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Richard F. Devlin<sup>1</sup>  
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An Essay on Institutional  
Responsibility:  
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Law School

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### *I. Introductory Comments*

Dalhousie Law School, like most other law schools, as a tribute to its graduates and as a manifestation of its traditions,<sup>3</sup> adorns its walls with class photographs of years gone by. However, if one were to stop and scrutinize more carefully these pictures one might want to reconsider the tradition in a more circumspect light. Perhaps one might notice that until the nineteen sixties women were few and far between and that even now they still make up less than half of most graduating classes. More conspicuous still, is the general absence of First Nations peoples from the celebratory pageant. Even more curious, is the partial presence of Blacks in the parade. In the older photographs one does, on occasion, come across Black graduates but, as a little research indicates, many of these turn out to be from Africa or the Caribbean — few are Black Canadians, and even fewer indigenous Black Nova Scotians. As the photographs become more contemporary, even this Black presence declines as African and Caribbean jurisdictions developed their own law schools and the visit to Canada became unnecessary. Although, during the 1980's, the profile of the classes has changed marginally so as to incorporate elements of the so called "changing multicultural nature" of Canadian society, the presence of Nova Scotian Blacks and First Nations peoples is sparse.

In this essay, we attempt to identify the origins and describe the first years' operation of a Programme designed to facilitate a greater presence of Nova Scotian Blacks and Micmacs at Dalhousie Law School. However, before proceeding a few caveats are in order. First, this is a partial account of the Programme. We use partial in a double sense: as incomplete and as partisan<sup>4</sup>. Both the authors are relatively privileged,

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2. Professor of Law, Dalhousie University. Both Professors MacKay and Devlin wish to acknowledge the research assistance of Michelle Gignac, a second year Dalhousie law student.

3. For discussions of the traditions at Dalhousie Law School, see J. Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979).

4. We derive this characterization from Martha Minow, "Partial Justice: Law and Minorities." (unpublished manuscript).

whites who were professors at the school when the Programme was developed and this, we believe, has a profound significance on our interpretation of the nature of, processes in relation to and aspirations for the Programme. Furthermore, we were both involved in the creation of the Programme and Wayne MacKay served as its founding director. Consequently, what follows should not be understood as a definitive account, but merely an interpretation that may be contradicted by, or supplemented with, alternative interpretations such as those from the Black and Micmac communities. Moreover, the essay is partial in a more obvious sense: the process of establishing the Programme was fraught not only with educational concerns but also political agendas — personal, institutional, communities, sub-communities, provincial, and federal — some of which we were privy to, others which we were not. We have chosen not to discuss some of these issues because to do so might further jeopardize the success of the Programme.

A few comments on the style of this essay may also be appropriate. One of the most difficult aspects of completing this essay was to develop an appropriate tone. In large part this is because of our understanding of the constitutive and interdependent relationship between the personal, the political, the academic and the institutional. Traditionally in law journals, and particularly when one is reporting on “developments in legal education” one is expected to aspire to “objectivity” (whatever that might mean) and this, in the vast majority of cases, has resulted in articles that are essentially descriptive. Our paper, however, is sceptical of claims to objectivity and thus it tends to oscillate between description, critical analysis and prescription. Moreover, we have also tended to focus on some of the more personal elements of the Indigenous Black and Micmac (I.B.M.) Programme because we believe that, at bottom, every institutional programme is driven by factors of human agency. Thus the paper, somewhat untraditionally, integrates formality and informality, tells stories, and echoes to some degree the methodology of “narrative jurisprudence”.<sup>5</sup> Thus we want to emphasize that we are not claiming any privileged authoritative interpretation of the I.B.M. Programme — indeed we have deliberately avoided discussion of certain aspects and issues — for undoubtedly there are a number of possible understandings and the Programme is still in its vulnerable formative stages. Having declared our biases we shall attempt an honest account of the origins and first year of the I.B.M. Programme.

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5. For a useful bibliography of narrative jurisprudence see, D. Elkins, (1990), 40 J. Legal Ed. 203.

## II. *Origins of the I.B.M. Programme*

From a Dalhousie institutional perspective, concern about the lack of access by minority students to legal education at Dalhousie Law school can be traced back to the mid 1980's when the Chairperson of the Admissions Committee, Susan Ashley, and Associate Dean Brent Cotter submitted a proposal to the, essentially American, Law School Admissions Council (LSAC), Minority Enrolment Challenge Grant Programme For Innovative Projects. The proposal argued that "(m)inorities in Atlantic (Canada) are seriously underrepresented in the legal profession" and in particular identified Blacks and First Nations peoples as the relevant target communities. The proposal sought funding for a three year pilot project to establish a regional Programme under a Director of Minority Enrolment. In retrospect, it seems to us that the objective of the Programme was quite modest and a little vague: "to produce more legally trained people drawn from Minority communities in Atlantic Canada." It was argued that this goal could be achieved through a three stage strategy: (a) the Director would promote legal education in minority communities and proactively "recruit" in those communities; (b) the school would establish a six week pre-law education and evaluation Programme (similar to that at Saskatoon, Saskatchewan) which would be open to both Micmacs and Blacks; and (c) a modification of the law school programme so as to allow for tutorials, summer school and additional upper year course offerings "of relevance to minority students". Further suggestions were made as to potential sources of funding for the project. The Law School Admissions Council rejected the proposal on the basis that it was not sufficiently innovative. From what we can gather, it also appears that the Council thought that the Dalhousie Programme would be in competition with the already well established Saskatchewan Pre-Law Programme, and did not wish to diversify its funding.<sup>6</sup>

Although the proposal to LSAC failed to generate the funding necessary to commence a Programme, the effort did serve as a catalyst for increased law school awareness that all was not well in legal education and that equality of opportunity in relation to admission to Dalhousie law school was a myth. Moreover, the drafting of the proposal had generated some rapport between some members of the law school and segments of the Black and Micmac communities. In particular, in early 1986, on the basis of a grant from a private foundation, the Union of

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6. The Native Pre-Law Programme at the University of Saskatchewan is a summer programme designed to prepare First Nations people for law school and act as a screening agency for law school admissions purposes. It was established in 1973.

Nova Scotia Indians, the Native Council of Nova Scotia, the Confederacy of Mainland Micmacs and Dalhousie University established the Micmac<sup>7</sup> Professional Careers Project [M.P.C.P.] in order to help redress the underrepresentation of Micmac people in professional Programmes such as Law, Health Sciences and Administration. Under the direction of Catherine Martin, several (personal rather than institutional) links were forged between the law school and the Micmac Professional Careers Project. Eventually, in June 1988, this led to a two day workshop sponsored by the M.P.C.P. on how legal education at Dalhousie was failing to attract Micmac students and how, if a Micmac student did succeed in gaining admission, the processes and culture of Dalhousie law school virtually guaranteed that she would fail. Once again, this generated a conviction on the part of several faculty members that further efforts would need to be made.

However, it was events outside the law school that provided the opportunity for the development of a Programme specifically tailored to the needs of the Black and Micmac communities of Nova Scotia. The first of these was the creation at the University level of the President's Task Force on Access for Black and Native People. The second was the Marshall Inquiry.<sup>8</sup> Although the Task Force was set up in 1988, the original Chairperson had to resign because of other commitments and it only really became active when Wayne MacKay was appointed to Chair in February of 1989. MacKay's involvement in the Task Force forged community links with the Black and Micmac communities which proved invaluable in designing the institutional structure and operation of the I.B.M. Programme in its first year.

At its inception the Task Force was intended to evaluate Dalhousie's Transition Year Programme — designed to be a bridge for Blacks and Micmacs to university education — but the Task Force's mandate was extended to a wider four point task. These were:

- a. to review existing programmes and resources at Dalhousie which serve the Black and Native communities;
- b. to consult with leaders and representatives of these two communities, with provincial and federal government officials, and within the university community;

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7. Micmacs are the First Nation's people of Nova Scotia. Some Micmacs also live in Newfoundland, Prince Edward Island and New Brunswick, though Malecites predominate in the latter.

8. This wide ranging Royal Commission set up to investigate the wrongful conviction of Donald Marshall Jr., — a Nova Scotia Micmac, has attained national prominence, *The Royal Commission on the Donald Marshall Junior Prosecution Report*, (1989), Vols 1-7.

- c. to propose by June 30, 1989, a strategic plan whereby Dalhousie could most appropriately serve the needs of the Black and Native communities, and the role which the Transition Year Programme should play in the fulfilment of this plan; and
- d. to contribute to the evolution of an overall university policy on affirmative action and to the awareness of the university and the wider community concerning access to education.<sup>9</sup>

There was some consultation with government and university officials, but the major focus of the hearings was in the Black and Micmac communities. In a self-styled Tom Berger<sup>10</sup> fashion, the Task Force held hearings in Black and Micmac communities and listened to what people had to say about the problems of minority access to Dalhousie and what needed to be done to overcome the barriers. It was those community insights which formed the heart of the Task Force's report — *Breaking Barriers: Report of the Task Force on Access For Black and Native People*. It also became clear in the course of these hearings that one of the vital areas where greater access was needed was in Dalhousie's professional schools, such as, law and medicine. The Law School's initiatives with respect to the I.B.M. Programme were frequently singled out for praise, as the kind of initiative that the university should be pursuing on a broader front. The parallel development of the Law School initiatives and the Task Force provided a receptive university environment for embracing the I.B.M. Programme.

