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Lawyer's life an enduring legacy

By Philip Girard

Law Times, October 24, 2016

A 1994 encounter in a Halifax courtroom was probably a first in Canada. That's because a black youth known as RDS — represented by a black lawyer — faced off against a white crown prosecutor and a white police officer, under the eyes of a black judge assisted by a black court reporter. Nova Scotia Family Court Judge Corrine Sparks' comments on police behaviour in acquitting the defendant led to an allegation of anti-white racial bias on her part. When the Crown appealed the acquittal, the black lawyer, the late Burnley "Rocky" Jones, argued the case all the way to the Supreme Court of Canada, joined by Dalhousie University law professor Dianne Pothier.

The SCC decision in *R v RDS* validated minority judges using their own life experience in assessing racially charged events such as interactions between police and minority youth. It also extended the frontiers of judicial notice and contextualized judging. The decision is consistent with Jones' greatest intellectual legacy, the notion of systemic discrimination, which has been absorbed into Canadian human rights law.

Jones' recently published autobiography, Burnley "Rocky" Jones: Revolutionary, fills in some of the backstory of *R v RDS*, but his role in the case is just one event in an action-packed narrative. The book should be required reading for Canadian lawyers and, indeed, all Canadians.

Jones came late to the law — he was nearly 50 years old when he entered Dalhousie Law School in 1989 courtesy of the Indigenous Blacks & Mi'kmaq Initiative, which he helped to create. This program mirrored an access program, the Transition Year Program for black and indigenous students, that he had helped to create at Dalhousie in 1970. Jones' legal career drew on a long legacy of community activism. In the 1960s and 1970s, he shook up the quiescent black community in Nova Scotia, challenging the leadership of the black church, the "occupation" of black portions of Halifax by the police and white paternalism, while making linkages with Black Power groups from the US. Soon, he was speaking and organizing across Canada, dubbed "Canada's Stokely Carmichael" by the media.

According to Jones, the community should decide what it wanted for itself and then figure out how to achieve it. To that end, he tried to foster independent decision-making for black communities. Jones was always suspicious of government money and organizations that tried to co-opt and direct grass-roots action. Inspired by the Black Panthers, he sponsored a series of controversial uni-racial "Black Family Meetings" in Halifax in the late 1960s, in order to discuss the needs of the black community. Out of this grew the Black United Front, which, as Jones feared, became somewhat toothless when it accepted federal funding. Undaunted, he went on to found a rival group, the Afro-Canadian Liberation Movement.

In few of his endeavours did Jones display the classic Canadian taste for compromise. He was not afraid of calling out views with which he disagreed. Reacting to Martin Luther King's Massey Lectures in 1967, in which King extolled Canada as a racially harmonious paradise, Jones

begged to differ. He also disagreed with King's philosophy of non-violence, though he later came to a new appreciation of King's thought. Resentful that the interests of West Indian immigrants came to stand in for those of all black Canadians, Jones castigated what he called island "tribalism" as a threat to black unity and reminded the newcomers of the long existence of indigenous black communities. Ultimately, however, he helped build bridges between the two groups, as he did between blacks and indigenous peoples as well.

Jones' legal career included the usual combination of routine work (to pay the bills) with pro bono criminal defence work and involvement with cases important to marginalized communities. In one of the latter, he defended a 13-year-old black girl suspected of a theft at school and strip-searched by a white female police officer in a way that violated the girl's constitutional rights. Jones and his co-counsel, Anne Derrick, were sued for slander by the police officer for allegedly calling her actions racist at a press conference. A jury award of \$240,000 was overturned by the Nova Scotia Court of Appeal, clarifying the qualified privilege of lawyers to speak out when Charter guarantees have been violated by state agents.

The great paradox of Rocky Jones is that this resolute exponent of non-mainstream ideas was an institution builder. Among Jones' legacies one can count the Nova Scotia Human Rights Commission and the access programs at Dalhousie mentioned earlier, as well as his contribution to what poet George Elliott Clarke calls the Africadian Cultural Renaissance.

Jones had wanted his friends Clarke and the historian Jim Walker to write his autobiography with him. To that end, they taped long interviews covering Jones' life down to 2003, before his untimely death in 2013. Walker's decision to write in the first person gives the account the vitality and immediacy Rocky Jones would have wanted. Only the last chapter, dealing with Jones' later years and legacy, is written by Walker in his own voice.

One chapter begins with Jones' observation that journalist Tariq Ali wrote a book about the great year of revolution, 1968, that does not even mention Canada. He protests that "we had our own 1968 in Canada." If you want to find out more about it, and its aftermath in Canadian law and life, read this book.

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