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### **Celebrating 30 Years of the Indigenous Blacks & Mi'kmaq Initiative: How the Creation of a Critical Mass of Black and Aboriginal Lawyers is Making a Difference in Nova Scotia**

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# **Celebrating 30 Years of the Indigenous Blacks & Mi'kmaq Initiative: How the Creation of a Critical Mass of Black and Aboriginal Lawyers is Making a Difference in Nova Scotia**

**By Naomi Walqwan Metallic<sup>1</sup>**

September 2019 will mark the 30<sup>th</sup> anniversary of the Indigenous Blacks & Mi'kmaq Initiative (“IB&M Initiative”) at the Schulich School of Law at Dalhousie University (the “Law School”). Although the IB&M Initiative is one of the only dedicated support and access programs for Black and Aboriginal students in a Canadian law school and has garnered some recognition and awards, most in the Canadian legal profession are not familiar with it. As a proud alumna of the IB&M Initiative,<sup>2</sup> on this occasion of the IB&M Initiative 30<sup>th</sup> year, I wish to shine a spotlight on the incredible impact this program has had on Canada’s legal profession and justice system.

The IB&M Initiative has been dogged at times in its history by misconceptions and unfair criticism; for example, then Premier Russell MacLellan made public comments questioning the competence of graduates of IB&M Initiative. Other members of the legal community labour under similar misconceptions, including that IB&M graduates undertake different (and easier) legal training than other law students and that the program produces graduates who are unprepared or unqualified for the practice of law.<sup>3</sup> The purpose of this article is to show that the Initiative, in addition to ensuring that the legal profession becomes more representative of historically marginalized communities, has had a transformative effect on the legal profession and justice system. In light of this, it is surprising to me that there are still so few affirmative action programs in Canadian law schools.<sup>4</sup> My hope is that this celebratory account of the IB&M Initiative will persuade other law schools

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<sup>1</sup> I would like to thank third year (now graduated) student, Katie Glowach for her help in preparing this article, as well as current IB&M Director, Michelle Williams, for providing comments on several drafts.

<sup>2</sup> I am a Mi'kmaq woman (originally from the Listuguj Mi'kmaq First Nation in Quebec) and a lawyer in Nova Scotia. I hold law degrees from the Schulich School of Law (“Schulich”) at Dalhousie University (LL.B), Ottawa University (LL.L) and Osgoode Hall Law School at York University (LL.M). I was the first Mi'kmaq person to clerk at the Supreme Court of Canada (2006-2007). I have been practising law in Nova Scotia since February 2008 in private practice at Burchells LLP, and in that regard have sat on various committees including the Racial Equity Committee of the Nova Scotia Barristers Society, the Bar Council of the NSBS, the board of directors of the Nova Scotia Legal Aid Commission, and Dalhousie University’s Board of Governors. On July 1, 2016, I began a full-time tenure track appointment at Schulich as an assistant professor and holding the Chancellor’s Chair in Aboriginal Law and Policy.

<sup>3</sup> Premier Russell MacLellan later apologized. See CBC News, “Employment equity coming for N.S. law firms”, February 20, 1999.

<sup>4</sup> Note that the Allard School of Law at the University of British Columbia has an Indigenous Legal Studies program that supports up to 25 Indigenous students per year. However, the program does not have dedicated funding for students, although they can apply for several scholarships and awards. The law school at the University of Saskatchewan’s Native Law Center also offers a Native Law Summer Program, which is an eight-week summer course that provides Aboriginal students from across Canada an opportunity to study first-year Property Law before beginning law school in the fall. Many students take this course as a condition of their acceptance to law school. It is not a full law degree program, however, nor does it provide dedicated funding for students to attend the program. Finally, there is the Akitsiraq Law School, a law program designed for Inuit students from Nunavut, now in its third co-hort of students. The program is offered through partnerships with other law schools, currently the University of Saskatchewan, wherein professors travel to Nunavut and teach in intensive periods. Students are provided both financial and other supports for the program.

and governments of the benefits of such programs and encourage them to create and support similar programs.

### **Nova Scotia, Donald Marshall Jr. and the IB&M Initiative**

Like every other province and territory in Canada, Nova Scotia has had a long history of pushing certain peoples to the margins of society. In Nova Scotia's case, this includes both the Mi'kmaq people<sup>5</sup> as well as African Nova Scotians<sup>6</sup> (who have also referred to themselves as 'Indigenous Blacks' at times and this name would be reflected in the title of Initiative<sup>7</sup>). Both groups have faced significant economic and social marginalization and discrimination over centuries from white settler society in Nova Scotia and their governments. It is beyond the scope of this article to relay those experiences in detail. However, this is not to suggest that either group were passive victims of colonialization. One can find many stories of resistance and resilience from both communities over this time period, and since the 1960s, both communities have actively and continuously advocated for reform and social justice for their peoples.<sup>8</sup>

