

“With the Appropriate Qualifications”

Aboriginal People and Employment Equity

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Cet article examine l'équité en emploi au Canada sous l'angle de la législation et des éléments constitutifs de la loi canadienne qui en fait la promotion. L'auteure explore la situation réelle des professeures autochtones dans leur lieu de travail, les difficultés rencontrées tels les obstacles qui empêchent leur avancement sans oublier le racisme de tous les jours.

The truth about stories is that that's all we are.

—Thomas King (2)

In the tradition of my Mi'kmaq ancestors, I believe in equity and fairness. In traditional times, the circle symbolized the need for all diversity to create the circle. No part could exist without the other. Moreover, in Mi'kmaq culture, my lived experience must also be included in any story about employment equity. I do not think my experiences differ from other Aboriginal faculty. We all sit in the circle. I am a Mi'kmaq woman, lawyer, teacher, and Director of the Transition Year Program (TYP) at Dalhousie University College of Continuing Education. I also taught at Dalhousie's law school for two years and directed its Indigenous Blacks and Mi'kmaq Program.¹ I no longer teach at the law school and therein lies part of my story.

The first group of Mi'kmaq women graduated from Dalhousie

Law School in 1993. I am the only Mi'kmaq woman with an LL.M. from Dalhousie Law School. I say this, not to brag, but to illustrate how recently we achieved law degrees and how far we have to go to achieve equity in the legal profession. Being part of the first group, my experience has been a mixed bag of outright racism to tremendous support.

I chose the title, “With the Appropriate Qualifications,” because it was the title of the job ad for the Director of the Program for Indigenous Blacks and Mi'kmaq. The job ad indicated that the successful candidate would be allowed to teach law if s/he had the “appropriate qualifications.” To me, this spoke volumes about the judgment calls made by those in power about our abilities. Inherent in assessing applicants for a job is subjectivity. The morals and values that we place on people and their knowledge create the judgment placed on any applicant. What is “appropriate?” The most important part of employment equity involves the deconstruction of those value judgments that tend to impede employment equity principles.

Despite the many statutes and even constitutional documents that propose to implement a society free of racism and discrimination, immense barriers still exist that prevent us from reaching our full potential. The Canadian government has implemented measures to ensure that employment

equity becomes a reality. The four designated groups—women, Aboriginal Peoples,² visible minorities, and people with disabilities—have statutory and constitutional measures designed to increase their employment. The focus of this paper, Aboriginal Peoples, reflects my experience as a Mi'kmaq woman facing barriers to employment due to my race/gender. I will critically analyze the barriers and propose suggestions for change.

This paper also explores the construct of employment equity in Canada. First, I examine the vision of employment equity through legislation and constitutional instruments and explore the law in Canada that supports employment equity. Second, I explore the reality that Aboriginal faculty encounter in the workplace. I will delineate the barriers that block our progress. Dominant institutions tend to create poisoned work environments when they do not understand our cultures or our experiences of oppression, poverty and racism. I will also explore barriers that Mi'kmaq people confront as we face racism on a daily basis. I most likely will not approach this in a strictly legal way. According to Patricia Monture-Angus (1995), “What I am concerned about is that the First Nations ways of understanding and learning are not the same as those that are accepted within the dominant institutions of learning in this land, especially

within legal institutions, including law schools. The understanding and respect of these different ways must be recognized and respected if we are truly going to make any headway in race relations” (26).

I believe strongly that my experience and that of others in marginalized positions must be shared and listened to in order to effect change. I conclude with my vision of healing from racism, and the need to confront issues of racism head on in the workplace without defensiveness and without shame. Dalhousie University, as an institution, has made significant progress on issues facing Aboriginal faculty. I have also found my place where I can flourish. I have moved towards healing.

Moving Towards Equity: The Vision in Law

In Canada, treating people equally has always meant accommodating difference, not treating people the same. According to Judge Rosalie Abella,³ in her report *Equality in Employment: A Royal Commission Report*:

Equality in employment is not a concept that produces the same results for everyone. It is a concept that seeks to identify and remove, barrier by barrier, discriminatory disadvantages. Equality in employment is access to the fullest opportunity to exercise individual potential. Sometimes equality means treating people the same, despite their differences, and sometimes it means treating them as equals by accommodating their differences. Formerly we thought that equality only meant sameness and that treating persons as equals meant treating everyone the same. We now know that to treat everyone the same may be to offend the notion of equality. Ignoring differences may mean ignoring legitimate needs. It is not fair to use the difference

between people as an excuse to exclude them arbitrarily from equitable participation. Equality means nothing if it does not mean that we are of equal worth regardless of differences in gender, race, ethnicity, or disability. The projected, mythical and attributed meaning of these differences cannot be permitted to exclude full participation. Ignoring differences and refusing to accommodate them is a denial of equal access and opportunity. It is discrimination. To reduce discrimination, we must create and maintain barrier-free environments so that individual can have genuine access free from arbitrary obstructions to demonstrate and exercise fully their potential. This may mean treating some people differently by removing the obstacles to equality of opportunity they alone face for no demonstrably justifiable reason. (3)

Canada has embraced Judge Abella's vision through court decisions, notably *Andrews v. the Law Society of British Columbia*,⁴ and through various pieces of legislation, notably the *Employment Equity Act*, proclaimed shortly after the Abella Report. Accommodation of differences means that we must also identify the barriers that prevent members of the designated groups from reaching their full potential. But still, the unspoken, underlying premise of employment equity assumes that the barriers that prevent us from reaching our full potential are not culturally bound but are individual flaws in the groups themselves.

