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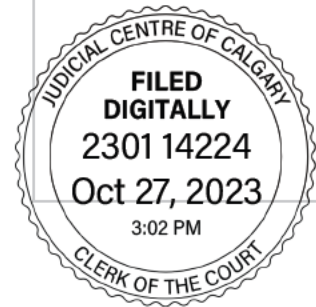
JUDICIAL CENTRE Calgary

APPLICANT Yue Song

RESPONDENT The Law Society of Alberta

DOCUMENT **EXPERT'S REPORT**

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THIS DOCUMENT

Glenn Blackett Law



My name is Joanna Williams

The qualifications on which my expert report are based are set-out in the report attached as Appendix "A" hereto (the "**Report**")

The information and assumptions on which my opinion is based are set-out in the Report.

A summary of my opinion is set-out in the Report.

Date:

21/10/23

Signature of Expert

Joanna Williams
Print Name

Appendix “A”

Expert opinion of Dr Joanna Williams
Director, Cicio

October 17, 2023

Re: Yue Song v. The Law Society of Alberta

A. INTRODUCTION

I was asked by Glenn Blackett, counsel to Yue (Roger) Song, to provide an expert opinion in connection with a pending application for judicial review relating to the Law Society of Alberta (the “LSA”).

I understand that, under the *Alberta Rules of Court*, I am only to answer questions which are within my area of expertise. I view all questions asked and answered herein as being within my area of expertise.

I confirm that, notwithstanding having been retained on behalf of Mr. Song, I have and will continue to provide an independent opinion for the benefit of the Court which is fair, objective and non-partisan.

B. QUALIFICATIONS

I have researched the academic development and practical impact of contemporary social justice movements - most specifically feminism, gender theory, critical race theory and postcolonialism - for over two decades. This research comprises the basis of my:

1. academic qualifications: 2009, PhD: “The political construction of social inclusion through Further Education policy”;
2. professional employment: lecturer, University of Kent, 2007 - 2018;
3. leadership positions in national think tanks: 2018 - present;
4. work as an author: *How Woke Won*, 2022; *Women vs Feminism*, 2017; *Academic Freedom in an Age of Conformity*, 2016; and
5. work as a journalist: *The Times*, *The Spectator*, *The Telegraph*, *Daily Mail*, *The Sun*, *City Journal*.

I am recognised internationally as an expert on social justice ideologies. In 2023 I addressed conferences in the UK (Various, London and University of Buckingham), Belgium (Mathias Corvinus Collegium, Brussels), Hungary (The Danube Institute, Budapest), Canada (Society for Academic Freedom and Scholarship, London, Ontario) and Australia (Center for Independent Studies, Gold Coast).

My CV is included as Appendix “A” to this report.

C. INFORMATION AND ASSUMPTIONS ON WHICH MY OPINION IS BASED

In preparing my report I reviewed and base my opinion on:

1. The LSA’s Regulatory Objectives of the Law Society of Alberta (December 2019);
2. The LSA’s Acknowledgment of Systemic Discrimination (April 2022);
3. The LSA’s Professional Development Profile for Alberta Lawyers (June 2022);
4. The Calgary Anti-Racism Education Collective Glossary, designated by the LSA as a “key resource” on its website in the area of “Cultural Competence & Equity, Diversity and Inclusion” (undated); and
5. The NVision Insight Group Inc., The Path, Your Journey Through Indigenous Canada assigned by the LSA as mandatory cultural competency education for Alberta lawyers to be completed before November 1, 2022.

I also reviewed and base my opinion on the secondary sources listed as footnotes to this report.

D. SUMMARY OF MY OPINION

Question 1. Briefly describe critical race theory (“CRT”), postcolonialism, and gender theory (collectively, the “Subject Theories”).

CRT

Derrick Bell is the founding father of CRT and critical legal studies.¹ CRT is an ideology which understands race not as a biological or scientific category-type but as a socially constructed concept, ie: race is created and made meaningful by people collectively, over time and place. Today, this view is generally accepted and the so-called “scientific racism” prevalent in the first decades of the 20th Century has been widely discredited.

This is not to argue that there are no physical differences between people (ie: skin color) but that the process of classifying people into distinct groups on the basis of such characteristics is an arbitrary exercise. For example, there may be as many physical differences within groups as between groups and the characteristics people choose to emphasize for the purposes of classification (most often skin color) have no inherent impact upon a person’s character.

¹ Bell, D. (1980) *Race, Racism and American Law*, Little Brown & Co

However, whereas civil-rights era anti-racists challenged the arbitrary classification of humanity and emphasized universal human traits, CRT suggests that, once constructed by society as a whole, race becomes real and meaningful. The group we are “racialized as” (to use an expression from CRT) will have a significant impact upon our life chances. Robin Di Angelo notes:

While there is no biological race as we understand it, race as a social construct has profound significance and shapes every aspect of our lives.²

CRT understands racism as systemic; that is, built into the fabric of societies designed by white people, for the benefit of white people. This posits white superiority and black inferiority as intrinsic to our language, culture and interpretations of history. Critical race theorists argue that every aspect of our daily lives – for example, housing, schooling, policing, the health service and the legal system - assumes a white norm. As a result, liberal attempts to adopt a “color blind” approach, or to advocate for equality before the law, or equality of opportunity, are not considered progressive but, rather, a cover for white supremacy. Reni Eddo-Lodge explains:

If you’re white, your race will almost certainly positively impact your life’s trajectory in some way. And you probably won’t even notice it.³

CRT is contested: it is a set of ideas, beliefs and opinions, not empirical facts. Although accepted by some, especially in academia and the professions, the beliefs underpinning CRT are not accepted by all. Some have firmly held and morally valid reasons to challenge the legitimacy of CRT. One criticism of CRT is that, in emphasizing arbitrary racial categories, it rehabilitates racial thinking (most often under the label “culture”). CRT encourages people to judge one another by the color of their skin. Furthermore, assumptions of white privilege and black oppression overlook social class differences which may have a more profound impact on people’s life chances.⁴

Postcolonialism

Postcolonialism indicates the ways in which the political, moral and cultural legacy of colonialism is thought to impact upon all aspects of society today. It represents a move away from an older understanding of postcolonialism as the historical period when once-colonized

² DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism*. Beacon Press. Ch. 6.

³ Eddo-Lodge, R. (2018) *Why I'm No Longer Talking to White People About Race*. Bloomsbury P. 87.

⁴ For a fuller account, see Williams, J. (2021) *Rethinking Race: A critique of contemporary anti-racism programmes*, Civitas.

countries gained independence. It shifts attention away from nation states and historical treaties towards what postcolonial theorists refer to as the “discourses of colonialism” which, they argue, continue to be reflected in values, language and social practices.⁵ Such practices would include the law, politics and economics. According to this understanding, even though colonialism as direct geopolitical rule has ended, the belief that the world can be divided between a “civilized” West and a “barbaric” other endures in a colonialist mind-set. This speaks to a postmodern idea of power perpetuated through discourse and emerging in people’s attitudes and biases.⁶ It becomes prejudice in former-oppressors and trauma in the formerly-oppressed.

The process of disrupting and reversing this colonial belief-system is known as “decolonization”. Decolonize movements aim to ameliorate the structural and epistemological legacy of colonialism through the removal of cultural assumptions of western superiority as manifest in statues and the names of streets and buildings; school and university curricula that privilege “western” knowledge; social and institutional practices that privilege “western” values; and legal systems that privilege “western” notions of justice.

Postcolonialism is contested. While almost everyone agrees that colonialism has left a political and economic legacy upon formerly-colonized countries, not everyone agrees that colonial oppression continues today in language, knowledge and social and cultural practices. Attempts to label knowledge and values as “western” or “indigenous” can rehabilitate outdated prejudices. The notion of “difference” becomes re-entrenched.

Gender Theory

Gender theory refers to the belief that, as well as having a biological sex evident in primary and secondary anatomical sex characteristics, chromosomes and hormones, all people have an innate sense of gender identity - a deep-rooted “feeling” that:

1. they are a man;
2. they are a woman; or
3. both or neither category applies to them and their identity lies at a mid-point on a spectrum between “male” and “female”.

⁵ For a fuller account see, Loomba, A. (1998) *Colonialism/Postcolonialism*. Routledge.

⁶ For a fuller account see Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone.

