

Update on the Law of Workplace Harassment: Rights and Responsibilities



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Presentation to the Law Society of Nunavut

June 15, 2018 -- PART 2

AGENDA

- ❖ The Law of Workplace Harassment: Quick Refresher
- ❖ Harassment and Implicit Bias
- ❖ Cultural Competence



REFRESHER

❖ ***Human Rights Act***

- s. 6 prohibits harassment related to employment on the basis of the prohibited grounds

❖ ***Health and Safety Regulations (Safety Act)***

- s. 34 prohibits harassment at a work site

❖ ***Law Society, Code of Conduct***

- s. 6.3 requires lawyers not to engage in harassment, sexual harassment or discrimination

REFRESHER

What is “harassment”?

“a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.”

Objective/Subjective test:

Would a reasonable person in the complainant’s position find the conduct or comments to be objectionable?



REFRESHER

Elements of Harassment:

- Usually a pattern of behaviour (but sometimes a single egregious incident)
- Intention of the alleged harasser is not determinative
- Subjective feelings of the complainant is not determinative
- Does not have to be targeted at a specific person (ie. hostile work environment)



REFRESHER

E.g., a pattern of:

- putting someone down with insults or unwarranted criticism, especially in front of others
- shouting, yelling, excessively confrontational behaviour
- demeaning or derogatory comments about someone to others in the workplace (malicious gossip)
- consistently disrespectful interactions, e.g. turning your back to someone when they are speaking, interrupting repeatedly, using a sarcastic or mocking tone of voice

REFRESHER

The word “harassment” refers to a departure from reasonable conduct

- ➔ persistent patterns of harmful behaviour or serious transgressions that result in more than fleeting awkwardness or momentary discomfort
- ✘ Occasional or isolated acts that are intemperate, callous or insensitive.
- ✘ Every heedless act or comment that injures someone’s feelings does not necessarily constitute harassment.
- ✘ Appropriate workplace supervision (incl discipline)

HARASSMENT AND IMPLICIT BIAS

Harassment can arise out of discriminatory attitudes and beliefs



e.g. pattern of behaviour that marginalizes or demeans someone because of a pre-judgment about their skills and abilities

HARASSMENT AND IMPLICIT BIAS

Explicit vs. implicit bias



Explicit bias: the attitudes and beliefs we have about a person or group on a conscious level



Implicit bias? the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious, or barely conscious, manner.