In Canada, the four designated groups receive legal protection through both provincial and federal legislation as well as the *Constitution Act of 1982*. Section 15 of the *Constitution Act of 1982* (the equality provision) states: (1) “Every individual is equal before and under the law and has the right to the equal protection and benefit of the

law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” The Courts have not closed these categories. Unlike the U.S. experience, the Charter allows for the development of equity programs in s. 15(2) which states: (2) Subsection (1) “does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, mental or physical disability.”

Morley Gunderson, Douglas Hyatt, and Sara Slinn illustrate the differences between the United States and Canada:

Employment equity means different things to different people—ranging from the general concept of equity or fairness at the workplace to more specific concepts pertaining to requirements to achieve particular representations of target groups in the internal workforce of the organization. The term *affirmative action* is more commonly used in the United States, while employment equity is the term used in Canada, coined by the Abella Commission (1984) in part to differentiate from the earlier U.S. affirmative action initiatives that were often associated with rigid quotas. (6-7)

In *Andrews*, the Supreme Court defined discrimination as:

Discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which with-

holds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely

diction. The *Canada Labour Code* applies to areas of federal responsibility as well. Provinces have enacted their own human rights legislation governing discrimination within their own spheres.

Canada has also implemented the *Employment Equity Act* that identifies four groups that require support: women, Aboriginal Peoples, visible minorities, and people with dis-

which states: "Within its area of jurisdiction, (federal) the Canadian Human Rights Commissions will not, as a general rule, consider as discriminatory preferential hiring, promotion or other treatment of Aboriginal employees by organizations or enterprises owned and /or operated by Aboriginal people" (CHRC policy guideline). This applies to band councils and other Aboriginal

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be so classed. (Abella 174-75)

S. 15(2) also, unlike the United States, allows for programs that are aimed at the amelioration of conditions facing disadvantaged groups (Hassmann 255). There is no question that for Aboriginal Peoples, language, culture, poverty, isolation, illness, disease, racism, lower education, and segregation from mainstream, all serve to act as disadvantages in the mainstream labour market.⁵

I had hoped that the adoption of Abella's vision would ensure that our community ties would be respected, where we would have the opportunity to overcome the barriers, by the active participation of those people who created those barriers. But the means to overcome those barriers meets resistance from those in the mainstream.

Canada has implemented many legal mechanisms that focus upon employment equity. Responsibility for remedying discrimination flows from the division of powers in s. 91 and s. 92 of the *Constitution Act of 1867*, which divided human rights responsibility by federal responsibilities set out in s. 91 and provincial responsibilities set out in s. 92. As a result, we have federal legislation, the *Canadian Human Rights Act*, which deals with issues under federal juris-

abilities. But the *Employment Equity Act* does not reach all members of the labour market. Gunderson, Hyatt, and Slinn find that legislated employment equity exists mainly in the federal jurisdiction, which covers about five to ten percent of the Canadian workforce (146).

The *Employment Equity Act* requires employers with more than one hundred employees, under the Federal Contractors Program, to create an employment equity plan for the four target groups if the federal government has business with that particular employer. For example, under the Federal Contractors Program, the business must report its numbers to the Human Resources Development Corporation (a federal government department) in order to be in compliance with the Act. Yet enforcement under the federal legislation is generally regarded as weak. Penalties under the legislated program exist only for failing to file a report with the Federal Human Rights Commission and these are minimal (maximum of \$10,000 for a single violation and \$50,000 for repeat violations).

The Canadian Human Rights Commission approved a new policy in February 1990 called the Aboriginal Employment Preference Policy,

organizations to allow them to hire Aboriginal Peoples without being subject to discrimination accusations by non-Native people.

Aboriginal Peoples, despite massive efforts of the Government to disconnect us from our cultures and assimilate us into the mainstream, have maintained a strong presence in Canada. We have secured constitutional protection of our treaty and Aboriginal rights.⁶ Over one million people identify as Aboriginal. As for Status Indians, there are over 660 reserves in Canada with approximately 719,496 in population (*Registered Indian Population* xiii). Disagreements continue to rage over the definition of "Aboriginal," which contributes to the difficulties in counting Aboriginal Peoples.⁷ So right off the bat, it is difficult to ascertain the exact numbers of Aboriginal Peoples in Canada. The difficulty arises in counting Aboriginal people in a particular workforce. People have the right to self-identify or not. In the Mi'kmaq country, our leaders have yet to determine clear parameters as to who is a beneficiary/member. From the employment side, this leads to people with little or no connection to the community self-identifying as Aboriginal, and taking advantage of employment equity programs for

Aboriginal Peoples. The burden is left to the employee to self-identify or not and people do not have to provide proof of ancestry. Many times that proof is lost in the eons of time.

Focusing on the Status Indians, those who have legal recognition under the *Indian Act*, we know that only two percent of status Indians have ever earned a degree. Most of those with degrees are women. In Nova Scotia, the provincial government workforce has only one percent of its workforce identifying as Aboriginal. Often, for us to gain employment, we must be better qualified than someone in the mainstream. In the next section, I explore the reality of employment equity, beyond the numbers.

Moving Towards Equity: The Reality

Facing our social conditions, created and sustained from colonialism, ensures that multiple employment barriers exist that prevent us from realizing our full potential. Linda Smith eloquently paints a picture of the social conditions faced by Aboriginal Peoples:

Whilst Indigenous communities have quite valid fears about the further loss of intellectual and cultural knowledges, and have worked to gain international attention and protection through covenants on such matters, many Indigenous communities continue to live within political and social conditions that perpetuate extreme levels of poverty, chronic ill health and poor educational opportunities. Their children may be removed forcibly from their care, adopted or institutionalized. The adults may be as addicted to alcohol as their children are to glue, they may live in destructive relationships which are formed and shaped by their impoverished material conditions and structured by politically regressive regimes.

