Dear Dean Dodek,

Re: Anti-Racism Working Group

In December 2020, you retained me to provide advice with respect to the structure and mandate of a proposed working group, comprised of students, staff and faculty representatives, to address systemic racism within the Faculty of Law (Common Law Section).¹

Over the past two months, I have reviewed University and Faculty of Law governance documents and policies; University and Faculty statements with respect to anti-racism; investigation reports and media coverage of anti-Black racism on campus; and existing proposals for reform from the Black Law Students Association and the University of Ottawa Black, Indigenous and Racialized Professors and Librarians Caucus. I have also conducted extensive one-on-one and group interviews with members of the Faculty administration; BIPOC students, faculty and staff from the English and French programs; student governments; and individuals who volunteered to participate as members of the Anti-Racism Working Group. All individuals interviewed were guaranteed confidentiality to encourage candid discussion. Their perspectives are not itemized and attributed as this is not a fact-finding report or an

¹ All references to “the Faculty” in this letter refer to the Faculty of Law (Common Law Section).
investigation. The interviews, instead, helped me understand the divergent experiences and priorities of stakeholders to ensure that my advice and the steps proposed are appropriately responsive.

In Part I of this report, I set out my understanding of the context from which the Anti-Racism Working Group initiative emerged. In Part II, I analyze key themes that emerged from the stakeholder interviews. Parts I and II are set out at length because they are the foundation which informs my advice in Part III about appropriate structures and mandates for pursuing Faculty-based anti-racism initiatives.

Part I: Background Context

The initiative to create an Anti-Racism Working Group emerges from the Faculty of Law administration’s recognition that systemic racism affects Indigenous, Black and racialized students, staff and faculty at the Faculty of Law (Common Law Section) and that concerted intentional action must be taken to dismantle structures and practices of systemic racism. Preliminary steps have been taken on this path. However, reform has been intermittent and uneven. This fuels frustration for BIPOC students, staff and faculty. For students, there is urgency that identifiable progress be made within short timelines. Unless students observe meaningful changes within their brief three-years at law school, their own experiences of systemic racism remain unaddressed and define their law school experience. Cynicism and distrust build and are conveyed to successive cohorts of potential and incoming students.

Ottawa and the Faculty of Law are situated on unceded Algonquin territory. Algonquin legal orders operate in these territories but are not reflected physically in the Faculty or in the core curriculum. There are very few Indigenous faculty members, but they play an outsized role supporting Indigenous learners in a context where the law taught is colonial, the forms of reasoning and teaching conflict with Indigenous worldviews, many learners are the first from their families or communities to attend post-secondary institutions or law school, and where, in studying law, Indigenous learners have responsibilities to their home communities. The Faculty has publicly committed to implementing the Truth and Reconciliation Calls to Action and addressing anti-Indigenous racism. The Faculty’s June 2019 Indigenous Pathways Statement expresses the institution’s
belief in the values of respect and reciprocity of relationships and are committed to fostering knowledge and skills relating to Indigenous laws, Indigenous peoples, anti-discrimination and the full implementation of the Truth and Reconciliation Commission Calls to Action and United Nations’ Declaration on the Rights of Indigenous Peoples.

In 2017, the Faculty hired an Indigenous Elder-in-Residence. Subsequently, the Faculty created the position of Indigenous Relations and Indigenous Learners Advocate whose role is to protect and promote the wellbeing of Indigenous learners in the Common Law Section. An Indigenous Legal Traditions Committee was constituted which has been working on a comprehensive plan to advance reconciliation, Indigenization and decolonizing within the Faculty. The resulting report, the Pathways Plan, has not yet been publicly released. Some objectives relating to reconciliation, Indigenization and decolonizing have been adopted in the Faculty of Law’s 2019-2024 Strategic Plan. A space has been allocated for Indigenous learners to meet. However, a key priority of the ILTC, addressing the TRC’s Call to Action #28 to create a mandatory course addressing Indigenous peoples and the law, remains unfulfilled. And Indigenous learners continue to experience systemic racism in class, online, in assignments and on campus.

