

Working Group 4

Reflections: Youth Justice in Black & White



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“Reflections: Youth Justice in Black & White”

PRESENTED BY JULIAN FALCONER (MARCH 21, 2022)

A Snapshot Of The Justice System: Being Set-Up For Failure.



- Part I: Discussing the Use of Force by the Toronto Police Service (July 2020)
- Part II: Revisiting the Report of the *Independent Street Checks Review* (2019)
- Part III: Assault of Dafonte Miller and Mr. Miller's Experience with the Criminal Justice System
- Part IV: Reflecting on Indigenous People in Criminal Court in Canada: An Exploration Using the Relative Rate Index (2021)
- Part V: Two school shootings, fifteen years apart (2022) & The Road to Health: A Final Report On School Safety (2008)
- Part VI: What Role Can We Play and What Can We Do?

Use of Force by the Toronto Police Service (July 2020)

Report of the Ontario Human Rights Commission (OHRC)
(Dr. Scot Wortley, Dr. Ayobami Laniyonu, Erick Laming,
2020)

Available on the OHRC website:

<https://www3.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf>

Use of force by the Toronto Police Service

Final report

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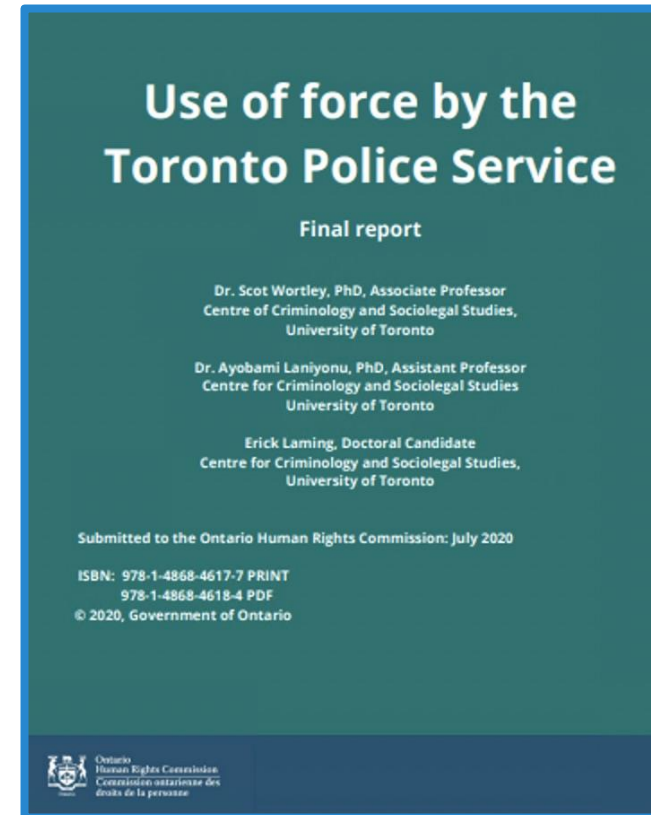
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What It Means To Be Black When Interacting With The Toronto Police



- OHRC published a report in 2020 analyzing patterns and indicators with respect to TPS use of force incidents.
- OHRC found that black individuals represented almost one-third (32%) of all the charges in the dataset, while white individuals and other racialized groups were under-represented.



Dr. Scot Wortley, Dr. Ayobami Laniyonu, Erick Laming, 2020

Systemic Issues With Police Charging Practices



- According to the OHRC, only one-fifth (20%) of all charges resulted in conviction.
- Charges against black individuals were more likely to be withdrawn and less likely to result in a conviction.
- These patterns raise systemic concerns about charging practices.



“Driving While Black”

- The OHRC commented on the widely-observed phenomenon of Black individuals being disproportionately pulled over at traffic stops.
- Black people represented over one-third (34%) of people involved in single-charge “out-of-sight” driving charges (such as driving without valid insurance), which could only be determined after the police have observed the race of the driver or stopped and questioned the driver.



Disproportionate Outcomes For Comparable Cannabis Usage



- Black people represented almost four in 10 (38%) charges involving cannabis, despite conviction rates and many studies showing similar cannabis usage rates across White communities, Black communities, and other communities of colour.