While they live like this they are constantly fed messages about their worthlessness, laziness, dependence and lack of “higher” human qualities. This applies as much to Indigenous communities in the First World nations as it does to Indigenous communities in developing countries. Within these sorts of social realities, questions of imperialism and the effects of colonization may seem to be merely academic; sheer physical survival is far more pressing. The problem is that constant efforts by governments, states, societies and institutions to deny the historical formations of such conditions have simultaneously denied our claims to humanity, to having a history, and to all sense of hope. To acquiesce is to lose ourselves entirely and implicitly agree with all that has been said about us. To resist is to retrench in the margins, retrieve who we were and remake ourselves. The past, our stories, local and global, the present, our communities, cultures, languages and social practices—all may be spaces of marginalization but they also have become spaces of resistance and hope. (3-4)

Employment equity focuses on the removal of barriers that prevent access to employment. Imagine living with such stereotypes and realities. I am convinced that employment equity measures in Canada that focus simply on monitoring the numbers of the four designated groups in businesses that fall under the *Employment Equity Act* does not go far enough to ensure equality. I base this on my own experience of barriers and the difficulties I have encountered at Dalhousie’s law school, both as a student and an academic.

Smith argues that research for/about Indigenous Peoples requires academics to recognize our social conditions. I would take that one

step further and argue that employers must also recognize the social conditions that affect our employment. Truly, the very fact that we must survive often takes precedence over “achieving career goals.” If we add the fight to remain employed and to overcome multiple barriers that years of colonialism placed in our path, the journey may very well appear hopeless.

Given that I come from this background, this is a story. It is my story. It is a story about law, about me, about racism. This narrative illustrates my attempt to weave law into my story, the need to share my “legal” career, my experience. As Thomas King states, “Stories are wondrous things. And they are dangerous” (9). Telling my story is dangerous but at the same time, necessary. Telling our stories that bring into question the values held dear to all Canadians is dangerous. Exposing racism through personal experience is dangerous. While my story sounds hopeless, and the social conditions that shape and govern my reality look bleak, I have not given up on my dream of writing and teaching.

The danger lies in exposing my inner truth to those in power who do not often understand my truth and the social reality that surrounds me. As Patricia Monture-Angus (1992) states:

Truth, in non-Aboriginal terms, is located outside the self. It is absolute and may be discovered only through years of study in institutions that are formally sanctioned as sources of learning. In the Aboriginal way, truth is internal to the self. The Creator put each and everyone here in a complete state of being with our set of instructions to follow. Truth is discovered through personal examination, not through systemic study in formally sanctioned institutions. (106)

As a Mi’kmaq woman, I must honour my traditions that demand

that I begin with the truth located in myself. At the same time, my truth or my story may not matter to anyone. After all it is my story. My story may not resonate with anyone. I am not telling the story to garner sympathy about the plight of “poor oppressed people.”⁸ Speaking from my cultural traditions in a modern context tells me that we have survived the dominant society’s outward attempts at

papers for the academy to consider me a researcher. I occupy some type of middle ground. I am too political, too controversial, too focused on the plight of the “poor oppressed people.” Coping with racism that cuts to one’s very soul takes its toll on one’s mental health. I became tired of the complaints, the racism, and issues in my own life that meant I could no longer fight the good fight. While I

has experienced racism, I believe the Mount Everest analogy reflects more of my experience. Some Aboriginal people make progress, and some even make it to the summit, but on the way, some of us have felt defeated and alone; not unlike being the first Mi’kmaq to achieve anything in the mainstream world.

Climbing Mount Everest demands rigour, preparedness, a sound heart

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colonialism and genocide but there is no question that we still live in a colonial world that does not respect our presence. However, in a country such as Canada, which holds the vision of equality and fairness to all, I think it is important to place that law under the magnifying glass, to see if the implementation of the law fits the vision.

Aboriginal experiences do not fit within the dominant legal framework. My experience has not fit into the dominant legal framework. Trying to fit our experience into a legal system mired in colonialism and racism is where the danger comes in. I have based my research and teaching on my cultural understandings. As a result, I often face scepticism from those of the dominant culture. James Henderson states that “Aboriginal perspectives are just now being heard in Canada in a climate that is not mired in racial discrimination and hostility to our very presence” (245). Mi’kmaq values demand that I find the truth in myself, but within a climate; at least at Dalhousie’s law school, which has hostility and discriminates against my presence.

I am told by Dalhousie’s law school that I am not a lawyer. I am not a legal academic. I cannot teach at the law school. I write barely enough

am not at the law school now, the fact that I lack academic talent from the perspective of the law school has shamed me to no end.

Stereotypes and racial profiling continue to have negative impacts upon our working and learning environment. I direct educational equity programs at Dalhousie. Particularly at the law school, accepting minority and Aboriginal applicants means “watering down” the qualification, meaning that we constantly need to prove our abilities. If you are accepted to law school, not only do you have to jump through all the same hoops as mainstream students, (LSAT, degree, and grades), you must also attend a pre-law program. Stereotypes such as drunk, disorderly, welfare bums, dumb, illiterate, and others too painful to mention, rule the mainstream mindset. Sadly, these stereotypes often shape my reality.

Negotiating the university climate, weighed down by these negative images reminds me of Mount Everest and its crevices. Climbing Mount Everest through the Khumbu Icefall is an apt analogy for tracking one’s way through the maze of academia. Jennifer Banker, a professor at the Dalhousie law school, constructs and describes employment barriers as a “steel ceiling.” However, as one who

and body, as well as a deep desire to succeed. In spite of the best-laid plans, the icefall can kill in an instant. Despite the best knowledge, one can never predict the movement of the icefall. I liken this to navigating the constantly changing paths of academia. Rules change and barriers appear, often without warning. As a result, I looked for advice from more experienced teachers. But mixed messages meant that the school accused me of doing too much work by reading the students’ papers and being too available for them.