Gender theorists argue that, while sex and gender are aligned in most people (labeled “cis”), this is not the case for everyone. Transgender people experience a mismatch between their sex and gender, or between their body and mind. Because of this, gender theorists argue that biological sex markers are an unreliable means of ascertaining whether someone is a man or woman. They refer to sex being “assigned at birth” to highlight a seemingly arbitrary (and symbolically violent) act of binary categorisation. Rather than dividing people into just two groups at birth, they argue for allowing people to express their “true” gender identity which could be multiple and fluid - different at different times.⁷

Gender theorists argue that gender identity is a more authentic indicator of a person’s “true” self than their biological sex and are therefore critical of the social and cultural practices that privilege sex over gender. They argue that sports, prisons, hospital wards, public restrooms, domestic violence shelters etc. should be accessible on the basis of self-declared gender identity rather than sex. They believe the law should recognise gender on the basis of self-identification rather than biology.

Gender theory is contested, most notably by gender critical feminists who argue that sex is real and should take precedence over innate feelings about identity. They argue that men are, on average, taller, stronger and heavier than women. For this reason, opening up female-only spaces on the basis of gender self-identification poses a threat to women’s safety.

2A. Are the Subject Theories related?

Yes.

2B. Are there other related theories?

Yes.

2C. If so, which related theories exist (the “Related Theories”, the Subject Theories and the Related Theories being referred to collectively as the “Theories”)?

The Subject Theories are related to each other and also to several Related Theories. They are connected through postmodernism, a movement which emerged in academia from the 1960s onwards. It has its intellectual roots in French philosophy, sociology and literary criticism but it rapidly spread to universities in the UK and US where it took on more applied forms.⁸ At its

⁷ For a fuller account see Williams, J. (2020) *The Corrosive Impact of Transgender Ideology*. Civitas.

⁸ For a fuller account see Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone.

core, postmodernism represents a rejection of grand narratives - broad, universal theories for making sense of the world and society. Postmodernism rejects Christianity and Marxism but also, most fundamentally, the Enlightenment values of reason and rationality associated with the scientific method. In place of grand narratives, postmodernists consider “power” crucial to understanding the workings of society. Power, it is argued, is only rarely exercised explicitly. Rather, it is expressed through language and, most especially, “discourse” which shapes thought and frames how people make sense of the world and their place in it. As people communicate through language, we reproduce a dominant discourse and become complicit in the exercise of power, including in our own oppression. Challenging dominant narratives and traditional power relations requires giving voice to multiple, subjective, fluid understandings. This is the goal of the Theories including: queer theory, critical disability theory, critical legal theory, critical weight studies, feminism and intersectionality.

3A. Are the Theories apparent in the Materials (yes or no)?

Yes.

3B. If so, please identify each instance in which the Theories are apparent.

CRT

CRT in the Regulatory Objectives of the Law Society of Alberta, 2019 (the “Regulatory Objectives”)

At page 4, e:

Promoting equity, diversity and inclusion in the legal profession and in the delivery of legal services.

As noted in response to question 4 (below), “equity” is not the same as equality. It is a call for positive discrimination to counteract what is perceived to be systemic racism.

At page 4, e)17:

The Law Society believes it is in the public interest for the legal profession to be representative of the population it serves. ... the public should have a meaningful choice in who represents them. This is particularly true in the case of groups who might be underrepresented in society, have cultural or language barriers to working with certain lawyers or firms, or simply feel more comfortable having someone who understands their culture representing them.

The significance given to representation and particularly the phrase, “someone who understands their culture,” speaks to a CRT-inspired view that cultural differences are real and can act as a barrier to communication and understanding.

CRT in the Acknowledgement of Systemic Discrimination (the
“**Acknowledgment**”)

At page 1:

The Law Society of Alberta acknowledges the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession. When we use the term systemic discrimination, we mean policies, procedures and practices within systems and institutions that result in disproportionate opportunities or disadvantages for people with a common set of characteristics such as age, culture, disability, gender, race, religion, sexual orientation and/or socio-economic status. Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behavior, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.

The focus on “systemic discrimination” (as opposed to just “racism”) and “inequity” (rather than inequality) point to the influence of CRT.

At page 2:

We recognize that systemic discrimination goes against the principles of fairness that the legal profession values and upholds. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal system more equitable, increasing diversity and promoting inclusion. Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it. The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture.

Once, fairness would have been assumed to mean “equality” before the law, now it is redefined as “increasing diversity and promoting inclusion.” A commitment to reducing barriers puts the existence of such barriers beyond question. The goal of “*affect[ing] long-term systems changes*” contradicts a commitment to the law as it currently stands. All of these are hallmarks of CRT.

At page 2:

To take further steps to address systemic discrimination... Ensuring that our Benchers participated in training focused on unconscious bias and centering equity in their governance and decision-making roles.

The notion of “unconscious bias” rather than overt racism speaks to CRT-influenced understanding of racism as not just systemic but inherent within the minds of individuals.⁹

CRT in the Professional Development Profile (the “Profile”)

At 3.1:

Build intelligence related to cultural competence, equity, diversity and inclusion.

Develop self-awareness of how one’s own conscious and unconscious biases affect perspectives and actions. Reduce one’s own biases through continual education, self-reflection and inquiry.

The assumption that racism manifests itself in individual biases that can only be “reduced” not overcome is a hallmark of CRT.

At 3.2:

Incorporate equity, diversity and inclusion in practice. Practise anti-discrimination and anti-racism.

The instruction to “practise anti-racism” is not the same as simply not being racist. The demand that people are actively anti-racist stems from CRT.¹⁰

At 3.3:

Champion enumerated groups in professional activities. Advance inclusion through intentional, positive and conscious efforts. Respect the diverse cultures, perspectives, backgrounds, interests and goals of clients, co-workers and colleagues.

⁹ See for example, DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism*. Beacon Press.

¹⁰ Kendi, Ibram X. (2019) *How To Be An Antiracist*. Penguin.

The demand to champion “enumerated groups” is a call for affirmative action, or positive discrimination which is advocated by proponents of CRT.¹¹ The call for “intentional, positive and conscious efforts” suggests being actively antiracist, not simply not racist.

At 3.3:

Advocate for those facing systemic barriers to accessing what they need or deserve

Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion.

Again, this is a call for positive discrimination grounded in CRT.

At 7 (Professional Contributions), 7.3:

Collaborate with others to make systemic improvements to increase access to justice.

Assumptions that racism is “systemic” come from CRT.

CRT in the CARED Collective “Our Glossary” (the “Glossary”)

Every definition provided in this document stems from one of the Theories. Indeed, the very fact that a glossary is needed speaks to a project of either introducing new theory-inspired terminology or redefining existing terms. We could, for example, assume that lawyers share a society-wide, common-sense understanding of the word “racism”. The need to specify definitions beyond this emerges when it is not “common-sense” understandings that are being advocated, but critical race theory-derived terms. For example:

Anti-Black Racism - Anti-Black Racism is deeply entrenched in Canadian Institutions, policies and practices, to the extent that Anti-Black Racism is either functionally normalized or rendered invisible to the larger white society.

The notion that anti-black racism is distinct from other types of racism emerges from a CRT-led view that not all racism is equally bad. Being prejudiced against people on the basis of their skin color can be acceptable if they are from an historically privileged community. Furthermore, the assumption that anti-black racism is “deeply entrenched”, “functionally normalized” and “rendered invisible” all stem from CRT. The final point is particularly worth

¹¹ Eddo-Lodge, R. (2018) *Why I’m No Longer Talking to White People About Race*. Bloomsbury. Page 79.

noting: CRT has it that even though we cannot see racism, it is not just still there, but all the worse for being “rendered invisible”.

The following terms included in the Glossary are further examples of new phrases or new definitions of existing words derived from CRT: Anti-racism; Anti-racist education; Denial; Discrimination; Environmental Racism; Implicit Bias; Individual Racism; Internalized Racism; Intersectionality; Melting Pot; Multiculturalism; Power; Position Power; Race; Racialization; Racial Microaggressions; Racial Profiling; White fragility and White privilege.

CRT in the Path, Your Journey Through Indigenous Canada (the “Path”)

As with The Glossary, *all* of this document stems from one of the Theories. It draws most heavily upon postcolonialism (see below) but has also been inspired by CRT. Some examples:

Module 1:

The idea that a government could decide whether you were Indian or not underscores the racist, discriminatory and patriarchal nature of Canadian law and policies towards First Nations, Inuit and Métis.

