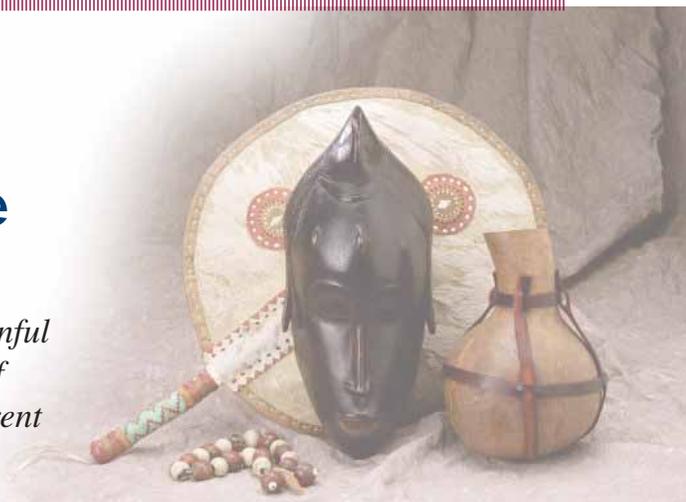


# Ottawa conference marks 200th anniversary of abolition of slavery in the British Empire

*“On one hand, the subject is something that is painful, the abolition of the slave trade and the slave trade itself is a painful memory, but I think there are some aspects in it of growth, of celebration, of shaking our minds up and thinking in a different way.” – Joanne St. Lewis*



The Law Society was proud to be involved in *Routes to Freedom: Reflections on the Bicentenary of the Abolition of the Slave Trade* held March 14 -16 at the University of Ottawa Faculty of Law. The conference was organized and chaired by bencher Joanne St Lewis, assistant professor of law at the university, and was sponsored by the Ontario government. Over 100 people attended the two-day event.

To open the conference, Professor St. Lewis introduced The Honourable Jean Augustine, P.C., saying, “This conference is happening in part because of her work as the chair of the Ontario Bicentenary Commemorative Committee of the Abolition of the Slave Act of 1807.” Augustine is Ontario’s first Fairness Commissioner.

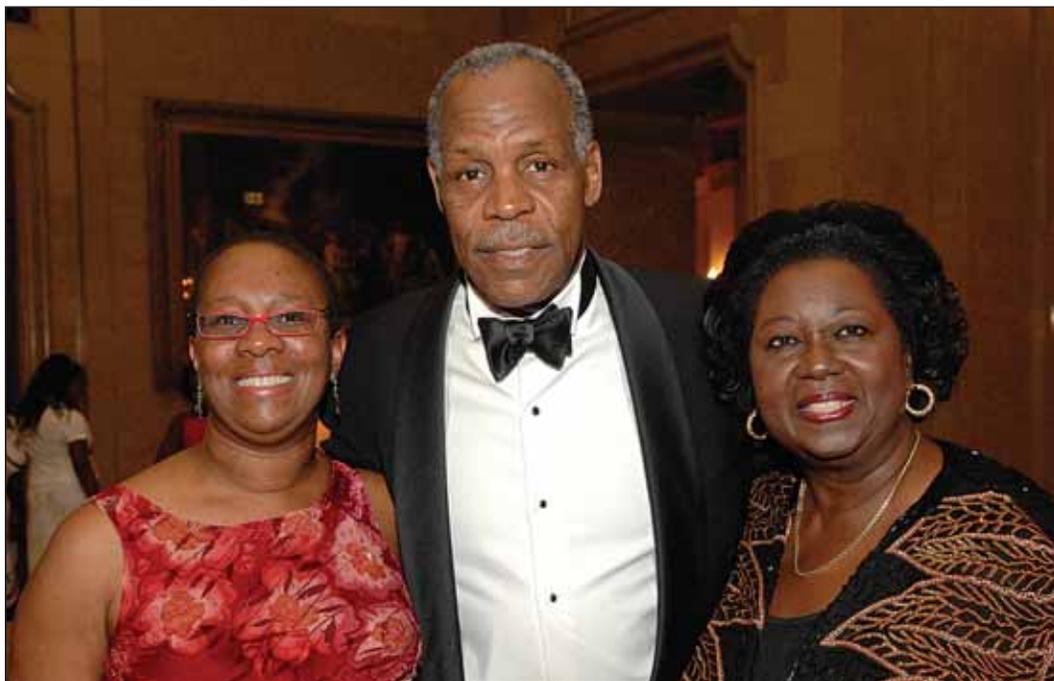
“When I was asked to lead the Ontario Bicentenary Commemorative Committee,” said Augustine,

