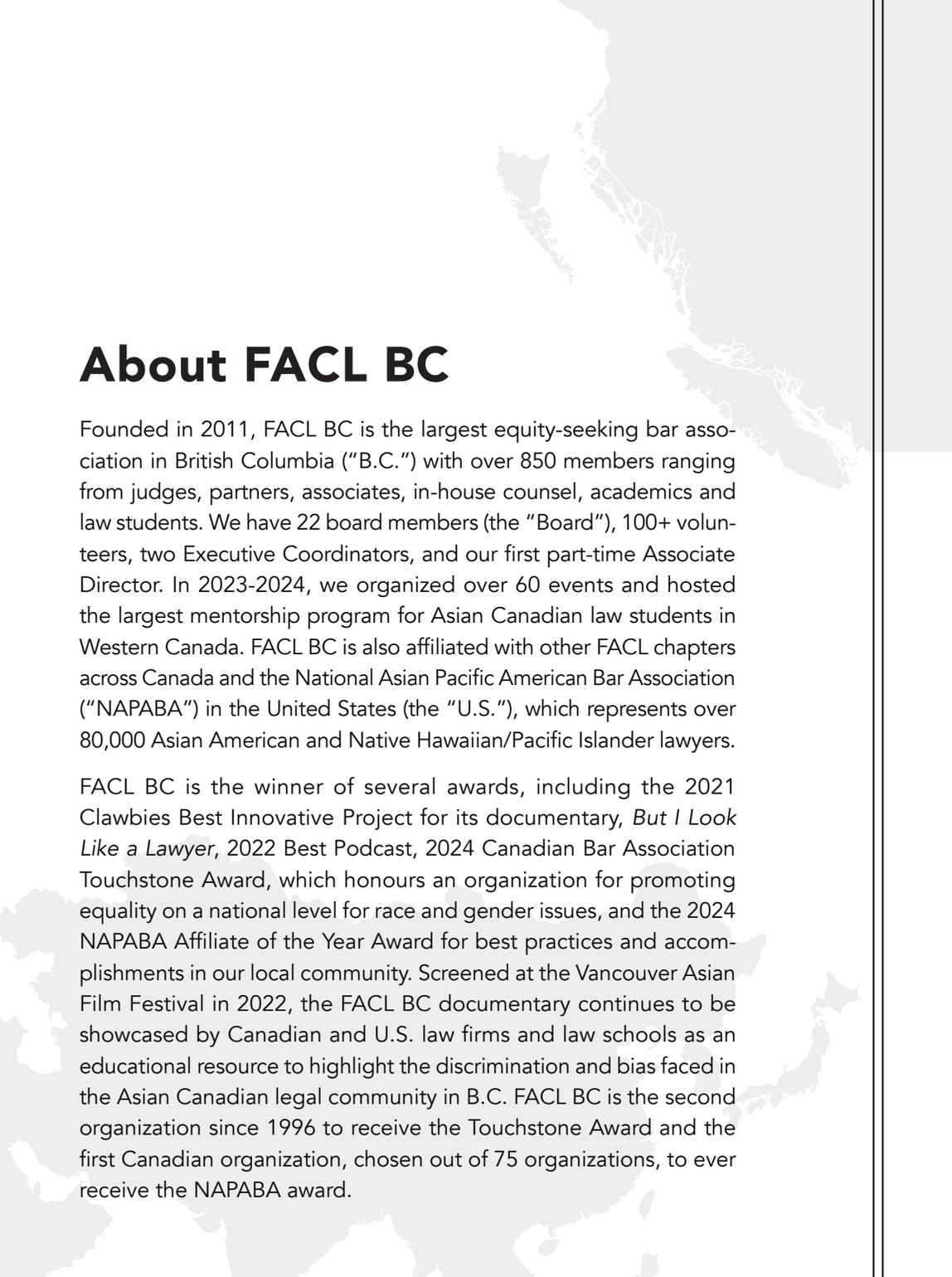
April 2025



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# About FACL BC

Founded in 2011, FACL BC is the largest equity-seeking bar association in British Columbia (“B.C.”) with over 850 members ranging from judges, partners, associates, in-house counsel, academics and law students. We have 22 board members (the “Board”), 100+ volunteers, two Executive Coordinators, and our first part-time Associate Director. In 2023-2024, we organized over 60 events and hosted the largest mentorship program for Asian Canadian law students in Western Canada. FACL BC is also affiliated with other FACL chapters across Canada and the National Asian Pacific American Bar Association (“NAPABA”) in the United States (the “U.S.”), which represents over 80,000 Asian American and Native Hawaiian/Pacific Islander lawyers.

FACL BC is the winner of several awards, including the 2021 Clawbies Best Innovative Project for its documentary, *But I Look Like a Lawyer*, 2022 Best Podcast, 2024 Canadian Bar Association Touchstone Award, which honours an organization for promoting equality on a national level for race and gender issues, and the 2024 NAPABA Affiliate of the Year Award for best practices and accomplishments in our local community. Screened at the Vancouver Asian Film Festival in 2022, the FACL BC documentary continues to be showcased by Canadian and U.S. law firms and law schools as an educational resource to highlight the discrimination and bias faced in the Asian Canadian legal community in B.C. FACL BC is the second organization since 1996 to receive the Touchstone Award and the first Canadian organization, chosen out of 75 organizations, to ever receive the NAPABA award.



## Land Acknowledgement

The FACL BC registered office is situated on the unceded, traditional territories of the xʷməθkʷəə (Musqueam), Sḵwú7mesh Úxwumixw (Squamish) and səliwətał (TseilWaututh) Nations. We acknowledge the significance of the land for the Indigenous peoples who have lived here and acted as stewards since time immemorial, as well as the historical and ongoing injustices they still face. We are committed to working towards decolonial solidarity and the full realization of Indigenous rights.

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# Foreword

Dear reader,

I am honoured to be the Journal's first Editor-in-Chief and present its inaugural issue. I started my FACL BC journey a few years ago as a member of the Advocacy Committee, and at that time, I did not foresee my eventual path to co-chairing that same committee and being given the opportunity to helm the Journal. It is a great pleasure to lead one of FACL BC's key projects and bring it to fruition with the help of my editorial board.

It is our hope that the Journal represents an opportunity to showcase underrepresented voices in the legal and legal-adjacent community and engage in issues that are relevant to the pan-Asian Canadian community in B.C. Our aim is to provide a forum for those who may bring fresh perspectives but have limited opportunities to express themselves within the legal and legal-adjacent community.

In this inaugural issue, we will first hear from current FACL BC president, Jenny Huang, who reflects on the groundbreaking year FACL BC had in 2024 in her president's message.

We have also received numerous submissions from pan-Asian community members from all walks of life. These members bring a diverse set of perspectives and insights to the Journal. This first issue of the Journal features seven submissions that range from student academic papers to personal musings on the legal profession. We feature works by judges and legal academics, as well as law students and newer lawyers.

Dr. Carol Liao, a member of FACL BC's advisory committee, reflects on B.C.'s history of anti-Asian racism and the continuing impact this history has had on the Asian Canadian legal community in B.C. Dr. Liao then considers the importance of organizations like FACL BC in fostering a more equitable environment in the legal profession.

Amy Xu speaks to an experience that many new calls may find themselves in but is frequently overlooked and not discussed: entering the job market after not being hired back by the firm she articulated with. Xu narrates her personal journey through

this challenging period in her life and provides insights into how she eventually secured an associate position.

The Honourable Justice David Masuhara muses on the effect of diversity in the legal profession through the lens of Akira Kurosawa's most recognizable film, *Rashomon*. Justice Masuhara emphasizes the importance of recognizing the cultural and social differences of Canada's increasingly diverse population in the pursuit of the truth in our legal justice system.

Victor Tai pens a case comment on *R v Bethune and Secreve*, a sentencing decision from the B.C. Provincial Court that found that racial remarks made by the offenders were aggravating factors to be considered during sentencing. Tai argues that a more rehabilitative approach would have engaged in the systemic issues of racism that contextualize the offenders' actions.

Anita Bal, Harveer Garcha, Neelam Jassal, and Simirin Lally, all current or former students of the Thompson Rivers University Faculty of Law, highlight how law school programs contribute to the lack of diversity in the legal profession. They argue that law schools cannot just claim to promote equity and diversity without providing concrete initiatives to make legal education more accessible to prospective students from racialized communities.

Jackie Zhao considers the efficacy of racial mandates as a method of addressing the systemic barriers Asians in Canada face regarding corporate board representation. Zhao instead argues that a stakeholder-driven approach, as well as institutional changes, advocacy, and education, is more likely to increase Asian representation on corporate boards.

Finally, Sarah Fong assesses Edmonton's Chinatown strategy through a decolonial lens. Fong reckons with the uncomfortable role that Asian Canadians may have in their communities with settler identities, and considers how revitalization efforts in Chinatowns across Canada can be an opportunity for decolonization and fostering solidarity between Asian and Indigenous communities.

We then move to works from FACL BC's committees, which provide us with insight into the invaluable work that they contribute to the Asian Canadian legal community in B.C.

Ending our first issue is past FACL BC president and current advisory director, Fiona Wong, who provides a behind-the-scenes view of how the Journal went from an idea to a fully realized project with funding secured.

We are grateful to the Law Foundation of British Columbia for providing the necessary funding to make this dream a reality. Putting together a journal, especially an inaugural issue, is a collective undertaking. We are indebted to everyone who volunteered their time and effort to make this issue possible.

Yours truly,

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Serena Cheong

Editor-in-Chief

# President's Message

It is with great pride that we present the inaugural Journal – a milestone that marks a new chapter in our history. FACL BC was founded in 2011 as a response to the urgent need for greater representation and support for pan-Asian legal professionals in B.C. As its current president for 2024-2025, I am honoured to lead this incredible organization and build on the tireless work of our past and present board members, advisors, volunteers, and supporters. Today, we stand proudly as a community of over 850 members. We continue to grow thanks to the dedication and passion of our members.

At the core of our work is our mission: to promote equity, justice, and opportunity for pan-Asian Canadian legal professionals and the wider community. Over the years, FACL BC has made tremendous strides in advancing our mission, and our work continues to have a profound impact on the legal profession and the broader community in B.C.

We have established ten dedicated committees that serve as the backbone of our operations, including Executive, Advisory, Membership, Mentorship, Advocacy, Gala, Victoria, Kamloops, In-House, and NCA & LLM. Each of these committees play a critical role in shaping the direction of our work and ensuring that our community's needs are met through focused programming and initiatives.

FACL BC's growth and success can be measured not only by our member count, but also by the impactful events and programs we have organized over the years. We are proud to host over 60 events annually, including educational seminars, advocacy outreach efforts, mentorship opportunities, networking sessions, and social gatherings. These events are designed to provide our members with the tools, resources, and connections they need to thrive both personally and professionally. Through these gatherings, we have witnessed firsthand the incredible potential within our membership to drive change, foster growth, and support one another.

The Journal marks an exciting milestone in amplifying the voices of pan-Asian Canadian legal professionals and serves as a platform for thought leadership,

meaningful dialogue, and reflection on the issues that matter most to our community. As we look ahead, we remain committed to our founding mission and look forward to connecting with you through future engagements and initiatives.

Warm regards,

A handwritten signature in black ink, appearing to read 'Jenny Huang', with a long, sweeping horizontal flourish extending to the right.

Jenny Huang



# Submissions



# Reflections on Equity and Asian Canadians in the Legal Profession

By Dr. Carol Liao \*

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\* Dr. Carol Liao is an associate professor and UBC Sauder Distinguished Fellow at the Peter A. Allard School of Law (University of British Columbia), the Chair and Principal Co-Investigator at Canada Climate Law Initiative, and the Co-Director at UBC Centre for Climate Justice. Thanks to Jackie Zhao, Richard Jiang, and Jessie Han for exceptional research assistance, and to the editors of the inaugural Journal for their thoughtful editing.

## Introduction

On January 20, 2025, in his inaugural address as the 47th President of the United States, Donald J. Trump proclaimed that he would end government policies “trying to socially engineer race and gender into every aspect of public and private life” and forge a society that is “color-blind” and “merit-based.”<sup>1</sup> One of his first executive orders was to dismantle diversity, equity, and inclusion (“DEI”) efforts at the federal level, while also revoking a six-decade-old executive order that had required government contractors to proactively address discrimination based on race and sex.<sup>2</sup> Federal DEI staff were placed on paid leave and eventually laid off; government agencies immediately removed DEI documents and references from their websites which are now littered with error pages. These executive actions have since caused ripple effects across thousands of private workplaces. Industry oligarchs have actively expressed support for the elimination of DEI initiatives, and corporations have followed suit.<sup>3</sup> The start of 2025 looks challenging for those working in the DEI field, both in government and in industry. Years of struggle and progress have been undone with a single stroke of Trump’s pen. As the second-term leader of the world’s largest economy applies “shock and awe” tactics on the global stage, those of us who have worked on and studied DEI within workplaces and institutions are bracing for what could be some of the most difficult and divisive years ahead. What will the spillover effects of Trump’s administration be in Canada? How will organizations like FACL BC navigate these turbulent and polarizing times?

Recently, a story was shared with me about a junior Asian lawyer who was being interviewed for a position at a law firm and had some involvement in FACL BC listed in their curriculum vitae. The interviewer was a white senior partner who had noticed the reference and commented on how much he disliked FACL BC and equity groups

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- 1 White House, “The Inaugural Address” (20 January 2025), online: <<https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/>>.
  - 2 Lauren Weber, “How Trump’s Assault on DEI Will Ripple Across Corporate America” (24 January 2025), online: *Wall Street Journal* <<https://www.wsj.com/business/how-trumps-assault-on-dei-will-ripple-across-corporate-america-d219ad91>>.
  - 3 Andrew Ross Sorkin et al., “DEI on the Ropes Ahead of the Next Trump Era” (17 January 2025) online: *The New York Times* <<https://www.nytimes.com/2025/01/17/business/dei-trump-meta-zuckerberg.html>>.

generally, because he believed they were divisive, racist, and only perpetuated differences between people. He then quickly added that he had an Asian spouse. As you may imagine, the remainder of the interview was conducted in the same tenor and did not go well, and the junior lawyer left the interview disheartened.

This story is just one of many that I hear each year from both current and former students as they navigate the job market and establish themselves within the legal profession. But when I first heard this specific account, I admit I reflected somewhat bitterly on how the more things change, the more they stay the same. It may be that law students and new lawyers are more willing to share these stories with me due to my participation in the FACL BC documentary, *But I Look Like a Lawyer*. It may be for a host of reasons. But it is unfair to expect young professionals to bear a disproportionate share of the burden in enlightening a profession at the earliest and most vulnerable stage of their careers.

Our legal profession must maintain a heightened awareness of the ongoing need to address the legacies of this province's history – an effort that should involve not just equity-seeking groups and affiliated organizations, but everyone. With the current noise south of the border and “misinformation and disinformation” being named as one of the top global risks for 2025 by the World Economic Forum,<sup>4</sup> it is essential to foster broader discussions and educate others on the historical roots of why DEI values – regardless of the terminology used going forward – are crucial across all industries, including our own legal profession. With that in mind, I want to carve out some space here, within dominant dialogues, to provide a brief history of anti-Asian racism in B.C. and its lasting impact on present day legal practice.

### **Colonialism and the Legalization of Anti-Asian Racism**

Racism does not exist as isolated behaviour; it is a manifestation of the legacy of Canada's colonial and racist past. To effectively understand racism in Canada, we must first confront the brutal reality of the country's settler-colonial history, which was founded on the oppression and continued marginalization of First Nations, Inuit,

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4 “Global Risks Report 2025: Conflict, Environment and Disinformation Top Threats” (15 January 2025) online: *World Economic Forum* <<https://www.weforum.org/press/2025/01/global-risks-report-2025-conflict-environment-and-disinformation-top-threats/>>.

and Métis peoples. The establishment of the *Constitution Act, 1867* was predicated on the establishment of the *Indian Act*, which gave the Crown power to govern all aspects of Indigenous life, including the management of reserve land, Indian status, and cultural practices, institutionalizing a long history of the desired elimination and assimilation of Indigenous peoples.<sup>5</sup> The *Indian Act*, which continues to exist today, largely retains its original form.<sup>6</sup> Laws upholding white dominance and white supremacy were foundational to the creation of Canada.

This colonial legacy of whiteness has reverberated throughout Canadian history, continuing to echo in modern day while affecting groups differently. Its implications have been far-reaching. For example, Indigenous peoples are overrepresented in prisons and poverty levels,<sup>7</sup> there is a lack of equitable access to healthcare,<sup>8</sup> disadvantages in employment and upwards mobility relative to white people,<sup>9</sup> and minimal representation in leadership roles, with compounding, distilling effects. These distilling effects include the prevalence of the “white gaze” in leadership,<sup>10</sup> where the few Black, Indigenous, and People of Colour (“BIPOC”) that have attained positions of leadership tend to revere or fear whiteness and perpetuate its supremacy, thus operating under the veneer of change while severely stunting the ability for institutions to shed such legacies.<sup>11</sup>

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5 *Indian Act, 1876* (37-39 Vict), c 18 [*Indian Act*].

6 UBC First Nations Studies Program, “The Indian Act” (accessed 31 July 2024), online: <[https://indigenouslyfoundations.arts.ubc.ca/the\\_indian\\_act/](https://indigenouslyfoundations.arts.ubc.ca/the_indian_act/)>.

7 Department of Justice Canada, “Understanding the Overrepresentation of Indigenous people in the Criminal Justice System” (accessed 31 July 2024), online: <<https://www.justice.gc.ca/socjs-esjp/en/ind-aut/uo-cs>;> Public Health Agency of Canada, “Reducing Health Inequalities: A Challenge for Our time” (2011), online: <<https://www150.statcan.gc.ca/n1/pub/41-20-0002/412000022023005-eng.htm>> [Reducing Health Inequalities].

8 Reducing Health Inequalities, *supra* note 7.

9 Wen-Hao Chen & Feng Hou, “Intergenerational Education Mobility and Labour Market Outcomes: Variation Among the Second Generation of Immigrants in Canada” (18 February 2019), online: <<https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019006-eng.htm>>.

10 Janice Gassam Adare, “Understanding the White Gaze and How it Impacts Your Workplace” (21 April 2022), online: *Forbes* <<https://www.forbes.com/sites/janicegassam/2021/12/28/understanding-the-white-gaze-and-how-it-impacts-your-workplace/>>.

11 See e.g., Ruha Benjamin, “Black faces in high places are not going to save us’ | Quotable” (17 April 2024), online (video): <<https://www.youtube.com/watch?v=javaZtuESR4>;> James Baldwin, *The Evidence of Things Not Seen* (Holt, Rinehart and Winston, 1985).

Being situated along the Pacific Rim, Vancouver is an international port city and gateway to Canada from Asia, but B.C. has also had a long and special legislative history of legalized discrimination and racism. There are interconnected and particularly relevant issues of racism across the pan-Asian community in Canada, of which this list is non-exhaustive. The *Chinese Immigration Act* (known as the Chinese head tax),<sup>12</sup> the *Immigration Act* of 1906 and 1910 (including the continuous journey regulation),<sup>13</sup> the *Chinese Exclusion Act*,<sup>14</sup> and over 175 anti-Asian laws<sup>15</sup> were designed to ensure a white majority in Canada. Events in history punctuated this racial animus, including Vancouver's anti-Asian riots of 1907,<sup>16</sup> Komagata Maru of 1914,<sup>17</sup> and Japanese Canadian internment camps during the Second World War.<sup>18</sup> Historian Henry Yu notes how the sheet music for the bar song "White Canada Forever" was a best seller in the early twentieth century and the political slogan "A White Man's Province" helped a candidate win his election as the Premier of B.C.<sup>19</sup> Asian people in North America were viewed and treated as subhuman abstract labour in racial capitalism. Iyko Day describes it as a history of "cheap" Asian labour in the nineteenth century, fetishized and valued as "efficient" in the 21st century, and a built-in desire for Asians to stay in their place.<sup>20</sup>

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12 *Chinese Immigration Act*, SC 1885 (48-49 Vict), c 71.

13 *Immigration Act*, SC 1906 (6 Edw VII), c 19; *Immigration Act*, SC 1910 (9-10 Edw VII), c 27.

14 *Chinese Immigration Act*, SC 1923 (13-14 Geo V), c 38.

15 Nicholas XEMFOLTW\ Claxton et al, *Challenging Racist "British Columbia": 150 Years and Counting*, (University of Victoria/The Canadian Centre for Policy Alternatives, 2021), online: <<https://challengerracistbc.ca/>> [Claxton]; Timothy J Stanley, *Contesting White Supremacy: School Segregation, Anti-Racism, and the Making of Chinese Canadians* (UBC Press, 2011) [Stanley].

16 Erika Lee, "Hemispheric Orientalism and the 1907 Pacific Coast Race Riots" (2019) 33:2 *Amerasia J* 19; "Vancouver Anti-Asian Riots of 1907 and the Parallels to Canada's Modern-Day Racial Divide" (24 November 2020), online: *Wilfrid Laurier University* <[www.wlu.ca/news/spotlights/2020/nov/vancouver-anti-asian-riots-of-1907-and-the-parallels-to-canadas-modern-day-racial-divide.html](http://www.wlu.ca/news/spotlights/2020/nov/vancouver-anti-asian-riots-of-1907-and-the-parallels-to-canadas-modern-day-racial-divide.html)>; "Why 1907?" (accessed 31 July 2024), online: <[www.project1907.org/](http://www.project1907.org/)>.