The high profile hearings of the Task Force and the widely distributed *Breaking Barriers Report* helped raise consciousness in the university of the barriers to minority access and the need for change. Part of the message of the Task Force *Report* was that Nova Scotia's Indigenous Blacks and Micmacs have been excluded from the elitist ivory tower and were deserving of educational equity in the form of specifically tailored programmes. It also provided an opportunity for Dalhousie University to think about its role and responsibility with respect to Black and Micmac people. This aspect of the Task Force's work is captured in the opening paragraph of the Preface to the *Breaking Barriers Report*:

This is a report about Nova Scotia's Black and Micmac people and the barriers which have impeded their access to Dalhousie University. It is also a report about the nature and character of Dalhousie University and its responsibility to the Indigenous Blacks and Micmacs who have been

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9. W. MacKay, *Breaking Barriers: Report of the Task Force on Access for Black and Native People* Submitted to Dr. H.C. Clark, President of Dalhousie University, September 21, 1989, at vii.

10. Thomas R. Berger, *The Report of the MacKenzie Valley Pipeline Inquiry*, (Ottawa: Minister of Supply and Services, 1977).

the victims of racism in Nova Scotia. In it we attempt to bridge the gap between the white university culture and the minority cultures of our Black and Micmac people. It is a small effort to salvage a future which includes the unique perspectives of the dispossessed.<sup>11</sup>

While the Dalhousie Task Force and its *Report* provided a receptive university climate for the I.B.M. initiative, even more important was the impact of the Marshall Inquiry on the larger Nova Scotian community.

As proceedings before the Royal Commission unfolded, it became obvious that what had happened to Donald Marshall Jr. could not be explained as a mere aberration. Rather, that it was the predictable, perhaps even inevitable, consequence of a legal system pervaded by racist assumptions; whether they be the police force, crown or defence lawyers, the judiciary, or the government itself. Although Dalhousie Law School was never identified as a player in the Donald Marshall Affair, it might perhaps be suggested that there was a sense of guilt by institutional association given that many of those implicated had been graduates of the school and that somewhere along the way Dalhousie, as an institution, had failed to sensitize its alumni to some of the basics of professional responsibility. Thus, the Marshall Commission, even before it published its findings and recommendations, had generated a province-wide sense that the legal system generally, and legal education as a subcomponent of that system, was in dire need of renovations that would render it more open to, and equitable for, the two primary minority groups of Nova Scotia. The time seemed auspicious for an anti-racist legal educational proposal.<sup>12</sup>

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11. *Breaking Barriers*, *supra* note 9, at i.

12. This sense was proved correct when the Commission published its Report one year later, in December of 1989. In a fairly wide ranging review that was quite (but insufficiently) critical about the justice system in Nova Scotia, one of the few praiseworthy comments was reserved for the fledgling Law School initiative:

It is obvious that visible minorities cannot be represented among the ranks of Crown prosecutors, defence counsel and the judiciary unless they are entering and graduating from law schools in greatly increased numbers, and they cannot do that without a solid educational foundation. Improvements are needed in the education system to ensure that minority students are given support, both educational and financial, to put them on an equal footing with White students.

The Dalhousie Law School's recently announced minority admission program — which includes special recruitment efforts and a summer program as well as educational and financial support — would appear to include all of the elements we have identified as being necessary to a successful initiative, and we are encouraged by its establishment. But Dalhousie's leadership must be accompanied by the financial support of governments and the bar in order to ensure that the increased participation of visible minorities in the legal profession actually occurs. [*Report of the Royal Commission on the Donald Marshall, Jr., Prosecution* (1989) Vol. 1, at 154-155.]

In the course of November and December 1988, representatives from the Black community and Micmac Professional Careers Project (M.P.C.P.) independently approached the law school and, once again, inquired as to the possibility of opening up the legal educational process at Dalhousie. These overtures had been triggered by "Academic Hearings", held by the Marshall Commission on the 24th and 25th of November 1988, which attempted to reflect more broadly on the significance of racism in the Canadian legal system. Specifically, MacKay chaired a session on "Affirmative Action and the Role of Law Schools in Combatting Racism". The major contact persons at the law school were: Wayne MacKay, because of his high reputation within the broader Nova Scotian community, and Richard Devlin, because of his interest in expanding legal education to render it responsive to perspectives other than those that reflect the dominant order. It was thought necessary to attempt to institutionalize the process and it was determined that the Micmac Professional Careers Project would be the most appropriate vehicle for the Micmac perspective, but there was no equivalent forum for the Black community. This led then Law School Dean Innis Christie to establish a Dean's Ad hoc Committee on the Black Presence at Dalhousie Law School. It was composed of Burnley "Rocky" Jones (community activist, and current I.B.M. student), Janis Jones-Darrell (Advisor to the President on Minorities, and current consultant on minority and race issues to the Halifax County District School Board), Dean Christie, Maxine Tynes (poet and member of the Dalhousie Board of Governors), Cynthia Thomas (student, and (future) President of The Law Student Society and a current Nova Scotia lawyer), Donald Oliver (local Black practitioner, and future Senator) and ourselves — Devlin and MacKay.

This advisory committee also had a working sub committee which was given the mandate to formulate a proposal to enhance access by Blacks to Dalhousie Law School, comprised of Jones, Jones-Darrell, Devlin, Thomas and Calvin Gough, another community activist. In the course of January and February 1989, this sub-committee met on a weekly basis and attempted to identify the sources of the problems and possible

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This led the Commissioners to propose that funding for this programme be made a priority:

**Recommendation 11**

We recommend that the Dalhousie Law School's minority admissions program for Micmacs and indigenous Blacks receive the financial support of the Governments of Canada and Nova Scotia, and the Nova Scotia Bar. *Ibid.* 155.

As we shall suggest later, however, it has not taken long for the provincial government, after a brief period of compliance, to ignore this recommendation.



strategies for transcending them. Every couple of weeks this sub-committee reported to the larger committee for feedback and a more general consideration of the enterprise. At the same time, consultations were being held with Catherine Martin of the Micmac Professional Careers Project, in relation to the Micmac's aspirations for the Programme. On March 6th 1989, the Dean's Ad Hoc Committee On the Black Presence at Dalhousie Law School accepted a proposal on a law programme. Around the same time, a similar proposal in relation to Micmac students was accepted in principle by the Planning Committee of the Micmac Professional Careers Project.<sup>13</sup> This then allowed Professors Devlin and MacKay to formulate a proposal to incorporate the demands of both target communities for submission to the Law School Faculty Council. It may also be worth noting that, at the request of representatives from the Black and Micmac communities, they were invited as "observers" (an unusual practice for the Dalhousie Law School Faculty Council). The proposal was unanimously approved at the Faculty Council on April 14, 1989. The final start-up hurdle was to obtain funding for the proposal. A submission for a five year Programme was submitted to the Law Foundation of Nova Scotia in April, 1989. Through a grant of \$76,000, it enabled the Programme to be scheduled for commencement on the 30th June, 1989.

Before discussing the aims of the Programme in more detail it may be helpful to provide a few comments on the process which we have just outlined. Although the genesis of the Programme can be traced back to 1986, it was not until November 1988, when members of the Micmac and Black communities began to intensify their demands in the context of the Marshall Inquiry, that the institutional response became serious. Six months later, a Programme had been agreed upon, funding had been secured and, one would think, things would appear to be on track. Although we believe that in general, the institutional response was appropriate and that the creation of the programme has been quite a remarkable achievement, we want to briefly highlight some of the problems.

The first concern relates to the sense of urgency that pervaded the process. We think that it is true to say that all those who were involved in the formulation of the Programme believed that it was essential that it be up and running by July 1989. To leave it another year would be to

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13. It should be noted, however, that Ms. Martin has argued that there was inadequate consultation with the Micmac community, and that she felt rushed by the pace of events. Broader consultation would have been preferable.

risk losing the province-wide dynamic (generated by the Marshall Inquiry) that was demanding that something be done about racism. Given the aspirations of the Programme and its ramifications for the nature, identity and day-to-day operation of the school, this meant that very significant decisions had to be made within a relatively short period of time. One advantage was that any proposal could not be debated or amended to death, a favourite strategy for those opposed to institutional change. The reverse side of the coin was that perhaps the consultation was not quite comprehensive enough, nor perhaps was it sufficiently egalitarian.

