(UN)NECESSARY EVILS?: ETHICAL AND EMOTIONAL CONFLICTS FOR SOCIAL CHANGE LAWYERS IN CANADA

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Abstract

This thesis concerns an exploratory study about "social change" lawyers in Canada. Based on qualitative interviews, I aim to provide a modest but in-depth examination of the experiences and practical challenges these lawyers face in their work and how they navigate them. I find their approaches are divided between external and internal, both of which are affected by lawyers' positionalities and experiences. "External approaches" concern how they reconcile conflicts in their values and responsibilities to different groups—namely individuals, communities and social movements—with each other, and with their obligations to the legal profession. Meanwhile, "internal approaches" concern how they navigate conflicting feelings arising out of working in contradictory and oppressive external systems. Ultimately, there is no formula or answer to how this work can be done; both approaches rely on finding a balance between conflicting parties or feelings and accepting an inherent uncertainty and unresolved nature of the work.

Acknowledgements

This thesis was conceptualized and written on the stolen lands and traditional territories of many First Nations, including most recently the unceded territories of the Anishinaabe Algonquin Nation. Beyond an acknowledgement, I commit myself to fulfilling my treaty responsibilities, especially as an uninvited settler (future) lawyer working in a colonial legal system.

Thank you to all participants for taking the time to share your reflections and experiences with me with so much care and depth — they have been invaluable both to this project as well as to my own understanding of how I can engage in this work in the future.

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Thank you to my mom, Amy, my dad, Duncan, and my people, Sophie, Jess, and Noé, all of whom have listened to me talk about this for hours on end, provided helpful feedback, and kept me grounded this past year. Thank you to everyone else who has helped me imagine what futures based out of equity and love might look like.

Finally, thank you to everyone doing tireless work on the ground to make the world a better place and pushing us all to get over ourselves and do the same or get out of the way.

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1 INTRODUCTION

"*This is a moment calling for a radical imagination, where the scale of deep critique is matched with a scale of grand vision*."[1]

Canadian law is violent. The colonial legal system is founded on and facilitates the oppression[2] and land dispossession of Indigenous peoples,[3] as well as the denial of Indigenous nations and laws.[4] It is systemically racist,[5] xenophobic,[6] classist,[7] ableist,[8] sexist,[9] and cisheterosexist,[10] resulting in intersectional forms of oppression.[11] It is also fraught with access to justice issues[12] and historic and contemporary exclusion of racialized and other marginalized groups from the legal profession.[13] Starting from this foundation,[14] how can lawyers use the law to work toward social change?[15]

Many people have outlined how to organize and work toward creating a better world.[16] The current legal system and lawyers commonly lie outside of these visions and constantly struggle to "catch up" to them.[17] In this thesis, I aim to provide a modest but in-depth examination of the experiences and practical challenges that "social change" lawyers in Canada face in their work: in particular, how they navigate these challenges, and how social identity may impact their choices, strategies, tactics, and relationships with the law. I find that their approaches are divided between external, or ethical, and internal, or emotional, both of which are affected by lawyers' positionalities and experiences.

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[1] Amna A Akbar, "Toward a Radical Imagination of Law" (2018) 93:3 NYUL Rev 405 at 412.
[2] Dean Spade "use[s] [the term] 'subjection' rather than 'oppression' because 'oppression' brings to mind the notion [...] that one set of people 'have power' and another set are denied it... [But] the operations of power are more complicated than that. [...] The term 'subjection' captures how the systems of meaning and control that concern us permeate our lives, our ways of knowing about the world, and our ways of imagining transformation" (*Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*, revised and expanded ed (Durham, North Carolina: Duke University Press, 2015) at 6). I use "oppression" throughout this thesis for clarity and understanding; the field of law often fails to acknowledge basic systems of oppression.
[3] See e.g. Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future:*

Summary of the Final Report of the Truth and Reconciliation Commission of Canada (Ottawa: Library and Archives Canada, 2015); National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019), online: <www.mmiwg-ffada.ca/final-report>; Bonita Lawrence, "Legislating Identity: Colonialism, Land and Indigenous Legacies" in Margaret Wetherell & Chandra Mohanty, eds, *The SAGE Handbook of Identities* (London: SAGE Publications, 2010) 508.

[4] See e.g. Sylvia McAdam (Saysewahum), *Nationhood Interrupted: Revitalizing Nêhiyaw Legal Systems* (Vancouver: UBC Press, 2019); John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002); B Lawrence, *supra* note 3 ("[i]n Canada, where treaty-making has almost always violated the integrity of Indigenous territories by cutting treaty lines arbitrarily across them, and entirely bypassing the larger traditional governments in order to deal only at the village level with so-called 'bands', Indigenous scholars are forced to carefully re-trace concepts of nationhood from within the oral tradition, and to reconnect the lines of their territories back to traditional frameworks, despite the legal dismemberment of their nations by the Indian Act in 1876" at 509); Laura Mudde, "Structural Genocide and Institutionalized Racism in Canada: The Department of Indian Affairs and Framing of Indigenous Peoples" (2018) 1:1 Alberta Academic Rev 15; Gabrielle Legault, "From (Re)Ordering to Reconciliation: Early Settler Colonial Divide and Conquer Policies in Canada" (2022) 11:2 J Indigenous Soc Development 44; Maxwell Sucharov, "The Ugly Truth to Canada's Big Lie: A Tale of Ongoing Settler Colonial Genocide of Canada's Indigenous Peoples and the Creation of an Apartheid State" (2022) 17:2 Psychoanalysis, Self & Context 196; Mary-Ellen Kelm & Keith D Smith, eds, *Talking Back to the Indian Act: Critical Readings in Settler Colonial Histories* (Toronto: University of Toronto Press, 2018). See also *Indian Act,* RSC 1985, c I-5.

[5] See e.g. Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995); Truth and Reconciliation Commission of Canada, *supra* note 3; Ontario Human Rights Commission, *Interrupted Childhoods: Over-representation of Indigenous and Black Children in Ontario Child Welfare* (Toronto: OHRC, 2018); Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999). Systemic racism has also been recognized by the Supreme Court of Canada (see e.g. *R v Barton*, 2019 SCC 33 at para 201; *R v Le*, 2019 SCC 34 at para 90) and other higher courts across the country (see e.g. *R v Morris*, 2021 ONCA 680; *R v Theriault,* 2021 ONCA 517). See also further discussion at ss 1.2.1 and 2.1, below.

[6] See e.g. Benjamin Perryman, "Citizenship, Belonging, and Deportation" (2023) 11 Can J Hum Rts 91; Deepa Mattoo & Sydele Merrigan, "'Barbaric' Cultural Practices: Culturalizing Violence and the Failure to Protect Women in Canada" (2021) 12:1 Intl J Child, Youth & Family Studies 124.

[7] See e.g. Emily Knox, Jeanne Mayrand-Thibert & Michelle Pucci, "Ticketing Poverty: An Analysis of the Discriminatory Impacts of Public Intoxication By-Laws on People Experiencing Homelessness in Montreal" (2023) 32 Dal J Leg Stud 157; Jackie Esmonde, "Criminalizing Poverty: The Criminal Law Power and the Safe Streets Act" (2002) 17 J L & Soc Pol'y 63; Mario Berti, "Handcuffed Access: Homelessness and the Justice System" (2010) 31:6 Urban Geography 825; Mitchell Stuart, "Canada's Justice System Favours Those Who Can Afford a Lawyer, Say Experts", (9 May 2023), online: <cbc.ca/radio/ideas/canadian-court-system-lawyers-fairness-justice-1.6836073>.

[8] See e.g. Fiona AK Campbell, "Inciting Legal Fictions: 'Disability's' Date with Ontology and the Ableist Body of the Law" (2001) 10 Griffith L Rev 42; Isabel Grant et al, "A Conversation on Feminism, Ableism, and Medical Assistance in Dying" (2024) 35:1 CJWL 31; Heidi Janz, "MAID to Die by Medical and Systemic Ableism" in Jaro Kotalik & David W Shannon, eds, *Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives* (Cham: Springer International Publishing, 2023) 299; Jonas-Sébastien Beaudry, "Ableism's New Clothes: Achievements and Challenges for Disability Rights in Canada" (2024) 74:1 UTLJ 1; Kelly Fritsch, Jeffrey Monaghan & Emily Van der Meulen, *Disability Injustice: Confronting Criminalization in Canada* (Vancouver: UBC Press, 2022). See also Laverne A Jacobs et al, eds, *Law and Disability in Canada: Cases and Materials* (Toronto: LexisNexis Canada, 2021).

[9] See e.g. Caroline Dick, "Sex, Sexism, and Judicial Misconduct: How the Canadian Judicial Council Perpetuates Sexism in the Legal Realm" (2020) 28:2 Fem Leg Stud 133; Jeffrey J Rachlinski & Andrew J Wistrich, "Benevolent Sexism in Judges" (2021) 58 San Diego L Rev 101.

[10] "Cisheterosexism is the societal and institutional privileging of heterosexuality, cisgender identity, and binary sex assignment as the norm... [it] functions simultaneously alongside sexism to construct and reinforce the existence of two distinct gender categories... each with specific parameters for 'appropriate' enactment or performance... Sexism,

as a system, privileges cisgender men and masculinity" (LGBTQ Center UNC-Chapel Hill, "Coming Out" (last accessed 2 August 2024), online: <lgbtq.unc.edu/resources/exploring-identities/coming-out>). For examples of how it operates in the legal system see Tia Dafnos, "What Does Being Gay Have to Do with It? A Feminist Analysis of the *Jubran* Case" (2007) 49:5 Can J Corr 561; Bruce MacDougall, *Queer Judgments: Homosexuality, Expression, and the Courts in Canada* (Toronto: University of Toronto Press, 2000); William Hébert & Samuel Singer, "Trans Rights, Trans Justice: A Conversation About Key Trans Legal Issues in Canada" (2022) 34:2 CJWL 354; Jena McGill & Kyle Kirkup, "Locating the Trans Legal Subject in Canadian Law: XY v Ontario" (2013) 33:1 Windsor Rev Legal Soc Issues 96; Pierre Cloutier de Repentigny & Evan Vipond, "Searching for Justice: Moving Towards a Trans Inclusive Model of Access to Justice in Canada" (2024) 47:1 Dal LJ 231. See also Spade, *supra* note 2; Kevin L Nadal et al, "Navigating Microaggressions, Overt Discrimination, and Institutional Oppression: Transgender and Gender Nonconforming People and the Criminal Justice System" in Christine L Cho, Julie K Corkett & Astrid Steele, eds, *Exploring the Toxicity of Lateral Violence and Microaggressions: Poison in the Water Cooler* (Cham: Springer International Publishing, 2018) 51.

[11] The term "intersectional" was coined by Kimberlé Williams Crenshaw: "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law" (1988) 101:7 Harv L Rev 1331; "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43:6 Stan L Rev 1241. See also e.g. Sunera Thobani, "Introduction: Of Exaltation" in *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007) [Thobani, "Introduction"]; S Thobani, "Closing Ranks: Racism and Sexism in Canada's Immigration Policy" (2000) 42:1 Race & Class 35; Erica G Rojas, Laura Smith & Randolph M Scott-McLaughlin, "Women, Poverty, and the Criminal Justice System: Cyclical Linkages" in Corinne C Datchi & Julie R Ancis, eds, *Gender, Psychology, and Justice: The Mental Health of Women and Girls in the Legal System* (New York University Press, 2017) 224; Hijin Park, "Racialized Women, the Law and the Violence of White Settler Colonialism" (2017) 25:3 Fem Leg Stud 267.

[12] See e.g. Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020); Jasminka Kalajdzic, *Class Actions in Canada: The Promise and Reality of Access to Justice* (Vancouver: University of British Columbia Press, 2018); Kerri A Froc, "Is the Rule of Law the Golden Rule?: Accessing 'Justice' for Canada's Poor" (2009) 87 Can B Rev 459; Emily Bates, Jennifer Bond & David Wiseman, "Troubling Signs: Mapping Access to Justice in Canada's Refugee System Reform" (2015) 47:1 Ottawa L Rev 1; Bethany Hastie, "The Inaccessibility of Justice for Migrant Workers: A Capabilities-Based Perspective" (2018) 34:2 Windsor YB Access Just 20. See also Elizabeth L MacDowell, "Reimagining Access to Justice in the Poor People's Courts" (2015) 22:3 Geo J on Poverty L & Pol'y 473; Rebecca L Sandefur, "Access to What?" (2019) 148:1 Daedalus 49; David Larson, "Access to Justice for Persons with Disabilities: An Emerging Strategy" (2014) 3:2 Laws 220.

[13] See e.g. Charles C Smith, "Tuition Fee Increases and the History of Racial Exclusion in Canadian Legal Education", (December 2004), online: <ohrc.on.ca/en/race-policy-dialogue-papers/tuition-fee-increases-and-history-racial-exclusion-canadian-legal-education>; The Law Society of Upper Canada [LSUC], Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions (2016), online (pdf): <lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Working-Together-for-Change-Strategies-to-Address-Issues-of-Systemic-Racism-in-the-Legal-Professions-Final-Report.pdf>.

[14] Amna A Akbar, Sameer M Ashar & Jocelyn Simonson, "Movement Law" (2021) 73:4 Stan L Rev 821 ("[i]n contravention of the common sentiment in law that the embrace of politics is the end of analysis, we believe it is a beginning" at 874).

[15] By "social change", I mean efforts to alter social structures to make them more equitable while disrupting the status quo. As other academics have done, I am focused on progressive approaches to social change rather than conservative ones: see e.g. Scott L Cummings, "Law and Social Movements: Reimagining the Progressive Canon" (2018) 2018:3 Wis L Rev 441 [Cummings, "Progressive Canon"]; Basil S Alexander, "Pragmatic Assorted Strategies: How Canadian Cause Lawyers Contribute to Social Change" (2019) 90:2d SCLR 3 at 9-10.

[16] Erica Violet Lee, "This is not about guilt or shame." (11 May 2024), online: <x.com/ericavioletlee/status/1789452341063905465> (post 2/2) ("[t]his is about understanding that every guide, every map we need for a gentler world is available"). See e.g. Eric Shragge, Jill Hanley & Aziz Choudry, eds, *Organize!: Building from the Local for Global Justice* (Oakland: PM Press, 2012).

[17] Fleur Johns, "On Writing Dangerously" (2004) 26 Sydney L Rev 473 ("[l]aw is the toddler lunging at bubbles and grasping for words [while] [l]awyers are in and out at the same time: central and yet strangely beside the point" at 474).

1.1 Roadmap

I begin with a brief overview of the context and contradictions in which I am writing, then situate my study in a wider body of literature on social change lawyering and the relationship between law and social movements. Chapter 2 summarizes my approaches to the research, including theoretical frameworks, methodology, sample, data collection, and analysis. I then outline my findings. Chapter 3 concerns social change lawyers' "external approaches", or how they reconcile conflicts in their values and responsibilities to different groups—namely individuals, communities and social movements—with each other, and with their obligations to the legal profession. Following this, I examine their "internal approaches" in Chapter 4, or how lawyers navigate the conflicting feelings that arise out of working in contradictory and oppressive external systems. Finally, in Chapter 5, I conclude with some reflections on the research and recommendations for future study.

1.2 Contextual Overview

1.2.1 The Motivation

I started conceptualizing this thesis in the final year of my MSW/JD[18]. I applied to law school after a brief experience in frontline social work, thinking it might provide an opportunity to address some of the profound structural issues affecting clients. Instead, I encountered many people in policy work trying to foster deeper connections with communities.[19] While too much focus on the individual or micro level can obscure root causes, too much at the structural or macro level can disconnect from lived realities and community voices. Stemming from my social

[18] Master of Social Work/Juris Doctor, or combined law and social work degree.
[19] See also Karin Galldin, "Using the Master's Tools: Reflections on Feminist Lawyering and Process" (2020) 32:2 CJWL 288 ("[p]rogressive lawyering is challenged by the uncertainty of how to make the biggest impact: is it through widespread, systemic change or through measurably improving the life of an individual client?" at 304).

work education,[20] I believe a combination of both is essential to achieve meaningful social change. As a result, my interests shifted from "policy reform" to "movement lawyering".

Law school also reminded me of the inherent violence of colonial law. I wrote several papers about how theoretically progressive reforms can in practice reinforce colonial state power and further harm Black and Indigenous people in particular.[21] National mythologies continue to obscure these harms through narratives of "colourblindness" and "multiculturalism"[22] and

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[20] The distinctions and relationships between micro, mezzo, and macro levels are fundamental to social work practice. See e.g. Janice Monti, "Micro vs. Mezzo vs. Macro Social Work" (last updated 17 July 2024), online: <socialworkguide.org/resources/micro-vs-mezzo-vs-macro-social-work>.

[21] For example, *Gladue* reports (see Jamuna Galay-Tamang "'This Justice System is Failing Our People': Report Meant to Help Indigenous People in Court Often Causes Harm", (24 November 2023), online: <cbc.ca/documentaries/the-passionate-eye/this-justice-system-is-failing-our-people-report-meant-to-help-indigenous-people-in-court-often-causes-harm-1.7039543>; Hayden King & Paula Hill, *Twenty-Five Years of Gladue: Indigenous 'Over-Incarceration' & the Failure of the Criminal Justice System on the Grand River* (Toronto: Yellowhead Institute, 2024), online (pdf): <yellowheadinstitute.org/wp-content/uploads/2024/07/YI-Gladue-Special-Report-July-2024.pdf>; Judah Oudshoorn, "Theorizing a Way out of Reformist Reforms: Gladue Reports and Penal Abolition" (2024) 26:2 Punishment & Society 243; Alexandra Hebert, "Change in Paradigm or Change in Paradox? Gladue Report Practices and Access to Justice" (2017) 43:1 Queen's LJ 149; Charlotte Baigent, "Why Gladue Needs an Intersectional Lens: The Silencing of Sex in Indigenous Women's Sentencing Decisions" (2020) 32:1 CJWL 1; Jillian Rogin, "Gladue and Bail: The Pre-Trial Sentencing of Aboriginal People in Canada" (2017) 95:2 Can Bar Rev 325; David Milward & Debra Parkes, "Gladue: Beyond Myth and Towards Implementation in Manitoba" (2011) 35:1 Man LJ 84) and the *UNDRIP Act* (Wendy Lynn Lerat, "Our Colonial History, the Colonial Agenda and Bill C-15", (4 May 2021), online: <cbc.ca/news/canada/saskatchewan/opinion-wendy-lynn-lerat-bill-c-15-1.6009178>; Steven T Newcomb, "The UN Declaration on the Rights of Indigenous Peoples and the Paradigm of Domination" (2011) 20:3 Griffith L Rev 578; Karen Engle, "On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights" (2011) 22:1 Eur J Intl Law 141; Aileen Moreton-Robinson, "Virtuous Racial States: The Possessive Logic of Patriarchal White Sovereignty and the United Nations Declaration on the Rights of Indigenous Peoples" (2011) 20 Griffith L Rev 641; Rosemary Nagy, "Transformative Justice in a Settler Colonial Transition: Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada" (2022) 26:2 Intl JHR 191; Ward Churchill, "A Travesty of a Mockery of a Sham: Colonialism as 'Self-Determination' in the UN Declaration on the Rights of Indigenous Peoples" (2011) 20:3 Griffith L Rev 526. But see Sara Mainville, "Hunting Down a Lasting Relationship with Canada - Will UNDRIP Help?" (2020) 57 Osgoode Hall LJ 98 ("*UNDRIP* does have some promising 'reconciliation' ingredients, but only if those ingredients include co-development with Indigenous peoples to create the final recipe and solution" at 104). See also Julia Sudbury, "Maroon Abolitionists" (2009) 9:1 Meridians 1 (examines the "non-reformist reforms" used by Black gender-oppressed activists in the anti-prison movement).

[22] See e.g. Carol A Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax, NS: Fernwood Publishing, 1999) (challenges the "prevailing myth in Canada that racism was never a factor in Canadian society" at 76); Vincent Wong, "Ethno-racial Legal Clinics and the Praxis of Critical Race Theory in Canada" (2020) 16 JL & Equality 63; Thobani, "Introduction", *supra* note 11; Carl E James, "Re/representation of Race and Racism in the Multicultural Discourse of Canada" in Ali A Abdi & Lynette Shultz, eds, *Educating for Human Rights and Global Citizenship* (Albany, NY: SUNY Press, 2008) 97; Jane Ku et al, "'Canadian Experience' Discourse and Anti-Racialism in a 'Post-Racial' Society" (2019) 42:2 Ethnic & Racial Studies 291; Heather Exner-Pirot, "Friend or Faux? Trudeau, Indigenous Issues and Canada's Brand" (2018) 24:2 Can Foreign Pol'y J 165; Liam Midzain-Gobin, "Comfort and Insecurity in the Reproduction of Settler Coloniality" (2021) 9:3 Critical Studies on Security 212

performances of "reconciliation".[23] These issues also inspired this project, especially because social change lawyers are sometimes described as a universal category.[24]

Through researching and writing my thesis, I wanted to figure out how lawyers doing "social change" work deal with professional tensions and structural barriers that have come up for me in regard to working within a racist colonial legal system, so that I could put my knowledge and skills to the most use while doing the least harm. As Angela Harris, Margaretta Lin and Jeff Selbin note, "concerns [about power and the dread of complicity in domination in social justice lawyering] are real... Yet the solution cannot be to withdraw one's training, knowledge, and influence from the struggle."[25] I reflected in a similar way on my responsibilities as a white settler after engaging in discussions, particularly during the resurgence of the Black Lives Matter movement in 2020, of the privilege white folks have to "disconnect" from racism.[26]

("[i]n distinguishing ourselves [from the US], settler Canadians largely enable our own moves to innocence distancing ourselves from the overt racism and violence of the United States. We envision a uniquely inclusive Canadian tolerance, one that is practically embodied in the rhetoric of reconciliation and multiculturalism" at 217); Susan McKelvey, "Creating the Myth of 'Raceless' Justice in the Murder Trial of R. v. Richardson, Sandwich, 1903" in Barrington Walker, ed, *The African Canadian Legal Odyssey: Historical Essays* (Toronto: University of Toronto Press, 2012) 167 ("[a]lthough the Canadian justice system was constructed — and may superficially have appeared — to be 'raceless', racism was nevertheless pervasive because it was inherent in the underlying systems and structures of the legal system" at 168-9); Himani Bannerji, "Geography Lessons: On Being an Insider/Outsider to the Canadian Nation" in The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender (Toronto: Canadian Scholars' Press, 2000) 63; Jenny Burman, "Multicultural Feeling, Feminist Rage, Indigenous Refusal" (2016) 16:4 Cultural Studies Critical Methodologies 361 ("it is necessary to recognize Canadian multiculturalism as a diversity framework that is implicated in and accountable to the ongoing violence of settler colonialism, and to build something different, in solidarity with self-governing Indigenous communities" at 370); Delores V Mullings, "Racism in Canadian Social Policy" in Anne Westhues & Brian Wharf, eds, *Canadian Social Policy: Issues and Perspectives*, 5th ed (Waterloo, ON: Wilfrid Laurier University Press, 2012) 95. See also Sujith Xavier, "Biased Impartiality: A Survey of Post-RDS Caselaw on Bias, Race and Indigeneity" (2021) 99:2 Can B Rev 354 (example of how this operates within the legal system).

[23] See Audra Simpson, "Whither Settler Colonialism?" (2016) 6:4 Settler Colonial Studies 438; Glen Sean Coulthard, "Seeing Red: Reconciliation and Resentment" in *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014) 105; Pauline Wakeham, "Reconciling 'Terror': Managing Indigenous Resistance in the Age of Apology" (2012) 36:1 Am Indian Q 1; Taiaiake Alfred, *It's All about the Land: Collected Talks and Interviews on Indigenous Resurgence* (Toronto: University of Toronto Press, 2023).

[24] Further discussion of this occurs at s 1.3.1, below.

[25] "From 'The Art of War' to 'Being Peace': Mindfulness and Community Lawyering in a Neoliberal Age" (2007) 95 Cal L Rev 2073 at 2115.

[26] See e.g. Elizabeth Gulino, "Feed Fatigue Is Real; But Pushing Past It Is Essential", (15 July 2020), online: <refinery29.com/en-ca/2020/07/9916363/feed-fatigue-social-media>; Sunny Moraine, "The Privilege of

1.2.2 The Moment

A lot of contemporary literature on social change lawyering, particularly from 2020 onward, talks about this "moment"[27]—"a time of crisis"[28] and "the crises of our time"[29]—and how members of the legal profession should respond.[30] This moment is characterized by numerous interconnected oppressions, violence, and resistance efforts, including:

- ongoing colonial violence and occupation, multiple genocides funded by Western states and motivated by capitalist and imperialist interests, and decolonial organizing in response;
- police brutality and murder, and abolitionist organizing in response;
- "xenophobic backlash against migrants (e.g. surveillance, detention, deportation) and the rise of far-right parties, mainstreaming of extremist language and spike in racist and xenophobic hate crimes",[31] and anti-fascist and migrant justice organizing in response;
- the (ongoing![32]) COVID-19 pandemic and disability justice organizing in response;

Disconnection", (21 August 2014), online: <thesocietypages.org/cyborgology/2014/08/21/the-privilege-of-disconnection>; EMM not Emma., "I keep reading that it's okay if we need to take a break from the news" (30 May 2020), online: <www.facebook.com/photo?fbid=2630434357232825>.

[27] See e.g. Akbar, Ashar & Simonson, *supra* note 14 ("[w]e are in a moment, then, of great suffering and great possibility-what comes next is uncertain" at 832); Jamelia Morgan, "Lawyering for Abolitionist Movements" (2021) 53 Conn L Rev 605 at 611. See also Fargo Nissim Tbakhi, "Notes on Craft: Writing in the Hour of Genocide", (10 December 2023), online: <portside.org/2023-12-10/notes-craft-writing-hour-genocide> ("[w]hat does Palestine require of us, as writers writing in English from within the imperial core, in this moment of genocide?"); Desmond Cole, *The Skin We're In: A Year of Black Resistance and Power*, paperback ed (Toronto: Anchor Canada, 2022) ("[i]n this moment of Black organizing and white guilt" at xii).

[28] Catherine Albiston, S Cummings & Richard L Abel, "Making Public Interest Lawyers in a Time of Crisis: An Evidence-Based Approach" (2021) 34:2 Geo J Legal Ethics 223. See also Mostafa Henaway, "Immigrant Worker Organizing in a Time of Crisis: Adapting to the New Realities of Class and Resistance" in Choudry, Hanley & Shragge, *supra* note 16; John Smyth, "Critical Social Science as a Research Methodology in Universities in Times of Crisis" (2020) 20:4 Qualitative Research J 351.

[29] Akbar, Ashar & Simonson, *supra* note 14 ("[t]o the extent that we are writing and producing scholarship, we should speak to the crises of our time with boldness and honesty, and in solidarity with poor and working-class people and grassroots movements" at 832). At the same time, I am conscious of how invoking the language of "crisis" can obscure the ways that these systems are working as intended (Vasuki Nesiah, "'A Mad and Melancholy Record': The Crisis of International Law Histories" (2021) 11:2 Notre Dame J Intl & Comp L 232; Efrat Arbel, "Rethinking the 'Crisis' of Indigenous Mass Imprisonment" (2019) 34:3 CJLS 437).

[30] See e.g. Raymond H Brescia, "Ethics in Pandemics: The Lawyer for the (Crisis) Situation" (2020) 34 Geo J Leg Ethics 295; R Brescia, "Lessons from the Present: Three Crises and Their Potential Impact on the Legal Profession" (2021) 49 Hofstra L Rev 607; Rachel F Moran, "The Three Ages of Modern American Lawyering and the Current Crisis in the Legal Profession and Legal Education" (2019) 58:3 Santa Clara L Rev 453.

[31] Akwugo Emejulu & Leah Bassel, "The Politics of Exhaustion" (2020) 24:1-2 City 400 at 401.

[32] Meghan Bartels, "Rampant COVID Poses New Challenges in the Fifth Year of the Pandemic", (6 February 2024),

- ecological violence and environmental racism, climate change, and climate justice organizing in response;
- escalating numbers of preventable overdose deaths,[33] a poisoned drug supply,[34] stigmatization and criminalization of drug use, and harm reduction organizing in response; and
- increasing financial disparity, precarity, and austerity, swathes of tenant and encampment evictions, skyrocketing rates of homelessness,[35] and tenant, worker, and anti-poverty organizing in response.

It has also been referred to as a "moment of multiple catastrophes"[36] and an "era of endings".[37] The ways that many "settlers talk about apocalypse... reveals a kind of privilege and naïveté that is indicative of how complete the destruction of Indigenous peoples and our nations is in the mindset of most Canadians and Americans".[38] Indigenous and Black people across Turtle Island outline how these issues "are not getting worse, they are getting uncovered";[39] they

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online: <scientificamerican.com/article/rampant-covid-poses-new-challenges-in-the-fifth-year-of-the-pandemic>; Nicole Ireland, "Your 'Summer Cold' Could Likely be COVID-19, Doctors Say Amid Surge", (3 August 2024), online: <globalnews.ca/news/10679341/covid-19-summer-2024-surge>.

[33] Benedikt Fischer, "The Continuous Opioid Death Crisis in Canada: Changing Characteristics and Implications for Path Options Forward" (2023) 19 Lancet Regional Health – Americas 100437; Shaleesa Ledlie et al, "Opioid-Related Deaths Between 2019 and 2021 Across 9 Canadian Provinces and territories" (2024) 196:14 CMAJ E469. See also HIV Legal Network, "Media Statement - Government of Ontario Plan Will Lead to More Preventable Drug Poisoning Deaths" (20 August 2024), online: <hivlegalnetwork.ca/site/media-statement-government-of-ontario-plan-will-lead-to-more-preventable-drug-poisoning-deaths>.

[34] McQuillan, Laura, "'Mass Poisoning Crisis': Canadians Need to Change How We Talk About Drug Deaths, Advocates Say", (24 May 2022), online: <cbc.ca/news/health/drug-poisoning-deaths-language-1.6457834>.

[35] A recent unofficial estimate by the Government of Ontario suggests "nearly a quarter of a million people — roughly three of every 200 residents — are homeless" (Charlie Pinkerton & Jack Hauen, "Ontario's 'Unofficial Estimate' of Homeless Population is 234,000: Documents", (13 August 2024), online: <thetrillium.ca/news/housing/ontarios-unofficial-estimate-of-homeless-population-is-234000-documents-9341464>).

[36] Emejulu & Bassel, *supra* note 31 at 406. While "catastrophe" has a similar connotation to "crisis", it can also mean "the denouement of a tragedy" or "a disastrous end; ruin" (Katherine Barber, ed, *The Canadian Oxford Dictionary*, 2nd ed (Don Mills: Oxford University Press) sub verbo "catastrophe").

[37] Antonio M Coronado, "Divine Injustice: Myths of Good Lawyers & Other Legal Fictions Notes" (2022) 14:1 Georgetown JL & Modern Critical Race Perspectives 107 at 114.

[38] Leanne Betasamosake Simpson, "Indigenous Resistance Lifts the Veil of Colonial Amnesia" (16 November 2017), online: <geezmagazine.org/magazine/article/indigenous-resistance-lifts-the-veil-of-colonial-amnesia>. See also e.g. Sara Reine, "Tweeting in the Time of Burning Screaming Apocalypse", (5 November 2018), online: Egregious <https://egreg.io/burning-screaming-apocalypse>.

[39] adrienne marie brown, "a range of reflections on resilience" (9 November 2016), online: <adriennemareebrown.net/2016/11/09/a-range-of-reflections-on-resilience>.

are "not evidence of a so-called 'tipping point', but rather the cumulative and ongoing struggle of people forcing our elites to reckon with their crimes against people and the planet."[40] While everyone is living during this moment, they are experiencing it in vastly different ways.[41] Yet, "[w]e find ourselves at a critical juncture in human evolution where global human solidarity is imperative for the survival of our species."[42]

1.2.3 The Academy

My struggles to grapple with the contradictions of working toward social change through law are reflected in my struggles to produce this thesis. It is "necessarily contradictory"[43] to write a thesis about how lawyers can work toward social change from within an academic institution,[44] especially as universities play a "central role in reproducing elite rule and the myth of meritocracy"[45] and continue to violently repress and restrict organizing efforts by student activists and union members,[46] and "this kind of sustained writing requires some temporary stepping back from active participation in the very movements and struggles the research emerges from and is accountable to".[47] Yet, other scholars in movement and radical legal work

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[40] Cole, *supra* note 27 at xiii.
[41] Khaldah, "I really can't stand Canadians" (26 February 2024), online: <x.com/Khaldah_/status/1762171118553616567>; Dr. Lucky Tran, "We are living in an age of denial" (28 May 2024), online: <x.com/luckytran/status/1795539234767687969>.
[42] Vanja Vukelic, "Solidarity Is Sacred", (20 February 2024), online: <multilayered.substack.com/p/solidarity-is-sacred>.
[43] Akbar, Ashar & Simonson, *supra* note 14 at 829.
[44] See also Smyth, *supra* note 28.
[45] Akbar, Ashar & Simonson, *supra* note 14 at 829.
[46] This is true of my alma mater as well as of the university where I am now, in terms of both student encampments in solidarity with Palestine (see e.g. UofT Occupy for Palestine, "On June 27, 2024, campus police violently attacked @UofTstudent protestors" (7 July 2024), online: <x.com/occupyuoft/status/1810032583536984270>; York Popular University for Palestine, "It is with grief and rage that we announce that at 8 AM on Wednesday, June 6, York U Administration called police on the York Popular University for Palestine and violently cleared it without prior warning" (6 June 2024), online: <instagram.com/p/C74eqKXJn9q>) and unions (see e.g. CUPE 3903, "Bargaining Team Report for the week of March 3 to 10, 2024" (11 March 2024), online: <3903.cupe.ca/2024/03/11/bargaining-team-report-for-the-week-of-march-3-to-10-2024>; York University Faculty Association, "Bargaining Update: Employer's proposals focus on stripping YUFA's Collective Agreement" (24 July 2024) online: <yufa.ca/bargaining_update>.
[47] Irina Ceric, *Lawyering from Below: Activist Legal Support in Contemporary Canada and the US* (PhD Thesis, York University, 2020) [unpublished] at n 6.

find that these contributions remain important.[48] My own study focuses on lawyers' relationships to social movements and their experiences of social change lawyering. While there are valid concerns about excessive focus on lawyers in the context of social movements,[49] I wrote this thesis as a way to share my learning and insights from my research with current and future lawyers who might benefit from them, as well as identifying areas for future study.