Although Nova Scotia is not unique from other provinces in having a long history of racism against its First Nations or African Canadian populations, it does stand out for having been the first (and only one of a few) to have that racism put on national display through a public inquiry.<sup>9</sup> I am

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<sup>5</sup> The land mass that we now know as Nova Scotia has been part of the Mi'kmaq people's territory, Mi'kmaki, for some 11,000 years or more. While treaties were signed between the Mi'kmaq and British in the mid-1700 to share these lands and live in peace and friendship, starting in the mid-19th century, Mi'kmaq were forced from their lands onto reserves through a combination of sickness from diseases that were new to North America, colonial laws, policies and a growing settler population that wanted these lands for their own settlement. On reserve, provincial and federals prohibited Mi'kmaq from engaging in their traditional livelihoods and forced their economic marginalization and sought to assimilate Mi'kmaq a number of different ways.

<sup>6</sup> Michelle Williams explains that this includes the decedents of enslaved people of African descent under the French and British rule of the region, Black Loyalist who fought on the side of the British in the American War of Independent in exchange for the freedom and promise of land and provisions in Nova Scotia, and the enslaved African Americans who forcibly joined their white Loyalist "owners" in coming to Nova Scotia. This also includes the descendants of Jamaican Maroons, African American refugees/freedom fighters of the War of 1812, descendants of Caribbean immigrants many of whom joined the industrialized workforce in Cape Breton in the early 1800s and the working and professional classes in later years, and more recent immigrants who have come to Nova Scotia from various African countries and other parts of the African diaspora. See Michelle Williams, "African Nova Scotia Restorative Justice: A Change Has Gotta Come," (2013) 26 Dalhousie LJ at 424-425.

<sup>7</sup> In *Speaking My Truth: Volume III: Cultivating Canada*, (Aboriginal Healing Foundation, 2012), George Elliott Clarke explains the phrase that was coined in the late 1970s and was intending to distinguish between those of African descent of long residency in Nova Scotia, from more recent black arrivals, most from the Caribbean and from the United States and from Africa. He notes it was not intended to erase their claim to original presence by the Mi'kmaq people.

<sup>8</sup> Clearly, the story of Viola Desmond's refusal to leave a whites-only area of the Roseland Theatre in New Glasgow, Nova Scotia is a famous example of Black Nova Scotia resistance to anti-black racism. In *Out of the Depths – The Experience of Mi'kmaq Children at the Indian Residential School at Shubenacadie, Nova Scotia*, 3rd ed. (Black Point, Nova Scotia: Roseway Publishing, 2001), Isabelle Knockwood gives several examples of how Mi'kmaq children at the Shubenacadie residential school engaged in small acts of resistance and rebellion against the priests and nuns running the school. In *Stories, Memories, Reflections* (Black Point, Nova Scotia: Roseway Publishing, 2001), Doug Knockwood writes about how his father successfully sued the residential school in the 1930s to have Doug and his brother permanently released from the school.

<sup>9</sup> There have since been similar inquiries in other provinces including the 1991 *Report of the Aboriginal Justice Inquiry of Manitoba* investigating the wrongful deaths of Helen Betty Osborne and J.J. Harper; the 2004 *Report of*

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referring, of course, to the 1989 *Royal Commission on the Donald Marshall, Jr., Prosecution*, addressing the wrongful murder conviction of Donald Marshall Jr., a Mi'kmaq man from the Membertou First Nation in Sydney, Nova Scotia. The travesty of justice that was Donald Marshall Jr.'s wrongful conviction has had profound effects in a multitude of areas—too many to enumerate here—but certainly, this includes a lasting impact on legal education and the legal profession in Nova Scotia.

In 1971, Marshall was charged and convicted with the murder of his friend, Sandy Seale, a young African Nova Scotian man, who was in fact killed by Roy Ebsary, an older white man, whose violent and senseless act was motivated by racism.<sup>10</sup> Marshall spent 11 years incarcerated for a crime he did not commit. In 1989, a Royal Commission of Inquiry concluded that the criminal justice system failed Donald Marshall, Jr. at virtually every turn, from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The Royal Commission found that these failures were due, in part, to the fact that Mr. Marshall was an Aboriginal person.<sup>11</sup>

To address the numerous failures of Nova Scotia's legal system, the Royal Commission's report ("the Marshall Report") contained 82 recommendations calling for changes in a wide number of areas. To address the systemic racism that the Commission identified in so many facets of Nova Scotia's legal system, the report called on various actors in the justice system<sup>12</sup> to implement a variety of measures to (1) increase the representation of racialized and Aboriginal peoples in positions of power in the legal system; (2) increase understanding by all justice system actors of the systemic discrimination issues faced by Mi'kmaq and African Nova Scotian communities in the province; and (3) create policies and committees to further positive race relations.<sup>13</sup>

These recommendations have been implemented to varying degrees by different actors in the justice system.<sup>14</sup> Among the more successful initiatives that followed the Royal Commission, were the creation of a Racial Equity Committee of the Nova Scotia Barristers Society (the self-governing body of the legal profession in Nova Scotia, "NSBS") in 1990, as well as the creation of an Equity Office within the NSBS in 1994 to be advisory to Bar Council on matters relating to

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*the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* in Saskatchewan for the 1990 death of Neil Stonechild from hypothermia and accusations that police misconduct contributed to his death; the 2004 *Ipperwash Inquiry Report* into the shooting death of Anthony O'Brien "Dudley" George during the occupation at Ipperwash Provincial Park, among others.