Excessive Involvement With The SIU

- Black people were involved in approximately one-quarter (25%) of all Special Investigations Unit (SIU) cases resulting in death, serious injury or allegations of sexual assault.
- Black people were involved in almost four in 10 (39%) cases involving lower-level use of force (where force did not rise to the SIU threshold).
- This over-representation cannot be explained by factors such as patrol zones in low-crime and high-crime neighbourhoods, violent crime rates and/or average income.



“Proactive” Policing Leads to Violence



- Black people were also found to be more likely to be involved in use of force cases that involved proactive policing (for example, when an officer decides to stop and question someone) than reactive policing (for example, when the police respond to a call for assistance).



Report of the *Independent Street Checks Review* (2019)



The Honourable Michael H. Tulloch (2019) -
<https://www.ontario.ca/page/report-independent-street-checks-review>

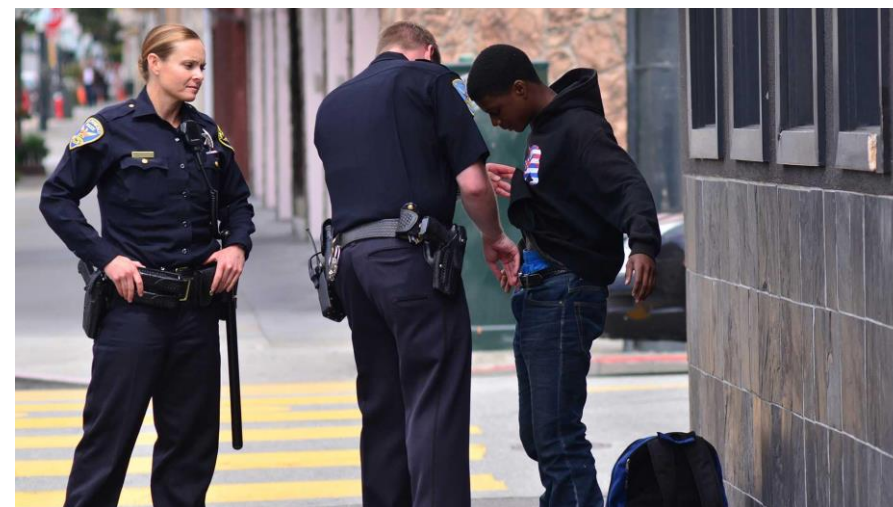
Carding Is Hurting The Public's Trust In The Police

- The Hon. Michael Tulloch, judge of the Ontario Court of Appeal, published a 2019 report on the Toronto Police Service's use of street checks, also known as "carding".
- Justice Tulloch's report found that carding disproportionately targets Black individuals and other Persons of Colour.
- "A street check is where information is obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation...Carding... is a small subset of street checks in which a police officer randomly asks an individual to provide identifying information when the individual is **not suspected of any crime, nor is there any reason to believe that the individual has information about any crime**. This information is then entered into a police database." – The honourable Michael H. Tulloch, 2019 (emphasis added).



The Many Costs Of Carding

- Negative effects on the physical and mental health of those carded;
- Potential negative impacts on their employment and other opportunities;
- The loss of public trust and cooperation;
- A reduction in the perception of police legitimacy.



The Fallacy of Carding

“I conclude that random street checks, which take considerable time and effort for a police service to conduct, have little to no verifiable benefits relating to the level of crime or even arrest. In fact, even before the Regulation, many police services had already discounted the practice because of its lack of effectiveness.” – Honourable Michael H. Tulloch, 2019 (emphasis added).



The Assault of Dafonte Miller and Mr. Miller's Experience with the Criminal Justice System



“Because of the colour of my skin, Michael Theriault could have got away with what he did to me.” – Dafonte Miller, 2020

Face To Face With Justice

- *“In the early morning hours of December 28, 2016, as I stood banging on the door of the home at 113 Erickson Drive, blood dripping from my face, pleading for help, I thought that Michael Theriault was going to kill me with a steel pipe.”*
 - – Dafonte Miller, 2020
- On December 28, 2016, Dafonte Miller, a nineteen-year-old from Whitby, ON, was brutally assaulted by off-duty police constable Michael Theriault of the Toronto Police Service.