1.3 Scholarship Overview

Questions about how lawyers can assist with working toward social change have been asked for about as long as lawyers have been engaged in this work.[50] Over time, perspectives on the relationship between law and social change have evolved significantly.[51] For decades, legal practitioners and academics have also tried to define what equitable lawyering can look like. So many approaches have been proposed that some authors use separate umbrella terms to

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[48] *Ibid* (the opportunity to critically reflect and theorize is a crucial (if often neglected) element of movement praxis and ... such moments are essential to the production of movement knowledges" at n 6); Akbar, Ashar & Simonson, *supra* note 14 ("[n]onetheless, we believe it is important and possible for legal scholars to support efforts at radical and popular ideation toward transformation. Otherwise, we acquiesce to a much narrower and more elite discourse" at 829).

[49] See e.g. Anna-Maria Marshall & Daniel Crocker Hale, "Cause Lawyering" (2014) 10 Annual Rev L & Soc Science 301 ("by studying [only] lawyers, we risk underestimating the role of cause lawyering in the broader field of law and social change" at 303); Ceric, *supra* note 47.

[50] See Joel F Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (New York: Academic Press, 1978) (offers an early theoretical conception of law and social movements as an academic field but acknowledges the number of decades these questions have been asked at 1). Due to the massive amount of literature on this topic, I am limiting the scope of this review to Canada and the US; but see e.g. Ahmed Ezzat, "Challenging the Legal Ideology of the State: Cause Lawyering and Social Movements in Egypt" (24 May 2019), online: <arab-reform.net/publication/challenging-the-legal-ideology-of-the-state-cause-lawyering-and-social-movements-in-egypt>; Ching-Fang Hsu, "Lawyers and Social Movements in Taiwan: Two Waves of Mobilization and Two Generations of Activist Lawyers" in Steven A Boutcher, Corey S Shdaimah & Michael W Yarbrough, eds, *Research Handbook on Law, Movements and Social Change* (Edward Elgar Publishing, 2023) 71.

[51] Different scholars have tried to categorize these changes over time, whether through thematic criteria or temporal distinctions. See e.g. S Cummings & Ingrid V Eagly, "A Critical Reflection on Law and Organizing" (2001) 48:3 UCLA L Rev 443 (divides the law and organizing movement into four stages: the progressive critique, the postmodern critique, the emergence of community organizing, and the fusion of law and organizing); Moran, *supra* note 30 (divides "modern American lawyering" into three "ages", the third being cause lawyering); Cummings, "Progressive Canon" *supra* note 15 (divides the "progressive legal canon" into the "old canon" and the "new canon"). See also Susan D Carle, "Ethics and the History of Social Movement Lawyering" (2018) 2018:2 Wis L Rev Forward 12; Ruth Buchanan & Louise G Trubek, "Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering" (1991) 19:4 NYU Rev L & Soc Change 687.

encompass them all,[52] while others use different terms interchangeably.[53] Similarly, I use the broad category of "social change lawyering"[54] when not speaking about a specific approach.

Since the 1970s, the social change lawyering literature has increasingly focused on power imbalances between lawyers and clients, especially in poverty law, where clients experience intersecting marginalizations and lawyers may dominate client and community interests.[55] Commenting on this ideological shift, Scott L. Cummings and Ingrid V. Eagly note that for postmodern poverty law scholars, "the antidote to client subordination was client empowerment. In order to facilitate empowerment, it was necessary to reaffirm the client's capacity as an agent of social change and challenge the 'myth' of client passivity and dependency."[56] They recognize Gerald P. López[57] and Lucie E. White[58] as "[t]he most influential scholars in this regard".[59]

López in particular is widely cited by those doing definitional work.[60] Alongside López's

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[52] See e.g. Stuart Scheingold, "The Struggle to Politicize Legal Practice: A Case Study of Left-Activist Lawyering in Seattle" in Cause Lawyering: Political Commitments and Professional Responsibilities (New York: Oxford University Press, 1998) 118 (uses "left-activist lawyering" to "provide an umbrella concept with which to collect and to synthesize the full range of principles and practices found in the existing literature" at 144, n 2); Shin Imai, "A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering" (2002) 9:1 Osgoode Hall LJ 195 (uses "community-based lawyering" to encompass "rebellious lawyering", "community lawyering", "critical lawyering", "activist lawyering", and "long-haul lawyering" at 197). See also Michael Grinthal, "Power With: Practice Models for Social Justice Lawyering" (2011) 15:1 U Pa JL & Soc Change 25 (uses "social justice lawyering" to encompass different models of practice that the author outlines and defines).
[53] See e.g. Shauna I Marshall, "Mission Impossible: Ethical Community Lawyering" (2000) 7:1 Clinical L Rev 147 ("I use the terms 'community lawyering' and 'rebellious lawyering' interchangeably throughout this article" at 147).
[54] I am not the first to use this term; see e.g. William Quigley, "Ten Questions for Social Change Lawyers" (2012) 17 Loyola Public Interest Law Reporter 204 [Quigley, "Ten Questions"]; Marisol Orihuela, "Crim-Imm Lawyering" (2020) 34:3 Geo Immigr LJ 613.
[55] See e.g. William H Simon, "The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era" (1994) 48 U Miami L Rev 1099.
[56] *Supra* note 51.
[57] *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Boulder: Westview Press, 1992).
[58] "Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak" (1987) 16 NYU Rev L & Soc Change 535; "To Learn and Teach: Lessons from Driefontein on Lawyering and Power" (1988) 1988:5 Wis L Rev 699.
[59] *Supra* note 51.
[60] See e.g. Richard D Marsico, "Working for Social Change and Preserving Client Autonomy: Is There a Role for Facilitative Lawyering" (1995) 1:3 Clinical L Rev 639; Alfredo Mirande, "Rascuache Lawyer: A Paradigm of Ordinary Litigation" (2011) 1 U Miami Race & Soc Just L Rev 155; Veryl Pow, "Rebellious Social Movement Lawyering against Traffic Court Debt" (2017) 64:6 UCLA L Rev 1770; Daniel S Farbman, "Resistance Lawyering" (2019) 107:6 Cal L Rev 1877; Bennett Capers & Bruce A Green, "Colloquium: Subversive Lawyering—Foreword" (2022) 90:5 Fordham L Rev 1945.

conception of "rebellious lawyering", many authors proposed their own practice models.[61] The most prominent of these have been "community lawyering", which centres the empowerment of communities,[62] and "cause lawyering", which involves "lawyers devot[ing] themselves to serving political causes... [and] us[ing] their professional skills in the service of moral and political ends."[63] Since the 2010s, the concept of "movement lawyering" has also gained significant traction.[64] While the term itself is not new,[65] it is only recently that "the principles and theory of movement lawyering have been developed".[66] Susan D. Carle and Scott L. Cummings note that "[t]his definitional project always raises questions about whether the new model is really new or rather repackages old concepts and practices" but argue that "both perspectives are

[61] See e.g. Grinthal, *supra* note 52; Paul Harris, "Guerilla Lawyering" (2004) 3:2 Seattle J for Social Justice; Jayesh Rathod, "Transformative Immigration Lawyering" (2022) 132 Yale LJ 632; Farbman, *supra* note 60; Capers & Green, *supra* note 60; Mirande, *supra* note 60; Ascanio Piomelli, "Appreciating Collaborative Lawyering" (2000) 6 Clinical L Rev 427; A Piomelli, "The Challenge of Democratic Lawyering" (2009) 77 Fordham L Rev 1383; Lauren Carasik, "'Think Glocal, Act Glocal': The Praxis of Social Justice Lawyering in the Global Era" (2008) 15 Clinical L Rev 55; Martha Minow, "Political Lawyering: An Introduction" (1996) 31:2 Harv CR-CLL Rev 287; Gary Bellow, "Steady Work: A Practitioner's Reflections on Political Lawyering" (1996) 31:2 Harv CR-CLL Rev 297.

[62] See Angelo N Ancheta, "Community Lawyering" (1993) 81:5 Cal L Rev 1363; Christine Zuni Cruz, "[On the] Road Back in: Community Lawyering in Indigenous Communities" (1999) 5:2 Clinical L Rev 557; Derek Denckla & Matthew Diller, *Community Lawyering: Theory and Practice* (New York: Fordham University School of Law & New York Lawyers for the Public Interest, 2000); Charles Elsesser, "Community Lawyering - The Role of Lawyers in the Social Justice Movement" (2013) 14:2 Loyola J Pub Int L 375; Marshall, *supra* note 53. See also Imai, *supra* note 52.

[63] Austin Sarat & S Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (New York: Oxford University Press, 1998). See also Scott Baker & Gary Biglaiser, "A Model of Cause Lawyering" (2014) 43:1 J Leg Stud 37; Marshall & Crocker Hale, *supra* note 49.

[64] See Susan D Carle & S Cummings, "A Reflection on the Ethics of Movement Lawyering" (2018) 31:3 Geo J Legal Ethics 447 ("define[s] movement lawyering as the use of integrated advocacy strategies, inside and outside of formal lawmaking spaces, by lawyers who are accountable to mobilized social movement groups to build the power of those groups to produce or oppose social change goals that they define" at 452); see also Alexi Nunn Freeman & Jim Freeman, "It's about Power, Not Policy: Movement Lawyering for Large-Scale Social Change" (2016) 23:1 Clinical L Rev 147; S Cummings, "Movement Lawyering" (2017) 2017:5 U Ill L Rev 1645; Carlton Edward Williams, "Symposium—The More We Fight, the More We Win: Movement Lawyering in the Era of #BlackLivesMatter" (2018) 40 W New Eng L Rev; W Quigley, "Ten Ways of Looking at Movement Lawyering" (2020) 5:1 How Hum & Civ Rts L Rev 23; Sami Schramm et al, "Movement Lawyering: Rebuilding Community Power & Decentering Law" (2023) 26:2 Human Rights Brief 101; Marika Dias, "Paradox and Possibility: Movement Lawyering during the COVID-19 Housing Crisis" (2021) 24:2 CUNY L Rev 173.

[65] See e.g. Chaumtoli Huq, "(inter)Generation Movement Lawyer 2.0" (14 June 2013), online: <lawatthemargins.com/intergeneration-movement-lawyer-2-0>; Carol Oppenheimer, "Rebel with a Cause: The Movement Lawyer in the Criminal Courts" (1973) 2:2 Am J Crim L 146.

[66] Sarah Schwartz & Zoe Bush, "What is Movement Lawyering?" (last accessed 31 July 2024), online: <reblaw.com.au/what-is-movement-lawyering>.

true. Contemporary movement lawyering builds upon concepts and practices of the past and also strives for new ways of thinking about and navigating the relationship between law and social change."[67] However, a cursory search indicates that other terms continue to be used widely,[68] perhaps due to their more widespread establishment in the literature.[69]

Despite the lack of a unified term to describe the work, most contemporary perspectives on social change lawyering recognize systemic problems in the legal system and ethical issues surrounding empowerment of clients. Upon review of the literature, it seems that different authors' conceptions of lawyering tend to fall within a matrix of 1) liberal or reformist approaches, which may critique systemic problems but ultimately "believe in the underlying justness of the legal system",[70] whether implicitly or explicitly, and 2) radical or abolitionist approaches, which believe that the law will not be the source of freedom from oppression but can be used as a "tool".[71] Such lawyering may range from serving a) individual clients, most often in the context of poverty law or clinic work, to b) the social cause or movement overall.

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[67] *Supra* note 64 at 452.
[68] See e.g. Kieran McEvoy, "Cause Lawyers, Political Violence, and Professionalism in Conflict" (2019) 46:4 JL & Soc'y 529; Theresa Zhen, "Community Lawyering: Direct Legal Services Centered Around Organizing" (2018) 9 Cal L Rev 29.
[69] See e.g. Nona Maria Gronert, "Law, Campus Policy, Social Movements, and Sexual Violence: Where Do We Stand in the #MeToo Movement?" (2019) 13:6 Sociology Compass 1 (discusses "cause lawyering" in the field of sociology).
[70] Joseph Phelan, "PURVI & CHUCK: Community Lawyering" (1 June 2010), online: <convergencemag.com/articles/purvi-amp-chuck-community-lawyering>.
[71] See Audre Lorde, *Sister Outsider: Essays and Speeches* (Berkeley, Calif: Crossing Press, 1984) ("[the master's tools] may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change" at 112); Matthew Clair & Amanda Woog, "Courts and the Abolition Movement" (2022) 110 Cali L Rev 1 ("[a]bolitionists can at once deploy legal tools 'strategically as a legal, ideological, rhetorical tactic to expose the hypocrisy' all the while recognizing that existing legal systems will not bring about '[B]lack freedom'" at 33, citing Dorothy E Roberts, "Abolition Constitutionalism" (2019) 133:1 Harv L Rev 1 at 110). See also Aylward, *supra* note 22 ("[a]lthough Critical Race theorists condemn law as a tool of oppression, they also recognize the importance of law as a tool in the fight against oppression" at 82); Spade, *supra* note 2.

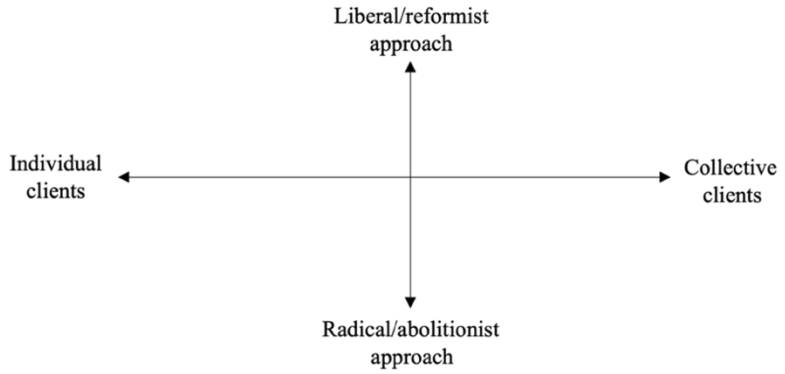

Figure 1: Lawyering matrix.

For example, "mapping" the most common types of lawyering might look something like this:

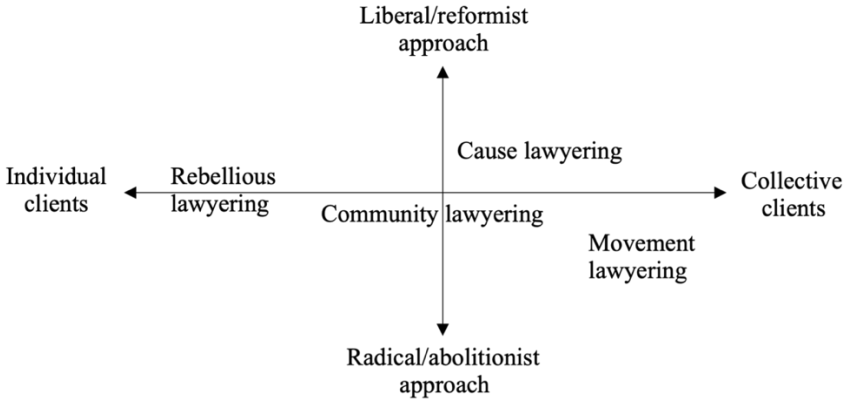

Figure 2: Lawyering matrix example.

The above exercise allows for a visual clarification of underlying values and perspectives that may otherwise be challenging to define, but it is not meant to suggest a dichotomous form of thinking. Many of these terms encompass their own spectrums of thought,[72] and there are often overlaps between individual and collective work, as well as efforts to make change within and outside of the legal system. There is a wealth of perspective to address these complexities from various critical angles, including Robert Knox's distinction between long-term "strategies" and

[72] See e.g. Sarat & Scheingold, *supra* note 63 at 7; Denckla & Diller, *supra* note 62; Alna Ball, "Transactional Community Lawyering" (2022) 94 Temp L Rev 397; Thomas M Hilbink, "You Know the Type...: Categories of Cause Lawyering" (2004) 29:3 Law & Soc Inquiry 657; Pow, *supra* note 60.

short-term "tactics" as well as their "inherent relation"[73] from a Marxist legal perspective, the "non-reformist reforms" used by abolitionist organizers on the ground,[74] and the Black feminist framework of "multiple consciousness"[75] applied in a legal context.[76]

1.3.1 Contribution to Scholarship

My project aims to make a modest contribution to the literature on social change lawyering in Canada, an area with noticeably fewer studies compared to the vast amounts of scholarship on social change lawyering derived from and pertaining to a US context.[77] Limited existing research may be partly because lawyers on the ground do not have the time, resources, or interest in publishing.[78] To remedy this, Basil S. Alexander has conducted interviews with a number of Canadian "cause lawyers" about their "pragmatic assorted strategies", finding that

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[73] "Strategy and Tactics" (2009) 21 Finnish YB Intl L 193 at 198.

[74] See Sudbury, *supra* note 21 (such reforms "challenge the logic of incarceration while simultaneously addressing prisoners' immediate needs" at 14). The Movement for Black Lives makes a similar call using the language of "not one more dollar": see Akbar, *supra* note 1 ("any reform that would translate into an additional dollar for policing or prisons is a loss for the movement and its cause" at 467).

[75] See Deborah K King, "Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology" (1988) 14:1 Signs: J Women in Culture & Society 42; A Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42:3 Stan L Rev 581.

[76] See e.g. A Harris, *supra* note 75; Mari J Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method" (1989) 11:1 Women's Rts L Rep 7.

[77] B Alexander, *supra* note 15 ("focused and detailed research for Canada needs to be done to understand what is happening on the ground here and to learn about trends, reactions and innovations from other angles... [and] contribute to a broader and more holistic understanding of how Canadian cause lawyers bridge and cope with that gap" at 6). But see Fay Faraday, Tracey Heffernan & Helen Luu, "Winning the Right to Housing: Critical Reflections on a Holistic Approach to Public Interest Litigation" (2019) 90 SCLR (2nd) 31; Julia Hernandez & Anne Levesque, "Movement Lawyering and the *Caring Society* Litigation" (2023) 15:2 J Human Rights Practice 395; D Parkes, "Solitary Confinement, Prisoner Litigation, and the Possibility of a Prison Abolitionist Lawyering Ethic" (2017) 32:02 CJLS 165; Britney De Costa, *"They Should Be Here With Us": Beginning with Communities to Reimagine the Role of Lawyers in Support of Systemic Change* (LLM Thesis, University of Windsor, 2017) [unpublished]. See also Sarah Buhler, "The View from Here: Access to Justice and Community Legal Clinics" (2012) 63 UNBLJ 436; A Levesque, "The Symbiotic Relationship Between Social Movements and Public Interest Litigation: A Case Study of the I am a Witness Campaign and the Human Rights Complaint of 165,000 First Nations Kids" (2019) 90 SCLR 101.

[78] See e.g. Charles Elsesser, *supra* note 62 ("there is often little time in these practices for recording... critical reflection... [a]nd perhaps there may be too much humility, as practitioners are painfully aware how far their practice strays from ideal community lawyering" at 377); Wendy A Bach & S Ashar, "Critical Theory and Clinical Stance" (2019) 26 Clinical L Rev 81. See also Jawziya F Zaman, "Why I Left Immigration Law" (12 July 2017) ("as lawyers, we are often locked in a fast-paced process whose daily urgency inhibits our thinking critically about the complexity of lived realities... global structures... and the insidiousness of a legal system that looks upon immigrants with suspicion or pity"), online: <dissentmagazine.org/online_articles/left-immigration-law>.

they often use diverse methods beyond "test case" litigation to include law reform, legal education, and media advocacy, as well as litigation and summary advice. The author discusses "cause lawyers" as a broad category, rather than using any race or gender analysis.[79]

Meanwhile, Irina Ceric makes an important contribution in regard to the "dearth of scholarly writing about radical legal support organizing... [and] the much louder silence (inside and outside the academy) about non-lawyers doing movement legal work".[80] She conducts in-depth qualitative interviews with lawyers and non-lawyers from the US and Canada. The author discusses gendered and racialized aspects of this work, but notes that "participants were overwhelmingly white, reflecting some of the internal and external critiques of radical legal support".[81] Finally, "little work has been done to explore the professional choices movement lawyers confront in practice and how legal ethics principles apply" even in a US context, suggesting another area for further research.

[79] B Alexander, *supra* note 15.
[80] Ceric, *supra* note 47 at 7.
[81] *Ibid*.

2 METHODS

"*[R]esearch methods…* have *a history. And a politics, and a set of relationships to power and money... We forget our history at our peril.*"[82]

I conducted a qualitative exploratory study to allow for a more in-depth understanding of social change lawyers' experiences in Canada.[83] My aim was to gather rich data and identify questions and areas for further study, rather than to make generalizable conclusions. Qualitative methods are becoming increasingly popular in legal research, reflecting a growing recognition that of the wealth of knowledge that can be gained outside of doctrinal text about how legal orders and values are constructed, how they function, and how they are experienced.[84]

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[82] Kristin Luker, *Salsa Dancing into the Social Sciences: Research in an Age of Info-glut* (Cambridge, MA: Harvard University Press, 2008) at 30.

[83] See e.g. Matthew B Miles & A Michael Huberman, "Drawing Valid Meaning from Qualitative Data: Toward a Shared Craft" (1984) 13:5 Educational Researcher 20 ("[q]ualitative data... are a source of well-grounded, rich description and explanation of processes occurring in local contexts" at 20). I am not interested in categorizing the specific type of legal research beyond being non-doctrinal, as it does not seem to fit into strict categorization. See Mathias M Siems & Daithí Mac Síthigh, "Mapping Legal Research" (2012) 71:3 Cambridge LJ 651 ("distin[guish] between three types of legal research: (i) ... [those that] emphasise[] law as a practical discipline, and approaches which position law as an aspect of (ii) the humanities or (iii) of the social sciences. This is not the only way of classifying legal research... [but] it offers a suitable conceptual framework for mapping legal research" at 653); Terry Hutchinson & Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17:1 Deakin L Rev 83 (outline three types of doctrinal research in contrast to "fundamental research" examining law as a "social phenomenon at 102, citing Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and the Humanities Research Council of Canada* (Ottawa: Ministry of Supply and Services, 1983); M Minow, "Archetypal Legal Scholarship: A Field Guide" (2013) 63 J Leg Educ 65 (outlines 9 categories of legal research: (1) "[d]octrinal restatement", (2) "[r]ecasting project", (3) "[p]olicy analysis", (4) "[t]est a proposition about society or the economy or about human beings that is used by lawyers or assumed in legal sources", (5) "[s]tudy, explain, and assess legal institutions, systems, or institutional actors", (6) "[c]ritical projects""[c]omparative and historical inquiries", (8) "[j]urisprudence, philosophy of law, and connecting philosophy and law", and (9) "combinations" of the above).

[84] See e.g. Ian Dobinson & Francis Johns, "Legal Research as Qualitative Research" in Michael McConville & Wing Hong Chui, eds, *Research Methods for Law*, 2nd ed (Edinburgh: Edinburgh University Press, 2017) 18; Emilia Korkea-aho & Päivi Leino, "Interviewing Lawyers: A Critical Self-Reflection on Expert Interviews as a Method of EU Legal Research" (2019) 12 European J Leg Studies 17; Michael Sunday Afolayan & Omolade Adeyemi Oniyinde, "Interviews and Questionnaires as Legal Research Instruments" (2019) 83 JL Pol'y & Globalization 51; Lydia A Nkansah & Victor Chimbwanda, "Interdisciplinary Approach to Legal Scholarship: A Blend from the Qualitative Paradigm" (2016) 3:1 Asian J Leg Education 44; Susan L Turley, "'To See Between': Interviewing as a Legal Research Tool" (2010) 7:1 J Assoc Leg Writing Directors 283.

Different methods are appropriate for different qualitative studies.[85] Similarly, evaluating a study's "legitimation does not lead to a dichotomous outcome (i.e., valid vs. invalid), but represents an issue of level or degree."[86] In this section, I outline my research process, from data collection to analysis, in as much detail as possible to strengthen the study's validity.[87]

2.1 Approaches to Law and Research

I reject the dominant ideas that colonial legal systems and Western research paradigms are objective, neutral, apolitical, or unemotional,[88] and instead recognize that both are rooted in structures of white supremacy and colonial violence.[89] In this regard, I draw from feminist legal theory and epistemology, particularly Black feminist scholarship, as well as critical race theory and critical disability studies.[90]

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[85] See e.g. Anthony J Onwuegbuzie & Nancy L Leech, "Validity and Qualitative Research: An Oxymoron?" (2007) 41:2 Quality & Quantity 233; Jeff Rose & Corey W Johnson, "Contextualizing Reliability and Validity in Qualitative Research: Toward more Rigorous and Trustworthy Qualitative Social Science in Leisure Research" (2020) 51:4 J Leisure Research 432; Lawrence Leung, "Validity, Reliability, and Generalizability in Qualitative Research" (2015) 4:3 J Family Medicine & Primary Care 324

[86] Onwuegbuzie & Leech, *supra* note 85 at 238-9.

[87] *Ibid* at 240; Handoyo Puji Widodo, "Methodological Considerations in Interview Data Transcription" (2014) 3:1 Intl J Innovation in English Language Teaching & Research 101; Leung, *supra* note 85; Kathleen A Knafl et al, "Managing and Analyzing Qualitative Data: A Description of Tasks, Techniques, and Materials" (1988) 10:2 Western J Nursing Research 195 ("lack of codification regarding data management and analysis techniques diminishes the credibility of qualitative research reports" at 195).

[88] The recognition of emotion here follows both Law and Emotion (Susan A Bandes et al, eds, *Research Handbook on Law and Emotion* (Northampton, MA: Edward Elgar Publishing, 2021)) and feminist (Maeve Landman, "Getting Quality in Qualitative Research: A Short Introduction to Feminist Methodology and Methods" (2006) 65:04 Proceedings Nutrition Society 429 ("[f]eminist research... is grounded in women's experience and recognises the role of emotions and gendered embodiment" at 432)) approaches. See Chapter 4, "Feeling and Emotion in Social Change Lawyering", for further discussion of law and emotion as it relates to social change lawyering.

[89] See e.g. Sherene Razack, ed, *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002); Eve Tuck & K Wayne Yang, "Decolonization is not a Metaphor" (2012) 1:1 Decolonization: Indigeneity, Education, & Society 1; E Tuck, "Suspending Damage: A Letter to Communities" (2009) 79:3 Harvard Educational Rev 409; A Harris, "Anti-Colonial Pedagogies: '[X] Justice' Movements in the United States" (2018) 30:3 CJWL 567; Dara Culhane, "Sensing" in Denielle Elliott & D Culhane, eds, *A Different Kind of Ethnography: Imaginative Practices and Creative Methodologies* (Toronto: University of Toronto Press, 2017) 45 ("[p]racticing sensory ethnography leads us to question not only these dominant, entrenched ways of knowing and acting—but also those of conducting research" at 58). See also Joyce M Bell, "Kangaroo Court: The Black Power Movement and the Courtroom as a Space of Resistance" (2022) 66:11 Am Behavioral Scientist 1530 (outlines how "the courtroom operates as hegemonic white space... organized around the logic of white supremacy and the exclusion of people of color" at 1546-7).

[90] See e.g. King, *supra* note 75; Lois Presser, "Negotiating Power and Narrative in Research: Implications for

I have taken a reflexive[91] approach throughout this project, aiming to reflect feminist[92] and critical social science[93] methodological frames. I am also inspired by movement law[94] and grounded theory.[95] I initially intended to use the latter to "give the participants the freedom to

Feminist Methodology" (2005) 30:4 Signs: J Women in Culture & Society 2067; Kristal Moore Clemons, "Black Feminist Thought and Qualitative Research in Education" (28 August 2019), online <oxfordre.com/education/view/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-1194>; Aylward, *supra* note 22; Wong, *supra* note 22; Sami Schalk, "Critical Disability Studies as Methodology" (2017) 6:1 Lateral ("we can understand critical disability studies as a method, an approach, a theoretical framework and perspective—not (exclusively) a study of disabled people. One can study disabled people and not be doing critical disability studies and one can be doing critical disability studies and not be directly studying disabled people" at 1). Many authors combine these approaches; see e.g. Alyssa Clutterbuck, "Rethinking Baker: A Critical Race Feminist Theory of Disability" (2015) 20 Appeal 51; A Harris, *supra* note 75; Subini Ancy Annamma, Beth A Ferri & David J Connor, "Disability Critical Race Theory: Exploring the Intersectional Lineage, Emergence, and Potential Futures of DisCrit in Education" (2018) 42:1 Rev Research in Education 46. See also Martha Albertson Fineman, "Introduction: Feminist and Queer Legal Theory" in M Fineman, Jack E Jackson & Adam P Romero, eds, *Feminist and Queer Legal Theory* (London: Routledge, 2010) 1.

[91] See Linda Finlay, "'Outing' the Researcher: The Provenance, Process, and Practice of Reflexivity" (2002) 12:4 Qualitative Health Research 531; L Finlay, "Negotiating the Swamp: The Opportunity and Challenge of Reflexivity in Research Practice" (2002) 2:2 Qualitative Research 209; Michael Rabbidge, "Embracing Reflexivity: The Importance of Not Hiding the Mess" (2017) 51:4 TESOL Q 961; Roni Berger, "Now I See It, Now I Don't: Researcher's Position and Reflexivity in Qualitative Research" (2015) 15:2 Qualitative Research 219; Katerina Deliovsky, "Whiteness in the Qualitative Research Setting: Critical Skepticism, Radical Reflexivity and Anti-racist Feminism" (2017) 4:1 J Critical Race Inquiry; Anne E Pezalla, Jonathan Pettigrew & Michelle Miller-Day, "Researching the Researcher-as-Instrument: an Exercise in Interviewer Self-Reflexivity" (2012) 12:2 Qualitative Research 165. See also Jan Fook, "Reflexivity as Method" (1999) 9:1 Ann Rev Health Soc Science 11 ("distinguish[es] between reflexivity as a position, and reflectivity as a general process" at 11 [emphasis in original]). But see Jasmine K Gani & Rabea M Khan, "Positionality Statements as a Function of Coloniality: Interrogating Reflexive Methodologies" (2024) 68:2 Intl Studies Q 1 ("contend that a distinction should be made between reflexivity in relation to practice or critique, versus reflexivity performed in positionality statements" at 2).

[92] See Landman, *supra* note 88; Brigette A Herron, "40 Years of Qualitative Feminist Interviewing: Conceptual Moments and Cultivating Ecosystems of Care" (2023) 29:6 Qualitative Inquiry 659.

[93] See Fook, *supra* note 91 ("[c]ritical social science researchers need to be able to trace the effects of their own position on their research, if they are to avoid imposing their own perspectives on the people they are researching... [reflexivity] should be integral to methodology, indeed built into methods themselves, rather than be limited to the more positivist objective of sustaining objectivity" at 11). See also Margaret Davies, "Ethics and Methodology in Legal Theory: A (Personal) Research Anti-Manifesto" (2002) 6 L Text Culture 7.

[94] Akbar, Ashar & Simonson, *supra* note 14 (movement law methodology "involves four interrelated moves": 1) "pay[ing] close attention to modes of resistance by social movements and everyday people", 2) "work[ing] to understand the strategies, tactics, and experiments of resistance and contestation", 3) "tak[ing] seriously the epistemologies and histories of the social movements", and 4) "mov[ing] with a sense of solidarity and accountability to... social movements they study... [T]hese four moves are not always made... [but] each... deepen[s] the practice of the prior" at 848).

[95] For a general overview of grounded theory as well as the "Glaser-Strauss debate", see Diane Walker & Florence Myrick, "Grounded Theory: An Exploration of Process and Procedure" (2006) 16:4 Qualitative Health Research 547. See also Antony Bryant & Kathy Charmaz, eds, *The SAGE Handbook of Current Developments in Grounded Theory* (London: SAGE Reference, 2019); Melanie Birks, Karen Hoare & Jane Mills, "Grounded Theory: The FAQs" (2019) 18 Intl J Qualitative Methods 1.

express themselves",[96] but took note of the numerous critiques of grounded theory's misuse[97] and limitations as I prepared for my interviews.[98] Nevertheless, it very much guided my data collection and analysis, and my project might be considered a subcategory thereof.[99]

2.2 Data Collection

I conducted a cross-sectional study consisting of semi-structured interviews with seven Canadian lawyers. While my sample is small, it provides detailed qualitative information about the intersectional experiences of Canadian lawyers working toward social change, and their ethical and strategic choices. This research also intends to highlight important areas for future research, particularly in regard to the gendered and/or racialized nature of this work.