<sup>10</sup> When he stabbed Seale, Ebsary shouted, "This is for you, Black Man," just before stabbing Seale. Royal Commission on the Donald Marshall, Jr., Prosecution – Digest of Findings and Recommendations (December 1989), at p. 2. Online:

[http://novascotia.ca/just/marshall\\_inquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution\\_findings.pdf](http://novascotia.ca/just/marshall_inquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf)

<sup>11</sup> *Ibid.* at p. 1.

<sup>12</sup> The parties that were identified included: (a) the provincial Department of Justice, (b) Dalhousie Law School, (c) the Nova Scotia Barristers' Society and the legal profession, (d) Judicial Councils and Chiefs Judges, (e) Legal Aid Nova Scotia, (f) the Legal Education Society of Nova Scotia, (g) the RCMP and municipal police forces, and (h) the Nova Scotia Human Rights Commission.

<sup>13</sup> Here are I am summarizing numerous recommendations in the Report including: 9-19, 26-27, and 31-34.

<sup>14</sup> L. Jane McMillan, "Still Seeking Justice: The Marshall Inquiry Narratives" (2014) 47 UBC I Rev 927-990.

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race relations.<sup>15</sup> The recommendations also led to initiatives within the Nova Scotia Department of Justice promoting greater hiring of Mi'kmaq and African Nova Scotia lawyers.<sup>16</sup>

The Mi'kmaq and African Nova Scotian communities of Nova Scotia also responded to the Marshall Inquiry by pushing for greater equality of access to university education. Some gains had already been made in 1971 with the creation of the Transition Year Program, following demands of both communities for equal access to Dalhousie University.<sup>17</sup> In the lead-up to the Marshall Report, responding to calls from the Mi'kmaq and African Nova Scotian communities, the President of Dalhousie created a Task Force on Access for Indigenous Black and Native People with a mandate to propose a strategic plan whereby Dalhousie could most appropriately serve the needs of the Black and Native communities.<sup>18</sup> The Task Force was Chaired by a professor from the Law School.<sup>19</sup>

Unsurprisingly, given all of these factors, a key recommendation coming out of the Task Force Report, issued in early 1989 and entitled *Breaking Barriers: Report of the Task on Access for Black and Native People*, called for the creation of the IB&M Initiative.<sup>20</sup> The idea for such a program was not generated from scratch by the Task Force: a couple of years earlier, in 1986, some administrators and professors at the Law School had made an unsuccessful grant application to the American Law School Admissions Council for the creation an access program for minority students, which served as an early prototype.<sup>21</sup> Members of the Law School, working with representatives from both the Mi'kmaq and Indigenous Black communities, advanced the proposal for the IB&M Initiative through the Law School's Faculty Council and planned for its commencement in September 1989. Donor funding was secured to support the first cohort of students; however, sustained funding was less certain.<sup>22</sup> Clearly, the Royal Commission was paying attention to the creation of the IB&M Initiative. In its Report, issued in December 1989, the Commission commended favourably on the creation of the Initiative, stressed that sustainable funding for it be a priority, and called upon the governments of Canada and Nova Scotia, and the Nova Scotia Bar, to provide financial support to the Initiative.<sup>23</sup> This recommendation was implemented.

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<sup>15</sup> See NSBS Equity Office: [http://nsbs.org/improving\\_justice/the\\_equity\\_program](http://nsbs.org/improving_justice/the_equity_program).

<sup>16</sup> Since the 1990s, the Nova Scotia Department of Justice has had a policy of reserving one of its articling position each year to a graduate from the Indigenous Blacks and Mi'kmaq Initiative (described below). The Department of Justice has also implemented a mentorship initiative for IB&M students to expose them to the work of the Department.

<sup>17</sup> See Carol Aylward "Adding Colour – A Critique of: "An Essay on Institutional Responsibility: The Indigenous Blacks and Micmac Programme at Dalhousie Law School" (1995) *CJWL/RFD* 470 at 486. At note 71, Aylward describes the Transition Year Programme ("TYP") as an access program for Black and Mi'kmaq Nova Scotians who have been disadvantaged educationally. The Programme is designed to introduce students to the University Environment and to prepare them for entrance into the undergraduate programme after completion of the TYP one-year course.