To elaborate: Our motivation for establishing a Programme such as Dalhousie's is to challenge the racism of the Canadian legal culture in general, and legal education in particular. We also believe that inequality and paternalism are two constitutive elements of racism. As we have already suggested, the primary impetus for the Programme came not from within the school, but from without: the demands of the Black and Micmac communities, and the vulnerable atmosphere created by the Marshall Inquiry. Although fairly extensive consultations and negotiations were held with representatives from the Micmac and Black communities, and although they certainly had input in the formulation of many aspects of the Programme, ultimately it was the Law School representatives, including ourselves, who controlled the process. Consequently, when certain difficult decisions had to be made — for example, the relative proportions of Black and Micmac candidates — despite the objections of both the communities, the decision of the Law School prevailed. In part, there may have been good reasons for such a determination. For example, “the fact” that on the issue of proportional representation, the demands of the Micmacs and Blacks were incompatible. The Law School's perception of what would be politically viable in the eyes of both the government and Law Foundation of the province<sup>14</sup> appeared to be a sound basis for resolving the issue.

Nevertheless, the way in which we dealt with such issues was problematic. Throughout most of the process, we consulted with the Black and Micmac communities separately and this may have created a perception among some that we were formulating either a Black or a Micmac Programme. When, later in the consultations, it became apparent that the school anticipated a Programme sensitive to the needs of both communities, this led some to question about the good faith of the

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14. As we shall see in Part VII, this issue has resurfaced at the level of the Community Advisory Board where a sub-committee is studying the proper proportion of Blacks and Micmacs.

Law School's representatives. Though we are convinced that there was nothing intentionally Machiavellian about the process of separate consultation — indeed in a sense it seemed both logical and appropriate to respond to the particular and diverse needs of the different communities — in retrospect, it would have been better if we had outlined our vision for the Programme up front. The failure to do so could have jeopardized community confidence in the Programme and therefore have undercut it even before it got off the ground. Moreover, on reflection, perhaps our approach was still underpinned by paternalistic and anti-egalitarian assumptions. First, in the back of our minds there was a sense that tensions did exist between the Micmac and Black communities and that Dalhousie Law School, as a white institution, did not want to be directly caught in that conundrum. Instead, from our position of “neutrality” we assumed that we could equitably balance the competing interests. On consideration, a better strategy would have been to encourage a tripartite discussion. For example, in relation to proportional representation, the relevant communities could negotiate their own solution rather than have one imposed from above. The Law School representatives may have been too quick to assume that they had the answers.

On critical reflection, we simply did not have the confidence in their ability to achieve a consensus, especially given the time frame. The point is that in our benevolence we never gave them a chance. Moreover, when some protested about the process, although we listened and took heed, we simply insisted that an integrated Programme was non-negotiable, in effect retreating to a take-it-or-leave-it stance. This we could do, and this the critics had to accept, because the law school was in the superior bargaining position. When it came down to it, structurally the Programme in its formulation, promotion and execution was dependent upon “a couple of white guys”. Racism, it seems is more pervasive than we would want to admit.

This procedural problem of insufficient openness to concerns of the identified communities is closely related to a broader issue: the legitimacy of the programme in the eyes of these communities. As we have emphasized, the approach of the Law School to the Programme was more reactive to events in the larger university and provincial context than an autonomous, proactive and meticulously thought-through project. Although we both strongly believed that in the development of the Programme, it was essential to have the involvement of the relevant communities. On reflection, we are somewhat concerned about the unsystematic way in which representatives from the communities came to be “nominated”. Briefly stated, given the very constrained time frame

and the lack of connection between the essentially white Law School and the Black and Micmac communities, it was those representatives who approached us that ended up as participants in the process. Our point is not that those who did participate in the process were not excellent contributors. Rather it is that we are dubious about how "representative" they were of the plurality of perspectives that undoubtedly exists within both the Micmac and Black communities. For example, we now wonder who represented the African United Baptist Church or the Native Council of Nova Scotia? To some degree this problem has now been resolved because as we shall see in Parts III and VII, the Community Advisory Board was constructed with greater sensitivity to the issue of representation and input from the identified communities. Our point is that a broadly representative process may add breadth and greater legitimacy to the perspectives presented and this can only be to the benefit of the Programme.

Having touched upon a few aspects of the creation process we want to briefly discuss some of our aspirations for the Programme. We shall attempt to highlight what we consider to be some of the key features of the Programme and to relate them to our vision of its potential. We should point out, particularly in the light of what we have said in relation to the process, that to a significant degree we have been influenced by the arguments of Black and Aboriginal peoples not only in Nova Scotia but also in the rest of Canada and the United States.

To some extent, the 1989 proposal for the I.B.M. Programme was modelled on the Ashley/Cotter proposal of 1986, which itself had drawn on Programmes elsewhere, particularly in the United States. However, there are several key differences. Insofar as the primary aspiration of the 1986 proposal was to redress the underrepresentation of Dalhousie Law School of Blacks and Micmacs in Atlantic Canada, it was based on an equal opportunity model. Although there is much to be said for the equality of opportunity approach, in our opinion, it tends to be too much of a one way street. In other words, it takes significant institutional initiatives to provide non-white applicants with an opportunity to access the processes, assumptions, norms and practices of the white Canadian legal system, but that white system remains unmodified. Whiteness remains the unarticulated but taken for granted assumption. The danger that we identified in this was that nonwhite candidates would, perhaps, have to surrender too much of themselves and their culture in order to make it through the legal educational process. Such a process we feared, smacked too much of another form of cultural imperialism. We do not suggest that any of these consequences were intended by the drafters of the 1986 proposal.

Consequently, the objective of the 1989 proposal was twofold: “to produce more legally trained people drawn from minority communities of Nova Scotia, and to open up legal education at Dalhousie to the input of minority perspectives on the Canadian legal system.” An underlying aspiration was to structure in the possibility of an inclusive rather than a unidimensional legal education — one that anticipated adaptation not only by the Micmac and Black students but also by the Law School itself. We should point out, however, that while the Programme was more ambitious than the 1986 proposal on this level, it was somewhat more modest in its vision of the geographic range of the student pool. The narrower definition of the pool was in part because of the political and cultural pressures that were brought to bear on the process. Thus, rather than opening up the Programme to Aboriginal peoples and Blacks from Atlantic Canada, the pool was limited to Indigenous Blacks and Micmacs in Nova Scotia. Hence the acronym: I.B.M.<sup>15</sup>

A central component in determining the extent of the institutional commitment to a renovation of legal education is to be found in its hiring decisions. The proposal called for the appointment of a Director of Minority Education. All too often, the appointment of such persons has been in an administrative stream and, while there is no doubt that a significant proportion of the Director’s responsibilities are administrative, we felt that such an administrative appointment would marginalize the Programme. Thus, it was argued that in order to attract the best and most committed candidates and to ensure the integration of the Director and the Programme into the day to day activities of the school, this person should be a “full-time, tenured or tenure-stream member of the teaching staff”. It was felt that such a position was essential if the Director was to have a real chance to successfully carry out her or his three primary purposes: liaison with the relevant communities; the fulfilment of the role of professor and tutor to the students; and, liaison with other faculty members in order to help them change the substance and methodologies of their teaching so as to be more inclusive of the concerns of the Black and Micmac students. It was also argued that it was desirable that the Director be a member of one of the communities identified. However, the commitment was to a Black or Aboriginal Director, not necessarily to one from the Nova Scotian communities.

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15. MacKay claims credit for the acronym, defending it on the basis of irony. Devlin remains unimpressed. It is interesting to note that the original proposal was cast in broader terms as “A Proposal to Enhance Minority Participation” but MacKay’s experience on the Task Force and consultation with the Black and Micmac communities suggested that those most in need of access were the Indigenous Blacks and Micmacs. The Law Foundation of Nova Scotia, as the primary funder, also preferred the Nova Scotian focus for the Programme.

To return, again, to the question of process there were some interesting developments around this issue of recruitment of a permanent Director on a tenure track basis. Although some faculty members expressed concern at the nature of such an appointment, fortunately, this was not a major hurdle in gaining their support for the Programme. The biggest dilemma was who the appropriate person might be. The first problem once again related to timing. Funding was not secured until April 1989 and the Programme was scheduled to come into operation in July. This left almost no time for an adequate market search. Second, we had identified two primary communities, but were very conscious that their aspirations and needs were quite distinct. From which community would the Director come? Were there in fact any suitable candidates within either of the communities? What were the relevant criteria? Were the traditional white male standards of professorial potential to be applied? Indeed, would such standards be a liability? An easy solution briefly loomed on the horizon.