2.2.1 Sample

Since this is an exploratory study, I used a combination of non-probability sampling methods[100] to ensure participants met study criteria while also representing a range of perspectives.[101] Purposive sampling can create methodological and power-related issues due to

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[96] Janice M Morse & Lauren Clark, "The Nuances of Grounded Theory Sampling and the Pivotal Role of Theoretical Sampling" in Bryant & Charmaz, *supra* note 95.

[97] See e.g. Roy Suddaby, "From the Editors: What Grounded Theory is Not" (2006) 49:4 Academy Management J 633; Andrew P Carlin & Younhee H Kim, "Teaching Qualitative Research: Versions of Grounded Theory" (2019) 18:1 Grounded Theory Rev 29.1/25/25 3:55:00 PM

[98] See e.g. Luker, *supra* note 82 ("as traditionally practiced... [grounded theory is] so relentlessly *micro*" at 33-4 [emphasis in original); Lars Seldén, "On Grounded Theory – With Some Malice" (2005) 61:1 J Documentation 114 ("at the beginning of a research project GT seems to be a promising and versatile tool... [but] it is difficult to carry through in a satisfactory way" at 126).

[99] See e.g. Philip Bulawa, "Adapting Grounded Theory in Qualitative Research: Reflections from Personal Experience" (2014) 2:1 Intl Research in Education 145; Maria C Malagon, Lindsay Perez Huber & Veronica N Velez, "Our Experiences, Our Methods: Using Grounded Theory to Inform a Critical Race Theory Methodology" (2009) 8:1 Seattle J for Soc Justice 253; Kailah Sebastian, "Distinguishing Between the Strains Grounded Theory: Classical, Interpretive and Constructivist" (2019) 3:1 J for Soc Thought 1.

[100] See Leeds Beckett University Library & Student Services, "Research Design" (last accessed 19 October 2023), online: <libguides.leedsbeckett.ac.uk/skills-for-learning/research-skills/research-design> (quota, purposive, and snowball sampling). Other studies have used a similar approach: see e.g. Ana Aliverti, "Exploring the Function of Criminal Law in the Policing of Foreigners: The Decision to Prosecute Immigration-related Offences" (2012) 21:4 Soc & Leg Studies 511 at 513.

[101] The data suggests that future research would benefit from a more detailed comparison between generational contexts and years of experience as well as work contexts, including geographic location and type of practice (firm vs organization, clinic, etc). I have generally avoided this in this thesis due to the small sample size and risk of participant identification.

the researcher's full control over participant selection.[102] I navigated these dynamics in part by seeking input from others and understanding participants to be speaking as individual lawyers rather than representatives of social identity groups or communities. Another ethical consideration brought up by a participant was time constraints of potential participants.[103] Alongside this comment, I had been reflecting on the purpose of my research and determined that I would rather engage with the data I had already collected more deeply than further burden those working on the front lines, especially since I had already met my goal for interviews.

I was interested in interviewing lawyers whose work focused on or connected to societal-level change and went through several stages to identify them. Initially, I conducted online searches, which proved difficult due to the inconsistency in how "social justice" and "social change" can be defined and understood.[104] After consulting with my supervisor, professors, and colleagues for initial suggestions, I then solicited suggestions from participants themselves. I used 3 general criteria to narrow down the long list of potential participants:

1) **Explicit Critical Positioning:** Due to the nature of the study, it was important that participants had some awareness of their positionality and critical perspectives about

[102] See Michelle Lokot, "Whose Voices? Whose Knowledge? A Feminist Analysis of the Value of Key Informant Interviews" (2021) 20 Intl J Qualitative Methods 1 (in the context of key informant interviews, a type of purposive sampling, the author "asks: why are particular informants viewed as 'key,' and who says they are 'key'?" at 1).
[103] Participant F, "Interview F" (5 March 2024) via oral communication [communicated to author] ("another issue that I take pretty seriously is[...] so many of us are so jammed up with time[...] I need to think about [that] in terms of who I would be comfortable saying would be available to talk to you") [PF].
[104] As one participant noted, "a lot of lawyers are 'social justice lawyers' or whatever, but when it comes down to it, how that looks can be very different" (Participant G, "Interview G" (18 March 2024) via oral communication [communicated to author] [PG])**.** In addition to general definitional issues, "social justice" can also be a loaded term that obscures political ideologies and structures of power. See e.g. Luke Savage, "Woke Capitalism Isn't Your Friend" (3 June 2020), online: <jacobin.com/2020/06/brands-corporate-publicity-racial-justice> (commodification of "social justice"); Harjeet Kaur Badwall, "Colonial Encounters: Racialized Social Workers Negotiating Professional Scripts of Whiteness" (2014) 3 Intersectionalities: A Global J Soc Work Analysis, Research, Polity, and Practice 1 ("argue[s] that the professional values and practices committed to the goals of social justice are the same values and practices that reinstall whiteness and underpin incidents of racial violence" at 1); Deliovsky, *supra* note 91 (reflects on research involving "white women who claim anti-racist and social justice identities, but... appear to practice its opposite" at 2); Dr. Autumn Asher BlackDeer, "A lot of yalls faves are only about racial and social justice in theory." (6 November 2022), online: <x.com/DrBlackDeer/status/1589262992285523973>; DavidLeftyMA, "Intersectionality/critical theory scholars who created social justice language to challenge systems of power, only to see it stripped of all radical vitality in order to be used by the status quo to defend multicultural imperialism & oppression" (11 January 2024), online: <x.com/DavidLeftyMA/status/1745492411110056360>.

the law/legal system. Generally, I determined this through a review of lawyers' public online bios.[105] There were no static or objective criteria, but key questions used to assess this included: Did they discuss their goals or work toward social change? How did they view the law (i.e. as "a tool")? Did they mention their positionality? Did they describe their relationships with social movements or involvement with organizing?

2) **Years of Practice:** I limited the study to lawyers who are licensed and have been in practice for at least 4 years.[106] I wanted to ensure that participants had several years of practical experience in order to draw the most depth out of interviews in the limited time I had to complete my LLM. It was my expectation that participants had thought about many of my questions already and had time to attempt to answer them over the course of their practice. I also wanted to stay focused on those who have chosen to continue working within the legal system as a lawyer, rather than using their legal knowledge in other contexts—while valuable, this would have been a different study.

3) **Field of Law:** I chose to focus on lawyers working in immigration and refugee law, labour law, and/or human rights law.[107] These fields all challenge power, have strong ties with overlapping social movements,[108] and are especially relevant in this

[105] A person's lack of online presence does not necessarily reflect the work that they are doing on the ground, just as a strong online presence does not always equate to an active presence on the ground. From my experience with data collection, snowball sampling, especially in the context of a longer-term study, has strong potential to reach lawyers who may not be as "prominent" or present in virtual spaces but nonetheless have important perspectives to share.
[106] When searching for participants, I took note of how a lot of younger lawyers had online bios that described their social locations. As noted previously (*supra* note 101), this suggests a potential area for future study. Also of significant note is that I did not interview people who *had* stopped practicing as lawyers.
[107] As I progressed through the interviews, I realized that these fields of law were not as distinct as I thought; while participants often had core fields of focus, many practiced across several fields, including class action law, administrative law, and constitutional law. What has been also highlighted from the study's recruitment phase is the potential of working toward social change through civil litigation, and particularly the field of personal injury law. This presents an interesting area for more future research.
[108] Most participants practiced in two or more of these fields. For further discussion of some of the ways these fields can overlap see Filiz Kahraman, "A New Era for Labor Activism? Strategic Mobilization of Human Rights Against Blacklisting" (2018) 43:04 Law & Soc Inquiry 1279; Henaway, *supra* note 28; Jennifer Gordon, "We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change" (1995) 30:2 Harv CR-CL L Rev 407 at 413 (immigration and labour); Caitlin C Patler, "Alliance-Building and Organizing for Immigrant Rights: The Case of the Coalition for Humane Immigrant Rights of Los Angeles" in Ruth Milkman, Joshua Bloom & Victor Narro, eds, *Working for Justice* (New York: Cornell University Press, 2017) 71; S Ashar, "Movement Lawyers in the Fight for Immigrant Rights" (2017) 64 UCLA L Rev 1464; Cedric Dawkins & Christina Dawkins, "Disciplining the Notion of 'Labour Rights as Human Rights'" (2022) 13:1 Global Labour J 2. See also Catherine L Fisk & Diana S Reddy, "Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements" (2020) 70:1 Emory LJ 63 (positions labour organizing within the law and social movement literature); Shiu-Ming Cheer, "Moving toward Transformation: Abolitionist Reforms and the Immigrants' Rights Movement" (2020) 68 UCLA L Rev Disc 68 (addresses the importance of linking social movements and their demands: "[w]hen immigration campaigns are connected to the movement to end mass incarceration, and not just limited to seeking the release of immigrants or the release of particular 'sympathetic' immigrants... they encompass intersectional demands that can bring together people working on racial justice, decarceration, and immigrants' rights" at 77).

moment,[109] opening up interesting spaces for comparative analysis.

Participants were also selected based on practical considerations, as well as to maintain a balance between participants' field of practice, context of work, and geographic locations—in particular, I prioritized lawyers working outside of national organizations and outside of the Toronto area.

I aimed to interview between 6 and 10 participants. Of the 12 lawyers that were contacted, 7 were interviewed; 3 people did not respond to the study invitation, and 2 others agreed to be interviewed but fell out of contact during the recruitment process. All participants consented to audio and video recording, and all but one[110] consented to the use of direct quotations.

4 participants identified as "male" or "man" while 3 identified as "female" or "woman". 5/7 identified as racialized; specifically, 1 identified as Black, 3 as South Asian or Indo-Caribbean, and 1 as West Asian, Arab or Middle Eastern, while 2 identified as white. 1 participant identified as having a disability, and 1 identified as 2SLGBTQ+. 1 participant also identified as a first-generation Canadian. 3/7 had no religious or spiritual traditions, 1 preferred not to say, 1 identified as Muslim, 1 identified as "raised protestant", and 1 noted "curious about various spiritual traditions.

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[109] See s 1.2.2, above. For further discussion on the relevance of these fields to "the moment" see Christine Cimini & Doug Smith, "An Innovative Approach to Movement Lawyering: An Immigrant Rights Case Study" (2021) 35 Geo Immigr LJ 431 ("[c]ommunities are protesting systemic racism, police killings, xenophobia, rising unemployment, climate change, and widening economic inequality. The immigrant rights movement is a critical part of these efforts to foment change.... [and] one of the leading edges in the current development of movement lawyering" at 432); Fisk & Reddy, *supra* note 108; Stephanie Ross & Larry Savage, eds, *Rethinking the Politics of Labour in Canada*, 2nd ed (Halifax & Winnipeg: Fernwood Publishing, 2021); James Hutt, "Moving Unions to Fight for a Free Palestine" (29 January 2024), online: <midnightsunmag.ca/moving-unions-to-fight-for-a-free-palestine> ("[t]he labour movement has been on the decline for decades, and its political ambitions have shrunk, but it is still among the best tools we have to win changes not just in our workplaces but also throughout our society and around the world"). But see Adrian A Smith, "Temporary Labour Migration and the 'Ceremony of Innocence' of Postwar Labour Law: Confronting 'the South of the North'" (2018) 33:2 CJLS 261 ("[w]hether as transnational labour law or any other approach, Labour Law's 'second coming' must take hold as a transformative project and agenda by confronting—not sidestepping—the intricacies of the South-North hierarchical relationship" at 263).

[110] Participant B [PB] did not consent to the use of direct quotations to allow more open and candid discussion during the interview without fear of being identified.

In addition to this, 6 participants identified as some form of middle class, shown in Figure 3, below. Most notably, 86% (n=6) of participants had at least one parent/guardian whose highest level of education was "post-graduate degree (e.g. Master's, PhD, MD)", and for 57% (n=4) this was both parents. However, 29% (n=2) had personal or familial experience of receiving social assistance.

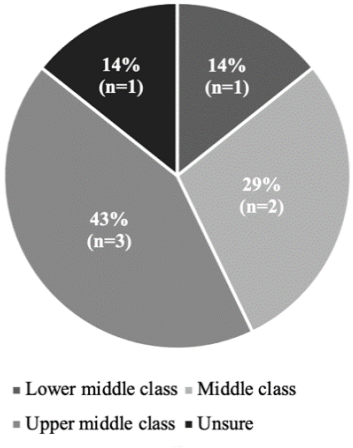

Figure 3: "What social class group do you identify with?"

As for their legal practice, 1 participant had 4-7 years of experience, 3 had 8-10 years of experience, and 2 had over 10 years of experience. Meanwhile, while most participants practiced in British Columbia or Ontario, participants practiced across the country, as outlined in Figure 4.

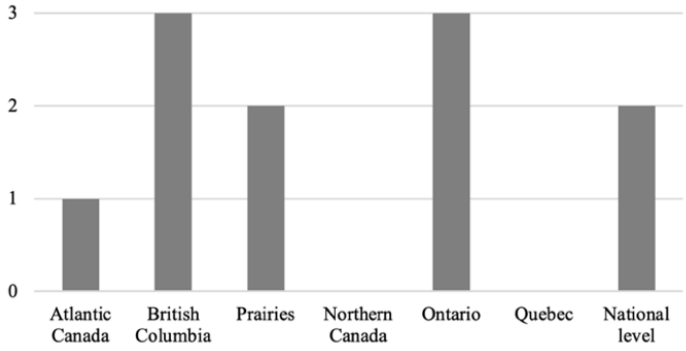

Figure 4: "Where do you practice law?"

2.2.2 Demographic Questionnaire

Before the interview, participants completed a short demographic questionnaire alongside

their consent form.[111] There are generally two reasons for collecting demographic data: "to answer research questions about identity, and... to accurately describe the sample of participants... [to] determine if the sample they recruited represented the population they wanted to study... help[] readers to understand the sample better... [and] tell if the findings are generalizable".[112] For this study, the demographic questionnaire served both purposes. It was also intended to give participants more room to speak about their experiences without being identified, while potentially flagging general themes or areas for further research.

Aside from the initial study invitation, the consent form and questionnaire were the first real "interaction" that I had with participants. Because of this, I felt it was important to ensure that the survey questions and descriptions reflected my research approach and values. Participants were given options to not identify or self-identify outside of the provided categories, and space at the end to discuss other aspects of their identity that were important to them. To minimize wording issues and improve validity,[113] questions were adapted or directly taken from existing surveys.[114] Most questions were also accompanied by a definition and/or explanation of

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[111] See Appendix A.

[112] Jennifer L Hughes et al, "Guidance for Researchers When Using Inclusive Demographic Questions for Surveys: Improved and Updated Questions" (2022) 27:4 Psi Chi J Psychological Research 232.

[113] Creating new, untested questions can cause issues in question interpretation (*ibid* at 233).

[114] See Canadian Institute for Health Information, *Guidance on the Use of Standards for Race-Based and Indigenous Identity Data Collection and Health Reporting in Canada* (Ottawa, Ontario: Canadian Institute for Health Information, 2022); Ontario Human Rights Commission, "Racial Discrimination, Race and Racism (Fact Sheet)" (last accessed 20 February 2024), online: <ohrc.on.ca/en/racial-discrimination-race-and-racism-fact-sheet>; Government of Ontario, "Data Standards for the Identification and Monitoring of Systemic Racism", online: <ontario.ca/document/data-standards-identification-and-monitoring-systemic-racism>; City of Toronto, "COVID 19: Ethno-Racial Identity & Income" (last accessed 16 June 2024), online: <toronto.ca/community-people/health-wellness-care/health-programs-advice/respiratory-viruses/covid-19/covid-19-pandemic-data/covid-19-archived-dashboards/covid-19-ethno-racial-identity-income>; Ontario Human Rights Commission, "What is Disability?" (last accessed 20 February 2024), online: <ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/2-what-disability>; Ontario Human Rights Commission, "Appendix B: Survey Demographic Information" (last accessed 16 June 2024), online: <ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario/appendix-b-survey-demographic-information>; Angus Reid Institute, "Canadians & Class: Strong Belief in Canada as a Meritocracy, but Plurality Identify as the Same Social Class as their Parents" (21 September 2023), online: <angusreid.org/great-canadian-class-study>; Statistics Canada, "Place of Work Status By Highest Level of Education and Gender: Canada, Provinces and Territories, Census Divisions and Census Subdivisions of Work" (2023), online: <www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810050501>.

their purpose.[115]

2.2.3 Interviews

All interviews were conducted virtually on Zoom between January 11 and March 18, 2024.[116] They ranged from 40–65 minutes and were recorded so I could focus on the discussion[117] and strengthen data management and analysis.[118] To protect participant confidentiality, I then stripped the audio and deleted the video recording. My interview guide consisted of 8 open questions encompassing a few key areas: motivations and goals, barriers and challenges, social and professional identities, and relationships with the legal system and social movements.[119]

As for the interview process,[120] I attempted a feminist approach that emphasized deep and careful listening[121] while treating the interview as a "human interaction" rather than a way to "extract data".[122] I was not always successful; I found it daunting, as both a researcher and recent law graduate, to talk to experienced lawyers doing work that I aspired to. I was not very confident in my role as an "interviewer", and often felt awkward asking questions. My insecurity

[115] Canadian Institute for Health Information, *supra* note 115 at 14.
[116] Virtual interviewing allowed me to interview lawyers across Canada despite limited resources and streamlined recording. Despite the increased use and potential of virtual interviewing in recent years due to COVID, it can also potentially "exclude communities and individuals without technological competence or access... [make] [c]onsent... more difficult to obtain... [b]ody language... less observable, and participants may fatigue faster or face home distractions" (Sam Keen, Martha Lomeli-Rodriguez & Helene Joffe, "From Challenge to Opportunity: Virtual Qualitative Research During COVID-19 and Beyond" (2022) 21 Intl J Qualitative Methods 1 at 7).
[117] See e.g. Widodo, *supra* note 87.
[118] See Elizabeth J Halcomb & Patricia M Davidson, "Is Verbatim Transcription of Interview Data Always Necessary?" (2006) 19:1 Applied Nursing Research 38.
[119] See Appendix B.
[120] Reflection on the interview process can "promote[]... more balance between the what and the how of interviews; greater data transparency; development of a more critical approach to interviewing; and a (hopefully) more honest appraisal of one's own role in the interview": see Rabbidge, *supra* note 91 at 970.
[121] Herron, *supra* note 92 ("[d]eep listening can take the form of closely examining the micro-aspects of talk in interviews... [while] [c]areful listening requires that a feminist researcher listen for silences" at 663).
[122] *Ibid* at 667.

led to several mistakes, including double-barrelled questions[123] and several interruptions of participant responses. At the same time, some participants indicated that they felt very comfortable during the interview, and I believe some "interviewer interjections" also led to interesting supplementary discussions.[124]

2.3 Data Analysis

The following sections outline my approaches to transcription, coding, and other forms of data analysis. While they are presented chronologically, the process was generally iterative, as I transcribed and coded interviews on an ongoing basis.

2.3.1 Transcription

Transcription is the process of **"**representing original spoken text (recorded talking data) in written discourse",[125] and is generally the first step of qualitative data analysis.[126] There are two main approaches: "naturalism, in which every utterance is transcribed in as much detail as possible, and denaturalism, in which idiosyncratic elements of speech (e.g., stutters, pauses, nonverbals, involuntary vocalizations) are removed".[127] Each approach can be useful for different studies.[128] The transcription process involves many other decisions and limitations,

[123] A double-barrelled question combines two related but distinct questions into one: see Alan Bryman & Edward Bell, *Social Research Methods*, 4th Canadian ed (Don Mills: Oxford University Press, 2016) at 112-3. There may have been a connection between my discomfort as a researcher and asking double-barreled questions: see Amber Gazso & Katherine Bischoping, "Feminist Reflections on the Relation of Emotions to Ethics: A Case Study of Two Awkward Interviewing Moments" (2018) 19:3 Forum: Qualitative Soc Research 1 at para 33. See also Dawn E Trussell, "Dancing in the Margins: Reflections on Social Justice and Researcher Identities" (2014) 46:3 J Leisure Research 342 (discusses the "cringe continuum" and the relationship between researcher unease and researcher privilege at 349).
[124] For further discussion of how researcher interjections can impact qualitative interviews see Lauren Mizock, Debra A Harkins & Renee Morant, "Researcher Interjecting in Qualitative Race Research" (2011) 12:2 Forum Qualitative Soc Research 1.
[125] Widodo, *supra* note 87.
[126] See Julia Bailey, "First Steps in Qualitative Data Analysis: Transcribing" (2008) 25:2 Family Practice 127.
[127] Daniel G Oliver, Julianne M Serovich & Tina L Mason, "Constraints and Opportunities with Interview Transcription: Towards Reflection in Qualitative Research" (2005) 84:2 Social Forces 1273 at 1273-4.
[128] *Ibid* at 1280; Halcomb & Davidson, *supra* note 119.

including whether and how to indicate tone,[129] expressions of emotion,[130] and even the researcher's own "voice".[131] These choices are rooted in conscious and unconscious political and epistemological beliefs,[132] and are often underexamined by researchers.[133]

For my study, I chose to create two transcripts for each interview. One was a naturalized transcript that included pauses, filler words, sighs, and laughter, but excluded other non-verbal information. The other was an edited, denaturalized transcript that excluded filler words. All quotations in this thesis come from the edited transcripts, both out of respect for participants[134] and to keep my analysis focused and accurate.[135] I transcribed all interviews manually. Following suggestions from the literature, I listened to each recording between three and five times, which ensured both accuracy and immersion in the data.[136] Participants were then sent a copy of their deidentified verbatim transcript and provided with an opportunity for review.[137] With more time and resources, I would have liked to incorporate participant involvement and feedback into the

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[129] See e.g. Blake D Poland, "Transcription Quality as an Aspect of Rigor in Qualitative Research" (1995) 1:3 Qualitative Inquiry 290; Ida Tolgensbakk, "Disclosing the Interviewer: Ethnopoetics and the Researcher's Place in Transcribed Interviews" (2020) 50:2 Ethnologia Europaea 125.
[130] See e.g. Rabbidge, *supra* note 91 ("[the participant's] laugh at this point, although not captured accurately in this extract, was part of a visible lessening of tension she had been feeling" at 968).
[131] See e.g. Tolgensbakk, *supra* note 130.
[132] See Mary Bucholtz, "The Politics of Transcription" (2000) 32:10 J Pragmatics 1439; Siobhán Madden, "Collaborative Story Telling: The Poetry of Everyday Life and the Challenge of Transcription" in Bernie Grummell & Fergal Finnegan, eds, *Doing Critical and Creative Research in Adult Education* (Leiden: Brill, 2020) 49.
[133] See Oliver, Serovich & Mason, *supra* note 128; Heather Hurst, Kathryn McCallum & Sara Tilles, "Dialoguing with the Silent Researcher: Rethinking the Role of the Transcriptionist in Qualitative Research" (2019) 12:2 Methodological Innovations 1; Leandro Da Silva Nascimento & Fernanda Kalil Steinbruch, "'The Interviews Were Transcribed', But How? Reflections on Management Research" (2019) 54:4 RAUSP Management J 413; Lilian Cibils, "The Underreported Significance of Transcription Decisions: Perspectives Gained from Two Different Vantage Points" (2019) 24:5 Qualitative Report 1133.
[134] See Anne Corden & Roy Sainsbury, *Using Verbatim Quotations in Reporting Qualitative Social Research: Researchers' Views* (York: University of York, 2006) at 17-19; Irit Mero-Jaffe, "'Is that what I Said?' Interview Transcript Approval by Participants: An Aspect of Ethics in Qualitative Research" (2011) 10:3 Intl J Qualitative Methods 231 at 236, 243; Poland, *supra* note 130 at 292.
[135] An in-depth meta-analysis of the interview process is outside the scope of this thesis; moreover, I do not want to speculate about non-verbal communication, since I did not have time to validate this with participants.
[136] See e.g. Halcomb & Davidson, *supra* note 119 at 41; Keen, Lomeli-Rodriguez & Joffe, *supra* note 117 at 6.
[137] See Appendix C for sample communications. Two participants had no revisions, two made significant redactions, and three did not respond by the time of writing. Transcription validation was an important step for ethics purposes as well as for data credibility: see e.g. Mero-Jaffe, *supra* note 135.

coding process as well.

2.3.2 Coding

Coding is often a marker of qualitative research,[138] but can vary widely in application.[139] Cynthia Weston et al describe "the enormous task of developing coding systems and coding the transcripts", outlining how their iterative coding system evolved over a period of several years.[140] While I had a much more limited timeframe for my research, this article was very influential in my coding process. I primarily used ATLAS.ti to create and organize codes. I began with *in vivo* coding to gain a richer understanding of and engage more deeply with the data.[141] I used a "splitter" approach[142] to "encourage careful scrutiny" of the data, and "generate a more nuanced... [and] trustworthy analysis".[143] I also kept an analytic memo to track key terms and concepts from each interview and identify emerging patterns between interviews over time.[144]

I ended up with 6 code categories:

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[138] Debates surrounding coding in qualitative research are beyond the scope of this thesis. See generally Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, 3rd ed (Los Angeles & London: SAGE, 2016) at 40-42; Elizabeth A St Pierre & Alecia Y Jackson, "Qualitative Data Analysis After Coding" (2014) 20:6 Qualitative Inquiry 715; Victoria Elliott, "Thinking about the Coding Process in Qualitative Data Analysis" (2018) Qualitative Report 2850; Karen Locke, Martha Feldman & Karen Golden-Biddle, "Coding Practices and Iterativity: Beyond Templates for Analyzing Qualitative Data" (2022) 25:2 Organizational Research Methods 262.

[139] See e.g. Saldaña, *supra* note 139; Erik Blair, "A Reflexive Exploration of Two Qualitative Data Coding Techniques" (2015) 6:1 J Methods & Measurement in Soc Sciences 14; Nicole M Deterding & Mary C Waters, "Flexible Coding of In-depth Interviews: A Twenty-first-century Approach" (2021) 50:2 Sociological Methods & Research 708; Locke et al, *supra* note 139.

[140] "Analyzing Interview Data: The Development and Evolution of a Coding System" (2001) 24:3 Qualitative Sociology 381 at 381.

[141] *In vivo* coding is a type of inductive or open coding that uses participants' spoken words or phrases as codes. See Saldaña, *supra* note 139 at 105-110; Jimmie Manning, "In Vivo Coding" in Jörg Matthes, ed, *The International Encyclopedia of Communication Research Methods.* (New York: Wiley-Blackwell, 2017).

[142] Saldaña contrasts a "splitter" approach to *in vivo* coding with a "lumper" approach. The former "splits the data into smaller codable moments" while in the latter, "just one In Vivo Code is applied to capture and represent the essence of [an] entire excerpt" (*supra* note 139 at 23-4).

[143] *Ibid* at 24.

[144] See Joseph A Maxwell & Margaret Chmiel, "Notes Toward a Theory of Qualitative Data Analysis" in Uwe Flick, ed, *The SAGE Handbook of Qualitative Data Analysis* (London: SAGE Publications, Inc., 2014) 21 ("[analytic] [m]emos are an important technique for analysing qualitative data, but can be used for either categorizing or connecting purposes, or to perform other functions not related to data analysis, such as reflection on methods" at 24). See also Halcomb & Davidson, *supra* note 119 (describes the similar process of "reflective journalling": "[a]s soon after the interview as possible, to ensure that reflections remain fresh, researchers should review their field notes and expand on their initial impressions of the interaction with more considered comments and perceptions").

1) Practice Approaches
2) Practice Issues
3) Feelings
4) Relationships
5) Positionality
6) Research Process

While I could have continued consolidating codes, and may still do so for future research, I found I was "losing the context of what is said... result[ing] in fragmentation of the data"[145]during the writing process. Because of this, I turned to other forms of thematic analysis, including mind and concept mapping[146] to synthesize data into themes and put together a structure for the thesis itself.[147] There were ultimately two themes I wished to explore in this thesis: internal and external approaches to social change lawyering work,[148] outlined in more detail in the following two chapters. The distinction between these categories is not absolute, but rather a pragmatic division for ease of analysis. In practice, the data suggests considerable overlap between ethics and emotions in this work.

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[145] Bryman & Bell, *supra* note 124 at 288.

[146] Generally, mind mapping explores one idea while concept mapping explores the relationships between many different ideas or themes; both are unstructured. See Martin Davies, "Concept Mapping, Mind Mapping and Argument Mapping: What are the Differences and Do They Matter?" (2011) 62:3 Higher Education 279. Other authors have discussed the potential of mind mapping in qualitative research. See e.g. Markus A Höllerer et al, "The Documenting Approach" in *Visual and Multimodal Research in Organization and Management Studies* (London & New York: Routledge, 2019) 88 at 89-90; Fadi Kotob, Lee Styger & Lauren Richardson, "Exploring Mind Mapping Techniques to Analyse Complex Case Study Data" (2016) 2:3 Australian Academy Business & Econs Rev 244; Johannes Wheeldon & Mauri Ahlberg, "Mind Maps in Qualitative Research" in Pranee Liamputtong, ed, *Handbook of Research Methods in Health Social Sciences* (Singapore: Springer, 2019) 1113; J Wheeldon & Jacqueline Faubert, "Framing Experience: Concept Maps, Mind Maps, and Data Collection in Qualitative Research" (2009) 8:3 Intl J Qualitative Methods 68. See also Carina J Fearnley, "Mind Mapping in Qualitative Data Analysis: Managing Interview Data in Interdisciplinary and Multi-Sited Research Projects" (2022) 9:1 Geo: Geography & Env 1 (replaces transcription with mind mapping).

[147] This approach was largely inspired by discussions and exercises completed in Professor Andrée Boisselle's graduate study group, "Bringing Imaginative Practices and Creative Methodologies to Bear on Law and Social Justice Scholarship". In particular, I found doodling exercises extraordinarily helpful to unravelling what I referred to as mental tangles that arose during my research: see Denielle Elliott, "Writing" in Elliott & Culhane, *supra* note 89 at 38. See also Jennifer L Lapum et al, "Pictorial Narrative Mapping as a Qualitative Analytic Technique" (2015) 14:5 Intl J Qualitative Methods 1.

[148] The categories of "Practice Issues" and "Relationships" were integrated into external approaches, while "Feelings" became internal approaches; "Practice Approaches" and "Positionality" were divided between both. Meanwhile, the category of "Research Process" was used for my own reflections on the study and was not substantively used for the findings outlined below.

3 EXTERNAL APPROACHES

"[L]egal professionals can silence community activists and shift the conversation into a discussion monopolized by the lawyer and the policymaker. At the same time, oversensitivity to our role as lawyers can impede our effectiveness... There are no cut-and-dried answers as to when to step forward despite one's privilege and when to step back."[149]

External approaches are the principles and practical choices that social change lawyers apply in their practice to manage conflicts between their values and relationships and the obligations they have to fulfil as lawyers working within an oppressive colonial system. All participants in this study viewed law as one of many "tools" toward social change,[150] and generally agreed that "community" or "movements" should lead the work,[151] both of which are common perspectives across many social change lawyering approaches.[152] Beyond this, I initially thought participants would ground their external approaches in a model of lawyering, but found that most did not use a specific one.

While some used labels for their work,[153] most described themselves by the fields in which they practiced.[154] Several participants stressed the limits of labels, in terms of their ability

[149] Harris, Lin & Selbin, *supra* note 25 at 2120.
[150] All participants specifically used the word "tool": Participant A, "Interview A" (11 January 2024) via oral communication [communicated to author]; Participant B, "Interview B" (18 January 2024) via oral communication [communicated to author] (used a specific identifying label but otherwise followed this) [PB]; Participant C, "Interview C" (16 February 2024) via oral communication [communicated to author] [PC]; Participant D, "Interview D" (22 February 2024) via oral communication [communicated to author] [PD]; Participant E, "Interview E" (28 February 2024) via oral communication [communicated to author] [PE]; PF, *supra* note 103; PG, *supra* note 104.
[151] See e.g. PF, *supra* note 103 ("I try and ensure that I make very clear that those are instructing me, whether it be an individual or organization, are the ones that are truly at the centre of what we are trying to pursue"); PG, *supra* note 104 ("I feel like that's the only way that anything is gonna change, is if you have drug user-led independent groups").
[152] See s 1.3, above.
[153] PC, *supra* note 151 ("community lawyer"); PG, *supra* note 104 ("movement lawyer"); PE, *supra* note 151 ("strategically and politically, I'd like to style myself or call myself a transgressive lawyer. I would agree with, or I'd *like* to be called a movement lawyer. And I think that's part of what I do, in some respects. I don't necessarily call myself that normally, because it's only in movement contexts or when I'm talking to grassroots community organizing groups, that they're really aware of that" [emphasis in original]).
[154] PE, *supra* note 151; PA, *supra* note 151; PD, *supra* note 151; PF, *supra* note 103.

to reflect the nature of their work[155] and how a "neoliberal over-emphasis on language[...] [is] weaponized, in a way, without any material action underlying it."[156] They were also sometimes an aspiration, rather than a static category.[157] Rather than labels, what seemed to distinguish participants from each other was their relationships with and understanding of accountability to individual clients, communities, social movements, and the legal profession.