17 Government of Canada, *Significant Events in the History of Asian Communities in Canada* (modified 10 May 2023), online: <[www.canada.ca/en/canadian-heritage/campaigns/asian-heritage-month/important-events.html](http://www.canada.ca/en/canadian-heritage/campaigns/asian-heritage-month/important-events.html)>.

18 Eric M Adams & Jordan Stanger-Ross, "Promises of Law: The Unlawful Dispossession of Japanese Canadians" (2017) 54:3 *Osgoode Hall LJ* 687 at 694-696.

19 Henry Yu, "The White Elephant in the Room: Anti-Asian Racism in Canada" (9 June 2021), online: *UBC Beyond* <<https://beyond.ubc.ca/henry-yu-white-elephant/>>.

20 Iyko Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism* (Duke University Press 2016) [Day].

Specifically with regards to the legal profession, the exclusion era extending up to the 1950s meant the legislated exclusion of Asians from certain professions including law.<sup>21</sup> This exclusion was done by way of the *Legal Professions Act, 1895*, which only permitted those who could vote with the ability to enroll as an articulated student in B.C., while, at the same time, other legislation prohibited Asians and other groups from voting.<sup>22</sup> The federal *Electoral Franchise Act* excluded women, most Indigenous peoples west of Ontario, and those of “Mongolian or Chinese race” from the vote in 1885,<sup>23</sup> while the provincial *Qualification and Registration of Voters Act* banned Chinese Canadians and Indigenous peoples in B.C. from voting in 1872. This legislation was later amended in 1895 through the *Provincial Voters’ Act Amendment Act* to also ban Japanese Canadians from voting.

It was not until 1947 that racialized “Mongolian and Chinese” Canadians were able to vote in B.C., 30 years after white women were given the right. Subsequently, Japanese Canadians gained the right in 1949, when the *Provincial Elections Act, 1949* took effect. In the same year, the federal *Dominion Elections Act*<sup>24</sup> was also repealed, removing race as a ground for exclusion from voting.<sup>25</sup> Only then were Asian people able to join the legal profession. Yet even when these formal restrictions

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21 Government of British Columbia, “Discrimination” (accessed 31 July 2024), online: <[www2.gov.bc.ca/gov/content/governments/multiculturalism-anti-racism/chinese-legacy-bc/history/discrimination](http://www2.gov.bc.ca/gov/content/governments/multiculturalism-anti-racism/chinese-legacy-bc/history/discrimination)>. See also Claxton, *supra* note 15; Stanley, *supra* note 15.

22 Government of British Columbia, “Discriminatory Legislation in British Columbia 1872-1948” (accessed 15 November 2024), online (pdf): <[www2.gov.bc.ca/assets/gov/british-columbians-our-governments/our-history/historicplaces/documents/heritage/chinese-legacy/discriminatory\\_legislation\\_in\\_bc\\_1872\\_1948.pdf](http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/our-history/historicplaces/documents/heritage/chinese-legacy/discriminatory_legislation_in_bc_1872_1948.pdf)>.

23 *Electoral Franchise Act*, SC 1885 (48-49 Vict), c 40.

24 *Dominion Elections Act*, SC 1920 (10 & 11 Geo V), c 46. This Act took federal voting rights away from individuals who were denied provincial voting rights because of their race (i.e., people of Chinese, Japanese and South Indian origin).

25 Elections Canada, “Modernization, 1920-1981” in *A History of the Vote in Canada*, 3rd ed (2007) 93 at 108, online (pdf): <[www.elections.ca/res/his/WEB\\_EC%2091135%20History%20of%20the%20Vote\\_Third%20edition\\_EN.pdf](http://www.elections.ca/res/his/WEB_EC%2091135%20History%20of%20the%20Vote_Third%20edition_EN.pdf)>. For Indigenous peoples, it was not until 1960 that they were able to vote and enter the legal profession with this newly acquired right: “First Nations right to vote granted 50 years ago” (modified 1 July 2010), online: *CBC News* <[www.cbc.ca/news/canada/north/first-nations-right-to-vote-granted-50-years-ago-1.899354](http://www.cbc.ca/news/canada/north/first-nations-right-to-vote-granted-50-years-ago-1.899354)>.

were removed, significant hurdles continued to remain for Asian law school graduates in finding articling principals – a requirement for registering in courses offered by the Law Societies.<sup>26</sup>

It seems that once the official exclusion era was over, some readers of history believe the racism then just magically disappeared, with a “*poof*”. But the implications of decades of racist Canadian laws are longstanding. Laws upholding white supremacy, with its ripple effects on the pan-Asian community, have not been completely reversed in Canada. Our judicial systems were not prepared to assume a proactive approach to confront the deficiencies of existing legal frameworks in redressing issues of legislated racism in its decisions.<sup>27</sup> The Ontario courts missed a rare opportunity to examine the role of government in confronting and redressing discrimination against Chinese Canadians who were subject to the head tax in its *Mack v Canada* decisions in 2003.<sup>28</sup> The court ultimately dismissed the claim and deferred the issue to the government, leaving issues of racist laws unaddressed.<sup>29</sup> It was only through tireless political lobbying and community mobilization that in 2006, the then-Prime Minister of Canada, Stephen Harper, issued an apology in the House of Commons to the Chinese Canadian community, and to the head tax payers and families for the injustices that they had suffered.<sup>30</sup> But this history still resounds in institutional and organizational cultures and influences modern day decisions in the workplace and in leadership.

## Impacts of Anti-Asian Racism in our Workplaces

For a significant period, there was little scholarly study on anti-Asian racism. Asians in North America were regarded as the supposed “model minority” and thought

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26 See e.g., Constance Backhouse, “Gretta Wong Grant: Canada’s First Chinese-Canadian Female Lawyer” (1996) 15 Windsor YB Access Just 3 at 27.

27 Stephanie Tse, “Case Comment: *Mack et al. v. Attorney General of Canada* – Rethinking the Contemporary Conception of Judicial Discretion and Justice” (2003) 18 JL & Soc Pol’y 159 at 160 [Tse].

28 *Mack v Canada (Attorney General)*, CanLII 27983 (Ont SC), 55 OR (3d) 113, 2001; *Mack v Canada (Attorney General)*, 2002 CanLII 45062 (Ont CA), 217 DLR (4th) 583; Avvy Go, “Whose Charter is it Anyways? An Examination of Charter Litigation as it Relates to the Chinese Canadian Community” (2007) 22 NJCL 93 at 101-103 [Go].

29 Tse, *supra* note 27.

30 Go, *supra* note 28 at 100.

to be too successful to be considered disadvantaged. The model minority stereotype drove a racial wedge between Asians and other minority groups, as perceived Asian success was used to dismiss the other real narratives of racism, while maintaining white dominance in leadership and politics.<sup>31</sup> This political maneuver also helped perpetuate the myth that anti-Asian racism did not exist.<sup>32</sup>

There are now well-studied understandings of the real discrimination, bias, and stereotyping experienced by Asian communities in addition to the model minority myth,<sup>33</sup> including the bamboo ceiling,<sup>34</sup> perpetual foreigner,<sup>35</sup> hypervisibility and invisibility,<sup>36</sup> Yellow Peril,<sup>37</sup> and unique intersectional barriers for Asian women,<sup>38</sup> who are subjected to fetishization and hyper-sexualization on one hand, but are also the most “forgotten minority in the glass ceiling conversation” on the other.<sup>39</sup> These forms of anti-Asian racism merge with deeply colonial and gendered histories in Canada that result in differing experiences for Asian Canadians in the legal

- 31 Willa Zhou, “The Model Minority Stereotype: Analyzing the Impact the Stereotype has on Asian Americans” (28 May 2019) at para 2, online: *Medium* <[www.medium.com/willazhou/the-model-minority-stereotype-analyzing-the-harmful-beneficial-effects-on-asian-americans-f394d3f6fd82](http://www.medium.com/willazhou/the-model-minority-stereotype-analyzing-the-harmful-beneficial-effects-on-asian-americans-f394d3f6fd82)> [Zhou].
- 32 Diamond Yao, “Model Minority” (modified 30 March 2022), online: <<https://www.thecanadianencyclopedia.ca/en/article/model-minority>>.
- 33 See e.g., Cliff Cheng, “Are Asian American Employees a Model Minority or Just a Minority?” (1997) 33:3 *JABS* 277 at 278; Gordon Pon, “Importing the Asian Model Minority Discourse into Canada” (2000) 17:2 *CSWR* 277; Daphna Oyserman & Izumi Sakamoto, “Being Asian American: Identity, Cultural Constructs, and Stereotype Perception” (1997) 33:4 *JABS* 435; Zhou, *supra* note 31 at para 4.
- 34 Chris Westfall, “Battling Discrimination and the Bamboo Ceiling: The Bias Facing Asian American Managers” (14 September 2021), online: *Forbes* <<https://www.forbes.com/sites/chriswestfall/2021/09/14/discrimination-and-bamboo-ceiling-the-unconscious-bias-facing-asian-american-managers/>>.
- 35 Sherry C Wang & Bianca Marie C Santos, “At the Intersection of the Model Minority Myth and Antiracism: From Asian American Triangulation to Recommendations for Solidarity” (2023) *J Counseling Psychol*, online: <[dx.doi.org/10.1037/cou0000662](https://doi.org/10.1037/cou0000662)>; Ellen Wu, *The Color of Success: Asian Americans and the Origins of the Model Minority* (Princeton University Press, 2013).
- 36 Rosa Kim & Katrina Lee, “Asian American Inclusion in Legal Academia” (31 March 2022), online: <[www.michiganstatelawreview.org/vol-2021-2022/2022/3/28/asian-american-inclusion-in-legal-academia](http://www.michiganstatelawreview.org/vol-2021-2022/2022/3/28/asian-american-inclusion-in-legal-academia)>.
- 37 Day, *supra* note 20 at 105.
- 38 Isabella Oishi, “Where Sexism and Racism Meet: The Danger of Existing as an Asian American Woman” (2022) 23:2 *Geo J Gender & L*, online: <<https://www.law.georgetown.edu/gender-journal/online/volume-xxiii-online/where-sexism-and-racism-meet-the-danger-of-existing-as-an-asian-american-woman/>>.
- 39 Andy Kramer, “Why Asian American Women Aren’t Advancing into Senior Leadership Positions” (22 January 2020), online: *Forbes* <<https://www.forbes.com/sites/andiekramer/2020/01/22/why-asian-american-women-arent-advancing-into-senior-leadership-positions/>>.

profession. Indeed, FACL BC's *But I Look Like a Lawyer* documentary was a close and intimate examination of that experience within our own B.C. legal community.

Empirical studies have shown that white professionals are twice as likely to be promoted into management compared to their Asian counterparts,<sup>40</sup> and also that people hold predominant biases that Asians are seen as optimal subordinate employees, but are regarded as unqualified to be leaders and managers.<sup>41</sup> Asians in their career progress face barriers based on subjective characteristics like “lack of leadership potential” and “lack of communication skills”.<sup>42</sup> The characteristics of being “submissive” and “willing to do the work without complaint” are seen as monoliths across Asian peoples.<sup>43</sup> American research on East Asian workers shows how coworker preferences are consistent with prescriptive stereotypes, where an extroverted, dominant East Asian employee was relatively disliked as a coworker compared to the non-dominant East Asian employee, and regarded as unwelcome and unwanted by their coworkers.<sup>44</sup> East Asians who were dominant, and thereby violated a descriptive and a prescriptive racial stereotype, were subjected to more racial harassment than other employees. Another American study specific to the legal profession found that Asian Americans are well represented at the entry levels – they are more than ten percent of the graduates of the top 30 American law schools – yet have the highest attrition rates and lowest ratio of partners to associates among all racial groups in all the law firms in the country.<sup>45</sup>

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40 Jennifer L Berdahl & Ji-A Min, “Prescriptive Stereotypes and Workplace Consequences for East Asians in North America” (2012) 18:2 CDEMP 141 at 150 [Berdahl].

41 Buck Gee & Denise Peck, “Asian Americans are the least likely group in the US to be promoted to management” (31 May 2018), online: *Harvard Business Review* <<https://hbr.org/2018/05/asian-americans-are-the-least-likely-group-in-the-u-s-to-be-promoted-to-management>>.

42 Jane Hyun, *Breaking the Bamboo Ceiling: Career Strategies for Asians* (New York: HarperCollins, 2005). See also Helen H Yu, “Revisiting the Bamboo Ceiling: Perceptions from Asian Americans on Experiencing Workplace Discrimination” (2020) 11:3 Asian American Journal of Psychology 158; Zhou *supra* note 31 at para 6.

43 Patrick Healy & Adrian J. Rivera, “These 12 Asian Americans Wonder When the Stereotypes Will Fade” (21 February 2023), online: *The New York Times* <<https://www.nytimes.com/interactive/2023/02/21/opinion/asian-americans-focus-group.html>>.

44 Berdahl, *supra* note 40 at 146.

45 Eric Chung et al, “A Portrait of Asian Americans in the Law” (2017) at 17, online (pdf): <[https://static1.squarespace.com/static/59556778e58c62c7db3fbe84/t/596cf0638419c2e5a0dc5766/1500311662008/170716\\_PortraitProject\\_SinglePages.pdf](https://static1.squarespace.com/static/59556778e58c62c7db3fbe84/t/596cf0638419c2e5a0dc5766/1500311662008/170716_PortraitProject_SinglePages.pdf)> [Chung].

These studies are multiple and wide-ranging. They are also complex in their application and understanding, as the experiences of the pan-Asian community certainly itself lends to significant diversities across ethnicities, races, and generations (including different experiences across first- and second-generation immigrants), as well as broader intersectional diversities. Yet these diversities within do not mean abandoning any analysis on the long shadow of shared histories of difference, nor failing to reach across in support and solidarity in light of these challenges. Racism flattens any beautiful differences. If you do not name it, the racism then subsists and fills itself up with the norm; this is where whitewashed histories thrive. The paths of history must be disrupted, which takes work, or its natural state will be to stay the course.

In 2020, the onset of the global COVID-19 pandemic exposed a “modern version of Yellow Peril”<sup>46</sup> and a reminder of the undercurrents of racisms and conditionality of acceptance for Asian Canadians in B.C. North America was named as the continent with the highest rate of anti-Asian hate crimes in the world, with Vancouver given the dubious title of being named as the “anti-Asian hate crime capital.”<sup>47</sup> Amid the COVID-19 pandemic, 43 percent of B.C. residents of Asian descent reported being the targets of racist attacks, ranging from racial slurs to property damage to physical violence.<sup>48</sup> There was a significant increase in hate crimes, with a 16 percent increase for the East or Southeast Asian populations and a 21 percent increase for the South Asian population.<sup>49</sup> During the pandemic, Asian groups also experienced a disproportionate impact from the economic effects of COVID-19 with respect to job loss and reduced hours, and the need for federal income support.<sup>50</sup>

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46 Anita Jack-Davies, “Coronavirus The ‘Yellow Peril’ Revisited” (3 August 2020), online: *The Conversation* <[theconversation.com/coronavirus-the-yellow-peril-revisited-134115](https://theconversation.com/coronavirus-the-yellow-peril-revisited-134115)>.

47 Natalie Obiko Pearson, “This is the Anti-Asian Hate Crime Capital of North America” (7 May 2021), online: *Bloomberg* <[www.bloomberg.com/features/2021-vancouver-canada-asian-hate-crimes](https://www.bloomberg.com/features/2021-vancouver-canada-asian-hate-crimes)>.

48 Simon Little & Paul Johnson, “43% of Asians in B.C. Experienced Racism in the Last Year, 87% say it’s getting worse: Poll” (9 April 2021), online: *Global News* <<https://globalnews.ca/news/7749588/anti-asian-racism-poll/>>.

49 Statistics Canada, *Police-Reported Hate Crime, 2021*, Catalogue No 11-001-X (Ottawa: The Daily, 22 March 2023).

50 Feng Hou, Kristyn Frank & Christoph Schimmele, “Economic Impact of COVID-19 Among Visible Minority Groups” (July 2020) at Table 1, online: <[www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00042-eng.htm](https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00042-eng.htm)>.

Understanding this long arc of history, particularly the racist harms within B.C. and Vancouver in particular, is important in the context of understanding why equity groups exist. The days of claiming “colour-blindness” to race – something I frequently heard from white colleagues at my law school prior to the murder of George Floyd and the Black Lives Matter movement in 2021 – was surely a privileged throwaway comment on its last legs. There are a multitude of empirical studies showcasing just how deep racism embeds itself within individuals and society due to our colonial histories. Dismantling systemic discrimination first requires identifying it. Now with the new Trump administration, DEI is being pushed to the side and the term “colour-blindness” is being renewed and applauded, while targeted anger towards historically marginalized groups is being inflamed, as though their meager gains in the past few years have robbed the rich and powerful of their fair share. It is a wildly disproportionate reaction to a progressive revolution that never even really took off.

## Reflections

Naomi Klein, author of *The Shock Doctrine*, journalist, and my fellow Co-Director of the Centre for Climate Justice, recently remarked on the times we are in. She said, “Cruel winds are blowing, not just south of the border but close to home, and they are trying to turn us against one another. They are trying to direct a righteous rage of injustice at the people who are most vulnerable...and if power means anything at all, it means the power to refuse all of that. We don’t choose our moment in history; we choose who we are in that moment.”<sup>51</sup>

Colonialism and the norms that perpetuate themselves in our organizational cultures get passed down from generation to generation. They also subvert BIPOC, women – and BIPOC women in particular – as well as other historically marginalized and equity-seeking groups from attaining support and positions of meaningful influence in society. Our racist past should not need to be continually invoked to justify the existence of organizations like FACL BC in creating community for its members, as though only through the victimization lens can one exist. It does not. But ignorance also serves no one. There needs to be a fuller understanding of B.C.’s history, which in the past

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51 Remarks by Naomi Klein on 7 February 2025, Vancouver Magazine Power50 Gala, Vancouver, B.C.

was erased from schoolbooks, and its reverberating connections within modern institutions, legal frameworks, economic systems, and existing power structures.

Scholars have explored how backlash against DEI often arises from individuals in dominant groups who hold disproportionate power and resources, with Trump perhaps as the prime example. Racism is not determined by demographics, but by hierarchy and power. The “social identity threat” of DEI makes these dominant groups uncomfortable, as these initiatives are seen to attack their assumptions about fairness, merit, and the status quo, revealing “deeper tensions in how people see themselves and their place in society”.<sup>52</sup> Yet this discomfort can also serve as motivating opportunities for learning and growth, and reflection.<sup>53</sup>

As a legal profession, we can do so much better to help upend the trajectory of our histories, which always begins with continued awareness and education. Organizations like FACL BC serve to disrupt the status quo and path dependence. As Pulitzer Prize winning author Viet Thanh Nyugen noted, “Our solidarity may begin in identity, but it must end in principle”.<sup>54</sup> Groups like FACL BC create networks of support and encouragement, offering opportunities and advice to lawyers that have long been available to others, while also uplifting other historically marginalized groups affected by B.C.’s well-documented racist history.<sup>55</sup> By embracing this collective effort, especially now as our southern neighbours undergo a second Trump administration, we have the power to dismantle systemic barriers and foster a legal profession that is truly inclusive and just. We must remember that we have the tools to create a more equitable and representative legal landscape for future generations. Our dedication to solidarity and principle has the power to transform our profession for the better.

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52 Camellia Bryan & Brent J Lyons, “Understanding the Backlash Against Corporate DEI and How to Move Forward”, online: *The Conversation* <<https://theconversation.com/understanding-the-backlash-against-corporate-dei-and-how-to-move-forward-246117>>.

53 Camellia Bryan & Brent J Lyons, “Beyond Backlash: Advancing Dominant-Group Employees’ Learning, Allyship, and Growth Through Social Identity Threat” (published online 30 October 2024), online: *Acad. Mgmt. Rev. forthcoming* <<https://journals.aom.org/doi/abs/10.5465/amr.2021.0521?journalCode=amr>>.

54 Remarks by Viet Thanh Nyugen on 3 March 2024, Lind Initiative at the Chan Centre for Performing Arts, Vancouver, B.C.

55 For an excellent resource for schools with accompanying online teaching materials, see Claxton, *supra* note 15.

# My Experience Finding a Job After Being Called to the Bar

By Amy Xu \*

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\* Amy Xu practices in the area of general civil litigation.

After being called to the bar, I encountered a challenging road to employment because the firm where I articulated underwent significant changes and could not offer me a position. This unexpected turn led me to start my job search in late 2023, which ultimately concluded in July 2024 when I finally received an offer. The journey took far longer than I had anticipated, filled with both setbacks and learning moments.

In this reflection, I will share my experience of securing a job, outlining the obstacles I faced, the strategies I used, and the invaluable lessons I learned along the way.

### **The Role of Persistence**

Throughout the process, I had several unsuccessful interviews, and I admit I was disappointed when the interviews did not work out. As time passed, I often wondered if I would ever find a job. Anxiety is inevitable, feeding into the uncertainty and self-doubt that accompany a long job search. Through this, I realized the importance of persistence. Shifting my mindset to view each step as progress, regardless of the outcome, was essential. Seeing every experience as a learning opportunity allowed me to maintain a sense of progress, which fueled my motivation and resilience.

