

December 8, 2025

A Court Divided: What an Ontario Court Motion Reveals About Race in the Courtroom

By: Gideon Christian

Cases Commented On: *Dosu v Human Rights Tribunal of Ontario*, [2025 ONSC 6496 \(CanLII\)](#); *Dosu v Human Rights of Ontario*, [2025 ONSC 6509 \(CanLII\)](#)

In a bizarre procedural twist, the Ontario Divisional Court issued two contradictory decisions on consecutive days in the same case. Two written motions for leave to intervene in *Dosu v. Human Rights Tribunal of Ontario* was sent to two different judges - Justice Sharon Shore and Justice Shaun Nakatsuru - who rendered opposite rulings. Justice Shore [dismissed](#) the would-be intervenors; the next day, in a separate ruling, Justice Nakatsuru [granted](#) them intervention, setting the stage for what appears to be an embarrassing judicial outcome for the court.

The anomaly in the motions outcome - essentially a legal coin flip yielding heads in one court and tails in another - has captivated legal observers and raises pointed questions about how judicial perspectives on race can decisively shape legal outcomes.

The underlying case is rooted in allegations of racial discrimination. Ms. Dosu, a York University employee, filed a human rights complaint at the Human Rights Tribunal of Ontario (HRTO) alleging racial discrimination by her employer. An HRTO adjudicator dismissed most of her claims as time-barred under the Code's one-year limitation period. She applied for judicial review challenging the reasonableness of that decision. In that review, Dosu's union, the [York University Staff Association](#) (YUSA), and the [Black Legal Action Centre](#) (BLAC), an anti-Black racism legal clinic, moved to intervene. What followed was an extraordinary divergence: two endorsements, issued by two different judges one day apart, reaching diametrically opposite conclusions on whether those intervenors should be heard.

Divergent Approaches to Race and Systemic Context

The contrast between Justice Shore's and Justice Nakatsuru's decisions can be viewed through a racial lens – specifically, how each judge framed the relevance of race and BLAC's proposed systemic submissions. Justice Shore adopted an extremely narrow view. In her endorsement, she insisted that [“the nature of this case is such that it is limited to the issue of the limitation period”](#) under the Human Rights Code. Justice Shore deemed BLAC's broader anti-Black racism perspective irrelevant to that technical timing question and warned that BLAC's involvement would introduce [“irrelevant peripheral issues”](#) likely to cause confusion. She saw no distinct contribution BLAC could offer on the limitation issue and doubted its participation would assist

the court at all. Accordingly, Justice Shore refused BLAC's motion. She likewise concluded that YUSA lacked a sufficient interest and denied it intervenor status.

Justice Nakatsuru, by contrast, embraced a systemic anti-discrimination lens. He acknowledged that York University portrayed the matter as a narrow limitation issue, but he refused to isolate Dosu's case from its broader context. Justice Nakatsuru found a "[sufficient foundation](#)" for BLAC's involvement, pointing to BLAC's concern that the HRTO's decisions could be interpreted to require an applicant to first raise their complaint with their employer before approaching the Tribunal. BLAC warned that such an interpretation would directly harm Black individuals beyond Ms. Dosu by effectively imposing an internal-exhaustion requirement [para. 19]. Justice Nakatsuru viewed this concern as far from peripheral – he saw it as a live issue tied to "[the intersectional nature of discrimination](#)" in Dosu's situation. He noted that "[BLAC is well placed to offer assistance in how the intersectional nature of discrimination faced by Black persons should be addressed on the judicial review application](#)". In sum, where Justice Shore dismissed BLAC's contextual lens as irrelevant, Justice Nakatsuru regarded it as indispensable.

BLAC's motion starkly highlights the judges' divergent lenses. Justice Shore's approach was essentially colour-blind: she treated the dispute as a neutral technical issue, dismissing race and systemic discrimination as irrelevant distractions that would only cause confusion. Justice Nakatsuru's approach was explicitly colour-conscious: he recognized that even a narrow legal question is inseparable from its racial and systemic context. This difference in framing proved decisive – BLAC's voice was silenced in Shore's courtroom but welcomed in Nakatsuru's.

Judicial Identity and the Context of Race

How could two brilliant judges in this case, faced with the same record and legal test, reach such diametrically opposite conclusions? The answer may lie in the judges' own identities and judicial philosophies regarding race. Justice Nakatsuru is a Japanese Canadian jurist well known for acknowledging how race, history, and personal experience inform the pursuit of justice. His own father was among the thousands of Japanese-Canadians [interned](#) by the Canadian government during the Second World War, an experience that might have shaped his understanding of historical injustice and the need for cultural awareness in adjudication.