3.1 Legal Ethics in Social Change Lawyering

Ethical considerations in social change lawyering often centre around questions of power, including who is leading the work and making decisions.[158] For example, community lawyering "sometimes causes the lawyer to work with many constituencies in a neighborhood, with no clear attachments to any one client or group. In this role, the lawyer and the various constituent groups are working together in order to bring about a specific result to a pressing community issue."[159] Similarly, movement lawyers are **"**accountable to mobilized social movement groups to build the power of those groups to produce or oppose social change goals that they define."[160]

Carle and Cummings suggest that because social movement organizations generally "have the resources and political power to advance campaigns... there is less concern about lawyers dominating vulnerable clients because social movement groups are organized and sophisticated—able to assert power in collaborations with lawyers."[161] Nevertheless, they identify two underexamined ethical challenges specifically affecting movement lawyers that

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[155] PA, *ibid* ("I don't think I label myself *anything*, in that sense. [...] I'm a lawyer who's interested in social justice issues broadly"); PE, *ibid*.
[156] PG, *supra* note 104.
[157] PE, *supra* note 151 ("a transgressive lawyer[...] [is] the kind of lawyering that I aspire to"); PB, *supra* note 151.
[158] See Grinthal, *supra* note 52; Bharat Malkani, "Antiracist Lawyering" in *Racial Justice and the Limits of Law* (Bristol: Bristol University Press, 2024) 121; S Carle, "Power as a Factor in Lawyers' Ethical Deliberation" (2006) 35:1 Hofstra L Rev 115; Marshall, *supra* note 53.
[159] Marshall, *supra* note 53 at 148.
[160] Carle & Cummings, *supra* note 64 at 452.
[161] *Ibid* at 457. PE, *supra* note 151, had similar sentiments ("the movements in some ways have become more savvy and sophisticated [over time] [...] [and] know how to avail of those kinds of resources").

expand the definition of "conflict of interest": intra-movement dissent and temporality. Intra-movement dissent involves "the inherent conflicts over goals and strategies that define social movement struggle,"[162] while temporality concerns the conflict "between short-term client interests and long-term movement objectives."[163]

Legal ethical codes do not provide much support to social change lawyers facing such issues.[164] These rules are designed to prohibit certain behaviours as well as outline lawyers' responsibilities to clients and the legal profession. However, they do not offer positive guidance about broader "social responsibilities"[165] beyond noting a "special responsibility" to uphold human rights laws[166] and that lawyers "act[ing] as spokespersons for organizations... represent[ing]... special interest groups... is a well-established and completely proper role for lawyers to play".[167] Spencer Rand contrasts this gap with the field of social work, which explicitly holds social justice as a core value of the profession, and suggests that law could follow suit.[168] Purvi Shah similarly argues for the creation of "a new code of ethics... that is aspirational and inspirational... [and] lay[s] out ten to fifteen simple values to create a new ethical framework on the social responsibility of lawyers."[169]

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[162] Carle & Cummings, *supra* note 64 at 451.
[163] *Ibid* at 451.
[164] *Ibid*; Purvi Shah, "Rebuilding the Ethical Compass of Law" (2018) 47:1 Hofstra L Rev 11; Susan L Brooks, "Mindful Engagement and Relational Lawyering" (2019) 48:2 Sw L Rev 267; Marshall, *supra* note 53; Spencer Rand, "Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach" (2006) 13 Clinical L Rev 459.
[165] See Shah, *supra* note 165 at 14; Yaniv Roznai, "Revolutionary Lawyering? On Lawyers' Social Responsibilities and Roles during a Democratic Revolution" (2013) 22:2 S Cal Interdisciplinary LJ 353 at 383. See also Louis Fisher, "Civil Disobedience as Legal Ethics: The Cause-Lawyer and the Tension between Morality and 'Lawyering Law'" (2016) 51:2 Harv CR-CLL Rev 481 ("proposes a philosophical justification for the cause lawyer's choice to privilege political morality over the code of legal ethics" at 483).
[166] See Federation of Law Societies of Canada, *Model Code of Professional Conduct* (Ottawa: FLSC, 2024) r 6.3-1, commentary 1 [*Model Code*].
[167] *Ibid*, r 7.5-1, commentary 5.
[168] *Supra* note 165; S Rand, "Social Justice as a Professional Duty: Effectively Meeting Law Student Demand for Social Justice by Teaching Social Justice as a Professional Competency" (2018) 87:1 U Cin L Rev 77.
[169] *Supra* note 165 at 16.

However, attempts in Ontario to entrench such values, even on a very basic level, have been resisted against by "predominantly — though not exclusively — white men"[170] invoking "meritocracy"[171] and "colour-blind" narratives.[172] More broadly, "legal ethics discourse has so far only situated itself within the Euro-Canadian legal tradition and its associated social values—it has thus far failed to consider the values and perspectives of the indigenous legal traditions which... are inextricably connected to Canada's legal and constitutional order."[173] It may be no surprise, then, that most lawyers maintain dominant systems of power.[174] "Social change lawyering" may therefore require lawyers to work not only against the legal system but against their own profession.[175] Creating a code of ethics or principles for all lawyers to follow might

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[170] See Joshua Sealy-Harrington, "Twelve Angry (White) Men: The Constitutionality of the Statement of Principles" (2020) 51:1 Ottawa L Rev 195 at 224 [footnotes omitted]; Justin P'ng, "The Gatekeeper's Jurisdiction: The Law Society of Ontario and the Promotion of Diversity in the Legal Profession" (2019) 77:2 UT Fac L Rev 82.
[171] Sealy-Harrington, *supra* note 171 at 200-1.
[172] *Ibid* at 256. Legal ethics has similar issues with "bleached out professionalism", where "rules of professional conduct are explicitly cast in universalist terms that purport to apply to all lawyers in all contexts... either omit[ting] [issues relating to a lawyer's non-professional identity] altogether or, in the case of 'conscience,' treated as an additional motivation for lawyers to uphold the profession's bleached out norms" (David B Wilkins, "Identities and Roles: Race, Recognition, and Professional Responsibility" (1998) 57:4 Md L Rev 1502 at 1504). Further, "[b]leached out' professionalism is the practical co-extension of... color-blind education. With whiteness—more precisely white settler colonialism—as the norm, i.e., the assumed, unstated, invisible measure of neutrality and objectivity, comes a profession being constructed to uphold it" (Eduardo RC Capulong, Andrew King-Ries & Monte Mills, "Antiracism, Reflection, and Professional Identity" (2021) 18:1 Hastings Race & Poverty LJ 3 at 14-5).
[173] Paul Jonathan Saguil, "Ethical Lawyering Across Canada's Legal Traditions" (2010) 9:1 Indigenous LJ 167 at 175. See also J Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010); J Borrows, *Law's Indigenous Ethics* (Toronto: University of Toronto Press, 2019); Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" (2019) 97:3 Can Bar Rev 526 (critically examines the ethical obligations of lawyers working in the Canadian colonial legal system to promote reconciliation, largely in the context of expanding definitions of and critiquing "cultural competence").
[174] See e.g. Roznai, *supra* note 166 ("as a class stratum, the conservative elite of lawyers usually play a central role in guarding the status quo" at 370); Amanda Alexander, "Nurturing Freedom Dreams: An Approach to Movement Lawyering in the Black Lives Matter Era" (2021) 5:2 How Hum & Civ Rts L Rev 101 ("[t]he legal field is built upon values and norms that maintain existing power dynamics and reinforce white supremacist, capitalist, ableist, heteronormative, and patriarchal culture" at 126-7).
[175] See e.g. Quigley, "Ten Questions", *supra* note 54 ("social change lawyers are swimming upstream against the current of our profession and usually the law itself. Law, as an institution and as a profession, is primarily about commerce and either maintaining the status quo or altering the current order slightly to accommodate modest change. It is uninterested in, if not hostile to, systemic social change. Any type of justice-based lawyering is therefore only a tiny bit of the profession and is actually—despite high-minded pledges to do justice and the like—profoundly countercultural to the law and legal profession" at 209-10); Roznai, *supra* note 166 ("some have claimed that a majority of lawyers are inclined to broadcast a collective, apolitical indifference in their professional role, and that only a minority of lawyers feel obliged to social change and is ready to make economic sacrifices for social and liberal goals" at 370).

instead lead to the institutionalization and further co-optation of "social change".[176] Rather than a formal code, some authors put forward other "ethics",[177] guiding principles,[178] and questions[179] lawyers can refer to and use to evaluate their professional and strategic choices (although they still to choose which to follow). In the following sections, I outline some of the ethical challenges experienced by study participants, and their approaches to navigating them.

3.2 Accountability and Positioning

When describing his law school experience, PC remarked that "there was a lot of emphasis, in a good way, [on] critical theories[...] but there was this gap when it came around actually doing shit to help people, and how you actually do that"[180]—a common question for many law students and young lawyers interested in social change. Purvi Shah and Chuck Elsesser suggest that "the 'how' comes down to accountability."[181] While they describe this in the context of community lawyering, discussions with participants led to a similar conclusion.[182]

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[176] Similar critiques exist in other contexts. See e.g. Kent Roach, "The Institutionalization of Restorative Justice in Canada: Effective Reform or Limited and Limiting Add-On?" in Ivo Aertsen, Tom Daems and Luc Robert, eds, *Institutionalizing Restorative Justice* (Portland: Willan Publishing, 2006); Dean Young, "Your Ways or Our Ways?: Addressing Canadian Neo-colonialism and Restorative Justice" (2019) 7:2 Salus J 85; Martha L Gomez, "The Culture of Non-Profit Impact Litigation" (2017) 23:2 Clinical L Rev 635; Cary Coglianese, "Social Movements, Law, and Society: The Institutionalization of the Environmental Movement" (2001) 150:1 U Pa L Rev 85.

[177] For example, an "ethic of care" (Stephen Ellmann, "The Ethic of Care as an Ethic for Lawyers" (1993) 81 Geo LJ 2665, citing Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982); Tamara Walsh, "Lawyers and Social Workers Working Together: Ethic of Care and Feminist Legal Practice in Community Law" (2012) 21:3 Griffith Law Review 752; Brooks, *supra* note 165), "abolitionist ethic" (Lalia L Hlass, "Lawyering from a Deportation Abolition Ethic" (2022) 110:5 Cal L Rev 1597; Parkes, *supra* note 77), or "radical legal support ethic" (Ceric, *supra* note 47 at 191).

[178] See e.g. Clair & Woog, *supra* note 71 ("identif[ies] three guiding principles as central to the police and prison abolitionist movement: (1) power shifting; (2) defunding and reinvesting; and (3) transformation" at 25); Brooks, *supra* note 165 (5 principles of "relational lawyering": "[1] cultivat[ing]... kindness, curiosity, humility, and transparency... [2] embracing the dignity of all human beings... [3] appreciating the importance of our own contexts as well as others'... [4] recogniz[ing] and focus[ing] on our own and others' strengths... [a]nd [5]... approach[ing] law as a healing profession... serv[ing] others to help alleviate their suffering... including a commitment to social transformation" at 272).

[179] See e.g. Quigley, "Ten Questions", *supra* note 54; Morgan, *supra* note 27.

[180] *Supra* note 151.

[181] Phelan, *supra* note 70.

[182] But see PE, *supra* note 151 ("there is not necessarily an accountability [to movements][...] it's more a question of volition and relationship, and dynamics with the different parties. [...] I think mutually, the lawyer and the movement define what are the good relationships, and those ones are the ones that go forward").

Although it began as a prompt in my interview guide,[183] early discussions of accountability with participants were interesting and fruitful, leading me to extend the question to all participants.

PA and PC both described "direct" accountability, where responsibilities to clients, whether individuals or institutions, were relatively straightforward and characteristic of the typical lawyer-client relationship.[184] Similarly, other participants referenced common issues in lawyer-client relationships, such as differing opinions on a case[185] or unhappiness with a result or a process.[186] However, accountability to communities or movements could at times be more difficult to navigate, especially when they conflicted with lawyers' responsibilities within the legal profession, whether formally to the Law Society or informally to colleagues or firms. Below, I provide a brief overview of participants' relationships in these three contexts.

3.2.1 Communities

All participants spoke about the role of community in their work, although these conversations ranged from brief references[187] to in-depth discussions.[188] The term "community" has numerous shifting meanings.[189] In this study, participants referred to local geographic communities,[190] racial, religious, and cultural communities,[191] professional communities,[192] and

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[183] See Appendix B.
[184] PA, *supra* note 151 ("if a union is the client, for example, then [I'm] directly [accountable]"); PC, *supra* note 151 ("I often am acting for individuals more than organizations... so... [i]t's like a direct relationship")
[185] PF, *supra* note 103.
[186] PB, *supra* note 151; PE, *supra* note 151.
[187] See e.g. PA, *supra* note 151; PG, *supra* note 104 (predominantly focused on movements rather than communities).
[188] See e.g. PB, *supra* note 151; PC, *supra* note 151; PE, *supra* note 151.
[189] See e.g. David M Chavi & Kien Lee, "What Is Community Anyway?" (12 May 2015), online: <ssir.org/articles/entry/what_is_community_anyway>; Megan Garber, "What Does 'Community' Mean?" (3 July 2017), online: <theatlantic.com/entertainment/archive/2017/07/what-does-community-mean/532518>; Rebecca Lawthom & Pauline Whelan, "Understanding Communities" in Andrew Azzopardi & Shaun Grech, eds, *Inclusive Communities: A Critical Reader* (Rotterdam: SensePublishers, 2012) 11; Terri Mannarini & Angela Fedi, "Multiple Senses of Community: the Experience and Meaning of Community" (2009) 37:2 J Community Psychology 211; Peter Iadicola & Patrick J Ashton, "What is Community? A Comparison of Perspectives" (1987) 11:1 Humanity & Society 80.
[190] PB, *supra* note 151; PG, *supra* note 104.
[191] PA, *supra* note 151; PB, *supra* note 151; PC, *supra* note 151; PD, *supra* note 151; PE, *supra* note 151; PF, *supra* note 103.
[192] PB, *supra* note 151; PD, *supra* note 151.

communities of shared experience more generally.[193] Many also shared social identities and experiences with clients,[194] with PE and PF elaborating in more detail.[195] For PF, this was less of "a deliberate choice[...] really, I have *found* myself advocating for amongst the most marginalized in our society."[196] Meanwhile, PE suggested that clients found *him*,[197] but "moved in that direction consciously as well."[198]

PE also commented on the "traditional sort of role of someone having a certain ethnocultural background, and having a client base of that nature... [and the] interplay between having a linkage[...] [or] background with a certain community, the ease or affinity that that community has with the lawyer, and then what the lawyer decides to do with it".[199] Both he and PC outlined how this affected their practice, whether through strengthened advocacy[200] or "buil[ding][...] [a] *legal* identity *upon* that to a certain degree" by "look[ing] more deeply at ways in which racialized communities are affected in a *number* of different areas, including police brutality".[201]

PC, the only participant who explicitly identified as a "community lawyer", had similar

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[193] PB, *supra* note 151; PG, *supra* note 104 ("directly impacted communities").
[194] PA, *supra* note 151; PC, *supra* note 151; PE, *supra* note 151; PF, *supra* note 103; PG, *supra* note 104.
[195] PF, *ibid* ("it's not lost on me that the vast majority of people that I represent and advocate for are racialized[...] often living in poverty[...] [and] at the intersection of various other sorts of oppressive frameworks, whether it be gender, or sexual orientation, or disability"); PE, *ibid* ("there *is* that social, cultural, religious context in which I've developed a certain relationship with some communities" [emphasis in original]).
[196] *Supra* note 103.
[197] *Supra* note 151 ("a lot of people from Muslim and Arab communities will come to *me* because of my background, because of my name, because they see that affinity" [emphasis in original]).
[198] *Ibid*.
[199] *Ibid*. These reflections echo discussions in the literature: see e.g. Jessica H Stein, "Coalition, Cross-Cultural Lawyer, and Intersectionality: Immigrant Identity as a Barrier to Effective Legal Counseling for Domestic Violence Victims" (2011) 11:1 Conn Pub Int LJ 133; Capulong, King-Ries & Mills, *supra* note 173. But see Alexis Anderson, Lynn Barenberg & Carwina Weng, "Challenges of Sameness: Pitfalls and Benefits to Assumed Connections in Lawyering" (2011) 18:2 Clinical L Rev 339; Julie D Lawton, "Am I My Client - Revisited: The Role of Race in Intra-Race Legal Representation" (2016) 22:1 Mich J Race & L 13. See also Kelly Jo Popkin, "Survivors Representing Survivors: Shared Experience and Identity in Direct Service Lawyering" (2018) 27:2 Kan JL & Pub Pol'y 261.
[200] PF, *supra* note 103 (being able to "identify with[...] what [clients] express[...] [and] experience [...] makes me a strong advocate").
[201] PE, *supra* note 151 [emphasis in original].

views, describing the theory that guides his work: "[Law] dictates how we relate, how we deal with each other, our relationship with the state[...] *But*, for certain communities[...] their access and their ability to traverse that public space is restrained[...] So my job as a lawyer is one of translation and navigation. [...] [T]o do that well, I think you gotta understand your client[...] [and] their experience[.]"[202] His approach to lawyering further extended to how he engaged with clients, staying "accessible[...] [and] as horizontal as possible[...] Dressing that way, using language that is understandable, not creating real formal, hierarchical relationships."[203]

3.2.2 Social Movements

Most participants also came from activist backgrounds, and went to law school specifically to add to their arsenal of skills to continue with that work.[204] Movements included the labour movement,[205] migrant justice,[206] housing justice,[207] drug policy,[208] pro-Palestine solidarity,[209] a combination of the above,[210] and "social justice broadly".[211] Even so, like "community", the term could get rather fuzzy.[212] PG described "the movement" as a "very nebulous and shifting thing", naming three different levels of accountability in her work: "there's this idea of the drug policy movement in so-called Canada, so I'm accountable to *that* movement.

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[202] PC, *supra* note 151.
[203] *Ibid*. PC's reflections point to the importance of combining accessible language and dress with critical approaches to law. López draws attention to this issue in the introduction of his book, commenting on how "the first wave of self-consciously progressive lawyers... all appeared to dress, speak, and act alike—or at least to dress, speak, and act not at all like us... [but] [s]haggy hair, hip talk, and mod dress couldn't change the fact that their views of lawyering were shared by, probably even inherited from, folks they claimed to be reacting against" (*supra* note 57 at 1-2).
[204] PA, *supra* note 151; PB, *supra* note 151; PC, *supra* note 151; PD, *supra* note 151; PG, *supra* note 104.
[205] PA, *supra* note 151; PD, *supra* note 151; PE, *supra* note 151.
[206] PB, *supra* note 151; PC, *supra* note 151; PD, *supra* note 151; PF, *supra* note 103.
[207] PC, *supra* note 151.
[208] *Ibid*; PG, *supra* note 104.
[209] PA, *supra* note 151; PD, *supra* note 151.
[210] PA, *supra* note 151; PC, *supra* note 151; PD, *supra* note 151.
[211] PE, *supra* note 151. Several participants were not tied to specific movements but rather helped in different places as needed: PE, *ibid*; PC, *supra* note 151; PF, *supra* note 103.
[212] I suspect that this was in large part due to how I was asking the questions; in my attempt to leave participants room to answer how they wished, I often referred to "social movements" or "the movement", generally.

But also very much accountable to my *local* community. And, even *more* granular, the group I work with very closely [with] [...] I'm very accountable to that Board and membership."[213]

Participants also had different levels of connection to social movements. For instance, while both PD and PA had long-rooted involvement in the labour movement and worked in labour law, they viewed their accountability rather differently. PA was "accountable to other Black unionists [and the membership at large] [...] I feel that accountability, and [that's] why I feel it's important to take on some of those cases."[214] In contrast, PD commented that "I don't think I have *any* accountability in the labour movement[...] [because] I'm not really *in* [it] [...] I have interpersonal relationships in the labour movement, but I don't have any kind of formal role. So, I don't know, maybe I don't *need* accountability, 'cause I don't actually… control anything."[215] Several participants also described their hesitancy in taking on particular professional labels due to the added accountability that they didn't think they were able to hold,[216] or the "contradictions" in claiming such a label while working at a private, profit-focused firm.[217]

Meanwhile, PG, who explicitly identified as a movement lawyer, talked about the difficulty in transitioning from "working in overdose prevention and outreach[...] [and being] very active in organizing[...] as an activist"[218] to the role of "lawyer", informing people of their rights regarding arrests and interactions with police: "I struggled with that for a really long time when I first started lawyering, because I was used to being at the action in a totally different *way*."[219] Similarly, upon becoming a lawyer, she "felt kind of [like] a 'traitor', almost? [...] [I]t

[213] PG, *supra* note 104 [emphasis in original].
[214] PA, *supra* note 151.
[215] PD, *supra* note 151 [emphasis in original].
[216] PF, *supra* note 103.
[217] PA, *supra* note 151.
[218] PG, *supra* note 104.
[219] *Ibid* [emphasis in original].

felt very *weird*, to have this privilege to[...] get a law degree, and then come back and be a lawyer, around the same people that I used to get high with."[220] PG's reflections seem to echo Nancy D. Polikoff's "role confusion" as a lesbian "lawyer activist" supporting queer organizers engaging in civil disobedience. The author notes that the "act of maintaining legitimacy [as a lawyer]... often requires behavior that separates me from my clients... Yet in the acts that reinforce this separation, I feel disintegrated, sometimes dishonest, unable to be seen by those in authority for all of me, never both a lawyer and a lesbian activist at the same time."[221]

PE and PG both noted that their connections with social movements go beyond the "traditional" solicitor-client relationship characterized by "power imbalance",[222] since the organizing work they support often involves informal interactions.[223] For PG, this relationship is "chosen family. The movement that I'm in is my family. And so, that means having extremely close relationships with people that, yeah, might not be conventional."[224] For PE, these "blurred lines" have stressed the importance of "creating and drawing boundaries where those need to be drawn. [...] And I think that's just a chronic problem. The more involved movement lawyers, I think, will take on a lot of that burden, whether consciously or inadvertently."[225]

While not a movement lawyer, PB also had difficulty creating and enforcing boundaries. She found refusing clients particularly challenging due to her knowledge of how few lawyers

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[220] *Ibid*.
[221] "Am I My Client?: The Role Confusion of a Lawyer Activist" (1996) 31:2 Harv CR-CL L Rev 443 at 448.
[222] PG, *supra* note 104 ("[t]he people that I work with, historically their relationships with lawyers have usually been very much dictated by a power imbalance, a very traditional solicitor-client relationship").
[223] PE, *supra* note 151 ("in a lot of the movement cases there's public discussions, there are meetings, there's organizing, and so there is a part of the life of those movements, and those files, where it goes beyond, probably, a normal solicitor-client relationship, just because you're dealing with people [...] within those circles"); PG, *ibid* ("I won't speak for other people's relationships with *their* lawyers, but I get the sense that they're not hanging out with their lawyers [...] and, that is a big part of my *job,* is hanging out with people.") See also Carle & Cummings, *supra* note 64 ("[t]he point is that there is engagement, formal and informal, between movement lawyers and organizational leadership that shapes what movement lawyers do" at 458).
[224] PG, *supra* note 104.
[225] PE, *supra* note 151.

were available and capable of doing certain kinds of work.[226] Yet, the "burden" she felt was lessened through increased connection with community and activist groups on the ground.[227] As will be outlined below, it seems that the real burden for many social change lawyers lies in the responsibilities and restrictions imposed by the Law Society.

3.2.3 Legal Profession

As licensed lawyers, all participants had responsibilities to their respective law societies. However, their relationships with the profession and how they navigated those responsibilities varied. Some prioritized their activism,[228] while others kept a stricter boundary around their role as "a lawyer".[229] Likewise, while all participants were social change lawyers, several referenced legal aid, pro bono cases, and volunteer commitments as something that they took on in a personal capacity on top of their full-time roles in legal organizations or firms,[230] often due to a "belie[f] in the issues that they're raising[...] and the impacts that they have."[231] For others, there seemed to be less of a distinction in the work.[232]

These differences also impacted their views and experiences of accountability. For example, while PA felt primarily accountable to Black unionists,

> **PA:** I also feel accountable to my colleagues. Because I work in a firm, and, whether we like it or not, firms have reputations. [...] [I]t goes both ways. [...] You won't see me doing *this* work, or being supported in this work in a completely corporate, capitalist, right-wing firm. [...] Also, I think about all the kind of cases that I do, because [...] [n]o matter what case it is that I'm doing, or how I'm representing myself externally, it goes back to the firm[.]

On the other hand, PE found that labour law "was a little bit limiting, just because when you

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[226] PB, *supra* note 151.
[227] *Ibid*.
[228] PG, *supra* note 104 ("I think that ultimately, my priority over being a lawyer is being a member of a movement"); PD, *supra* note 151 ("most of us here [at my firm] are activists first, lawyers second").
[229] PA, *supra* note 151; PE, *supra* note 151; PF, *supra* note 103.
[230] PA, *supra* note 151; PB, *supra* note 151.
[231] PA, *supra* note 151.
[232] PC, *supra* note 151; PD, *supra* note 151; PE, *supra* note 151; PG, *supra* note 104.

represent institutional clients, you can't take on other cases that are more political, or[...] take a definitive stand on some issues."[233] He and several others noted that opening their own practices allowed for increased professional flexibility.[234]

Participants also had varied personal relationships with the legal profession. For instance, making connections within the legal community based on shared legal or political commitments could be important and energizing, and allowed lawyers to consult trusted peers about shared clients[235] or issues.[236] Yet, the numbers of these lawyers, especially those who were available, were few and far between.[237] Meanwhile, they had to navigate relationships and interactions with other legal professionals who often had very different values or approaches, which sometimes manifested in an expectation of conformity to professional norms.

For instance, PA reflected on the "pressure" in law school to pursue certain contexts of work,[238] suggesting that they were further normalized through career events that used language like "'*non-traditional* law day', or '*alternative* law day'".[239] Meanwhile, PG recalled her shock upon entering law school when she mentioned her past work in harm reduction to another student who replied with offhanded stigmatizing remarks: "I was like, 'Holy shit. Okay, I'm *here*. This is my environment now.'"[240] Similar messaging can come from higher positions in the profession as well. PB and PC both shared anecdotes where Law Society leadership discouraged social justice advocacy efforts that might impact their "reputation".[241]

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[233] PE, *supra* note 151.
[234] *Ibid*; PC, *supra* note 151; PF, *supra* note 103 ("when I made a decision to go out on my own as a sole practitioner... [I] ha[d] the sense of freedom of being able to try certain things").
[235] PA, *supra* note 151.
[236] PB, *supra* note 151.
[237] See e.g. PB, *ibid*; PG, *supra* note 104.
[238] *Supra* note 151 ("you think the only thing you can do with your degree is basically firm work, or corporate type work").
[239] *Ibid* [emphasis in original].
[240] *Supra* note 104 [emphasis in original].
[241] PB, *supra* note 151; PC, *supra* note 151.

Immersion in these environments combined with the scarcity of lawyers with similar politics and values can make social change lawyering "isolating".[242] Without community and guidance, law students and young lawyers may find it difficult to know where or how to begin their work.[243] PF spoke about starting out in a different field of law than his current practice as a refugee and immigration lawyer:

> **PF:** [W]hen I made a switch, I didn't have well-established connections within the Bar in my area of law. And so, while I was able to *see* that there were members of the Bar that were able to pursue this sort of high-impact work, it was really unclear to me how *I* could take on that work. [...] I definitely did not see myself, and didn't have access to, the more traditional ways of taking this on[...] [like] work[ing] with a senior lawyer [...] or work[ing] in an office that has had a long history of doing this kind of work.[244]

He described his ultimate entry into "that work" as "luck": **"**I had established a pretty good working [and personal] relationship with a colleague who had had a case that had been vetted to be a test case. And so this particular colleague [...] who *knew* me to be someone who was capable and serious, referred that case *to* me."[245]

From another perspective, PC recalled that upon graduating law school, "nobody thought I'd be a lawyer[...] And I was resigned to that fact as well."[246] After a rather tumultuous articling experience, he then "opened [his] firm up right away."[247] The contrast between PC's and PF's experiences further demonstrates the difficulty and importance of connecting to communities and professional networks of people doing similar work. Both PB and PC suggested that taking public positions and putting oneself forward can create examples for other lawyers to follow,[248]

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[242] PG, *supra* note 104.
[243] See e.g. PC, *supra* note 151 (reflecting on "how you actually do [shit to help people]", quoted at s 3.1, above).
[244] *Supra* note 103.
[245] *Ibid* [emphasis in original].
[246] *Supra* note 151.
[247] *Ibid*.
[248] PB, *supra* note 151; PC, *supra* note 151 ("[j]ust trying to signal that this shit can be done here, it can be done well, and others should participate").

which might be considered a more abstract example of "performance work".[249]

Issues of community and belonging also occur at the structural level. Systemic inequity and discrimination in the legal profession is pervasive,[250] even in "social justice" contexts.[251] Several participants discussed their own experiences, ranging from gendered impostor syndrome[252] to overt sexism and racism.[253] PF reflected in more detail on

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[249] Not to be confused with "performative work", performance work involves "making visible aspects of ['ethical resistance'] work to others; demonstrating oneself at work (accountability work)" (Merlinda Weinberg & Sarah Banks, "Practising Ethically in Unethical Times: Everyday Resistance in Social Work" (2019) 13:4 Ethics & Social Welfare 361 at 365, citing Sarah Banks, "Everyday Ethics in Professional Life: Social Work as Ethics Work" (2016) 10:1 Ethics & Soc Welfare 35). See also Susan Bennett et al, "Building a Culture of Scholarship with New Clinical Teachers by Writing about Social Justice Lawyering" (2023) 31:3 Am UJ Gender Soc Pol'y & L 311.

[250] See LSUC, *supra* note 13; Canadian Centre for Diversity and Inclusion, "Diversity by the Numbers: The Legal Profession—Unpacking Hegemonic Masculinity in the Culture of Private Practice Law" (2018), online (pdf): <ccdi.ca/media/1391/20180125-dbtn-qualitative-research-final-updated.pdf>; The Continuing Legal Education Society of BC, "But I Was Wearing A Suit" (23 November 2017), online (video): <youtube.com/watch?v=HTG7fi-5c3U>; Mallory Hendry, "Reconciliation's Uphill Battle: Indigenous Legal Education" (5 March 2020), online: <canadianlawyermag.com/resources/legal-education/reconciliations-uphill-battle-indigenous-legal-education/327115>; Robert Cribb, "Sexual Harassment, Discrimination Forcing Women Lawyers to Quit. Some Say the Profession Needs its 'Me Too' Movement" (18 February 2024), online: <thestar.com/news/investigations/sexual-harassment-discrimination-forcing-women-lawyers-to-quit-some-say-the-profession-needs-its-me/article_89175f9e-cc18-11ee-8577-33d7f11e0967.html>; C Smith, "Who is Afraid of the Big Bad Social Constructionists? Or Shedding Light on the Unpardonable Whiteness of the Canadian Legal Profession" (2008) Alta L Rev 55; P'ng, *supra* note 171; J McGill & Amy Salyzyn, "Queer Insights on Women in the Legal Profession" (2014) 17:2 Leg Ethics 231; Tiisetso Russell, "I am a Lawyer! Am I a Lawyer? The Experiences of Foreign Trained Black Lawyers in Ontario" (2011) 18:3/4 Race, Gender & Class 198; Meghan Dawe, *Stratification in the Canadian Legal Profession: The Role of Social Capital and Social Isolation in Shaping Lawyers' Careers* (PhD Thesis, University of Toronto, 2018) [unpublished].

[251] See Sandra Simkins, "The 'Pink Ghettos' of Public Interest Law: An Open Secret" (2020) 68:3 Buff L Rev 857; D Mullings, "The Institutionalization of Whiteness in Contemporary Canadian Public Policy" in Veronica T Watson, Deirdre Howard-Wagner & Lisa Spanierman, eds, *Unveiling Whiteness in the Twenty-First Century: Global Manifestations, Transdisciplinary Interventions* (Lanham: Lexington Books, 2015) 115; Rakhi Ruparelia, "Legal Feminism and the Post-Racism Fantasy" (2014) 26:1 CJWL 81; Brittany N Hearne & Holly J McCammon, "Black Women Cause Lawyers: Legal Activism in Pursuit of Racial and Gender Equality" in Holly J McCammon & Lee Ann Banaszack, eds, *100 Years of the Nineteenth Amendment* (New York: Oxford University Press, 2018) 257 ("[r]arely... in accounts of the influential efforts of activist lawyers working to end racial and gender discrimination do scholars consider the role of black women lawyers" at 257). See also Emejulu & Bassel, *supra* note 31 ("[[women of colour] activists must struggle against both their government and their ostensible allies in activist spaces who are both equally exhausting... As we have long documented in our work on women of colour's anti-austerity activism in Britain and France, a key point of contention in multi-racial and multi-class coalitions is how many white activists refuse to take women of colour activists and their intersectional analyses seriously. It is unsurprising, given the severity of the social, economic and political crises that women of colour are experiencing, that these structural power dynamics of misrecognition and disrespect continue unabated" at 403); Paul C Gorski & Noura Erakat, "Racism, Whiteness, and Burnout in Antiracism Movements: How White Racial Justice Activists Elevate Burnout in Racial Justice Activists of Color in the United States" (2019) 19:5 Ethnicities 784; Alison Phipps, "White Tears, White Rage: Victimhood and (as) Violence in Mainstream Feminism" (2021) 24:1 European J Cultural Studies 81.

[252] PB, *supra* note 151.

[253] PA, *supra* note 151; PD, *supra* note 151.