I also found it important to monitor my energy levels to avoid burnout. For example, I began to limit the number of events I attended each week and gave myself permission to take short breaks from job search activities entirely when I felt it was needed. This approach kept me feeling more refreshed and ultimately more focused, enabling me to approach each opportunity with renewed enthusiasm.

### **Networking**

Networking became an invaluable part of my job search strategy. I attended various events hosted by FACL BC. These events allowed me to learn from experienced lawyers and connect with lawyers across different practice areas. After each event, I followed up with one or two lawyers I had met, inviting them for coffee chats to learn more about their career paths, their practice areas, and what their day-to-day work entailed. I found this beneficial because it exposed me to a variety of roles and career paths I had not initially considered, expanding my understanding of potential opportunities. I also learned why individuals made certain career transitions, how they have successfully learned new skills, and the advice they have for others hoping to do the same.

Through these interactions, I developed a clearer picture of my preferences and interests, which is very important when deciding what my next steps are. This self-discovery was invaluable in guiding my career decisions and aligning my professional goals with my personal values.

### **Navigating the Job Search as an Asian Woman**

During the process, I occasionally questioned whether my identity as an Asian woman impacted my job search. I wondered whether the process might be different if I were of a different ethnicity or cultural background. As I hoped this was not the reason for my delay, and that it is also not the reality of others, I found FACL BC to be an invaluable source of support.

One particularly memorable event was the “100 Years of Resilience: The Paper Trail to the Chinese Exclusion Act” organized by FACL BC in collaboration with the Chinese Canadian Museum in Vancouver’s Chinatown. The exhibition highlighted the resilience of the Chinese Canadian community in the face of historical injustices caused by the *Chinese Exclusion Act*. One of the most impactful displays was a republished declaration from the Chinese Benevolent Society, calling on the Chinese community to stop working on July 1, 1933, in protest of the 10th anniversary of the *Chinese Exclusion Act* and the immense humiliation and shame caused by it. Reading the original Chinese version of this declaration moved me to tears. I realized that the opportunities I have today — to study, to vote, to practice law — are direct results of the courage and sacrifices made by those who came before me. This sense of collective struggle and resilience stayed with me throughout my job search and continues to inspire me as I move forward in my career.

### **The Call Ceremony**

The job search took nearly a year, and I often questioned why it was taking so long, until I attended my call ceremony in July 2024.

The ceremony had a much greater impact on me than I had expected. Though I had already been called to the bar, reciting the Barristers and Solicitors’ Oath, standing in the Great Hall before a judge, listening to the speakers talking about the noble tradition of the legal profession, and signing my name in the book made me realize the significance of the moment.

The ceremony reminded me of my purpose and responsibility as a legal professional, which reinforced my commitment to upholding the principles of justice and equity in my practice. Reflecting on my journey afterward, I understood that the time it took was necessary for me to be mentally prepared for the responsibilities ahead.

## **Conclusion**

My journey to employment after being called to the bar was long and challenging but also led to significant personal growth. Persistence, networking, and self-reflection were instrumental in my success, as were the support and mentorship I received from FACL BC. For those who may be facing similar challenges, I hope my story offers some encouragement. Keep going, stay true to yourself, and remember that every step you take brings you closer to your goal.

# The *Rashomon* Effect and the Importance of Diversity in the Legal Profession

By The Honourable Justice David Masuhara \*

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\* The Honourable Justice David Masuhara is a judge of the B.C. Supreme Court and sits in Vancouver. He is a third generation Japanese-Canadian – sansei.

On any given day, perusing the B.C. Supreme Court's issued decisions page, you will find the vast majority of cases engaged in fact-finding – the assessment of the evidence. There will be discussions about the credibility or reliability of witnesses. This task lies at the core of the truth-seeking function of the trial judge.

Judges frequently list differing versions of events as presented by opposing sides, sorting through commonalities and discrepancies, and assessing the weight to attribute to each witness's testimony. In conducting this exercise myself, I am often reminded of Akira Kurosawa's 1950 cinematic masterpiece, *Rashomon*: a film that portrays multiple conflicting accounts provided to a police commissioner by witnesses who observed or were involved in the murder of a samurai and the rape of his wife in feudal-time Kyoto. The narratives of the witnesses raise questions about the circumstances leading to the samurai's death, the wife's potential complicity, whether the samurai took his own life, the motivation of the self-confessed murder and assailant of the wife, and the motivations of others involved. The film poignantly illustrates how there can be multiple inconsistent versions of the same event, prompting us to ponder where the truth lies. I often make mental notes to refer to *Rashomon* in future decisions when confronted with similarly conflicting narratives.

To my surprise, I recently discovered that various judges in different courts have referenced *Rashomon* in their decisions. A search on a legal database will reveal some of these instances. Delving further, I came to learn that the phenomenon of varying and conflicting narratives has been named in academic literature as the Rashomon Effect, or in Japanese, Rashomon Kouka (羅生門効果). While it is not a legal principle, it is a convenient and elegant way to describe the complexity of human perception and the challenges it poses in the pursuit of discovering the truth.

To connect the relevance of the Rashomon Effect to Asian Canadian lawyers, I refer to the judicial commentary on the question of credibility and reliability and a recent Statistics Canada report on immigration.

In assessing credibility, two cases are commonly referenced in B.C. Supreme Court

decisions: *Faryna v Chorny*<sup>1</sup> and *Stenner v Bradshaw*.<sup>2</sup> In the latter case, Madam Justice Dillon summarized the approach:

*Credibility involves an assessment of the trustworthiness of a witness's testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (Raymond v. Bosanquet (Township), [1919] 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examining various factors such as the ability and opportunity to observe events, the firmness of memory, the ability to resist the influence of interest to modify recollection, whether the witness's evidence harmonizes with independent evidence that has been accepted, whether the witness changes testimony during direct and cross-examination, whether the witness's testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanor of a witness generally (Wallace v. Davis, [1926] 31 O.W.N. 202 (Ont.H.C.); Faryna v. Chorny, [1952] 2 D.L.R. 152 (B.C.C.A.) [Faryna]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).<sup>3</sup>*

In terms of immigration, according to the October 2022 Statistics Canada report,<sup>4</sup> based on current trends, immigrants could represent from 29.1 percent to 31 percent of the population of Canada by 2041. Almost one in four people (i.e., 23 percent) counted during the 2021 Census are or have been a landed immigrant or permanent resident in Canada. From 2016 to 2021, immigrants accounted for four-fifths of labour force growth. Historically, the majority of immigrants in Canada came from Europe. However, over the past 50 years, the share of new immigrants from Europe has declined, with the share of new immigrants from Asia (including the Middle East) increasing. In 2021, Asia continued to be the top source region of new immigrants.

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1 *Faryna v Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 DLR 354.

2 *Stenner v Bradshaw*, 2010 BCSC 1398.

3 *Ibid* at para 186.

4 Statistics Canada, "Immigrants make up the largest share of the population in over 150 years and continue to shape who we are as Canadians" (2022), online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/221026/dq221026a-eng.htm>>.

As Canada's population becomes increasingly diverse with a current weighting from Asian immigration, the truth-seeking function requires recognition of the unique cultural, linguistic, and social contexts applicable to those more recent arrivals to Canada who find themselves involved in the civil and criminal justice system. This is where the importance of a legal profession that reflects this diversity becomes significant. This is not merely a matter of representation; it directly impacts the effectiveness and fairness of the justice system.

Diversity in the justice sector brings invaluable perspectives in understanding cultural nuances and how they impact legal issues, including those influencing assessments of a witness's conduct and credibility. Lawyers and judges from varied backgrounds deepen the well of available insight through their lived experiences from the communities from which they come; not only aiding in uncovering biases that may otherwise go unnoticed but also fostering a more comprehensive approach to truth-seeking.

While we are left without the ultimate truth in *Rashomon*, the themes raise universal questions about subjective and objective truth and differences in perception, memory, and reporting. The cultural, philosophical, and allegorical aspects are significant in understanding the characters and their revelations. One can see through this the importance of diversity as a critical means to finding the truth.

# **A Line Crossed: How racism turned mischief into a hate-motivated crime against Chinese Canadians in *Bethune and Secreve***

By Victor Tai \*

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## Introduction

The B.C. Provincial Court’s decision in *R v Bethune and Secreve*<sup>1</sup> concerned an altercation between café employees and customers during a critical phase of the COVID-19 pandemic, as soaring infection rates prompted the Provincial Health Officer to issue orders in March 2021 limiting dine-in service, except on outdoor patios.<sup>2</sup> The accused, Mr. Bethune and Ms. Secreve, violated these restrictions at a Steveston café.<sup>3</sup> In doing so, they poured coffee onto the floor, and hurled racial slurs.<sup>4</sup> This case stands as a significant example of how anti-Chinese bias, prejudice, or hate can motivate criminal conduct,<sup>5</sup> even in the absence of formal “hate crime” charges or convictions.<sup>6</sup>

The objectives of this case comment are straightforward. First, to explain the decision, particularly focusing on why an act as seemingly trivial as pouring a cup of coffee could reflect an underlying discriminatory motivation. This motivation ultimately influenced the sentencing of Mr. Bethune and Ms. Secreve, despite the lack of specific hate crime charges. This discussion is grounded in Judge Vandor’s thorough judgment, where she recognized the accused’s disrespectful and brazen comments constituted a statutorily aggravating factor,<sup>7</sup> requiring harsher penalties for mischief motivated by bias, prejudice, or hate. As Judge Vandor held, “Pouring coffee onto the floor of a café in the context of an argument over seating is an extraordinarily hostile and aggressive act. It is an intended insult that crossed the line into criminal conduct”.<sup>8</sup>

Second, this comment seeks to critically assess the decision, specifically examining whether the court has adequately considered rehabilitation as a sentencing

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1 *R v Bethune and Secreve*, 2022 BCPC 243 [*Bethune and Secreve*].

2 *Ibid* at paras 45-46.

3 *Ibid* at para 13.

4 *Ibid* at paras 2-3.

5 *Ibid* at paras 78-95.

6 *Ibid* at para 97. The accused were charged under the *Criminal Code of Canada*, RSC 1985, c C-46, s 430(4) (Mischief) [*Criminal Code*]. Judge Vandor held that this was not a “hate crime” under Criminal Code, ss. 318 (Advocating genocide) and 319 (Public incitement of hatred).

7 *Criminal Code*, *supra* note 6, s 718.2(a)(i) (Other sentencing principles).

8 *Bethune and Secreve*, *supra* note 1 at paras 91-92, 135.

objective. In *Bethune and Secreve*, the accused downplayed the seriousness of their mischief by asserting that “there is nothing racial here”.<sup>9</sup> While *R v Gillard*<sup>10</sup> illustrates the Ontario Court of Justice’s acknowledgement of the need to address the broader societal harms caused by racially-motivated crime, with the aim of striking a balance between denunciation, deterrence, and rehabilitation,<sup>11</sup> *Bethune and Secreve* appears to have deviated from this approach. In *Bethune and Secreve*, the court prioritized denunciation and specific and general deterrence,<sup>12</sup> concluding that “rehabilitation is not a strong sentencing objective” due to the accused’s lack of sincere remorse.<sup>13</sup> This comment argues that rehabilitation should have played a more prominent role in the sentencing decision of Mr. Bethune and Ms. Secreve, particularly in light of the racial dynamics underlying the offence.

### **Background: Hateful Words After Mischief**

Let us start with the facts of the case: on March 29, 2021, Mr. Bethune, aged 74, and his ex-wife, the 76-year-old Ms. Secreve, entered a small café in Steveston.<sup>14</sup> Ms. Tan and Mr. Chan were, respectively, the store manager and the barista on duty.<sup>15</sup> Due to COVID-related restrictions, no indoor seating was available. Mr. Bethune decided to bring a table from the patio and unstack two chairs from the back of the café.<sup>16</sup> Despite repeated requests from the café employees to abide by the seating protocols, the pair refused to move to a nearby table, which had just been cleaned and sanitized for them.<sup>17</sup>

The situation quickly escalated into more aggressive and disruptive behaviour when Mr. Bethune stood up, poured his coffee onto the floor of the café, and Ms. Secreve followed suit.<sup>18</sup> The pair “perceived both café employees to be of Chinese

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9 *Ibid* at para 135.

10 2022 ONCJ 164 [*Gillard*]. *Gillard* was cited in *Bethune and Secreve*, *supra* note 1 at paras 60, 65.

11 *Gillard*, *supra* note 10 at paras 30, 43, 48.

12 *Bethune and Secreve*, *supra* note 1 at paras 111-148.

13 *Ibid* at paras 139-148.

14 *Ibid* at para 8.

15 *Ibid* at paras 8-9.

16 *Ibid* at paras 10-11.

17 *Ibid* at para 12.

18 *Ibid* at paras 12, 17.

race or ethnic origin”,<sup>19</sup> and hurled vilifying and dehumanizing epithets associating them with the Coronavirus, including “Fuck You Chinese”, “Fucking Chinese”, and “the Coronavirus is you”.<sup>20</sup>

On the third day of trial, after Ms. Tan had given her evidence,<sup>21</sup> both Mr. Bethune and Ms. Secreve pled guilty to one count of mischief.<sup>22</sup>

### **When it Crossed the Line: Mischief Motivated by Anti-Chinese Bias**

Judge Vandor identified three aggravating factors, which the Crown had proven beyond a reasonable doubt: (i) the defiant conduct of Mr. Bethune and Ms. Secreve occurred during the pandemic;<sup>23</sup> (ii) it significantly impacted the café manager;<sup>24</sup> and (iii) the mischief was motivated by anti-Chinese bias, prejudice, or hate.<sup>25</sup>

The third aggravating factor was crucial in explaining how the court linked the hateful remarks to the mischief itself, justifying the imposition of an aggravated sentence, even though the accused were not formally charged with a hate crime.<sup>26</sup> This decision therefore highlights how the court can consider the motivations behind criminal conduct when determining sentencing, particularly when racial bias is involved. The court also acknowledged the broader context of the “increased vulnerability of the Canadian-Chinese community because of misinformation linking them to the COVID pandemic”.<sup>27</sup>

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19 *Ibid* at paras 3, 9.

20 *Ibid* at paras 3, 18, 19, 27.

21 *Ibid* at para 106.

22 Contrary to the *Criminal Code*, *supra* note 6, s 430(4) (Mischief).

23 *Bethune and Secreve*, *supra* note 1 at paras 45-49.

24 *Ibid* at paras 50-55.

25 *Ibid* at paras 56-104.

26 *Ibid* at para 97. See the *Criminal Code*, *supra* note 6, s 718.2(a)(i) (Other sentencing principles). It provides that the court should increase a sentence to factor in, amongst others, “evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor”.

27 *Bethune and Secreve*, *supra* note 1 at paras 74-76.

Drawing on the six factors identified in *R v Kandola*,<sup>28</sup> Judge Vandor held that the actions of the pair were motivated by bias, prejudice, or hate, given their perceived Chinese race or ethnic origin of the café manager.<sup>29</sup> Notably, the racist comments were uttered in close temporal and spatial proximity to the mischief committed,<sup>30</sup> and the actions taken by the accused — pouring coffee onto the floor in protest of a safety measure — were extreme or disproportionate to the situation at hand.<sup>31</sup> The café manager acted professionally throughout prior interactions, including making their drinks and approaching them without provocation.<sup>32</sup> Accordingly, Judge Vandor concluded that no other plausible explanation for the pair’s actions existed apart from anti-Chinese bias, prejudice, or hate.<sup>33</sup>

The accused also raised a constitutional argument, asserting that their right to free expression was violated.<sup>34</sup> Judge Vandor rejected this claim, emphasizing that their actions had crossed the line of mere hatred into criminal conduct that had gone too far in Canadian society.<sup>35</sup> While Mr. Bethune was free to leave for another café with different seating rules, he simply chose to remain and engage in behaviour that was racially motivated and disruptive.<sup>36</sup>

The significance of spilling coffee in this case extends beyond mere mischief. The context of anti-Asian racism plays a crucial role in understanding the severity of the accused’s actions.<sup>37</sup> A recent report on anti-Asian hate presented at the

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28 2010 BCSC 841 [*Kandola*]; *Bethune and Seceve*, *supra* note 1 at paras 63, 71, 72.

29 *Bethune and Seceve*, *supra* note 1 at para 56.

30 *Ibid* at paras 79-81, 86-89. As for Mr. Bethune, “there were intervening events between Mr. Bethune’s mischief and his anti-Chinese comments” (*ibid* at para 86), but the timing was inferred to be less than one minute apart.

31 *Ibid* at paras 79, 85.

32 *Ibid* at paras 79, 84, 85.

33 *Ibid* at paras 82, 90-95.

34 *Ibid* at paras 59, 97-98.

35 *Ibid* at paras 98-101.

36 *Ibid* at para 93. Further, Mr. Bethune equated the café manager to the Coronavirus, which suggested nothing other than his motivation for mischief based on the manager’s race or ethnic origin (*ibid* at paras 94-95).

37 In defence, Mr. Bethune and Ms. Seceve denied racist motivation, and framed their offence as “nothing more than a mischief” (*ibid* at para 59).

Chinese Cultural Centre<sup>38</sup> — the centre itself was defaced with racist graffiti during the COVID pandemic<sup>39</sup>— calls for urgent action to combat hate crimes, violence, discrimination, and “real systemic issues that disproportionately affect individuals of Chinese ethnicity”.<sup>40</sup> The pandemic exacerbated anti-Asian hate incidents across Canada, with only a fraction reported to law enforcement.<sup>41</sup> Even when victims sought help, they often faced inadequate responses.<sup>42</sup>

The experience of the café manager<sup>43</sup> reflected a broader picture faced by the Chinese Canadians. Judge Vandor noted that the Chinese Canadian community “has historically been discriminated against in Canada”,<sup>44</sup> and the actions of the accused echoed the long legacy of anti-Chinese sentiment.<sup>45</sup> Similarly, in *R v Castonguay*, Judge Dhillon, also of the B.C. Provincial Court, emphasized that sentencing “must be situated both in the present day but also with an eye to the context and history faced by Chinese Canadians in Canada”.<sup>46</sup> This judicial recognition of “the long struggle of Chinese Canadians against racism”<sup>47</sup> was central

38 CBC News, “Report on anti-Asian hate an urgent call to action, say authors” (14 May 2024), online: CBC News <<https://www.cbc.ca/news/canada/british-columbia/anti-asian-hate-report-1.7199599>>.

39 *R v Castonguay*, 2021 BCPC 315 [*Castonguay*].

40 Kenny Zhang, Ally Wang & Jimmy Yan, *One Hotline, Many Cold Lines – An Analysis of Victim Cases Reported to the Hotline 1-2-3*, (Vancouver: Stop Anti-Asian Hate Crimes Advocacy Group Association of Canada, May 2024) at 5, online (pdf): <<https://1-2-3.site/wp-content/uploads/2024/05/SAAHCAG-one-hotline-many-cold-lines-report-V61.pdf>> [Zhang].

41 *Ibid* at 9. See also: British Columbia, Office of the Human Rights Commissioner, *From hate to hope: Report of the Inquiry into hate in the COVID-19 pandemic* (Vancouver, B.C.: Office of the Human Rights Commissioner, March 2023) at 28, online (pdf): <[https://bchumanrights.ca/wp-content/uploads/BCOHRRC\\_Hate-in-the-pandemic.pdf](https://bchumanrights.ca/wp-content/uploads/BCOHRRC_Hate-in-the-pandemic.pdf)>.

42 Zhang, *supra* note 40 at 12. Relatedly, public perception of police bias can manifest in various forms such as racial profiling, which was discussed in *R v Le*, 2019 SCC 34 at paras 72-106. It was also said that public health crises have exemplified pre-existing inequalities, see e.g. Elene Lam et al, “The Double-Edged Sword of Health and Safety: COVID-19 and the Policing and Exclusion of Migrant Asian Massage Workers in North America” (2021) 10:5 *Soc Sci* 157.

43 The manager’s efforts to uphold the COVID-seating protocols had no bearing on her race or ethnicity, yet she was subjected to dehumanizing slurs tied to racial bias (*Bethune and Secreve*, *supra* note 1 at paras 79, 85).

44 *Ibid* at para 118.

45 See e.g., Angela Lee, “Open Your Eyes: Teaching and Learning about Anti-Asian Racism and the Law in Canada” (2023) 46:1 *Dal LJ* 111 at 119.

46 *Castonguay*, *supra* note 39 at para 15.