The immediate impetus for creating an Anti-Racism Working Group at the Faculty arose from multiple high-profile incidents of anti-Black racism and mobilization against anti-Black racism on and off campus in the last two years. These included:

- the arrest of a Black University of Ottawa student by campus police in June 2019, video of which circulated broadly, and which an external investigation confirmed arose from anti-Black racial profiling;
- the global rise in widespread Black Lives Matter protests following the police killing of George Floyd in May 2020;
- Black Law Students’ Association’s meetings with the Faculty administration, beginning in May 2020, demanding action to address anti-Black racism at the

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1 Call to Action #28 states: “We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”
Faculty, followed by BLSA’s public release of its demands in October 2020 and its protest that reforms had not been implemented;

- a white University of Ottawa professor’s use of the n-word in an art and gender class in September 2020 and the response to that incident, including heightened tension arising from an open letter by a group of uOttawa professors publicly defending use of the n-word under the banner of freedom of expression and academic freedom; and

- the statement and list of demanded institutional reforms released in response to that incident by University of Ottawa’s Black, Indigenous and Racialized Professors and Librarians Caucus.

University President Jacques Frémont created a campus-wide Anti-Racism Advisory Committee following the racial profiling incident in 2019. BIPOC faculty and students felt the Advisory Committee had limited power and was not well resourced. The President disbanded it in late November 2020 stating that “after a year of meetings, the consensus was that the committee had proved to be ineffective”. At the same time, he replaced the Advisory Committee with a new Action Committee on Anti-Racism and Inclusion for which member nominations continued to the end of January. Students, faculty and staff who had invested significant work in the Advisory Committee felt their year of work had been disregarded and would be duplicated by the new Committee. As a result, from the outset, the new Action Committee was perceived by many as delaying rather than advancing reform and its announcement spurred a 6-day student sit-in in early December 2020.

The announcement of the Faculty of Law’s proposed Anti-Racism Working Group in November 2020 arrived in this context of heightened tension around anti-Black racism, delays in addressing anti-Indigenous racism, and rising frustration and cynicism of BIPOC students, staff and faculty about a lack of demonstrable anti-racist action at the University. As a broadly constituted group purporting to address all forms of anti-racism at the Faculty, the Working Group’s creation fueled tensions between student governments and organizations about the composition and degree of student representation on the Working Group. In addition, students, staff and faculty who were asked to participate on the Working Group remained unclear about the Working Group’s mandate (which was undefined), its priorities, and whether it would duplicate work already completed and/or delay action to address known concerns.
The Faculty administration has taken steps to respond to some calls for reform by BLSA. A mandatory anti-racism training component was added to Orientation. However, concerns arise broadly that anti-racism training offered to staff and faculty is not mandatory and that there is explicit resistance to such training. In response to an alumna proposal, the Faculty created the position of Black Legal Mentor-in-Residence in October 2020. Interim measures were taken to increase course offerings by Black professors by retaining Black adjunct professors to teach *Race, Racism and the Law* and an anti-racism directed research course in the Winter 2021 term. On 1 February 2021, the Faculty of Law also announced the creation of five new $10,000 entrance scholarships for Black law students (with renewal in 2L and 3L for $5,000). But these initiatives are recognized by the administration as only initial steps required to address systemic anti-Black racism in the law school.

Meanwhile, the experiences of systemic discrimination faced by racialized students, staff and faculty who are neither Indigenous nor Black remain underexamined and unaddressed.

**Part II: Considerations that Inform an Approach to Anti-Racist Action**

As a starting point, it bears noting that, under the *Human Rights Code*, the Faculty of Law has a proactive legal obligation to provide a learning and work environment that is free of discrimination. That legal obligation is reinforced in, but not displaced by, anti-discrimination provisions in University policies and collective agreements. Accordingly, action to address systemic racism must be examined in light of that responsibility.