It was then suggested that, as a one year interim measure, a member of the current Faculty could fulfil the position until a permanent Director could be found. At first, and not surprisingly, this option went over like a lead balloon with the representatives of the Black and Micmac communities. One particular concern was that a Programme was being created, ostensibly in the name of Micmacs and Blacks, but that the primary benefactors would be the Law School as an institution and some white person. Isn't that always the way? By this point, we were already into May and things were looking grim for a July 1989 start up date. Once again the idea of appointing an interim Director from the current faculty was floated, this time specifically identifying MacKay as the possibility, reinforced by a promise from Dean Innis Christie at a public meeting at the North Branch Library, Halifax, that he would resign if a "minority person" was not appointed as a Director within a year. Yet another series of meetings were held with representatives of the Black and Micmac communities, one of the most interesting being over a couple of beer in the Graduate House. At this meeting issues were openly debated and a consensus achieved.<sup>16</sup> Eventually, this interim resolution was agreed upon, we believe, much to everyone's relief. In retrospect, this informal genre of decision-making (the "old boys network") is not an appropriate way to reach such important decisions.

To a certain extent this killed two birds with the one stone. MacKay's interim Directorship created a one year contract position in the Law

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16. It is indicative of the flawed process of consultation that no Micmacs were present at this informal meeting.

School and, as it turned out, this was offered to and accepted by Patricia Monture, a Mohawk woman. Thus, within a six month period the Programme had been conceived, approved, funded and established, and two Aboriginal people (though neither was a Micmac<sup>17</sup>) had acquired positions on the teaching staff, one tenure stream, the other on a term contract. In the course of the following year, a Director was appointed, Davies Bagambiire, a Black of Ugandan origin who had practiced in Nova Scotia for approximately fifteen years. He was also active in the Afro-Canadian Caucus, Nova Scotian Black politics and human rights and immigration litigation.<sup>18</sup>

From our perspective, these developments in academic appointments suggest that on this level, the Dalhousie Law School has taken its institutional responsibility seriously. Within an eighteen month period in a faculty of approximately thirty, a faculty that due to budget cuts was undergoing a reduction of its complement, one tenth were non-white. We also believe that the potential spin-off effects of this hiring policy are significant. First, though one could hardly say that three persons constitute a critical mass, it does suggest the transcendence of tokenism (although that is always a lurking danger) and the possibility of a support network within the school. Secondly, the presence of several non-white teachers creates role models for Micmac and Black students which, the research indicates, is important for motivating students of colour. Thirdly, it will allow for more authentic First Nations and Black perspectives to be expressed in the Law School rather than being filtered through a couple of well meaning but probably erroneous "white guys". We hasten to add, though, that this does not mean that white members of the Law School do not have a continuing role to play, rather their role has changed. This is a point we will return to shortly.

The Law School initiative also called for a series of reforms to facilitate access by, and the retention of, Micmac and Black students. Many of these were relatively common in other Programmes and would include: proactive recruitment strategies, an expansion of admissions criteria so as to decentre the significance of the LSAT test, with its potentially discriminatory impact; a pre-law education initiative modelled to a large

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17. To our knowledge the exclusion of the Micmac people from legal education in Nova Scotia has been absolute: there are no Micmac graduates of Dalhousie Law School. This, in effect, meant that for the time being, at least the possibility of appointing a legally trained person from that community was non-existent. Certainly, the Programme will spoil that perfect record. Ironically the first Micmac to graduate with a law degree was from Osgoode Hall Law School in 1991.

18. Unfortunately, Professor Bagambiire did not remain as Director beyond a few months and in retrospect Dalhousie paid a price for moving too quickly.

degree on the Native Law Programme at the University of Saskatchewan; the creation of a comprehensive and intensive tutorial and counselling package; and a law summer school after the first regular year term to cover the course that had been displaced by the tutorials programme. Cumulatively, these components are designed to prevent the open door from becoming a revolving door.

At the same time, we were convinced that these modifications of the traditional law school programme would not go far enough in that they would leave too much of the ethnocentric substructure in place. It would still demand too much of a denial of the student's alternative world views. It was insufficiently transformative of the nature, purpose and identity of Dalhousie Law School to truly include different perspectives. Consequently, the proposal called for a modification, not merely of the procedures of the law school, but also of the substance of what happens in a law school. Thus it was proposed that upper year seminar courses be developed that would directly encompass issues of particular interest to Blacks and Micmacs, and that students be given academic credit for legal projects that they might take on in relation to their communities. In this way, the School would be validating vital aspects of the *raison d'être* for the presence of at least some of the Black or Micmac students. Changing the nature of the Law School involves not only whom you teach, but also what and how you teach.

However, it was felt that even these changes did not go far enough in destabilizing the hegemony of whiteness in the school. We feared that the creation of specially tailored courses, though vital, could result in the "ghettoization" of issues of race, and that this would have deleterious ramifications not only for Blacks and Micmacs, but also for the white students and teachers. Consequently, it was proposed that all teachers take proactive steps to develop "generative themes" in *all* law school courses so as to reflect the importance of interpretations beyond, and quite possibly critical of, white perspectives. Though some of the burden for this task would be on the Director, the vast majority of the responsibility was envisioned as falling on individual professors to seek out materials that could shed light on their courses, in ways that would be inconceivable when operating within the myopic parameters of the white paradigm. Thus, a central ambition of the Programme was that it could operate as a sort of "structure-revising-structure",<sup>19</sup> a blueprint for the reconstruction of an institution, so as to render it less racist, (perhaps even anti-racist) less elitist, less exclusive. In more positive terms the aim was to make Law School a more inclusive and more dynamic

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19. R.M. Unger, *Politics: A Work in Constructive Social Theory* (1987) *passim*.



educational forum, one that had begun to transcend its nineteenth century origins, one that was ready to embrace the twenty first century. We were optimistic enough to think that this could be the beginning of a genuine celebration of difference at Dalhousie Law School.

### III. *The First Year of the I.B.M. Programme*

It was not clear that the new Programme would be operational for the 1989-90 school term. The resolution of Faculty Council approving in principle the proposal for the I.B.M. Programme was only passed in April of 1989, while the funding from the Law Foundation of Nova Scotia was only secured in late April of that year. This timetable made a nation-wide search for a Black or Aboriginal Director for the Programme a virtual impossibility. There were conflicting pressures to avoid delay and thus to strike while the iron was hot. This was counterbalanced by the pressure to start the Programme on a solid footing.<sup>20</sup> The pressure to choose carefully the Director was further accentuated by the commitment to hire on a tenure track basis, thereby allocating scarce faculty resources on a long term basis, even though the funding for the Programme was short-term.

The solution to this dilemma was to appoint an Interim-Director from within the existing faculty for the 1989-90 term. Both of the "white guys" writing this article were implicated in this arrangement. Richard Devlin, aided and abetted by Dean Christie, succeeded in talking Wayne MacKay into serving as the founding Director of the I.B.M. Programme. All parties were aware that this was a less than ideal solution and only defensible as a temporary measure.<sup>21</sup> While there were some political advantages to the Director being neither Micmac nor Indigenous Black in the sense of not having to choose between the two communities, the choice of a white Director did raise questions of legitimacy in both communities. The institutional response of Dalhousie Law School was two-fold. In a June, 1989 meeting with both Blacks and Micmacs, Dean Innis Christie promised to resign if a Black or Aboriginal Director was not in place within a year.<sup>22</sup> MacKay's institutional response, as Interim Director, was to create a Community Advisory Board to assist him in guiding the Programme and to provide grassroots input.

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20. These conflicting pressures are revealed in the Faculty Council Minutes of April 14, 1989 and Wayne MacKay's memorandum to Faculty Council dated April 14, 1989 and attached to the Faculty Minutes.

21. It is a far too common occurrence that programmes are established to benefit visible minorities or First Nations people only to be guided and controlled by a "great white father".

22. This was also the only basis upon which MacKay was willing to serve as Interim-Director.

The creation of the Community Advisory Board was an important achievement of the first year of the I.B.M. initiative. An Advisory Board (a majority of which would be drawn from the Black and Micmac communities) is consistent with our vision of the Programme as empowering not just individual Black and Micmac students, but also the larger minority communities. For political reasons many groups wanted to be represented on the Board and it grew to a rather large twenty-two members.<sup>23</sup> On the Board were representatives of Black and Micmac communities, the University at large, the Law School, Student Counselling, students (both from the Law Student Society and the I.B.M. students) and the Nova Scotia Bench and Bar. The intention was that the real work of the Board would be carried out by smaller working committees and the full Board would meet as a policy body only three or four times a year. In fact, the Board met on a monthly basis from its creation in November, 1989 to June of that year.

Interesting and challenging political questions were raised by the selection of Board members, especially those from the Black and Micmac Communities. The three major political organizations representing the Micmacs are the Union of Nova Scotia Indians, the Native Council and the Confederacy of Mainland Micmacs. Each of these organizations nominated representatives to the Board. There was no such clear delineation of authority within the Black community. The process adopted at a community meeting in the North Branch Library in Halifax was that various Black organizations (such as the African United Baptist Church and the Afro-Canadian Caucus) would suggest names which would form the pool from which Board members would be selected by an ad hoc committee composed of Janis Jones-Darrel (then Minority Advisor to the President of Dalhousie), Dean Innis Christie and Interim Director, Wayne MacKay. These selections were made with some effort to reflect the different political views within the Indigenous Black communities.