47 *Ibid* at para 14.

to the court's decision, reflecting how the historical and contemporary contexts of anti-Chinese sentiment shaped the sentencing of Mr. Castonguay, who pleaded guilty to mischief of damaging the Chinese Cultural Centre in April 2020.<sup>48</sup>

The statements made by the accused in *Bethune and Secreve*, such as “there is nothing racial here” and “the Chinese community is sensitive because they are being blamed for COVID coming from China”,<sup>49</sup> reveal their entrenched prejudice against people of Asian descent.<sup>50</sup> Despite the accused's assertions of vulnerability due to age and pandemic fears, it was their own disregard for public health measures which put them at greater risk. The denial of the racial nature of their actions mirrors similar patterns seen in other cases where individuals minimize the impact of their racist behaviour.<sup>51</sup>

### Re-Positioning Rehabilitation as a Sentencing Objective

*Bethune and Secreve* also raises important questions about rehabilitation as a sentencing goal. Although Mr. Bethune and Ms. Secreve had no prior criminal records and pleaded guilty to the charge of mischief,<sup>52</sup> their continued denial of the significance of their actions, coupled with a lack of genuine remorse, raised doubts about the possibility of rehabilitation.<sup>53</sup> Judge Vandor emphasized denunciation and deterrence in imposing a suspended sentence with a one-year probation order,<sup>54</sup> and held that “rehabilitation is not a strong objective”<sup>55</sup> due to their lack of sincere regret. However, I argue that rehabilitation should have played a more

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48 *Ibid* at para 2.

49 *Bethune and Secreve*, *supra* note 1 at para 135.

50 In defence, Ms. Secreve argued that the mischief was an instinctive reaction, as she merely followed the lead of her ex-husband (*ibid* at para 80). However, this possibility was rejected in light of the fact that Ms. Secreve could have said nothing, instead of saying “Fuck You Chinese” directly to the café manager less than two seconds after the mischief (*ibid* at para 81). As for Mr. Bethune, he argued that he committed the mischief because he wanted to get attention and diffuse the escalating situation (*ibid* at para 30). However, his argument was plainly rejected (*ibid* at para 92).

51 See e.g., *Castonguay*, *supra* note 39 at para 25 (Mr. Castonguay criticized the victims based on the misinformation directed at the Chinese and unproven linkage to COVID pandemic).

52 *Bethune and Secreve*, *supra* note 1 at paras 105-106.

53 *Ibid* at paras 138-139.

54 *Ibid* at paras 148, 150. No order was made for counselling, community hours, or an apology letter to be written (*ibid* at para 152).

55 *Ibid* at paras 138, 139, 152.

prominent role in this decision, particularly in light of the entrenched racial biases which this comment has discussed above.

Section 718(d) of the *Criminal Code* explicitly identifies the rehabilitation of offenders as a fundamental objective of sentencing. Even when race-based hatred is recognized as an aggravating factor, the courts may still adopt a sentencing approach that emphasizes rehabilitation.<sup>56</sup> For instance, seven months before the judgment of *Bethune and Secreve*, the Ontario Court of Justice released the sentencing decision of *Gillard*, where the 24-year-old Mr. Gillard pled guilty to the charge of assault against Ms. Mahamed, a Muslim woman.<sup>57</sup> Mr. Gillard's positive steps towards rehabilitation, including the resumption of his mental health medication, counselling, and mental health treatment,<sup>58</sup> led to a suspended sentence which balanced denunciation with rehabilitative goals.<sup>59</sup>

To provide another example, in *R v Porco*,<sup>60</sup> the 56-year-old Mr. Porco pled guilty to the charge of mischief for vandalizing bus shelters in Durham with anti-Muslim graffiti.<sup>61</sup> Whilst the two-page apology letter Mr. Porco wrote did not offer any insight as to the impact of his hateful words on the community,<sup>62</sup> Justice Javed held that probation could assist with his rehabilitation, which included cultural sensitivity counselling and 15 hours of community service.<sup>63</sup> Even where Mr. Porco had not started

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56 See e.g., *Regina v Lankin*, 2005 BCPC 1 at para 46; and *R v Elliott*, 2020 ONCJ 134. In particular, rehabilitation has been cited 33 times as a sentencing principle, where hate was an aggravating factor at sentencing. This figure was mainly derived from a review of case law from 2007 to 2020 which considered s 718.2(a)(i) of the *Criminal Code* (Department of Justice Canada, *Hate as an Aggravating Factor at Sentencing - A Review of the Case Law from 2007–2020*, Department of Justice Canada, 2020 CanLII Docs 3732 at 34-35.

57 For the facts, in July 2019, Ms. Mahamed intervened in a verbal dispute between Mr. Gillard and another person. Mr. Gillard turned his aggression to Ms. Mahamed by swearing at her, bumping her with his chest, and pulling off her hijab. He then punched her in the face, causing her to fall (*Gillard*, *supra* note 10 at para 2). Mr. Gillard's hate was an aggravating factor to consider in the context of gendered Islamophobia (*ibid* at para 20).

58 *Ibid* at paras 7, 27.

59 *Ibid* at paras 43, 51. Mr. Gillard was required to actively participate in rehabilitative programs, amongst other conditions (*ibid* at para 52).

60 2017 ONCJ 676 [*Porco*].

61 *Ibid* at para 1, 22. The incident was motivated by bigotry and hate (*ibid* at paras 18-19).

62 *Ibid* at para 29.

63 *Ibid* at paras 47-48.

ridding himself of his xenophobic fears, the court held that “there is hope for Mr. Porco as ignorance, bigotry and hate can be rooted out with the will to change.”<sup>64</sup>

In contrast, *Bethune and Secreve* saw rehabilitation sidelined due to the lack of remorse of the accused. While it is true that genuine remorse may indicate a readiness for rehabilitation,<sup>65</sup> the absence of remorse should not automatically preclude a rehabilitative approach. The systemic nature of anti-Chinese racism in Canada, as acknowledged by Judge Vandor, and previously in cases like *Castonguay*, underscores the importance of addressing racial bias at its roots. The café manager’s experience was not an isolated incident but part of a wider pattern of discrimination faced by the Chinese Canadian community, particularly during the pandemic. By focusing more on rehabilitation, the court could have engaged in a wider variety of rehabilitative tools, such as cultural sensitivity counselling or apology letters, to combat this legacy of racism.

### **Conclusion: More than Coffee Stains**

In conclusion, while the physical mischief in *Bethune and Secreve* may seem trivial, the racial undertones render the case far more complex, aligning it with judicial efforts to address hate-motivated crimes. Courts like those in *Gillard* and *Porco* have emphasized the potential for rehabilitation, even when hateful conduct is involved, using probationary measures to foster change. However, the judicial notice taken by Judge Vandor in *Bethune and Secreve* regarding the historical discrimination against Chinese Canadians highlights a deeper, systemic issue that the courts must continue to address. By acknowledging the broader social context of racism, courts play a crucial role in shaping sentencing to reflect the gravity of bias-driven offences, while balancing the rehabilitative potential of offenders where appropriate.

Coffee stains may be scrubbed away, but the harm caused by racist remarks lingers long after the incident.<sup>66</sup> Sentencing that incorporates judicial recognition of the

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<sup>64</sup> *Ibid* at paras 49, 51.

<sup>65</sup> See e.g., *Gillard*, *supra* note 10.

<sup>66</sup> See e.g., *Bethune and Secreve*, *supra* note 1 at para 55, where the café manager “eventually stopped working at the café three months after the mischief because she was not comfortable working there any longer”.

broader societal harms inflicted by racism, as seen in *Castonguay*, underscores courts' role in denouncing discriminatory conduct while fostering possibilities of rehabilitation. This balance between deterrence and social healing is essential to addressing hate-motivated offences.

# Gatekeepers to Diversity in the Legal Profession: British Columbia's Law Schools

By Anita Bal, Harveer Garcha, Neelam Jassal, Simirin Lally \*

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\* Anita Bal, Harveer Garcha, Neelam Jassal, and Simirin Lally are law students at Thompson Rivers University. Jassal is in her third year, while Lally and Garcha are both in their second year. Bal is a former student, who was a part of the Thompson Rivers University Faculty of Law class of 2024. All are dedicated to developing their legal skills and pursuing careers focused on justice, fairness, and legal excellence.

The lack of diversity in the legal profession is an ongoing issue that people from visible minority groups continue to face in today's society. It can be said that this issue has stemmed from the province's history, however, it does not justify why it continues to exist today. According to 2022 statistics from the Law Society of British Columbia ("LSBC"), 19.7 percent of lawyers identified as a racialized person of colour. In comparison, the 2021 Census reported that 34 percent of British Columbians identified as a visible minority. It is evident from such data that the legal profession is not representative of B.C.'s diverse population. Law schools serve as the gateway to the legal profession, and if law school admissions are not reflective of the diverse population, the emerging pool of lawyers will inevitably lack diversity as well.

As the society around us continues to become more diverse, it is necessary for legal teams to have more diverse backgrounds and perspectives to better understand and serve their needs. Diverse opinions and experiences contribute to more robust intellectual debates when formulating legal strategies, enriching existing ideas. As mentioned in a law panel at Ryerson University (now Toronto Metropolitan University), greater diversity shows that our laws and the legal sphere is a place for everyone – as the public's perception of the legal field usually creates impressions of the larger legal system.<sup>1</sup> For the reasons above, greater diversity within law schools will help encompass a more diverse profession of young lawyers.

In order to increase diversity within B.C. law schools, it is important to analyze the current steps taken within them. Thompson Rivers University ("TRU"),<sup>2</sup> the University of Victoria ("UVIC"),<sup>3</sup> and Peter A. Allard School of Law at the University of British Columbia ("UBC")<sup>4</sup> all claim to prioritize equity and diversity; however, the actions taken to promote their mandates often fall short.

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1 Sarafina Romano, "Diversity in the legal system critical to understanding defendants" (16 November 2021), online (journal): <[ontherecordnews.ca/diversity-in-the-legal-system-critical-to-understanding-defendants-say-legal-experts-1-2/](https://ontherecordnews.ca/diversity-in-the-legal-system-critical-to-understanding-defendants-say-legal-experts-1-2/)>.

2 Thompson Rivers University, "Faculty of Law Admissions", online: <[https://www.tru.ca/law/admissions.html?gad\\_source=1&gclid=CjwKCAjwzN-](https://www.tru.ca/law/admissions.html?gad_source=1&gclid=CjwKCAjwzN-)>.

3 University of Victoria, "Faculty of Law Admissions", online: <<https://www.uvic.ca/law/admissions/index.php>>.

4 Peter A. Allard School of Law, "Admissions", online: <<https://allard.ubc.ca/programs/juris-doctor-jd-program/admissions>>.

The first hurdle that prospective law students face is the admission process. Notably, at this stage, all universities have discretionary and Indigenous categories which is one way law schools make it overt that certain diversity characteristics matter and are considered. However, beyond this, a lack of information about these categories makes it difficult to determine how effective they are when it comes to increasing diversity within B.C. law schools.

High tuition rates are another barrier to legal education that law students face.<sup>5</sup> For some, tuition rates may be infeasible and thus, individuals are not able to pursue a legal education. In 2021, Craig Jones, on behalf of TRU Faculty of Law's South Asian students, filed a B.C. Human Rights Tribunal complaint against the province's Ministry of Advanced Education.<sup>6</sup> In this complaint, it was argued that the way in which the law school was funded amounted to discrimination against South Asian students. It outlined that a majority of B.C.'s South Asian law students received their legal education from TRU. Jones noted that "South Asian law students pay substantially higher tuition to attend law school compared to other students, exacerbating their historical lack of access to the profession".<sup>7</sup> At the time the complaint was initiated, tuition at TRU was roughly \$22,000 a year, which was almost twice that of UBC's and UVIC's.

It is unsurprising that faced with such high tuition rates, students of diverse backgrounds may opt not to pursue law school as a result. Each of the law schools offer scholarships, many of which are reserved for students coming from minority backgrounds. However, the number of scholarships offered and their dollar amount make us skeptical to believe that they are a suitable solution to such a large barrier.

Once students from marginalized groups have successfully been accepted, they often lack the support required to succeed in law school and the legal profession. Factors such as support throughout law school, mentorship and law school-related opportunities undoubtedly influence one's ability to enter and succeed in the legal

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5 Sarah Kriekle, "Gatekeeping Admissions: Access to Justice and Inclusive Admission Processes" (2022), Vol 31 Dalhousie Journal of Legal Studies at 85.

6 *Jones obo South Asian Law Students at Thompson Rivers University v. Ministry of Advanced Education, Skills & Training*, 2021 BCHRT 162 [Jones].

7 *Ibid* at para 21.

field.<sup>8</sup> Thus, while law schools and their admissions can be seen as a predictor of diversity in the legal profession, it is important that law schools provide continued support to their students as well.

In order to determine how effective law schools in B.C. are at fulfilling their equity and diversity mandates, one must turn to their statistics. However, not every school provides such numbers. Of the three law schools, only UBC provides a thorough disclosure of their yearly 1L class profile and their diversity rates of visible minorities do seem to be increasing.<sup>9</sup> For instance, roughly 47 percent of UBC's 1L class in 2022 identified themselves as being a visible minority with regard to their race, as compared to 41 percent in 2021. They fare better than UVIC, which reports that approximately 20 percent of their students are visible minorities.<sup>10</sup> However, UVIC's website does not specify the year in which this statistic was measured, nor does it provide rates of previous measurements to provide greater context into how their diversity numbers have evolved over the years. Finally, TRU does not provide any data on their diversity statistics.

It is difficult to determine whether the initiatives law schools take to promote equity and diversity are effective given the lack of data. Furthermore, even though law schools have reported an increase in diversity amongst their student populations, we do not see similar increases of diversity in the legal profession. Given so, we are left to question the effectiveness of admission processes and law school initiatives meant to increase diversity.

So, how then can law schools do better? One of the challenges that visible minorities face in accessing legal education is law school tuition. Law schools could do a better job at providing funding to students by outsourcing funding, increasing bursaries, and prompting diversity focused scholarships. It is equally important that law

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8 Zoe Johansen-Hill Larissa Meridith-Foster and Coleman Owen, "Follow-Up Report & Summary Notes: Diversity and Inclusion in The Legal Profession" (2019) at 5.

9 Peter A. Allard School of Law, "1L JD Class Profile", online: <<https://allard.ubc.ca/programs/juris-doctor-jd-program/admissions/1l-jd-class-profile>>.

10 University of Victoria, "JD Admission FAQs", online: <<https://www.uvic.ca/law/admissions/jdadmissionfaqs/index.php>>.

schools support the students in accessing these resources. Often, law students are unaware of the bursary or grant options that their school provides due to the timing of when this information is provided. The first week of classes is when students tend to receive the greatest number of emails, and this tends to be when information about financial aid resources is circulated, so such emails are often overlooked. This can be an ongoing issue during law students their second and third years.

Both the federal and provincial also have the power to alleviate the financial burden law students face. Government loans and grants should, at the bare minimum, cover a law student's entire year of tuition. This would help reduce the financial stress faced by law students and allow them to focus on their education, which directly relates to accessing higher paying jobs post law school.

In order to determine what is or is not working in addressing the lack of diversity in law schools, it is of the utmost importance that law schools are transparent. This includes transparency with their demographics, their DEI policies, and other relevant initiatives. As discussed earlier, law schools across the province lack information about the demographics of their students. Although UBC provides detailed information regarding their class profile including the ethno-racial identities of their students, there is still a lack of information about the number of individuals from visible minorities who apply versus those who receive an acceptance. To increase diversity in law schools, schools should be required to collect and publicly release their demographic data.

Across the province, all the law schools require some form of a personal statement, which they claim is taken into consideration when assessing a student's application. Such holistic admission processes have encouraged individuals from marginalized groups to apply and, according to law schools, have created more diverse law school cohorts. For example, the University of Windsor's Faculty of Law, which is one of Canada's most diverse law schools, applies a holistic admissions process. The website clearly states the seven factors taken into consideration and that no one factor is determinative. In B.C., there is a lack of consistent transparency concerning the holistic review. UVIC states that the written statement may be taken into consideration, whereas UBC states that LSAT scores, academic performance, and personal statement are all given equal consideration. Law schools need to be transparent when they claim they take a holistic approach in reviewing applications.

What is being considered when they are looking at the personal statements? Who is reviewing the applications? Do individuals reviewing these applications come from diverse backgrounds?

It is also important for law schools to ensure that once a diverse set of students are enrolled, that they are well supported to succeed as future lawyers. Individuals from marginalized groups are often also first-generation Canadians and face difficulties navigating the social constructs of the legal profession. Mentors can provide critical access to informal networks and intelligence regarding the “unwritten rules” in a work environment that can significantly impact advancement.<sup>11</sup> Having a mentorship program where mentors who have navigated similar situations are matched with students would allow students to feel a sense of belonging while also providing a valuable skill set for students from marginalized backgrounds. While law schools may have mentorship programs in place, more can be done to enhance the overall impact of such programs. For instance, long-term mentorship that continues past the first year of law school enables law students to be mentored by actual lawyers versus fellow law students, and takes an individualistic approach based on one’s need for resources and support.

It is important that the legal profession represents our province’s diverse demographics. As the initial step into the legal profession, law schools have the greatest responsibility in increasing diversity in our field. Law schools should provide accessible legal education to prospective students from racialized communities through active efforts such as inclusive admissions, increased funding, and mentorship. In doing so, aspiring law students will be able to perceive the legal field as accessible irrespective of their race and background, and not an unattainable career as many still do today.

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11 The Law Society of British Columbia, “Towards a More Representative Legal Profession: Better practices, better workplaces, better results” (June 2012) at 5, online (pdf): <[www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/diversity\\_2012.pdf](http://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/diversity_2012.pdf)>.

# **Pierce the Bamboo Ceiling: Should Canadian Law Implement Racial Mandates on Corporate Boards?**

By Jackie Zhao \*

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During the COVID-19 pandemic, Asians faced increased discrimination in North America,<sup>1</sup> with 39 percent of Asian Americans reporting racial discrimination,<sup>2</sup> reflecting broader barriers. In the U.S., although Asian Americans are highly educated and make up 13 percent of the population workforce, they occupy only four percent of Fortune 500 board seats and remain the least represented group in senior corporate roles.<sup>3</sup> Board diversity initiatives often overlook Asian representation, focusing instead on gender or Black representation. Similarly, despite comprising 9.3 percent of the population,<sup>4</sup> Asians<sup>5</sup> hold only 2.78 percent of corporate directorships in Canada.<sup>6</sup> This phenomenon exemplifies the bamboo ceiling, a set of career barriers Asians face, often rooted in subjective biases like perceived deficiencies in leadership potential or communication skills.<sup>7</sup> While Canadian demographics differ (e.g., Chinese Canadians comprise 4.7 percent of the population versus 1.5 percent of Chinese Americans<sup>8</sup>), comparable economic and cultural biases suggest the bamboo ceiling persists in Canada.

This paper examines the underrepresentation of Asian Canadians on corporate boards and evaluates the potential of legal mandates, such as racial quotas, to

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- 1 Neil G Ruiz et al, "Many Black and Asian Americans say they have experienced discrimination amid the COVID-19 outbreak" (1 July 2020), online: <<https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/>>.
  - 2 *Ibid.*
  - 3 KPMG Board Leadership Center (BLC) & Ascend Pinnacle, "Asian representation on Fortune 1000 boards: 2022 Edition" (2022), online (pdf): <<https://static1.squarespace.com/static/621f898a98dc785cd663ab7b/t/6411f2ee4666315d84f17833/1678897904702/asian-representation-fortune-1000-boards-2022-edition.pdf>> [KPMG].
  - 4 Statistics Canada, "Census Profile, 2021 Census of Population" (15 November 2023), online: <<https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/index.cfm?Lang=E>>
  - 5 "Asians" here refers to East Asians and Southeast Asians.
  - 6 David Milstead, "Canada trails U.S. significantly in corporate diversity" (20 March 2023), online: *The Globe and Mail* <<https://www.theglobeandmail.com/business/article-canada-us-corporate-diversity/>>.
  - 7 Willa Zhou, "The Model Minority Stereotype: Analyzing the Impact the Stereotype has on Asian Americans" (28 May 2019) at para 6, online: <[www.medium.com/willazhou/the-model-minority-stereotype-analyzing-the-harmful-beneficial-effects-on-asian-americans-f394d3f6fd82](http://www.medium.com/willazhou/the-model-minority-stereotype-analyzing-the-harmful-beneficial-effects-on-asian-americans-f394d3f6fd82)> [Zhou].
  - 8 Neil G Ruiz et al, "Appendix: Demographic profile of Asian American adults" (8 May 2023), online: <<https://www.pewresearch.org/race-ethnicity/2023/05/08/asian-american-identity-appendix-demographic-profile-of-asian-americanadults/#:~:text=About%2017.8%20million%20Asian%20adults,adults%20lived%20in%20the%20country>>.

enhance board diversity in Canada. Racial quotas, as legislative or regulatory measures distinct from common law, are analyzed through comparisons with Europe’s gender quotas and California’s diversity mandates. In Canada, Asians are categorized under the “visible minorities” classification, which includes all non-Caucasian and non-Indigenous groups,<sup>9</sup> which is similar to the “people of color” classification in the U.S.<sup>10</sup> For the purposes of this paper, “Asians” will specifically refer to East and Southeast Asians, a narrower definition based on the focus of the data relied upon. This approach acknowledges that different subgroups within the broader Asian category may experience distinct challenges and barriers in corporate settings. While racial mandates could improve Asian representation, I argue against their implementation in Canada, as the associated costs, including legislative complexity, economic trade-offs, and potential backlash, likely outweigh the benefits. Instead, this paper advocates for a stakeholder-driven approach that encourages corporate self-governance through specific disclosure methods, racial targets, and institutional changes to empower Asian advocates and foster inclusive corporate cultures. Addressing unconscious biases through advocacy and education is also critical to breaking the bamboo ceiling and achieving sustainable diversity.