Despite this legal obligation, interviews with stakeholders consistently identified ongoing experiences of overt and systemic racism at the Faculty. These concerns included in-class interactions involving both faculty and students; substantive course content and assignments; faculty and student reactions and explicit resistance to anti-racism training; and microaggressions in both the learning and work environments. In addition, high profile events of overt and systemic racism beyond the University over

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2 Section 1 of the *Human Rights Code*, R.S.O. 1990, c. H-19 sets out the legal obligation to provide services without discrimination; section 5 sets out the legal obligation to provide employment without discrimination.
the past year\(^3\) had a distinctly heavy impact on BIPOC members of the community. As a result, the trauma of experienced racism is a constant presence for BIPOC students, staff and faculty which affects their ability to participate fully in the life of the Faculty, and to do so without fear.

The key themes raised by stakeholders fall into three broad categories:

(a) the direct impact on BIPOC individuals of doing anti-racist work;
(b) the impact of working and learning remotely during the COVID-19 pandemic; and
(c) institutional-level considerations that affect the ability to work effectively on anti-racism initiatives.

These categories will be outlined in more detail below.

(a) **Direct impact on individuals doing anti-racist work**

The theme raised most frequently in interviews is the overwhelming intensity of the emotional labour required in doing anti-racist work advocating for change within the institution where stakeholders study or work. BIPOC stakeholders have directly experienced racism over extended periods. Thus, advocating for anti-racism reform is of critical importance both personally and professionally. To have their experiences denied or dismissed is emotionally and mentally damaging gaslighting. At the same time, the work of identifying, analyzing and proposing solutions to systemic racism is incredibly time intensive, far beyond regular committee or course work. For individuals doing this work, holding their personal experiences and emotions, while trying to educate others about the harm of racism and advocating for change is emotionally, physically and mentally depleting and negatively affects individuals’ health. BIPOC stakeholders raised concerns that the institution lacks the capacity to facilitate conversations about anti-racism in a trauma-informed way which exacerbates the emotional and mental toll on stakeholders.

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\(^3\) These include but are by no means limited to state violence directed at Indigenous land defenders, police killings of Black and Indigenous people, rising embrace of white supremacy in Canada and the US during and following the US election, the 6 January insurrection in the US, anti-Indigenous racism in health care, and sharp increases in anti-Asian racism and violence during the COVID-19 pandemic.
The second most frequently raised theme in this category is that doing anti-racist work imposes a burden on BIPOC students and faculty not carried by their non-BIPOC colleagues. For example, while non-BIPOC students are earning a law degree, BIPOC students are doing that difficult work while also working to create an institution in which they can earn their degree without experiencing discrimination as the price for doing so. This has a detrimental impact on BIPOC students’ academic performance which is not recognized. At the same time, there are very few BIPOC faculty. BIPOC faculty identify the disproportionate, unrecognized work they do in providing mentorship and guidance to BIPOC students. Again, due to their low number, BIPOC faculty are often called upon and feel pressure to sit on Faculty and University committees to ensure a BIPOC presence. Being the only BIPOC committee member, or a minority presence on those committees is difficult, alienating work. It is particularly depleting if the committee’s work is experienced as performative rather than a genuine initiative for change. While BIPOC stakeholders largely agreed that BIPOC individuals should lead in identifying how to address systemic racism, the concern is that the work involved is not recognized and/or compensated (whether through academic credit, teaching release, research leave, or monetary compensation). BIPOC stakeholders are also very conscious of power imbalances within the Faculty, University and legal profession, and expressed genuine fear that advocating for anti-racism may result in either academic or professional reprisals.

The third key theme is that BIPOC stakeholders often experience advocating for institutional change or working with committees to advance change as relationships in which learning is unidirectional and extractive. BIPOC members’ expertise and extensive emotional and intellectual labour is extracted for the benefit of the institution, and they are forced to repeatedly recount traumatizing experiences, but do not receive an exchange of knowledge and capacity building from the institution. They express concern that when initiatives are adopted that have emerged from their advocacy, their contributions are not publicly acknowledged.

(b) The impact of the COVID-19 pandemic

Working to deconstruct systemic discrimination relies heavily on building
relationships of trust across difference. It requires participants to co-create and adopt new protocols and ways of interacting that model the non-discriminatory relationships to which anti-racism initiatives aspire. That relationship building often requires facilitation by external experts who can help participants move past entrenched patterns and ways of thinking. Sustainable relationship building is almost impossible to do well without in-person interactions. The artificiality of remote interactions impedes the organic development of relationships and of trust.