“it was because the Ontario government recognized the bicentenary as an opportunity to do several things: to help Ontarians deepen their understanding of the province’s past; to raise awareness of the little known and

unspoken fact that slavery existed in Ontario; to recognize the struggle of African-Canadians, then and now; and to honour those who fought for freedom and justice and equality.”

“When most Canadians think of slavery and racism, we tend to think of

Canada is depicted as an enlightened safe haven – the place of freedom slaves ran to on the underground railway. This writing out of slavery from the historical narrative was accomplished so successfully that, in contemporary Canada, few Canadians are aware of this history.”



*From left: Bencher Joanne St. Lewis, Danny Glover, The Honourable Jean Augustine, P.C., at the The Routes to Freedom Endowment Fundraiser Gala*

the U.S.,” said Tamara Extian-Babiuk, of Duke University, “when in fact, slavery existed on Canadian soil for over 200 years. White supremacy is viewed largely as an American phenomenon, while

Legal academics, historians, political economists and writers addressed the issue of slavery from a variety of perspectives at this multi-disciplinary international conference. Presenters

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## Panel: Women and Slave Resistance

From left: Professor Camille Nelson, School of Law, Saint Louis University; Professor Rebecca Hall, S.J. Quinney College of Law, University of Utah; Moderator: Professor Lucie Lamarche, Gordon Henderson Chair, Human Rights Research and Education Centre, University of Ottawa; Professor Marlene Thelumsa Rémy, Department of Sociology, Collège Boréal de Toronto; Dr. Aoua LY-Tall, Research Associate Institute of Women's Studies, University of Ottawa & Researcher in Residence, Institut des Etudes Africaines, Université Mohamed V-Soussi, Rabat, Morocco.

included bencher Constance Backhouse, who spoke on the presence of the Ku Klux Klan in Canada in the 1920s and 1930s; Deidré Rowe Brown, who presented the story of Ontario's first black lawyer, Robert Sutherland; and author Lawrence Hill, who read from his award-winning novel *The Book of Negroes*.

One of the themes of the conference was the law and how it first supported the system of slavery, and how legislation was then used in its abolition. Rebecca Hall, Visiting Professor at the University of Utah's S.J. Quinney College of Law stated, "Before the law of abolition, there was the law that created and maintained the trade: military law, maritime law, insurance law, acts of navigation, and so on. The slave trade needed the law to exist and thrive."

Professor Camille Nelson, from Saint Louis University, discussed property law and its impact on slave women in the United States. "When we look at slavery, we see that the law really functioned not as a shield, but as a sword. Slaves were no different than any other type of property either alternatively categorized

as real property, or in most cases chattel property, moveable property or personal property. So you have lots of cases where we have a disposition of slaves, be they for sale, bequests, transfers, leases, rental agreements. You have taxation, depreciation. The legal mindset did not distinguish in this person-property conflation."

Discussion of contemporary issues in labour exploitation reminded participants



The Honourable Justice Rosalie S. Abella speaks at the Law Society reception.

that modern forms of slavery continue to exist, as did the discussion of whether law can overcome the legacy of slavery through redress and/or reparations.

In the panel discussion entitled, *Can the Law Overcome the Legacy of Slavery?* Professor Carol Aylward, Dalhousie Law School, discussed legal solutions for redress and reparations for descendants of slaves in the context of the *Canadian Charter of Rights and Freedoms*.