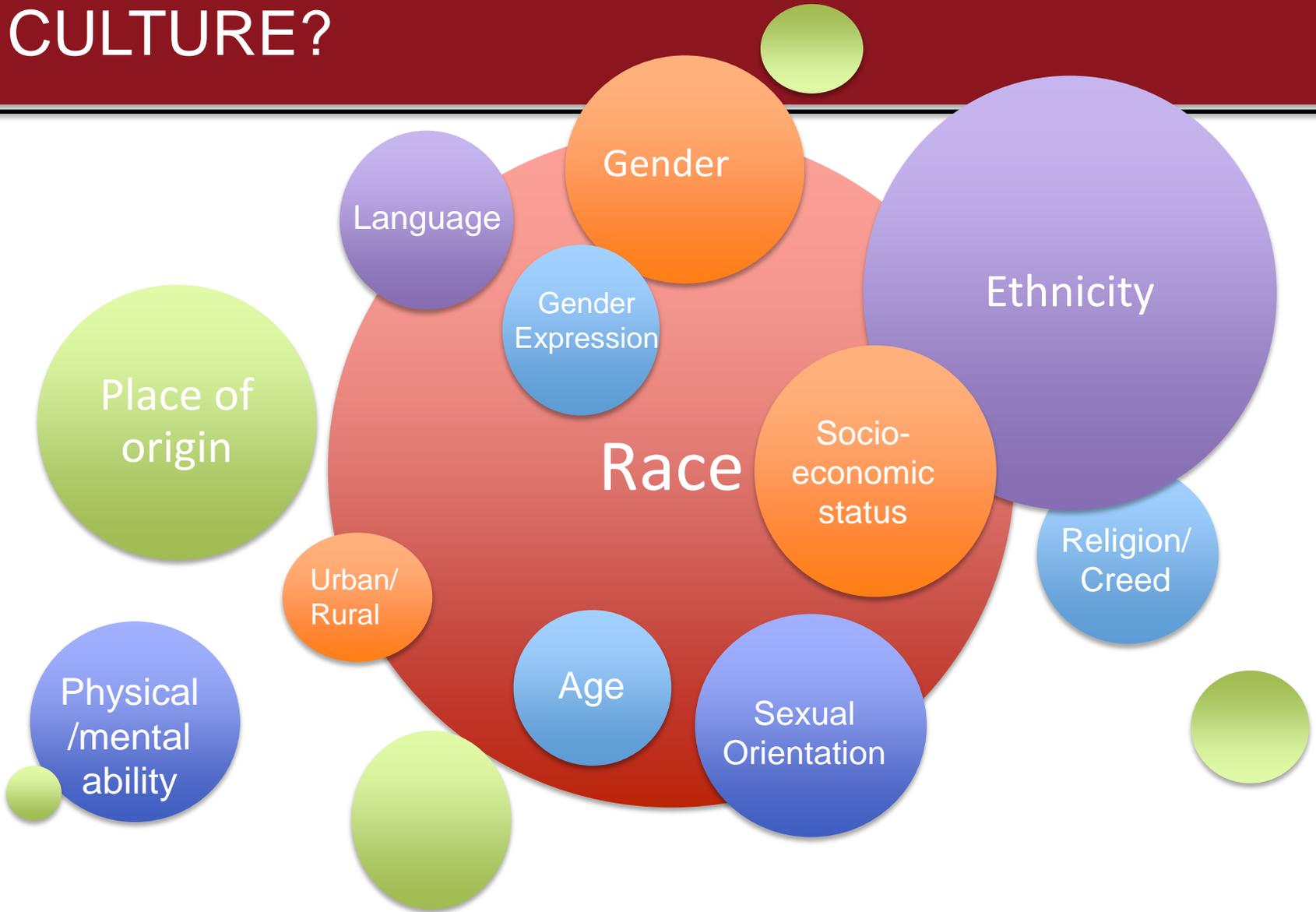
FEATURES OF IMPLICIT BIAS

- Biases are deeply ingrained in our cultural belief systems
- The implicit associations we hold **do not necessarily align with our declared beliefs** or even reflect stances we would explicitly endorse.
- We generally tend to hold implicit biases that **favor our own ingroup** (though we can still hold implicit biases against our ingroup).