This paper proceeds in five sections. Section 1 outlines the theoretical framework for board diversity and argues for a stakeholder approach in Canada. Section 2 examines systemic racism and the model minority myth. Section 3 reviews gender quotas in Europe and diversity mandates in California, offering lessons for Canada. Section 4 evaluates Canada’s diversity policies, weighs the costs and benefits of racial mandates, and offers recommendations for improving Asian representation without mandates. The final section concludes the paper.

**Section 1: Theoretical Framework - Preference for Stakeholderism in Racial Diversity**

There is ongoing debate between the shareholder and stakeholder approaches to promoting board diversity. Shareholderism advocates argue that corporations are structured to maximize shareholder’s value, and they caution that a stakeholderism

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9 Government of Canada, “Diversity of boards of directors and senior management” (11 November 2023), online: <<https://ised-isde.canada.ca/site/corporations-canada/en/business-corporations/diversity-boards-directors-and-senior-management>> [Diversity of Boards].

10 “People of Color” in the U.S. includes any races that are “non-white”.

approach relying on corporate governance can increase slack performance and impede corporate reforms. Therefore, they believe that regulations should step in to facilitate corporate efforts in increasing diversity, as corporations may lack incentives to promote social goods.<sup>11</sup> On the other hand, stakeholderism advocates believe that corporations should serve the interests of not only shareholders but also all other stakeholders, such as the environment and consumers. They emphasize the importance of corporate discretion and self-governance in advancing social goods, as laws cannot address every issue.<sup>12</sup> Given the diverged interests among different racial groups and the complexities involved in implementing racial mandates, I propose that Canada adopt a stakeholder approach, encouraging corporate self-governance to pierce the bamboo ceiling.

From an economic perspective, stakeholderism is more effective for addressing racial discrimination in Canada, as non-market factors – such as social interactions and networks – play a significant role in board appointments.<sup>13</sup> Promotions are often influenced by the preferences of senior leaders, who may favour candidates within their existing social networks, often of the same race. There are no heavy costs to the discriminator, but social rewards.<sup>14</sup> The market, directly related to profit maximization, is a shareholder’s consideration, whereas social interactions and networks are less relevant to shareholder’s interests. A shareholderism approach may not be the most effective way for Canada to pierce the bamboo ceiling as it overlooks factors beyond profit maximization that contribute to the underrepresentation of Asian Canadians. In contrast, a stakeholderism approach, which accounts for non-market factors influencing the bamboo ceiling, offers a more comprehensive solution. I will substantiate this theoretical assumption with empirical discussion in Section 4.

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11 Lucian A Bebchuk & Roberto Tallarita, “The Illusory Promise of Stakeholder Governance” (2020) 106:1 Cornell L Rev 91 at 92.

12 Colin Mayer, ‘Shareholderism versus Stakeholderism – A Misconceived Contradiction. A Comment on “The Illusory Promise of Stakeholder Governance” by Lucian Bebchuk and Roberto Tallarita’ (2020) Cornell L Rev 106 at 1859.

13 Kenneth Arrow, “What has economics to say about racial discrimination?” (1998) 12:2 J of Econ Perspectives at 97.

14 *Ibid* at 98.

## Section 2: The Myth of the Bamboo Ceiling and Unconscious Biases

To evaluate the need for racial mandates in Canada, it is essential to understand the systemic racism and barriers Asians face, known as the bamboo ceiling. Due to limited Canadian data on Asian representation in corporate boards, this paper draws on American trends to illustrate comparable issues. In the U.S., Asian Americans are labeled as the model minority, a stereotype that portrays them as too successful to be considered disadvantaged.<sup>15</sup> This narrative not only marginalizes Asian experiences of discrimination but also creates a racial divide, maintaining white dominance in leadership.<sup>16</sup>

Unconscious biases in corporate settings, where Asians are perceived as “shy” or “demure,” limit their career progression.<sup>17</sup> In 2021, 65 percent of Asian Americans and Pacific Islanders (“AAPI”) professionals reported the bamboo ceiling as a moderate to serious career barrier.<sup>18</sup> Despite having the highest educational attainment and success in many areas, AAPI professionals face considerable discrimination. 72 percent of Fortune 1000 companies lack an AAPI board director.<sup>19</sup> Asian Americans in the legal field have the highest attrition rates and the lowest ratio of partners to associates.<sup>20</sup> In the C-suite, Asian Americans are more frequently promoted to CEO during company downturns, reflecting expectations of “self-sacrificing” leadership.<sup>21</sup>

American DEI initiatives, such as efforts to increase the representation of racial minorities on corporate boards, often overlook Asians, instead prioritizing other groups of colour, such as Black and Latino Americans.<sup>22</sup> This is partly because of widespread ignorance of biases against Asians. While 69 percent of White Americans perceive Asians as aligned with white people, 76 percent of Asians

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15 Cliff Cheng, “Are Asian American Employees a Model Minority or Just a Minority?” (1997) 33:3 JABS 277 at 278.

16 Zhou, *supra* note 7 at para 2.

17 Association of Asian American Investment Managers, “Good Workers – Not Leaders: Unconscious Biases that stall AAPI Advancement” (11 November 2023) at 2, online (pdf): <[https://aaaim.org/wp-content/uploads/2021/09/21-09\\_BSG-AAAIM-Report-v2.pdf](https://aaaim.org/wp-content/uploads/2021/09/21-09_BSG-AAAIM-Report-v2.pdf)> [AAAIM].

18 *Ibid.*

19 KPMG, *supra* note 3 at 2.

20 AAAIM, *supra* note 17 at 3.

21 *Ibid.*

22 *Ibid* at 12.

identify more closely with other people of colour.<sup>23</sup> Consequently, Asians face a dual challenge: they are not seen as underrepresented, yet encounter significant barriers in career advancement.

Two main unconscious biases drive the model minority myth. First, Asians are stereotyped as “behind-the-scenes” workers rather than leaders,<sup>24</sup> deemed “book smart” but lacking social skills, boldness, and strategic thinking.<sup>25</sup> Factors such as appearance, accents, and “looking younger look than others” further diminish their perceived credibility.<sup>26</sup> Second, cultural differences between Asians and the majority lead to unconscious biases. Western culture teaches “the squeaky wheel gets the grease”, whereas Eastern culture teaches “the nail that sticks out gets hammered down”.<sup>27</sup> The Asian culture of “being meek and humble” does not thrive well in an individualistic Western society.<sup>28</sup> Influenced by Confucian values, Asians may be less vocal about their rights in corporate environments.<sup>29</sup> Despite that Asians are high achievers in many professions, they face unconscious biases resulting from stereotypical and the cultural challenges. The biases reinforce the bamboo ceiling, perpetuating systemic racism in board representation – a dynamic also present in Canada.

### **Section 3: The European and Californian Experience in Legal Mandate**

#### *European Gender Quotas*

Norway pioneered mandatory gender quotas in 2003,<sup>30</sup> requiring 40 percent female representation on corporate boards by 2008,<sup>31</sup> with penalties for non-compliance,

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23 Jennifer Lee, “Are Asian Americans people of color or the next in line to become white?” (11 October 2022), online: *Brookings* <<https://www.brookings.edu/articles/are-asian-americans-people-of-color-or-the-next-in-line-to-become-white/>>.

24 AAAIM, *supra* note 17 at 9.

25 *Ibid* at 9.

26 *Ibid*.

27 *Ibid* at 11.

28 *Ibid* at 9.

29 *Ibid* at 6.

30 Darren Rosenblum, “Diversity and the Board of Directors: A Comparative Perspective” (2020), *Research Handbook on Comparative Corporate Governance* (Afsharipour & Gelter, eds.) at 1 [Rosenblum].

31 *Ibid* at 4.

such as fines and company dissolution.<sup>32</sup> The policy proved successful, with all covered companies meeting the quota.<sup>33</sup> This approach was later adopted by other European nations,<sup>34</sup> leading to significant improvements in female board representation – over 35 percent in countries like Norway, Sweden, and Italy,<sup>35</sup> and nearly 45 percent in France.<sup>36</sup> Therefore, gender legal mandates have proven effective in promoting gender board diversity in Europe.

Some scholars initially criticized gender quotas, citing a significant drop in market prices in Norway due to the appointment of less experienced female board members.<sup>37</sup> However, this argument was rebutted ten years later, as evidence showed that the gender quota had no devaluation effect on firms, either in the short or long term.<sup>38</sup> Over the years, a pool of qualified female directors emerged, ensuring a sufficient number of skilled candidates to maintain firm value.<sup>39</sup> Consequently, the quota law did not impact the market value of Norwegian firms, demonstrating that gender diversity quotas in Europe can be effective without compromising economic efficiency.

### *Californian Diversity Mandate*

However, applying European gender quotas to racial mandates in Canada may be problematic since gender and race differ significantly. California’s AB 979 offers a

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32 The Economist, “Ten years on from Norway’s quota for women on corporate boards” (17 February 2018), online: *The Economist* <<https://www.economist.com/business/2018/02/17/ten-years-on-from-norways-quota-for-women-on-corporate-boards>>.

33 Rosenblum, *supra* note 30 at 5.

34 *Ibid.*

35 Andie Kramer, “Mandated Quotas Won’t End Inequalities in Business Leadership” (23 June 2022), online: *Forbes* <<https://www.forbes.com/sites/andiekramer/2022/06/23/mandated-quotas-wont-end-inequalities-in-business-leadership/?sh=74a0f7bf161a>>.

36 *Ibid.*

37 Kenneth R Ahern & Amy K Dittmar, “The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation”, (2012) 127:1 Q J Econ 137 at 183–184.

38 Espen Eckbo et al, “Valuation Effects of Norway’s Broad Gender-Quota Law Revisited”, *Management Science* 68:6 (2022), at 4112-4134 [Eckbo].

39 *Ibid.*

more relevant model.<sup>40</sup> AB 979 is a diversity mandate to require public companies headquartered in California to have at least one director who is from an underrepresented community, depending on the size of the board.<sup>41</sup> The “underrepresented community” are those who identify as a racial or ethnic minority or as gay, lesbian, bisexual, or transgender.<sup>42</sup> Corporations that fail to comply with the quotas are subject to fines in the six figures.<sup>43</sup>

However, the law faced implementation challenges. Small boards struggled to comply; for instance, boards with one or two members found it impractical to meet the diversity requirements. Additionally, focusing on one diversity dimension could inadvertently exclude others – an all-white board could fulfill the mandate by adding a white LGBTQ2S+ person, potentially sidelining Asian representation. The law also did not affect private companies or companies headquartered outside California, so companies could skirt the requirements by relocating their operations to another jurisdiction.

Ultimately, the diversity mandate was declared unconstitutional in *Crest v Padilla*.<sup>44</sup> The California court ruled that the law violated the state constitution’s guarantee of equal treatment.<sup>45</sup> The court argued that quotas treated individuals differently based on race, sexual orientation, or gender identity, excluding others (e.g., straight white male individuals) from board opportunities.<sup>46</sup> It concluded that California lacked a compelling interest to justify the state’s intervention in board selection.<sup>47</sup>

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40 David Bell et al, “New Law Requires Diversity on Boards of California based Companies” (10 October 2020), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2020/10/10/new-law-requires-diversity-on-boards-of-california-based-companies/>>.

41 *Ibid*.

42 *Ibid*.

43 David Bell et al, “Diversifying the Boardroom” (11 May 2023), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2023/05/11/diversifying-the-boardroom-2022-disclosures/>> [Bell].

44 Ufonobong Umanah & Andrew Ramonas, “California Board Diversity Law Violates Federal Constitution” (18 May 2023), online: *Bloomberg Law* <<https://news.bloomberglaw.com/us-law-week/california-board-diversity-law-violates-federal-constitution>>.

45 Sarah Fortt et al, “California Gender Board Diversity Law Is Held Unconstitutional” (12 June 2022), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2022/06/12/california-gender-board-diversity-law-is-held-unconstitutional/>>.

46 *Ibid*.

47 *Crest v Padilla*, 20 STCV 37513.

The ruling highlighted a tension between equity (addressing systemic barriers) and equality (equal chances regardless of identity), raising concerns that strict adherence to equality may overlook structural disadvantages faced by groups like Asians. Therefore, California’s experience underscores the difficulties of racial mandates and provides valuable insights for Canada’s approach to diversity policies.

#### **Section 4: Should Canada Adopt a Diversity Mandate for Asians?**

##### *Current Legal Regime in Canada*

Like the U.S., Canada’s approach to board diversity favours corporate self-governance over government mandates. The Canadian legal regime includes mandatory disclosure, racial targets and “comply or explain”.<sup>48</sup> Disclosure is a common measure and reflects corporations’ efforts for board diversity. Canadian federal law mandates public-traded companies to disclose their diversity information and policies.<sup>49</sup> In 2020, the *Canada Business Corporation Act*, the guiding federal corporate legislation, was amended to require federally incorporated Canadian companies to report on the representation of four designated groups: women, Indigenous peoples, persons with disabilities, and members of visible minorities.<sup>50</sup> Similarly, s 72.2(4) of the *Canada Business Corporations Regulations* requires corporations to disclose board diversity regarding the four designated groups.<sup>51</sup>

Corporations are also subject to a racial targets regime. They must disclose whether they have adopted racial targets for representation on the board and among senior management, the expected timeframe for achieving the targets, and the progress made toward achieving the targets during the year and since its adoption.<sup>52</sup> If the corporations failed to adopt a target for representation of designated group, they must specify this and explain why it has not done so.<sup>53</sup>

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48 Diversity of Boards, *supra* note 9.

49 *Ibid.*

50 *Canada Business Corporations Act*, RSC 1985, s 172.1.

51 *Canada Business Corporations Regulations*, SO 2001, s 72.2(4).

52 *Ibid.*

53 *Ibid.*

Under the Canadian legal definition, Asian Canadians are categorized as members of visible minorities. The “visible minorities” is similar to the American term “people of color”,<sup>54</sup> and is broader than the American designation of AAPI. This is reflected in diversity reports; for example, an annual diversity report published by a Canadian national law firm only has the statistics of board representation of visible minorities.<sup>55</sup> This lack of a specific category for Asians in diversity disclosures increases the difficulties of setting legal mandates for Asian representation.

### *Weighing the Benefits and the Costs of Racial Mandates*

While racial quotas could increase Asian representation, legislative challenges, potential harm to business efficiency, and the risk of reinforcing stereotypes suggest that mandates would be ineffective. Instead, a stakeholder-driven approach – one that actively involves employees and customers in shaping corporate strategies – offers a more constructive path forward. This approach encourages companies to take the lead in promoting self-regulation, increasing transparency through enhanced disclosure, and setting specific racial inclusion targets for Asians, fostering a more equitable and inclusive corporate environment.

#### A. Benefits

A racial mandate could increase Asian board representation, much like Europe’s gender quotas increased female representation. It could be inferred that if Canada enacted a racial quota requiring a set number of Asian directors, it would likely result in more Asians on corporate boards. A mandate for Asian directors could enhance corporate performance by attracting talented Asian individuals and fostering stronger relationships with Asian clients.<sup>56</sup> This racial mandate could create economic benefits for corporations with Asian ties. The quota may promote good employment relationships for Asian employees as Asian directors may understand their

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54 E Tammy Kim, “The perils of “people of color”” (29 July 2020), online: *The New Yorker* <<https://www.newyorker.com/news/annals-of-activism/the-perils-of-people-of-color>>.

55 Andrew MacDougall et al, “Report: 2023 Diversity Disclosure Practices – Diversity and leadership at Canadian public companies” (11 October 2023), online (pdf): <<https://osler.com/wp-content/uploads/2024/03/Osler-Diversity-Disclosure-Practices-report-2023.pdf>>.

56 Lisa M Fairfax, “The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards” (2005) 2005:3 *Wis L Rev* 795 at 811 [Fairfax].

needs or the barriers better.<sup>57</sup> It would also enhance the quality of a board's decision and monitoring functions.<sup>58</sup> Further, Asian directors can bring unique perspectives regarding their clients, increase the board's ability to recognize the interests of various stakeholders and facilitate a better performance on the company's corporate social responsibility performance.<sup>59</sup>

## B. Legislative Challenges

However, the costs of racial mandates likely outweigh their benefits. Although shareholderism advocates argue that regulation is the optimal approach to improve board diversity, regulations have significant limitations when applied to board diversity for Asian Canadians and other racial minorities. Racial mandates are more challenging to legislate because race differs fundamentally from gender. While gender quotas have effectively increased female representation on boards, racial quotas may not have the same impact.<sup>60</sup> Research shows that employees do not prefer colleagues of the same gender.<sup>61</sup> In fact, they are more likely to stay when there are more of the opposite gender,<sup>62</sup> suggesting that directors may prefer to collaborate with individuals of the opposite gender.

Conversely, workers are more inclined to work with people of the same ethnicity, with studies showing they are willing to pay eight percent of their earnings for two days to work with someone of the same ethnicity.<sup>63</sup> A Canadian corporation with predominantly white male directors may prefer appointing a white female director over an Asian male director with similar expertise and experience. This indicates that race often outweighs gender as a dominant identity in corporate settings. Applying gender quota principles to racial diversity mandates may unintentionally

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<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Maretno Harjoto et al, "Board Diversity and Corporate Social Responsibility", *J Bus Ethics* (2015) 132 641-660 at 645.

<sup>60</sup> Holger Spamann & Jacob Fisher, "Corporate Purpose: Theoretical and Empirical Foundations/ Confusions" ECGI Working Paper Series in Law (2022) at 20.

<sup>61</sup> Kevin Lang & Ariella Kahn-Lang Spitzer, "Race Discrimination: An Economic Perspective" (2020) 34:2 *J of Econ Perspectives* at 72 [Lang].

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

exacerbate these preferences, leading to friction or reduced collaboration among board members. Such dynamics could undermine decision-making efficiency by prioritizing diversity metrics over board cohesion and shared understanding.

Further, with racial minorities making up a smaller proportion (i.e., 26.5 percent)<sup>64</sup> of the population compared to women, and the diverged interests of different racial groups in advocating for their own representation, implementing racial mandates presents more complexity than gender quotas, which only consider gender. Racial diversity includes multiple groups with distinct population ratios and interests, making fair quotas challenging to establish.<sup>65</sup> Asian groups, for instance, might focus more on advocating for Asian representation over other visible minorities. Granting racial quotas to one ethnic group without extending the same treatment to others could be perceived as inequitable. Assigning individuals of mixed ethnicity to a specific racial quota adds another layer of complexity.<sup>66</sup> This complexity partly explains why Canadian shareholder proposals have focused more on gender than racial diversity.<sup>67</sup> Therefore, having a legal regime on racial diversity is more difficult than gender diversity mandates.

Additionally, legislation aiming to pierce the bamboo ceiling may receive limited public support compared to other diversities. Mandates aimed at addressing the bamboo ceiling for Asian Canadians may detract from other important diversity aspects, such as age, immigrant status, or sexual orientation. For example, a white refugee from Ukraine is more likely to face more barriers than an Asian who was born and raised in Canada. Moreover, the proportion of the Asian population in Canada is not substantial enough to justify a compelling legal mandate. From a public interest perspective, mandating racial quotas only for Asians may not provide proportionate benefits to Canadian society, especially when considering other stakeholders and minority groups.

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64 Statistics Canada, "Visible minority and population group by generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with part" 2021 Census, Table 98-10-0324-01 (2022).

65 Atinuke O Adediran, "Racial Targets" (25 July 2023), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2023/07/25/racial-targets/>> [Adediran].

66 *Ibid.*

67 Bell, *supra* note 43.

### C. Undermining Business Efficiency

Racial mandates could harm business efficiency by prioritizing representation over qualifications, limiting opportunities for other groups. Quota hiring is believed to force employers to hire incompetent individuals who have nothing to recommend other than the appeasement of a minority group's demand.<sup>68</sup> Racial quotas for Asians, for instance, could reduce chances for equally or better-qualified individuals from other backgrounds to become directors. Further, the greatest market for Canadian corporations is the U.S., as the American market constitutes 75.36 percent of Canada's trade value.<sup>69</sup> Canadian firms with more ties with the Asian market are likely to voluntarily increase Asian representation on boards without a need for mandates. Therefore, racial quotas could harm economic efficiency and reduce diversity in other areas.

While some scholars argue that gender quotas do not devalue businesses,<sup>70</sup> the same may not apply to racial quotas. The reason why more female directors do not cause the devaluation of the share is because there are enough supplies of experienced female directors.<sup>71</sup> In contrast, racial quotas face challenges because the smaller Asian population may limit the availability of experienced candidates, raising concerns about potential business inefficiencies.

### D. Reinforcing the Barrier

Racial quotas may unintentionally reinforce the bamboo ceiling. They risk stereotyping Asian directors by assuming they possess specific skills, such as communicating with Asian clients,<sup>72</sup> while ignoring that many Asian directors immersed in Canadian culture may lack these competencies. This marginalizes them by assigning them

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68 Leroy D Clark, "The Law and Economics of Racial Discrimination in Employment by David A. Strauss" (1991) 79:6 Geo LJ 1695 at 1708 [Clark].

69 World Integrated Trade Solution, "Canada Trade" (12 November 2023), online: <<https://wits.worldbank.org/CountrySnapshot/en/CAN>>.