<sup>18</sup> Richard F. Devlin and A. Wayne MacKay, "An Essay on Institutional Responsibility: The Indigenous Blacks and Micmac Programme at Dalhousie Law School" (1991) 14 *Dalhousie L.J.* 296 at 299.

<sup>19</sup> *Ibid.*

<sup>20</sup> Dalhousie University, *Breaking barriers : Report of the Task Force on Access for Black and Native People* (Halifax: Dalhousie University, 1989), (Chair: A. Wayne MacKay).

<sup>21</sup> *Ibid* at 298.

<sup>22</sup> *Supra* note 17 at 299-311.

<sup>23</sup> See Report, *supra* note 21, Recommendation 11, at p. 26.

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A significant part of the mandate of the IB&M Initiative is to increase the representation of Indigenous Blacks and Mi'kmaq people in the legal profession. It does so by reserving 12 spots in each in-coming first-year class of the Law School for 6 students from the Indigenous Black Nova Scotian community and 6 students from the Mi'kmaq community. The Initiative currently defines “Indigenous Black Nova Scotians” as individuals who are Black and were born and raised in Nova Scotia, and who have a substantial connection with a historically Black community in Nova Scotia. Mi'kmaq are defined as individuals who are Mi'kmaq and were born and raised in Mi'kmaqi or have a substantial connection with a Mi'kmaw community in Mi'kmaqi. The IB&M Initiative places the admission of African Nova Scotian and Mi'kmaq students as its highest priority. However, other Black and Aboriginal students across Canada are also urged to apply. If, in any given year all qualified Indigenous Blacks and Mi'kmaw students have been admitted and there are still spaces available, Black students who are not indigenous to Nova Scotia and Aboriginal students who are not Mi'kmaq, may be admitted through the IB&M category.<sup>24</sup>

The Initiative takes a holistic approach to assessing applicants from the Mi'kmaq or African Nova Scotian communities, considering factors like previous work history, family responsibilities, commitment to community, and individual experiences of overcoming adversity, in addition to GPA and LSAT scores. Further, the Initiative recognizes that, for a variety of reasons, some of which may be systemic, some students may not have had the same opportunities as other students to excel in their studies or achieve exceptional LSAT results.<sup>25</sup>

Further, the Initiative provides students with various supports, including a 4-week preparatory pre-law program, mentoring and academic support (upon request) while in law school, as well as some financial support,<sup>26</sup> all in order to aid students' success at law school. The Initiative is overseen by a Director, who is a member of the faculty and teaches law school courses in addition to being the administrator of the Initiative.<sup>27</sup> The Director is also supported by an administrative assistant and a Community Advisory Council, made up of Mi'kmaq and Indigenous Black lawyers, community members, Law School faculty members and the Director of the Initiative. The Advisory Council has played a critical role in ensuring that the Initiative responds to the needs and concerns of Mi'kmaq and African Nova Scotian communities.<sup>28</sup>

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<sup>24</sup> Indigenous Black and Mi'kmaq Initiative webpage, “How to Apply,” online:

<https://www.dal.ca/faculty/law/indigenous-blacks-mi-kmaq-initiative/how-to-apply.html>

<sup>25</sup> Whether GPA and LSAT scores should continue to be the prevailing standards by which we measure suitability to enter law school has been questioned those who charge that such standards systematically favour students from privileged backgrounds. Yet the continued reliance GPA and LSAT scores has not been justified by empirical study: see Dawna Tong & W Wesley Pue, “Best and Brightest? Canada Law School Admissions” (1999) 37:4 Osgoode Hall LJ 843.

<sup>26</sup> Due to cut-backs on funding in recent years, financial support has been limited to only those African Nova Scotian students who were either born or raised in Nova Scotia, or who otherwise have a substantial connection to a historically black community in Nova Scotia, and those Aboriginal students of Mi'kmaq descent with a connection to Mi'kmagi (the traditional Mi'kmaq territory). With rising tuition rates, finding sufficient funding to support students IB&M students is an ongoing challenge for the Initiative.

<sup>27</sup> For more information, see Indigenous Black and Mi'kmaq Initiative webpage, mainpage, online at: <http://www.dal.ca/faculty/law/indigenous-blacks-mi-kmaq-initiative.html>.

<sup>28</sup> Indigenous Black and Mi'kmaq Initiative webpage *ibid*, “Council & Committee”

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## The IB&M Initiative's impact on Nova Scotia's legal system

Although systemic racism and inequality continues to exist in Nova Scotia and not all of the 82 recommendations in the Marshall Report have been fully implemented,<sup>29</sup> the initiatives and programs that have arisen in response to Donald Marshall Jr.'s wrongful conviction are changing both the face of the legal system in Nova Scotia (by making it more diverse) and the attitudes of those in it (by educating and raising awareness of critical race issues). The IB&M Initiative has been crucial in this regard.