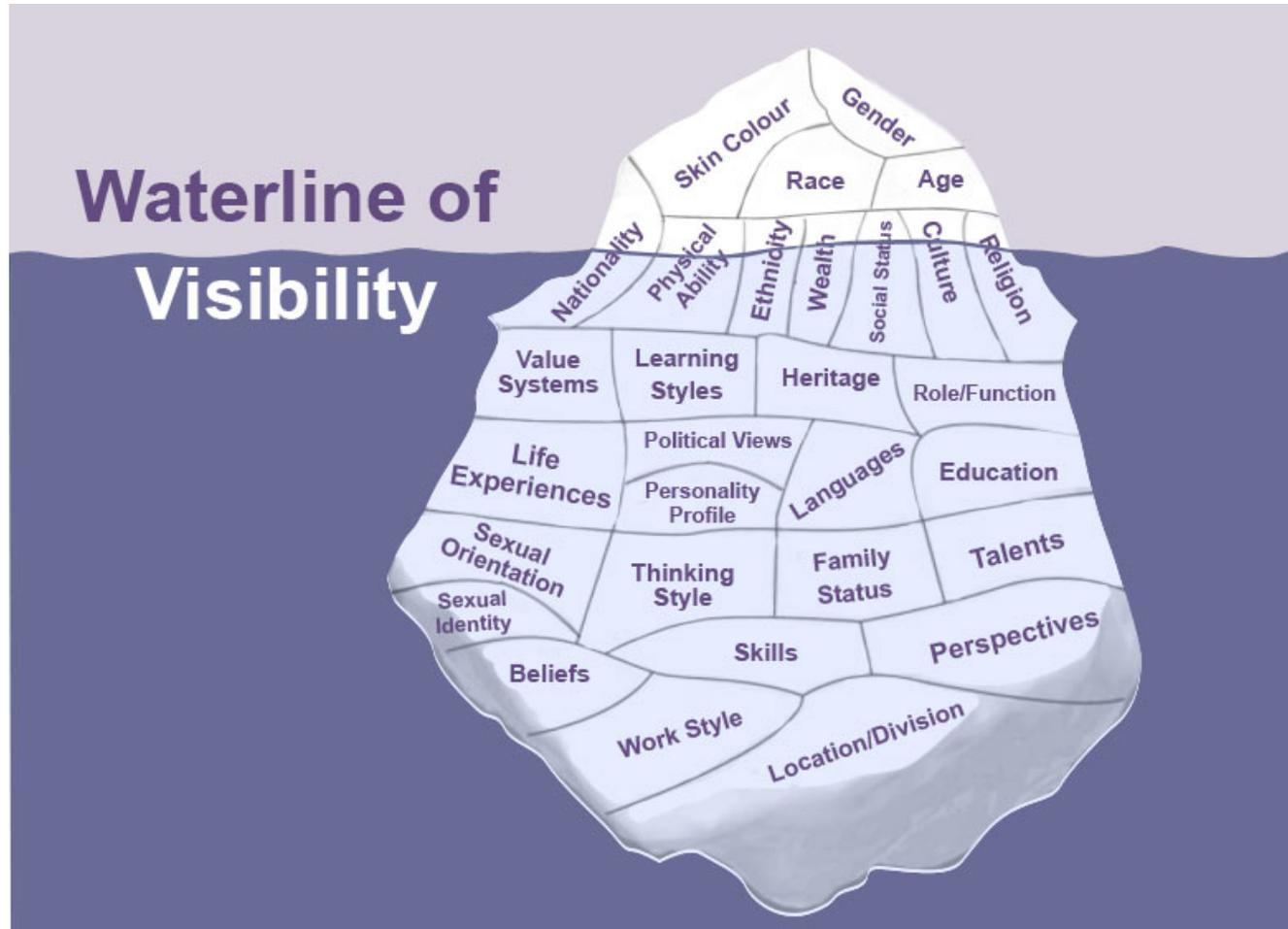
OUR CULTURAL BELIEF SYSTEMS

1. “socially transmitted values, beliefs, and symbols that are more or less shared by members of a social group”
2. “a system of collectively held values”
3. “deeper level of basic assumptions and beliefs ... that **operate unconsciously and define in a basic ‘taken for granted’ fashion** a group’s view of its self and its environment.”

CULTURE?



THE DIVERSITY ICEBERG



Source: www.brookgraham.com

THE SCIENCE OF IMPLICIT BIAS

- Psychology tells us that the brain processes information in different ways on two different levels: conscious and unconscious



THE POWER OF THE UNCONSCIOUS



- Neural pathways are formed in the brain whenever information is processed.
- These pathways become hard-wired and create automatic unconscious defaults for our thinking.

THE UNCONSCIOUS MIND

- An extremely useful quick-thinking tool that helps us avoid dangerous situations and negotiate daily life.



THE UNCONSCIOUS MIND

- An extremely useful quick-thinking tool that helps us avoid dangerous situations and negotiate daily life.

Even if you're very thirsty, your unconscious tells you not to drink this > >

You don't have to think about it.



Conscious Mind

- ❖ Operates methodically and requires some effort.
- ❖ Operates slowly and is data-driven.
- ❖ A typical person can only consciously process up to 8 bits of information at a time.
- ❖ It can take seconds or minutes to reach a decision or conclusion.