> the struggles that I've had as a racialized lawyer with lived experience in gaining legitimacy in the work that I'm doing. [...] I've seen lawyers who work in large corporate commercial firms be extended a presumption of competency, be extended a presumption of *authority,* in areas of law that they don't normally practice in, by virtue of their perceived pedigree, that *isn't* extended to me.[254]

PF brought specific attention to systemic exclusion of women from social change litigation due to the high volume of work and tight deadlines: "if you are in any kind of caregiving role, these are difficult things to manage. [...] I'm fortunate in that I have [a support network][...] But I can see how if you don't have those supports, you would self-select out[...] or, you put yourself forward and then unfortunately are limited in what you can contribute, and[...] not be invited again."[255] Similarly, PG described how the physical and mental toll of litigation exacerbated her disability symptoms, preventing her from doing it more regularly.[256] These barriers "ultimately[...] ha[ve] an impact *on* the change that this kind of work can do" due to whose perspectives and contributions are excluded.[257]

3.3 Navigating Conflicting Responsibilities

Conflict of interest is an obvious ethical issue for all lawyers, but it appears to be almost inherent to the work of social change lawyers, given their strong ties to communities and social movements described above. In this section, I focus on three "conflicts" described by participants: those that occur between different groups within a social movement, between individual clients and movements, and between movements and the legal profession.

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[254] PF, *supra* note 103 [emphasis in original].
[255] *Ibid*.
[256] PG, *supra* note 104 ("I find litigation specifically to be, for me, extremely stressful[...] 'cause of timelines, and everything[...] [B]asically every time that I am working actively on a case, I inevitably get *extremely* sick, either during, or *right* at the end of it[...] [I]t's one of the reasons why I'm *not* a constant litigator. Because I know that I couldn't physically or mentally handle it" [emphasis in original]).
[257] PF, *supra* note 103 [emphasis in original].

3.3.1 Intra-Movement Conflicts

Intra-movement conflicts "require that lawyers have a principled mechanism for making representational choices... and resolving internal disputes."[258] Many participants alluded to intra-movement dissent as a significant ethical challenge. These conflicts were particularly evident in discussions of labour law, since unions "can sometimes be the less powerful party, but in other contexts, such as in disputes against individual members, are the more powerful adversary."[259] For instance, PA referred to "cases where individual folks *have* been discriminated by their local[...] So, it could be workers, Black workers, who are facing direct racism from their own union."[260] More broadly, PD outlined moments that brought into question whether unions were representing what workers wanted,[261] which was particularly difficult to discern because "I'm not on the ground. I don't know the workers."[262]

Such deeply entrenched systemic inequities can lead some social change lawyers to avoid working for unions.[263] For instance, PE "almost exclusively[...] represent[ed] employees[...] not unions, often against unions."[264] In contrast, a union being "inherently discriminatory—which it is, systemically so, of course it is" did not lead PA to "completely axe[...] the whole union".[265]

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[258] Carle & Cummings, *supra* note 64.
[259] Carle, *supra* note 159 at n 114.
[260] PA, *supra* note 151 [emphasis in original].
[261] PD, *supra* note 151 (for example, "groups of workers who want to decertify, and they're trying to squelch a decertification campaign. [...] The *guiding* principle should be, what do the workers actually want? How do we achieve democracy for the workers? And sometimes it's hard to tell").
[262] *Ibid*. See also Carle, *supra* note 159 at 155-6 (examines the issue of decertification through an ethical hypothetical that contrasts "justice-focused" and "power-focused" lenses).
[263] PA identified this as a distinction between his approach to lawyering and that of "some movement lawyers[...] [who say] 'No way I'm going to work for unions, because I see what they do, and I'm not gonna be part of that structure. [But] I will work with them when it *works*'" [emphasis in original] (PA, *supra* note 151). This may be due to institutional issues within unions (see e.g. Tania Das Gupta, "Racism/Anti-Racism, Precarious Employment, and Unions" in Siu-ming Kwok & Maria A Wallis, eds, *Daily Struggles: The Deepening Racialization and Feminization of Poverty* (Toronto: Canadian Scholars Press, 2008) 143), but also the ways that the law itself can severely limit union organizing (see e.g. Fisk & Reddy, *supra* note 108). See also A Smith, *supra* note 109.
[264] PE, *supra* note 151.
[265] PA, *supra* note 151.

He remained "conscious of the limitations and the barriers that unions pose", but was ultimately "more hopeful in terms of the[ir] *potential*[...] to create real social changes".[266] PD also highlighted how legal support for unions could change depending on the context: "well-established unions" in the public sector tend to take a "[not] *politically* conservative, but *legally* conservative" approach, in contrast to "clients in the *private* sector who are doing a *lot* of organizing, and they're having a lot of bloody battles for certifications [and decertifications]".[267]

Participants navigated intra-movement dissent more directly by maintaining relationships with groups or organizations that have democratic governance structures,[268] a common strategy used by movement lawyers.[269] PG elaborated further on the importance of this.

> **PG**: [V]ery often in drug policy, we'll see organizations and groups partnering with singular, specific *chosen* drug users. [...] [But] who is *that* person accountable to? [...] At least with a drug user-led group, while it may not be perfect, I *know* that this group is accountable to a vast membership, and that they have a mandate that they have collectively decided on. I feel much better in trusting the word of a Board of democratically elected people than I do of an individual person.[270]

At the same time, PD stressed the importance of ensuring that such structures allow for genuine input and relationships with directly-impacted communities.[271] As a Board member of a clinic for migrant workers, she described the leadership development training and supports created "so that current and former migrant workers really feel confident and empowered to *take* those

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[266] *Ibid*.
[267] PD, *supra* note 151 [emphasis in original].
[268] *Ibid* ("I'm accountable [...] through the Board and the Board structure"); PF, *supra* note 103 ("I try and work with organizations that have governance structures that are truly grassroots and democratic, so that those that are most affected are the ones that are heard and are the ones that are providing instructions"); PG, *supra* note 104 ("being accountable as a movement lawyer oftentimes *means* building very close relationships with drug user-led groups that are democratically structured, so that it's not just a matter of getting my instructions from two people who use drugs... [but] from a Board of democratically-elected drug users who represent hundreds and hundreds of people, who have voted them in, to make decisions on behalf of the people" [emphasis in original]).
[269] See Carle & Cummings, *supra* note 64 at 458.
[270] PG, *supra* note 104.
[271] PD, *supra* note 151 ("it's really easy, and a lot of organizations do that in a tokenistic way, where it's like, 'Okay, there's 9 Board members and 5 are former migrant workers,' but the 4 who are lawyers and accountants are actually the ones who feel comfortable operating in a Board governance environment").

leadership roles."[272] These efforts appear to her to have been successful, and have "built in much better accountability" in the organization overall.[273] She applied similar skill and education-building strategies in her work with unions.[274]

Participants emphasized that movements and directly-impacted communities should lead the work, but most also expressed wanting some level of control over their contributions to social change—from being able to choose work they believed in without limitations, to choosing what work they would *not* take on.[275] Both PA and PD worked in firms rather than in-house, and had the ability to decline certain work—for PA, this was cases involving anti-Black racism and "police work",[276] while PD refused those involving "meritorious allegations" of sexual harassment or assault.[277] PD described the ability to choose in this way as one of the significant differences between labour law and criminal law.[278] Making choices is inherent to legal work—"[r]ather than pretending to exercise no influence, [social change lawyers] should seek to use it

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[272] *Ibid* [emphasis in original].
[273] *Ibid*.
[274] *Ibid* ("when we're doing a grievance arbitration, [we use] every opportunity that we have[...] to build skills within the union that we're working with. So, bringing *more* folks from the union *to* the arbitration hearing so they can see what that process is like and get some exposure. And using it as an opportunity to educate members about what's in your collective agreement, and how you enforce those collective agreement rights, and using every legal proceeding that we engage in as a tool *for* movement building" [emphasis in original])
[275] PA, *supra* note 151 ("*that,* in essence, is a form of resistance, to kind of… block out all the stuff where people are kind of diving in, and figuring out what do *I* choose to believe in, and then how does this fit, and my work fit, into the systems that I believe in, and the work that *I* actually really want to do?" [emphasis in original]); PB, *supra* note 151; PC, *supra* note 151 ("I was lucky enough[...] in the sense that I just went and did what I wanted to do right away. I didn't have to work at some big firm that I didn't want to work at until I put myself in a position where I could"); PE ("found that [labour and employment law] was a little bit limiting, just because when you represent institutional clients, you can't take on other cases that are more political, or where you have to take a definitive stand on some issues, whether it's against the government or otherwise[...] [which] pushed me into the direction of working independently") PG ("with grants, or donations, there's oftentimes an expectation of, "You will do this with that money." And it's like, "Just let us do our work. We *know* what we're doing, we *know* how to identify priorities").
[276] PA, *supra* note 151 ("if a union's being accused of racism, for example, against a Black worker, I'll say, 'I'm not comfortable doing that case[...] [S]ome unions[...] represent police officers as representatives. That's something *I'm* not interested in doing [for lived experience and systemic reasons], so I don't do police work like that[...] And so, that's how I try to address some of those [...] personal ethical issues that I have in specific files" [emphasis in original]). See also Ryan Hayes, "Let's Talk about Police in Our Unions: An Abolitionist Approach to Decent Work for All" in Shiri Pasternak, Abby Stadnyk, & Kevin Walby, eds, *Disarm, Defund, Dismantle: Police Abolition in Canada* (Toronto: Between the Lines, 2022).
[277] PD, *supra* note 151.
[278] *Ibid*.

prudently... [and] strive to exercise excellent judgment... [while] recogniz[ing] the power and discretion they exercise in a vast array of professional decisions".[279]

3.3.2 Clients vs Movements

The litigation process can be gruelling for clients,[280] but it can be "very difficult to convey to someone what the process is going to entail and the toll that it's gonna take."[281] As a result, some participants indirectly echoed the "temporality" conflict between "short-term client interests vs long-term movement objectives".[282] In the context of test cases, PF reflected on the issues that arise when "organisations who are engaged in social justice advocacy, in movements[...] identify a particular individual, and *my* obligation is to the *individual*."[283]

Carle and Cummings "suggest... that legal ethics should permit movement lawyers to count the long-term movement's interest as a legitimate goal to pursue... [and] treated akin to a consentable client conflict", allowing them to ethically prioritize the movement.[284] But even if this were the case, such a resolution was more complicated for PF, who did not "feel[...] at liberty to provide the kind of radical accountability" required for movement lawyering, and was also "not prepared to sacrifice an individual in the name of a broader cause."[285] Meanwhile, PE, who identified as a "movement lawyer" to some degree,[286] spoke to a balance between "the individual[...] importance of representing the interests of my client, but also the broader

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[279] Carle & Cummings, *supra* note 64 at 471.
[280] PE, *supra* note 151 ("most people are not equipped emotionally, and psychologically, and physically to withstand litigation [...] [Y]ou might function okay as a witness. But when it's your whole *life*, as well?" [emphasis in original]).
[281] PF, *supra* note 103.
[282] Carle & Cummings, *supra* note 64 at 451.
[283] PF, *supra* note 103 [emphasis in original].
[284] Carle & Cummings, *supra* note 64 at 466.
[285] PF, *supra* not 78.
[286] PE, *supra* note 151 ("I would agree with, or I'd *like* to be called a movement lawyer. And I think that's part of what I do, in some respects. I don't necessarily call myself that normally, because it's only in movement contexts or when I'm talking to grassroots community organizing groups, that they're really aware of that").

importance of pushing back against an oppressive system, of politicized laws that have impacts on racialized communities. [...] It's about choosing certain *kinds* of laws [that can do both]".[287]

Several participants also discussed the difficulties in deciding whether or not to take on a case that might have sweeping legal implications for marginalized communities. For instance, PF discussed the "uncertainty" of constitutional litigation, explaining that the potential of

> doing more *harm* by having a court entrench [a provision][...] [is] an ethical consideration that's difficult to work through. There's always a question of, "Well, we have a particular case now that may be appropriate to challenge the constitutionality a law or practice, but maybe there's a case that comes down the pipe a year from now that's better." You just don't know.[288]

PD described similar issues in the context of broader implications for social movements. She noted the importance of "being strategic about what legal arguments we make, and what we advance at the Labour Board and what we don't, based on what's a useful way to develop the law, what's a risky way to develop the law? So, always thinking *first* about[...] [the] goals of the labour movement, and then[...] the legal steps that we can take that advance that".[289]

Paying attention to the impacts of litigation on micro and macro levels is clearly important. At the same time, PC offered a different perspective:

> **PC:** I've reached a point in my career where sometimes you just gotta do a case, even if you know your odds are bad. Because there's an obligation to the folks who are coming into your office, who often have not dealt with a lawyer in this context, to do your best. [Ruth Bader Ginsberg,] [h]er whole thing was, "I choose the right case at the right time, to advance the law the right way." That's such a privileged position. 'Cause if somebody comes in my office and says, "Yo, I'm going to die, or suffer harms if you don't do something," I'm not gonna be like, "Well, the precedent's against you, and you're not the most..."
>
> **MM:** Yeah.
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> **PC:** That is the most ridiculous thing, I think. That is not community lawyering.[290]

[287] PE, *supra* note 151.
[288] PF, *supra* note 103 [emphasis in original].
[289] PD, *supra* note 151.
[290] PC, *supra* note 151.

PC's critique aligns with that of Gomez in the context of "impact-litigation nonprofits", and the ways that organizational strategic "priorities come at a price, usually one paid by the client communities and particular clients."[291]

Other participants would likely also agree with PC. Many discussed the ways that losing an individual case could still lead to significant "wins" by allowing opportunities for individuals and collectives to be heard and empowered,[292] "holding power accountable",[293] and creating "symbolic value".[294] Moreover, these immediate losses could help build public pressure[295] and be incredibly useful as a step toward broader goals.[296] Overall, it seems that striking a balance between "individual and social justice"[297] and "strategies and tactics"[298] can be helpful to

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[291] *Supra* note 177 at 651.

[292] PD, *supra* note 151 ("[y]ou're providing an opportunity for a worker who's been wronged to tell their story of what happened to them... [and] in many cases having the fight is what's valuable about using those legal process is in building worker power"); PE, *supra* note 151 ("you lose your case, but you were able to provide advocacy for your client in a system where this might have been their only, or their last recourse"); PF, *supra* note 103; PC, *supra* note 151 ("in my practice, I can use [the law] for folks as a sword, and I can empower them. And even if we lose, that process of putting others on the back foot, leveling the playing field, of sorts... I think it's so powerful and transformative to your standing in the community, and what's viable, what kind of community we can build"). At the same time, PC suggested that "[i]f I were losing, and if I was getting cost awards against my clients, super vulnerable, marginalized, then I would have to reconsider, perhaps, what I'm doing" (*ibid*).

[293] PD, *supra* note 151 ("("you lose a *lot* when you're on the side of workers... [but] part of the value of what we do is holding power accountable[...] [E]ven where you lose, you are requiring the employer to explain themselves, account for what they're doing, have that transparency"); See also PC, *supra* note 151 (""a lot of the times I've lost in court, only to force the government to settle on something later on").

[294] PE, *supra* note 151 ("particularly in the movement-oriented cases, there's a lot of positives that come out from… even when you lose, your case stands for something, as a symbolic value. And that becomes a win").

[295] *Ibid* (through the process "you discover more, literally, in terms of information [...] and testimony that wouldn't otherwise be available. And so, that feeds into public discourses, media discourses, and also other kinds of political advocacy. It depends on the framing of it, but smart and very organized people are able to make those connections").

[296] *Ibid* ("you lose much more often than you win. But, the fact that you have resisted, and you've fought, and you've launched that challenge, plays into a broader struggle, where it's used to inform other political critique"); PC, *supra* note 151 ("it's a long game [...] End of the day, it's the client. How do you position them to advance? And maybe that means fighting hard but losing in the court process, so it opens up political space where they can get something. So, it's being a bit strategic and looking broadly"); PF, *supra* note 103 ("even where the specific legal goal was not achieved, there's some aspect of the litigation process, some aspect of a particular set of reasons, particularly from appellate courts, that can serve to advance broader goals. And I look to that"). See also e.g. Douglas NeJaime, "Winning through Losing" (2010) 96:3 Iowa L Rev 941; C Albiston, "The Dark Side of Litigation as a Social Movement Strategy" (2010) 96 Iowa L Rev Bull 61; Michael M Oswalt, "Liminal Labor Law" (2022) 110:6 Cal L Rev 1855.

[297] PE, *supra* note 151.

[298] R Knox, *supra* note 73 ("any tactical intervention will also have strategic consequences... [W]hen thinking about effectiveness, it is necessary to understand the inherent relation between strategy and tactics... to consider how effective particular (seemingly 'short term') interventions might be in the longer term" at 198).

navigating social change lawyering.

3.3.3 Movements vs Legal Profession

One of the most challenging and least resolved conflicts that participants faced were between social movements and the legal profession. These generally occurred in one of two ways. First, some lawyers felt the "inherent tension between [their] commitment [...] to be a lawyer and committing myself to the legal profession, the legal process, the legal Code of Ethics and Professional Responsibility [...] and a commitment to a particular movement, or a particular cause."[299] Second, and more commonly, were the broader limitations of using the law and the "very complicated relationship between the law and social movements" overall.[300] Participants managed these conflicts in several ways, including recognizing the role division between activists and lawyers, managing client expectations, and engaging in strategic compromises.

3.3.3.1 Respecting Roles

Lawyers' professional obligations and legal strategies can often hinder movement strategies and goals,[301] and the power lawyers hold often means they can shirk accountability.[302] Meanwhile, an absence of legal education can open up creative possibilities due to not knowing, and so not fearing, potential legal risks, but can also cause significant problems for activists and social movements.[303] For example, PD outlined previous issues "with activist organizations

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[299] PF, *supra* note 103.
[300] PG, *supra* note 104.
[301] PF, *supra* note 103 ("professional standards that I have sworn an oath to uphold [...] can come into conflict with *movements*, movement lawyers, and goals that movements have"); PG, *supra* note 104 **(**"I've seen *way* too many times the legal strategy actually getting in the way of the movement strategy, resulting in compromises, or watering down, or exhaustion of the movement and the individual players").
[302] PB, *supra* note 151; PF, *supra* note 103 ("as soon as you step forward and put yourself out there as a lawyer, because of certain assumptions[...] [and] power imbalances that can be very profound, you [can] very quickly slip into[...] scenarios in which you can *duck* accountability" [emphasis in original]).
[303] Dr. Cindy Blackstock describes the nine arduous years of litigation leading up to the final decision in *First Nations Child and Family Caring Society of Canada v Canada (AG)*, 2016 CHRT 2 (see Cindy Blackstock, "The Complainant: The Canadian Human Rights Case on First Nations Child Welfare" (2017) 62:2 McGill LJ 285 (in particular, while she comments that "[s]ometimes, my legal naïveté was an advantage, in that I was less likely to be

purporting to provide representation to workers in ways that were disastrous for people who had vulnerable status in Canada. Lots of people got deported because they got legal advice from a random activist who knows nothing about immigration law."[304] Conversely, PB expressed her desire to get more involved in protest lawyering, particularly due to the increasing repression and arrests of pro-Palestine activists,[305] but felt that the gap in this area of her legal knowledge created a significant risk of doing harm while trying to help.[306] There must be a mutual exchange, then, of knowledge and experience between lawyers and activists.[307]

Building on this, PD noted that

> **PD:** [The triangulation] between legal service providers, community activists, and the community that has both legal and political needs[...] can be really difficult[...] and really fractious. [...] In the past, there have been times where the relationship was very strained [at the organization][...] [Now,] there's a better understanding of the role that a legal clinic plays and the role that activist organizations play, and then *how can we support each other and respect each other's roles*.[308]

PE expressed a similar view in the context of supporting social movements as a sole practitioner: "it *is,* really, as 'lawyer' that I'm part of those movements. I wouldn't call myself an 'organizer'[...] and I think deliberately so. I have a very specific role that I play, and I think that

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deterred by significant legal issues than an informed lawyer would be", she also describes "[t]he perils of proceeding without a skilled lawyer" due to the government taking advantage of legal technicalities at 298-9).

[304] PD, *supra* note 151.

[305] See e.g. Martin Lukacs, "Inside the 'Shocking' Police Operation Targeting Pro-Palestine Activists in Toronto" (17 June 2024), online: <breachmedia.ca/inside-the-shocking-police-operations-targeting-pro-palestine-activists-in-toronto>; J Sealy-Harrington, "Righteous Student Activism and Evolving Anti-Palestinian Reprisal in Canada" (4 July 2024), online: <canadiandimension.com/articles/view/righteous-student-activism-and-evolving-anti-palestinian-reprisal-in-canada>. PD, *supra* note 151, also discussed her "social justice defamation" work with pro-Palestine student activists.

[306] PB, *supra* note 151.

[307] In the context of radical legal support, Ceric similarly comments that the "inescapable and sometimes contradictory nexus of movement knowledge, legal expertise, and power demonstrates why both radical legal educators and accounts of knowledge production... draw on earlier conceptualizations of and debates about knowledge and pedagogy in social movements, particularly feminist approaches and Paulo Freire's *Pedagogy of the Oppressed...* Reflecting on the need to respond to experiences of exploitation and mistreatment rather than simply imparting knowledge, John Viola told me, '[w]e need to be as careful and as attentive to listening to that and learning from that as we are to teaching'" (*supra* note 47).

[308] PD, *supra* note 151.

the organizers appreciate that."[309] Following the idea of law as a "tool" toward social change, many participants also decentered law in their views of both legal work[310] and their own positions.[311]

However, structural imbalances can make role division more complicated, particularly when it comes to resources. PB observed that even when legal organizations try to take direction from activists and community members, staff can often end up making decisions because they are paid for their time and therefore have more capacity.[312] This raises further questions about what it means to be "community led".[313] On the other hand, PG talked about how this manifested for lawyers in non-profit or small firm contexts: "the people who actually *care* about this work are[...] totally strapped, and don't have *time*. [...] [W]e're all burning *out*. It's hard to get *organized*, 'cause[...] oftentimes, it's *you* who's doing the admin, and the paperwork, and the argument, *and* the submissions, *and* the *client* work, and it becomes very untenable, very quickly."[314] She described the importance of receiving support from larger firms with more

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[309] PE, *supra* note 151

[310] For instance, PA commented that one of the reasons he enjoyed his work with unions was because "people didn't view [the legal section] as that important. [...] You're not the centrality here, you're just a part. An annoying part, in fact, at times" (*supra* note 151). PF similarly commented, "I see the work that we're doing to be complementary to broader work that social movements are doing,[...] So, the legal work is not the *centre*" (*supra* note 103).

[311] PB, *supra* note 151 (did not view the title of lawyer as important); PG, *supra* note 104 (being a lawyer is a "somewhat arbitrary classification"); PC*, supra* note 151 ("you're not the saviour[...] [E]verybody wants to be a lawyer who shows up in court and blows it up[...] Who gives a shit?").

[312] PB, *supra* note 151.

[313] Such questions are common in community development work as well. For example, a research team at the Tamarack Institute "undertook a review of 67 organizations who use the term 'Community-Led' to describe their approaches to community change and found a substantial range in engagement practices, from completely grassroots citizen action through to organizations consulting with community stakeholders on program development" (Lisa Attygale, "Understanding Community-Led Approaches to Community Change" (9 July 2020) at 1, online (pdf): <tamarackcommunity.ca/articles/paper-understanding-community-led-approaches-community-change-lisa-attygalle>. Attygale notes that this "discrepancy may come from the gap that lies between the intent of community change organizations, practitioners, and advocates... and engrained ways of working—where power is held by organizations or funders in 'service' of the community... [or] from those who overpromise or are disingenuous—saying 'Community-Led' when in fact they don't intend to give that much power to the community, or arrogantly assume they can speak FOR community or KNOW what community wants. All too often, the term 'Community-Led' overlooks the diversity of perspectives that typically exists within communities in favour of promoting a homogenous and/or over-simplified stereotype" (*ibid* at 1).

[314] PG, *supra* note 104 [emphasis in original].

resources, especially for administrative tasks.[315]

The contrast between PB's and PG's concerns reflects "a fundamental tension: classic SMOs [social movement organizations] defined by a mass membership base promoted accountability but lacked dependable resources, yet larger SMOs, over time, were more likely to become professionalized, dependent on elite patronage... and... de-radicaliz[ed]".[316] Legal co-optation of social movements is insidious and can be led by private funders non-profit organizations alike.[317] While there are some ways for lawyers, law firms, and legal organizations to navigate these issues,[318] it remains problematic that "[a]ccess to justice for... equality-seeking groups... largely remains[] based on sacrifice, luck, and... generosity".[319]

3.3.3.2 Strategic Compromise

Lawyers working toward social change are fundamentally "limited" in what they "can do" in their professional role.[320] By using legal processes, social change lawyers have, at least to

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[315] *Ibid* ("[t]he amount of *time* that goes into putting together an application record... because we can't afford a paralegal. And so, even just *having* a firm be like, "Yes, send it our way. We will do all of that," would be *incredible*" [emphasis in original]). See also Thelton Henderson, "Social Change, Judicial Activism, and the Public Interest Lawyer" (2003) 12:1 Wash U JL & Pol'y 33 ([in] [o]ne of the biggest and most significant civil rights cases I have tried... partners and associates at that firm worked in a pro bono capacity and expended tremendous resources, including advancing costs well in excess of a million dollars... The public interest prison law group could not possibly have handled the case by themselves" at 36).

[316] S Cummings, "The Social Movement Turn in Law" (2018) 43:2 Law & Soc Inquiry 360 at 377 [footnotes omitted].

[317] See e.g. Megan Ming Francis, "The Price of Civil Rights: Black Lives, White Funding, and Movement Capture" (2019) 53:1 Law & Soc'y Rev 275 (examines "movement capture", or "the process by which private funders use their influence in an effort to shape the agenda of vulnerable civil rights organizations" at 276; Gomez, *supra* note 177 (describes how the "culture of non-profit impact litigation"; of particular note is Gomez's discussion of how "Dominance Drives the Division of Work" at 651-3).

[318] See e.g. E Tammy Kim, "Lawyers as Resource Allies in Workers' Struggles for Social Change" (2009) 13:1 CUNY L Rev 213; Michael Haber, "The New Activist Non-Profits: Four Models Breaking from the Non-Profit Industrial Complex" (2019) 73:3 U Miami L Rev 863; See also Mark Aspinwall, "Legal Mobilization Without Resources? How Civil Society Organizations Generate and Share Alternative Resources in Vulnerable Communities" (2021) 48:2 JL & Soc'y 202.

[319] Blackstock, *supra* note 305 at 302.

[320] PG, *supra* note 104 ("[t]here's just limitations in terms of what you can do as a lawyer, but it also comes with a lot of privilege and power, too. So it's an exchange"); PF, *supra* note 103 ("[I] have several constraints, when compared to an activist[...] [so] I accept as a starting point that I am committed in many ways, to the legal profession and the legal system[...] I am compromised, vis-a-vis a particular movement, or a cause. I am limited in what I can do"). While PA noted that "[t]hat's the difference I see, when you're talking about 'movement lawyers[...] [who are]

some degree, "committed to[...] play[ing] by these rules"[321] and "resign ourselves to what the process *is*. [...] [W]hatever the legal constraints are of [the] process, we adopt those, because that's only way to move forward in the system. And then we also adopt whatever the colonial tools, or practices, that are inherent within [the legal system]".[322] Because of this, PE commented that "I think it's all a strategic compromise. And *my* rationale for it is that I think in the *scheme* of things, when you're interested in political and social change, legal challenge and the law has a *role* to play, whatever limited role that may be."[323] Other participants similarly emphasized their willingness to accept these constraints to benefit clients and movements.[324]

Strategic compromise can work in different ways. For instance, PG outlined the "exchange" that occurs between "gain[ing] certain tools, and power, and oftentimes a seat at the table[...] because of this, let's be honest, somewhat arbitrary classification" with the "sacrifice" of **"**hav[ing] to bite your *tongue* at times because you're a 'professional'".[325] Another related concern is that of the lawyer's ethical responsibility to "uphold and promote respect for the administration of justice"[326] while not believing in or perhaps working actively against the system.[327] PB described a similar dilemma regarding the racist and dehumanizing questions and

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not always committing to play by the system's rules, you can think of, sometimes, more creative ways to do, but if I go outside the system, I'm the one who's gonna get sanctioned" (*supra* note 151), even those adopting a more radical approach face similar struggles. See e.g. PE, *supra* note 151 ("the movement lawyer *is* a *lawyer*, and there are rules which define the solicitor-client relationship" [emphasis in original]). PG, *supra* note 104; Ceric, *supra* note 47 at 188).

[321] PA, *supra* note 151.

[322] PE, *supra* note 151 [emphasis in original].

[323] *Ibid*.

[324] PF, *supra note 103* ("to the extent that those that are affected still see some benefit to the work that I do, I'm happy to do that work"); PG, *supra* note 104 ("I'll *do* it if that's what people want" [emphasis in original]).

[325] PG, *supra* note 104 [emphasis in original].

[326] *Model Code*, *supra* note 165, r 5.6-1.

[327] This does not seem to be discussed widely in the literature, perhaps due to how grey of a rule it is. In the context of child protection, Jennifer L Hiatt outlines how it can provide some conflicting guidance for family lawyers ("The Rules of Professional Conduct: A Conflicting Guide for Counsel in Child Custody and Access Proceedings" (2012) 1:1 Western J Leg Studies at 5-6). However, many radical lawyers find creative ways to navigate these issues. See e.g. Roznai, *supra* note 166; Morgan, *supra* note 27; Ceric, *supra* note 47; Akbar, *supra* note 1.

requirements that immigration officers only impose onto racialized immigrants.[328] While she may have felt they were important to challenge, it would likely also cause significant additional troubles for her client. For her, this inherent unfairness was why it was so important to balance individual client work with systemic advocacy.[329]

There are many other "things that you have to do [as a lawyer] in the system that you'd rather not do."[330] For instance, lawyers are obligated to either disclose or ensure that their clients disclose information in certain contexts. This can sometimes be challenging, such as in civil disputes, where parties must share all relevant information, even if it hurts their case.[331] However, PA and PB discussed the added difficulty when these obligations conflict with their own values and desire to "protect" clients from the legal system, particularly very "vulnerable" clients who may be put at risk of further harm by following those rules.[332] PA brought attention to how "survivor[s] in a workplace sexual assault case[...] have to exchange some medical information[...] in the disclosure [process]", which can "pu[t] people in an even more vulnerable position with people who have harmed them".[333] On an individual level, this can also create

[328] PB, *supra* note 151.
[329] *Ibid*.
[330] PA, *supra* note 151.
[331] See e.g. *Rules of Civil Procedure,* RRO 1990, Reg 194, r 30.02. Some of these issues are alluded to by the further guidance given to lawyers in Ontario: "[w]here the rules of a tribunal require the parties to produce documents or attend on examinations for discovery, a lawyer, when acting as an advocate (a) *shall explain to their client* (i) the necessity of making full disclosure of all documents relating to any matter in issue, and (ii) the duty to answer to the best of their knowledge, information, and belief, any proper question relating to any issue in the action or made discoverable by the rules of court or the rules of the tribunal..." (Law Society of Ontario, *Rules of Professional Conduct* (Toronto: LSO, 2000), r 5.1-3.1, online: <lso.ca/about-lso/legislation-rules/rules-of-professional-conduct> [emphasis added]). See also Mitchell London, "Resolving the Civil Litigant's Discovery Dilemma" (2013) 26:4 Geo J Leg Ethics 837.
[332] PA, *supra* note 151 ("[i]f you have somebody who's a survivor in a workplace sexual assault case, and you're going to a hearing, and you're going to have to exchange some medical information[...] it's putting people in an even more vulnerable position with people who have harmed them"); PB (discussed lawyers' obligations when clients disclosed unauthorized work or expressed intention to leave during removal proceedings). See also Zaman, *supra* note 78; Negar Katirai, "Retraumatized in Court" (2020) 62:1 Ariz L Rev 81.
[333] PA, *supra* note 151. See also e.g. Hillary Levun, "Medical Privacy and Litigation Discovery: Can They Be Harmonized: The American and Canadian Perspectives" (2010) 16:1 Sw J Intl L 131.

difficulties in the lawyer-client relationship.[334]

In a similar vein, participants outlined the importance of managing client expectations. Because the court process is probably "going to result in[...] something very individual and[...] watered down from what the movement actually wants", PG is "always very, very clear with clients in the movement that this is not going to *solve* everything[...] [and] might not get us where we want to go".[335] She emphasized the "level of care that I always take in doing litigation, to ensure that the movement is still healthy, and not sidelined, or exhausted, or whatever, as a result of the legal process."[336]

Meanwhile, PG faced professional difficulties when toeing the lines of "illegality": "a lot of the work that I do and support is premised on the idea of breaking laws in order to change them. And so, while my *personal* ethics is that people *should* break laws that are bad and harmful[...] as a *lawyer*, that becomes very tricky. [...] I've had people threaten to report me to the Law Society."[337] Professional ethics prohibit lawyers from encouraging or assisting clients in any way with "dishonesty, fraud, crime, or illegal conduct".[338] Although they specify an exception for non-violent, technical challenges to laws,[339] the balance between these two leaves

[334] *Ibid* ("[client] trust is key, but in those moments where you have to do things, it becomes like distrustful").
[335] PG, *supra* note 104. PF, *supra* note 103, made a similar comment when discussing individual harm, described at s 3.3.2, above ("I am transparent at the outset with respect to what my *role* is, and what my honest appraisal of what can be achieved, and what is *risked* by pursuing a goal through traditional litigation" [emphasis in original]).
[336] PG, *supra* note 104 [emphasis in original].
[337] *Ibid*.
[338] *Model Code, supra* note 165, r 3.2-7 ("[a] lawyer must never: (a) knowingly assist[ing] in or encourage any dishonesty, fraud, crime, or illegal conduct[,] (b) do or omit[ting] to do anything that the lawyer ought to know assists in or encourages any dishonesty, fraud, crime, or illegal conduct by a client or others, or (c) instruct[ing] a client or others on how to violate the law and avoid punishment").
[339] *Ibid*, 3.2-7 ("a bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case" at commentary 4).

some room for interpretation,[340] putting PG "in these *very* grey areas, *very* often."[341] Part of the reason for this, she suggested, was that her "clients are not the clients envisioned by Canada's legal system".[342] She elaborated:

> **PG:** [T]he legal profession does not oftentimes recognize this type of advocacy[...] [and] the legal system is intended to be a stopgap *against* things like direct action, oftentimes. It's like, "If you want to see change, you must go through the proper legal channels. And here's channels that we've set out for you." And it's like, "Yeah, but those channels don't *work* for my client." [...] I need to support them in whatever way makes *sense* for that person, and for the movement, but that can oftentimes be considered illegal. So, it is challenging.[343]

Strategic compromise can also sometimes involve situations where, as PC put it, "my client's interests come in conflict with my interests professionally".[344] He described a case involving a number of predominantly racialized families against a charity that had refused them housing:[345]

> **PC:** I asked the court to appoint someone with no relationship. I thought they did. We go to a hearing, we lose the hearing, turns out the judge is a donor. [...] And I remember [...] a colleague of mine, someone I admired, had called me up, and was like [...] "You need to not ruffle any feathers, 'cause it might hurt your reputation." And then a lot of [other] colleagues[...], similarly situated, [...] pretty accomplished lawyers, said the same thing to me, of, "It may have been a thousand bucks. It's not a big deal." And it's this moment of, "Do I just eat it, or do I *do* something?"[346]

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[340] See e.g. Charles R DiSalvo, "The Fracture of Good Order: An Argument for Allowing Lawyers to Counsel the Civilly Disobedient" (1982) 17:1 Ga L Rev 109; M Minow, "Breaking the Law: Lawyers and Clients in Struggles for Social Change" (1990) 52:4 U Pitt L Rev 723. See also Polikoff, *supra* note 222 (discusses representing activists engaged in direct action); Ceric, *supra* note 47 (discusses legal ethics in the context of radical legal support at 188-97); Paul R Tremblay, "At Your Service: Lawyer Discretion to Assist Clients in Unlawful Conduct" (2018) 70:2 Fla L Rev 251; Fisher, *supra* note 166; D Wilkins, "In Defense of Law and Morality: Why Lawyers Should Have a Prima Facie Duty to Obey the Law" (1996) 38:1 Wm & Mary L Rev 269.