I have often discovered new crevices as I have struggled to reach my potential. Often, these crevices appear quickly and without warning. As Patricia Monture-Okanee (1995) states:

As a professor, I wield a certain amount of power. I do not deny this. It is true. I decide whether a student passes or fails; if an “A” or a “C” is earned. However, when I stand in front of a class, many of the individuals have more privilege and power than I can ever imagine having. This power is carried as a result of their skin-privilege, or their gender or their social status or family income. The Law School,

however, functions solely on the view that I am the powerful one. Students are protected against any “alleged” bias by any professor by the grade appeal process. However, I am not any professor. I am not male, white, and my family is not economically advantaged. I am heterosexual, able bodied, and a mother of five. I am Mohawk and follow

Council, and the TYP Advisory Board. I also had to finish my LL.M. I am also expected to know everything “Aboriginal.” But of course, I did not know enough to teach law to mainstream students.

I had to teach constitutional law and public law—required courses that most students did not see as advantageous to their career path. Having a brown face teaching these courses

achieved my Master’s degree. I did complete my LL.M. but then was told that I could not teach. This was a result of the law school’s judgment that I failed as a first- and second-year law teacher in 1995-96.

Unfortunately, despite achieving my Master’s degree in law, I did not have the opportunity to teach a course in the law school after those painful two years of teaching. I found out

When I had Aboriginal students in the class, the law school ignored their positive evaluations because these students would automatically rate me highly as a teacher. When I had negative evaluations from white students, the school thought the white students had rated me objectively as a poor teacher.

my ways. There is not protection available for me in any policy of either the law school or the university if the situation arises where I experience a student who discriminates against me based on my gender, culture, or race. (21).

As a professor at the law school, I encountered many students who complained about my lack of “appropriate qualifications.” Students brutally assassinated my character, my abilities, and my soul. When I had Aboriginal students in the class, the law school ignored their positive evaluations because, of course, Aboriginal students would automatically rate me highly as a teacher. When I had negative evaluations from white students, the school put them out for all to see as the school thought the white students had rated me objectively as a poor teacher. Everyday, I faced that hostility and racism. I felt alone and without support as no one at the school could understand my experience of racism.

Workloads often differ for Aboriginal faculty. During my time at the law school, I sat on the studies committee, Indigenous Blacks and Mi’kmaq Program committee and Advisory Board, Employment Equity

set some students off on a path of racial harassment. I went to the Dean with my issues and she did nothing to support me. In my second year of teaching, another professor attended my lectures with her class. Again, the school told me that students had complained about my teaching style. But at that time, I had another professor observing my class. The school did not pursue the complaints when the Dean learned that another professor in the class with me provided feedback and could disprove the allegations of poor teaching. I had support from other colleagues who affirmed my role as a teacher. The administration anticipated that I would not have support from others and had counted on my isolation.

In my first year of graduate studies, I had two part-time jobs, took a full course load, and taught one course. I also had my family and extended family responsibilities to deal with. I am also diabetic which can derail me. At the same time, many of my colleagues did not face the same challenges of poverty, illness, and racism. I had no release time for my thesis until 2001. When I became the Director of the Indigenous Blacks and Mi’kmaq Program in 2000, the Dean promised to allow me to teach a course in the law school once I

that due to my grades (or perhaps my thesis, I am not sure), I would never be allowed to teach at the law school. Despite my experience in many areas, the Dean in no uncertain terms, told me that I would never be allowed to teach at the law school again, as apparently I did not have the “appropriate qualifications.” I felt so confused because the rules changed midstream as to my job, my duties, and my responsibilities with respect to my former law school position. So another crevice appeared, without warning.

Mainstream judgmental barriers face all Aboriginal people in the Dalhousie law school. I have wondered what is wrong with me. I cannot overcome these hurdles. Other times, I become filled with rage over the unfairness of it all. I cannot put into words the despair I experienced or the lack of confidence I suffered during those two years. I could fill a book with my negative experiences. I am so grateful to have tremendous support in my current position, as director of the Transition Year Program. I had little or no support in the law school.

Due to the lack of support, I left the law school to work in my community. I couldn’t handle the racism anymore—the veiled judgments

about minority students in the Indigenous Blacks and Mi'kmaq Program as being "less than" other students. Having grown up in my community, I live my life in a Mi'kmaq way, which means, in the school's mind, as "less than." My Mi'kmaq way did not fit into the law school. Mainstream culture focuses upon the individual. The Mi'kmaq culture focuses upon family and community responsibility. To juggle conflicting values while trying to adapt to mainstream culture becomes difficult when the institution does not take seriously our cultural connection to our communities. Institutions tend to devalue Aboriginal scholars whose work focuses upon community unless non-native people pursue such research. Our family and cultural responsibilities limit and impact on our ability to gain and retain employment.

While the numbers may show an increase in the hiring of designated group members, particularly white women, the retention issue for Aboriginal employees illustrates the clash of cultures that occurs when Aboriginal people gain positions within institutions, such as those in academia. I have suffered throughout my law school career due to these cultural clashes and denial of my experiences. As Monture-Okanee (1992) states:

The continued denial of our experience at every corner, at every turn, from education at residential schools through to university, is violence. The denial of my experience batters me from all directions. Because others have the power to define my existence, experience and even my feelings, I am left with no place to stand and validly construct my reality. That is the violence of silence. Separateness limits remedial proceedings that could compensate for past injustice by the power of legal definition." (197-98; see also Doyle)

The law school did not recognize

these issues as cultural clashes but as character flaws unique to me. The administration could also point out other "Aboriginal People" who did not have my problems.