This is not an argument for universalism (one nation, Canada; one race, the human race) but a statement affirming the fundamental importance of self-defined group identity. CRT insists that race is socially constructed, which - as noted earlier - is now generally accepted and uncontroversial. However, the argument that physical differences between people are arbitrary could be used to unite people under one, new, national identity. Instead, CRT insists that differences are meaningful but, rather than being dictated by a government, should be a matter of self-definition.

Module 5, Topic One:

That cultural context will help you grasp some basic elements of verbal and non-verbal communications, and help you in your interactions with indigenous peoples. ... Cultural differences are just that; different, not better or worse but just another way of seeing the world.

The idea that cultural differences are real, deeply entrenched and often insurmountable stems from CRT. The relativist notion that all differences are equally valid comes with postmodernism more broadly. Many would argue that some cultural differences, such as female genital mutilation, are indeed worse than others.

Module 5, Topic Two:

... those twenty thousand years of history and culture define the way that First Nations, Inuit and Métis think, feel and act today.

This sets up two distinct groups of people: those whose actions in the present are defined by “twenty thousand years of history” and those whose actions are driven by more immediate concerns. It both creates and entrenches divisions.

Postcolonialism

Postcolonialism in the Profile

At 3 (Cultural Competence, Equity, Diversity and Inclusion):

Lawyers have an awareness of the unique experiences of the enumerated groups set out in the Alberta Human Rights Act. They implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-appropriate services and outcomes.

This establishes the view that there are distinct cultures each with an historically distinct experience that requires differential treatment in the present. It also suggests that lawyers should aim not for an objectively “best” outcome, or equal outcomes, but “appropriate” outcomes. These views emerge from postcolonial theory.

At 3.1:

Recognise how systemic inequalities and barriers affect individuals and groups. Develop an awareness of the effects of individual and systemic trauma. Consider how multiple points of discrimination interact to create barriers for individuals.

Frequent references to “trauma” are made in this and other documents discussed in this paper. The notion of trauma speaks to a psychological understanding of racism prevalent in postcolonialism. The suggestion that trauma can be inherited suggests that young people today still suffer from the mistreatment experienced by their ancestors. The idea that the legacy of colonialism lives on in the public mind-set even after colonial institutions have been dismantled emerges from postcolonialism.

At 8 (Truth and Reconciliation):

Alberta lawyers understand the historical and cultural impacts that Canadian law has on Indigenous Peoples in Canada [...] and participate in reconciliation.

Again, there is an assumption that historical injustices carry an ongoing cultural legacy.

At 8.1:

Strengthening understanding of the truth regarding the experience of Indigenous Peoples in Alberta and Canada. Acknowledge the impacts of colonization and systemic discrimination. Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada. Understand the history of the Indian Residential Schools and day schools and their impact on the well-being of Indigenous Peoples. Recognize the historical and ongoing impacts of Canadian and Alberta Law on Indigenous Peoples.

References to “the truth” suggest only one account of the past is accurate and there is no room for alternative interpretations of history. Calls to “acknowledge the impact” again suggest that the ongoing legacy of colonialism cannot be disputed, simply recognized.

8.2 Demonstrate support for reconciliation with the Indigenous Peoples of Canada

Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients. Recognize that Indigenous Peoples have their own restorative justice systems and use them where appropriate.

This suggests that lawyers should not strive for equality before the law but for multiple laws for multiple communities. Inequality becomes formalized.

Postcolonialism in the Glossary

See above re: entirety of glossary. Specific examples include:

Anti-Indigenous Racism: ongoing race based discrimination, negative stereotyping and injustice. Includes ideas and practices that establish, maintain and perpetuate power imbalances, systemic barriers and inequitable outcomes that stem from the legacy of colonial policies and practices in Canada.

Here we see explicit reference made to “the legacy of colonial policies”, a hallmark of postcolonialism.

Dominant Culture: patterns of learned behaviors and values that are shared among members of a group, and are transmitted to group members over time. Even with the extent of racial and ethnic diversity in Canada, the prevailing cultural values are of European (Western) origin and are perceived as the norm.

The assumption that colonial domination continues into the present and is transmitted through cultural values is grounded in postcolonialism.

Ethnocentrism: The tendency to view others through the filters and assumptions of one's own group/practices and to see one's own group as the "the norm", the best or the ideal to which others should conform.

The idea that there is a socially and culturally dominant "norm" and an "other" which the dominant group defines itself against comes directly from postcolonialism.

The following terms included in the Glossary are further examples of new phrases or new definitions of existing words derived from postcolonialism: Aboriginal Peoples; Acceptance; Anglocentrism; Appropriation; Assimilation; BIPOC; Colonialism/Colonization; Culture; Cultural Racism; Cultural Sensitivity; Cultural Values; Decolonization; Denial; Ethnicity; Eurocentrism; First Nations; Intergenerational Trauma; Imperialism; Neocolonialism and Privilege.

Postcolonialism in the Path

As stated above, all of this document draws upon postcolonialism. As with the provision of a glossary, the very fact of providing lessons in history suggests that "mainstream", "common sense" or "school curriculum" history is not considered appropriate as a basis for the ideas and values expounded by a professional development framework. Participants do not simply need educating; crucially, they need re-educating. The premise of this entire framework is that history must be re-written to center the experiences of indigenous people and their treatment at the hands of European colonizers. The history participants are taught is a story of colonization and oppression waged through land-grabs, genocide, and economic exploitation that continues in social, cultural and political discrimination in the present. This is an approach to history entirely derived from postcolonialism. Furthermore, there are no opportunities for participants to challenge the facts presented. The lessons to be learnt are not about history but about morality in the present. Successful completion of The Path involves demonstrating acquisition of approved attitudes and values. Some examples:

At Module 1, Topic 1:

Welcome on this path of Indigenous cultural awareness. This course is intended to be a broad overview of First Nations, Inuit and Métis history across this land now called Canada. You will listen to stories and hear perspectives that we all should have learned in history class but never did. Cultural awareness is the first step on this journey of reconciliation...

The phrase “this land now called Canada” appears repeatedly throughout The Path. It calls into question the legitimacy of the nation state by indicating an impermanence. Participants are meant to recall that the land and people existed before the label “Canada” was applied and that “Canada” itself is an invention that may one day be overturned. This overlooks what may be considered progressive about the nation state: its capacity to unite a diverse population and provide a practical means for enacting the democratic will of the majority. Questioning the value of nationhood and the contents of the school history curriculum are hallmarks of postcolonialism. Imposing an outcome, “reconciliation”, excludes the potential for criticism.

Module 2, Topic 1:

Indigenous accounts of creation are expressions of spiritual and cultural truth. They reflect a way of looking at the world. Science and history tell the story from another perspective. We can look at science and origin stories as simply different ways to describe where we’ve come from.

Creation myths are a “cultural truth” only in the sense that anything that any group of people believe can be said to be a “cultural truth”. The suggestion that science is just “another perspective” introduces anti-Enlightenment cultural relativism into The Path. The notion that truth is multiple and perspectival, and that science is just a western perspective, is taken from postcolonialism.

Module 5, Topic 3:

What I hope The Path and your personal educational journey shows you is that Indigenous people, clients, also come with the weight of colonialism and there’s no escaping that however accomplished you are as an individual, the cultural way of colonialism is inescapable. ... for non-Indigenous lawyers, it’s incumbent upon you to educate yourself on what colonialism has done to our society and Indigenous people.

This makes clear that lawyers are expected to view not just the past, but people in the present, through the lens of colonialism. The legacy of colonialism can never be overcome: it is inescapable. This sets up a barrier between two distinct groups - Indigenous and Non-Indigenous people, ascribing ignorance to the latter and passivity to the former. Indigenous people are destined to suffer from the legacy of a past where they were “done to” rather than being agents of change. Again, such tropes emerge directly from postcolonialism.

Gender Theory

Gender Theory in the Profile

At 3.2:

Develop and promote a deeper understanding of sexual orientation and gender identity.

The expectation that lawyers will not just develop but *promote* a deeper understanding of sexual orientation and gender identity speaks to the influence of queer theory and gender theory. Participants are not expected to question or challenge notions of gender identity but to deepen their understanding. The word “promotion” suggests personal knowledge is insufficient; lawyers must display their awareness to others. The use of the phrase “gender identity”, as opposed to sex, suggests a privileging of gender identity over sex-based rights. The omission of sex to refer to male or female indicates the influence of gender theory.

