

INTRODUCTION

Changing the Subject: Redefining Access to Justice

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This inaugural edition of the Toronto Metropolitan University Law Review (TMU Law Review) represents a milestone for the Lincoln Alexander School of Law. With a mission to diversify legal scholarship, the law journal expands the law school's reach beyond its core academic program and furthers its commitment to diversity, equity and inclusion. By disseminating cutting edge articles on a variety of legal topics, the journal aims to increase the depth and breadth of scholarly discourse and enhance an already rich body of legal literature within Canada and beyond. Authors are members of the legal academy and profession whose perspectives on contemporary legal and social issues merit broader exposure. Indeed, providing an outlet to those whose perspectives have been underrepresented in legal publications will be a primary goal of the journal, which will go some way towards changing the subjects of legal analysis.

Celebration of this inaugural edition warrants some reflections about the institution that made this publication possible. Beginning as an abstract idea more than a decade ago, the Lincoln Alexander School of Law welcomed its first students, faculty and staff members in the summer and fall of 2020, and graduated its first cohort of students in summer 2023. In just three years, the law school has become one of the most diverse in Canada, having attracted a faculty, staff and student body who support its mission to increase diversity in the legal profession, provide more robust legal services to the underrepresented, and approach the study of law with a critical lens. There seems to be an appetite for what the school has to offer. Since opening, it has attracted among the highest number of student applications in Ontario relative to the number of seats available and has made a name for itself in moot court competitions, for the diversity and activity of its student organizations, and for the excellence of its teaching and scholarship. Applications for teaching positions both on the tenure track and practitioner track have numbered in the hundreds. Moreover, the law school will soon open its first in-house community legal clinic that will serve its neighbours in various areas of legal practice.

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Over the course of its first three years, the law school has launched an ambitious Integrated Practice Curriculum featuring scholars and practitioners working together to provide a rigorous educational program. Students are exposed to doctrinal and theoretical courses, courses focusing on Indigenous laws, courses analyzing the relationship between technology and justice, and courses taking a critical approach to a legal system that has been designed to support those in power more than those in need. Student programming centres on student well-being and academic enrichment and is staffed by a talented and creative group of professionals. The law school's events, conferences, and workshops have attracted thousands of audience members in an impressive array of venues. And our faculty members are making an outsized impact in the legal academy and profession.

These accomplishments are made all the more impressive considering that the law school opened during a global lockdown caused by the COVID-19 pandemic, and for two years operated almost entirely remotely. During this time, a caring and cohesive community was being established all the while navigating changing public health protocols, distance learning, and the mental health effects of prolonged isolation.

My deanship began in January 2020, just two months before the COVID-19 pandemic forced the world indoors. When the pandemic struck, the law school had only just begun the process of hiring its first group of faculty members and had only a handful of staff. Even without the pandemic, the task of embedding a new faculty into an existing university and of introducing a new law school to the legal community would have been challenging. But with the support of senior leadership at Toronto Metropolitan University, dedicated professionals from the central university, and a small number of cross appointed faculty members at the law school, planning for the law school continued briskly despite being done entirely remotely. We assembled a rigorous curriculum, established essential relationships both in and outside the university, drafted new policies and procedures, and put in place student support services all without the benefit of face-to-face contact, spontaneous discussions, or in person interactions that would facilitate community building. Nothing was easy or straightforward during these first three years, and yet the law school managed to attract an extremely talented faculty and staff, a student body to be proud of, and created a rich and thriving intellectual environment.

We faced enormous challenges in launching an institution with no history, no alumni base, and staffed by individuals who had never met before under conditions of isolation, facing personal challenges brought on by COVID-19, and under immense pressure to assemble a complex and ambitious program of legal education within a short period of time. An early task was to define and refine the mission of the law school—one that would prioritize critical approaches to law by infusing them into discussions of the promise and perils of Canadian legal education and would emphasize providing access to students from underrepresented groups. It would highlight for students the importance of serving underrepresented and underserved communities and encourage students to appreciate but be wary of new technologies and the laws that regulate them.

As most law schools do, the Lincoln Alexander School of Law takes seriously its role in assisting students to understand the law and their role in the legal system. Educating future legal professionals to serve the public good requires it to provide instruction about the ways in which the practice of law and laws themselves have perpetuated and indeed were designed to perpetuate some of

the worst injustices imaginable. Without an antiracist, anti-oppression, and anti-colonial lens, the legal education provided at the Lincoln Alexander School of Law would be offering students only a partial account of legal doctrine and history, and one that has been fundamentally exclusionary and oppressive. Consequently, part of the law school's mission is to nurture a learning environment that encourages critical thinking and scepticism about any claim of law's neutrality.