At the time of the Marshall Report, of the almost 1200 lawyers in Nova Scotia, none were Mi'kmaq and only about a dozen were Black.<sup>30</sup> As of the fall of 2018, there are 2961 lawyers, both practising and non-practising, in Nova Scotia.<sup>31</sup> The first cohort of the Initiative started at Dalhousie Law School in the fall of 1989, and over the past thirty years, over 200 Black and Aboriginal IB&M students have graduated from Dalhousie Law School.<sup>32</sup> This has materialized into 64 members of the Nova Scotia Barristers Society who are Mi'kmaq or Aboriginal as of 2018-2019, representing 2.2% of total lawyers in the province. There are 79 lawyers in Nova Scotia who are African Nova Scotian or Black as of 2018-2019, representing 2.7% of the total lawyers in the province.<sup>33</sup> Of course, not all of these individuals are IB&M alumna, but many are. Finally, five more IB&M graduates articulated in Nova Scotia in 2018-2019.

Unfortunately, there are no national statistics on the ethnic/racial composition of Canadian legal profession that we can use to assess Nova Scotia's progress on increasing diversity within its bar. The Federation of Law Societies publishes snapshots comparing provincial and territorial law societies statistics on their members, but these only compare gender and years of call comparison.<sup>34</sup> I suspect this is so because some law societies do not collect statistical data on the ethnic/racial composition in their annual lawyer reports. Unfortunately, that only leaves us with anecdotal comparisons. In this regard, I often compare Nova Scotia to New Brunswick to illustrate the difference the IB&M Initiative has had on the composition of the legal profession in the Maritimes. New Brunswick has two law schools, 15 First Nations communities (2 more than Nova Scotia) as well as historic black communities, but to my knowledge does not keep any statistics on diversity within the legal profession and only has about six practising First Nations lawyers, two of whom are also licenced and primarily living in Nova Scotia. I do know the number of African New Brunswickers practising in that province.

What is also impressive about Nova Scotia is the range of legal workplaces in which we now find Aboriginal and Black lawyers within the province. Nova Scotia Legal Aid ("NSLA"), which has

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<sup>29</sup> See "Still Seeking Justice: The Marshall Inquiry Narratives", *supra* note 6.

<sup>30</sup> See Report, *supra* note 21, Vol. 1, at p. 154

<sup>31</sup> Nova Scotia Barristers Society Fall/Winter 2018/2019 Statistical Snapshot, online: <https://nsbs.org/sites/default/files/cms/menu-pdf/2018statsnapshot.pdf>

<sup>32</sup> *Ibid.*

<sup>33</sup> These numbers are a combination of self-identification statistics provided by Nova Scotia Barristers Society for 2018, as well as the authors knowledge of the Nova Scotia bar.

<sup>34</sup> See Federation of Law Societies webpage, "Statistics," online: <https://flsc.ca/resources/statistics/>.

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about 100 staff lawyers, now has 2 Aboriginal and 9 Black lawyers on staff and has a practice of hiring African Nova Scotian and Mi'kmaq articling students. Fifteen IB&M alumni work for the Nova Scotia Department of Justice, including within the Public Prosecution Services ("PPS"). Mi'kmaq lawyers within PPS have been instrumental in leading Indigenous awareness initiatives within their workplace and in developing a ground-breaking policy for PPS, entitled, "Fair Treatment of Indigenous Peoples Prosecution Policy to Direct Crown Attorneys" made public in February 2019.<sup>35</sup> Six alumni also work for Justice Canada. We also now find IB&M alumni who are partners and associates in large, medium and small firms, as well as a number of sole practitioners or proprietors their own small firms. Although the representation of IB&M alumni in private practice has seen the slowest growth, this is also now changing.<sup>36</sup>

In addition, a number of Mi'kmaq IB&M alumni have gone on to work as in-house legal counsel for Aboriginal organizations in the province and for First Nations governments. As well, some Mi'kmaq alumni have used their legal training to act as policy advisors to First Nations governments and the Mi'kmaq Grand Council. One alumnus is currently the Chief of his First Nation, two others are Senior Mi'kmaq Advisors presiding over the Mi'kmaq of Nova Scotia's modern-day treaty negotiations, and another has led the Nova Scotia Branch of the Native Women's Association and has been a key spokesperson nationally on the issue of missing and murdered Indigenous women. All of these individuals are pursuing important goals on behalf of the Aboriginal community.

Four IB&M alum have been appointed to the judiciary, three to the Nova Scotia Provincial Court and one to the Nova Scotia Supreme Court. Further, there is a growing pool of alumni with the requisite number of years of experience, as well as the credentials and reputation that would make them excellent candidates for the bench. We also now have two Mi'kmaq lawyers in the province (one of whom is an IB&M alum) that are small claims court adjudicators in the province. Another Mi'kmaq lawyer is now Chair of the Nova Scotia Human Rights Commission. Other impressive in-roads forged by IB&M alum include court clerkships, six Queens Counsel recipients, a member of the Legislative Assembly and Attorney General of New Brunswick, and lecturers, as well as law professors.