Gender Theory in the Glossary

The glossary contains numerous terms that are derived from gender theory. See especially: Binary Thinking; Queer; Transgender; Two-Spirited People; LGBTQIA2S and Heterosexism.

4. What does “equity” mean in CRT?

Equity means “fairness” and “justice”. It does not mean equality. CRT understands “fairness” and, most especially, “justice” as compensating for historical wrongs that are perceived to burden some communities with an ongoing disadvantage. A metaphor commonly employed is that of a race. “Equality” would suggest that all participants should set off at the same time and run the same distance. According to CRT, not everyone starts the race as equals. Some are held back by historic disadvantage and current prejudice. In order for the race to be “fair” and “just,” it is necessary to adjust the distances and starting times in proportion to each participant’s identity. Put crudely, for a race to be “fair” and “just” able-bodied white men should run longer and set off later than black women with disabilities. The aim is not necessarily equality of outcome (not everyone will come first) or equality of opportunity (not everyone starts at the same point) but the promotion of a moral and political framework that forces acknowledgment of systemic inequality and the perceived lack of fairness and justice in society.

Civil rights era anti-racism campaigns focused on equality of opportunity - improving schools, housing, access to transport and health care - so that all children could benefit from an equally

advantageous start in life. However, Derrick Bell, the founding father of critical legal studies and critical race theory, noted that “civil rights advances for blacks always seemed to coincide with changing economic conditions and the self-interest of elite whites.”¹² He argued that legal equality was a necessary but insufficient basis for social, political and economic equality.

The focus on “equity” reflects a political shift towards *inequality* and actively discriminating in favor of certain groups in order to compensate for historical disadvantages. A focus on equity, rather than equality, leads Ibram X. Kendi to argue in favor of racial discrimination:

*... if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person’s race, then racial discrimination is not inherently racist. If discrimination is creating equity, then it is antiracist.*¹³

The need for discrimination - and the shift to a focus on equity rather than equality - emerges because, crucially, proponents of CRT assume that all racial disparities (inequalities of outcome) are the sole result of deeply-entrenched systemic racism rather than, for example, social class, poverty, family structure or attitudes towards education.

5. What do “cultural competence” and “decolonize” mean in postcolonialism?

Both cultural competence and decolonization emerge from postcolonial theory. Postcolonial theorists assume that the end of direct rule of western governments over colonized nations did not, in fact, mark the end of colonialism. To suggest it did, they argue, is to misunderstand the way power operates. Postcolonial theorists adopt Foucault’s claim that, “Power is everywhere; not because it embraces everything, but because it comes from everywhere”.¹⁴ According to this understanding, power operates through culture, where culture is understood not just as art, music and drama but the daily reality of people’s lived experiences and the multiple interactions they have with others. When power is located in culture, it becomes internalized in people’s ways of understanding the world: “Human beings internalize the systems of repression and reproduce them by conforming to certain ideas.”¹⁵ Postcolonial theorists argue that colonialism endures through ideology or “mental frameworks”; in other words, through the beliefs, concepts and language people use to express their relationship to the world.

¹² Delgado, R. and Stefancic, J. (2017) *Critical Race Theory* (3rd Edition) NYU Press.

¹³ Kendi, Ibram X. (2019) *How To Be An Antiracist*. Penguin.

¹⁴ Foucault, M. (1990) *The History of Sexuality*, trans. R. Hurley. Vintage Books. Page 3.

¹⁵ Loomba, A. (1998) *Colonialism/Postcolonialism*. Routledge. Page 40.

Postcolonial theory suggests that one legacy of colonialism is that the “norm” for human experience is white, male, middle class, cis-gendered, heteronormative. This norm is reflected in art and literature, popular culture, social expectations (eg. working hours, punctuality, dress codes) and language (eg. use of male pronouns to symbolize a generic person). In this way, formerly colonized people continue to be oppressed, not by direct rule and a denial of democracy, but through their own mental processes. Fanon defines colonized people as those “in whose soul an inferiority complex has been created by the death and burial of its local cultural originality.”¹⁶

Postcolonialists emphasize culture as a site of conflict between the oppressors and the oppressed. They argue that there are entrenched and enduring differences between socially dominant and oppressed groups that appear in language, behavior, personal interactions and ways of understanding as well as, more straightforwardly, in food, media, dress etc. For members of a culturally dominant group to assume that their ways of acting and thinking are the norm is to reinforce the legacy of colonialism.

Cultural competency is mastery of the skills required to relate to people from different communities in a way that respects their outlook and traditions and does not further exacerbate presumed power imbalances. Cultural competency assumes people from dominant groups can be trained to speak and behave in new, more sensitive and appropriate ways. The first part of this training often involves making people sensitive to cross-cultural differences. Cultural competence has been described as “the appropriateness and effectiveness of one’s behavior in an alien cultural environment,”¹⁷ and “the acquisition and maintenance of culture-specific skills”.¹⁸

Cultural competence is contested because it entrenches differences between people rather than focusing on what people have in common. When taught as a set of skills, cultural competence can reinforce crude and outdated stereotypes that all members of a particular community behave in a particular way. Cultural competence can also apportion knowledge, artifacts or ways of behaving to different communities in a way that reinforces prejudice. An instruction to avoid “cultural appropriation”, for example, can hinder appreciation and, again, reinforces boundaries between people. Many people from formerly colonized nations take great delight

¹⁶ Fanon, F. (1967) *Black Skin, White Masks*. Grove Press. Page 18.

¹⁷ Muzychenko, O. (2008). ‘Cross-cultural entrepreneurial competence in identifying international business opportunities.’ in *European Management Journal*, 26(6), 366-377.

¹⁸ Wilson, J., Ward, C., & Fischer, R. (2013). ‘Beyond culture learning theory: What can personality tell us about cultural competence?’ in *Journal of Cross-Cultural Psychology*, 44(6), 900-927.

in Shakespeare's plays, for example, seeing his work as of universal value and not just for white men.

Decolonization also builds on the idea that the legacy of colonialism endures in culture. But it goes further than advocating cultural competence to suggest that the lasting impacts of colonialism should be exposed and removed from all aspects of society. There is a particular concern with "western knowledge" and "western ways of thinking" that shape school and university curricula and the law. Decolonization campaigns aim to expose western understandings that, they argue, are often disguised as politically and culturally neutral. They then seek to substitute, or add alongside, alternative beliefs and practices from non-western cultures.

6. According to postcolonialism, does "cultural competence" mean "how we connect with people who are different from us ... a skill that makes us able to relate to others comfortably, respectfully and productively"?

Yes, see answer above.

The assumptions that people are fundamentally different from one another, that these differences should be respected rather than challenged, and that cultural understandings can be taught as a skill, all stem from postcolonial theory. Variations of the definition of cultural competence provided here are widely used across higher education and professional development training.¹⁹

7. According to CRT and postcolonialism, does the legitimacy of law depend on whether or not it:

A. advances equity or decolonization; or

B. is passed by a democratically elected legislature and is constitutional?

The answer is A.

According to CRT and postcolonialism, the legitimacy of the law depends upon whether it advances equity and decolonization.

CRT began with legal scholars merging critical legal studies and radical feminism, with work by philosophers and theorists associated with Critical Theory more broadly, such as Foucault

¹⁹ See, for example, Bhasin, R. (2014). *Cultural competence: An essential skill in an increasingly diverse world*. Practice Pro. Available at: <https://www.practicepro.ca/2014/09/cultural-competence-an-essential-skill-in-an-increasingly-diverse-world/> (Accessed 10/10/23).

and Derrida. They combined this with a psychological understanding of race and a therapeutic and behaviouristic approach to race relations that had emerged in the 1960s alongside the civil rights movement.²⁰ A key initial text was Derrick Bell's *Race, Racism and American Law*, published in 1970. In it, Bell argued white people only concede rights when it is their interests to do so, a notion he labeled "interest convergence". He argued that, "Because racism advances the interests of both white elites (materially) and working-class whites (psychically), large segments of society have little incentive to eradicate it."²¹ Bell and his colleagues understood the law as primarily reflecting the interests of white people and only changing as the interests of white people converged with black people.