In addition, the Lincoln Alexander School of Law was designed to answer a decades-long debate concerning the most effective ways for law schools to prepare students for the practice of law. Much of the debate is presented as a binary contest between theory and practice. A common argument is that law schools focus unduly on doctrinal analysis, legal history and philosophy and critical theories, and not enough on the practical skills required to efficiently enter conventional law practice as competent professionals. Though well intentioned, this critique does not fully acknowledge the important role that law schools play in mapping important fields of study within higher education. Law schools are not simply trade schools that are tasked with teaching a predetermined set of competencies. Nor are law schools merely ivory towers of arcane legal thought with no current or practical application, as the pages of this law journal will surely demonstrate. Law schools train students to be public citizens and dedicated legal professionals, which involves teaching historical and current political context, legal methodology, theory, doctrine, critical thinking, and the practical skills and professionalism required to practice law. Though still only three years old, the Lincoln Alexander School of Law is doing the hard work of designing a curriculum dedicated to getting the balance right. Because we are building the law school from scratch, challenges of institutional inertia are not barriers to our progress.

This mission of the law school was particularly compelling to me personally and an important reason I joined the law school at its inception. But clearly this interest is not mine alone. Many students, staff and faculty have been attracted to the law school because its curriculum is fashioned to reflect critical understanding of law and legal practice. As a racialized woman with an understanding of the legal systems in both Canada and the United States, I have come to believe that the legal status quo is almost always worth disrupting. But my interest in being dean of the Lincoln Alexander School of Law has less to do with disrupting legal education in Canada than with preserving what legal education is meant to do—to dismantle oppressive systems embedded in law and legal practice; to support and maintain an intellectual environment in which academic freedom is promoted in research, scholarship and teaching; and principles of collegial governance are embedded in the operation of the institution.

Early in my deanship I received a lovely note congratulating me on my appointment that has served as a guide. The author wrote:

Working in education is, for so many reasons, more of a blessing and a reward than a career; your contributions are multiplied by the understanding and courage of your students. Moreover, working in the justice system, with the possibility of contributing to change, is a privilege.... You will shape the learning and future of so many young people and contribute to the changes we all live for.

This letter captured the essence of legal education—teaching students and learning from them in the pursuit of making the law better for all of us.

Not everyone saw my appointment as something to celebrate, however. Only four weeks after I arrived on campus in my new role, I was made aware of a letter that had been sent to the members of the committee that had hired me, the provost and president of Toronto Metropolitan University, the Minister of Education for the Province of Ontario, and the Premier of Ontario. The author objected to language in the public advertisement for the position of founding dean, which encouraged applications “from members of groups that have been historically disadvantaged and marginalized, including First Nations, Metis and Inuit peoples, Indigenous peoples of North America, racialized persons, persons with disabilities, and those who identify as women and/or 2SLGBTQ+”. But the author, noting that a Black woman had been appointed dean, suggested that my appointment was illegitimate as I could not possibly have had the credentials required for such a role. He wrote,

[O]ne is left to wonder if it would not have been easier, not to mention far more honest, for [Toronto Metropolitan University] to have come right out and said that applications from able-bodied heterosexual white men were not needed. By its/your despicable behaviour... You have discriminated against a very large segment of Canadian society...something that is utterly unacceptable in Canada...There can only ever be one acceptable hiring criterion: merit. You have forever tarnished the reputation of Ms. Young. There is at least a possibility, however remote, that Ms. Young was appointed on the basis of merit. However, in view of your blatant, utterly unacceptable discrimination, this can never be known, and, for the rest of her life, Ms. Young will be viewed as a fifth-rater who was appointed entirely because she is black and because she is a woman.

I didn't take this letter personally and it did not undermine my confidence in myself or in the institution I had enthusiastically joined. Nonetheless, the letter had the potential, and probably was designed, to do all of that and more. It must not be dismissed as the musings of a disgruntled individual. Rather, it reflects an undercurrent of intolerance in Canada, including within the legal profession—an undercurrent that has sought to keep some of us in our place, to define our successes as failures, our gains as ill-gotten, our achievements as undeserved, and our very identities as disqualifying.

I mention this letter to help explain what drives me and many of those who have joined the Lincoln Alexander School of Law as faculty, staff, and students. The letter was meant to send a message to those of us who enter spaces not designed to include us. Law schools have not historically been welcoming environments for faculty, staff, or students who are Indigenous, racialized, new to Canada, members of the 2SLGBTQ+ communities, or to those who are the first in their families to attend university. Though the author of the letter was willing to voice his concerns to a great number of people, many others are not. Their anger and resentment is communicated to us in other ways. The legal profession is not immune to this kind of intolerance. There have been troubling signs—pressure on law schools to engage in only certain kinds of research, attempts to ban certain theories from the curriculum, and targeting faculty members for the courses they teach. These pressures must be resisted.