[341] PG, *supra* note 104. She further elaborated that "while Benchers can really helpful, we're oftentimes navigating territory that they're like, "Yeah, I *don't* know what to tell you about handing out free drugs[...]" And you're like, "O...kay." So, you're oftentimes just having to figure it out on your own. Which can be hard, just from a legal perspective. [But] I don't ever feel any ethical uncertainty in terms of, 'Is this right?', or, 'Is what I'm doing important?'" (*ibid*).

[342] *Ibid*.

[343] *Ibid* [emphasis in original].

[344] PC, *supra* note 151.

[345] *Ibid* ("I represented like 75 families, all racialized, except for one or two. 300 people, marginalized, in the program, and they were promised houses if they me[t] certain things. They completed, didn't get it, we would go to an injunction").

[346] PC, *supra* note 151.

Ultimately, PC summarized, "I did what I needed to do."[347] In a different context, PB described a situation where she reported herself to the Law Society due to her own error. Her concerns about the impact of the mistake on her clients conflicted with the Law Society's concerns about liability, and they blocked her attempts to admit fault.[348] Both PC and PB concluded that their reputation mattered less than the impact on vulnerable clients, although PC seemed to face less external restrictions.[349]

While part of the findings of this section is that there *is* no resolution to these issues, it may also be true that the context of work impacts the degree to which social change lawyers have to compromise. PE commented that **"**I don't necessarily hold myself to being someone who's achieved this, but[...] those who function more at the margins of the profession are[...] critiquing the profession itself, but also advancing notions of justice more than those who sit within the state power *of* the institution. [...] I think there's a *lot* of value of being at the margins."[350] Similarly, William P. Quigley asks social change lawyers, "[i]s the work on the margins?" and suggests that "[i]f someone else is already doing the work, social change lawyers are probably needed elsewhere".[351]

Two participants, PE and PC, talked about starting their own firms.[352] For both, opening their own practice gave them more freedom to take on cases they believed in without as many institutional limitations.[353] At the same time, they each spoke to the significant financial

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[347] *Ibid*.
[348] PB, *supra* note 151.
[349] PC, *supra* note 151 ("I don't *care* what (laughs) these people think about me[...] I have an obligation to the clients. 300 people who are in dire straits, to whom *20* bucks a month is significant, let alone a *thousand* dollars, you know?" [emphasis in original]); PB, *supra* note 151.
[350] PE, *supra* note 151 [emphasis in original].
[351] Quigley, "Ten Questions", *supra* note 54 at 208.
[352] For PC, this was immediately after articling (*supra* note 151), while for PE, this was after "start[ing] in labour and employment... primarily working with and for trade unions" (*supra* note 151).
[353] PC, *supra* note 151; PE, *supra* note 151 ("[I] kind of found that it was a little bit limiting, just because when you

considerations and risks involved in opening up their own practice.[354] This raises the question, who is *able* to start their own practice and work in such a context? There is a common perception that the low pay associated with social change lawyering, combined with the significant debt that many law students hold,[355] forces people to compromise their career choices.[356] However, this is the subject of vigorous debate and is not currently supported by empirical data.[357]

While not examined in detail in this thesis, issues of pay and income were raised by many participants and are a significant concern for many of those interested in social change lawyering.[358] Doing work "at the margins" may therefore not be accessible for all lawyers

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represent institutional clients, you can't take on other cases that are more political, or where you have to take a definitive stand on some issues, whether it's against the government or otherwise. And so, that kind of pushed me into the direction of working independently").

[354] PC, *supra* note 151 ("I did graduate with six-figure debt. I did choose[...] [a] harder path [by opening my own practice]"); PE, *supra* note 151 ("I'm able to *maintain* a practice. [...] [C]lients [...] [aren't always] able to pay us. [...] [R]unning your own practice[...] there's always sort of this underlying tension, or concern that you *need* to make money[...] to survive. So there is that financial calculus" [emphasis in original).

[355] Canadian Bar Association, "Law Grads' Student Loan Burden is an Access-to-Justice Issue", (11 April 2019), online: <cba.org/News-Media/Press-Releases/2019/student-loan-burden>; Watson, HG, "The Debt Burden", (7 August 2018), online: <canadianlawyermag.com/resources/legal-education/the-debt-burden/275350>; C Smith, *supra* note 249 at 65.

[356] See e.g. Jacques Gallant, "Help My Community or Pay My Debts? Rising Law School Costs Force More Young Lawyers to Make the Choice", (7 March 2019), online: <thestar.com/news/canada/help-my-community-or-pay-my-debts-rising-law-school-costs-force-more-young-lawyers/article_7b9b9e47-4088-58d2-a4c5-e264e4c5a03b.html>; Ted Tjaden, "Letter to a Law Student", (19 October 2011), online: <slaw.ca/2011/10/19/letter-to-a-law-student>; Donald Nicolson, "Legal Education, Ethics and Access to Justice: Forging Warriors for Justice in a Neo-liberal World" (2015) 22:1 Intl J Leg Profession 51 at 53, 59.

[357] See PA, *supra* note 151 ("you could talk to folks[...] who said they were so interested in human rights, so interested in family, so interested in criminal, and they got a nice offer, and off they ride. And we all have debts to pay, I understand, that's the common thing people say[...] But we'll see where you're at in 20 years, when your debt's paid off. Did you switch? Did you leave?"); Christa McGill, "Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear" (2006) 31:3 Law & Soc Inquiry 677; S Boutcher et al, "A Faustian Bargain? Rethinking the Role of debt in Law Students' Career Choices" (2023) 20:1 J Empirical Leg Stud 166. Rather than debt, some authors argue that legal education is what diverts law students from social justice paths. See Albiston, Cummings & Abel, *supra* note 28; William P Quigley, "Letter to a Law Student Interested in Social Justice" (2007) 1:1 DePaul J Soc Justice 7 at 9-11 [Quigley, "Letter to a Law Student"]; Jonathan A Rapping, "It's a Sin to Kill a Mockingbird: The Need for Idealism in the Legal Profession" (2015) 114 Mich L Rev 847; Tan N Nguyen, "An Affair to Forget: Law School's Deleterious Effect on Student's Public Interest Aspirations" (2007) 7 Conn Pub Int LJ 95.

[358] See e.g. PB, *supra* note 151 (wondered how other lawyers can afford to do certain types of work, and discussed the financial constraints of her legal aid practice); PG, *supra* note 104 ("[I'm] not saying that I want to be paid the same amount as someone in a corporate law firm, but[...] I am barely affording my rent. [...] [T]he financial precarity is a real thing"); Elizabeth Adjin-Tettey & Maneesha Deckha, "Promises and Challenges of Achieving Racial Equality in Legal Education in Canada" (2010) Can Leg Education Annual Rev 171 ("[a]s law schools

wanting to pursue social change. On the other hand, senses of isolation or feeling "different" from others within the legal profession may be an indication that these lawyers are engaging in meaningful, transformative work, even if that work occurs within more traditional confines.[359] This discussion opens yet another inquiry for future research to be done. In the following section, I examine some of the deeper emotional undercurrents of social change lawyering and the ways that participants managed them.

consider how to achieve racial balance in their institutions, the financial implications must also be considered. Many students from lower socio-economic brackets already carry a substantial debt load from their undergraduate studies, making the prospect of taking on more for professional school training daunting" at 195); Quigley, "Letter to a Law Student", *supra* note 359.

[359] I initially considered framing this as "thinking on the margins", but I want to avoid abstracting or metaphorizing the concrete work that needs to be done. See Tuck & Yang, *supra* note 89 ("[w]hen metaphor invades decolonization, it kills the very possibility of decolonization; it recenters whiteness, it resettles theory, it extends innocence to the settler, it entertains a settler future. Decolonize (a verb) and decolonization (a noun) cannot easily be grafted onto pre-existing discourses/frameworks, even if they are critical, even if they are anti-racist, even if they are justice frameworks. The easy absorption, adoption, and transposing of decolonization is yet another form of settler appropriation. When we write about decolonization, we are not offering it as a metaphor; it is not an approximation of other experiences of oppression. Decolonization is not a swappable term for other things we want to do to improve our societies and schools. Decolonization doesn't have a synonym" at 3).

4 INTERNAL APPROACHES

"Sometimes we may feel the paralysis of despair. The problems of the world seem insoluble. But, we should thank our lucky stars that we are able to feel, for the capacity for empathy is what motivates us to act, to feel the power to change the world."[360]

During law school, I read a lot about social change lawyering to try and resolve my uncertainty about my future work. A lot of this literature defines and critiques different models of practice and offers useful perspectives on navigating issues of power and domination as a lawyer.[361] However, I still felt unsatisfied with how they addressed a lot of the deeply felt tensions that I was experiencing especially compared to concepts like "moral distress" in other fields.[362] I found little guidance on how to actually deal with these feelings—only that others struggled with them too. I had not fully articulated these issues prior to data collection, but expected participants to share similar struggles, whether in the past or in their current practice.

One of my interview questions focused on how participants felt upon becoming lawyers.[363] As I began to code, I quickly noticed how often "feeling" was referenced in the context of their past and current practice, and it expanded into a central theme of the study. In this chapter, I examine some of the emotional conflicts that arise for social change lawyers and what strategies they use to navigate them. While I do not intend to centre the individual feelings above collectives, it is often as individuals that lawyers and law students struggle.[364] The limited

[360] Leti Volpp, "Lawyering at the Margins: On Reason and Emotion" (2002) 11:1 Am UJ Gender Soc Pol'y & L 129 at 131.
[361] See ss 1.3 and 3.1, above.
[362] See e.g. Georgina Morley, Caroline Bradbury-Jones & Jonathan Ives, "What is 'Moral Distress' in Nursing? A Feminist Empirical Bioethics Study" (2020) 27:5 Nursing Ethics 1297; M Weinberg, "Moral Distress: A Missing but Relevant Concept for Ethics in Social Work" (2009) 26:2 Can Soc Work Rev 139.
[363] See Appendix B at no 2-B. Thank you very much to my committee member Professor Fay Faraday for suggesting this question.
[364] See e.g. Ann Juergens, "Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching" (2005) 11:2 Clinical L Rev 413 ("[a]ll lawyers need means of transforming hate and

attention paid to these issues in law school and beyond, as will be discussed in the following section, suggests this is an important additional component to social change lawyering that should be examined in more detail.

4.1 Feeling and Emotion in Social Change Lawyering

Emotion tends to be very present in organizing and social movement work, particularly emotions like love and anger.[365] However, in law the dominant belief is that "reason" should prevail over "emotion";[366] this is built into legal structures, from legal education[367] and scholarship[368] to legal decision-making[369] and outcomes.[370] Many students entering law school

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fear so that we do not turn those emotions against others or against ourselves through depression or addiction. Law students need our guidance to learn to heed their feelings while engaged in lawyers' work and in life" at 424).

[365] See e.g. James M Jasper & Lynn Owens, "Social Movements and Emotions" in Jan E Stets & Jonathan H Turner, eds, *Handbook of the Sociology of Emotions: Volume II* (Dordrecht: Springer Netherlands, 2014) 529; Deborah J Cantrell, "Love, Anger, and Social Change" (2019) 12 Drexel L Rev 47; Helena Flam, "Micromobilization and Emotions" in Donatella della Porta & Mario Diani, eds, *The Oxford Handbook of Social Movements* (Oxford: Oxford University Press, 2015) 264; Lama Rod Owens, *Love and Rage: The Path of Liberation Through Anger* (Berkeley: North Atlantic Books, 2020). See also A Lorde, "The Uses of Anger" (1997) 25:1/2 Women's Studies Q 278; bell hooks, *All About Love: New Visions* (New York: William Morrow, 2018) D Spade, *Love in a F*cked-Up World: How to Build Relationships, Hook Up, and Raise Hell Together* (New York: Algonquin Books) [forthcoming, 2025].

[366] See e.g. Bandes et al, *supra* note 88.

[367] See e.g. Gillian Calder, "Whose Body is This? On the Role of Emotion in Teaching and Learning Law" in Bandes et al, *supra* note 88 ([t]he prevailing pedagogy in Canadian law schools devalues emotion, the body, the subjective, the personal, the artistic in contrast with reason, the mind, the objective, and the neutral" at 64-5); D Cantrell, "Love, Anger, and Lawyering" (2016) 19:4 Richmond JL & Public Interest 283; Volpp, *supra* note 362 at 130; Imai, *supra* note 52 ("I was taught that it was sometimes easier to be an advocate if the client was made to disappear, because the client might introduce messy facts and emotions which could get in the way of a good legal argument" at 196); Juergens, *supra* note 366 (discusses having to "muffle" emotions as women in male-majority law schools and the connections between emotion/femininity and reason/masculinity at 417).

[368] See e.g. Cantrell, *supra* note 369; Juergens, *supra* note 366 ("[demonstrating] the importance of intrinsic goals and a well-balanced life... can be a challenge within the legal academy, where work is valued over health, thought is elevated over feeling, individual achievement is trumpeted and community accomplishment largely overlooked" at 415).

[369] See e.g. Terry A Maroney, "Law and Emotion: A Proposed Taxonomy of an Emerging Field" in Bandes et al, *supra* note 88 ("[t]raditional legal theory either presumes that judges have no operative emotions about the litigants and issues before them or mandates that any such emotions be actively suppressed, reflecting an untested, common-sense wisdom that emotion distorts the objective legal reasoning demanded by the judicial role" at 552); Sharyn Roach Anleu & Kathy Mack, *Judging and Emotion: A Socio-Legal Analysis*, 1st ed (Routledge, 2021); Linda Mussell & Michael Orsini, "Governing Through Remorse: The Discursive Framing of Dangerous Offenders in Canada" (2021) 36:3 CJLS 505.

[370] See e.g. Betsy J Grey, "The Future of Emotional Harm" (2015) 83:5 Fordham L Rev 2605 (examines systemic difficulties in being awarded compensation for emotional harm in tort law); Emily Kidd White, "Images of Reach, Range, and Recognition: Thinking about Emotions in the Study of International Law" in Bandes et al, *supra* note 88

passionate about "making a difference" often leave drained of both energy and excitement,[371] although this is partly due to having unrealistic expectations.[372]

For several decades, the 'Law and Emotion' movement has aimed to challenge "the traditional understanding of the law as a purely rational, unemotional endeavor",[373] and instead highlight how "emotion organises the study of law and how the practice of law is fundamentally emotional."[374] This emerging field follows the lead of a number of others,[375] while recognizing the significant value of using interdisciplinary approaches in legal research.[376] Yet, its broad nature can lead to trouble in defining terms.[377] I experienced this myself while writing this

("[i]t is also necessary to acknowledge the conservative nature of precedent, which tends to disregard those forms of harm, injury, social exclusion, or discrimination that appear to fall outside the recognized categories of legal rights violations" at 496-7).

[371] See e.g. Jane Aikan & Stephen Wizner, "Law as Social Work" (2003) 11 Wash UJL & Pol'y 63 ("[t]he law school curriculum is designed to neutralize that passion [for social justice] by imposing a rigor of thought that divorces law students from their feelings and morality" at 73); Calder, *supra* note 369; Juergens, *supra* note 366 (discusses having to "muffle" emotions as women in male-majority law schools and the connections between emotion/femininity and reason/masculinity at 417).

[372] See e.g. Quigley, "Letter to a Law Student", *supra* note 359; López, *supra* note 57. PC similarly commented, "I think the people who are disappointed that the law can't solve everything had gone into it thinking it can. And I never shared that outlook, so when people complain about this stuff, I just don't understand. The 'crushing of dreams.'" (*supra* note 151).

[373] Alex Batesmith, "Lawyers Who Want to Make the World a Better Place – Scheingold and Sarat's Something to Believe In" in Leading Works on the Legal Profession, 1st ed (London: Routledge, 2023) 212 at 217.

[374] Senthorun Raj, "Teaching Feeling: Bringing Emotion into the Law School" (2021) 55:2 L Teacher 128 at 141.

[375] Bandes et al, *supra* note 88 ("[i]n the past two decades, as fields like philosophy, psychology, neuroscience, sociology, history, anthropology and the humanities discovered (or rediscovered) the importance of reckoning with emotion, legal scholars at last began to develop a more realistic and sophisticated understanding of emotion's complex role" at 1). However, many fields can trace back studies of affect and feeling much earlier: Dan Goodley, Kirsty Liddiard & Katherine Runswick-Cole, "Feeling Disability: Theories of Affect and Critical Disability Studies" (2018) 33:2 Disability & Society 197 ("[j]ust as feminism can claim a long historical alignment with affect through 'the personal is political', so critical disability studies can also point to a body of literature that has been engaged with the affective *experiences* of disability" at 206).

[376] See e.g. Bandes et al, *supra* note 88 ("we are still in the early stages of this exciting interdisciplinary project" at 1); Maroney, *supra* note 371 ("[w]e therefore would do well to foster dynamic collaborations among social scientists, those trained in the life sciences, philosophers, lawyers, and legal scholars... [to] encourage creation of a common language, and [make] resulting scholarship... both more complex and more accessible to those across the range of implicated disciplines" at 557); Kathryn Abrams & Hila Keren, "Who's Afraid of Law and the Emotions" in Bandes et al, *supra* note 88 ("[s]cholarship on law and emotions has undergone a rapid development, from a movement allied with feminists and other critical scholars in challenging legal rationality and objectivity, to an interdisciplinary effort aimed at exploring many dimensions of human affective response" at 568).

[377] See Bandes et al, *supra* note 88 ("[a]cross disciplines, it is unhelpful—and indeed misleading—to treat "emotion" as a monolithic, unchanging entity" at 4); Maroney, *supra* note 371 ("[w]hen th[e] somewhat wobbly compendium of thought on human emotion is paired up with 'law,' a term encompassing a breathtakingly large domain of social

review, as I tried to briefly distinguish between the three separate but related concepts of affect, emotion, and feeling.[378] To address this issue, Susan A. Bandes et al. suggest that people should "state one's working definition of 'emotion,' or of the particular emotions under discussion, with the recognition that all such definitions are provisional and contested... [and] identify[ing] the purpose of the inquiry."[379]

"Affect" generally refers to "feelings generated by—and... circulating through—relationships among people."[380] Meanwhile, "emotion" and "feeling" are often defined against each other, with emotions being a physiological reaction and feelings being a conscious one.[381] However, their definitions are sometimes interchangeable, or even reversed.[382] For example, some authors emphasize the ways that people can ignore information that the body tries to convey through feelings[383] or senses.[384] For the purposes of this thesis, I use "feeling" as an umbrella term to mean a form of bodily knowledge that includes sensory and emotional experiences that may be conscious or unconscious.

Perceptions and experiences of emotions are also political. Sara Ahmed "challenges any

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regulation, the enterprise seems perilously unsteady" at 557); Harold Anthony Lloyd, "Cognitive Emotion and the Law" (2016) 41 L & Psychology Rev 53; Anna Wierzbicka, "Defining Emotion Concepts" (1992) 16 Cognitive Science 539; Paul R Kleinginna & Anne M Kleinginna, "A Categorized List of Emotion Definitions, with Suggestions for a Consensual Definition" (1981) 5:4 Motivation & Emotion 345.

[378] See Goodley, Liddiard & Runswick-Cole, *supra* note 377 ("[t]he study of affect broadly hails a return to emotion and feeling..." at 198).

[379] Bandes et al, *supra* note 88 at 4.

[380] Culhane, *supra* note 89 at 54.

[381] See e.g. Raj, *supra* note 376 at 129; Jesse Prinz, "Are Emotions Feelings?" (2005) 12:8–10 J Consciousness Studies 9.

[382] See e.g. Merriam Webster, "Emotion" (21 June 2024), online: <merriam-webster.com/dictionary/emotion> ("a conscious mental reaction (such as anger or fear) subjectively experienced as strong feeling"); Barber, *supra* note 36 sub verbo "feeling" ("a sense of touch or the capacity to feel... [or] a particular emotional reaction").

[383] See e.g. Brooks, *supra* note 165 ("[f]eelings start with bodily sensations and can be important sources of information, though we may tend to ignore them or minimize them. We and our students... often get confused about the difference between thoughts, which are actually interpretations, and feelings. It is often easier to identify our thoughts, especially when both law school and legal practice often focus on rational and analytical thinking to the exclusion of everything else. As a consequence, we may try to ignore or simply not pay attention to our feelings, which leads us to miss important information" at 287 [emphasis added]).

[384] See e.g. Resmaa Menakem, My Grandmother's Hands: Racialized Trauma and the Pathway to Mending our Hearts and Bodies (Las Vegas: Central Recovery Press, 2017) at 5-7; Culhane, *supra* note 89.

assumption that emotions are a private matter, that they simply belong to individuals, or even that they come from within and then move outward toward others".[385] Instead, she argues,

> emotions *do things,* and they align individuals with communities — or bodily space with social space — through the very intensity of their attachments. Rather than seeing emotions as psychological dispositions, we need to consider how they work, in concrete and particular ways, to mediate the relationship between the psychic and the social, and between the individual and the collective.[386]

The author demonstrates that emotions, while intangible, have material and racialized repercussions.[387] Further, Western colonial values attempt to construct white emotions as universal[388] while regulating the emotions of people of colour.[389] Emotions can therefore reinforce dominant systems of power,[390] but can also be a form of resistance.[391] Because the

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[385] Sara Ahmed, "Affective Economies" (2004) 22:2 Soc Text 117 at 117.
[386] *Ibid* at 119.
[387] Ahmed builds upon these ideas in her book, *The Cultural Politics of Emotion* (2nd ed (Edinburgh: Edinburgh University Press, 2014)). Both works draw from Frantz Fanon, who, among his many contributions to postcolonial and critical theory, is recognized for his analysis of "the psychiatry of racism and the psychology of oppression" (George J Sefa Dei & Marlon Simmons, "The Pedagogy of Fanon: An Introduction" (2010) 368 Counterpoints XIII at xvii). See also Frantz Fanon, *The Wretched of the Earth*, translated by Richard Philcox (New York: Grove Press, 2004); Frantz Fanon, *Black Skin, White Masks*, new ed, translated by Charles Lam Markmann (London: Pluto Press, 2008).
[388] See e.g. Zachary Samalin, "Affect Theory's Colonial Sources" (2022) 64:4 Victorian Studies 561 ("even though affect and emotion have been central to the modern analysis of power, the often-presumed universality of our emotional lives is itself an artefact of the scientific projects of liberal universalism and the forms of domination for which such universalism has historically provided the discursive justification. There can be no question that emotions are constitutive of social life, but the ways that we come to know and understand them as constitutive are themselves subject to historical and ideological pressures" at 561); Culhane, *supra* note 89 ("[r]ecognizing this construction of the senses as particular to dominant theories in the West, we see that we live within sensory regimes [where]... [o]ur bodies, feelings, imaginations, and senses are educated and trained in particular ways, and these are naturalized and considered 'ordinary common sense'" at 58).
[389] See e.g. Dian Million, "Felt Theory: An Indigenous Feminist Approach to Affect and History" (2009) 24:2 Wicazo Sa Review 53; Coulthard, *supra* note 23; Lorde, *supra* note 367; Harald Fischer-Tiné & Christine Whyte, "Introduction: Empires and Emotions" in H Fischer-Tiné, ed, *Anxieties, Fear and Panic in Colonial Settings: Empires on the Verge of a Nervous Breakdown* (Cham: Springer International Publishing, 2016) 1.
[390] Loretta Pyles, "Healing Justice, Transformative Justice, and Holistic Self-Care for Social Workers" (2020) 65:2 Social Work 178 ("[t]he dominant social system tends toward reifying the separate self as essentially cognitive... [and] the body, emotions, and one's connections to spirit, the environment, and others are less valued" at 181).
[391] See e.g. Emese Ilyés et al, "Human Rights Beyond the Colonial Imagination: Legal Empowerment and Techniques of Delegitimation" (2023) 15:2 J Human Rights Practice 432 ("feelings of exhaustion and frustration and even hopelessness can be instances of radical resistance that refuses to participate in dehumanization" at 445); Coulthard, *supra* note 385; Kidd White, *supra* note 372 ("[e]motional reactions, such as horror, indignation, or political anger, can also serve to highlight the hypocritical nature of a legal order by juxtaposing the impact of a law's publicly stated purpose, against its impact. The attention-directing features of emotions are far from apolitical,

legal system is a place where emotions operate materially and invisibly,[392] emotion is an important site of study in discussions of social change lawyering.

There are a number of approaches to law and emotion,[393] but most relevant for this study is the "legal-actor approach", which "focuses on the humans that populate legal systems and explores how emotion influences and informs, or should influence or inform, those persons' performance of the assigned legal function."[394] Much of this literature has focused on legal decision makers,[395] especially judges[396] and jurors.[397] Lawyers have most often been studied in particular contexts,[398] although more recent scholarship has expanded to new areas.[399] By devaluing their own and others' emotions, lawyers can dismiss legally relevant information,[400] reinforce harmful power dynamics, stereotypes, or narratives about clients,[401] or simply "act

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and raise a series of questions about whose emotions are legible to those in power, and whose emotions are perceived to be legitimate, compound, deeply-felt, or authentic" at 505); Cantrell, *supra* note 369 at 53-4.

[392] See e.g. Burman, *supra* note 22; S Buhler, "Encountering Social Suffering in Clinical Legal Education" (2013) 19:2 Clinical L Rev 405 ("the suppression of emotional responses can maintain dominant ideas about the irrationality of emotional responses in legal practice, and how these ideas similarly reproduce dominant notions of the proper sphere of legal practice and professional identity" at 423) [Buhler, "Social Suffering"].

[393] See Maroney, *supra* note 371; Abrams & Keren, *supra* note 378.

[394] Maroney, *supra* note 371 at 551.

[395] Bandes et al, *supra* note 88 ("[t]he relationship between law and emotion is complex because of the lack of specificity regarding when, why, how, where, and for whom emotion should influence legal judgments" at 3); Brian H Bornstein & Richard L Wiener, eds, *Emotion and the Law: Psychological Perspectives* (New York: Springer, 2010) ("[d]espite the legitimacy of emotion in many legal situations, the law has a double standard with respect to emotion. In many situations, the law presumes that legal decision makers can set their emotions aside and behave as cool, dispassionate, rational actors" at 5); Maroney, *supra* note 371 (while "this is the area of highest concentration of empirical work... that work has not been evenly distributed across the universe of legal actors" at 551).

[396] Maroney, *supra* note 371 at 552.

[397] *Ibid* at 551.

[398] Most often criminal law or clinical legal education (*ibid* at 548, 553).

[399] See Abrams & Keren, *supra* note 378 (expanding not only to other fields but other kinds of emotions at 573-4).

[400] *Ibid* at 575; Juergens, *supra* note 366 at 420; Gary J Friedman, "Working with Emotions: Going Down the V" in *Inside Out: How Conflict Professionals Can Use Self-Reflection to Help Their Clients* (Chicago: ABA Book Publishing, 2014).

[401] See e.g. Galldin, *supra* note 19 ("[w]hen situated within larger systems of domination and oppression, the lawyer's inability to work with difficult or emotional clients takes on a greater meaning—that of refusing participation to those who challenge the status quo" at 302); Buhler, "Social Suffering", *supra* note 394 ("an uncritical embrac[ing] of [compassionate] approaches [to suffering]... may perpetuate rescue fantasies and notions of clients as voiceless victims" at 416); Friedman, *supra* note 402; Zaman, *supra* note 78.

habitually".[402]

While it does not always fall under the "law and emotion" literature,[403] lawyer well-being has also received increased attention in recent years. Like many "helping" professions, anxiety, depression, and burnout are widespread problems.[404] A recent study found that 57% of Canadian lawyers experience "psychological distress", which has been exacerbated by the COVID-19 pandemic,[405] and impacts many demographics at disproportionately higher rates.[406] Similarly, more attention is being paid to the role of trauma in legal processes,[407] including how lawyers may be impacted by their work in trauma-dominated fields, also known as vicarious or secondary trauma.[408]

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[402] Cantrell, *supra* note 369 ("I also started to see that the challenge about emotions and lawyering was not that I would act irrationally because of emotions... but that I would act habitually" at 289). See also Friedman, *supra* note 402 ("[w]hen we're not aware of those deeper feelings and their workings, they guide us invisibly" at 50).
[403] But see e.g. Lloyd, *supra* note 379.
[404] See e.g. Megan Seto, "Killing Ourselves: Depression as an Institutional, Workplace and Professionalism Problem" (2012) 2:2 Western J Leg Studies 1; Cheryl Ann Krause & Jane Chong, "Lawyer Wellbeing as a Crisis of the Profession" (2019) 71:2 S Cal L Rev 203; Paula Baron, "Sleight of Hand: Lawyer Distress and the Attribution of Responsibility" (2014) 23:2 Griffith L Rev 261; N Ireland, "'The Impact on Society is Enormous': In Legal Profession, Depression, Addiction Hurt Clients, Too" (26 November 2016), online: <cbc.ca/news/health/lawyers-mental-health-addiction-problems-1.3865545>; Beth Beattie, Carole Dagher, & Thomas Telfer, eds, *The Right Not to Remain Silent: The Truth About Mental Health in The Legal Profession* (North York, ON: LexisNexis Canada, 2024).
[405] See Nathalie Cadieux et al, *Research Report (final version): Towards a Healthy and Sustainable Practice of Law in Canada. National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I (2020-2022)* (Sherbrooke, QC: Université de Sherbrooke Business School, 2022).
[406] *Ibid*. See also Pyles, *supra* note 392 ("[a]lthough everyone experiences stress, for people who are targeted by systems of oppression that include violence, social exclusion, or persistent microaggressions, chronic stress and trauma are part of a daily lived reality" at 179); Cher Weixia Chen & Paul C Gorski, "Burnout in Social Justice and Human Rights Activists: Symptoms, Causes and Implications" (2015) 7:3 J Human Rights Practice 366 ("several of the participants of colour noted the ways they experienced racism within SJHR movements, and even within racial justice movements, and how this contributed to their activist burnout" at 377); Gorski & Erakat, *supra* note 252.
[407] See e.g. Sara E Gold, "Trauma: What Lurks Beneath the Surface" (2018) 24:2 Clinical L Rev 201; Helgi Maki & Tess Sheldon, "Trauma-Informed Strategies in Public Interest Litigation: Avoiding Unintended Consequences Through Integrative Legal Perspectives" 90 SCLR (2nd) 65; David A Crenshaw et al, "Developmentally and Trauma-Sensitive Courtrooms" (2019) 59:6 J Humanistic Psychology 779; Nicole C McKenna & Kristy Holtfreter, "Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness" (2021) 30:4 J Aggression, Maltreatment & Trauma 450. But see Natalie Clark, "Shock and Awe: Trauma as the New Colonial Frontier" (2016) 5:1 Humanities 14.
[408] See Marie-Jeanne Leonard et al, "Traumatic Stress in Canadian Lawyers: A Longitudinal Study" (2023) 15:Suppl 2 Psychological Trauma: Theory Research Practice & Pol'y S259; Marie-Eve Leclerc, Jo-Anne Wemmers & Alain Brunet, "The Unseen Cost of Justice: Post-Traumatic Stress Symptoms in Canadian Lawyers" (2020) 26:1 Psychology, Crime & Law 1; Stine Iversen & Noelle Robertson, "Prevalence and Predictors of Secondary Trauma

Social change lawyers may experience these issues differently than lawyers working in other fields, although there is a lack of data in this regard.[409] For instance, while some authors suggest that high levels of empathy may contribute to an increased risk of burnout and/or vicarious trauma ("compassion fatigue"),[410] these same qualities may also act as protective factors,[411] especially when combined with connections to community and a strong sense of purpose ("compassion satisfaction").[412]

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in the Legal Profession: a Systematic Review" (2021) 28:6 Psychiatry, Psychology & L 802; Mark Rabil, "Secondary Trauma in Lawyering: An Introduction" (2021) 56:4 Wake Forest L Rev 719; Lisa Morgillo, "Do Not Make their Trauma Your Trauma: Coping with Burnout as a Family Law Attorney" (2015) 53:3 Fam Ct Rev 456; Lila Petar Vrklevski & John Franklin, "Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material" (2008) 14:1 Traumatology 106; Grace Maguire & Mitchell K Byrne, "The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals" (2017) 24:2 Psychiatry, Psychology and Law 233; Andrew P Levin et al, "Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working With Trauma-Exposed Clients" (2011) 199:12 J Nervous & Mental Disease 946; Lindsay M Harris & Hillary Mellinger, "Asylum Attorney Burnout and Secondary Trauma" (2021) 56:4 Wake Forest L Rev 733; Neil Graffin, "The Emotional Impacts of Working as an Asylum Lawyer" (2019) 38:1 Refugee Survey Q 30; Colin James, "Towards Trauma-Informed Legal Practice: A Review" (2020) 27:2 Psychiatry, Psychology & L 275 ("[i]n particular, lawyers who work in criminal law, coronial law, family law, domestic violence, child abuse, immigration and refugee law and personal injury cases may be at risk from indirect trauma exposure since they often need to work with traumatised clients and to particularise violent events" at 276). See also Sarah Knuckey, Margaret Satterthwaite & Adam Brown, "Trauma, Depression, and Burnout in the Human Rights Field: Identifying Barriers and Pathways to Resilient Advocacy" (2018) 49:3 Colum Hum Rts L Rev 267; Anne Groggel, Jenny L Davis & Tony P Love, "Facing Others' Trauma: A Role-Taking Theory of Burnout" (2022) 85:4 Soc Psychology Q 386.