As noted earlier, the designated group of Aboriginal lacks precise definition. As a result, some people identify as Aboriginal when in fact their cultural and community connection does not exist at all. Because employment equity depends upon self-identification, basically anyone may self-identify as Indian when in reality, their only community connections to Indians may have occurred at the first Thanksgiving. Universities love hiring these types of "Indians." Because these types of Indians have never faced poverty, racism, and oppression, they often do not carry the same baggage as First Nations people. Defined as "new Indians," Devon Mihesuah states: "many of the new Indians are not knowledgeable about their tribes" (Mihesuah and Wilson 9). Cornel Pewewardy makes a much stronger argument against institutions that rely on self-identification, which allows ethnic fraud.

Ethnic fraud is the inaccurate self-identification of race by persons applying for faculty positions at mainstream colleges and universities, or for admission to special programs and for research consideration. Gonzales defines ethnic fraud as the deliberate falsification or changing of ethnic identities in an attempt to achieve personal advantage or gain. (201-202)

The difficulty with the "new Indians" lies in their lack of tribal or cultural affiliation. As a result, they have no problems fitting in with the mainstream. Moreover, they tend to speak with the "authoritative voice" for all First Nations. As a result, they have not suffered from racism or the injuries that flow from the violence of oppression. Mainstream institutions tend to accept their experience as the norm, which further isolates those

of us with community connections. Thus, these "new Indians" do not face one of the major barriers in achieving employment equity, the community and cultural connection that most Aboriginal people have maintained. Despite the lack of understanding from mainstream institutions, my cultural and community connections remains the foundation of who I am as a Mi'kmaq woman. I am connected to a large community and, I come from a very extended family. But I feel divided when my responsibilities conflict with mainstream values and mainstream institutions that refuse to acknowledge our responsibilities for our family, our community, and our cultural values.

For example, in my first year of law teaching, my mother suffered severe injuries in a car accident. My niece and nephew were also in the car with her. This occurred on a Friday afternoon. My husband, son, nephew, and I drove to Cape Breton. My mother survived the accident and had a long healing period. However, by Sunday, she had recovered sufficiently for me to return to Halifax as I had a class to teach on Monday. I did not dare miss that class. I arrived in Halifax and taught my class. None of my Mi'kmaq students attended the class. After the class, one of my Mi'kmaq students ran into me in the hall. She exclaimed, "What are you doing here, we heard that your mom was in a serious car accident." I said that that was true. My student said, "We expected you to be in Cape Breton; that is why none of us came to class. I am shocked that you are here."

And herein lies the cultural schism that I face everyday. I knew I should have stayed home in Cape Breton but I also knew that the law school would not understand if I had to miss a class for such a family emergency. My expectation came true later when I suffered three miscarriages and lost my nephew. I find it healing to tell this story because the cultural schism widened when my nephew was killed in another car accident in August 2000. I went home for

the wake and funeral. I came back to Halifax because I needed to get things settled at work because I had to return to Chapel Island. After the funeral, I cried because I had so much fear of facing the law school. I knew they would not understand the loss of my nephew, the need to take care of my mom, the need to support my sister and her other children as well as my own nuclear family. But I said no; I will not prejudge. I arrived at Dalhousie and my Dean at Henson saw me, gave me a hug, and said, "Take the time you need, we understand and we are here for you."

But I still had to face the law school. Now, a few of my colleagues supported me, I believe that. But a few at the law school did not. I had to meet with senior administrators and many other people to ensure my job would be done while I was on compassionate leave. Not one person said I am sorry for the loss of your nephew. It felt like, "Oh well, another dead Indian, what can you do?" They expressed more compassion for a judge whose puppy was sick than for my family. I will never forget walking into that office and facing that hostility. I was in a very emotionally vulnerable position. While I had the permission to take the time off, I knew that I would pay a price for asserting my rights under the collective agreement for bereavement leave.

Clearly, my law school experience has further marginalized me, in terms of my self-confidence and my identity. My experience tells me that I did not fit in the law school (see *The Voices of Visible Minorities*). Those in power chose to ignore me and invalidate my experience of racism and marginalization. Historical and current oppression leaves us on the outside, looking in. Not because we don't have merit but because racial stereotypes about our lack of "appropriate qualifications" continues to rule in the mainstream (*The Voices of Visible Minorities* 4-5). The name of this article, "With the Appropriate Qualifications," reflects my experience of the subjectivity

that continues to govern particular employment situations. Many employers derive their "objectivity" from racial stereotypes. Internalizing these negative stereotypes makes it difficult to speak out about racism. Maybe what they think is true? Even in my situation, filing a complaint against the law school would have further marginalized me. Pursuing human rights complaints under the provincial or federal process rips open the pain of racism and leaves the wound open for all to see, often serving to further traumatize the victim.

The most recent case of *Moore v. Play it Again Sports*⁹ is instructive in the reasons why we often fear filing a complaint and also why we cannot gain remedy in the tribunals and courts. Kateri Moore is a Mi'kmaq woman who worked at Play it Again Sports as a sales clerk. Ms. Moore's boss, she alleged, created a poisoned work environment for her by making remarks about picking Indian women up in bars as well as calling her "Kemosabi." She alleged that her boss continued to call her Kemosabi, despite her requests for him to stop. She alleged discrimination based on race/gender.