The Advisory Board provided a vital link to the grassroots minority communities and under the co-chairing of Catherine Martin (Micmac Professional Careers Project) and Senator Donald Oliver, Q.C., it provided valuable assistance to the Director during the first year.<sup>24</sup> While

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23. By the end of the second year of the Programme the size of the Board was reduced to nearly half its original size and the name was changed to "Advisory Council" to emphasize the limits of its role. There was a price for being broadly representative.

24. Because of the many demands on Senator Oliver's time Catherine Martin chaired more than half of the meetings and devoted much time and energy to the Programme. Ms. Martin deserves credit for being actively involved with the Programme from its earliest guise in 1986.

the Board does represent another level of bureaucracy for the Director, it is a vital part of a community sensitive Programme. During the first year the advice that the Board offered was taken seriously by both the Director and the Dean. One of the best illustrations of this was the inclusion of two Board representatives as full voting members of the Law School Appointments Committee which selected the full-time Director. As the year unfolded some tensions grew between Black and Micmac members of the Board and these were emphasized by the selection of a Black Director. However, political tensions were generally kept within the Board and not passed along to the students. In respect to the students, the Board played a supportive role.

The heart of the Programme during its first year was the six pioneering students who survived within the fish bowl that was the I.B.M. Programme. There were three Micmacs and three Blacks and of these six only one was a woman. Some entered the Law School fully aware of the political nature of their presence, while others wanted to get a law degree with a minimum of attention. Some wished to champion the I.B.M. Programme while others wished to remain anonymous. These differing approaches came to the fore in respect to the posting of notices, treatment at faculty marks meetings and the handling of tutorials, to give but a few examples. The challenge for the Director was to raise the profile of the Programme for funding purposes while not detracting from the rights of those who wished to remain low profile.

By the time of the "Open Forum on Racial Issues" held on March 16, 1990 all but two of the students were willing to publicly identify with the Programme. This forum begun the previous year by Catherine Cogswell (a third year student) and Cynthia Thomas (another third year student and President of the Law Student Society). It was designed to focus attention on the problems of racism in society. Black and Micmac speakers were brought to the Law School and students and faculty were encouraged to attend. The I.B.M. students played a significant role in organizing the 1990 version of the "Race Forum" and they were able to exercise some political power — albeit in a limited form. There was the hope that the dialogue engendered by these forums could make the Law School community more sensitive to racism and thus more inclusive of Black and Micmac perspectives. The fear was that it can have the opposite effect. One thing that these sessions do achieve is to place racism squarely on the Law School agenda.

Academic supports for the six I.B.M. students were in the form of tutorials and the deferral of Criminal Law until the summer. In the proposal there was a third support in the form of a six-week pre-law course in July and August prior to law school. This was not available in

1989-90 because of the late start for the Programme. Two of the Micmac students had attended the summer programme at the Native Law Programme in Saskatchewan, but the other students had no access to such a course.

The idea behind the deferral of Criminal Law was to create space for tutorial sessions and to take some of the pressure off the first year. Another advantage of this arrangement was the creation of a seminar in Criminal Law, taught in an intensive four-week block.<sup>25</sup> During the first summer, the course was taught by Professor Archie Kaiser who describes it as one of the best<sup>26</sup> experiences of his law teaching career. The downside of the deferred Criminal Law course is that it stigmatizes the I.B.M. students and could be seen as paternalistic. It also cuts into the students' summer earning capacity. On balance we think the deferred course is a desirable part of the Programme but experience may someday suggest that it is not necessary.<sup>27</sup>

Next to the Director, tutorials are, in our view, the most vital feature of the I.B.M. Programme. Eight second and third year students were hired from an applicant pool of forty students. This high level of interest in tutoring was particularly encouraging because the honorarium was not high and most of the students were committed to making the I.B.M. Programme work. Many of the students who were not hired as tutors were happy to serve in a volunteer bank to assist in administrative and social matters related to the I.B.M. Programme. A committee was struck by the Director composed of himself, Sandy Hodson from Student Counselling and Law Professors John Yogis and Mary Ellen Turpel for purposes of hiring the tutors and directing them at a policy level. We selected tutors on the basis of both academic ability and sensitivity to minority issues and on balance we selected well.

Each of the six I.B.M. students was assigned to an individual tutor, as were two students who were admitted by regular channels, but became voluntarily involved in tutorials.<sup>28</sup> There were also subject tutorials in the

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25. The selection of Criminal Law as the course to be deferred was somewhat arbitrary but it did seem a reasonable choice. After the fact there was some suggestion that it was a good choice because sensitive issues are raised by the presence in the case material of Blacks and Aboriginal people as either criminals or victims of crime.

26. H.A. Kaiser, "The Demise of the Monochromatic Law School: One Professor's Celebration", seminar paper prepared for the Edinburgh Conference of the Society for the Reform of Criminal Law, *Equality in the Administration of Criminal Justice*, August 5-9, 1990.

27. The line between helpful supports to assist the students in the Programme and paternalism is a fine one.

28. One Black student from British Columbia was admitted on the condition that she take the tutorials, and a Métis women opted to be involved in the tutorials during the first term. Both these students became concerned about being stigmatized and did not attend the subject tutorials in the second term. They also made a point of distancing themselves from the Programme.

four substantive courses — Public Law, Torts, Contracts and Property — which were taught by a pair of tutors. The idea behind having a pair of tutors in each subject was to provide a more balanced perspective and to allow the sessions to be split if it was felt desirable. On the assumption that there might be some learning style differences between the Black and Micmac students, two tutors could better accommodate the situation. The tutoring sessions were not split in this way and when it was discussed the students were opposed to it. The group was divided for some of the subjects on the basis of different teaching materials and varying professor styles.

On the advice of the Community Advisory Board the tutorial sessions were mandatory during the first term but as a consequence of a friendly student protest after Christmas, they were made optional for the second term. Attendance was reasonably good throughout the year and this was especially so when the tutors emphasized problem solving and examination writing. As a positive side effect of the tutoring many of the I.B.M. students and tutors became close friends.

Another part of the tutorial structure was a general Friday tutorial session operated by the Director and Sandy Hodson of Student Counselling. These sessions focused on time management, study skills, organization and writing. Attendance at these sessions were not so regular, a fact that is in part explained by their Friday afternoon slot.<sup>29</sup> During second term the role of these sessions was changed to provide a forum for raising concerns with the Director and to allow special presentations on mooting skills and examination writing. The most popular tutorials were those that emphasized practical skills rather than subject content but it was often difficult to assess what skills were needed. Flexibility and willingness to change to meet the needs of the students are vital to a successful tutorial structure.<sup>30</sup>

The major thrust of research and curriculum change during the first year of the Programme was the design of the Pre-Law course for the summer of 1990. Catherine Cogswell, an interested and involved third-year student, assisted the Director during the school year in designing the Pre-Law course and preparing materials. Because both the Director and

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29. Dorothy Loomer, a Dartmouth teacher, volunteered her time during the first term to teach computer skills and three of the students took advantage of her sessions on a regular basis. While timing was a problem the opportunity to acquire important computer skills was appreciated.

30. J. Broocke, *Skills Based: A Guide for Tutorials Implementation* (1990). The need to be flexible and creative with tutorials was also reinforced in a meeting between the Director (MacKay) and Ruth Thompson of the Native Law Center in Saskatchewan in May, 1990. Ms. Thompson also stressed the importance of basic reading and writing skills to success in law school.

Ms. Cogswell are white there was some concern expressed by both the I.B.M. students and the Advisory Board that there should be more minority input.<sup>31</sup> Most decisions concerning the Programme have a political dimension and the potential for controversy, and one of the essential skills of a Director, is trying to anticipate such problems to head off confrontations.

The politics of the Pre-Law Programme also bubbled up in the Advisory Board context. There were two issues of controversy at the Board level. One concerned the role of the Pre-Law course and the other its content. On the question of content the concern was whether it was appropriate to include a segment in the Pre-Law course dealing with problems of racism in legal education and in the justice system at large. Some supported the inclusion of such materials as dealing with the experiences of Black and Micmac students, while others objected on two different bases. One perspective was that the material was too sensitive and the issue of racism too emotional to be encountered so early in law school. The other was that the Pre-Law course should be a reflection of the regular law school curriculum and not create the illusion that discrimination and racism will be acknowledged.<sup>32</sup> Another way of expressing the latter concern is that the Pre-Law course should teach the basics. After weighing this advice, the Director did not remove the material on racism and the nature of legal education but he did try to take account of the need for sensitivity, when he taught this segment of the Pre-Law course in August, 1990.<sup>33</sup> The advice on this matter was taken seriously but not followed.

The role of the Pre-Law Programme was a more hotly contested matter. Most of the Micmac members of the Advisory Board advocated the use of the Programme as a screening and evaluating device — similar to the Saskatchewan Native Law Programme. Many of the Black Board members felt that it should be an orientation and a preparation but not

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31. Director MacKay did not feel it was appropriate to take the I.B.M. students away from their studies during the school term but did intend to involve them in reviewing the materials prior to their final approval. Joan Mercredi, a Métis student, was also hired as a summer student to work on the materials and consult with the I.B.M. students. Catherine Cogswell had earlier been challenged in respect to the Race Forum for her leadership role, as a white women raising minority concerns.