Unconscious Mind

- ❖ Operates effortlessly and constantly in the background, like an “auto-pilot”.
- ❖ Operates quickly and is intuitively-driven.
- ❖ It has 200,000 times more brain processing power than the conscious mind.
- ❖ Brain scans show that it processes information in as little as 30 milliseconds.

Conscious Mind

- ❖ Slow and inefficient, but results are more reliable because the conscious mind uses logic and careful rational processing.



Unconscious Mind

- ❖ Unconscious judgements are useful and necessary in everyday life.
- ❖ They are usually “good enough” for daily routine, but they are often wrong when it comes to more complex matters because they are based on limited information and super-fast processing.

Implications?

STEREOTYPES

- The (consistent but inaccurate) attribution of particular traits or qualities to members of certain social groups
 - May involve negative or positive biases.
 - Can affect our perceptions, decisions and behaviours without us even being aware – even when we are highly attuned to the problems of bias and stereotypes

First Impressions



Which of these individuals is most intelligent?



<< Perceived lower
intelligence



Perceived higher >>
intelligence

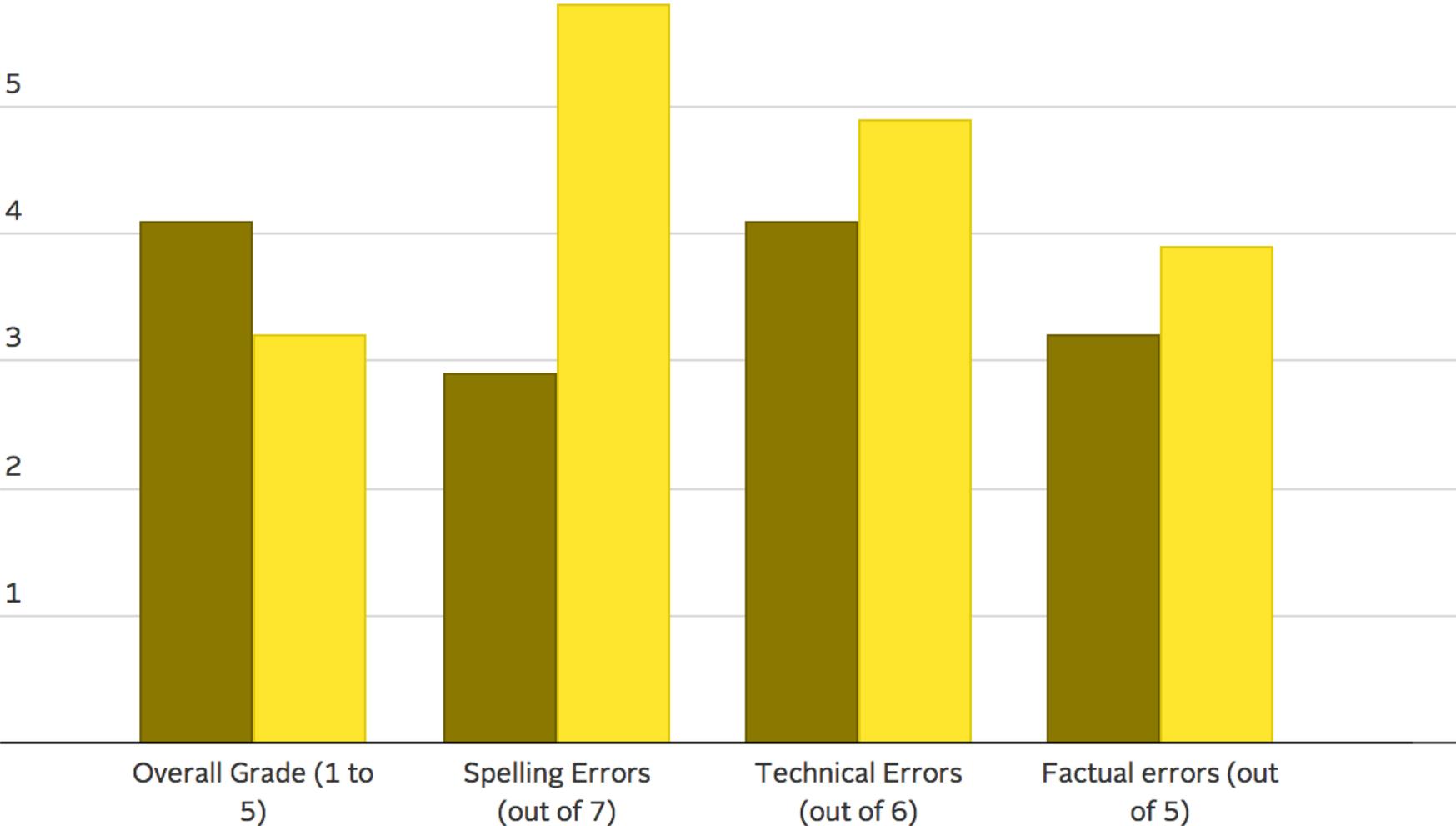


EFFECTS OF SOCIAL BIASES

- Research has shown that implicit biases influence our perceptions, decisions, actions and behaviours in all realms of social interaction, even though we are not aware of them.
 - e.g. multiple studies show:
 - racial bias in criminal justice system
 - racial and age bias in health care
 - gender bias in IT
 - gender bias in music

Race affects legal reviews

■ Reviewer told the author is white
■ Reviewer told the author is black



Source: Nextions

IMPLICIT BIAS IN EMPLOYMENT

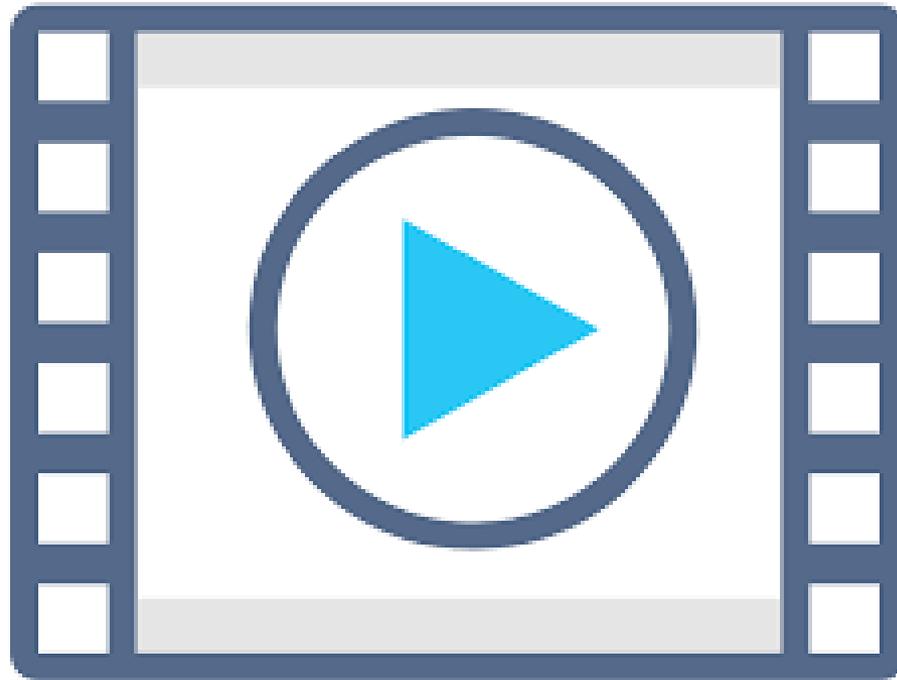
- 2011 Canadian study regarding employment barriers for immigrants and racialized people:
 - Researchers examined interview call-back rates from identical resumes sent to real online job postings across multiple occupations in Toronto, Montreal, and Vancouver.
 - Substantial differences in callback rates based on whether the applicant's name was English-sounding (e.g. Matthew vs Samir).
 - English-sounding names were 35% more likely to receive callbacks.

MICRO-AGGRESSIONS

What is a “micro-aggression”?