[409] See C James, *supra* note 410 ("[m]ost empirical research so far reports on the experience of lawyers in private practice, prosecutors and judges, and there appears to be nothing published to date on the experience of indirect trauma by lawyers in legal aid or community legal services" at 282). For instance, Cadieux et al, *supra* note 407, find that "legal professionals in the public sector or NFPO experience the most suicidal ideation in their work (27.2%), compared to 18.8% and 22.1% in the education sector and for-profit corporations, respectively" at 42, but do not define or go beyond this broad categorization.

[410] See C James, *supra* note 410; Cadieux et al, *supra* note 407; Nora Chlap & Rhonda Brown, "Relationships between Workplace Characteristics, Psychological Stress, Affective Distress, Burnout and Empathy in Lawyers" (2022) 29:2 Intl J Leg Profession 159. See also Weixia Chen & Gorski, *supra* note 408; Steve Geoffrion, Carlo Morselli & Stéphane Guay, "Rethinking Compassion Fatigue Through the Lens of Professional Identity: The Case of Child-Protection Workers" (2016) 17:3 Trauma, Violence, & Abuse 270; Kelly Jo Popkin, "Survivors Representing Survivors: Shared Experience and Identity in Direct Service Lawyering" (2018) 27:2 Kan JL & Pub Pol'y 261 (found "survivor-attorneys" commonly experienced vicarious trauma when working with survivor clients, although it also had a "healing effect" at 264).

[411] C James, *supra* note 410 ("it is possible that community lawyering attracts lawyers who have a more compassionate disposition than does private practice, and some research suggests that compassion is a protective quality in trauma exposure" at 282).

[412] See e.g. Marcela Matos et al, "Compassion Protects Mental Health and Social Safeness During the COVID-19 Pandemic Across 21 Countries" (2022) 13:4 Mindfulness 863; Rosaura Gonzalez-Mendez et al, "Protective Factors in Resilient Volunteers Facing Compassion Fatigue" (2020) 17:5 Intl J Envtl Research & Public Health 1769; Maggie Glover-Stief, Sophie Jannen & Tanya Cohn, "An Exploratory Descriptive Study of Compassion Fatigue and

Alongside increased awareness of mental health issues among lawyers is a recognition of the importance of "self-care" or wellness practices in response.[413] Some legal educators have brought these concepts into the classroom, particularly in clinical settings.[414] While important, the wellness movement has itself been critiqued for its neoliberal tendency to make individuals responsible for their own care rather than recognize institutional problems[415] and for centring individual well-being over collective well-being.[416] Sarah Buhler critically examines a similar dynamic in law students, arguing that "empathy... can also function to focus attention on individual emotions... magnify the individual lawyer-client relationship at the expense of larger systemic forces that produce suffering... [and] obscure and neutralize the power differences between themselves and their clients."[417]

For many organizers, the answer to this problem is to fall into community; collective care in turn will help people rest and receive care for themselves.[418] As lawyers, however, to engage

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Compassion Satisfaction: Examining Potential Risk and Protective Factors in Advanced Nurse Practitioners" (2021) 33:2 J Am Association Nurse Practitioners 143.

[413] See e.g. Canadian Bar Association, "CBA Well-Being" (last accessed 31 July 2024) online: <cba.org/Sections/Wellness-Subcommittee>; Sam Rosenthal, "Lawyer Mental Health and Wellness: Changing the Conversation" (30 November 2023), online: <clio.com/blog/lawyer-mental-health>; Law Society of Ontario, "Well-being Resource Centre" (last accessed 31 July 2024), online: <lso.ca/lawyers/well-being-resource-centre>.

[414] See e.g. Christine E Doucet, "Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care" (2014) 23 J L & Soc Pol'y 136; A Harris, "Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, and Professional Identity" (2012) 61:4 J Leg Educ 647; Raj, *supra* note 376; Rhonda V Magee, "Does Mindfulness Enhance the Study and Practice of Law?" (2023) 58 USF L Rev 1.

[415] See e.g. Pyles, *supra* note 392 ("[self care] is arguably a function of neoliberal managerialism and thus reinforces the social and economic structures and culture that are causing burnout in the first place" at 178); Baron, *supra* note 406.

[416] See e.g. Lizzie Ward, "Caring for Ourselves? Self-care and Neoliberalism" in Lizzie Ward et al, eds, *Ethics of Care: Critical Advances in International Perspective* (Bristol: Bristol University Press, 2015) 45; Inna Michaeli, "Self-Care: An Act of Political Warfare or a Neoliberal Trap?" (2017) 60:1 Development 50; Michelle Newcomb, "Self-Care Rhetoric in Neoliberal Organisations: Social Worker Experiences" (2022) 34:3 Practice 223; Sarah Badr, "Re-Imagining Wellness in the Age of Neoliberalism" (2022) 3 New Sociology J Critical Praxis. In the legal context specifically, narratives of wellness can stem from and contribute to "sanism in the legal profession": see Palwinder Singh, "Rethinking Resilience: Sanism in the Legal Profession" (2024) 44 Windsor YB Access Just 72. See also Seto, *supra* note 406.

[417] "Social Suffering", *supra* note 394 at 423.

[418] See e.g. Pyles, *supra* note 392; Laura Valenciano Arrieta, "From Self-Care to Collective Care", (12 August 2021), online: <resurj.org/reflection/from-self-care-to-collective-care>; Nicole Nimri, "Self Care is Collective Care is Community Care", online: <slowfactory.earth/readings/self-care-is-collective-care-is-community-care>; Paul

in this work without worsening power imbalances requires reflection and self-awareness of the lawyer's position and power on both micro and macro levels.[419] For example, Monika Batra Kashyap outlines four stages of mindfulness that reflect different levels of relationships and community lawyering principles.[420] However, one does not necessarily have to be following this specific framework or model of lawyering[421] to make use of similar techniques.[422] In the following section, I examine the emotional dynamics participants had to manage in their work.

4.2 Balance and Reflection

To my surprise, references to feelings across interviews were not overwhelmingly positive or negative, but instead a complex blend of both; sometimes even mentioned in the same breath. Given that this study did not explicitly focus on emotions, but rather legal practice more generally, participants may have been impacted by stigma surrounding discussions of emotion, or felt conscious of being interviewed "as lawyers" and not wanted to break "the array of unwritten emotion rules that one must follow" in such a role.[423] However, it seems that in order

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Matisz, "A friend once shared what she called the Parable of the Choir..." (14 January 2020), online: <x.com/hungover_the/status/1217268335638990848>.

[419] Culhane, *supra* note 89 ("[w]hile we are paying close attention to our embodied sensory experience, we are likely not simultaneously, consciously, or purposefully analyzing our sociopolitical situation—our positionality within transnational neoliberal capitalism, for example, or our historical relationships with colonialism and empire" at 57).

[420] "Rebellious Reflection: Supporting Community Lawyering Practice" (2019) 43:3 NYU Rev L & Soc Change 403 ("Self-Awareness" in the Lawyer/Self relationship, "Collaborati[on]" in the Lawyer-Client relationship, "Awareness of Race, Class, Power, [and] History" in the Lawyer/Community Relationship, and "Grassroots Theory of Social Change" in the Lawyer/Movement relationship).

[421] Harris, Lin, & Selbin, *supra* note 25 ("[m]indfulness in the practice of law does not dictate a particular set of projects or a particular model of lawyering... [but rather] provides a framework for thinking about how individual action is tied to group process, how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national and global levels" at 2076).

[422] Capulong, King-Ries & Mills, *supra* note 173 ("call[] for the infusion of the reflective method with critical race consciousness to develop antiracist professional identity" at 7).

[423] Lisa Flower, "The Loyal Defence Lawyer" in Bandes et al, *supra* note 88 at 175. See also Batesmith, *supra* note 372 at 217. Participant-interviewer dynamics may have also been at play. While I do not want to delve too deeply into "insider-outsider" discussions, I did feel that I was a combination of both, as a white, young, recent law graduate who was (likely) also read as female and/or queer, talking to experienced lawyers with a range of social identities; see e.g. LSE Middle East Centre Conversations on Positionality with Anne Kirstine Rønn, "Episode 3: Ahlam Chemlali on Hybrid Positionality and Vulnerable Communities": (25 October 2023), online (podcast):

to process these emotions and continue with this work, it is necessary to hold space for opposing feelings to exist alongside each other.

In total, participants used over 50 different affective words or phrases, ranging from specific emotions to general feelings or senses. In the literature, many scholars choose specific emotions to examine in detail.[424] Following this approach, I am focusing on three different pairs of emotions that stood out in the data, in terms of both frequency and overall connection to themes: Motivation-Exhaustion, Comfort-Unease, and Gratification-Frustration.

4.2.1 Motivation vs Exhaustion

As outlined in the previous chapter, social change lawyering can be difficult on a number of personal, professional, and systemic levels. When examining what motivates lawyers to do such work,[425] a distinction is often made between intrinsic and extrinsic motivation.[426] However, intrinsic motivation must also be sustainable.[427] While most participants discussed their high workloads, PB highlighted the cycle of burnout[428] and how it impacted her well-being,

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<podcasts.apple.com/gb/podcast/episode-3-ahlam-chemlali-on-hybrid-positionality-and/id1711373736?i=1000632563484>; Lauren Breen, "The Researcher 'In the Middle': Negotiating the Insider/Outsider Dichotomy" (2007) 19:1 Australian Community Psychologist 163. See also Onwuegbuzie & Leech, *supra* note 85 ("reactivity involves changes in persons' responses that result from being cognizant of the fact that one is participating in a research investigation" at 236); Louise Archer, "'It's Easier that you're a Girl and that you're Asian': Interactions of 'Race' and Gender between Researchers and Participants" (2002) 72:1 Feminist Rev 108.

[424] See Bandes et al, *supra* note 88; Wierzbicka, *supra* note 379.

[425] See e.g. Volpp, *supra* note 362 ("[w]hat motivates lawyers and law students to work on behalf of the poor, the dispossessed, and the disenfranchised, to perhaps spend our lives working with politically unpopular groups of people?" at 129); Maroney, *supra* note 371 (outlines key debates about lawyers' emotional motivations).

[426] See e.g. Kennon M Sheldon & Lawrence S Krieger, "Service Job Lawyers are Happier than Money Job Lawyers, Despite their Lower Income" (2014) 9:3 J Positive Psychology 216. See also Peter H Huang, "Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership" (2017) 55:1 Hous L Rev 63 (practicing mindfulness can be a way to "increas[e] intrinsic motivation... decreas[e] extrinsic motivation... [and] increas[e] moral motivation" at 101).

[427] Juergens, *supra* note 366 ("grief and rage are not self-renewing; they are not long term healthy sources of inspiration for one's work... [and [s]ustain[ing] a stressful public defender law practice does not extend to how to sustain a meaningful and satisfying life" at 422).

[428] Burnout "is more than just exhaustion that comes from working too hard... [It]is the combination of resentment, exhaustion, shame, and frustration that make us lose connection to pleasure and passion in the work and instead encounter difficult feelings like avoidance, compulsion, control, and anxiety. If it were just exhaustion, we could

professional capacity, emotional capacity, as well as her capacity to engage in organizing overall.[429] She also reported seeing younger lawyers burning out at particularly high rates,[430] although it is unclear whether this is due to age, generational context, or simply years of experience.[431]

Despite the multiple levels of exhaustion that she described, PB spoke to her many motivations, inspirations, and goals throughout the interview.[432] This mirrored my discussion with PE. In spite of numerous personal and structural challenges in his practice, he remained motivated because the work consists of "so many variables[...] and you never know how it's gonna end. And I think that's one of the things that makes it interesting: that you're not dealing with something that's static. [...] But the downside, or the negative, is that you're always trying to make things work, you're worried that things are gonna explode, [and] you're worried about the impact on your client."[433]

Many other participants also discussed the constant, ongoing nature of social change work.[434] PA emphasized, "for some it's disheartening, 'cause you're like, 'It never ends.' [...]

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take a break and rest and go back, but people who feel burnt out often feel they cannot return to the work, or that the group or work they were part of is toxic" (D Spade, *Mutual Aid: Building Solidarity During This Crisis (and the Next)* (London & New York: Verso Books, 2020) at 107). At the same time, exhaustion is a tangible "feeling" (Emejulu & Bassel, *supra* note 31 ("[e]xhaustion describes a very real emotional and psychological state of being with activists fighting burnout and demoralisation" at 401)) that that characterized much of the discussion with several participants, which is why I have combined these two conversations.

[429] PB, *supra* note 151.

[430] *Ibid*.

[431] See e.g. C James, *supra* note 410 ("burnout may be increasing among contemporary younger lawyers as they compete to prove their value to employers since law firms are adopting more IT functions and more law graduates enter an already crowded market" at 279); Brittany Stringfellow Otey, "Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession" (2014) 24:1 S Cal Interdisciplinary LJ 147; Lydia Bleasdale & Andrew Francis, "Great Expectations: Millennial Lawyers and the Structures of Contemporary Legal Practice" (2020) 40:3 LS 376; Cadieux et al, *supra* note 407 ("[b]urnout experienced by professionals remains relatively stable during the first 10 years of their careers. Although it decreases slightly after five years, it is at 10 years of experience that it decreases significantly" at 142).

[432] *Supra* note 151.

[433] *Ibid*.

[434] See e.g. PB, *supra* note 151; PF, *supra* note 103 ("a very important part of this *work* is to see what you are doing as a contribution to a dialogue, or series of conversations that continue, in which you're advancing a certain

[T]here's a hundred [cases], so even if you win one, here's another one that's popped up that's even *worse* than that one. And you're like, 'So are we *really* improving?' [...] But I'm like, 'That's really kind of the strugg[le]. [T]his is what we're doing.'"[435] These feelings are very common in organizing spaces.[436] In the context of anticapitalist organizing, Mostafa Henaway remarks that "[t]he feeling that you are moving from fire to fire can be draining and can seem like a never-ending scenario, one where it seems so difficult to build a movement. However, the sense of being grounded in people's lives in different neighborhoods... keeps my belief in the possibility of change going."[437]

At the same time, Emejulu and Bassel examine the "politics of exhaustion", "argu[ing] that exhaustion plays an important discursive and temporal role of women of colour activists... [by] hail[ing] the equally exhausted and build[ing] solidarity... [It] operates quite literally as a structure of feeling of mutual recognition."[438] Because of this, they suggest that "[r]ather than individualising exhaustion... [f]ocusing on 'structural exhaustion' helps us avoid pathologising the exhausted and brings into sharp relief the multiple crises that exact a huge toll on the minds and bodies of women of colour."[439] The authors outline how "[e]xhaustion... can therefore act as an endpoint and gateway to withdrawal, but also a moment of reflection and rebirth of activism in different configurations."[440] In this way, Emejulu and Bassel seem to align with the conclusion

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perspective[...] illuminating a particular experience or set of experiences, shining a spotlight on a certain injustice"); PA, *supra* note 151 ("[e]ach action we take, each case, kind of assists in that process, but it's an ongoing process").

[435] PA, *supra* note 151.

[436] See e.g. Weixia Chen and Gorski, *supra* note 408 ("'[t]he burnout that I feel... is just the amount of work that there is to be done. It feels endless. It feels like a lot of heavy lifting.'... The most common [additional factors contributing to burnout]... were (1) infighting and tense relationships within activist organizations and movements; (2) deep sensitivities to injustice that made the slow process of social change difficult to bear; and (3) a lack of attention to burnout and self-care in their activist communities" at 377).

[437] *Supra* note 28 at 155.

[438] *Supra* note 31 at 400.

[439] *Ibid* at 402.

[440] *Ibid* at 406.

that motivation and exhaustion operate in tandem, and it is necessary to feel these emotions, while also practicing self-compassion. They also bring attention to the ways that exhaustion is both racialized and gendered. The authors' findings, combined with participant data, indicates that further research on the specific exhaustion of women of colour practicing social change lawyering is necessary.

4.2.2 Comfort vs Unease

Two participants, PF and PC, used identical affective language to describe rather different experiences, contrasting the feelings of "comfort" and "unease". For PF, this was in a personal context, while for PC it was in the context of power. When I went back through the data, it was apparent that most participants also described unease and uncertainty using language from "trepidation" to being "uncertain", "unsure", "nervous", or "disillusioned".[441] Comfort was not described to the same extent, but the contrast between these two emotions provides an interesting basis for discussion.

The way that PF described comfort and unease may seem very familiar to those who are currently in or recall the early stages of their path to be a social change lawyer:

> **PF:** [T]he early part of my work was very *uneasy* for me. Even though I was quite happy that I was a lawyer, and I felt this potential that I had to affect some change, I just didn't feel as though I was able to find a space that I would be able to kind of actualize on my potential. [...] [T]he turning point for me was when I made a decision to go out on my own [...] [I]n terms of a sense of *comfort* with my ability to do the work, that really is what helped me develop.[442]

Several other participants recalled similar feelings early on in their careers, although in slightly different contexts. For PG, this involved being "unsure" about whether "the trauma of going

[441] PA, *supra* note 151; PB, *supra* note 151; PC, *supra* note 151; PD, *supra* note 151; PE, *supra* note 151; PF, *supra* note 103; PG, *supra* note 104.
[442] PF, *supra* note 103 [emphasis added].

through law school was worth it. [...] [W]hen I was just getting called, I had no idea. Law school was really, really, hard for me. [...] I was constantly on the verge of quitting, or leaving, and it felt very challenging."[443] Meanwhile, PA described his internal struggle when preparing for the Bar, asking himself if he wanted to "commit[] to being part of this, playing by these rules[...] [and] *actually* want to go through this?' Partly because of some of the oaths that you have to take. [...] 'Do I want to be part of this?'"[444]

PE experienced more of a balance between the initial "trepidation[...] that a lot of new lawyers have about maybe not having enough experience, not being qualified enough, not necessarily having the expertise to give the opinions and advice and support that a lawyer needs to give" and "fe[eling] good about the[...] compatibility between my interest in rights and social justice and[...] starting off in an environment that focused on those kinds of cases."[445] In contrast, PB's articling experience left her questioning if she would continue with legal practice at all.[446] On a broader level, "for the people who work in th[is] sphere, there is inherent uncertainty [around] how are you just going to survive? But with that aside, you can do a lot of good."[447]

While PC had questioned whether or not he *could* be a lawyer,[448] he also stated that "I think the people who are disappointed that the law can't solve everything had gone into it

[443] PG, *supra* note 104.
[444] PA, *supra* note 151.
[445] PE, *supra* note 151.
[446] PB's discussion of this experience connected to that of Zaman's (*supra* note 78), although for PB chose to continue working in refugee and immigration law, while Zaman determined it was irreconcilable ("[m]y own discomfort with the constraints of the legal framework within which I acted necessarily gave way to the real world consequences of each case… [b]ut this is only a small piece of a multifaceted truth for which the law does not—and perhaps cannot—account": *ibid*).
[447] PE, *supra* note 151. See also Cantrell, *supra* note 369 ("one of the lessons I have learned is that often it is useful to resist the simple, storybook ending, to acknowledge the fear or worries I might have about the messier way forward, and to go ahead and explore the uncertainty instead of trying to manage it at" 289-90).
[448] PC, *supra* note 151 ("I had to figure out what to do[...] When I graduated [law school]... no one was like, 'Oh, this guy's gonna be a lawyer.' And I was resigned to that fact as well").

thinking it can. I never shared that outlook [...] I think if you have a sense of the law as not always there for you from the start, this is not a 'betrayal'".[449] Instead, his discussion of comfort versus unease centered around how other lawyers resisted his intuition and story-based approach to litigation: "I think for some people law provides certainty, law school provides certainty, and your ability to master the case law gives you *comfort*. And if a guy like me comes in and says, 'Well, fuck that, let's just tell a better story,' it leaves them uneasy, 'cause they're no longer in control."[450] He further noted that "sometimes, people get really mad at me."[451]

PC's reflections on this anger and resistance can also help to understand how "affective states of comfort and discomfort are shaped by the social and political."[452] Megan Boler and Michalinos Zemblyas outline the "pedagogy of discomfort", which "recognizes and problematizes the deeply embedded emotional dimensions that frame and shape daily habits, routines, and unconscious complicity with hegemony... By closely examining emotional reactions and responses... one begins to identify unconscious privileges as well as invisible ways in which one complies with dominant ideology."[453] For example, white people may resist being confronted with their privilege in discussions of race,[454] and settlers may experience "settler insecurity[,] [which] is similar to... white and male privileges – and their associated fragilities... [although] the locus of settler insecurity... goes to [the] very legitimacy of the settler project

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[449] *Ibid*.
[450] *Ibid* [emphasis in original].
[451] *Ibid* [emphasis added].
[452] Ditte Marie Munch-Jurisic, "Against Comfort: Political Implications of Evading Discomfort" (2020) 10:2 Global Discourse 277 at 280.
[453] Discomforting Truths: The Emotional Terrain of Understanding Difference" in Peter Pericles Trifonas, ed, *Pedagogies of Difference* (New York: Routledge, 2002) 107 at 108. But see Christie Schultz, "Between Discomfort and Comfort: Towards Language that Creates Space for Social Change" (2017) 24:3 Philosophical Inquiry in Education 266.
[454] A Harris, *supra* note 75 ("feminist essentialism offers [white] women... intellectual and emotional comfort" since they do "not having to try and learn about the lives of black women" at 605-6). See also Munch-Jurisic, *supra* note 454 ("introduce[s] the concept of *bias discomfort* and its more specific subtype *interaction discomfort*" at 279 [emphasis in original]).

itself".[455] "Abstraction and detachment" can be additional "ways out of the discomfort of direct confrontation with the ugliness of oppression".[456] Discomfort is therefore not only essential to learning,[457] but also to engaging with social change work.[458]

4.2.3 Fulfilment vs Frustration

Frustration was the most common feeling expressed in interviews, and generally stemmed from systemic issues. Although participants did not generally link feelings of fulfillment directly to frustration, similar to the previous section, I pair these emotions together due to their opposing natures yet simultaneous presence across participant interviews.

Two participants brought up frustration when asked about how their identity impacted their work and relationship with the legal system. For PF, this was in the context of translating a client's experience into a legal goal or remedy: "I think [my social identity] has been a source of strength for me in terms of advocacy, but it can also be a real source of frustration, and it can be quite demoralizing when I see the issue being a misunderstanding of those experiences, rather than a result that is based on a true understanding of those experiences."[459] Meanwhile, PD discussed her frustration and "rage" with being treated differently as a young woman in law,[460] while emphasizing that "as a white person there's lots of ways that I haven't experienced, nearly to the same extent[...] that same dynamic."[461] Yet, she still found it "really gratifying[...] when

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[455] Midzain-Gobin, *supra* note 22 at 213 (examines "settler comfort" vs "settler insecurity", finding that "settler insecurity is similar to the ways in which we speak about white and male privileges – and their associated fragilities... More deeply, however, I want to suggest that the locus of settler insecurity... goes to very legitimacy of the settler project itself" at 222)
[456] Matsuda, *supra* note 76 at 9.
[457] Brooks, *supra* note 165 ("it is tremendously useful to name the ideas of stretching and leaning into discomfort as normal and natural parts of the learning process of becoming a lawyer" at 284).
[458] *Ibid* (discomfort can "become a lens into deepening our understanding, and along with it, our empathy and compassion toward ourselves and others, especially others with whom we struggle or disagree" at 278); Munch-Jurisic, *supra* note 454 ("argue[s] that an increased awareness and toleration of negative affective states can be a key resource in promoting social and political change" at 279).
[459] PF, *supra* note 103**.**
[460] PD, *supra* note 151.
[461] *Ibid*.

there is an opportunity for overlap" between social movements, noting that "[t]he Canadian labour movement has been really slow in the face of the current genocide in Palestine to take a strong position, and so where I've had opportunities to have those conversations and provide what support I can, helping nudge people and organizations in that direction."[462]

When offered the opportunity to discuss their own topics after the primary interview questions, PB and PG both raised significant frustrations related to working within the legal system. PB, for instance, expressed frustration with the limited intervention of governing bodies like the Law Society in cases where other lawyers exploit or neglect their clients doing due diligence with clients.[463] Meanwhile, PG described the "paternalizing" expectations and red-tape duties tied to non-profit funding, which can "creat[e] a weird level of stress, on top of what's already very stressful."[464] At the same time, both lawyers continue to get fulfilment from their connection to communities and movements on the ground, as well as providing individual legal support alongside systemic advocacy.[465] For them, the systemic-level frustrations that generally occur at the systemic level seem to be offset by fulfilment on an individual level.[466]

Other participants made similar comments. For instance, PE suggested that because "[t]here is an adversary, so to speak, in all litigation files that we do [...] *I* find something *tangible* about that, because we're *trying* to move towards a result, or an objective, in every case, and I think that that keeps us motivated, it keeps us strong, and we try and get the best result possible."[467] Meanwhile, PF commented on a more abstract component of fulfilment in the context of the "profound remedy of striking down a provision of a law", and "what that

[462] *Ibid.*
[463] PB, *supra* note 151.
[464] PG, *supra* note 104.
[465] PB, *supra* note 151; PG, *supra* note 104.
[466] This is similar to the concept of "compassion satisfaction" (s 4.1 at 70, above).
[467] PE, *supra* note 151 [emphasis in original].

signifies".[468] He stated, "being able to stand up and convince someone that a law, which had the full backing of every aspect of the state's *power* is unconstitutional[...] [is] a vindication of your client's experiences, [...] the power of the law and the legal process, [...] [and] the role that you play as a lawyer in having crafted that case[...] It's really remarkable".[469]

Participants would likely agree that a lawyer's feelings are not central to defining success. Nevertheless, the fulfilment lawyers experienced still factored into these discussions, as described above. For instance, PA commented that when "somebody gets their job back who was terminated unfairly[...] [y]ou *see* that, you *experience* that."[470] At the same time, he clarified that "there's no success for *me* in that [checkbox] sense[...] It's more, what were we able to gain for the folks who we're working with?"[471] In this sense, PA's fulfilment seems to be a vicarious or proxy benefit derived from client satisfaction and gains. PC similarly remarked, "It's a tough thing. Contentness with what we do, and knowing that it's a long game, and knowing that you're not the saviour[...] [E]verybody wants to be a lawyer who shows up in court and blows it up and you get the respect– 'Oh, you did this, you did that.' Who gives a shit? End of the day, it's the client. How do you position them to advance?"[472]

Yet, tangible successes for individual clients may not fully reconcile the significant structural issues that social change lawyers must contend with.[473] This often leads them to pursue more systemic strategies for change,[474] as was the case for the participants of this study. It can

[468] PF, *supra* note 103.
[469] *Ibid*.
[470] PA, *supra* note 151.
[471] *Ibid.*
[472] PC, *supra* note 151.
[473] See e.g. Elsesser, *supra* note 62 ("[e]ventually the young social justice lawyer can become very frustrated since she fails to see any real connection between her work and any meaningful change in her clients' communities" at 37).
[474] This was true for participants of the study; Pow also notes that "[d]espite our success with individual cases, Zhen and I became increasingly frustrated by how much work each case demanded for only an individualized effect.

lead others to abandon their field altogether.[475] Jawziya Zaman, a former immigration lawyer, recounts how "particularly for undocumented clients, I saw tangible benefits [when I won cases]... My frustration with the job, I learned, had to do with how I felt implicated in the flawed premises of immigration law, including its reductionist narratives about other countries and its dehumanization of foreigners".[476] Zaman ultimately found these issues to be irreconcilable with her values. Ilyés et al talk about a similar balance between emotions, in particular the "frequent[] vacillat[ion] between feelings of hope and desperation" in "community-based, participatory legal empowerment" work.[477] At the same time, the authors note that "feelings of exhaustion and frustration and even hopelessness can be instances of radical resistance that refuses to participate in dehumanization".[478]

4.3 Navigating Conflicting Feelings

In the previous section, I explored the conflicting feelings that occur for social change lawyers, but how do they resolve them—or do they? Participants suggested a few key ways that they navigate these issues: trusting their instincts, accepting certain realities of oppression within the legal system, and building their experience over time. Each of these approaches seems to involve remaining conscious of their feelings.

4.3.1 Intuitions and Vibes

Most participants described how "feeling" led their work, even if this was not explicitly stated. Rather than shying away from complicated feelings, they appeared to embrace them. For example, when faced with difficult ethical decisions arising in his work, PA stated: "I look at the

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Moreover, we were concerned that our individualized courtroom victories reified the predatory procedures of the court, decreasing the likelihood that pro *se* defendants would receive favorable outcomes" (*supra* note 60 at 1789).
[475] As noted in Chapter 2, s 2.2.1
[476] *Supra* note 78.
[477] *Supra* note 393 at 445.
[478] *Ibid* at 445.

issue, I look at[...] the organization[...] the system that this is furthering, [and] *how do I feel about it*[?]"[479] PC similarly described the in-the-moment, rapid decisions that have to be made as a litigator:

> **PC:** A lot of the things I do[...]—how I present things, what I *focus* on—often are intuition. It's on vibes. [...] And a lot of people don't like that. A lot of people, they need to have everything worked out before they step in the court. And I have the substance of it, but if I feel like a justice is going a particular way, I'm gonna go down that path. [...] You cannot script everything.[480]

PB described a similar issue in the context of providing legal support to undocumented people in crisis, relying on her instincts as a lawyer to provide them with necessary aid.[481]

Both PC and PB also described their approaches as being atypical in comparison to "other lawyers".[482] PC also had to manage relationships with other lawyers who did not understand or appreciate his approach. While he described "giv[ing] a lot of room to folks" as a response to this, he also emphasized that "maybe I gotta be a bit more... not *forceful*, but established. I do have *experience*. I do have a sense of how things go, and I *definitely* do these cases way more than most people. And *often*. In that case [I described], a lot of my colleagues[...] had great ideas and stuff, but what we clashed on, I think, [was] I had the knowledge, because they hadn't *done* it before.[483]

PC's remarks may speak back to the devaluation of sensory or felt knowledge,[484] or those

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[479] PA, *supra* note 151 [emphasis added].
[480] PC, *supra* note 151.
[481] PB, *supra* note 151.
[482] *Ibid*; PC, *supra* note 151.
[483] PC, *supra* note 151 [emphasis in original].
[484] Culhane, *supra* note 89 ("[s]ensory knowledge is 'non-verbal,'... "taken for granted," "felt," ... "invisible," "emotional," "mundane," "intuitive,"… Ethnographers are challenged to understand how experiencing, knowing, feeling bodies are engaged in diverse ways of knowing, what we call epistemologies. What do experiencing, feeling bodies know? And how do we come to know what our bodies know? at 47). See also e.g. Volpp, *supra* note 362 ("[b]eing told not to feel can rob us of a way through which we exercise our capacity to know" at 131).