In a 1993 article for the Harvard Law Review, *Whiteness as Property*, Cheryl I. Harris argues that, "whiteness," as the basis of racialized privilege, "provided the basis for allocating societal benefits both private and public in character." She notes that, "These arrangements were ratified and legitimated in law as a type of status property." Consequently,

*Even as legal segregation was overturned, whiteness as property continued to serve as a barrier to effective change as the system of racial classification operated to protect entrenched power.*²²

The argument that the law reflects the interests of white people suggests that - even if equality before the law were possible - it would not promote racial justice. In other words, if people are treated equally by a systemically biased legal system, then the outcome will be unequal. Racial justice would demand taking biases inherent to the legal system into account in order to create more equal outcomes. Writing for the International Bar Association, Jennifer Venis notes:

*The uncomfortable truth is that most legal and justice systems were established with one race, one gender, one class in mind, and have served to ensure the longevity of that power structure. So, to address these problems, we must acknowledge the way our laws and societies were established and therefore perpetuate cycles of oppression and discrimination.*²³

According to this argument, attempts to promote equality before the law are destined to fail. Laws can only be considered morally legitimate if they focus on equity rather than equality. As noted above, equity and equality have fundamentally different meanings.

²⁰ Delgado, R. and Stefancic, J. (2017) *Critical Race Theory* (3rd Edition) NYU Press.

²¹ Delgado, R. and Stefancic, J. (2017) *Critical Race Theory* (3rd Edition) NYU Press.

²² Harris, C. I. (1993) 'Whiteness as Property' in *Harvard Law Review* (106) 8. Pp. 1707-1791

²³ Venis, J. (2020) 'Inequality before the law' at the *International Bar Association*. Available at: <https://www.ibanet.org/article/53fcff50-4a76-4c1c-ab03-5f432378a3f7>. Accessed: 10/10/23.

The Law Society of Alberta has as one of its regulatory objectives: “Promote *equity*, diversity and inclusion in the legal profession in the delivery of legal services [emphasis mine].”²⁴ It later specifies:

*It is in the public interest to have an effective legal and court system that supports the concept of equal justice for all within an open, ordered and impartial system. [emphasis mine]*²⁵

As noted previously, “equity” and “equality” have different meanings. Equity can mean *inequality* in order to create fairness. As noted previously, “fairness” is used to indicate compensating for historical wrongs that are perceived to burden some communities with an ongoing disadvantage.

It appears as if LSA’s regulatory objectives contradict, a point it acknowledges:

*There may be times when two or more of the regulatory objectives conflict with one another. In these cases, the Law Society will weigh the costs and benefits of aligning with each objective.*²⁶

The premise that the legitimacy of law rests upon its capacity to promote equity is reflected in the Acknowledgement which notes that:

*Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions [...] and results in disproportionate harmful impacts to those who are marginalized.*²⁷

It continues:

*Acknowledging that systemic discrimination exists within the Law Society, the legal profession and the justice system is a step towards improving how we protect the public interest and fulfill our regulatory objectives. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal profession more equitable, increasing diversity and promoting inclusion.*²⁸

According to the Subject Theories, democratically-passed and constitutional law is not inherently legitimate because, as *per* the Venis quote above:

²⁴ The Regulatory Objectives, page 1.

²⁵ The Regulatory Objectives, page 3.

²⁶ The Regulatory Objectives, page 2.

²⁷ The Acknowledgment, page 1.

²⁸ The Acknowledgment, page 2.

“... most legal and justice systems were established with one race, one gender, one class in mind, and have served to ensure the longevity of that power structure.”

In other words, democratically-passed and constitutional law that was enacted when not all people had the right to vote, or equal access to participate in democratic structures, or equal opportunities to have their views heard, would be considered illegitimate.

8. Are the Subject Theories “political” in the sense of having an objective to change, influence, or affect laws, regulations, administrative actions, or other allocations of or exercises of power?

The Subject Theories are political in the sense of wanting to influence or affect laws, regulations, administrative actions and the allocation and exercise of power.

CRT, Postcolonialism and Gender Theory share a foundational understanding of, firstly, the importance of power and, secondly, the way that power operates through ideology, discourse and, ultimately, people’s mental states. For example, gender theorists argue that the naming of a gender binary (the apparently arbitrary separation of people into two distinct categories: male and female) allows “woman” to be defined as “other” to a male norm. This reinforces gender hierarchies and, by proxy, the power of men in a patriarchal social order.

The Subject Theories move beyond analysis, and become more explicitly political when they are applied to real-world social contexts. Academics Helen Pluckrose and James Lindsay describe “postmodernism’s applied turn” in which theorists applied themselves to the problem they saw “at the core of society: unjust access to power.”²⁹ They note that “new strains” of “Theory” (i.e. the Theories) “are centred on a practical aim that was absent before: to reconstruct society in the image of an ideology which came to refer to itself as ‘Social Justice’”³⁰ A new phenomenon emerged: the scholar activist. Scholar activists apply Subject Theories to real world problems but, importantly, with predetermined goals: to upend dominant power relations and bring about equity and social justice for oppressed groups. It is this predetermined goal that transforms academics into political agents.

Harvard’s Derrick Bell and his colleague, the coiner of intersectionality, Kimberlé Crenshaw helped take CRT from a scholarly pursuit to a tool for activists. Bell argued activism was necessary because “majoritarian self-interest” was “a critical factor in the ebb and flow of civil

²⁹ Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone. Page 46.

³⁰ *Ibid.*

rights doctrine”; in other words, a white-majority society would be unlikely to cede its power voluntarily.³¹ The goal of CRT, along with other Subject Theories, became not simply to analyze laws, regulations and administrative actions but to advocate for specific changes such as the implementation of affirmative action or positive discrimination programs. Academics who promote Subject Theories are not only pursuing political goals themselves but, crucially, they are educating the next generation of teachers, lawyers, journalists, social workers and managers. Over the course of several decades, scholar activists have been able to wield considerable influence within public institutions.

We see an example of how this influence plays out in Acknowledgement:

*Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it. The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture.*³²

The commitment to “long-term systems changes” to overcome “systemic discrimination” speaks to not just one interpretation of the role of the LSA but a political commitment to bring about change in policies and procedures.

9. According to CRT and postcolonialism, does “practising anti-discrimination and antiracism” mean to not be prejudiced towards people based on their race and to actively oppose such prejudice? If not, what does it mean?

No.

Practising antiracism, in CRT and postcolonialism, often means the opposite of not being prejudiced towards people according to their race.

See question 1 above:

CRT understands racism as systemic; that is, built into the fabric of societies designed by white people, for the benefit of white people.

This removes racism from the sphere of individual actions. A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context

³¹ Matsuda, M.J., Lawrence III, C.R., Delgado, R., Williams Crenshaw, K. (1993) *Words That Wound, Critical Race Theory, Assaultive Speech, and the First Amendment*, Westview Press.

³² The Acknowledgment, page 2.

of a systemically racist society, this is not enough: they will still uphold a racist *status quo*. As Robin DiAngelo explains:

*Individual whites may be “against” racism, but they still benefit from a system that privileges whites as a group.*³³

Simply not being racist is therefore deemed insufficient to counteract entrenched racial inequalities. Anti-racism, according to CRT, requires the opposite of not being racist. DiAngelo notes that:

*If we become adults who explicitly oppose racism, as do many, we often organize our identity around a denial of our racially based privileges that reinforce racist disadvantage for others.*³⁴

In other words, rather than declaring opposition to racism, white people should overcome their “fragility” and acknowledge their complicity in upholding systemic racism. We see an example of this with the LSA’s Acknowledgment.

It is logical that after acknowledging complicity with racism, amends should be made. See question 4 above: Ibram X. Kendi argues in favor of racial discrimination:

*...if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person’s race, then racial discrimination is not inherently racist. If discrimination is creating equity, then it is antiracist.*³⁵

More bluntly, Kendi explains:

The only remedy to racist discrimination is antiracist discrimination.

This is an argument to see race and to treat people differently according to the color of their skin, affording privilege to some while penalizing others.

For this reason, CRT is particularly hostile to “color blind” anti-racism. Eddo-Lodge explains: “seeing race is essential to changing the system.”³⁶ But CRT posits that rather than black people being disadvantaged, they are to be the beneficiaries of positive discrimination through

³³ DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism*. Beacon Press. Page 24.