Devastating Impact For Dafonte and His Community

- *“The attack by Michael Theriault that night has created a devastating and lasting impact on my life. I now look at police differently. As a young black man, I have often heard stories of police abusing their power, but I had never experienced it like I did on December 28, 2016. I can only imagine what would have happened if Mr. Silverthorne had not called 911 that night, or if he hadn’t testified at trial. Things could have gone very differently.”*
 - – Dafonte Miller, 2020



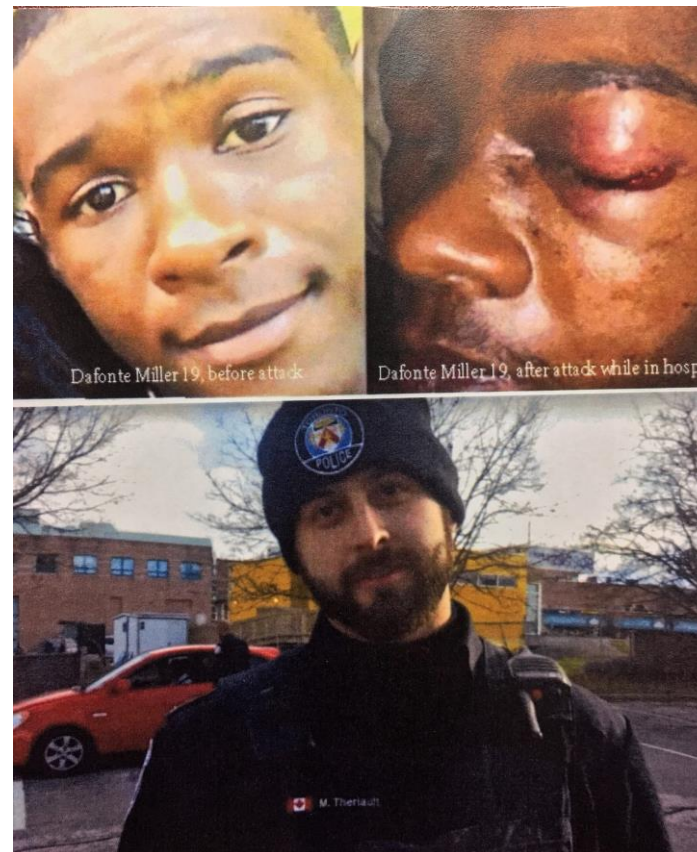
A Mother's Perspective

- *“As a mother, it hurts me to my core that the systems, and in particular police officers, who are mandated to serve and protect the community were not committed in that moment to protecting Dafonte from the assault by Michael Theriault on December 28, 2016. In fact, I am completely disappointed and deeply resent that this individual ever served in the force, no person should be commissioned to protect the lives of civilians they cannot even treat as humans”*
 - – Leisa Lewis, 2020



Recognizing the Realities of Anti-Black Racism

- Ultimately, Michael Theriault was convicted for his assault on Dafonte Miller.
- “The existence of anti-Black racism in Canadian society is beyond reasonable dispute and is properly the subject matter of judicial notice. **It is well recognized that criminal justice institutions do not treat racialized groups equally... This reality may inform the conduct of any racialized person when interacting with the police, regardless of whether they are the accused or the complainant.**”
 - – *R. v. Theriault*, 2021 ONCA 517 at para 143 (emphasis added)



A Moment of Reckoning

- “While often overlooked out of a tendency to distance ourselves from the social ills plaguing our southern neighbour, **Canada’s long history of anti-Black racism has manifested in the contemporary phenomena of over-policing and disproportionate incidents of violence during interactions between Black people and the police**: Le, at para. 93. Systemic and overt racism have long sustained unequal treatment before the law, leading to a crisis of confidence in the administration of justice in some communities. **The current moment of reckoning with respect to systemic racism in Canada is long overdue.**”
 - – *R. v. Theriault*, 2021 ONCA 517 at para 212 (emphasis added)



Sentencing Michael Theriault

- Michael Theriault was found guilty of assault and sentenced to 9 months in jail, and a period of probation for 12 months.
- This sentence was upheld on appeal to the Ontario Court of Appeal.
- Michael's application for leave to the Supreme Court of Canada was denied.