IB&M graduates are also active volunteers in the legal community and beyond. We have had five IB&M graduates sitting as members of Bar Council ("Benchers") over the past decade with the current second vice president set to be the first Mi'kmaq to hold the position of Bar Society President,<sup>37</sup> and many more who have sat on Bar Council committees, including the Racial Equity Committee ("REC"). As a past Bencher, I would like to put some emphasis on the difference that I feel having Aboriginal and Black lawyers on Bar Council makes. Without a doubt, having benchers at the table who can be strong advocates for the importance of diversity in the legal

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<sup>35</sup> Public Prosecution Service New Release, "Fair Treatment of Indigenous Peoples Prosecution Policy to Direct Crown Attorneys," February 26, 2019, online: <https://novascotia.ca/news/release/?id=20190226001>.

<sup>36</sup> See "Employment Equity within the NSBS Membership", *supra* note 13.

<sup>37</sup> Nova Scotia Barristers Society Announcement, "Tuma T. W. Young acclaimed as Second Vice-President for the 2019-2020 Council year" online: <https://nsbs.org/news/2019/02/tuma-t-w-young-acclaimed-second-vice-president-2019-2020-council-year>. Mr. Young's is not an IB&M alum; his law degree is from the University of British Columbia, but his is supporter and friend to the program. Overall there have been six Mi'kmaq and African Canadian lawyers who have been members of the NS Barristers Society governing council.

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profession, as well remind the other members of Council about the access to justice needs of their communities (as well as that of other historically disadvantaged groups), has changed things. Perhaps more than ever before, the NSBS now devotes significant attention to equity and diversity issues and responding to the Truth and Reconciliation Report in its strategic plan,<sup>38</sup> having equity, diversity and non-discrimination feature prominently in its regulatory objectives and management systems for ethical legal practice,<sup>39</sup> emphasizing lawyer cultural competence,<sup>40</sup> and supporting community projects on Indigenous child welfare and African Nova Scotia land titles issues.<sup>41</sup>

Since 2011, Nova Scotia Legal Aid (“NSLA”) has embarked on a ‘Diversity Refocus’. This has translated into NSLA creating a Racial Diversity Committee, taking steps to raise the profile of NSLA with IB&M Initiative students, and creating an Aboriginal Justice Initiative steered by a committee made up of the NSLA’s Aboriginal lawyers and Commissioner. Some of the concrete initiatives that have resulted from the coalescing of these developments, include (1) the provisions of in- or near-community services in both Mi’kmaq and African Nova Scotia communities by NSLA lawyers; (2) increased outreach with these communities to determine how NSLA can improve service delivery; (3) forming partnerships with community groups to support legal reform in certain areas;<sup>42</sup> (4) the addition of a self-identification questionnaire for Aboriginal clients on the NSLA’s intake questionnaire;<sup>43</sup> and (5) dedicated time for cultural competence CPD at each annual staff meetings of the NSLA and other in-house PD sessions.

Beyond the NSBS and NSLA, IB&M alumni sit on numerous other boards and committees, including the Provincial Judicial Appointments Committee, the federal Nova Scotia Judicial Appointments Committee, the Commanding Officer Advisory Board of the RCMP, the Review Board for the Office of Nova Scotia Police Complaints Commission, and various corporate boards, boards of education, charities, and university boards. Recently, an IB&M alumna was named as Chair of Dalhousie’s Board of Governors.<sup>44</sup> In my view, the value that the IB&M graduates bring

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<sup>38</sup> See NSBS, “2016-2019 Strategic Framework”, online: [http://cdn2.nsbs.org/sites/default/files/cms/menu-pdf/2016-2019\\_stratframework.pdf](http://cdn2.nsbs.org/sites/default/files/cms/menu-pdf/2016-2019_stratframework.pdf).

<sup>39</sup> One of six of the NSBS Council’s Regulatory Objectives is to “Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system” and one of its 10 core elements of an effective management system for ethical legal practice is “Working to improve diversity, inclusion and substantive equality.” For more information, see NSBS website, “Legal Services Regulation,” online: <https://nsbs.org/legal-services-regulation>.

<sup>40</sup> For example, since 2013, cultural competency has been made a mandatory part of articling clerks’ Skills Course offered by the NSBS. Since 2014, the Bar Exam materials have been amended to speak to how the substantive law may apply to Aboriginal clients differently in certain circumstances. Cultural competency CPD has been offered at various NSBS and CBA conference. Finally, the REC, with the support of Council, continues to develop resources to assist in cultural competency training.

<sup>41</sup> See #TalkJustice update: North Preston land titles project, online: <https://nsbs.org/talkjustice-update-north-preston-land-titles-project>.