Those of us engaged in legal education know that law schools have to respond to critical questions about the role we play in preparing students for the practice of law, while at the same time attending to other fundamental responsibilities that have remained fairly constant over time—providing faculty with the resources and freedom to explore complex socio-legal questions and

supporting them in their roles as teachers and researchers. With the advent of new laws, new ways of breaking the law, and new technologies that both help and hinder the practice of law, analytical nimbleness is a necessity. And in the end, law schools must protect the academic mission designed to serve the public good.

I learned this lesson all too well in my role as a law professor and as a faculty advocate at the American Association of University Professors (AAUP) in the United States. I came to the deanship at Toronto Metropolitan University not as an administrator, but as a critic of bad administrations. My experience in the United States and my involvement in faculty advocacy makes me attuned to threats to the academy. In Canada, we see worrying developments: some openly questioning the value of higher education; some lawyers calling for changes to law school curriculum to further their own agenda; appeals to remove law schools from provincial licensing requirements; incivility and hate expressed online and in person; tuition increases; crippling lack of resources for public education; and unfair levels of student debt.

Despite our strong faculty associations, we cannot ignore these signs and allow ourselves to think that what is unfolding in the United States could not happen here. For years we have witnessed high levels of anti-Asian discrimination, violence, and terrorism. Anti-Black racism is manifest in housing, education, employment, and provision of services. Islamophobia is manifested in laws, rules, and regulations, surveillance, and in deadly attacks on places of worship. There has been a steady stream of anti-Semitic attacks and street harassment against young children and elders, and defacement of synagogues and cemeteries. We've been witness to evidence of what Indigenous communities have always known—violence and death within residential schools, over-policing of Indigenous communities and criminalization of Indigenous culture, language, practices, and huge discrepancies in public services for First Nations children and communities. As a society, we are complacent about the persistent discrimination against people with disabilities in failures of accommodation, and overt discrimination in employment, housing, and public services.

Despite lofty legal doctrine and our professed national identity as a caring and fair-minded people, we Canadians and we lawyers remain too tolerant of inequality, inequity, and injustice. But still there is reason for optimism. Law professors are better preparing students for critical thinking and challenging systems that are not working for the majority of people. Canadian law schools are committed to innovative curricula that mainstream social justice values. And after the brutal murders of George Floyd, Breanna Taylor and others, and the international protests that followed, we have seen an unprecedented growth in the number of multiracial movements throughout Canada, the United States, and around the world that remind us of the importance of activism, civil disobedience, and collective action.

Critical approaches to law are necessary for uncovering the role of the law in systems of oppression but also for reimagining a more just system. Law schools have a solemn responsibility to teach our students and learn from them; to model creativity and innovation; to acknowledge that what we teach is partial and that we need to hear all voices to round out our knowledge and understanding; and that the voices that have been absent from law's stories must be heard.

Introducing counter-narratives into legal analysis and turning on its head mainstream storytelling found in case law and legal advocacy gives students the tools necessary for normative critique of law. If some stories are never heard, they cannot influence outcomes.

Critical analysis of the law must begin with the premise that oppression is a systemic part of our societal norms: that it permeates our lives, that it is embedded within systems and institutions, like the legal systems that replicate and promote inequities; and that even though overt intentional acts of discrimination are to be found scattered throughout workplaces, educational institutions, health care, housing and public services, systemic inequities are more pernicious and almost completely resistant to attempts at redress through human rights laws and processes.

And so law schools must dedicate themselves to telling the stories that have not been told in the law. Persistent social and economic inequities are reflected in law and are only reinforced when some perspectives are suppressed and some lives don't matter. Black lives, Indigenous lives, Asian lives don't matter, for example, under political, educational, and legal systems that are designed and instituted with the purpose or effect of maintaining a racial status quo.

The Lincoln Alexander School of Law has gotten off to an auspicious start. But there is much left to do. I have great faith in the next generation of lawyers. They are learning new techniques and embracing creativity. They are using critical thinking to address complex problems. I see a strong commitment to access to justice in this generation of students. Though the legal system is full of contradictions, confusing doctrine, and archaic language and ideas, it is fascinating to study, and to do so repays one's efforts. Law is only one tool to address inequities, but an important one. Our knowledge is partial and we need others to help fill in the pictures, but that cannot happen if the message to others is that they will not be heard.

I want to thank the group of law students and faculty who have worked so hard to launch this journal, and particularly Dr. Angela Lee, for this significant accomplishment on behalf of all of us at the Lincoln Alexander School of Law. The TMU Law Review is dedicated to publishing scholarship that exposes where our legal system falls short and suggests ways to move forward in addressing vexing legal problems. In this way, it not only reflects the social justice mission of the law school, but in fact will help to lead the law school in a direction that ensures that it stays true to this mission. With this inaugural edition of the TMU Law Review, we see a small but important step toward revealing law's untold stories, to making concrete the pledge of our law school to hold law to account for its shortcomings and true to its pledge to improve the world.