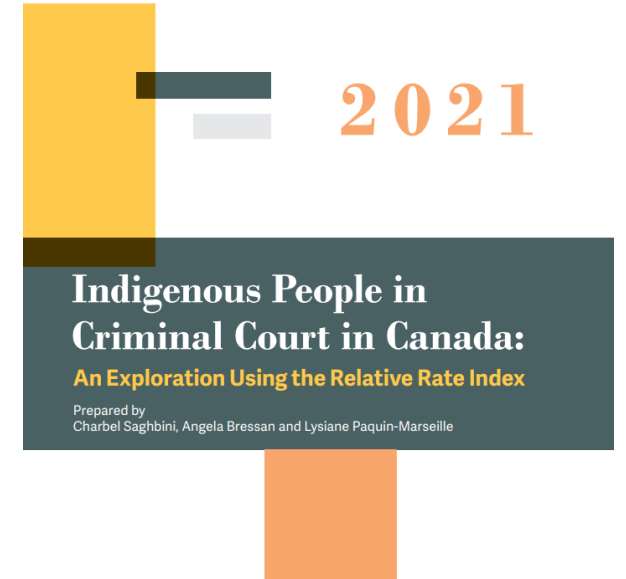
Indigenous People in Criminal Court in Canada: An Exploration Using the Relative Rate Index (2021)

Charbel Saghbibi, Angela Bressan and
Lysiane Paquin-Marseille,
Available online at:

<https://www.justice.gc.ca/eng/rp-pr/jr/eurri-efitr/docs/rsd-2021-rri-of-indigenous-people-in-criminal-court-en.pdf>



 Department of Justice Canada / Ministère de la Justice Canada



Research and Statistics Division
Department of Justice Canada

Canada 

Indigenous People in Canada's Criminal Courts

- In 2021, Statistics Canada published an analysis of Indigenous individuals in the criminal justice system.
- The Report concluded that **Indigenous individuals are significantly overrepresented as accused in criminal courts, relative to their proportion of the Canadian population.**



Accounting For Race

- White individuals account for 55% of all accused in the population, and represent 71% of the total Canadian population.
- Indigenous accused account for 25% of all accused in the criminal justice system, despite accounting for only 5% of the total Canadian population.*



*Charbel Saghbibi, Angela Bressan and Lysiane Paquin-Marseille, 2021

Justice Is Not For All

According to Statistics Canada, Indigenous accused are:

- More likely to have a preliminary hearing;
- Less likely to go to trial;
- Less likely to encounter a withdrawal, dismissal or discharge and are overall less likely to be acquitted;
- More likely to encounter a stay of proceedings;
- More likely to be found guilty (including guilty pleas);
- Less likely to receive a fine and probation, and more likely to receive a conditional sentence and to be sentenced to custody; and
- Less likely to receive long-term custodial sentences of two or more years.*



* Charbel Saghbibi, Angela Bressan and Lysiane Paquin-Marseille, 2021

Devastating Outcomes

Overall, the findings from this 2021 report confirm the widely-documented reality that Canadian criminal courts are contributing to differential and disproportionate outcomes for indigenous accused.



Two School Shootings, 15 Years Apart



■ Jordan Manners (d. May 23, 2007)



■ Jaheim Robinson (d. February 14, 2022)

Remembering Jordan Manners and Jaheim Robinson



- On May 23, 2007, high school student Jordan Manners was shot and killed in the hallway of C.W. Jefferys Collegiate Institute Secondary School.
- The resulting report, *The Road to Health, A Final Report on School Safety*, was published on January 4, 2008.
- On February 24, 2022, high school student Jaheim Robinson was shot and killed at David and Mary Thomson Collegiate Institute.

Two School Shootings: 15 years Apart

- Inori Roy published an article for 'The Local', an independent magazine exploring urban health and social issues in Toronto, about the recent death of Grade 12 student Jaheim Robinson.
- The article reflects on the 15 years that passed since Jordan Manners was fatally shot at C.W. Jefferys Collegiate Institute in 2007.