70 Eckbo, *supra* note 38 at 4112-4134.

71 *Ibid.*

72 Fairfax, *supra* note 56 at 834.

limited roles, which commodifies their presence and separates them from their white counterparts,<sup>73</sup> perpetuating negative stereotypes.

Ambiguities in racial mandates can also produce unintended consequences. For example, California’s diversity mandate lacked clarity on board tenure for Asian directors,<sup>74</sup> making it legal for corporations to hire one Asian director for a brief period as a token figure. To avoid penalties for non-compliance, corporations may seek out an Asian director with no real decision-making power, which undermines the mandate’s purpose.

In sum, implementing a racial diversity mandate for Asians in Canada is not advisable. Although it could increase representation and bring valuable perspectives, the potential drawbacks, such as legislative complexity and potential harm to business efficiency, outweigh the benefits. A stakeholder-driven approach that encourages corporate self-governance is a better alternative.

### *Alternatives to Racial Mandates*

To improve Asian representation on corporate boards, a stakeholder-driven approach encouraging self-governance is preferable. Canadian companies may adopt more specific disclosure requirements and racial targets for Asian Canadians. Current diversity reports categorize Asians under “visible minorities”, providing little insight into their representation. This may create loopholes in diversity promotion because it may improve board diversity for one ethnic group while undermining the other. To address this, reporting should differentiate between ethnic groups, as an Asian director’s experiences may differ from those of a Black director.

Similarly, although the Canadian guidance sets racial targets, corporations may consider more specific racial targets for Asians. Unlike racial quotas, which mandate compliance with penalties, racial targets are non-binding and voluntary goals. Racial targets can be beneficial as they open opportunities for minorities and do not bar advancement opportunities for white people.<sup>75</sup> However, U.S. companies often

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<sup>73</sup> *Ibid* at 847.

<sup>74</sup> Adediran, *supra* note 65.

<sup>75</sup> *Ibid*.

prioritize Black and Latinx representation, overlooking Asians.<sup>76</sup> For example, BNY Mellon aspires to achieve a 30 percent increase in Black and Latinx representation of senior leaders to over 4 and 5.5 percent, respectively.<sup>77</sup> When adopting racial targets, Canadian companies should set goals that reflect the population ratios of each ethnic group, including Asians.

Stakeholders, including institutional investors, advocacy groups, and policymakers, can play a critical role in driving this change by demanding transparency, tying investments or funding to diversity outcomes, and publicly recognizing companies that make measurable progress. Conversely, companies that fail to adopt these practices could face reputational risks and decreased stakeholder trust. To encourage compliance, governments could introduce incentives such as tax benefits for companies meeting diversity benchmarks or penalties for failing to disclose diversity metrics.

Institutional changes are needed to empower Asian advocates for board diversity. A boost in boardroom diversity is possible under strong multichannel pressure from stakeholders, including investors, consumers, employees and regulators.<sup>78</sup> Asians, particularly senior leaders, must be more vocal in challenging the bamboo ceiling, as advocacy has proven effective in other movements like Black Lives Matter (“BLM”). The BLM movement in the U.S. has pressured all stakeholders, which brought immediate change to U.S. corporate boardrooms.<sup>79</sup> Within one year after the BLM protests, American companies have considerably increased the proportions of Black directors from 8.2 to 9.6 percent.<sup>80</sup> Thus, advocacy of interests can help increase Asian visibility in corporate affairs.

Meanwhile, protections must be implemented to prevent discrimination against outspoken Asians, including enforcing anti-retaliation policies and offering legal support for discrimination claims. Outspoken Asians, who challenge conventional

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<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> Anete Pajuste, “Boardroom Racial Diversity: Evidence from the Black Lives Matter Protests” (22 November 2022), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2022/11/22/boardroom-racial-diversity-evidence-from-the-black-lives-matter-protests/>>.

<sup>80</sup> *Ibid.*

stereotypes, may be unfairly perceived as aggressive. People who have been discriminatorily refused a promotion may be reluctant to file a charge for fear of retaliation by their employer.<sup>81</sup> To address this, organizations should foster an inclusive culture by providing diversity training, ensuring transparency in promotion criteria, and supporting bona fide complaints through impartial investigations.<sup>82</sup> These measures will encourage Asians to express their views on corporate affairs without fear of reprisal.

Creating a more inclusive environment is crucial. Companies should use standardized criteria for evaluating board candidates and provide cultural sensitivity training for senior leaders to address systemic barriers.<sup>83</sup> Corporations should facilitate networking, affinity groups and mentorship for Asians, which support them to form a mutually supportive platform.<sup>84</sup>

Additionally, Canadian society needs more public advocacy to address unconscious biases against Asians. It is important to recognize the unique challenges Asians face, distinct from those encountered by other minority groups. For instance, Black individuals often encounter generational barriers in education, leading to labour market disparities.<sup>85</sup> In contrast, education is not a main barrier for Asians, who are often highly qualified and well-represented in skilled professions. Instead, Asians face deeply ingrained stereotypes that hinder their corporate advancement, such as assumptions that they lack leadership potential, are overly technical, or have insufficient communication and interpersonal skills. Overcoming these challenges requires targeted advocacy, including mentorship programs, diversity initiatives that highlight Asian leadership, and corporate efforts to dismantle stereotypes through education and representation.

Although the progress on board diversity has advanced significantly faster for white women than for racial minorities, Asian Americans board representation has increased in recent years. Based on the 2022 Deloitte report, the board seats in

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81 Clark, *supra* note 68 at 1706.

82 *Ibid* at 1704.

83 AAAIM, *supra* note 17 at 12.

84 *Ibid* at 13.

85 Lang, *supra* note 61 at 85.

Fortune 500 companies held by AAPI have increased from 3.8 percent in 2018 to 5.2 percent in 2022.<sup>86</sup> Although Canada’s legal framework for board diversity is less robust, there is optimism for gradual improvement.

In sum, rather than implementing racial quotas, a stakeholder-driven strategy promoting corporate self-governance can help dismantle the bamboo ceiling. Companies should enhance disclosure requirements and set specific racial targets for Asians, ensure protections for outspoken advocates, foster an inclusive environment, and raise awareness to counteract unconscious bias.

### **Section 5: Conclusion**

This paper evaluates the need for a racial mandate to pierce the bamboo ceiling for Asian Canadians, comparing Europe’s gender quota and California’s diversity mandate. It concludes that Canada should not have a racial mandate for Asian board representation because its costs outweigh the benefits. Instead, Canada should adopt a stakeholder-driven approach to encourage corporate self-regulation. Canadian companies could implement stricter disclosure requirements and set specific racial targets for Asians, rather than quotas. Institutional changes are needed to protect Asian voices, foster an inclusive environment, and establish objective criteria for advancement. Addressing unconscious biases and raising awareness of the bamboo ceiling are key steps for meaningful progress.

This paper contributes to the board diversity conversation by highlighting the unique challenges faced by Asians in Canada, distinct from those of other minorities. Two areas for future research are identified: first, examining the possible lack of unity among Asian Canadians due to diverging interests, which may impact collective efforts to challenge the bamboo ceiling. Second, given the reliance on U.S.-based literature, further research should explore how the challenges faced by Asian Canadians differ from those of Asian Americans, considering the higher proportion of Asians in Canada.

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<sup>86</sup> Deloitte, “Missing Pieces Report: A board diversity census of women and underrepresented racial and ethnic groups on Fortune 500 boards, 7<sup>th</sup> edition” (2022), online (pdf): <<https://www2.deloitte.com/content/dam/Deloitte/us/Documents/us-missing-pieces-7th-edition-report.pdf>>.

# Why Edmonton's Chinatown Strategy is an Opportunity to Decolonize the Diaspora

By Sarah M. Fong \*

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Currently, there is an unfortunate lack of Indigenous solidarity in Edmonton's Chinatown revitalization efforts. To relieve the tension between pursuing economic development and addressing the struggles of the unhoused (a crisis faced disproportionately by Indigenous people in downtown Edmonton), it is time to reconceptualize Edmonton's Chinatown through a decolonial lens.

Canadian Chinatowns, from Montreal to Vancouver, are facing a concerning pattern of gentrification, often in response to concerns about the neighbourhood's overall safety.<sup>1</sup> Urban planning decisions come at the cost of erasure of not only heritage buildings, but cultures and communities. The Chinatown in Edmonton, my home city, is no exception. Edmonton is located on Treaty 6 territory, and the Chinatown neighbourhood is home to establishments such as family associations, a multicultural center, seniors' residences, restaurants, and retail stores. Sadly, Edmonton's Chinatown has recently been the subject of heightened crime and social disorder, exacerbated by the pandemic's toll on businesses.<sup>2</sup>

Edmonton's Chinatown is in the city's downtown core. The Chinatown area suffers from a triple crisis of mental health, addiction, and homelessness, creating an environment where people's safety is at risk, regardless of whether they are unhoused.<sup>3</sup> It is estimated that 60 percent of people in Edmonton experiencing homelessness are Indigenous, although the most recent statistics indicate that less than six percent

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1 Morgan Lowrie, "Montreal filmmaker documents gentrification in Chinatowns across cities" (28 May 2023), online: *CBC News* <<https://www.cbc.ca/news/canada/montreal/montreal-filmmaker-saving-chinatown-1.6857492>>; Fo Niemi, "Opinion: Crime and disorder in Chinatown require a broader look" (6 October 2023), online: *Montreal Gazette* <<https://montrealgazette.com/opinion/opinion-crime-and-disorder-in-chinatown-require-a-broader-look>>.

2 City of Edmonton, "Chinatown" (2024), online: <[https://www.edmonton.ca/projects\\_plans/communities\\_neighbourhoods/chinatown](https://www.edmonton.ca/projects_plans/communities_neighbourhoods/chinatown)>; Natasha Riebe, "New hope for Edmonton's Chinatown as city aims to make area into a cultural hub" (7 December 2023), online: *CBC News* <<https://www.cbc.ca/news/canada/edmonton/new-hope-for-edmonton-s-chinatown-as-city-aims-to-make-area-into-a-cultural-hub-1.7051541>>; Fakiha Baig, "Hoping for change: Edmonton's Chinatown losing business after rise in crime" (18 June 2022), online: *CTV News* <<https://edmonton.ctvnews.ca/hoping-for-change-edmonton-s-chinatown-losing-business-after-rise-in-crime-1.5953230>>.

3 Michael Ganley, "Chinatown Crisis" (23 December 2022), online: *Urban Affairs* <<https://urbanaffairs.ca/edmonton-ish/chinatown-crisis/>>.

of Edmonton's population is Indigenous.<sup>4</sup> The City of Edmonton is involved in an ongoing process of making downtown safer, yet its strategy for Chinatown tends to neglect the plight of those experiencing homelessness, and how it impacts Indigenous communities.<sup>5</sup>

The City of Edmonton's "Chinatown Strategy: Energizing a Prosperous Future" focuses on community-based partnerships for economic success.<sup>6</sup> The strategy is also mentioned in the city's "Downtown Core and Transit System Safety Plan", which contains a land acknowledgement recognizing the Indigenous groups of Treaty 6 Territory, on which the land known as Edmonton (called "amiskwacîwâskahikan", meaning Beaver Hills House, in Cree) is located.<sup>7</sup> Beyond that, the plan directs a stronger police presence in Chinatown to support social agencies and reduce violence.<sup>8</sup> These strategies are well-intentioned, but driving prosperity in the city should not come at the cost of overlooking a key aspect of the Chinese Canadian, and more broadly, Asian Canadian identity: being settlers on Indigenous land.

The choice to deal with "safety" in Chinatown through increased policing is in tension with the reality faced by many Indigenous individuals, an example being the

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- 4 Fraser Needham, "Federal housing advocate says Indigenous people grossly overrepresented in Canada's homeless population" (15 February 2024), online: *APTN News* <<https://www.aptnnews.ca/nation-to-nation/federal-housing-advocate-says-indigenous-people-grossly-overrepresented-in-canadas-homeless-population/#:~:text=%E2%80%9CIn%20Saskatoon%20an%20estimated%2090,folks%20experiencing%20homelessness%20in%20Canada.%E2%80%9D>>>; Government of Alberta, "Edmonton - % Aboriginal Population" (28 February 2023), online: <<https://regionaldashboard.alberta.ca/region/edmonton/percent-aboriginal-population/#/>>.
  - 5 Saif Kaiser, "Downtown Edmonton safety still a work in progress" (7 July 2023), online: *Global News* <<https://globalnews.ca/news/9818697/downtown-edmonton-safety-still-work-in-progress/>>; City of Edmonton, "Edmonton's Downtown Core and Transit System Safety Plan" (6 June 2022), online (pdf): <<https://www.edmonton.ca/sites/default/files/public-files/Downtown-Core-and-Transit-Safety-Plan.pdf>> [Downtown Transit Plan].
  - 6 City of Edmonton, "The Chinatown Strategy: Energizing a Prosperous Future" (2023), online: <<https://www.edmonton.ca/public-files/assets/document?path=CTStrategy.pdf>>.
  - 7 Downtown Transit Plan, *supra* note 5 at 4; City of Edmonton "Origins of Naming in Edmonton" (2024), online: <[https://www.edmonton.ca/city\\_government/edmonton\\_archives/origins-of-naming-in-edmonton](https://www.edmonton.ca/city_government/edmonton_archives/origins-of-naming-in-edmonton)>.
  - 8 Downtown Transit Plan, *supra* note 5 at 8–9.

elimination of encampments by Edmonton Police Services.<sup>9</sup> These evictions represent just one instance of encounters between people experiencing homelessness and the state that perpetuates harmful colonial narratives. The absence of a way to address these issues within the Chinatown Strategy prompts the need for the Asian Canadian diaspora to strategize for solidarity with Indigenous Peoples who have been disproportionately impacted by the conditions in Chinatown, instead of deepening the divide between the communities.

### **Contextualizing Chinatown**

Chinatowns across Canada are located on the ancestral territories of Indigenous peoples. For example, Vancouver’s Chinatown began as a transportation route and gathering place, providing access to False Creek and the Burrard Inlet.<sup>10</sup> After the gold rushes of the 19th century, Chinese migrants in what is now Victoria and Barkerville commonly ran businesses providing essential services, and were crucial in logging and farmland development.<sup>11</sup> In the 1880s, Chinese railway workers and gold miners in the Fraser Canyon engaged in reciprocal relationship-building with the Sto:lo and Nlaka’pamux First Nations communities, before B.C. joined Confederation.<sup>12</sup> Today, organizations such as the Chinese Canadian Museum in Vancouver raise awareness of the history of colonialism and Indigenous exclusion

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- 9 ReconciliACTION YEG Team, “Dismantle the Barriers, Not the Tents: Edmonton’s Encampment Evictions and the Over-Policing of Indigenous Communities” (2024), online: <<https://www.reconciliactionyeg.ca/post/dismantle-the-barriers-not-the-tents-edmonton-s-encampment- eviction-and-the-over-policing-of-indig>>.
  - 10 Vancouver Heritage Foundation, “Historic Chinatown: Vancouver’s Chinatown Map Guide” (2018), online (pdf): <<https://www.vancouverheritagefoundation.org/wp-content/uploads/2020/12/VHF-Chinatown-Map-Guide-FINAL-web-res.pdf>>.
  - 11 Chinese Canadian Museum, “Gold Rush & Chinatowns” (2024), online: <<https://www.chinesecanadianmuseum.ca/learn/learning-resources/chronology-goldrush-chinatowns?parentId=1toN-MypUUbqTJmoKjPbaE3&childId=item-1>>.
  - 12 Justine Hunter, “A forgotten history: tracing the ties between B.C.’s First Nations and Chinese workers” (9 May 2015), online: *The Globe and Mail* <<https://www.theglobeandmail.com/news/british-columbia/chinese-heritage/article24335611/>>.

that the creation of Chinatowns depended on, among the diverse stories and experiences found within the Chinese Canadian diaspora.<sup>13</sup>

Chinatown in Edmonton is at the nexus of both race and class marginalization. Its roots are inherently racialized, as it started as a community for Chinese immigrants who faced discrimination by the predominantly white society tracing back to the late 1800s.<sup>14</sup> The neighbourhood also highlights class disparity, with a high concentration of social services organizations in contrast to the quickly developing downtown hub nearby.<sup>15</sup>

Against this combination of social factors, addressing injustices in Chinatown means expanding the narrower view of “improving safety” in an already vulnerable place to encompass a broader decolonial lens. Decolonization is a process that both disrupts power structures and revitalizes Indigenous approaches that have been impacted by Western colonial ideologies.<sup>16</sup> Asian Canadian communities are in a nuanced position of being both harmed by colonial systems, and yet complicit in upholding Western structures over Indigenous ways. Solidarity between Asian Canadians and Indigenous Peoples is essential to driving systemic changes that contribute to collective well-being.

A fundamental step towards increasing Asian-Indigenous allyship is for the Chinese and Asian Canadian diaspora to be aware of their settler histories and their role in reconciliation. While Chinatowns in Canada were carved out of a need for survival to resist white settler colonialism, the process of sustaining Chinatowns has entailed

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13 Chinese Canadian Museum, “1788” (2024), online: <<https://www.chinesecanadianmuseum.ca/learn/learning-resources/chronology-1788?parentId=1toNMypUUUbqTJmoKjPbaE3&childId=item-0>>; Chinese Canadian Museum, “Chinese Canadian Diaspora” (2024), online: <<https://www.chinesecanadianmuseum.ca/learn/learning-resources/chronology-chinese-canadian-diaspora?parentId=1toNMypUUUbqTJmoKjPbaE3&childId=item-5>>.

14 Chinese Benevolent Association, “Chinatown at 100” (2020), online: <<https://www.cbaedmonton.com/chinese-community>>.

15 Wallis Snowdon, “Fighting for change in Chinatown” (21 November 2022), online: CBC <<https://www.cbc.ca/newsinteractives/features/fighting-for-change-in-chinatown>>; Explore Edmonton, “Ice District” (2024), online: <<https://exploreedmonton.com/attractions-and-experiences/the-ice-district>>.

16 Ian Cull et al, “Decolonization and Indigenization” (2018), online: <<https://opentextbc.ca/indigenizationfrontlineworkers/chapter/decolonization-and-indigenization/#:~:text=Decolonization%20is%20the%20process%20of,and%20addressing%20unbalanced%20power%20dynamics.>>>.

engaging with and following the white settler state. One example is the culturally hybrid practices outlined in Jo-Anne Lee’s study of *guanxi* in the context of keeping Vancouver’s Chinatown alive.<sup>17</sup> Another is the architectural aesthetic of Chinatown gates, both distinct from colonial design elements, and intentionally built to assert Chinatown’s presence in the eyes of colonial authorities. This building style is consistent in Chinatowns across the globe began as a strategy initiated by San Francisco’s Chinese business leaders determined to “reinvent” the community that had been a target of hatred and violence, after the 1906 earthquake devastated their Chinatown.<sup>18</sup> Chinatown architecture therefore duly resists Western hegemony and strategically employs Orientalism, a framework characterized by Edward Said as a production of knowledge from the West that portrays the East as mystical, viewing the Eastern world through a lens that distorts reality.<sup>19</sup>

In an era of reconciliation with Indigenous nations, it is crucial to recognize the link between the histories of the Asian diaspora in Canada, and settler colonialism. The Canadian state is no stranger to imposing settler colonial ideas upon both Indigenous Peoples and racialized settlers. As Nicole Yakashiro discusses, after Nikkei settlers in B.C. were dispossessed of daffodil farms, a return to property ownership was seen as a form of justice; however, access to that justice depended on Indigenous dispossession.<sup>20</sup>

Now in a post-pandemic world where Chinatowns across Canada continue to assert their existence, local organizations have created solutions. For example, Toronto’s community land trusts build collective power in their downtown Chinatown.<sup>21</sup>

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17 Jo-Anne Lee, “Gender, Ethnicity, and Hybrid Forms of Community-Based Urban Activism in Vancouver, 1957–1978: The Strathcona story revisited” (2007) 14:4 *Gender, Place and Culture* 381 at 395–396.

18 Ranjani Chakraborty and Melissa Hirsch, “The surprising reason behind Chinatown’s aesthetic” (10 May 2021), online: *Vox* <<https://www.vox.com/videos/2021/5/10/22428437/chinatown-aesthetic-survival-anti-asian-racism>>.

19 Edward Said, *Orientalism* (New York: Vintage Books 1979) at 1.

20 Nicole Yakashiro, “Daffodils and Dispossession: Nikkei Settlers, White Possession, and Settler Colonial Property in Bradner, BC, 1914–51” (2021) 211 *BC Studies* 49 at 78.

21 Amanda Seraphina, Julia Lawrence & Anita Li, “‘Build collective power’: Land trusts come together to fight gentrification in Chinatown” (1 September 2023), online: *City News* <<https://toronto.citynews.ca/2023/09/01/gentrification-chinatown-toronto/>>.

However, even the idea of a land trust aligns with the same system that displaced Indigenous Peoples and functions to uphold the power dynamics of the settler state.