<sup>42</sup> For example, the NSLA participates in a Child Welfare Working Group to examine reform in the area of child welfare services in First Nations communities, is on a committee looking at standardizing sentencing circles in NS, and has formed a working group with the African Nova Scotia community in the Prestons to address their legal needs.

<sup>43</sup> This is because the Aboriginal status of a client can impact the application of the law in various ways. The self-id questionnaire was rolled out in April 1, 2014, and just in the first four month period, 282 applications self-identified as Aboriginal.

<sup>44</sup> Dal New, “Meet the New Chair: Candace Thomas Set To Lead Dal’s Board Of Governors,” May 9, 2019.

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to these boards in educating others around the table about Aboriginal and African Nova Scotian communities and their histories and continuing challenges, cannot be overstated. The above are only some of the many examples of how the presence of IB&M graduates in Nova Scotia's legal profession is making positive changes for the Mi'kmaq and African Nova Scotia communities in Nova Scotia and beyond.

Finally, it bears mentioning that the IB&M Initiative has received significant recognition for its critical work in promoting diversity and critical race awareness. The list of awards the Initiative has won include CBA Touchstone Award (2010), the Canadian Race Relations Foundation Award of Excellence Education (2014), the CBA-NS Branch – Law Day Award (2015), and the Lexpert Zenith Award celebrating Diversity and Inclusion (2016).

### **What makes the situation in Nova Scotia so successful?**

Most law schools in Canada have publicly committed to the principle of diversity.<sup>45</sup> In this regard, many have special admission categories for Aboriginal and other historically disadvantaged communities that consider more than just GPA and LSAT scores.<sup>46</sup> However, a study of Canadian law school admission criteria suggests that flexible admission criteria alone are not sufficient to achieve diversity in the legal profession.<sup>47</sup> The provision of financial support (given that many students from historically disadvantaged communities and their families cannot afford law school, especially in the era of sky-rocketing law school tuition), as well as academic support, have been identified as key factors to ensuring students from historically disadvantaged backgrounds make it through law school and enter the legal profession.<sup>48</sup>

As noted earlier, the IB&M Initiative offers both financial and academic supports, in addition to holistic admissions criteria, and there is no question that this is crucial for IB&M students' success in law school. But another feature of the Initiative that is so important but often overlooked—which I wish to highlight—is the creation of a community of law students and alumni that support and help each other. The value that belonging to this community brings to the professional development of IB&M students and alumni deserves significant emphasis.

Speaking as an alumna of the IB&M Initiative, I can say that from the beginning of my law school career, when I participated in the 4-week pre-law program with the other incoming IB&M students, I felt myself to be part of a community and that sense of belonging lasted throughout my time in law school and beyond. I have drawn much strength, support and insight from my fellow IB&M colleagues.

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<sup>45</sup> See Faisal Bhabha, "Towards a Pedagogy of Diversity in Legal Education" (2014) 52 Osgoode Hall LJ 59 at para. 7.

<sup>46</sup> See Dawna Tong & W Wesley Pue, "Best and Brightest? Canada Law School Admissions" (1999) 37:4 Osgoode Hall LJ 843.

<sup>47</sup> See Dolores J. Blonde et al., "Law Students, Law Schools and their Graduates" (2001) 20 Windsor YB Access to Just 211. In this regard, Charles C. Smith argues that most Canadian law school's commitment to diversity is weak and their public commitments are but lip service: see "Who is Afraid of the Big Bad Social Constructionists? Or Shedding Light on the Unpardonable Whiteness of the Canadian Legal Profession" (2008) 45 Alta L Rev 55.

<sup>48</sup> *Ibid.* and see also Bhabha, *supra* note 22 at para. 33-41.

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Being in the IB&M Initiative gives students and graduates a sense of assuredness and belonging that a minority student simply admitted through general or discretionary law school admissions criteria might not get from their law school experience. The Initiative creates a critical mass of Aboriginal and Black students; students are assured that, in any given year, there will be about 35 other people in the Law School who look like them and come from similar backgrounds. They are also now assured that they will have a few professors from their communities.

The key role of the IB&M Director in the success of the Initiative also deserves emphasis. The Initiative has had three directors from the Mi'kmaq and African Nova Scotia communities to date, with the current Director, Michelle Williams, having served in the position for over 15 years. The Director plays a critical role not only in supporting, advising and mentoring students, but also in advocating for students and the Initiative more broadly. The institutional and financial support that the Initiative depends upon has fluctuated at times, and the Director has played an essential role in assuring the ongoing vitality of the program. It is fair to say that without the tireless efforts of the current and past directors, it is unlikely that the Initiative would have had the longevity or would have generated and maintained the level of cohesion that it has. In addition to this, the Director serves as a public face of the Initiative, promoting and raising awareness in the Mi'kmaq and African Nova Scotia communities and beyond, as well as championing alumni. Finally, the Director serves as a catalyst for change in the broader community, using her role to advocate for greater representation of members of the Mi'kmaq and African Nova Scotia communities within all parts of the legal profession, including within the bar society and judiciary.