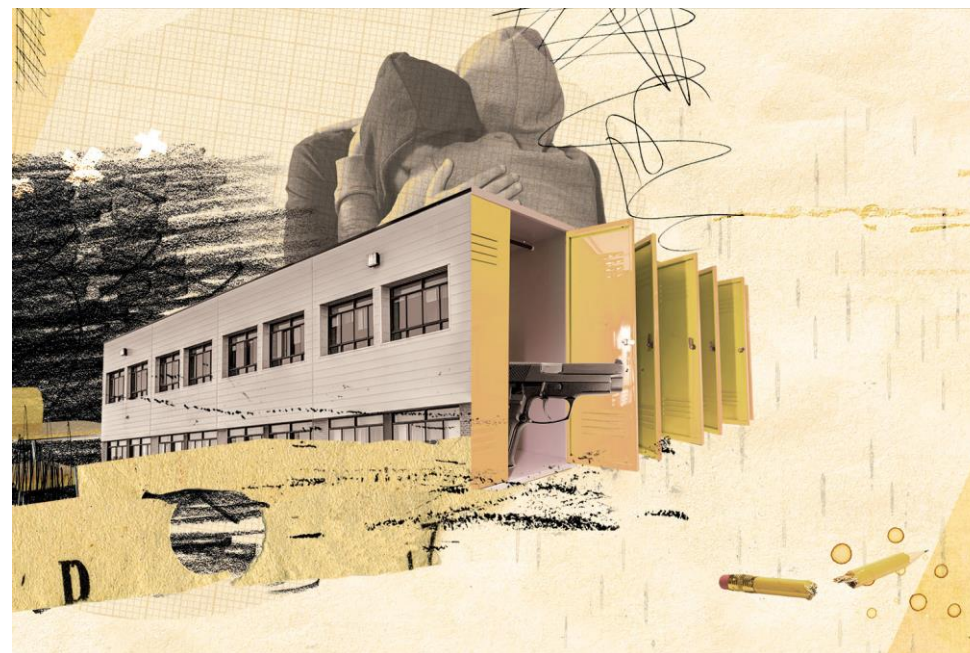
Two School Shootings: 15 years Apart

- “...[B]etween 2014 and 2019, the number of physical assaults in schools that required medical attention rose by 174 percent, and incidents involving the use of a weapon by a student to threaten or cause harm rose by 60 percent.” – Inori Roy, 2022



Are There Any Lessons To Learn?

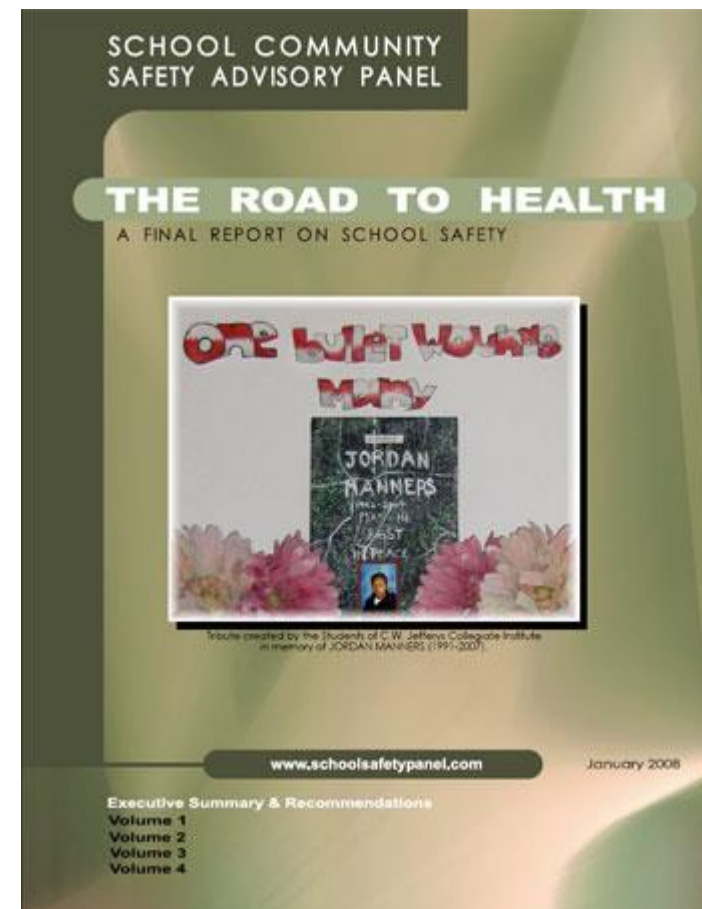
- “And in the fifteen years since [Jordan] Manners’ death, despite the numerous reports commissioned, committees struck, and recommendations made, troublingly little has been done to address the root causes of violence in schools” – Inori Roy, 2022



History Repeating Itself

In the wake of Jordan Manners's death, Julian Falconer was tasked with chairing a *School Community Safety Advisory Panel*. The goal of the panel was to identify ways to enhance school safety and prevent future incidents of a similar nature.