³⁴ DiAngelo, R. (2018) *White Fragility: Why It's So Hard for White People to Talk About Racism*. Beacon Press. Page 108.

³⁵ Kendi, Ibram X. (2019) *How To Be An Antiracist*. Penguin.

³⁶ Eddo-Lodge, R. (2018) *Why I'm No Longer Talking to White People About Race*. Bloomsbury P. 84.

opportunities denied to white people from similar socio-economic backgrounds. That the LSA supports this approach is evident in The Profile, most notably:

Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion.

10. How do the Subject Theories understand impediments to achieving any political objectives including legal impediments, conventions, moral and religious objections, and inaction?

In response to question 8 (above) it was noted that the political objective of Subject Theories was “to upend dominant power relations and bring about equity and social justice for oppressed groups.”

More concretely, in relation to CRT and postcolonialism, this can be understood as actions to ameliorate the impact of what is understood to be historical and current systemic racism through, for example, affirmative action or positive discrimination. In relation to gender theory, this may mean subverting traditional assumptions of a binary sex category being reflected in a person’s gender presentation through, for example, practices such as declaring pronouns, wearing pronoun badges, having “all gender” bathrooms, and defining “woman” as an identity rather than a biological reality.

Impediments to such objectives might include legal frameworks that adopt a color blind approach to justice or assume citizens meet the law as equals. They might also include a range of social, moral and religious conventions, such as dress codes; merit-based recruitment and promotion practices that take no account of an applicant’s lived experiences; leisure activities that are assumed to be sex-segregated (eg. sport) or religious objections to same sex marriage or gender transition. Inaction is also considered an impediment because it allows an historically discriminatory status quo to continue unchallenged.

Subject Theories consider impediments to achieving political objectives as evidence of continued systemic discrimination (see especially Source Two). In this way, impediments are obstacles to be overcome in the interests of equity and social justice. Impediments can be overcome through political advocacy, changing the law, or enacting practices that overrule perceived obstacles.

The LSA adopts all three of these approaches. See, for example, the Acknowledgment which points to a Fall 2020 LSA survey in which members were invited to “share their experiences of racial discrimination and stereotyping”. The premise of the research, that racial

discrimination and stereotyping take place, introduces bias. Members who had not experienced discrimination were unlikely to respond to such a call. In this way, research becomes political advocacy. The acknowledgment of systemic discrimination, along with a commitment to promoting “equity, diversity and inclusion in the legal profession,” is a means of over-ruling a perceived obstacle - in this case, the discrimination perceived to be systemic in the legal system - through practice. The impediment of “inaction” is tackled through the regulatory objectives of the LSA, the Professional Development Profile that incorporates commitments to Cultural Competence and Truth and Reconciliation, as well as in The Path training materials. Not accepting the fundamental political assumptions and objectives of Subject Theories does not appear to be an option for Alberta Lawyers.

11. Do the Subject Theories view objectivity, science, and reason as legitimate and universal?

No.

As noted in response to question 2 (above) the Subject Theories share a common root in postmodernism and:

At its core, postmodernism represents a rejection of grand narratives - broad, universal theories for making sense of the world and society. Postmodernism rejects Christianity and Marxism but also, most fundamentally, the Enlightenment values of reason and rationality associated with the scientific method.

It is this connection with the Enlightenment that makes Subject Theorists question the value of objectivity, science and reason. As the philosopher Susan Neiman notes, recent decades have witnessed a turn against the Enlightenment on the erroneous grounds that it

... is a sham that was invented to disguise Eurocentric views.³⁷

According to this (false) critique, values that were promoted by Enlightenment philosophers - reason, rationality, objectivity and the scientific method - emerged from the “lived experiences” of thinkers such as Kant, Hume and Locke and are, therefore, a product of their specific view of the world. Far from being universal, then, such values represent only a white, Eurocentric, male, cis-gendered, heteronormative perspective. The enduring status of Enlightenment values stems, the theorists in the Subject Theories (the “**Subject Theorists**”) argue, from the fact that this identity-specific perspective has been accepted as being of

³⁷ Neiman, S. (2023) *Left Is Not Woke*. Polity. Page 36.

universal relevance. Claims to universality are, as Neiman notes, considered to be a disguise for Eurocentric views. Subject Theorists argue that this duplicity renders Enlightenment values illegitimate.

Proponents of CRT reject Enlightenment-derived values of objectivity, neutrality, equality and meritocracy as a particular perspective imposed on others under the guise of universalism. Instead of universal values, they argue people understand the world from the standpoint of their own identity group. Personal, or lived experience becomes all important.³⁸ Evidence of this rejection of objectivity and reason as universal values, in favour of assigning pre-Enlightenment beliefs to Indigenous communities is prevalent throughout The Path. For example, participants in The Path are informed, that there is a “common thread” that binds peoples from Indigenous nations:

*Viewed through the lens of Indigenous language, the world is not hierarchical, or linear, or divided into multiple, rigid categories. The Indigenous world view, and thus Indigenous languages, interpret experience in a holistic way. Its most powerful image is the circle, which reflects and contains all things, links back to itself. You see this image in the teaching of the medicine wheel, or in the circle of life itself.*³⁹

This sets up two distinct communities: white colonizers who imposed rationality, reason, objectivity and science upon Indigenous peoples who had their own beliefs and values. The endpoint of accepting separate but equally valid belief systems is that it is no longer possible to advocate for equality under the rule of law. This point is made explicit:

*Canada is multi-juridicial. And right now the only law that people are familiar with is civil law and common law. And there's a richness of legal history and ways of managing that are thousands of years old that can help not only just indigenous peoples today insofar as managing ourselves, but also our relationship with Canada.*⁴⁰

12. According to the Subject Theories, are words capable of having a universal meaning regardless of race?

To postmodernists, words do not have an intrinsic relationship to objects. There is nothing inherent in the word “chair” that organically connects it to a piece of furniture for sitting on. Instead, words are socially constructed, or created by people. As people create language, they

³⁸ For a fuller account see Williams, J. (2022) *How Woke Won*. Spiked.

³⁹ The Path, Module Five, Topic 1.

⁴⁰ The Path, Module Five, Topic 3.

also shape the way the world is seen. For example, it is language that differentiates a chair from a throne. Following this argument, some argue that words do not just shape perceptions of the world but create reality itself. Stuart Hall, the founding father of the academic discipline Cultural Studies, argues that the representation of reality through language is important for being “one of the central practices that *produces* culture” (my emphasis). Language is central to the way that meaning is produced and, in turn, cultural meanings, “organize and regulate social practices, influence our conduct and consequently have real, practical effects.”⁴¹ In this way, language comes to be seen as powerful: its use reflects the interests of those who create it and it has a practical impact on the reality of people’s lives. Each Subject Theory considers language to be of fundamental importance because of its relationship to power.

Gender theorists note that it is through language that we recognise someone as male or female and, in so doing, confer a particular gender identity upon them. Judith Butler argues that, through repetition, such speech acts “accumulate the force of authority.”⁴² Referring to someone as female, by this argument, “is not to describe an objective, value free fact” but to assign them a normative role to play.⁴³ As another gender theorist notes: “agents bring a new fact into being with their speech: their saying so makes it so.”⁴⁴

For Critical Race Theorists and Postcolonialists, western languages, and English in particular, have been used to oppress colonized communities. The imposition of one language, and the outlawing of others, became a means of imposing one perception of reality and outlawing others. Language both reflects and creates the prejudices of the oppressor. Ideas of white superiority and black inferiority are inscribed into the words we use and become central to culture and interpretations of history. This language shapes our very thoughts and, in this way, racial differences become deeply psychologically entrenched. Pluckrose and Lindsay argue that it is when power is separated from politics and the workings of institutions and is relocated in language and knowledge itself, that racism can be identified everywhere: it exists within our unconscious mind and becomes real with our every utterance.

This view is evident in *The Path*:

Every human language embodies a specific cultural approach to communication and understanding, and Indigenous languages are no exception. There are more than 70 different languages and dialects spoken

⁴¹ Hall, S. *et al.* (2013) *Representation*. Sage Publications.