In his landmark sentencing decision *R. v. Jackson*, he confronted anti-Black racism in the criminal justice system head-on. He wrote that "[for African Canadians, the time has come where I as a sentencing judge must take judicial notice of](#)" the history of colonialism, slavery, segregation, and systemic racism, and how that legacy contributes to inequality and over-incarceration. He emphasized that judges should not require formal proof of such social facts in every case, because these forms of systemic harm constitute part of the legal context. Jackson underscored that judicial notice of systemic racism is an "[important first step](#)" toward rendering justice. This philosophy explains why Justice Nakatsuru did not view Dosu's case as a sterile technical exercise, but rather as part of a broader narrative of anti-Black discrimination.

By contrast, Justice Shore's endorsement shows no comparable awareness of racial context. She approached the motion from a formalist perspective, focusing narrowly on the limitation issue and the immediate parties. Nothing in her reasons suggests that she considered the broader context of

Dosu's discrimination allegations or the value of an anti-racism voice in the courtroom. Her characterization of BLAC's input as "irrelevant" and potentially confusing reflects a view that the law should be applied in a vacuum, sealed off from the realities of social context. That form of purported neutrality creates the very blind spots through which systemic bias is allowed to persist.

Justice Shore's approach mirrors a deeply problematic pattern among some non-racialized judicial decision-makers when faced with race and racism in adjudication. Too often, the reflex is to dismiss race as "irrelevant" and retreat into the 'safe' confines of a narrow legalism that pretends social context does not exist. This is not neutrality – it is erasure. I have previously criticized this pattern in my analysis of the all-White panel in [LSA v. Madu](#).

The Case for Lived Experience and Cultural Competence

The Dosu case underscores why judges hearing race-based discrimination matters need either lived experience or genuine cultural competence regarding systemic racism. At minimum, any judge handling such a case must understand how racism operates within legal processes – whether through personal experience or through rigorous, purposeful education. The stark difference in outcomes here illustrates what is at stake: a judge without an appreciation for the role of race may unwittingly downplay or exclude crucial context, whereas a judge attuned to systemic factors will welcome contextual expertise like BLAC's, enriching the court's understanding and improving the quality of justice delivered.

There is growing recognition that judicial diversity and cultural competence are not matters of optics but of substantive justice. A judge from a racialized community – or one who has worked closely with marginalized groups – may more readily grasp why a Black-led organization like BLAC offers a perspective distinct from that of the main parties. Such a judge is also more likely to appreciate how historical and contemporary power imbalances can render ostensibly technical issues, such as filing deadlines, especially fraught for racialized claimants.

This is not to suggest a simplistic "race-matching" of judges to cases – racial identity alone does not guarantee judicial insight on race. Many non-racialized judges have written deeply [race-conscious decisions](#), while some racialized judges have, conversely, authored racially troubling ones – Justice Clarence Thomas's opinion in [SFFA v. Harvard](#) being a prominent example. The point is that every judge deciding race-related cases must possess the cultural literacy necessary to engage with their full context. Whenever possible, such cases should be assigned to judges who already have that literacy; at the very least, judges without lived experience must approach these matters with humility and openness – including by welcoming intervenors who bring expertise on systemic discrimination.

Conclusion

Dosu v. HRTO is a cautionary tale for justice in a multicultural society. Two judges – one a traditional formalist, the other a social-context jurist – produced irreconcilable rulings in a case centred on race. The takeaway is stark: who sits in judgment can profoundly shape the legal outcome. In cases alleging racism, courts cannot simply apply rules in a vacuum; they must be prepared to confront the lived realities that animate the legal issues. This necessity demands greater

cultural competence on the bench and may require rethinking how judges are assigned in such matters. Dosu reminds us that justice is best served when those who dispense it reflect and respect the diverse experiences of the society they judge. Only then can we avoid the intolerable prospect of racial justice turning on chance, and ensure that every litigant finds a court open to all relevant voices – including those highlighting systemic inequality.

This post may be cited as: Gideon Christian, “A Court Divided: What an Ontario Court Motion Reveals About Race in the Courtroom” (8 December 2025), online: ABlawg, http://ablawg.ca/wp-content/uploads/2025/12/Blog_GC_DividedCourt.pdf

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>

Follow us on Twitter [@ABlawg](https://twitter.com/ABlawg)