At the same time, the extended physical and social isolation of the pandemic, the increased complexity of family and community care during the pandemic, and the loss of family and friends to the pandemic means that people are stretched emotionally and mentally, and are time poor and economically precarious in extraordinary ways. Combined with the intense experiences of systemic discrimination outlined in Part I, these conditions of overwhelm undermine the ability to engage in difficult conversations and intense emotional labour in a healthy way.

(c) Impact of institutional-level factors

Five key themes emerged with respect to institutional-level factors that impair effective anti-racism action.

The governance structure at the University of Ottawa and within the Faculty of Law is exceedingly complex. In some respects, the practice also deviates from the by-laws which are outdated. A theme that was almost universally raised by students, staff and faculty stakeholders is the lack of clarity around decision-making authority and accountability: whether issues must be addressed centrally with the University or within the Faculty governance procedures; what can be addressed directly as an operational matter within the authority of the Dean and administration; and what the specific procedures and timelines are for implementing reforms through different governance procedures. This complexity creates frustrations and resentments that may or may not reflect the reality of decision-making processes. At the same time, the complexity can obscure accountability and appear to shelter unwarranted delay.
Another key concern is the lack of race-disaggregated data that can provide an evidence-based foundation for identifying and prioritizing necessary reforms. The University does not gather demographic information with respect to students and staff. The Faculty has gathered some data but demographic surveys are not a mandatory part of student registration. In particular, data on the concerns of racialized students, staff and faculty is lacking.

The distribution of BIPOC members of staff is uneven. As noted above, there are very few BIPOC full-time professors in the Faculty. There are also vanishingly few BIPOC managers and administrators. The majority of BIPOC staff are in non-managerial and service positions which creates a noticeable division of power within the Faculty that falls along racial lines.

There is widespread concern that the Faculty does not have a Code of Conduct and that the complaint process through the central Human Rights Office has limited effect. The concern is that without effective consequences for those who engage in discriminatory conduct, those who discriminate are emboldened, increasing the risk to BIPOC students, staff and faculty.

Finally, there was a desire from all stakeholders that some concrete actions be taken and completed during the present academic term to demonstrate the Faculty’s commitment to addressing systemic racism in a meaningful way and to build the foundations for working in a healthy and productive way moving forward.

Part III: Recommendations for Moving Forward

It is acknowledged that the present circumstances are challenging as the pandemic continues and as the middle of Winter Term approaches. People are exhausted, and relationships are frayed. Nevertheless, it is my opinion that meaningful steps can be taken to advance anti-racism initiatives during the present term and set the foundation for the next academic year. However, it is my opinion that it is premature to address systemic racism at the Faculty through a single Working Group tasked with addressing all forms of systemic racism.
While systemic race discrimination affects all BIPOC communities, the way that discrimination manifests differs significantly between communities. In society and within the Faculty of Law, the practices and structures of anti-Indigenous racism are different from those of anti-Black racism, which are, in turn, different from the multiple forms of systemic racism experienced by other racialized communities. Moreover, the Faculty’s history and extent of engagement addressing distinct forms of systemic racism are at different stages. While some initiatives are in process with respect to reconciliation, Indigenization and decolonization, initiatives addressing anti-Black racism have begun more recently, and initiatives addressing concerns of other racialized students, staff and faculty remain nascent. As a practical result, the priorities identified by different communities are not always aligned.

Yet, without doubt, significant work and resources are required to address all forms of systemic race discrimination affecting all BIPOC members of the Faculty. Attempting to address all these concerns through a single mechanism creates anxieties that different communities’ priorities will be placed in competition with each other. It creates fears that communities experiencing particular forms of systemic racism will lose agency to identify appropriately responsive actions. It also raises concerns that decisions will be made in the absence of appropriate data. At this point in time, the proposed single structure, with an undefined mandate, heightens feelings of distrust rather than fostering trust and productive relationships.