32. Issues of racism and discrimination are central to the first year Public Law course and do emerge more regularly in the first year curriculum than the members of the Board realized. There was a certain irony in being instructed by non-lawyers about the nature of the Law School curriculum.

33. Ruth Thompson of the Native Law Center in Saskatchewan had also advised against the inclusion of such materials in a May, 1990 meeting with the Director. Based on both formal and informal student feedback this segment of the course was well received by the students.

a further hurdle to admission. A middle of the road compromise proposed by MacKay won the day. The focus was to be orientation, but there would be an assessment on a pass/fail basis of whether the student successfully completed each of the four Pre-Law segments.<sup>34</sup> In order to allow more time for students to earn money, the Pre-Law Programme was only offered for four weeks in the month of August, immediately prior to the start of law school.

Funding provided another political mine field for the I.B.M. Programme in its first year of operation. The Law Foundation of Nova Scotia provided the financial anchor by funding the Director and the administrative structure to the sum of \$76,000.00 in the first year and guaranteeing a somewhat larger financial base for the second year. None of this money went to providing a living allowance for students, which was called for in the Proposal for the I.B.M. Programme, in recognition of the significant financial hurdles faced by many Black and Micmac students.<sup>35</sup> While the Micmacs were partially funded by the Department of Indian Affairs and their bands, there was no such financial aid for the Indigenous Black students. On this issue, the hero was distinguished Dalhousie Law School alumnus, Alex MacIntosh, of Blake, Cassels and Graydon in Toronto. He spearheaded a private funding campaign that produced a modest living allowance for the Black students within the same range as that provided to the Micmac students.<sup>36</sup> Without this money from private sources, the Black students would have encountered considerable financial stress to add to their academic load.

The Nova Scotia Government made a \$15,000 donation to the Programme in its first year and during the fall of 1989, then Premier John Buchanan announced that he was willing to support the Black students in the Programme at the same general level as the Micmac students. After a series of unanswered letters and phone calls over many months it became clear that the Province of Nova Scotia would have to be pushed to fulfill its promise to implement recommendation 11 of the *Marshall Inquiry Report*.<sup>37</sup> After much acrimonious debate, press conferences held

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34. For economic reasons there were pressures to have the whole Pre-Law Programme taught by the new Director. In the end Davies Bagambiire taught Public Law, Wayne MacKay taught Legal Education and Racism, Mary Ellen Turpel taught Property and Jennifer Bankier taught Contracts.

35. The financial barriers faced by Micmac and Indigenous Black students were recognized in the Law School proposal and *Breaking Barriers*, *supra*, note 9.

36. The Walter & Gordon Duncan Foundation, John Labatt Ltd. and the Canadian Imperial Bank of Commerce were the main corporate benefactors.

37. This recommendation called for funding of the I.B.M. Programme by the governments of Canada and Nova Scotia, as well as the Nova Scotia Bar. *Supra*, note 12.

at the Law School to expose the government's position, and angry exchanges in the media between the Attorney General and the Director, a tripartite, three-year funding arrangement was finally reached in early 1991. The parties to this funding arrangement were the Law Foundation of Nova Scotia, the Government of Nova Scotia and the Secretary of State at the federal level.<sup>38</sup>

In addition to pursuing funding and operating the Programme on a daily basis, the Director is intended to forge links with both the Black and Micmac communities. The demands of the Programme on the home front during the first year did not leave much time for this important task, but there were recruiting missions and community meetings building on MacKay's contacts developed as Chair of the Task Force on Access for Black and Native People. The Community Advisory Board was an important link to the communities. Public relations was also an important part of the Director's agenda in the form of meetings with the Nova Scotia Bar Society and other interested groups.<sup>39</sup> The development of a brochure, posters, t-shirts and stationery as well as a Programme logo, helped to establish a clear identity. For better or for worse, the I.B.M. Programme had a high profile in both the local and the national media during its first year and most of the coverage was quite positive in nature. It was known within the legal community and beyond that the face of Dalhousie Law School had changed.

#### IV. *Reflections and Recommendations*

The emphasis on Parts II and III of this essay was on providing a description of the origins and first year of the I.B.M. Programme, although this was supplemented by some analysis of, in particular, the procedural shortcomings. In this part of the essay we want to stand back and develop some reflections on the Programme and to make some recommendations for further improvements. Although we believe that

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38. The details of this budget are presented in *The Law Programme for Indigenous Blacks and Micmacs: Final Report to the Law Foundation of Nova Scotia* (W. MacKay) August, 1991. Schedule D of *Report Number Three Regarding Law Programme for Indigenous Blacks and Micmacs at Dalhousie Law School, Halifax* (D. Bagambiire), August 1990, provides the press clippings that accompanied the high profile dispute over funding. When Joel Matheson succeeded Tom MacInnis as Attorney General and John Buchanan went to the Senate, the Nova Scotia Government was more cooperative with respect to the funding of the Programme.

39. In the wake of the *Marshall Inquiry Report*, the Bar Society was officially supportive of the Programme even if many individual members were sceptical. Bruce MacIntosh, who was President of the Bar Society during the 1989-90 term, was not only outspoken in favour of the Programme but served as a member of the Community Advisory Board. This link has been extended into the second year of the Programme in the person of Darrel Pink, Executive Director of the Nova Scotia Bar Society.



the original proposal, both in its conceptualization and execution, identified, confronted and reduced some of the problems that non-white students encounter in law school, it has become apparent that further modifications need to be made.

In the first year of the Programme, significant attempts were made to advertise the Programme in the Micmac and Black communities, by the means of pamphlets, posters, brochures, presentations and media coverage. In the main, we think that this was very successful but we have a sense that the information networks within the Micmac community are somewhat more accessible than those within the Black community and that particular efforts should be made to improve the distribution of information within the latter. More generally, perhaps, a video should be put together so as to provide potential candidates with a more comprehensive sense of what law school life is about.

As was pointed out in the original proposal, one of the most difficult barriers for minority communities is the racially biased Law School Admissions Test (L.S.A.T.) with its adverse impact upon minorities. Although significant efforts have been taken by a few members of the Faculty to modify the anxiety expressed by many potential candidates in taking the test, and to provide some assistance in L.S.A.T. methodology, we believe that greater efforts should be made in this direction. Specifically, as part of the Director's outreach function, s/he should organize a series of weekend workshops on L.S.A.T. skills, perhaps drawing on the experience of students who have done well on this test.

The first year Programme itself also needs some changes. The one month Pre-law Programme appears to be quite successful, particularly now that there has been a resolution of the debate as to its role. Unfortunately there has been no similar resolution (and we doubt if there can be) as to the broader structure of the first year curriculum. There are still some debates about the focus of the first Pre-law Programme and whether it is too ambitious on the broader issues. As discussed in the previous section the sessions on racial and sexual barriers in legal education have been well received. There appears to be some value in recognizing the problems faced by "outsiders" in the legal fraternity.

One of the most difficult issues in developing the I.B.M. Programme, and then in its actual execution, was whether the tutorial Programme and the deferral of Criminal Law to the following summer, should be mandatory or optional for the I.B.M. students. The original proposal espoused the mandatory approach. Not surprisingly, at least some of the students disagreed with this choice, primarily on the basis that it was paternalistic and stigmatizing. Indeed, after the first set of Christmas examinations, the students strenuously lobbied MacKay, who agreed to

make the tutorials optional during the second term. It is interesting to note that the more general tutorial had a poor attendance rate but that the student led tutorials continued to be very popular. We believe that this difference can be accounted for on two grounds: first, the student tutorials in the second term focused upon examination skills, whereas the general tutorial was more open ended; and second, that excellent relations had developed between the tutors and the students.

In the light of the first year of experience, it seems to us that the tension between autonomy and paternalism is one that will need to be thought through each year. Although philosophically, we both believe that autonomy should trump paternalism we also believe that given the reality of the culture shock of law school and the temptation within contemporary society to impose a regime of sameness rather than one fostering difference, it is inappropriate to permit the students to opt out of the support mechanisms provided by the I.B.M. Programme. The compromise might be, as in fact happened in the first year, to make the deferred course non-negotiable, and to expect compulsory attendance at tutorials for the first term, but make them optional in the second term. Having said this, we also want to emphasize that within this broad compromise, the key should be a sensitivity to the *needs* of individual students, so that the Director should pay particular attention to the progress of each student and provide guidance accordingly. This, of course, demands great sensitivity on the part of the Director, and an open and trusting relationship with students. Flexibility and openness are the keys to success.