"experiences and knowledge that may not be expressible in words".[485] At the same time, while PC did not explicitly discuss this issue, his remarks connect back to PF's earlier discussion of the difficulties in "gaining legitimacy" as a racialized lawyer.[486] Potential connections to race and class were particularly reflected in PC's comment that "some people don't like [the way I litigate] [...] If they *came up through academics* and stuff, it's *improper for someone like me* to be able to do what I do, and influence the law the way I do."[487] When I summarized back to him that "the 'intuition' and the 'vibes', also sounds like it comes from actual experience in litigation", he elaborated further: "being in court all the time[...] [is] like playing the trumpet, or an instrument, or a sport. At some point, it's intuitive. [...] Some people who *don't* play the trumpet all the time, and read the book of how to play the trumpet, or know how to read music, are like, 'No, we gotta stay on sequence.' That's not where the magic happens."[488]

Susan Bandes, a prominent law and emotion scholar, remarks that "[t]he attempt to cordon off emotion from reason is detrimental to lawyering in the obvious sense that separating lawyers from their emotional reactions increases the risk of numbing them to their *ethical intuitions*."[489] PE similarly commented that "you *feel* it, in some ways, about how the profession constrains, but you can sort of just come back to the fundamentals of what's important to *you* as a person. And I think that the systems of law dehumanize and take that away from you."[490] In this regard, it seems that the "ethical intuitions" that Bandes describes warrant further investigation in the specific context of social change lawyering work.

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[485] Culhane, *supra* note 89 at 47. Peter Huang suggests that mindfulness can be one way to "help people reconcile analysis and intuition[...] [and] regulate emotions that arise from conflicts due to making trade-offs" (*supra* note 428 at 89).
[486] See s 3.2.3, above, at 46-7.
[487] PC, *supra* note 151
[488] *Ibid*.
[489] "Feeling and Thinking like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law" (2021) 89 Fordham L Rev 2427 at 2430 [footnotes omitted, emphasis added].
[490] PE, *supra* note 151 [emphasis in original].

4.3.1.1 Feeling Success

It seems that one aspect of social change lawyers' "intuition and vibes" concerns the ability to recognize and define what success looked like. Participants described various types of success, such as particular results[491] or decisions,[492] career achievements,[493] relationship-building,[494] or steps toward broader social movement goals.[495] While therefore not their *sole* indicator, several participants emphasized their central role of "feeling" in determining what success looked like in their work. This was most explicitly put by PA, for whom success could be determined by asking:

> **PA:** How do [the folks that I'm working with] *feel* about the process? Do they feel some sense of gaining some power back, through a system that actually disempowers people, whether you're going through an arbitration or a labour board? [...] [A]nd that might not be always the case with everyone. There are some cases I had where people are unhappy, still, with the process of what has occurred. But success *is* that: How did the member feel?[496]

He further extended such an analysis to the movement level: "How did the union feel about their participation in that process[?]"[497]

Similarly, in addition to helping clients receive "some kind of settlement[...] usually it's *money*", success for PE also involves "br[inging] the client to a place where *they* feel vindicated[...] And if you do that, that's a good feeling, and if you *can't* do that, that's a really bad feeling."[498] Meanwhile, PG's understanding of success centred around the "health" of the movement. When asked how she determined this, she responded that "it's almost like a

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[491] PA, *supra* note 151; PB, *supra* note 151; PC, *supra* note 151; PD, *supra* note 151; PE, *supra* note 151; PF *supra* note 103.
[492] PC, *supra* note 151; PF, *supra* note 103.
[493] PA, *supra* note 151; PB, *supra* note 151.
[494] PG, *supra* note 104.
[495] *Ibid.*
[496] PA, *supra* note 151 [emphasis in original].
[497] *Ibid*.
[498] PE, *supra* note 151 [emphasis in original].

temperature check, a lot of the time. There are times when[...] you [just] *know*. You're like, 'Oh, things are *bad* right now. Morale is low. We're feeling *bad*.' And other times, you feel... *good*."[499] Both participants notably discussed client and lawyer feelings simultaneously, suggesting that social change lawyers' feelings often extend from client experiences. This mirrors the ways that participants discussed fulfilment, above.[500]

PE and PG both laughed as they used the descriptors "good" and "bad", seemingly not able to find more precise language for complex tangles of emotions. However as Anna Wierzbcka outlines, even such broad emotional terms hold significant value,[501] and are in fact some of "the most prominent parameters of which people appear to think about their emotional experience, and on which an illuminating classification of emotion concepts across languages and cultures can be based".[502] The dominant idea of lawyers as rational—in multiple senses of the word[503]—therefore contrasts with how participants described success as a "feeling" that can be understood through intuition and sensory knowledge.

4.3.2 Pragmatic Attitudes

When I first started coding, I noticed common references to the "reality" of social change lawyering work within an oppressive legal system.[504] For example, PA stated, "[of] course there's contradictions that will happen. And I think it's acknowledging that. [...] We're all full of contradictions. And we justify some, and some we don't. [...] I *try* to be conscious of some of

[499] PG, *supra* note 104.
[500] At s 4.2.3.
[501] *Supra* note 379.
[502] *Ibid* at 550. The author refers to these terms as examples of "lexical universals, that is, concepts encoded in distinct words of any human language" (*ibid* at 546).
[503] Barber, *supra* note 36 sub verbo "rational" ("of or based on reasoning or reason"); The Britannica Dictionary, "Rational" (last accessed 21 August 2024), online: <britannica.com/dictionary/rational> ("based on facts or reason and not on emotions or feelings").
[504] See e.g. PA, *supra* note 151 ("that's the reality"... "that's reality"); PC, *supra* note 151 ("I'm a realist"); PE, *supra* note 151 ("that's just part of the process"); PG, *supra* note 104 ("realistic about the law").

that."[505] I initially coded such phrases as "attitudes", but was not sure what these represented until the penultimate interview. PF commented that over the course of his career, his goal has "become more modest. I'm very mindful of what *can* be achieved. I take a much longer-term view than I used to. I appreciate that I am one part in a longer continuum of folks [...] And so, *it's reconciling a certain acceptance of a latent degree of injustice, while recognizing that there is still a potential for change*."[506] Following this conversation, I categorized these phrases as "pragmatic attitudes", similar to the "assorted pragmatic strategies" that Alexander describes.[507] However, "acceptance" that the legal system is structurally racist and unfair does not equate to "accepting" that that this always be the case. PA, for instance, remains "conscious of the limitations and the barriers that unions pose", but "more hopeful in terms of the *potential* that they have to create real social changes".[508]

4.3.3 Time

While some participants described particular approaches to managing difficult feelings, others simply referred to them as being largely resolved through the passage of time. Time may not be an active approach that a lawyer can take, but participants did recognize it as a method through which they were able to manage some of the conflicts that they experienced. Participants sometimes made indirect references to this, such as through making comparisons to when they "first started lawyering".[509] PA and PD both specifically discussed experiences of being "young" and how they were treated differently by arbitrators, judges, and other lawyers.[510] PA, for

[505] PA, *supra* note 151 [emphasis in original].
[506] PF, *supra* note 103 [emphasis added].
[507] B Alexander, *supra* note 15.
[508] PA, *supra* note 151 [emphasis added].
[509] PG, *supra* note 104 ("when I first started lawyering[...] suddenly I had all of this responsibility, and people would be asking me questions about how to interact with police, and stuff. And I'd be like, 'I don't *know*. I've been a lawyer for like 6 months!")
[510] PA, *supra* note 151; PD, *supra* note 151.

example, who refused to take on certain kinds of cases based on his values and experiences,[511] also described being

> at a point [...] which is different than other more *junior* lawyers, in the sense that [...] you always have the liberty to say no, but[...] you may not *feel* you have the liberty to say no. Because this is your employer, they've given you work to do, this is who you represent, and you feel you can't say, "Well, I'm not really comfortable doing that work." But I'm in a place where I can.[512]

PD further suggested that the reason for this mistreatment is that "when you're first starting, you're just some random anonymous [lawyer][...] It's this fairly tight-knit professional community, and then you're coming up in that. Nobody knows who you are, and nobody really… cares."[513] PF had similar reflections when discussing the barriers around legitimacy, commenting that "I've had to overcome certain perceptions about my competency within a certain group of gatekeeper lawyers in my particular area of law, because I'm initially unfamiliar. And I'm initially unfamiliar because I'm not, or I *wasn't,* connected to networks that have the effect of *approval*."[514] PF further commented that "the effect of that was to exclude me from certain opportunity, *at least initially*".[515] In the same way, PD stressed that "[i]t's not even necessarily that you have more experience, so you're more skilled, so you're treated differently. It's [more] like you become part of the community, and then [others in] the community don't feel as free to [mistreat] you".[516]

Others described the assistance of time in their work more directly. For example, PE believed that "the feelings that a lot of new lawyers have about not having enough experience,

[511] Discussed in more detail in s 3.3.1 at 48.
[512] PA, *supra* note 151 [emphasis in original].
[513] PD, *supra* note 151.
[514] PF, *supra* note 103 [emphasis in original].
[515] PF, *supra* note 103 [emphasis added].
[516] *Ibid*.

not being qualified enough[...] wea[r] off at the beginning".[517] This appears to be supported by empirical data. Cadieux et al suggest that "gaining experience appears to have a protective effect" against burnout and secondary trauma, but that it "is slow to emerge... [with an overall] plateau[] in the first 10 years of practice, then [an] increase[] significantly after 10 years of practice."[518] In a similar way, PG stated, "I can say *now*, after being a lawyer for [many] years, that[...] the trauma of going through law school was worth it. But at the time, when I was just getting called, I had no idea."[519] Similar reflections occur from other lawyers in the literature. Cantrell, for instance, notes that "I [now] realize that it took me some time to find a way to lawyer that also made me feel like I was flourishing in my broader life... I had to fail to flourish. Then, I had to learn that flourishing is not a static feature".[520]

Time also allowed participants to build strong ties with others doing similar work. PG emphasized that her "feelings have gotten better over time because I feel that I've managed to maintain relationships, and I feel like the work that I'm doing is valuable to my friends and community. [...] It feels less challenging to reconcile than it once did."[521] PB also emphasized relationships with community groups as helping her to feel more balanced about the work she was doing and the systems she was working in.[522] These reflections echo Juergens' suggestion that "lawyers working on justice issues should feel their profound sorrow and anger, but use the love and collective wisdom in community as a sort of wetland to filter the toxicity from the rivers of energy for our work."[523]

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[517] PE, *supra* note 151.
[518] *Supra* note 407 at 142.
[519] PG, *supra* note 151.
[520] *Supra* note 369 at 284.
[521] PG, *supra* note 104.
[522] PB, *supra* note 151.
[523] *Supra* note 366 at 422.

5 CONCLUSION

"You must figure out your own way of being a social justice lawyer — but you have to do it as part of a team."[524]

In the previous two chapters, I examined some of the external and internal approaches that social change lawyers take to reconcile the contradictions and conflicts they experience in their work. Through each approach, I found that participants did not necessarily "resolve" the ethical and emotional conflicts they experienced, but rather came to find a degree of balance between different commitments or feelings. In Chapter 3, I found that broad "conflicts of interest" are inherent to social change lawyering, given lawyers' commitments to different communities and social movements on top of those to individual clients and the legal profession. Meanwhile, in Chapter 4, I found that lawyers hold space for "negative" and "positive" feelings alongside each other. These feelings are largely navigated, although perhaps not resolved, through a combination of intuition, pragmatic attitudes, and the passage of time.

These findings speak to Bandes' reflections on how anxiety manifests for law students entering the legal profession. The author argues that "the appropriate role of anxiety in this new epistemic world... ought to be a kind of comfort with discomfort—an acceptance of indeterminacy. Embracing indeterminacy is a necessary step toward mastering the richness, fluidity, and context dependence of law."[525] At the same time, she cautions that "the boundaries of the field of law [may] allow certain kinds of indeterminacy and ward off others—those that interfere with the sense of control, authority, and hierarchy that characterize our field[,] [and those that] threaten its sense of internal coherence."[526] Newly emerging social change lawyers

[524] Quigley, "Ten Questions", *supra* note 54 at 209.
[525] Bandes, *supra* note 491 at 2441.
[526] *Ibid*.

therefore have to manage not only the feelings of anxiety inherent to their emergence into a brand new field, but must also do so within the confines of a field that tries to prevent them from disrupting the very structures they intend to challenge.

5.1 Inherent Imperfection

When I first started this project, I wanted to know how other lawyers did the work that I aspired to do. Although I "knew" that many of the answers I was looking for lay in community connection and that there is no universal way to do this work, like many young lawyers and recent law graduates, I still wanted that certainty and standard of "perfection".[527] In retrospect, I think that this perfectionism is partly an extension of "settler anxiety" tied to my whiteness.[528] In the context of decolonial organizing in Canada, Harsha Walia warns against "the possibility of 'I am waiting to be told exactly what to do' being used as an excuse for inaction or paralysis."[529] Devon Price similarly suggests that **"**when we... freeze up with complete inability to choose any cause to work toward because we can't decide which one is the 'most worthy,' we are operating out of a highly individualistic framework that positions the self as the agent of change**...** the solution was to get over myself... frankly I am not important**.** I just need to show up and do whatever it is that I can".[530] In fact, the most clarity that I felt over the past year came when I pushed through my insecurities to attend pro-Palestine rallies and join other students to support

[527] See e.g. Benjamin Scott Wright, "My Struggle for Perfectionism: The Myths and Realities of Being a Young Lawyer" (3 August 2016), online: <wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=8&ArticleID=24997>. See also Doron Gold, "Perfect not the Enemy of Good", (18 February 2019), online: <lawtimesnews.com/archive/perfect-not-the-enemy-of-good/263426> (suggests that "writing a piece on how lawyers should avoid perfectionism... [is] like writing about how a basketball player shouldn't make such a fuss about physical fitness").
[528] See e.g. Lisa Slater, "Good White People: Settler Colonial Anxiety and the Endurance of Racism" (2019) 3:2 Emotions: History, Culture, Society 266; Midzain-Gobin, *supra* note 22; and discussion at 4.2.2, above.
[529] "Moving Beyond a Politics of Solidarity Toward a Practice of Decolonization" in Choudry, Hanley & Shragge, *supra* note 16.
[530] "When You Live Your Values Every Day, There's No Need for Activist Guilt.", (19 June 2024), online: <drdevonprice.substack.com/p/when-you-live-your-values-every-day>.

striking CUPE 3903 members at the picket line. In both contexts, organizers needed bodies, as there is strength—and safety—in numbers. There are similarly plenty of spaces for lawyers to offer their assistance without waiting for an explicit invitation, as demonstrated by the participants of this study.

5.2 A Theory of Change

As PA predicted,[531] participants exhibited both considerable overlaps and differences in their approaches to social change lawyering, reflecting the diverse models of lawyering proposed in the literature.[532] Based on this research, I suggest that this is largely because these approaches are deeply personal, stemming from a combination of relationships and commitments, emotions and intuitions, and experiences and identities.[533] PE similarly noted that many of the issues and questions that arise in this work are "just insoluble things, but you need to think them through. I think it's important[...] for *any* lawyer to figure out where they are, and also learn from other lawyers' experiences".[534] This reminds me of a "theory of change",[535] often discussed in program evaluation and community development contexts to mean a structured model that outlines precisely what vision is being working towards and how that goal will be achieved through logical steps. [536] On a more abstract level, it is simply "one way of understanding history and

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[531] PA, *supra* note 151 ("I think you're gonna hear a lot of similarities, but I think there will be a lot of differences, in terms of people's approaches and people's experience, too").
[532] See further discussion at s 1.3.
[533] PC, for instance, mentioned that "in practice I've come up with this conception, or this theory, of what I do" (*supra* note 151).
[534] PE, *supra* note 151. PE informed me that he himself "went and [...] looked at *other* lawyers[...] to see what *their* visions of justice, or social justice, were" (*ibid* [emphasis in original]). His findings are presented in the documentary *Lawyers (F)or Justice?* (Wide Open Exposure Productions, 2020).
[535] The term "theory of change" was coined by Carol H Weiss: "Nothing as Practical as Good Theory: Exploring Theory-Based Evaluation for Comprehensive Community Initiatives for Children and Families" in James P Connell et al, eds, *New Approaches to Evaluating Community Initiatives: Concepts, Methods, and Contexts* (Washington: The Aspen Institute, 1995) 65.
[536] The actual goal being worked towards is less important than the outline of what steps need to be taken to achieve it. See e.g. Carol H Weiss, "Theory-Based Evaluation: Theories of Change for Poverty Reduction Programs" in Osvaldo N Feinstein & Robert Picciotto, eds, *Evaluation and Poverty Reduction* (New York: Routledge, 2001);

how change comes about",[537] and has been applied across a range of social change and advocacy contexts,[538] including law.[539]

Ultimately, there is no formula for how to do this work. It is messy and imperfect, and current and future social change lawyers have to grapple with that messiness to develop their own approaches. What matters most is that this process is guided by clear principles and values that are informed by those doing work on the ground. If I had told myself a year ago that this would be my answer, I think I might have been disappointed. However, I actually feel very good about the realization that there is no definitive answer and am ready to "embrac[e] indeterminacy" in my own future career in law. As William Quigley notes, "[a]ll of us need to work continuously to re-center ourselves to become social change lawyers. We will fail many times, and we will make lots of mistakes. But when we fall, if we are willing to get back up and keep trying along with the rest of the team, we will be on the path to social change lawyering."[540]

Marisol L Meyer, Ceewin N Louder & Guerda Nicolas, "Creating With, Not For People: Theory of Change and Logic Models for Culturally Responsive Community-Based Intervention" (2022) 43:3 Am J Evaluation 378; Jody Brook & Becci Akin, "Using Theory of Change as a Framework for Examining Community Context and Philanthropic Impact" (2019) 77 Evaluation & Program Planning 101708; Laura A Voith et al, "Using Grounded Theory to Develop a Theory of Change for a Violence Intervention Program" (2023) 99 Evaluation & Program Planning 102303.

[537] A Alexander, *supra* note 175, citing Betty Hung, "Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change" (2008) 1 Los Angeles Public Interest LJ 4.

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[539] See e.g. A Alexander, *supra* note 175; Hung, *supra* note 540; Pierre Noreau, "Justice Reform and Theory of Change" (2020) 54:1 RJT 51.

[540] Quigley, "Ten Questions", *supra* note 54 at 8.

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Participant A, "Interview A" (11 January 2024) via oral communication [communicated to author].
Participant B, "Interview B" (18 January 2024) via oral communication [communicated to author].
Participant C, "Interview C" (16 February 2024) via oral communication [communicated to author].
Participant D, "Interview D" (22 February 2024) via oral communication [communicated to author].
Participant E, "Interview E" (28 February 2024) via oral communication [communicated to author].
Participant F, "Interview F" (5 March 2024) via oral communication [communicated to author].
Participant G, "Interview G" (18 March 2024) via oral communication [communicated to author].

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Appendices

Appendix A: Demographic Questionnaire[541]

Identity is complex and nuanced, and there are many issues with categorizing and collecting demographic data. This questionnaire will be used as a basic quantifiable measure, as well as a way to de-identify interview data to further ensure participant confidentiality. If you prefer, options have been left open for you to provide more detail where needed.

This questionnaire consists of 12 questions will take approximately 5-10 minutes of your time.

1. **How many years have you been practicing law?**

Please note that due to the limited scope of my study, at this time I am focused on lawyers who have been in practice for at least four years.

- ☐ 0-3
- ☐ 4-7
- ☐ 8-10
- ☐ 10+

2. **Where do you practice law? Select all that apply:**

- ☐ Atlantic Canada (i.e. New Brunswick, Nova Scotia, PEI, and/or Newfoundland & Labrador)
- ☐ British Columbia
- ☐ Canadian Prairies (i.e. Alberta, Saskatchewan, and/or Manitoba)
- ☐ Northern Canada (i.e. Yukon, Northwest Territories, Nunavut)
- ☐ Ontario
- ☐ Quebec
- ☐ National level (i.e. Canada)
- ☐ International level
- ☐ Other: _____
- ☐ Prefer not to say

3. **How do you currently describe your gender?**

4. **Do you identify as a racialized person?**

[541] The questionnaire and consent form were paired with the title of the study, "(Un)necessary Evils?: 'Cause Lawyering' and the Limits of Strategic Litigation in Canada", which likely gave participants additional context about what would be examined.

I use the term "racialized" in the place of "visible minority", which is used by Statistics Canada and the Federal Employment Equity Act. While the term has its own critiques, "racialized" draws attention to race as a social construct and process, rather than a biological trait. The Ontario Human Rights Commission defines "racialization" as "the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life." The term "racialized" also includes Indigenous peoples while "visible minority" does not.

- ☐ Yes
- ☐ No
- ☐ Other: _____
- ☐ Prefer not to say

5. **How would you describe your race? Select all that apply:**

The Canadian Census has been criticized for its deficiencies related to race-based data. The categories I use here are adapted from the Government of Ontario's Data Standards for the Identification and Monitoring of Systemic Racism and Toronto Public Health's COVID-19 pandemic data. Please feel free to self-identify outside of these categories.

- ☐ Black *(e.g. African, Afro-Caribbean, African Canadian descent)*
- ☐ East Asian *(e.g. Chinese, Korean, Japanese, Taiwanese descent)*
- ☐ Latino/a/e/x *(e.g. Latin, Central, or South American descent)*
- ☐ Indigenous in Canada *(e.g. First Nations, Métis, Inuit descent)*
- ☐ South Asian or Indo-Caribbean *(e.g. Bangladeshi, Indian, Nepali, Pakistan, Sri Lankan descent)*
- ☐ Southeast Asian *(e.g. Filipino, Vietnamese, Thai, Indonesian, Cambodian descent)*
- ☐ West Asian, Arab, or Middle Eastern *(e.g. Afghani, Egyptian, Iranian, Lebanese, Palestinian, Syrian, Turkish descent)*
- ☐ White *(e.g. European descent)*
- ☐ Other: _____
- ☐ Prefer not to say

6. **Do you have a religion and/or spiritual traditions?**

These categories replicate those used by the Ontario Human Rights Commission.

- ☐ Buddhist
- ☐ Christian
- ☐ Hindu
- ☐ Indigenous spirituality
- ☐ Jewish
- ☐ Muslim
- ☐ Sikh
- ☐ Other: _____
- ☐ No religion

☐ Prefer not to say

7. **Do you identify as a person with a disability?**

"Disability" is a broad term that includes physical, mental, intellectual and developmental, cognitive, learning, communication, and/or sensory impairments, as well as mental health conditions, addictions, and life-threatening allergies. Disabilities can be temporary, chronic/sporadic, or permanent, and can exist at birth, be caused by an accident, or develop later in life. This definition is adapted from that of the Ontario Human Rights Commission.

☐ Yes
☐ No
☐ Other: _____
☐ Prefer not to say

8. **Do you identify as 2SLGBTQIA+?**

☐ Yes
☐ No
☐ Other: _____
☐ Prefer not to say

9. **What social class group do you identify with?**

Despite growing wealth inequality and stratification, social class is not as widely understood or talked about in Canada compared to other societies. These categories replicate those used by the Angus Reid Institute for the Great Canadian Class Survey.

☐ Lower/poverty class
☐ Working class
☐ Lower middle class
☐ Middle class
☐ Upper middle class
☐ Upper class
☐ Other: _____
☐ I don't identify with a social class group
☐ Prefer not to say

10. **Have you or your family ever received social assistance?**

"Social assistance" refers to income (e.g. Ontario Works/OW) or disability (e.g. Ontario Disability Support program/ODSP) assistance. Receipt of social assistance can be highly stigmatized, but can also offer insight into experiences of social class.

☐ Yes
☐ No

☐ Other: _____
☐ Prefer not to say

11. What is the highest level of education that your parents completed?

These categories are adapted from those used by Statistics Canada.

EDUCATION LEVEL	MOTHER OR PARENT 1	FATHER OR PARENT 2
Elementary school	☐	☐
High school or equivalent (GED)	☐	☐
Trades certificate or diploma	☐	☐
College, CEGEP, or other non-university certificate or diploma	☐	☐
University or diploma below the bachelor's level	☐	☐
Bachelor's degree	☐	☐
Post-graduate degree (e.g. Master's, PhD, MD)	☐	☐
Don't know	☐	☐
Prefer not to say	☐	☐

12. Are there any other aspects of your social identity that are important to you that you would like to disclose but have not been asked about?

Appendix B: Interview Guide[542]

Thank you so much for agreeing to participate in this study. As you might recall from the consent form, the purpose of this study is to better understand how Canadian lawyers working toward social change reconcile systemic oppression in the legal system with their work, and the relationship between these choices and social identity.

This interview will consist of about 8 general questions. If you find that a question isn't clear or want more direction, I have a number of specific prompts, but I want you to have space to answer the questions as you interpret them and to take the interview where you feel it should go. To respect your time, this interview is only expected to take up to an hour, but you are welcome to send additional thoughts after the interview as well if you have any. Do you have any questions for me before we begin?

To start off, I want to take just a couple minutes to discuss your work as a lawyer in general.

1. **How would you describe the bulk of your practice?**
    - What field(s) do you work in?
    - Where is the bulk of your practice (client work, litigation, mediation, etc)?
        - Do you go to court often?
    - Who are your clients? What kinds of legal problems do they have?
    - Do you do pro bono or low bono work? Do you take legal aid certificates?
    - What kinds of engagements do you have with other lawyers?
        - Who do you think your professional community consists of ?

    a. **Are there any key experiences that led to your current role?**
        - How did you choose this practice?
        - How long has your practice been the way it is now?
        - How did you develop this practice?
        - Were there any significant factors that led you to be where you are now?
        - Are there any people or mentors in your life that influenced you into this area or type of practice?
        - Do you have any legal experience that's different from what you're doing now? (e.g., where did you article?)
        - Did the area of work come first, or the desire to do social justice/community work?

2. **(At this point in your career,) do you remember what originally made you choose law?**
    a. Do you remember what you thought you would be doing?
        i. (If not obvious) Is this different from where you ended up?

[542] The questions above come from the final version of the guide. Slight variations were made following the first few interviews. Questions in bold font indicate questions that were prioritized for all participants, while bulleted questions served as additional prompts used to clarify or draw out further information.

b. **Do you remember what feelings you had upon becoming a lawyer?**
    i. How, if at all, do those feelings relate to what originally made you choose law school?

The next few questions will explore the underlying values and principles guiding your practice.

3. There are many terms to describe lawyers who are working toward social change, including "movement lawyer", "cause lawyer", "community lawyer" and "social justice lawyer". **Do you identify with any of these terms? How would you describe yourself in this regard?**

    a. If not: Why not?
    b. If so: What does [term] mean to you?
        i. What is included and what is excluded from this definition?
        ii. Do you think the terms that we use are important in this regard?

4. **What is your vision, or what are your goals, for your work?** Is there a gap between these and your work in practice?

    a. **Has your view on this changed over the course of your career? If so, how?**

5. "Social identity" refers to a collection of intersecting factors such as race and ethnicity, gender and sexuality, class, and disability. **How do you think your social identity affects your practice and relationship with the legal system?**

6. **What is your involvement with social movements, whether that's in a personal or professional capacity?**

    a. Professional
        - Do you ever attend protests as a legal observer? Participate in advocacy or law reform activities? Volunteer for legal organizations?
        - Who do you understand yourself to be serving? What is your relationship with that group?
        - Who do you take instruction from? **Who are you accountable to? How are you accountable to the movement?**
        - What are some of the tensions in that relationship? (e.g., different approaches, values, opinions within the movement)
        - In your view, what is it that you offer to the movement?
        - Is there any room for using the law creatively in your work?

    b. Personal
        - What movements are important to you?
        - Are you involved in activism? Do you ever attend protests yourself?
        - Do you have a relationship with a community or communities of activists?

7. For this next question, I'm interested in key ethical dilemmas in your area of work. In this context, I don't necessarily mean formal ethical rules for lawyers, but rather ethical issues

that you experience across your practice as a whole. **What would you say are the key ethical issues or tensions in your work?**

- What are the biggest conflicts you come across (between people, movements, goals)?
- Do you face any financial pressures in your work? Do they impact your choices?

a. How have you resolved, or how are you working to resolve these issues?

b. Are there any aspects of the legal system that you have resigned yourself to or made (ethical) "sacrifices" in relation to?
- What is the most that you can hope for from the law in your area of work?
- What are the biggest limitations of using the law to achieve social change-related goals?
- What are the challenges of using litigation in relation to social change?
- How do you think the law works with or against social movements?
- (Participant-specific prompts designed before and/or during interview)

8. How do you know when you've succeeded in your work?
- Is there a distinction between your actual goals (large scale) and your practice goals (small scale)?
- Can you share the biggest challenge(s) or disappointment(s) you have had?
  - When has the law failed you? When has it failed your clients?
- Can you share the biggest success(es) that you have had?
  - Have any moments made the challenges "worth it" for you?

9. Is there anything else that you would like to discuss or comment on related to this topic? (If time allows)

10. Do you know any other lawyers working toward social change who might have an important perspective to share for this study?

Appendix C: Communications

Sample Recruitment Emails

"Cold" Email

Good morning [NAME],

I am a Research LLM student at Osgoode Hall Law School working under the supervision of Professor Sonia Lawrence. I am conducting qualitative research about lawyers in Canada who are working toward social change. The aim of this study is to examine how these lawyers confront systemic oppression in the legal system, and how this might be affected by social identity.

Given your experiences in [FIELD], I believe that you would provide an important and valuable perspective for this study and would be very interested in interviewing you.

Participation in this study would involve a brief demographic questionnaire followed by a confidential interview, which can be conducted virtually via Zoom or Microsoft Teams and would take up to 60 minutes of your time.

By participating in this study, you would be helping to address significant gaps in our understanding of the complex ways that lawyers in Canada balance their professional identity and ethical responsibilities with their commitment to social justice.

If you would like to participate, you can reply to this email or fill out the initial consent form and questionnaire here. Alternatively, if you would like to assist with the study but are unable to participate yourself, perhaps you could send me the names of other lawyers who might be appropriate and interested (I am focused on lawyers with 4+ years of experience).

Thank you so much for your time and consideration. Please let me know if you have any questions or concerns.

Take care,
Marina McKenzie

"Warm" Email

[SAME]

Another participant suggested that you would provide an important perspective for this study. I would be very interested in hearing more about your experiences.

[SAME]

Sample Transcript Revision Request

Good morning [NAME],

Please see attached for your interview transcript. For methodological purposes, this is transcript is "verbatim", meaning that it includes filler words and pauses. For some this might be strange or uncomfortable to read—it will never be published in this form.

If you would like, please review the transcript for significant errors and deletions or redactions (annotations, editing for clarity, etc are not necessary) and let me know if you have any changes or if it is fine as is. This is not intended to take a significant amount of your time, but I want you to have an opportunity to review and validate the data that you've provided for this study.

Let me know if you have any questions or concerns.

Thank you and take care,
Marina

Sample Strike Notification

Partway through the data collection process, CUPE 3903, the union representing GA's, TA's, Contract Faculty & part-time Librarians and Archivists at York University went on strike. Based on my own values, the nature of the study, and conversations with my supervisor and colleagues, I decided that it was important to inform current and potential participants of the strike itself as well as what actions I had taken in response. Below is a sample paragraph that was added to recruitment and transcript revision request emails.

Please note: York University is currently a struck campus. I am not unionized and am not in any classes, but many of my colleagues are. Based on current guidance from the union, I am continuing with my research while refraining from crossing the picket line (i.e. using university facilities for the duration of the strike) and showing up to the picket lines in solidarity when possible. However, this understandably may still affect some participants' comfort in participating in the study. If you would like more information, please visit CUPE 3903's website.

Appendix D: Ethics Approval

This study was approved by the Human Participants Review Sub-Committee of York University's Ethics Review Board.

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OFFICE OF RESEARCH ETHICS (ORE)
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Tel 416 736 5914
www.research.yorku.ca

Certificate #:	**STU 2023-159**
Approval Period:	**12/19/23-12/19/24**

ETHICS APPROVAL

To: **Marina McKenzie**
Graduate Student of Law
marinamckenzie@osgoode.yorku.ca

From: Alison M. Collins-Mrakas, Director, Research Ethics
(on behalf of You-ta Chuang, Chair, Human Participants Review Committee)

Date: Tuesday, December 19, 2023

Title: **(Un)necessary Evils?: 'Cause Lawyering' and the Limits of Strategic Litigation in Canada**

Risk Level: ☒ Minimal Risk ☐ More than Minimal Risk

Level of Review: ☒ Delegated Review ☐ Full Committee Review

I am writing to inform you that this research project, **"(Un)necessary Evils?: 'Cause Lawyering' and the Limits of Strategic Litigation in Canada"** has received ethics review and approval by the Human Participants Review Sub-Committee, York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines.

Note that approval is granted for one year. Ongoing research – research that extends beyond one year – must be renewed prior to the expiry date.

Any changes to the approved protocol must be reviewed and approved through the amendment process by submission of an amendment application to the HPRC prior to its implementation.

Any adverse or unanticipated events in the research should be reported to the Office of Research ethics (ore@yorku.ca) as soon as possible.

For further information on researcher responsibilities as it pertains to this approved research ethics protocol, please refer to the attached document, **"RESEARCH ETHICS: PROCEDURES to ENSURE ONGOING COMPLIANCE".**

Should you have any questions, please feel free to contact me at acollins@yorku.ca.

Yours sincerely,

Alison M. Collins-Mrakas M.Sc., LLM
Director, Office of Research Ethics