⁴² Butler, J. (2006 [1998]) *Gender Trouble*, p. 227

⁴³ Asta, S. (2018) *Categories We Live By*, p. 59

⁴⁴ Asta, S. (2018) *Categories We Live By*, p. 13

*by Indigenous peoples across Canada. [...] Each of these languages encapsulates a unique culture and a specific way of looking at the world.*⁴⁵

The argument that language “*encapsulates a unique culture and a specific way of looking at the world*” suggests that words do not necessarily have a universal meaning regardless of race but are instead an expression of culture and identity. This assumption can be challenged: people clearly learn new languages and, in so doing, gain insight into new cultures. To Subject Theorists however, the “specific ways of looking at the world” created through language appear as an insurmountable barrier to cross-cultural communication that can only be overcome through competence training.

Elsewhere, The Path notes that:

For most young Aboriginal people, culture and language have been separated. As a result, most of these young people are trying to walk in two worlds with one language.”⁴⁶

Their lives are assumed to have been made more difficult by the imposition of a dominant language distinct from their indigenous culture. They have to make sense of a world through the wrong frame of reference.

Another witness is quoted in The Path as saying:

*English is so hierarchical. In Cree, we don't have animate-inanimate comparisons between things. Animals have souls that are equal to ours. Rocks have souls. Trees have souls. Trees are “who” not “what”.*⁴⁷

This highlights the postmodernist view that language use reflects not universal meanings but different perceptions of reality. This suggests that different linguistic communities (or “cultures”, or “races”) can use the same word, for example “tree”, and refer to the same object (a large, woody plant with a single trunk) but understand quite different things - to one group it is a conscious, living being; to another group it is an inanimate resource. Similar logic applies with the word “contract”. Two communities may use the same word and refer to the same object (a written document, a formal treatise) but understand quite different things. To one group this may signify a legally binding, permanent statement of obligation or ownership. To another group it may signify just one person's view at one point in time.

⁴⁵ The Path, Module Five, Topic 1.

⁴⁶ The Path, ‘R. Henze’ Module Five, Topic 1.

⁴⁷ The Path, ‘Tomson Highway’ Module Five, Topic 1.

13. Are the Subject Theories tolerant of:

A. neutrality; or

B. holding and expressing contrary ideas?

The Subject Theories are inherently hostile to the notion of “neutrality”. See question 12 above. As with reason, rationality, and universalism, neutrality is considered not just impossible to achieve (people can never be freed from viewing the world from the perspective of their own identity group) but, worse, claims to neutrality present one perspective (white, western, male) as a norm.

For Michel Foucault, truth exists not as neutral, objective facts but only in “circular relation with systems of power which produce and sustain it.”⁴⁸ This view soon became widely accepted by postmodernists and, later, Subject Theorists. A rejection of universal truth gave way to a belief in “many truths”, each reflecting different “systems of power” or “interests”. When this argument is accepted, the veracity of claims cannot be judged objectively but only by reference to the identity of the speaker. We need to know the speaker’s interests, or his relationship to power, in order to be able to assess the truth of his claims. In practice, this means that before judging the truth of a statement we need to know whether the speaker is white, black or indigenous, a man or a woman, or rich or poor. Truth cannot be measured objectively but only in relation to the identity of the speaker. To return to a previous example, an indigenous person who claims that a tree is a conscious being with a soul is speaking the truth according to their community, even though scientific tests may provide no objective evidence in support of the claim.

This sets up two competing notions: “truth” which can be objectively tested and exists independent of the identity of the knower; and “truth” which is subjective and dependent upon the identity of the knower. This latter form of “truth” has entered popular discourse in the phrase “my truth”. The addition of the word “my” places us in the realm of subjectivity and individual perspective. It takes us away from objectivity. Inherent in the notion of multiple, perspectival truths, or “my truth” is scepticism about the notion of neutral, objective truth. The educational sociologists Michael Young and Johan Muller make clear the consequences of this when they note that, “when a commitment to truth is paired with scepticism about truth, the latter inevitably erodes the former.”⁴⁹

⁴⁸ Foucault, M. (1975) *Discipline and Punish*. p. 30.

⁴⁹ Young, M. and Muller, J. (2016) *Curriculum and the Specialization of Knowledge*. Routledge.

The emergence of “standpoint theories” within the social sciences spoke to a rejection of universal truth, objectivity and neutrality. Young and Muller note that, “the idea of objectivity in the social sciences seemed to be aligned with oppression.” In a bid to reveal a bigger truth about the workings of power, actual truth was jettisoned, along with objectivity and neutrality, and in its place came new definitions of multiple truths. The Path, for example, tells us that “Indigenous accounts of creation are expressions of spiritual and cultural truth.”

Ironically, the notion of truth as multiple and subjective does not mean that Subject Theories are open to political and intellectual challenge. They are hostile to the expression of alternative viewpoints. Pluckrose and Lindsay note that,

*Postmodernism is no longer characterized by radical skepticism, epistemic despair, nihilism, and a playful, though pessimistic, tendency to pick apart and deconstruct everything we think we know. [...] In the guise of Social Justice scholarship, postmodernism has become a grand, sweeping explanation for society - a metanarrative - of its own.*⁵⁰

In moving from understanding truth as neutral and objective, to seeing it as a matter of identity-based standpoint, “truth” has been reified, that is, made real and put beyond possible contestation. Put simply: when truth claims (for example, the theory of evolution) are premised upon assumptions of objectivity and neutrality, they can be tested and challenged (we can test the theory of evolution through evidence and argument). When truth claims are premised upon assumptions of identity and standpoint, they cannot be objectively tested. When I speak “my truth” I utter something that no one else can challenge, only I can confirm or deny the veracity of my claim. In the same way, we cannot question the “spiritual truth” of creationism: it is true because people hold it to be true. When truth is linked to identity and power, a white man cannot challenge the claims of a black woman: to do so would be to call into question the veracity of her lived experience. Expressing contrary ideas is to side with the oppressor over the oppressed, an act some would describe as “violence”.

Rather than challenging truth claims, the Subject Theories call on people to “acknowledge” or “recognize”. Both words appear throughout the LSA documents reviewed but see especially the Profile, Section 8 (Truth and Reconciliation). Lawyers are asked to:

Acknowledge the impacts of colonization and systemic discrimination.

⁵⁰ Pluckrose, H. and Lindsay, J. (2020) *Cynical Theories*. Pitchstone. P. 209.

Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada.

Recognize the historical and ongoing impacts of Canadian and Alberta law on Indigenous Peoples.

Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients.⁵¹

The imperative to “acknowledge” “recognize” and “incorporate” puts ideas beyond empirical contestation.

14. Do the Subject Theories attribute psychological or social characteristics to people on the basis of race, sex, sexuality, and other identity characteristics?

Subject Theories do attribute psychological and social characteristics to people on the basis of their identity.

In relation to gender theory, the idea that people have a “gender identity” or “gendered essence” that floats free from biological sex can only be understood by reference to commonly accepted stereotypes. It is because people express a preference for the toys or clothing commonly associated with the opposite sex, or because they demonstrate behaviours or mannerisms associated with the opposite sex, that they are assumed to be transgender. Rather than challenging stereotypes - for example, arguing that women can be assertive and still be women, or boys can play with dolls and still be boys - gender theory reinforces these outdated notions. People are still expected to conform to gender stereotypes, it’s just that they can change their body to reflect their innate preferences. Rigid psychological and social characteristics are attributed differentially to men and women.

In relation to CRT and postcolonialism racism is built into the fabric of societies designed by white people, for the benefit of white people. This removes racism from the sphere of individual actions. A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context of a systemically racist society, this is not enough: they will still uphold a racist status quoism. In claiming the Enlightenment values of reason, rationality, objectivity and universalism as specifically white, western beliefs; Subject Theorists ascribe the opposite social and psychological characteristics to black and indigenous communities. In place of reason comes superstition and in place of rationality comes

⁵¹ Profile, Section 8 (Truth and Reconciliation).

primitivism. Whereas these characteristics were once derided, they are now celebrated as encapsulating a greater truth and a better, less oppressive way of being.

The bind for black and indigenous communities is that this celebration is linked to a perception of them as oppressed, or victims of intergenerational trauma. Attempts by black and indigenous people to challenge this perception of being traumatized, and therefore emotionally fragile and mentally vulnerable, are written off as “internalized racism”. According to the Glossary, internalized racism occurs when:

*A racial group oppressed by racism supports the supremacy and dominance of the dominating group by maintaining or participating in the set of attitudes, behaviors, social structures and ideologies that undergird the dominating group’s power.*⁵²

This view makes it more difficult for members of black or indigenous communities to comply with dominant social and cultural conventions or to emerge as robust, rational individuals in control of their own lives. Doing so is presented as a betrayal of your people.

