

Native Women's Association of Canada



ABORIGINAL WOMEN & GENDER BIAS IN THE LEGAL PROFESSION

~ January 22, 1992 ~

Canadian Bar Association
Task Force - Toronto, On

An NWAC Presentation

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The following are recommendations to the CBA Task Force on Gender Bias in the Legal Profession:

Judiciary

1. The Native Women's Association of Canada recommends that the CBA Task Force on Gender Bias inquire of the Minister of Justice, the Chief Justice of each Province and Territory, and for Canada:
 - a) *What efforts are contemplated to ensure equitable representation of aboriginal women in the judiciary, at all levels, given that there is now only one such appointee in the nation.*
 - b) *What efforts are being made to eradicate gender and race bias by the judiciary given the significant number of media reports of judge's comments which indicate a reasonable apprehension of gender and/or race bias.*
2. The Native Women's Association of Canada asks the CBA Task Force on Gender Bias to write to Provincial CBA affiliates and recommend to the national CBA that they consider ways and means of ensuring an increase in the number of aboriginal women appointed to the judiciary at all levels.

Government

3. The Native Women's Association of Canada recommends that the CBA Task Force on Gender Bias ask the federal government and provincial and territorial governments for a written report on the number of aboriginal female lawyers employed in a legal capacity within:
 - a) *the Department of Justice*
 - b) *other Departments, Crown Agencies, Human Rights Commissions, Boards, and other provincial bodies.*
4. The NWAC recommends that Canada, the Provinces and Territories increase their efforts to recruit aboriginal female lawyers as counsel in their respective Departments of Justice, agencies, boards, commissions and other such bodies beginning immediately.
5. The NWAC recommends that Canada, the Provinces and Territories establish an affirmative action policy and practice aimed at providing Articling positions to aboriginal female law graduates and that the number of positions be proportionate to the aboriginal female population.

6. The NWAC recommends that Canada, the Provinces and Territories establish a jointly-funded scholarship program aimed at increasing the number of aboriginal female law students, with emphasis on off-reserve Indians, Métis, non-status Indians, and Inuit and that such a Scholarship Fund be operated by an independent Aboriginal Board comprised of aboriginal female lawyers appointed by the NWAC, Pauktuutit, and the National Métis Women's Association.

In-House Counsel / Private Practice

7. The NWAC recommends that the CBA Task Force on Gender Bias in the Legal Profession inquire of law firms the extent of their hiring of aboriginal female lawyers and their practice with respect to providing career opportunities to aboriginal female lawyers.
8. The NWAC recommends that the CBA Task Force on Gender Bias in the Legal Profession inquire through the CBA Native Committee whether law firms have an Aboriginal Law Section and the extent to which Aboriginal female lawyers have been recruited to work in these sections.
9. The NWAC recommends that the CBA Task Force on Gender Bias in the Legal Profession inquire of Crown Agencies, provincially and federally, and major corporations, banks and businesses in the transportation and communications sector, as well as energy whether they have made any attempts to recruit, train and develop aboriginal female lawyers as in-house counsel.

Academics

10. The NWAC recommends that the CBA Task Force on Gender Bias in the Legal Profession inquire of Deans of Law throughout Canada:
 - a) *how many full-time aboriginal female law professors are employed;*
 - b) *how many part-time aboriginal female law professors are employed;*
 - c) *whether there is any plan to implement an affirmative action program to recruit full-time and part-time aboriginal female law professors and the time-frame for such a plan;*
 - d) *what kind of scholarship program, if any, has been instituted to encourage aboriginal female lawyers and law graduates to pursue a Master of Laws and Doctor of Jurisprudence; and*
 - e) *what kind of support program exists at the Law School to ensure the success of aboriginal female law students in their studies e.g. mentor programs, tutoring support, presence of an Equity Director, presence of a Native Counsellor (lawyer or educator), etc.*

Saskatoon Pre-Law Program for Indigenous Students

11. The Native Women's Association of Canada asks the CBA Task Force on Gender Bias to make direct inquiries to the University of Saskatchewan Pre-Law Program for Indigenous Students:
- a) *for statistical data on the number of female vs. male applicants for the summer program, by year, by sex, including numbers accepted, and numbers recommended to law schools.*
 - b) *to assess the extent of sexual harassment of female aboriginal students, reported and unreported, and what efforts are made by the faculty to ensure that sexual harassment is eradicated, including harassment of aboriginal women by professors, tutors and colleagues.*

LSAT

12. The Native Women's Association of Canada asks the CBA Task Force on Gender Bias to undertake a study aimed at establishing gender and race bias in the LSAT, and indicate in its findings whether this is the most appropriate way to control access to law schools in Canada, or whether Canada should establish its own test.