The Nova Scotia Human Rights Tribunal ruled that Ms. Moore had not been subject to discrimination by her boss when he called her Kemosabi. In reading this case, two points became clear. First, the Tribunal did not understand the experience of racism. The Tribunal called witnesses forward from the Mi'kmaq community to determine if the term Kemosabi was offensive. The Tribunal members watched hours of the Lone Ranger and Tonto television series. They also asked linguistic experts to determine the origin of the word Kemosabi. Despite intention not being a relevant consideration in the determination of discrimination, the Tribunal made reference to the respondent's state of mind in terms of his racist perspectives or lack thereof.

Second, the Tribunal appeared to blame the complainant for her circumstances. Ms. Moore did not

complain right away. She accepted rides home from her boss. She appeared to be the only employee who thought her boss racist. According to the Tribunal, Ms. Moore had some sort of mental breakdown when she ended up quitting her job.

The Human Rights Commission appealed this ruling to the Nova Scotia Court of Appeal. The Nova Scotia Court of Appeal upheld the tribunal decision (*The Nova Scotia Human Rights Commission and Dorothy Kateri Moore v. Play it Again Sport Ltd., Trevor Muller and Ron Muller*). The Court stated that, "the findings of the Board clearly support the conclusion that the respondents did not, in Ms. Moore's workplace, discriminate against her by making a distinction based on her Aboriginal heritage or status" (27).

Clearly, the Tribunal and Court of Appeal ignored the social context of discrimination. By making reference to Ms. Moore's emotional state, while denying any discrimination took place, the tribunal evidently does not understand the impact of racism. The Tribunal separated her reaction from the behaviour that acted as a catalyst for creating a poisoned workplace. When I read this case, I understood my reluctance to file human rights complaints because I would become the focus. My state of mind, my reaction, my inadequacies would be on trial for all to see.

As long as we cannot find remedy in the very organization that exists to support us, we need to find other ways to ensure our workplace remains free of discrimination. Most importantly, if racism and discrimination do poison our workplace, we must come up with alternative ways to confront the problem and initiate creative solutions.

Despite the laws, constitutional protections, human rights commissions, both federal and provincial, employment equity has yet to be achieved for Aboriginal Peoples. If Mi'kmaq people cannot gain remedies at the Human Rights Tribunals, the question is: How do we rectify discrimination?

How do we implement employment equity? How do we achieve fairness in the workplace? I have stayed at Dalhousie as a professor because despite my experience at the law school, Dalhousie as an institution has made strides in supporting Aboriginal and African-Canadian faculty. In the next section, I explore the changes that Dalhousie has made on the path to achieving employment equity.

in order to provide direct empirical evidence on the specific behaviours and attitudes that affect the employment relationship that leads to discriminatory practice (20).

L. E. Falkenburg and L. Boland also explore the development of internal mechanisms of control and enforcement instead of relying on further government intervention (97). Taking responsibility for employment

support “equity seeking groups” have been extremely judgmental of my background, my oppression, and my community.¹⁰

In our candid discussions about employment equity, I felt validated for the first time with respect to my experiences at the law school. While discussing racism may encourage those in power to become defensive, the senior administrators of

Prior to the need for “standards,” the informal network of old cronies had referred each other to jobs. Once the merit principle emerged, not only did we need to figure out the informal network but also now we would be judged by standards that ignored a social context of racism, poverty, oppression, and violence.

Moving Towards Equity: The Healing

The struggle for employment equity goes far beyond the numbers. It depends upon not only the hiring of Aboriginal Peoples but also their retention. The difficulties arise when cultural clashes occur in employment practices such as hiring process, supervision, performance reviews, and workplace environments. Harish Jain and John Lawler argue that establishing good practices for minorities in the workplace requires more than just adherence to the law. They established an index that measures indicators such as accountability, numerical goals and guidelines, monitoring and control mechanisms, on-going publicity, employment practice review, special target or designated group recruitment and training efforts, employment equity committee or Coordinator, resources, and budget (2). By reviewing results from questionnaires, the authors concluded that racism plays a large part in the disparity in achievements between different minorities and whites in the labour market (20). Rather than debating the existence of racism, the authors advocate further studies to explore the institution from within

equity in the workplace, from the top down, lends credence to employment equity policies. I believe this is happening at Dalhousie University.

There is no question that at Dalhousie I have experienced the schism of the vision of employment equity not meeting the reality of the situation. To Dalhousie’s benefit, we met together, the administration and the Aboriginal faculty, (all three of us), and discussed freely the issues facing us at Dalhousie. We discussed the issues of mentoring, support for our community connections and work, acknowledgement of our significant workload, and the need to examine the process of tenure and promotion. With the imposition of employment equity, the merit principle took precedence. Prior to the need for “standards,” the informal network of old cronies had referred each other to jobs and supported each other. Once the merit principle emerged, the need for standards created more barriers for Aboriginal academics. Not only did we need to figure out the informal network but also now we would be judged by standards not of our making; standards that ignored a social context of racism, poverty, oppression, and violence. I have faced many of these issues. Even faculty members at the law school who purport to

Dalhousie University as well as the Employment Equity officer listened attentively, without debate. Out of these meetings arose recommendations for change.

First, we identify the need of getting through the door. Even with the “appropriate qualifications,” the mainstream’s view of diminishing qualifications because of racial background remains constant. Employment and educational equity programs focused on Aboriginal students and others who are “racially visible” (another term I do not like because I think white people are visible, and we tend to be invisible) tend to be seen by the mainstream as people getting an education through the back door with lower qualifications and suspect degrees at the end. But as I said, getting through the door is only the first step. The university needs to reach out to the community. In some instances, qualifications for employment should be closely examined to determine if the qualifications fit the job.

Competition between equity groups often means that white women tend to win over people who are racially visible. Thus, statistics are skewed in favour of white women.¹¹ Deciding on priorities for employment equity means that one group is more important than the other.