These concerns also impact upon our suggestions for the second and third year I.B.M. students. Although the original proposal envisaged support for the students throughout the Programme, we are somewhat concerned that the student demand for autonomy may result in an institutional license for non-involvement. This, we think, would be a fundamental error, that will only be avoided if the Director, and all the other teachers, remain in tune with the needs of the students as they progress through the law school. There is little point in providing a comprehensive support network in the first year, only to abandon the students in the upper years. The result could be to simply relocate the revolving door. Hopefully, the support network of the first year will provide the necessary foundations for law school success, but for some of the students there may be a need for ongoing support. Thus, the school should be willing and able to provide tutorial assistance for at least the second year students should it be required, and the Director should liaise with the other professors to ensure continued success.

This, in turn, leads us to a more structural problem that, we believe, continues to thwart the ambitions of the Programme. As was pointed to

in Part II of this essay, in order to avoid the dangers of cultural imperialism, the Programme was deliberately designed to have two components: the first was to increase access, the second was to “open up legal education at Dalhousie to the input of minority perspectives in the Canadian legal system.” Though we think that significant progress has been made in relation to the first of these ambitions we are less sanguine about the latter, which aspires to a reconstruction of legal education at Dalhousie, or as Professor Archie Kaiser has put it, to achieve a polychromatic rather than monochromatic legal education.<sup>40</sup>

Although some progress has been made on the expansion of the Law School’s conception of legal knowledge, it seems to us that, on balance, the impact has been marginal and that the dominant thrust of legal education has remained unmodified. Although issues of race have been raised in several courses, in the vast majority of others there has been no movement at all, and in some there has been explicit resistance when students have raised issues of race. Although we realize that it takes time to adapt and develop courses, we also believe that it is a question of priorities and that the institutional commitment that was expressed at Faculty Council when the original proposal was passed, seems to have sagged somewhat since that time. One obvious strategy of resistance has been to conceive of issues of race as, definitionally and structurally, the domain of the I.B.M. Programme, the responsibility of the Director or the two First Nations professors. This, we believe, is unacceptable. Racism in legal education is an institution wide problem, and the creation of an anti-racist legal education structure is a faculty wide responsibility. There is a vital role to be played by white lawyers and law teachers in the expurgation of racist practices from law: silence and ghettoization being two such practices.

What is required is a renewed commitment from faculty members to move beyond equal opportunity, so as to make anti-racism an important element of their legal education praxis. What is aspired to, and what may be within Dalhousie’s grasp, is the creation of an inclusive and more holistic legal education environment. Should this be achieved, the result might be a greater recognition of legal disadvantage, the recognition of the possibility of equality of condition, a decentering of the white norm within the academy and the valuing of difference.

As a first step to achieving these goals, it is necessary to develop a series of cross-cultural awareness sessions, particularly targeted at the professorate. Secondly, it should be considered a central mandate for the

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40. H. Archibald Kaiser, “The Demise of the Monochromatic Law School: One Professor’s Celebration”, *supra*, note 26.

new dean, that s/he provide leadership for the faculty in achieving the requisite attitudes. In particular, research assistantships for the next couple of years, or at least until every course has a race conscious component, should have their focus on the development of race specific materials. Thirdly, although the school has done remarkably well in attracting professors from the First Nations and Black communities, complacency on this front would be fatal, and efforts must be made to retain these teachers and to recruit others. Fourthly, in the light of the increased student activism and the potential for change to come from the bottom up as well as the top down, we recommend that the faculty should consider the student input as a vital component of the self-revising ambitions of the Programme, and respond favourably to them. In the next section we discuss some of these student contributions to the life of Dalhousie Law School.

#### *V. Student Influence: Changing the Traditional Structures of the Law School*

In the early days of the I.B.M. Programme some of the students wanted to keep a low profile. These students felt vulnerable to the stigma that some students, lawyers and others would attach to being a member of the Programme. Frequent reference was made to being in a “fish bowl” and wanting to get on with the task of learning law, like any other student. Other students in the Programme sought to be explicit about their political consciousness and were eager to fight political battles under the banner of the I.B.M. Programme. This division of perspectives emerged in respect to how high profile we should be about the I.B.M. Programme within the law school. Should there be notices on I.B.M. letterhead and, more importantly, should these notices have names of the individual students in the Programme?

These questions were squarely addressed in early tutorial meetings between the Director and the students. The result of these consultations was that we should be proud of the I.B.M. Programme and not try to hide its identity but that we should respect the privacy of individual students who should be free to decide for themselves what kind of political profile they wanted to adopt. These identity problems were further complicated by the presence of one Black and one Métis person in the early tutorials who were not part of the I.B.M. Programme, but had been admitted through regular admissions channels. At the request of the Admissions Committee the tutorials were made available to them on a voluntary basis. These two people were also given access to an individual tutor. Neither of these people made use of the formal tutoring structure after the

Christmas break because of what they felt was the negative stigma attached to the Programme.<sup>41</sup>

As time went on, the students realized that Dalhousie Law School is really a small community and there was little chance of hiding one's association with the I.B.M. Programme. Because the tutorials were mandatory and perceived as useful by the students, there was regular attendance at the tutorials, with one exception. This one person had legitimate reasons for not wanting to be openly identified with the tutorials, so he met with the Director on a weekly basis, in lieu of attending the formal tutorial sessions. At the general Friday tutorials with the Director there were frequent discussions about the profile of the Programme and the students in it, and they became more comfortable with the fact that they would not likely be regarded as "regular" Dalhousie law students, at least in the short term.

Different approaches about the political role of the I.B.M. students persisted throughout the year and some adopted a low profile approach. There was no pressure to do otherwise and people within the Programme agreed to differ on this point. On March 16, 1990 the I.B.M. students in conjunction with Catherine Cogswell, a white recent law graduate, sponsored an Open Forum on Racial Issues at Dalhousie Law School. This was the second such venture designed to raise consciousness about racial issues in the Law School and the larger society by bringing in speakers from the Black and Micmac communities. The first Open Forum on Racial Issues (which had taken place during the negotiations leading up to the establishment of the Programme) was organized by Catherine Cogswell and Cynthia Thomas, a second year Black law student who later became President of the Law Student Society. The second Racial Forum marked a turning point for some of the students in the I.B.M. Programme as all but two of the six students decided to go high profile and assert their political power. The students insisted that they be actively involved in organizing the conference, selecting speakers and chairing panels at the conference. In general terms the Racial Forum was a big success and the I.B.M. students involved do not appear to regret having adopted such a high profile political role within the Law School.

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41. This perception was crystallized when a document was circulated by the Associate Dean's office at the Faculty Council marks meeting in January, 1990 showing the results of the I.B.M. students and included the other two students as well. When the students found out about this segregating they all objected to it. The Director, who had not been consulted on the preparation and circulation of this list, made it clear that there should be no such singling out in the future. There has not been. In any event, the two outside students ceased to attend the tutorials after this.

In both a direct and indirect way the I.B.M. students began to exert an influence on the curriculum of the Law School and its research agenda. Change in the basic law school curriculum to reflect the different perspectives of Blacks and Micmacs is an important objective of the I.B.M. initiative. Some progress had been made at Dalhousie even before the arrival of the I.B.M. Programme. The first year Property course under the direction of Professor Phillip Gerard has a section on Aboriginal land issues, although it has not been taught by all Property professors. Public Law — the first year small group course — has focused on the issues of equality, human rights and discrimination for several years. With the arrival of Professor Mary Ellen Turpel and the I.B.M. Programme, a section on slavery was also added to the materials on Property. Public Law Professors developed both materials and assignments which directly raise issues of racial discrimination and “affirmative action” and this was another indirect response to the presence of I.B.M. students in the Law School.

With the arrival of the second wave of I.B.M. students in 1990-91, the influence of these students on the curriculum, teaching the research at Dalhousie became even more direct. One Property Professor who teaches neither Aboriginal land issues nor slavery was challenged on this point first by an I.B.M. student and then other non — I.B.M. students about what constitutes the core of Property Law and where issues of Aboriginal title and slavery should be addressed. There was no immediate change in the course syllabus as a result of this exchange but the issue was put squarely on the table and the encounter sparked a wide-ranging discussion about these issues outside the classroom as well. Regrettably, however, this professor has continued to exclude these issues.<sup>42</sup>

Another illustration of the value of the I.B.M. students in educating faculty about being aware of different racial perspectives occurred in Public Law. Here the issue was not the exclusion of issues and materials that are relevant from a minority perspective but rather how these materials and issues are handled in a small group teaching context. Most, if not all, of the I.B.M. students have experienced racism and attacks on anti-racist programmes, on a personal basis.<sup>43</sup> Thus, they felt quite vulnerable in some of the Public Law classes when the professors in the

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42. The reason given by this professor is “a lack of expertise in this area.” This is a tricky problem. We do, of course, recognize that without an experiential basis it is difficult to claim “expertise” in racism, but frequently law teachers conduct courses in which they are not “experts”, but they have at least a familiarity with the literature. In our opinion, it is a question of commitment and time allocation.