## The Way Forward

There is hope for the future, however. In “Community Power for Anti-Displacement: An Inclusive Future for Downtown Chinatown”, Friends of Chinatown Toronto recommends protecting affordable housing and creating community land trusts.<sup>22</sup> Friends of Chinatown Toronto view preventing displacement of socio-cultural assets in Downtown Toronto’s Chinatown as connected to the often-untold narrative of solidarity between Chinese Canadian communities and Indigenous Peoples, and urge the City of Toronto to reconcile Chinatown’s role in the dispossession of Indigenous Peoples.<sup>23</sup> Another example is the youth conference held in Edmonton between the Enoch Cree Nation Youth Council and the Chinese Benevolent Association Youth Council, which combined cultural exchange, discussions on anti-racism, and exploration of the parallels between the relegation of Indigenous Peoples to reserves, and the establishment of Chinatowns in urban places that white society found undesirable.<sup>24</sup>

With the momentum of the downtown transformation movement in Edmonton comes an opportunity for municipal leaders to formally commit to Indigenous solidarity. The City of Edmonton can go beyond symbolic acknowledgement and gestures of reconciliation, and expressly integrate Indigenous philosophies within the Chinatown strategy. In practice, this may take the form of strengthening existing partnerships between communities and branching out into working with Indigenous nations to reconceptualize the design of Chinatown as a public space.<sup>25</sup>

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22 Zeina Ahmed et al, “Community Power for Anti-Displacement: An Inclusive Future for Downtown Chinatown” (December 2020) at 1, 32–40, online (pdf): <[https://drive.google.com/file/d/1Q\\_D9h4jW-C6HmMbVe-7avWm3za8sTgK-/view](https://drive.google.com/file/d/1Q_D9h4jW-C6HmMbVe-7avWm3za8sTgK-/view)>.

23 *Ibid* at 7–8, 39.

24 Adam Lachacz, “From intergenerational trauma to resilience: Edmonton Chinese and Indigenous youth conference builds understanding” (22 May 2022), online: CTV News <<https://edmonton.ctvnews.ca/from-intergenerational-trauma-to-resilience-edmonton-chinese-and-indigenous-youth-conference-builds-understanding-1.5914608>>.

25 Lee Rayne Lucke, “Chinatown Gates: Monuments Towards Decolonial Relationalities” (2 April 2023), online: *BlackFlash* <<https://blackflash.ca/chinatown-gates-monuments-towards-decolonial-relationalities/>>.

The starting point is holding conversations between community leaders about what both groups can accomplish when they are allies to one another. Organizations such as the Chinatown Transformation Collaborative should expand their group of partners to include Indigenous voices.<sup>26</sup> This could be through a combination of artists, non-profit organizations, and the governments of nearby Indigenous nations such as the Enoch Cree Nation.<sup>27</sup>

Perhaps defining “decolonization” can adopt key elements of Yi Chien Jade Ho’s insights from community organizing in Vancouver’s Chinatown.<sup>28</sup> Specifically, decision-making practices that foster a “community of resistance and care”, language accessibility to grow participation in social movements, and facilitating intergenerational discussions can all be applied to collaborating with Indigenous nations to pave the way forward.<sup>29</sup> When the Asian Canadian diaspora realizes the dual nature of complicity and resistance that characterizes their relationship to the settler colonial state, they can maximize the potential of their solidarity with Indigenous Peoples. This understanding is especially important in the context of Chinatown, a cultural and economic space that contends with the conflicting forces of erasure and survival.

Implementing Edmonton’s Chinatown strategy must not neglect the injustices at the root of the homelessness crisis disproportionately faced by Indigenous Peoples in downtown Edmonton. To succeed in the collective process of decolonization, Edmonton’s Chinatown strategy must strike a balance between building both economic and social resilience in the neighbourhood. From reflective territorial acknowledgements, to formal strategies that draw on Indigenous knowledges, these decolonial practices must include advocacy for, and in solidarity with Indigenous Peoples, whose land all Chinatowns in Canada are found on.

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26 Chinatown Transformation Collective, “Community Partners”, online: <<https://www.ctcyeg.ca/communitypartners>>.

27 Enoch Cree Nation, “About” (2024), online: <<https://enochnation.ca/about/>>.

28 Yi Chien Jade Ho, “Aligning Anti-Racism Efforts with Decolonization: Reflections from Organizing in Vancouver’s Chinatown” (2023) at 5–6, online (pdf): *SFU* <[https://www.sfu.ca/content/sfu/david-lamcentre/news-events/news-archives/2023/2022-Jade-Ho/\\_jcr\\_content/main\\_content/download/file.res/Aligning%20anti-racism%20to%20decolonization.pdf](https://www.sfu.ca/content/sfu/david-lamcentre/news-events/news-archives/2023/2022-Jade-Ho/_jcr_content/main_content/download/file.res/Aligning%20anti-racism%20to%20decolonization.pdf)>.

29 *Ibid* at 6–8.



# Committee Writings



ADVOCACY

# Advocacy in Action: Our Commitment to Justice and Equity

By Sebastian Chern, Russell Chiong \*

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\* Sebastian Chern is Vice President External of FACL BC and in his role oversees the Advocacy and Kamloops Committees. He is currently an associate at Ascent Employment Law. Russell Chiong is a long-time Advocacy Committee volunteer and was a FACL BC Student Director from 2021-2022. Chiong is currently an associate at Ratcliff LLP and is active outside of work in the Chinatown community.

*“At the end of the day, we need and will continue to need people who can listen carefully, respond thoughtfully, and disagree civilly; who can identify the real issues, marshal the relevant facts, and offer persuasive and compelling submissions towards a fair and just outcome. In short, we need excellent and dedicated advocates.”*

the Honourable Robert Bauman, former Chief Justice of the B.C. Court of Appeal (in praise of advocacy, and a challenge to the legal profession)

Robust and effective advocacy is essential to the legal profession. As an organization representing and composed of legal professionals, FACL BC is dedicated to advocating for the rights and interests of its members. The Advocacy Committee is responsible for advancing the organization’s mission of promoting equity, justice, and opportunity for Asian Canadian legal professionals and the wider community.

Effective advocacy requires empathy, compassion, and conviction. Good advocacy work also requires a strong commitment to the interests of individual clients and to justice more broadly, keeping in mind the potential for advocacy to not only persuade an individual or change the outcome of a particular case, but to change our society for the better.

The Advocacy Committee strives to carry out advocacy in its many forms, in order to advance FACL BC’s mandate and positively effect change in the Asian Canadian legal profession and wider community. In the past few years, the Advocacy Committee has grown tremendously along with FACL BC. As our membership grows, so do our varied interests, and more importantly, the strength of our collective voice.

To respond to greater demand for educational, interest-based, and equity seeking programming, the Advocacy Committee has hosted events such as “Fireside Chat with Chief Judge Gillespie: Insights on Becoming a Judge”, “Fireside Chat with Minister Lametti: Diversity on the Bench”, “Anxiety and Mental Health in the Legal Profession”, “Leading with Pride: 2SLGBTQIA+ Mixer”, and “100 Years of Resilience: The Paper Trail to the Chinese Exclusion Act”, just to name a few.<sup>1</sup>

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1 Please visit [facbbc.ca](http://facbbc.ca) for more information on our upcoming events and educational resources.

The Advocacy Committee has also released educational resource guides for the general public, such as the *Amplifying Asian Women in Law: A FACL BC International Women's Day Resource List*, and the *Anti-Asian Racism and Hate Incidents Resource List*. With the collective strength and voice of its members, the Advocacy Committee has issued written statements and position papers to respond to current events and issues relevant to our communities, such as the rise of Asian discrimination during the COVID-19 pandemic, the amendments to the *Legal Profession Act*, and the proper pronunciation of names in the judicial proceedings. We are actively working towards one day intervening on important cases that may impact our communities and members. Of course, the Advocacy Committee is also responsible for this journal itself, which has been a long-term goal for FACL BC for many years and would not be possible without the hard work of its volunteers and chairs, and also the support of FACL BC's membership.

All of our work requires collaboration and solidarity. We recognize the diversity and also intersectionality between pan-Asian communities and other equity-seeking groups. Those differences bind us together and are a great source of our strength, which we can use to address parallel and intersecting forms of oppression.

The Advocacy Committee will hold space, speak up, rail against injustice, and affirm voices that historically have not been heard. With the help and support of FACL BC's members and other committees, we will continue to push the envelope to build a better future for the pan-Asian legal profession and greater community.

GALA

# Unity in Diversity: FACL BC's 13th Annual Gala

By Lily Zhang \*

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\* Lily Zhang serves as the Gala Committee Chair, leading the planning of FACL BC's successful 13th annual gala and upcoming 14th annual gala. Zhang is also a litigation associate at Owen Bird Law Corporation with a practice primarily in commercial litigation and construction law. In her free time, Zhang enjoys travelling and playing tennis.

On November 15, 2024, the Fairmont Hotel Vancouver buzzed with celebration, connection, and culture as FACL BC hosted its 13th annual gala. With over 780 attendees — including current and former judges, benchers, politicians, lawyers, students, academics, and community leaders and allies — this was a night to remember and a testament to the strength of pan-Asian representation in the legal community.

The evening kicked off with a cocktail reception: an opportunity for attendees to mingle, reconnect, and make new connections. The joyous atmosphere set the tone for the evening as the event transitioned to the formal program. Gala Chair and emcee Lily Zhang warmly welcomed the guests and introduced the night's theme: "Unity in Diversity."

FACL BC's president, Jenny Huang, delivered an address that reflected on a year of unprecedented milestones, including FACL BC receiving the Canadian Bar Association's Touchstone Award and the NAPABA's Affiliate of the Year Award. In her remarks, Huang called upon those in positions of influence to uplift others by mentoring, creating opportunities for, and offering guidance to them.

The program continued with a captivating keynote speech by award-winning journalist Lien Yeung. Yeung's story of growing up in Canada as a member of a visible minority group and experiencing racism as an Asian Canadian resonated with many. She spoke passionately about her work reporting on the rise of anti-Asian hate during the COVID-19 pandemic and amplifying the voices of the Asian community. Yeung's reflections on representation and resilience were both a celebration of diversity and a call to action, leaving a lasting impression on attendees.

Finally, FACL BC awarded scholarships to two students enrolled at the UBC Peter A. Allard School of Law, Liam Liu and Helen Yang, who have demonstrated a keen interest in and willingness to contribute to the pan-Asian Canadian legal community in BC.

This gala marked FACL BC's largest event in its 13-year history. It was made possible by the generous support of title sponsor and exclusive financial partner, Scotiabank, alongside over 50 other sponsors from the legal community. FACL BC is looking forward to another year of promoting equity, justice, and opportunities for pan-Asian legal professionals, engaging with the wider pan-Asian community, and an even bigger and better celebration of diversity within the legal profession at its annual gala next year!

IN-HOUSE

# **Empowering Change: The Unique and Unspoken Role of In-House Lawyers**

By Steven Ngo, Mark Leung, Karen Claus \*

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\* Steven Ngo was FACL BC's President from 2022 to 2023, and the co-founder of its In-House Committee alongside Mark Leung. Leung now serves as the committee's Chair, with Karen Claus as Vice-Chair.

When we talk about in-house lawyers, certain questions often come up: How do I move in-house? Is the grass greener on the other side? What can I do to get more business from in-house counsel?

While these questions have their time and place, they focus on the transactional nature of in-house counsel and barely scratch the surface of what in-house counsel can do to shape the culture of our legal industry and the organizations they work in.

Now is the time to explore a deeper and more transformative role for in-house lawyers — a role that extends beyond transactions and can help to advance FACL BC's mandate of promoting equity, justice and opportunity for Asian Canadian legal professionals and the wider community.

### **Why We Started**

The In-House Committee ("IHC") was created with a dual purpose in mind: (1) to create a place of belonging for in-house counsel; and (2) to leverage our positions to champion equity, justice, and opportunity within the legal industry and beyond.

We recognized that in-house counsel are pivotal agents of change, influencing not only the organizations we work in but also the law firms we engage with. This is a pressing need and is evidenced by the high attrition rate of Asian legal professionals within major law firms.

### **Recent Trends**

There has been a notable shift among Asian legal professionals who have moved from traditional law firm roles into in-house roles. This pattern is evident in both the U.S. and Canada. This trend is, in part, due to the discrimination, stereotyping and bias experienced by Asian lawyers within law firm settings as highlighted in the FACL BC documentary, *But I Look Like a Lawyer*.<sup>1</sup>

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1 *But I Look Like a Lawyer*, is available at <https://facbbc.ca/documentary>.

This data is also captured in the “A Portrait of Asian Americans in the Law” report,<sup>2</sup> which documents the steep decline in Asian Americans at major law firms within a decade of bar admission:

*“For nearly two decades, Asian Americans have been the largest minority group in major law firms. But they have the highest attrition rates and the lowest ratio of partners to associates among all groups.”*

*“The attrition rate for Asian Americans, as for other minority groups, is disproportionately high [...] the number of Asian Americans working in firms with over 100 attorneys declined by 68 percent over the decade from 2 to 12 years after bar admission, compared to a 61 percent decline among Blacks, a 44 percent decline among Hispanics, and a 53 percent decline among whites.”*

Despite this, the number of Asian Americans in general counsel roles is rising. In 2009, there were only 19 Asian American general counsels among Fortune 1000 companies. In 2020, that number had grown to 45. Today, the situation is even more promising, with over 200 Asian American general counsels in the San Francisco Bay Area alone.<sup>3</sup>

This trend is mirrored in B.C., with many of our FACL BC members and supporters ascending into senior leadership roles, including:

- **Barinder Sidhu**, Vice President & General Counsel, First West Credit Union
- **Catherine Chow**, Chief Legal Officer, Canucks Sports & Entertainment
- **Catherine Lau**, General Counsel, Mountain Equipment Company (MEC)
- **Dorothy Wong**, General Counsel & Corporate Secretary, the Insurance Corporation of British Columbia

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2 Eric Chung et al., “A Portrait of Asian Americans in the Law (November/December 2018), online: *Centre on the Legal Profession* <<https://clp.law.harvard.edu/knowledge-hub/magazine/issues/asian-americans-in-the-law/a-portrait-of-asian-americans-in-the-law/>>.

3 National Asian Pacific American Bar Association, “BAAAGC X NAPABA | Celebration of 200 Bay Area Asian American General Counsel”, online: <<https://www.napaba.org/events/EventDetails.aspx?id=1909860>>.

- **Gigi Chen-Kuo**, Chief Executive Officer, Law Society of British Columbia
- **Hubert Lai KC**, University Counsel, University of British Columbia
- **Jennifer Chan**, General Counsel & Chief Privacy Officer, Providence Health Care
- **Miranda Lam KC**, Chief Legal Officer & VP Business Development, Acuitas
- **Peter Li**, General Counsel, Seaspan Corporation
- **Raj Dhatt**, General Counsel, Herschel Supply Company
- **Tony Wong**, General Counsel, Chrysalis Software

### **Current and Upcoming Initiatives**

Building on this momentum, the IHC is leading initiatives to embed diversity, equity, and inclusion principles into our legal community and the organizations we work in.

For instance, our **FACL BC Template RFP**<sup>4</sup> encourages firms to prioritize diversity and provide transparency on team composition. Our **Trailblazer Series** celebrates legal pioneers and provides a platform to share their stories with our community. Our **FACL BC Leadership Academy**<sup>5</sup> helps to bridge the gap between private practice and in-house lawyers, fostering mentorship and peer-to-peer relationships amongst those between two to five years of call. Our recurring IHC networking events help to build an informal support network for our often underrepresented and under-served demographic. Finally, our **FACL BC IHC Connects** program aims to facilitate one-on-one connections between in-house counsel and law firm associates by providing a forum for associates to practice their business development skills in an intentional manner.

### **Call to Action**

As in-house counsel, we are uniquely positioned to set the standard in championing inclusive practices within law firms, the organizations we work in, and even beyond.

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4 FACL BC Request for Proposal (RFP) is available at <https://facbc.ca/inhouse>.

5 See <https://facbc.ca/academy>.

Our roles empower us to promote equity, justice, and opportunity not only within our immediate legal spheres but across all the communities we belong to.

Some practical ways that in-house counsel can promote FACL BC's mandate include:

- mentoring and championing racialized junior in-house counsel;
- developing and implementing macro strategies to strengthen DEI systemically, such as creating and publicizing the FACL BC Template RFP;
- speaking as panelists at IHC's events to promote the importance of DEI initiatives from the perspective of in-house counsel; and
- building deeper connections with law firms and their lawyers to encourage their support of FACL BC's mandate.

This bold mandate will require the participation of not just the in-house counsel community but also its allies, including senior leaders who work alongside in-house counsel and the law firms that service these organizations. Our committee has already witnessed practical ways in which allies have helped to advance the FACL BC mandate, including:

- opening up spaces, including law firm boardrooms, to allow for in-house counsel to connect and host DEI-related events;
- providing generous financial sponsorship to the in-house community's DEI initiatives; and
- adopting company practices aimed at encouraging DEI within law firms.

As in-house counsel, we have the privilege of hiring external counsel to help our organizations achieve their goals. As the target clients of law firms, we are well-positioned to request and even require firms to meet certain standards of calibre, competence, and culture.

By working together with our colleagues in private practice, we can collectively drive the pursuit of equity and justice and help the legal industry become more inclusive and fair to those who have historically been underrepresented.

MEMBERSHIP

# The FACL BC Podcast: Solidarity through Storytelling

By Baron Hsueh \*

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\* Baron Hsueh is the co-chair of the Podcast Subcommittee (a committee nested under the Membership Committee) and the Student Director at the Allard Peter School of Law at the University of British Columbia.

FACL BC's Membership Committee is responsible for engaging our diverse group of members and leading marketing outreach with legal organizations, law firms, and businesses in B.C. The Committee organizes a variety of initiatives, including social, networking, and wellness events such as *Hometown Eats*, the *Writing Café*, the *Associates' Mixer*, snowshoeing, and more. In addition to these events, the Committee also manages the Membership Benefit Program and produces the FACL BC Podcast. These efforts aim to strengthen our community and fulfill our mandate of serving a robust network of Asian Canadian legal professionals and the community at large.

Our award-winning FACL BC Podcast was launched during the COVID-19 pandemic in 2020, a time marked by widespread isolation and a troubling rise in anti-Asian hate crimes. The FACL BC Podcast created a welcomed sense of community and belonging, a bond which persists for interviewees, guests, and listeners to this day. Now in its fifth season, the podcast continues to unite people and spark meaningful conversations around the Asian Canadian experience.

The FACL BC Podcast has been operated by dedicated volunteers from the FACL BC Podcast subcommittee. These volunteers manage every aspect of the podcast, including preparing interview questions, recording, editing, and publishing each episode. The FACL BC Podcast highlights the stories, lived experiences, and wisdom of a range of Asian Canadian legal professionals, who share valuable insight on their careers, their upbringings, and the importance of diversity and representation in the legal industry. In 2022, the FACL BC Podcast received the Canadian Law Blog Awards, also known as the Clawbies Award for "Best Podcast", recognizing our commitment towards sharing the untold and empowering stories of Asian Canadian leaders in the legal community.<sup>1</sup>

In what appears to be an increasingly divided world where discussions of DEI prevail in professional settings, it has never been more crucial to recognize the transformative impacts of diverse representations and voices in fostering a stronger legal community. The theme for the 2024 FACL BC annual gala, "Unity in Diversity",

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1 Clawbies, "2022 Clawbies: Canadian Law Blog Awards" (31 December 2022), online: <<https://www.clawbies.ca/2022-clawbies-canadian-law-blog-awards/>>

encouraged attendees and members to reflect on an important question: what does it mean to be united through recognizing diversity, and how may we best continue strengthening our community as minority members of a privileged profession?

The FACL BC Podcast embodies the belief that effective and compassionate storytelling can be a powerful vehicle to not only answer many of the untold stories and questions related to navigating the legal industry as visible minorities, but to also normalize discussions around the unique experiences of Asian Canadians in law, whether as students, lawyers, judges, or other legal professionals. The FACL BC Podcast effectively strives to foster unity by celebrating Asian Canadian stories and lived experiences. In this article, we share overviews of some episodes of the FACL BC Podcast, and the powerful messages of solidarity and empowerment conveyed by our podcast guests, all of whom are elected benchers (“Benchers”) of the Law Society of British Columbia (“LSBC”).

### **Gaynor Yeung (she/her), Episode 17**

Gaynor Yeung is an experienced insurance and personal injury mediator and partner at Whitelaw Twining and was elected as a Bencher in 2021.

*“It means to me not having some people get to ride an elevator to the top floor while others have to climb a rope. If you have equity, diversity will naturally flow. If you provide equal opportunities to everyone, you are going to see a legal community which actually represents our community.” - Gaynor Yeung*

In this episode, Yeung shares her personal experience about the changing legal landscape on DEI and tools on combating unconscious bias. Yeung also discusses her views on the importance of DEI in maintaining professionalism and integrity in a law firm setting, and her three objectives in improving DEI as a Bencher: “combating unconscious bias, providing tools, and spotlighting diverse legal organizations”.

*“I really encourage young lawyers to find a cause or organization that you are passionate about and give: share your knowledge, share your skills, and give your time.” - Gaynor Yeung*

## **Gurminder Sandhu, KC (he/him), Episode 18**

Gurminder Sandhu, KC is a commercial, family, and insurance litigation partner at Hamilton Duncan, and was elected as a Bencher in 2021. Sandhu was also appointed by the Minister of Justice to the BC Federal Judicial Advisory Committee in 2021.