Work to dismantle practices and structures of systemic discrimination is by its nature iterative and collaborative. Actions must be sequenced appropriately to help the work build in a sustainable way. The problem-solving structures that are adopted can and should evolve over time to be responsive to the specific work required at any given stage. It is important to ensure that, ultimately, the problem-solving forum that emerges (whether it is one or more working groups or committees) is anchored in the Faculty governance structure so that continuity of action does not depend on the initiative of particular individuals; institutional memory is preserved; and lines of communication and accountability endure.

Transforming structures of systemic discrimination is complex work. Having a clearly defined objective for each stage of the work enables the work to be focused and divides the work into manageable stages.
In the immediate term (next 2-3 months), it is my opinion that the priority work involves capacity and relationship building which is best lead by the Dean’s office. It involves distinct, time-limited initiatives that respond to immediate impediments to sustained collaborative work. Some components that I propose are as follows:

(a) Provide training on governance and decision-making structures within the Faculty and at the central University level. This training to support effective strategy and advocacy is legal education in governance and democratic engagement. It should be offered to all stakeholders and representative organizations (ILSG, BLSA, other racialized student organizations, BIPOC Caucus of professors and librarians, staff representatives). Such training is an example of knowledge exchange and support for capacity building which creates collaborative rather than extractive relationships: the administrative shares its knowledge in a way that helps empower those who bring other expertise to the reform project. Providing this training to all groups together promotes transparency and can create opportunities to identify common interests or strategies. It can reduce misunderstandings that breed resentment and distrust. It may help identify faculty-student mentoring relationships with respect to governance issues that can be done by non-BIPOC faculty who sit on various governance committees. It can also help identify ways in which the goals and interests of law school administration, students, staff and faculty may be aligned rather than in tension.

(b) Provide training on how to engage in advocacy and collaborative work in a trauma-informed way.
This is a critical competency for practising lawyers. It is also a critical competency for those working to address systemic discrimination. Trauma-informed advocacy training builds the skills necessary to work with others who have experienced or are experiencing trauma; to work within institutions designed for the benefit of privileged classes and which replicate structures of discrimination; and to identify one’s own need for self-care in the face of direct and vicarious trauma. Providing this training to all stakeholders and representative organizations can help create space
to begin repairing relationships that have been frayed in the past year. Continuing to provide this training can ensure that all those who may sit on working groups or committees engaged with equity work have the skills to participate in those venues in a productive, healthy way. Providing this training also enables the administration to promote knowledge exchange and capacity building that helps build trust.

(c) **Conduct a survey of all students to identify concerns about systemic racism.**
An anonymized survey of all students about their experiences of systemic racism at law school would gather the data necessary for evidence-based decision-making. Such a survey would enable students who are not active members of student organizations to express their views. It would also fill a significant data gap with respect to racialized students. Analyzing the responses would help to identify priority areas of shared concern which could, in an evidence-based way, shape the mandate of a future working group or committee. If necessary, similar surveys could be conducted of staff and faculty. Creating an intersectional team of BIPOC stakeholders (perhaps through the hiring of BIPOC research assistants) to analyze the survey responses would be a task-specific way of creating transparency and steps towards collaboration.

The sharpening of data and priorities that emerges from these immediate term efforts would inform whether it is most productive in the short term (next 12-24 months) and medium-term (2-4 years) for anti-racism initiatives addressing concerns of Indigenous, Black and racialized communities to proceed separately, or whether there are some elements that would benefit from being addressed jointly. Proposing decision-making structures and their mandates in advance of those initial steps risks exacerbating tensions rather than promoting sustainable collaborative relationships.

**Concluding comments**

Collaborative work on system change only proceeds at the speed of trust. The quality of the relationships that are facilitated and the processes adopted are of paramount importance because they are a core part of systems change. They create
new habits of collaboration built on non-discriminatory principles. While the initial stages may differ from traditional committee structures, an iterative process that responds to data in real time can establish a stronger foundation for future action.

I trust that this initial report is of assistance. I would be happy to address any questions or comments you may have. Please do not hesitate to contact me.

Yours truly,

FAY FARADAY