It is also significant that the IB&M Initiative is a formal institution at the Schulich School of Law, not simply an admission category. As a formal institution, the Initiative has a mandate and history, giving it permanence and legitimacy that doesn't exist where diversity is sought simply through admission criteria. In this regard, beyond its important work in increasing representation, the Initiative also has a mandate to foster systemic changes in the legal system by inclusion of diverse perspectives, achieved through:

- facilitating initiatives that contribute to the production of legal knowledge from Aboriginal and African Nova Scotian perspectives through organizing guest lectures, assisting with student-led and other conferences, and encouraging community-legal partnerships and activities;
- encouraging scholarly research on and from Aboriginal and African Canadian/Nova Scotian perspectives; and
- supporting the work of the IB&M Community Advisory Council, IB&M Standing Committee and related committees of the Law School & University.

Further, the existence of a formal institution permits students and alumni to rally around it and celebrate it. Indeed, the Initiative holds at least two annual receptions for students and alumni to meet and network with each other, as well as holding celebratory events (lecture series and gala dinners) for large milestones, such as the Initiative's 20<sup>th</sup> and 25<sup>th</sup> anniversary and soon the 30<sup>th</sup>

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anniversary. Such events are integral to the students and alumni of the IB&M Initiative seeing themselves as a community.

Outside of larger formal events, throughout their time at the law school, the IB&M students are reminded that the Initiative's purpose is to combat systemic racism in the justice system and the role they play in this. As a result, critical race issues become common topics of discussion during both formal and informal gatherings of IB&M students and graduates. This leads to many IB&M students and graduates feeling comfortable in raising and addressing issues of race, class and privilege in various settings.

Following graduation, another important institutional legacy of the Marshall recommendations, the Racial Equity Committee ("REC") of the NSBS, provides an important forum allowing IB&M alumni, and other racialized and Aboriginal lawyers practising in Nova Scotia, to raise critical race issues affecting the legal profession and justice system, as well as support important justice projects within the Aboriginal and African Nova Scotia communities. The REC serves to extend and enhance the sense of community created by the IB&M Initiative.

It is the qualities that the IB&M Initiative instils in its graduates—a sense of assuredness, a sense of community and belonging, and confidence in raising critical race issues—that is now allowing these alumni to go out and change attitudes and raise awareness about their communities in the various areas in which they work and volunteer. Alumni, along with the Initiative's Director, have also been instrumental in defending and advocating for the continued need for the Initiative within the law school to the university at large and the government during those times when there has been waning institutional support for the Initiative and addressing institutional racism. Changing attitudes and eliminating systemic racism does not happen overnight, but now, some 30 years since the Marshall Report, we are beginning to see some profound changes in the legal profession in Nova Scotia.

## **Conclusion**

Other provinces in Canada do not need to have experienced a wrongful conviction of an Indigenous or racialized person like Donald Marshall Jr., or some other travesty of justice laying bare the systemic racism inherent in its legal system, to achieve what Nova Scotia has. That would be beyond perverse. Systemic racism persists in legal systems across the country; no travesty of justice has to occur to prove this. Provincial governments and law schools can and should act now to create and support access and programs like the IB&M Initiative. The same goes for legal regulators, regarding the creation of Equity Offices and Racial Equity Committees. A commitment to equality and eliminating systemic discrimination in the legal system is all that is needed. The commitment to substantive equality and the explicit recognition of affirmative action programs set out in *Canadian Charter of Rights and Freedoms* alone would be a sufficient justification for creating such programs and initiatives. The Calls to Action from the Truth and Reconciliation

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Commission, and the recent Calls to Justice of the Missing and Murdered Indigenous Women and Girls Inquiry further bolster this.<sup>49</sup>

By creating a critical mass of Aboriginal and Black students within the law school, and nurturing and supporting those students, the IB&M Initiative creates conditions will allow Aboriginal and Black graduates not just to ‘make it’ into the profession, but to thrive as a vibrant community within the legal profession. The Initiative creates Aboriginal and Black lawyers who feel strong in their identity, who have a network of peers to draw strength and support from, and who have the courage to take on positions in places of power where their communities have been historically excluded, and bravely raise issues of race and equality in those spaces.

The impact that IB&M graduates have in raising awareness of race issues and changing the discourse around race and equality issues in places of power can be quite significant. This can be seen from the few examples I have given above of changes that have occurred at both the NSBS, NSLA and PPS in the past few years since IB&M grads have been participating and influencing the decision-making structures of those organizations. Other law schools, with support from their provincial governments, federal government and legal societies, should follow the Schulich School of Law’s and Nova Scotia’s leads and create access for those racialized groups that remain among the most marginalized in their jurisdictions.

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<sup>49</sup> Truth and Reconciliation Commission of Canada: Calls to Action (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), nos 27 and 28; *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Calls for Justice (June 2019) nos 10 and 11.

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