In this episode, Sandhu discusses his history of community service from his time as a law student at the University of British Columbia, to his inspirational journey towards becoming a Bencher. He also delves into the advantages of equitable representation in the legal profession, and how to best leverage our cultural experiences and upbringings to offer better legal services to a diverse community of Canadians. Sandhu calls upon all lawyers to remain cognizant of their privilege and backgrounds and to engage in the mentorship of the next generation.

*“A ten-year call has to realize what it felt like as a first or second-year call. Their role is not only to grow their own practice, but their role shifts to one of giving back: take 30 minutes to proofread something, take the time to give suggestions, be a listening post.” - Gurminder Sandhu, KC*

## **Cheryl D’Sa, KC (she/her), Episode 34**

Cheryl D’Sa, KC is the managing partner of Narwal Litigation LLP and was elected as a Bencher in 2020. D’Sa is an experienced litigator, advocate, and passionate member of the bar. She is also the Chair of the LSBC’s Equity, Diversity and Inclusion Advisory Committee, and a past president of the Vancouver Bar Association.

*“Sharing your own challenges is really important so people know that they’re not alone. Mentorship is friendship, it’s very important to me, and I’m going to do it for as long as I can.” - Cheryl D’Sa, KC*

In this episode, D’Sa shares her own gendered and racialized experiences throughout her legal career. As she recalls her feelings of anxiety as a first-generation law student, and her development as an experienced and prolific lawyer, D’Sa also sheds light on the intersectional nuances of legal practice as an Asian Canadian woman and mother.

D'Sa's episode discusses how she has allowed her experiences of marginalization to become her fuel for advocacy as a Bencher, and how to seek allies within the legal industry.

Please check out the FACL BC Podcast on Spotify<sup>2</sup> and Apple Podcast<sup>3</sup> Are you interested in being a podcast guest? If so, please contact [membership@facbbc.ca](mailto:membership@facbbc.ca).

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2 <https://open.spotify.com/show/3wLEXIVTWwjUlrEN2Mj1kc>.

3 <https://podcasts.apple.com/us/podcast/facl-bc/id1536370708>.

MENTORSHIP

# Is the Current Mentorship Model Outdated? Improving Mentorship for New Lawyers

By Jennine Punzalan, Jianna Faner \*

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\* Jennine Punzalan is VP Internal of FACL BC and oversees the Mentorship and Victoria Committees. She is currently legal counsel at Pomerleau. Jianna Faner is a Mentorship Committee volunteer. She practices civil and commercial litigation, with a focus on family law, at DLA Piper.

## FACL BC Mentorship Committee

In addition to formal legal education within the classroom, mentorship is a central component of the education of a lawyer in B.C. No one can become licensed as a lawyer in B.C. without completing articling: a form of training that has — or at least should have — mentorship embedded within it. During their articling period, soon-to-be lawyers ostensibly begin the practice of law under the supervision and guidance of a senior lawyer, known as their principal.

It is trite to say that there is room for improvement when it comes to the training and development of new lawyers in B.C. Currently, articling is the sole pathway to lawyer licensing in the province. Whether or not that should continue to be the case has been the subject of debate for some time.<sup>1</sup> Indeed, discussions about whether articling should perhaps be discontinued altogether, as has been done in the U.S., have been taking place for decades.<sup>2</sup>

The Law Society of British Columbia (“LSBC”) recently conducted surveys to better understand current issues associated with the articling experiences and the training of new lawyers. The LSBC reported two key and troubling findings from these surveys:

1. Almost 60 percent of respondents who completed articling in the last five years felt less than fully prepared for entry-level practice; and
2. Of those who responded, 30 percent encountered discrimination and/or harassment during recruitment and/or articling.<sup>3</sup>

Among the key reasons that current and recent articulated students feel unprepared? Lack of mentorship.<sup>4</sup>

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1 Law Society of British Columbia, *Exploring the development of alternatives to articling: Recommendations* (2020) at 5.

2 Janice M. Zima, “Is Articling Obsolete?” (1995) *Canadian Lawyer* 19 (9): 18-22.

3 Law Society of British Columbia, *Articling Program Assessment: Full Report* (29 November 2024) at 12, 20 [Articling Program Assessment].

4 Articling Program Assessment, *supra* note 3 at 45.

To be clear, a lack of access to good mentoring relationships is not a new challenge. Though there exists a good deal of nostalgia about the “old guild” model of apprenticeship in the early days of the legal profession within Canada, where articled students would form intimate relationships with their principals by virtue of how closely they had to work together, mentorship was also not without its challenges in those days.<sup>5</sup>

As early as 1849, law students at the Osgoode Club complained that practitioners could not make time to teach apprentices, writing that the lawyers’ business precludes them from imparting regular systematic instruction.<sup>6</sup> The Honourable David Vanek, called to the Ontario Bar in 1939, recalled being “dispatched hither and yon, to file papers” during his articles and being “allowed to trot beside [his principal], carrying his briefcase” on the way to motions court.<sup>7</sup> Over a century and a half after the 1849 complaints of the Osgoode Club, a report to the LSBC to assist the “re-visioning” of the Professional Legal Training Course observed that articled students and junior lawyers often bemoaned the difficulty they face in “gain[ing] access to senior lawyers to seek their advice and comments on their work.”<sup>8</sup>

If a lack of mentorship results in unprepared new lawyers, the inverse is also true. Mentorship is paramount for the growth and success of aspiring legal professionals.<sup>9</sup> Current and recent articled students who reported feeling prepared for entry-level practice after articling named training and mentorship as key factors to good preparation for entry-level practice.<sup>10</sup>

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5 Veronica H. Ashenurst, “Mentoring the Lawyer, Past and Present: Some Reflections” (2010) 42:1 *Ottawa Law Review* at 134 [Ashenurst].

6 *Ibid* at 138–139.

7 *Ibid* at 141.

8 Law Society of British Columbia, *New Directions for Practical Legal Training in British Columbia* (November 1999) at 42.

9 Tracument Solutions Inc., *Early Career Legal Survey: A 2023 Survey of Junior Legal Professionals and their Employers* at 23-24.

10 Articling Program Assessment, *supra* note 3 at 44.

Canadian associates at law firms rank mentorship as a top reason for staying at their firm – a higher ranking than among their peers down south.<sup>11</sup>

The mentoring relationship provides benefits to both mentor and mentee. As the LSBC surveys bring to light again, mentoring enhances new lawyers' sense of competence, helps them transition to effective practice, socializes them into the profession, and develops their ethical judgment by providing opportunities for moral dialogue with experienced practitioners. Mentors help articulated students and associates learn about many aspects of practice that are not taught in school, from areas of law to navigating the politics of a firm.<sup>12</sup> In turn, the mentoring relationship validates senior lawyers' professional experience and also challenges them to improve relational skills such as listening, providing criticism, and generating trust.<sup>13</sup> A good mentor can guide with their experience and perspective, not only in relation to the legal profession, but to mental and emotional health and well-being as it relates to legal practice.<sup>14</sup>

Mentorship may also be a particularly effective DEI tool. Research has shown that 85 percent of women and 81 percent of racialized professionals need "navigational help" inside organizations.<sup>15</sup> Historically underrepresented groups may struggle with accessing and navigating the "unwritten rules" that are ever present but seldom spoken about out loud in law firms, which an effective mentor may assist with.<sup>16</sup> While overt discrimination based on race and gender is arguably less prevalent today, systemic barriers in the profession continue to be created by unconscious

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11 National Association for Law Placement Foundation, "Should I Stay or Should I Go?: Key Factors Driving Law Firm Associate Retention" (9 December 2024), online: <<https://www.nalpfoundation.org/news/the-nalp-foundation-releases-canadian-stay-study-exploring-key-factors-driving-law-firm-associate-retention>>.

12 Heather Gray-Grant, "Why Mentoring Programs Fail (And How to Fix Them)" (4 February 2020), online: *Slaw.ca* <<https://www.slaw.ca/2020/02/04/why-mentoring-programs-fail-and-how-to-fix-them/>>.

13 Ashenurst, *supra* note 5 at 131.

14 Lawyers Assistance Program of British Columbia, "Being a Mentor in the Legal Profession" (11 December 2020).

15 Rafael X. Zahralddin-Aravena., "The Evolution of Mentorship in Legal Professional Development" (19 March 2020), online: *Business Law Today* <<https://businesslawtoday.org/2020/03/evolution-mentorship-legal-professional-development>>.

16 Diversity Lab, *2022 Inclusion Blueprint: Firm Leadership Insights*, at 15.

bias.<sup>17</sup> Mentorship provides representation and opens doors for equity-seeking lawyers to opportunities that were previously closed to them. Indeed, welcoming new lawyers from equity-seeking groups through mentorship is, in itself, a public act to foster diversity in the profession.<sup>18</sup>

Therefore, the lack of effective mentorship reported by the LSBC survey represents a significant loss for racialized law students, articled students, and junior lawyers. As new lawyers are beginning their practice in a very different world, effective mentoring relationships are more important than ever. The profession continues to experience steady waves of change, from the rise of artificial intelligence and social media, to the changing conversation on mental health and the still reverberating after-effects of the COVID-19 pandemic.

### **What solutions can we undertake?**

***Provide opportunities for informal mentorship.*** There is merit in taking a closer look at different forms of mentorship. Mentorship is most prevalent as “formal” mentorship. In an articling scheme, formal mentorship takes form in the relationship between the articling student and their principal. Law firms, as well as professional organizations like FACL BC, have also formalized mentorship through programs where students and junior lawyers are paired with a few mentors of varying levels. The nature of the mentoring relationship and time commitments may vary. The mentoring relationship often suffers due to a lack of commitment from the mentor with a busy practice and the mentee feeling insecure about reaching out and “bothering” their mentor. It is a cycle that often perpetuates itself, resulting in a lack of face-to-face time between the mentor and mentee.<sup>19</sup> A mentoring relationship is left in theory, not in practice, and a new generation of lawyers continue to feel unprepared for legal practice.

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17 Law Society of British Columbia, *Towards A More Representative Legal Profession: Better practices, better workplaces, better results* (June 2012) at 4; FACL BC’s *But I Look Like A Lawyer* documentary has highlighted this reality for Asian-Canadian lawyers, from articled students to senior members of the Bar.

18 Ashenhurst, *supra* note 5 at 132.

19 Ashenhurst, *supra* note 5 at 149, Canadian Bar Association Conversations with the President, “Mentorship, Sponsorship and Diversity” (July 2020) at 00:12:20.

Informal mentorship, meanwhile, is a mentoring relationship that develops organically. The relationship is fostered from the compatibility of mentor and mentee as well as the initiative from both sides to share ideas and learn from each other. This type of mentorship is often more prevalent at mid-size and smaller law firms, though informal mentoring relationships are also formed within big law firms, regardless of the existence of a formal mentoring program.<sup>20</sup> In a National Association for Law Placement survey on mentoring, an overwhelming number of mentees claimed that informal mentorship has been very beneficial to them and that it often arose from working together on matters. Informal mentorship benefited mentees because they felt more comfortable going to informal mentors with questions, and the nature of the relationship provided opportunities for more candid conversations. In short, informal mentorships allow the participating lawyers to create a relational rapport, where they both want to “show up” and attend to the mentoring relationship.<sup>21</sup> Thus, law firms may benefit by building informal mentorship into their existing systems, e.g. mentorship training for senior associates and partners or providing its lawyers with a budget for informal mentorship opportunities.

FACL BC has continuously sought to provide mentorship avenues for Asian Canadian lawyers, both formally and informally. The Mentorship Committee runs the Mentorship Program annually. The program has been a reliable source of effective mentoring relationships between law students and lawyers, and it has recently added an option for junior lawyers to obtain mentorship from senior lawyers as well as an option for peer mentorship.

In addition to the Mentorship Program, the Mentorship Committee organizes various events throughout the year with the goal of fostering informal mentoring relationships. Events such as the Networking Workshop (organized in collaboration with Allard Law’s Asia-Pacific Law Club), the Mentorship Roundtable, the Women’s Social, and the Lunch and Learn series provide opportunities for lawyers to connect and establish the rapport and personal ties that make for a successful mentorship.<sup>22</sup>

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20 Tammy A. Patterson & Mark J. Korf, “The Power of Informal Mentoring Programs”, *The Benchers* (March/April 2013) at 17.

21 Ashenhurst, *supra* note 5 at 147.

22 Ashenhurst, *supra* note 5 at 147.

We recognize that informal mentorship, though beneficial for the parties involved, may suffer from systemic issues and unconscious bias in the profession. FACL BC aims to provide a safe space for pan-Asian lawyers in B.C. to foster mentoring relationships in a way that allows participants to be authentic and candid.

*Change the perspective on what good lawyering is.* For the nature of mentorship to evolve and improve, we must look at the foundations of the legal profession. According to author Veronica H. Ashenhurst, the dominant paradigm of lawyering continues to be male and able-bodied. From our perspective, it is also heteronormative and white. It is a paradigm that demands many hours of labour and only rewards hitting annual billable targets over other worthy accomplishments, such as being a committed mentor and contributing to DEI initiatives. Though law firms are, ultimately, businesses, quality mentorship makes for more productive, engaged lawyers.<sup>23</sup> Legal workplaces would thus benefit substantially from laying the foundation of a mentoring-friendly professional culture by placing an increased value on quality mentorship. Furthermore, senior lawyers and mentors would benefit from incorporating quality mentorship as an aspect of a good and ethical practice, including learning how to face unconscious bias and how to mentor effectively despite differences.

FACL BC's Pro Bono initiative, spearheaded by the Advocacy Committee, is currently working on developing guidelines on what a sustainable DEI policy can look like at a law firm. Ultimately, however, experienced lawyers and law firm management must see the benefits of mentoring for themselves. By doing so, they will improve the quality of their own practice and firm culture as well as guide a new and more diverse generation of lawyers for the betterment of the profession.

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23 Shawn Erker, "It Takes a Village to Build a Lawyer: The Importance of Mentors in a Legal Career" (28 October 2019), online: *Ontario Bar Association Law Practice Management Section* <<https://www.oba.org/Sections/Law-Practice-Management/Articles/Articles-2019/October-2019/It-Takes-a-Village-to-Build-a-Lawyer-The-Importan>>.

## **About the Mentorship Committee**

FACL BC's Mentorship Committee runs the largest mentorship program in the province for Asian Canadian students and junior lawyers, with over 150 mentor/mentee pairings. Applications for our mentorship program typically open towards the end of the year. In addition to our mentorship program, the Committee also runs events throughout the year.

NCA AND LLM

# **Bridging the Gap: Empowering Internationally Trained Lawyers**

Tiffany Ho, Tina Ye \*

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\* Tiffany Ho, an internationally trained lawyer and associate at Barbeau Evans LLP, and Tina Ye, who completed her Masters of Law at the University of British Columbia before articling at Yan Muirhead LLP, are the co-founders of the NCA & LLM Committee.

The NCA & LLM Committee was established in 2023 to build a supportive community for foreign-trained lawyers navigating the National Committee on Accreditation (“NCA”) process or the Master of Laws (Common Law) (“LLM CL”) program. FACL BC recognized that many individuals undergoing the re-licensing process in B.C. may be racialized and faced with unique challenges. From this observation, the organization saw the need to create a dedicated space for connection, guidance, and collaboration.

The legal profession in B.C. mirrors the diversity and vibrancy of its multicultural population. Globalization has led to an influx of internationally trained lawyers into Canada, many of whom are seasoned professionals from their home countries. These lawyers enrich the Canadian legal community by bringing a mix of diverse backgrounds, specialized expertise, and fresh perspectives shaped by their global training and experiences.

Internationally trained lawyers and law graduates aspiring to join the B.C. Bar must first have their foreign law degrees evaluated by the NCA, which is part of the Federation of Law Societies of Canada (“FLSC”). This evaluation ensures that their legal knowledge aligns with the standards of a Canadian law school graduate. Upon successful completion of these requirements, these internationally trained candidates are awarded a Certificate of Accreditation, which allows them to begin articling and participate in the British Columbia Law Society Admission Program. For each of the past four years, between 3,300 and 3,500 people have applied for an NCA evaluation. During this same timeframe, between 1,200 and 1,750 Certificates of Qualification were issued annually.<sup>1</sup> The top five jurisdictions of education for the number of applicants are England, India, Nigeria, the U.S., and Australia. Many skilled lawyers with years of legal practice under their belt bring their wealth of experience from other common-law or civil law jurisdictions into Canada.

At the same time, an increasing number of Canadian students are pursuing legal education abroad and returning home to launch their legal careers. These individuals bring a broader worldview and valuable international experiences, having immersed themselves in different legal systems and cultures. Their time abroad

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1 Statistics provided by FLSC on December 18, 2024.

enriches their understanding of legal practices and customs, while allowing them to approach their legal journey in Canada with a unique global outlook.

Despite bringing valuable experiences, internationally trained candidates are often overlooked compared to their Canadian-educated law school peers. The path to becoming a lawyer in B.C. can differ significantly depending on where one's law degree was obtained. The licencing journey is typically less straightforward for those who studied outside of Canada. Canadian law school faculties often develop a clear and well-defined route for their students beyond graduation in Canada, which may or may not be the case for internationally trained candidates who wish to pursue a career in Canada. This highlights the need for greater opportunities to ensure that all candidates, regardless of their educational backgrounds, have an equal chance at success in the licencing process. The ability to practice law competently, whether in advocacy, effective legal writing, or client relationship, depends not on the place of education, but on the dedication and commitment to ongoing learning.

As the first committee of its kind in B.C., the NCA & LLM Committee aims to address the varied journeys of legal professionals by offering valuable resources, networking opportunities, and mentorship at all stages of their careers.

Now an active group of committee members, the NCA & LLM Committee organizes panels and events on key topics such as immigration, recruitment, exam preparation, articling, job searching, and networking. If you are a foreign-trained law candidate, we encourage you to join us and be an active part of the community! Your participation will help contribute to the continued growth of the committee.

# FACL BC Journal's Journey: A Message from Fiona Wong

The Journal you just read is the culmination of excellent writing from hand-picked Asian Canadian authors, the hard work and countless hours of editing and revisions from our Advocacy Committee, specifically Co-Chair Serena Cheong serving as the Editor-in-Chief of the inaugural issue, and the Journal's Editorial Board over the past 12 months. The Journal is yet another example of what FACL BC can achieve when we have a vision and the funding to realize that vision. I want to acknowledge the Law Foundation and their generosity in making this Journal possible. My thanks also goes out to VP External, Sebastian Chern, and Advocacy Committee Co-Chair, Shanna Gu, for spearheading our advocacy efforts as well.

It is now my sixth and final year on the Board as the Immediate Past President and Advisory Director. Each year, my favourite FACL BC activity is when the Board embarks on an annual Board retreat to collectively brainstorm our long-term goals and vision for the next one to five years. We often have so many wonderful ideas that we vote on our top three choices to narrow our options. To make these choices more creative, we often think of long-term goals and visions as "moonshot ideas" – namely, ideas that we would love to achieve if time and money were not an issue for FACL BC.

Some of these goals have included launching a documentary, a podcast, hiring an Associate Director, and most recently, publishing a journal. I am so proud to share that our Boards over the years have successfully managed to achieve all of these long-term goals or push them to substantial completion within the year.

The Board wished to publish a journal because despite the existence of a plethora of legal scholarship in B.C. and across Canada, none were exclusively devoted to showcasing the voices and perspectives of the Asian Canadian legal community. Our other projects — the FACL BC Podcast and the documentary, *But I Look Like a Lawyer*, for example — were created through other mediums but effectively empowered the Asian Canadian legal community to come together, to speak up, and to share their collective experiences as Asian Canadians in the legal community. So we thought, why not do it differently, this time through print?

At the time, the issue of making the Journal a reality was hindered by two challenges: 1) our finances, and 2) our limited time and expertise as a working Board. While the non-profit society is generously supported by firm sponsorships, our annual gala, and membership dues, the creation of a journal required significant funding that we did not have for the foreseeable future as our budget was already allocated to other initiatives and operational needs.

Our documentary was a moonshot idea made possible through a grant from the Law Foundation in 2019/2020. It was filmed during a worldwide pandemic with strict social distancing measures in place, but we managed and completed it through sheer determination and diligent planning. Thankfully, the impact of our documentary convinced the Law Foundation to entrust us again in 2023, this time with a \$50,000 Racial Justice Grant for our journal and the hiring of an Associate Director. Because of this additional funding, we were able to put out a call out for volunteers with academic journal experience, and assemble a dedicated Editorial Board and production team under a short timeline.

Several of these journal volunteers are joining FACL BC's efforts for the first time, while others have been steadfast in leading our Advocacy Committee efforts over the past several years. All of them have collectively addressed our issue of limited time and expertise, with some of them having served as the Editors-in-Chief for the academic journals at their respective law schools, and created this Journal through the thoughtful submissions of our authors.

A heartfelt thanks to Jenny Huang for being at the helm of FACL BC as President this year, to ensure that this Journal came to fruition. I hope you enjoy reading the thoughtfully curated articles in this Journal as much as I do. I am so proud to be part of FACL BC, to see what we can collectively achieve when we come together, are supported by the legal community at large, and thank all those who continue to push the organization forward.

Warm regards,

A handwritten signature in black ink, appearing to read 'Fiona Wong', written in a cursive style.

Fiona Wong

2024–2025 FACL BC Advisory Director