Again, the subjective analysis concludes that we like people who are like us. Brown faces are not white. And herein lies the problem.

However, let us assume you get through the door, through the scrutiny of your grades from graduate school, the minute examination of your thesis, and the personality tests of your professors (Indian lovers, equity seekers, liberal world changers). Once you get in the door, you must now try (or not) to fit into a culture that is different. In my experience, I learned more about my Mi'kmaq culture when I realized the deep crevice of difference between what I see as truth and what the mainstream sees as truth. I discovered that I thought differently; my values focused on family and community, and my passion for researching issues of concern to Aboriginal people to create social change all contrasted strongly with the mainstream. As noted earlier, in Mi'kmaq culture, family is all-important. Community connections remain paramount. This is in stark contrast to the culture that says individual achievements are the norm and community connection the aberration. Our community connection often translates into a significant workload for Aboriginal faculty. Managing this workload, trying to gain tenure, and being the "Aboriginal expert" takes its toll on all of us.

Despite the fear, we told our stories. Out of my story, and the stories of so many other faculty of colour, we devised the following recommendations. Given that all of us had attended Dalhousie University as students, many of the recommendations focused on students as well as faculty.

Initiatives to Recruit and Retain African-Canadian and Aboriginal Students:

- Create an Employment Equity/Diversity Education Web site. This is ongoing.
- Mentoring programs for African-Canadian and Aboriginal students. We recently met to

develop guidelines for mentoring.

- Scholarship support for academic excellence.
- Accreditation of TYP courses (TYP currently offers courses not for credit to prepare students from both groups for university.
- Exploration of other access programs similar to TYP and IB&M such as science and medicine.
- Voluntary self-identification will be added to application forms in order to access students for scholarships and identify them for mentoring purposes.

Initiatives to Recruit and Retain Aboriginal and African-Canadian Faculty:

- Faculty and departmental workloads should be defined to recognize and provide guidance to tenure and promotion committees on appropriate levels of community involvement in the assessment of the achievements of faculty members. This issue is being addressed through the new Promotion and Tenure guidelines.
- Faculties will be encouraged to create an affirmative action program that would be used as part of the recruitment process in various units where promising designated group members who do not meet probationary tenure track criteria would enter the faculty on a convertible limited term basis. There is a planned senior administrator workshop on equity.
- Develop Tenure and Promotion handbook orientating probationary tenure-track faculty members and assist in guiding the committees in the tenure and promotion process. Faculties will also be encouraged to perform an annual review of probationary tenure track

members to provide feedback to new faculty in order to meet the requirements for tenure and promotion.

- Faculties will be encouraged to develop a formal mentoring program.
- The President will sponsor bi-annual networking opportunities for designated group members and staff.
- Employment Equity workshops will be held for all staff/faculty such as "History of Barriers Facing African-Canadian and Aboriginal People."
- The Employment equity office will collect data and report to the President on the recruitment and retention efforts for Nova Scotia Black and Aboriginal employees.¹²

In my own experience, I feel positive about the contributions made by the Aboriginal Faculty at this meeting. I am also impressed that the senior administrators have listened to our views, adopted our recommendations, and begun the process of implementation. In my own tenure process, the committee included my community work while recognizing the many demands that flow from my workload. Often, in my experience at the law school, my community and committee work at the university was dismissed as work that took away from the law school. Thankfully, my tenure and promotion committee did not share this view. Despite false starts due to missed deadlines, I earned my tenure at Dalhousie. Focusing upon my writing, my community work, my position at Dalhousie, I did feel overwhelmed by the process. Designing and creating my dossier left me anxious and sleepless. I felt judged by people who could not understand the intricacies of my position, the community connection of TYP, and the ongoing requirement to act as the Aboriginal expert, to research and write, to counsel students whilst managing staff and budgets as well as travelling to the communities. The

majority of professors do not have their work judged on so many levels. While the committee interviewed many people from the Dalhousie community, I always feared that my tenure and promotion process would not proceed smoothly. Over eight months of stress and fear, interviews, uncertainty, and the nagging doubt that perhaps I have not worked hard enough, limited my ability to maintain my position.

My Mi'kmaq world and values shape and inform my reality. To this end, the establishment of mentoring for new faculty provides information for navigating this world of academia. More than anything, having someone on your side, to assist and support you in your move to a tenured position decreases the isolation Aboriginal faculty often face in their attempt to gain a foothold in the university. I am also excited about the opportunity to be a mentor to new faculty.

I titled this section, "Moving Towards Healing." Sharing my experience will hopefully make the road easier for the next person. I carried my pain with me, and I assumed that my shortcomings prevented me from teaching and writing. I now recognize my own shortcomings, but at the same time I also acknowledge the role that systemic racism played in my experience. I am now teaching at the Faculty of Management, through the School of Resource and Environmental Studies. I teach "Indigenous Peoples and Natural Resources" with Professor Fay Cohen. Last year, due to Professor Cohen's sabbatical, I had to teach the course alone. All my old fears came back. But I faced the class, taught my curriculum, and I had a wonderful experience. Once I wrote this paper, I felt stronger within myself. I thought my working environment would be positive, friendly, and I would feel connected to those I teach and work with. But tenure brought with it the cancellation of my class, the lack of movement on the initiatives, and the need to further commit to the initiatives to support Aboriginal faculty in pursuing our dream.

The initiatives aimed at employment equity, while supported at the senior administrative level, rely on faculties and departments for implementation. It remains to be seen if faculties and departments will commit to these initiatives. Even today, some faculty deans question the level of responsibility their departments have towards meeting these objects. Today, lack of progress depends upon budgetary constraints that restrict the hiring of Aboriginal peoples and development of curriculum taught by Indigenous professors. Lack of money meant my course could not be offered. Yet at the same time, Dalhousie pursues ongoing financial commitments with the Mi'kmaq community. Dalhousie will do X if someone else pays. Yet my course, the only one on campus taught by an Indigenous professor, faces cancellation and I lose the opportunity to further my professional development.