Racism in Law Schools

13. Given the extent of racism and sexism in the law school curricula, among professors of law, and within the student body, the Native Women's Association of Canada calls upon the CBA Task Force on Gender Bias to establish a timeframe for ending racism and sexism in Canada's Law Schools:
- a) *by asking Deans of Law to conduct a study on race and gender bias in the curricula over a one - or two-year period and make reports to the CBA;*
 - b) *by asking Deans of Law to encourage female professors and students to report and document incidents of race and sex discrimination or harassment;*
 - c) *by asking Deans of Law to establish in writing a Code of Conduct aimed at eradicating race and sex bias and sexual harassment in the Law Schools by Law Professors.*

Articling Interviews

14. The Canadian Bar Association and Deans of Law should be encouraged to establish some feed-back mechanism to encourage students to report sex and race bias in Articling Interviews; and
- a) *the Law Societies should include in their Codes of Conduct explicit rules which provide penalties against Law Firms and Lawyers who are found to have a reasonable apprehension of race and/or sex bias in the Articling Interview process;*
 - b) *the Law Societies need to take more stringent measures to end sexual harassment of female Articling applicants and Articling students.*
 - c) *the Department of Justice for Canada should review its Articling procedures, questions and interviewers and should be asked to eradicate race bias in the Articling Student interviews conducted with Aboriginal students e.g. there is a suggestion in their process that aboriginal students cannot maintain confidentiality when handling aboriginal matters and are therefore not trustworthy.*

Articling Students

15. Law Societies should be encouraged to write to law firms requiring them to eradicate racist practices, stereotyping, and assigning of aboriginal female Articling students:
- a) *Aboriginal law students are not less intelligent, nor less sensitive than other students;*
 - b) *Aboriginal students have a right to be treated the same as everyone else and should not be assigned solely to aboriginal matters; and*
 - c) *Law firms do not have a right to force Aboriginal law students to bring business to the firm when this is clearly not required of other students.*

Family Law

16. The Native Women's Association of Canada recommends that Canada exercise its jurisdiction under section 91(24) of the Constitution Act, 1867 and pass an Indian Family Act:
- a) *which deals with divorce on Indian lands and the rights of female spouses;*

- b) *which deals with child custody taking into account culture, tradition, and places a priority on the right of the mother and reviews the appropriateness of the "best interest of the child" doctrine given the state of poverty of Indian and aboriginal women in Canada and the state obligation to provide a decent standard of living for the mother;*
- c) *which deals with marriages on Indian land taking into account customary marriages;*
- d) *which deals with the property rights of female spouses and ensures them a right to 50 per cent of marital property, both real and personal;*
- e) *which deals with the authority of Chiefs and Council and Band by-laws, particularly in child apprehension, giving priority to the mother e.g. Indian children are not the property of the community or the Chief and Council.*

Canadian Human Rights Act

- 17. The Native Women's Association of Canada asks the Task Force to support their request to have section 67 of the Canadian Human Rights Act repealed, period. The current Bill to amend the C.H.R.A. repeals section 67, but adds in its place a non-derogation clause for sections 25 and 35 of the Constitution Act, 1982. What the federal government gives with one hand to Indian women, it takes with the other hand. A non-derogation clause within the Canadian Human Rights Act may mean the Department of Indian and Northern Affairs and Band by-laws can continue to discriminate against Indian women on reserves with no recourse to the Canadian Human Rights Commission. This is totally unacceptable to the NWAC.
- 18. The NWAC asks for a review of Provincial and Territorial Codes of Human Rights which are not applicable on Indian lands and asks for support to have these Codes incorporated by reference through the Indian Act to benefit on-reserve Indian women and other First Nations citizens until there is in place an Aboriginal Code of Human Rights applicable on all Indian lands.

Criminal Justice Administration

- 19. The NWAC asks the Task Force to support their call for a review of Criminal Justice administration as it impacts upon Aboriginal women and children who are the primary victims of violent crimes, e.g. domestic violence, spousal assault, rape, child physical and sexual abuse.
 - a) *There is a need to revise the entire Criminal Code to eradicate sex bias in Canadian criminal law, and to incorporate defences more applicable to women offenders;*

- b) *There is a requirement to amend the Criminal Code to criminalize racial discrimination and racial harassment;*
- c) *There is a need to establish firmly in law the minimum sentence for crimes against women and children until it is established that the judiciary is subject to the Canadian Charter of Rights and Freedoms e.g. where there is a reasonable apprehension of race or sex bias by a judge, he or she should be removed from the Bench. The minimum sentence requirement would remove judicial discretion in sentencing, and eradicate the practice of allowing prisoners to serve only one-third of their sentence. These practices -- judicial discretion and serving one-third of the time--are detrimental to aboriginal women who live in small communities and who have been victimized by rapists or violent husbands.*
- d) *There is a need to change the term "sexual assault" back to "rape" within the Criminal Code because judges and defence counsel have used these changes to further victimize women and children within the criminal justice system e.g. sleeping victims of rape don't feel anything, don't remember anything, didn't know it happened, and therefore the crime was not violent, and was not a "major sexual assault". Male judges in particular do not understand the nature of the crime and give inappropriate sentences. This, in our view, is gender bias and it needs to be eradicated.*

Conclusion

This concludes the recommendations of the Native Women's Association of Canada. However, we do reserve the right to provide additional recommendations and studies prior to end of the studies of the CBA Task Force on Gender Bias.