The Path includes numerous examples of attributing social or psychological characteristics to people on the basis of their race. For example, participants are instructed that:

Indigenous people speak so strongly about the protection of the environment [because] their perspective stretches beyond short term profit from development, and focuses on the need to preserve what we have for future generations.

[and]

*The Indigenous world view [...] interprets experience in a holistic way.*⁵³

Such statements may hold true for some Indigenous people but to suggest that *all* hold these beliefs is a gross generalization.

Likewise, the Path informs participants that:

*Twenty thousand years of history and culture define the way that First Nations, Inuit and Métis think, feel and act today.*⁵⁴

[and]

⁵² The Glossary, page 19.

⁵³ Specifically, Module Five, Topic 1.

⁵⁴ The Path, Module 5, Topic 2.

Indigenous people are where we are today because of what has been done to us by the non-Indigenous people using their system to directly try to destroy our people.

Such statements, along with repeated references to “trauma” portray Indigenous people as having distinct psychological characteristics.

15. According to gender theory, are people identifiable at birth as either male or female?

Views on this question vary. Some extreme gender theorists believe that people are not identifiable at birth as either male or female and that people are born “sexless” (see, for example, UK Labour MP Dawn Butler’s statement that babies are born without sex.⁵⁵) Although rarely stated so baldly, the frequently-used phrase “sex assigned at birth” suggests that sex is not intrinsic to a baby’s chromosomes, hormones and anatomy but is somehow “assigned” in a random declaration by a medical professional.

Less extreme gender theorists accept the reality of biological sex identifiable at birth but assume that an innate sense of gender identity takes precedence in determining whether someone will grow up to be a man or a woman. This gendered essence is not visible and can only be revealed to the world as the child grows up.

16. According to CRT and postcolonialism, what is “systemic discrimination” and “systemic inequality?”

“Systemic inequality” refers to the statistical disparities that can be identified between members of different racial and ethnic communities. For example, the Path notes that:

While Indigenous people make up about 5% of Canada’s population, they represent 27% of its prison population.

[and]

Rates of self-reported sexual assault is 3x higher in the Indigenous population, High school diploma rate non-Indigenous people 89%, Indigenous people 68%. First Nations youth, age 15 - 24 are 3 times more likely to commit suicide, childhood poverty: general population, 19%, First generation immigrants and refugees children 33%, Métis, Inuit, off-reserve First Nations children, 27%, On reserve First Nations Children, 62%.

The notion of “systemic” inequality suggests that these disparities are deep-rooted, being replicated and exacerbated over several generations, and are integral to the “system” of

⁵⁵ O’Neill, B. (2020) ‘Dawn Butler’s Transgender Madness’ in *The Spectator* (18/02/20).

Canadian society. That is, a society which has a legacy of colonialism has racial inequality built into its customs and practices, and formalized through its education and legal systems. To support this argument, it tends to be only disparities that are unfavorable to indigenous communities that are highlighted in research and reports. Disparities are used to support the existence of discrimination. It is assumed that statistical disparities between different communities have been caused by discrimination.

In this way “systemic inequality” is a result of “systemic racism”. As previously defined, that racism is “built into the fabric of societies designed by white people, for the benefit of white people.” This removes racism from the sphere of individual actions. A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context of a systemically racist society, this is not enough: they will still uphold a racist *status quo*.

Systemic racism presents racial disparities as an inevitable consequence of historic and continued oppression. It ignores the fact that other factors such as wealth, social class, sex, occupation, area of residence, educational level, family structure and parental educational level may also contribute to a person’s life chances. When these factors are taken into consideration the gap between outcomes for black and indigenous communities and white communities lessens. This suggests that racial prejudice may not be the only reason, or even the most important explanation, for racial disparities. Race may correlate with poor health outcomes, for example, rather than causing such inequalities. This matters because it can lead to policy initiatives that focus on the wrong areas - trying to tackle racism, for example, rather than improving education. What’s more, discussion of racism and inequality as “systemic” also overlooks progress that has been made. This can send a message to indigenous children that the odds of success are more stacked against them than they really are, with negative psychological consequences.

A handwritten signature in dark ink, appearing to read 'J. Williams', with a horizontal line underneath.

Dr. Joanna Williams

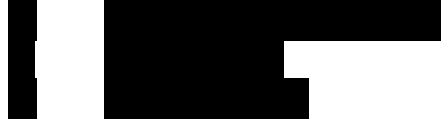
APPENDIX “A”

Curriculum Vitae

Dr. Joanna Williams

Director, Cielo

Contact details:



Employment:

- 2020: Director of the Freedom, Democracy and Victimhood Project, Civitas
- 2018: Head of Education and Culture, Policy Exchange
- 2014: Director of the Centre for the Study of Higher Education, University of Kent
- 2007: Lecturer in Higher Education and Academic Practice, University of Kent
- 2004: Lecturer in Post-Compulsory Education, Canterbury Christ Church University

Qualifications:

- 2009: PhD, University of Kent
'The political construction of social inclusion through Further Education policy'
- 2009: PGCE, University of Kent
- 2006: MA in Educational Studies, Canterbury Christ Church University (Distinction)
- 1996: PGCE, English and Drama, University of Warwick
- 1995: BA, English (hons), University of Birmingham

Books:

- 2022: How Woke Won (Spiked/John Wilkes)
- 2017: Women vs Feminism, why we all need liberating from the gender wars (Emerald)
- 2016: Academic Freedom in an Age of Conformity, confronting the fear of knowledge (Palgrave Macmillan)
- 2016: Why Academic Freedom Matters (co-editor and contributor, Civitas)
- 2012: Consuming Higher Education: why learning can't be bought (Bloomsbury)

Think Tank Reports:

- 2023: The Politicisation of History Teaching in the EU (MCC Brussels)
- 2022: Teaching National Shame: History and Citizenship in the School Curriculum (CIS Australia)
- 2020: The corrosive impact of transgender ideology (Civitas)
- 2020: Policing Hate (Civitas)
- 2019: Sins of Admission, How university application processes impact upon schools and colleges. (Policy Exchange)
- 2018: 'It just grinds you down' Persistent disruptive behaviour in schools and what can be done about it. (Policy Exchange)

Selected book chapters

2016: 'Why Academic Freedom Matters' in C. Hudson and J. Williams (eds) *Why Academic Freedom Matters*, Civitas: London.

2016: 'Teaching Students to Censor: How academics betrayed free speech' in T. Slater (ed.) *Unsafe Space – The Crisis of Free Speech on Campus*. Palgrave Macmillan: London.

2015: 'Contractualising the student experience through university charters' in J. Fanghanel (ed.) *Dimensions of Marketisation in Higher Education*, Routledge: London.

2015: 'Free to Pursue an Academic Education' in *The Ins and Outs of Selective Secondary Schools*, Civitas: London.

Journalism:

Spiked: weekly columnist since 2014

Also written for: The Times, The Daily Mail; The Sun, New York Daily News; The Spectator; The Telegraph; American Conservative; The Evening Standard; Times Higher Education; James G. Martin Center; Huffington Post; Areo; Open Democracy; Times Educational Supplement; Quillette.

Media: regular contributor to GB News and Sky News

Also appeared on: Sky News Australia; ITV Good Morning Britain; Channel 4 News; BBC 1 The Daily Politics; Radio 4: Broadcasting House, The Moral Maze; Radio 3 Nightwaves; Minneapolis Public Radio; Canadian CBC; Toronto 604.

Selected Guest Lectures:

2023: Society for Academic Freedom, Canada. Academics for Academic Freedom, University of Buckingham.

2019: University of Bath, University of Oxford, University of Hull

2018: University of Bonn, University of Cologne, Berlin Free University, University of Leiden, University of Buckingham.

2017: St Olaf College; North Dakota State University; University of Bath; Newcastle College; Haberdasher Aske School; LAMDA; Wellington College; Bath Spa University; Radley College

2016: University of San Diego; California State University, Fullerton; University of Bath; Oxford Arts Festival; University of Brighton; Newcastle Literary and Philosophical Society; University of Kent- Vice Chancellor's Esteem Lecture