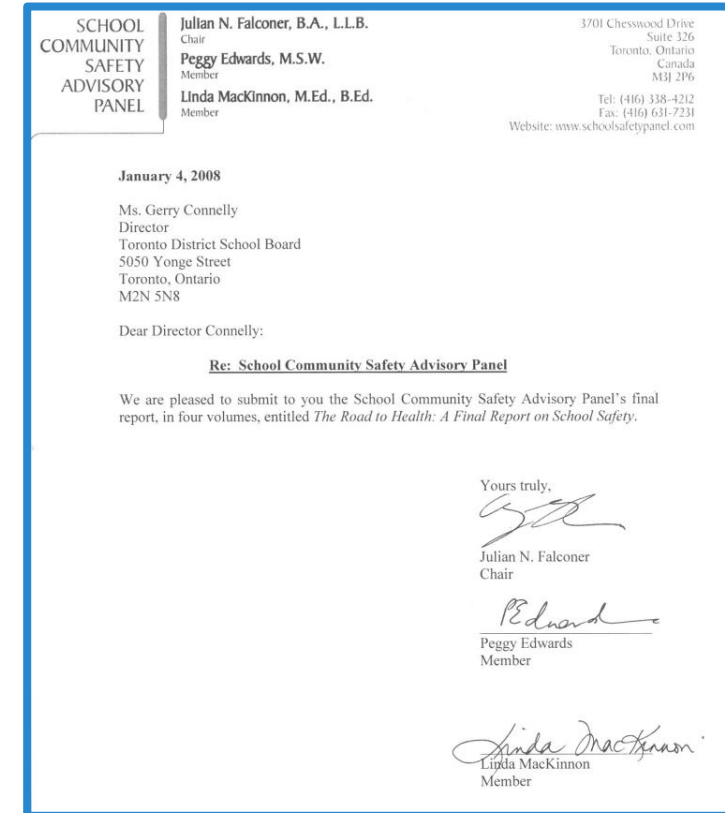
“...it is simply not enough to be accomplished in teaching curriculum. Matters going beyond academic must be overcome in order to address the fundamental needs of youth who come to school unable to learn because of their challenging lives outside of school” – *School Community Safety Advisory Panel*, 2008.



The Road to Health: A Final Report On School Safety



“It is about recognizing that ‘treating everyone the same’ does not work when the starting points for youth can be so different.” – *School Community Safety Advisory Panel, 2008.*



Where Do We Go From Here?



What Role Can We Play?

- In 2020, Jacqueline Ebho published a report for *Level*, a charitable organization focused on human rights, on the issue of systemic racism in Canada's criminal justice system.
- Her report contained recommendations on efforts that communities and actors in the justice system can take to combat this problem.

The cover of the report features a red background with a pattern of white dots. The title is written in large, bold, white capital letters. At the bottom, the author's name is written in a smaller, white font.

SYSTEMIC RACISM IN CANADA'S CRIMINAL JUSTICE SYSTEM

Paper for Level by Jacqueline Eboh

What Role Can We Play?

- “... [W]e must also ask much needed questions such as: given how deeply entrenched anti-Black and Indigenous racism is in the criminal justice system and other Canadian systems, what role do criminal justice actors play in dismantling anti-Black racism and what could that practically look like?”
 - – Jacqueline Eboh, 2020, *Systemic Racism in Canada’s Criminal Justice System* (emphasis added).

SYSTEMIC RACISM IN CANADA'S CRIMINAL JUSTICE SYSTEM

Paper for Level by Jacqueline Eboh

Helping Our Youth

- In 2008, Prof. David Tanovich published a critique of the criminal justice systems and its disproportionate impacts on Black, Indigenous, and Persons of Colour (BIPOC).
- “[T]he system needs anti-racist training for all criminal justice actors, the creation of monitoring systems, the creation of more anti-racist actors such as *Gladue* workers, the appointment of more Aboriginal and racialized judges, greater funding for community programs, community mobilization and political lobbying. I think these are core and substantial things that need to be out in place. Include a section on investing in communities in order to uproot the well-researched roots of youth violence. Invest in underserved communities; interrupt the school to prison pipeline for Black and Indigenous youth.”
 - – D. Tanovich, "The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System" (2008) Volume: 40 *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* at 661 (Emphasis added).

The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System

David M. Tanovich*



Miigwetch!



Litigation with a conscience.

Up next...

- Your next session begins at 3:55 PM
- To join, go to **Summit Agenda** and select Closing Remarks