Conclusion

When the conference organizers asked me to speak on Indigenous Peoples and racism in the workplace, I struggled with sharing my story, knowing the danger facing me. I never want to hurt anyone, but still the fear churned inside of me. I believe strongly in visions of equity and the need to move forward with the implementation of that vision. But underpinning my vision is the nagging voice that maybe "they" were right. Speaking out about my pain and my story can be dangerous but I want to show that I have moved beyond the law school. Yet, attending a law conference frightened me.

We often find help in unexpected places. During my visit to Washington D.C., my husband and I visited the American Museum of the American Indian. Upon walking into the first exhibit, I found the following:

All My Relations: Entire nations perished in the wave of death that swept the Americas. Even their names are lost to

us. We cannot tell you where they lived, what they believed, or what they dreamed. Their experiences are buried and unknowable. Like much of Indian history, only fragments are left to us. This wall names many of the languages spoken by our relatives who are still here as well as those ancestors that vanished without a trace. The list can never be whole, it will always be incomplete. Nine in ten native people perished in the first century of contact between the hemispheres. One in ten survived. They didn't fear change, they embraced it. Their past lives on in our present. As descendants of the one in ten who survived, we in the twenty-first century share an inheritance of grief, loss, hope and immense riches. The achievements of our ancestors make us accountable for how we move in the world today. Their lessons instruct us and make us responsible for remembering everything, especially those things we never knew (Chaat Smith).

I recognized, finally, that possessing the strength flowing from my ancestors is their gift to me and this generation. I found the courage to speak and to write my story. I must respect my ancestors' power of resistance and survival. Flowing from that strength, I have shared my truth.

Wel'la'liak (thank you).

Patti Doyle-Bedwell is a Mi'kmaq woman. She was a member of the National Association of Women and the Law (NAWL) for five years and has presented on topics such as Aboriginal women's issues such as custody, access, housing, politics, discrimination, employment equity, education, and health. She was president of the Advisory Council on the Status of Women where she developed community partnerships and made many public/media presentations on Aboriginal women's issues. She currently

directs the Transition Year Program at Dalhousie University College of Continuing Education in Halifax, Nova Scotia. She has two law degrees.

¹The Indigenous Black and Mi'kmaq Program, active since 1989, is an admissions program at Dalhousie Law School that increases the number of Aboriginal and African-Canadian students at the law school.

²The use of "Aboriginal" in this paper parallels the usage in *The Constitution Act, 1982*, Section 35. I use the word "peoples" rather than "people" unless specific documents or contexts use the latter. For general information about Aboriginal Peoples in Canada see Berger.

³Now Justice R. Abella, as she has just been appointed to the Supreme Court of Canada.

⁴The Supreme Court of Canada first interpreted s. 15 of the Charter, developed a definition of discrimination and expanded the categories of discrimination by development of enumerated and analogous grounds. Mr. Andrews wished to practice law in British Columbia but did not meet the citizenship requirement to do so. The Supreme Court found in his favour. It is also telling that Mr. Andrews found a remedy for discrimination based on citizenship using section 15(1) of the Charter when he is a white lawyer from South Africa.

⁵For further discussion of the social conditions faced by Aboriginal Peoples, please see, *The Report of the Royal Commission on Aboriginal Peoples*.

⁶Section 35(1) of the *Constitution Act 1982* being Schedule B to the *Canada Act 1982* (U.K.) states: "The existing Aboriginal and treaty rights of the Aboriginal and treaty peoples of the Aboriginal peoples of Canada are hereby recognized and affirmed."

(2) In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.

(3) "For greater certainty, in subsection (1) 'treaty rights' includes rights

that now exist by way of land claims agreements or may be so acquired."

⁷For example, in Nova Scotia, besides the thirteen bands, there are four political organizations that purport to represent various groups of Aboriginal Peoples. The Union of Nova Scotia Indians represents the Cape Breton Bands, the Confederacy of Mainland Mi'kmaq represents the bands on the mainland of Nova Scotia, the Native Council of Nova Scotia represents those Aboriginal people who live off the reserve and who do not have status under the Indian Act. Whether the Native Council represents off reserve status Indians is hotly debated among the political organizations. Most recently, another group, the Nova Scotia Confederacy of Métis, has come forward, representing Aboriginal people not covered under the other groups.

⁸I use this term because one of my white students complained to the Dean that all I talked about in class was the "plight of the poor oppressed people."

⁹Tribunal Decision (On file with author). As well, please see: <http://www.gov.ns.ca/humanrights/decisions/2004decisions.htm>.

¹⁰One law faculty member who builds her career on equity questioned my work habits, and stated that I was acting like a white woman. She also sent an email to CAUT questioning my connection to my Mi'kmaq community. She is also someone who waves the flag of equity.

¹¹The issues surrounding this program demand another paper.

¹²These recommendations are taken from the President's Initiatives designed to support "Recruitment and Retention of Aboriginal and African Nova Scotian Faculty and Students" (On file with author).

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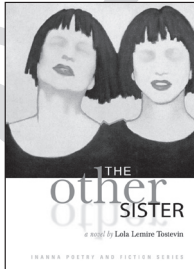
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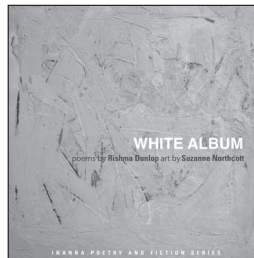
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