- Brief but frequent comments or gestures that reflect (whether intentionally or not) hostile, demeaning, disrespectful attitudes toward individuals or groups.
- Often well-intentioned.
- Micro-aggressions convey highly nuanced messages, often communicated through body language or tone rather than words.
- *They may be imperceptible to bystanders who witness them.*

MICRO-AGGRESSIONS



How Micro-aggressions Are Like Mosquito Bites

Fusion Comedy

Implicit biases are pervasive

*So why do we become so **defensive**
when someone points out our biases?*

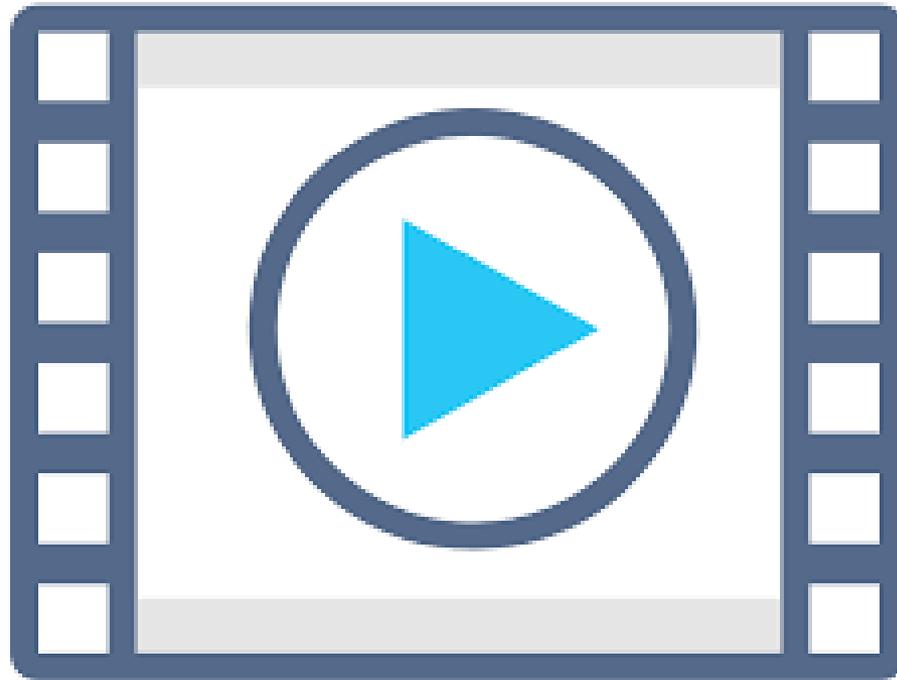
GOOD / BAD DICHOTOMY

We've been socialized to think about prejudice as intentional and deliberate



But this ignores the reality of implicit bias.

ACKNOWLEDGING IMPLICIT BIAS



How I Stopped Worrying and Learned to Love Talking about Race
TedX Talk: Jay Smooth