"One of the main arguments against a legal solution has been that discrimination, particularly racial discrimination, was not a crime at the time of slavery. And because it was not a crime, then you cannot apply constitutional principles. So in Canada, the argument goes something like this: because the right not to be discriminated against on the basis of race was not a pre-existing right, i.e. a right that existed prior to the implementation of the charter, that right is not protected under section 15. Therefore, there is no legal foundation for compensating descendants of slaves for the crime against their ancestors, when in strictly legal terms, no crime was committed."

Aylward then demonstrated how the charter provides avenues for redress and reparations for the harm caused by slavery. "The right not to be discriminated against based on race has always existed and was not merely created by section 15 of the charter. Slavery was discriminatory because it violated pre-existing equality rights. The fact that the government violated these rights is not justification for finding that they cannot be redressed by the remedial provisions of the charter. As the Supreme Court ruled in the *Reference re Secession of Quebec* case, 'the Constitution Act 1982 removed the last vestige of British authority over the Canadian constitution and reaffirmed Canada's commitment to the protection of its minorities, Aboriginals, equality, legal and language rights, and fundamental freedoms as set out in the charter.'"

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On Friday March 14, the Law Society of Upper Canada, in partnership with the Canadian Association of Black Lawyers, the Black Law Students' Association of Canada and the University of Ottawa's Faculty of Law, hosted a reception at which The Honourable Justice Rosalie S. Abella and M. NourbeSe Adamu Philip – well-known poet, essayist, novelist, playwright and author – spoke. The reception was held in celebration of the International Day for the Elimination of Racial Discrimination and was part of the Law Society's Equity Public Education Series.

In her keynote address, Justice Abella stated, "The story of the 200 years since the slave trade was abolished is the story of the incremental, often glacially incremental, struggle for equality for blacks in Canada and in the United States."

Justice Abella's address focused on the history of the legislation and jurisprudence dealing with discrimination against Black people in North America after the abolition of slavery. "The *British Imperial Act* abolished slavery in



### Panel: Legal Constraints

From left: Professor David Gilles, Chargé de cours, Faculté de droit de l'Université d'Ottawa; Rosalia de la Cruz Gitau, Fellow, Center for Human Rights and Global Justice, NYU School of Law; Deidre Rowe Brown, Ph.D. candidate, OISE, University of Toronto & Executive Assistant to the Treasurer of the Law Society of Upper Canada; Constance Backhouse - Distinguished University Professor, University Research Chair, Faculty of Law, University of Ottawa; Bencher, The Law Society of Upper Canada; Professor Daphne Gilbert, Faculty of Law, University of Ottawa; Moderator: Professor Pacifique Manirakiza, French Common Law, University of Ottawa.

the British Empire in 1834, but, like the American experience, the reality of discrimination remained vigorous. Our litigation story includes *Christie v. York*, where the Supreme Court of Canada said that the Montreal-based proprietor who refused to serve beer to a Black person was entitled to do so. On the other hand, over 40 years later, the Supreme Court of Canada decided the *Andrews* case, which created a new and unique constitutional equality guarantee that respects and accommodates differences."

The conference was capped by a gala fundraiser chaired by actor and activist Danny Glover. He chairs TransAfrica Forum, an African American human rights and social justice advocacy organization. Funds raised from the gala will be used to establish two scholarships, the first for an Ontario law undergraduate and the second for a doctoral candidate from Africa that will be named in honour of Glover.

Followup to the conference will include a dedicated issue of the *Ottawa Law Review* for selected papers presented at the conference, a DVD of the conference, an academic publication, and curriculum materials for high schools.

In her introduction, Professor St. Lewis explained that she asked Glover to lend his name to the doctoral fellowship, "because she wanted someone who "embodied the social activism, the level of engagement and the stature to engage people in the African diaspora and outside of our community on this issue, and Glover was the first person I thought of." ■



Professor Carol Aylward, of Dalhousie Law School spoke on the panel discussion: *Can the Law Overcome the Legacy of Slavery?*