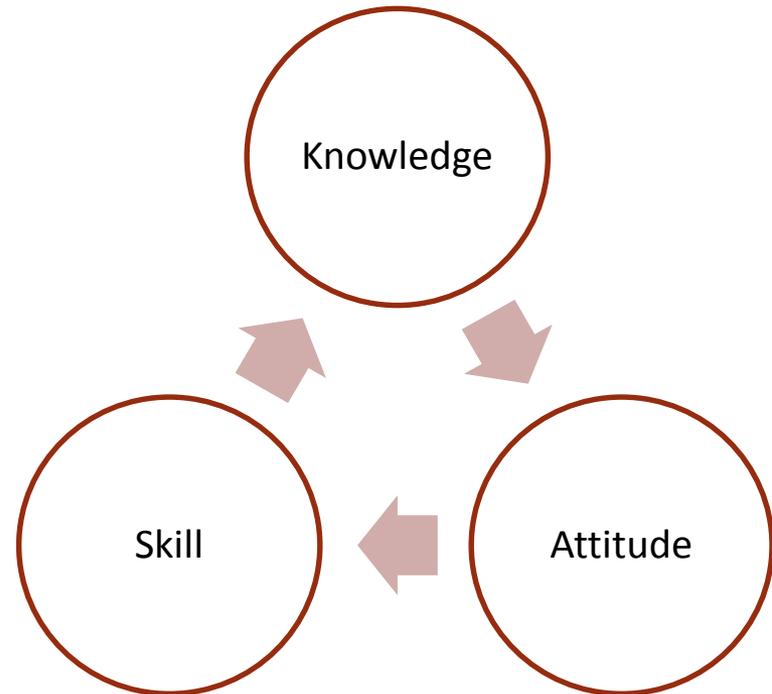
ACKNOWLEDGING IMPLICIT BIAS

- Jay Smooth:
 - What makes us “good” people is not that we don’t have biases, but that we continually seek to recognize and deal with our biases
 - Understanding implicit bias and how it operates can help us overcome or reduce our defensiveness, making us more open to examining and changing our unconscious attitudes and behaviours.

Where to Begin ???

DEVELOP OUR CULTURAL COMPETENCE

- The behaviours, attitudes, policies and structures that enable organizations and individuals to work effectively in cross-cultural situations.



STEP 1: Get Over Denial

Acknowledge that, like all other people, we have implicit biases and that those biases unconsciously affect how you perceive and treat other people.

- Be open to feedback and don't become defensive if you don't like what you hear.
- Try to become aware of your own biases – **check yourself constantly.**
- **Follow Jay Smooth's "dental hygiene" approach to implicit bias.**

STEP 2: Check Yourself

Pay attention to the words, emotions and physical reactions that surface in interactions with others, then consider whether these respect and accommodate difference.

The act of discovering and understanding your own hidden biases can help propel you to act in ways to correct them.

STEP 3: Curb Your Positive Biases

Recognize that positive bias can have just as much harmful impact as negative bias.

- A common form of hidden bias is the inclination to give an extra helping hand to someone with whom we share a common bond.
- Don't refrain from helping others, mentoring, providing guidance and advice, etc. But **check yourself** to be sure that you are doing so equitably and not simply assisting those who belong to your "in-group".

STEP 4: Evaluate Your Biases

Try to gain insight into the origins of your biases.

- When you recognize that you have developed a bias based on information that you have heard from others or have been influenced towards by others, ask yourself whether it is consistent with your own experiences? Or whether it's based on first-hand information?
- When you recognize that you have developed a bias based on a past experience, ask yourself whether that past experience was an isolated incident from which you have generalized, and ask yourself whether it is actually what you are experiencing in the present?

STEP 5: Slow Down

We are most vulnerable to having our decisions influenced by implicit biases when we are mentally lazy and take short cuts, when we allow our unconscious mind to do the thinking.

- When making important decisions (hiring, discipline, promotion, performance review, assignment of work), carefully examine and weigh all relevant information
- Use protocols, not impressions: Don't make decisions based on impressionistic evidence. Gather the information/evidence you need to make an informed decision.
- Don't make mental lists!

STEP 6: Expand Your Networks

Make conscious efforts to expand your social and professional networks:

- Like-minded people often gravitate towards each other. Restricting our social and professional networks to like-minded people will simply reinforce rather than challenge our implicit biases.
- Seek out opportunities to immerse yourself in different environments outside your comfort zone and expose yourself to people from different cultural, racial, religious, ethnic and socio-economic backgrounds.

STEP 7: Embrace Counter-Stereotypes

Embrace rather than discount “counter-stereotypes”

- Counter-stereotypes are those that are inconsistent with the current theory of our own assumptions.
- When you encounter people from an “out-group” who do not fit the stereotypes ascribed to their group, don’t treat them as an “exception”.
- Instead, question the validity and accuracy of the stereotype itself.

STEP 8: Focus on Inter-Group Similarities

When you interact with people from an “out-group”, focus on similarities (common identities and shared goals) not differences.

STEP 8: Focus on Inter-Group Similarities



Thank you!