43. For example, in the first year of the program white resistance manifested itself in a temporary group which called itself A.I.L. . . . Advocates for Individual Liberty! Fortunately, the great majority of the student body was supportive of the I.B.M. Programme.

name of "objectivity" and "pluralism" would entertain a wide range of views from students in the class without indicating their own stand on the issues. Some students also felt that they were being singled out to represent the Black or Micmac view on an issue, when they would have preferred to remain as silent observers. They also found it difficult to be involved in an open discussion of the pros and cons of affirmative action when the I.B.M. Programme was the example used.

The response of the students to this concern was to meet as a group and thereby support their colleagues who felt vulnerable. They then met as a group with the Director and asked him to pursue the issue with the relevant Public Law teachers, thus taking the burden off the individual first year students to challenge their professors on this issue. The questions of what and how you teach are not simple and there are issues of academic freedom and student free speech that deserve consideration. To have a discussion on anti-racist programmes where no one is allowed to say anything negative would be a degree of censorship in academic conversations that most would find offensive. On the other hand, there is an obligation to be sensitive to the experiences of Blacks and Micmacs in the class (and indeed to individual students generally). This is an important part of teaching in a more inclusive way. We address the substantive issue elsewhere in this article but the process point we raise here is the power of the I.B.M. students as a group to influence teaching at Dalhousie Law School.

There has also been an impact on research at the Law School in a number of ways. A significant number of students at Dalhousie are interested in Black and First Nations issues and are now pursuing research papers in these areas. This is facilitated by the fact that Professor Mary Ellen Turpel is offering a seminar on Aboriginal Peoples and both she and Professor Patricia Monture are eager to supervise Independent Research papers in these areas.<sup>44</sup> Some of the second year I.B.M. students have embarked on Independent Research papers that deal with issues from the Black and Micmac perspectives. Tutors have also had their interest stirred by involvement in the Programme and have used their contacts with the I.B.M. students as an opportunity to raise their own consciousness. Hugh MacAuley who was one of the first group of tutors, has written an excellent paper on the I.B.M. Programme in the context of other such Programmes in Canada as part of his course work in Aboriginal Peoples under the direction of Professor Bruce Wildsmith.<sup>45</sup>

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44. Even before the I.B.M. Programme Professor Bruce Wildsmith offered a Native Law seminar course.

45. This paper was selected as one of the winners of the Tory prize for student law papers and appears in "Improving Access to Legal Education for Native People in Canada: Dalhousie Law School's I.B.M. Programme in Context" (1991), 14 *Dal. L.J.* 133.

Another impact on the research agenda of the Law School concerns the preparation of the materials for the Pre-Law course in August, 1990. While the original student research was provided by Catherine Cogswell, the final research was done by Joan Mercredi, a Métis woman who spent two years at Dalhousie Law School before moving to the University of British Columbia to complete her degree. Both of these women worked under the supervision of Director MacKay but also consulted all the I.B.M. students to get their views about the structure and content of the Pre-Law course. The result was what we consider an interesting set of Pre-Law materials which tries to balance hard-core legal skills and broader issues of racism and the role of legal education. Student input in the process, as well as that of the Community Advisory Board, was in our view vital to the success of both the materials and the Pre-Law Programme.

If there is a pattern in the area of student influence, it is that it is expanding as the number of students grow and the I.B.M. Programme becomes more established. Not only has the number of I.B.M. students in the Law School risen from 6 to 16 as the Programme moves into its second year, but also Dalhousie has attracted 6 students of Aboriginal origin from elsewhere in Canada.<sup>46</sup> This means that Dalhousie is approaching a critical mass of Black and First Nations students who can support each other in challenging some aspects of the existing law school structure.<sup>47</sup> This support network and collegiality is given a focus by the I.B.M. student lounge on the third floor where these students can meet over coffee and share experiences about coping with first year law. Even in the first year and a half of the Programme the influence of the I.B.M. Programme and its students has been significant. What is even more encouraging for those who desire a cultural transformation in the traditional law school, is the fact that the influence of both the students and the Programme is growing.

#### VI. *Problems in Defining Indigenous Black and Micmac*

One of the controversial decisions in the early stages of designing the I.B.M. Programme was to limit the scope of the Programme to Indigenous Nova Scotian Blacks and Micmacs. We were well aware that

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46. Every graduate of the Saskatchewan summer programme who received an offer from Dalhousie in 1990 came to this Law School. The major factor seemed to be the I.B.M. Programme and the image it created for Dalhousie. Many of the white students in the course of admissions interviews, for the 1990-91 first year class also cited the I.B.M. Programme as a positive reason to come to Dalhousie.

47. We are, of course, not suggesting any cap on the number of First Nations or Black students.



racial barriers confront Blacks and First Nations peoples regardless of their province of origin but also felt that a special case could be made for the Blacks and Micmacs of Nova Scotia who have been dispossessed by whites and consequently disadvantaged. An outline of this historical disadvantage was presented as part of the proposal passed by Dalhousie Law School's Faculty Council on April 14, 1989.

In the first year of the Programme there was really no question that the three Blacks and three Micmacs met any test of indiginity. However, in considering the broader pool of students who were claiming consideration as I.B.M. students, the Admissions Committee had to exercise its own judgment on who did or did not qualify as Indigenous Black or Micmac. Since the pool of potential candidates was small in the first year there were only a couple of cases that required any discretionary judgment call on the part of the Admissions Committee.

Early in the business of the Community Advisory Board and its sub-committee on Student Services and Recruitment, Professor Vaughn Black, Chair of the Admissions Committee, brought the question of defining who was an Indigenous Black or Micmac to the sub-committee. It was agreed at the full Advisory Board that it was vital to involve the Black and Micmac representatives of the Board in helping to define the relevant student group for the Programme. It was also emphasized by Professor Black, Associate Dean, Susan Ashley and others that the final decision on who should be eligible for admission through the I.B.M. Programme was a decision for the Faculty of Law. Several efforts were made to have meetings of the Student Services sub-committee of the Advisory Board. Finally, some meetings were held at which there was no Micmac representation. At these meetings it was decided not to attempt a general definition of indiginity but rather to identify the kind of factors that the Admissions Committee should take into consideration when deciding whether an applying student was eligible for the Programme. These factors, which include lineage, place of birth, place of education and links to Nova Scotia, now comprise a guideline for the Admissions Committee.

When the sub-committee reported back to the Advisory Board there was general agreement on the identified factors with respect to the Black communities but strong opposition to extending the same factors to Micmacs. One level of objection was the lack of Micmac representation at the Student Services Committee when the factors were adopted, although there was no suggestion that this exclusion was deliberate. A more fundamental objection was to any suggestion that the term "Indigenous" in the I.B.M. Programme modifies Micmacs as well as Blacks. As the originator of the name, MacKay indicated that it was only intended to modify Blacks as Micmacs were inherently indigenous.

Professor Black, on behalf of the Admissions Committee, argued that the concept of indiginity needed to apply to both groups. In the end the factors have been applied to Black applicants but the definition of who is a Micmac for purposes of the Programme has been left open.

The Advisory Board referred back to the Student Services Committee the question of who was a Micmac for purposes of the I.B.M. Programme. Even among the Micmac representatives on the Advisory Board there were divisions about the issue of who qualified. Some felt there should be resort to definitions under the *Indian Act*; others thought the primary focus should be on Micmacs from Nova Scotia; still others argued that a Micmac was a Micmac regardless of the territory s/he presently occupies. The issue of defining a Micmac for purposes of the Programme was still unresolved at the time of writing this article.

For the purposes of admitting the 1990-91 students to the I.B.M. Programme, the Admissions Committee did use the factors identified in respect to Indigenous Blacks, as a guideline. The Committee also includes members on the Advisory Board from the respective Black and Micmac communities in both the general interviewing of the I.B.M. students and on any questions of deciding a student's eligibility for the Programme. There were a few judgment calls to be made but they were mostly in respect to Blacks rather than Micmacs.

There were some positive and negative aspects to the processes followed in respect to defining the scope of the I.B.M. Programme. The direct involvement of people from the Black and Micmac communities at several levels in the process was vital. Not only does this increase the likelihood that this definition will reflect the reality of the minority groups it also gives it a legitimacy within the affected communities. In all respects, direct involvement by community representation increases the value of the definition. The attempt to apply one set of factors to the two different minority communities is problematic. There are many differences between Indigenous Blacks and Micmacs and this should be reflected at the vital level of defining the scope of the Programme.

We recommend that a separate policy guideline be developed in respect to the definition of Micmacs. In devising this policy every effort should be made to reach an accommodation between the conflicting views within the Micmac communities and the institutional views of the Admissions Committee. The involvement of Blacks and Micmacs in the interviewing stage of the Admissions process should be continued and possibly even formalized to some extent. There must be a mechanism for resolving difficult cases which is flexible, workable and seen as legitimate by all the affected communities.

## VII. *Funding: In Search of Security*

Funding has been one of the I.B.M. Programmes major challenges in its first couple of years of operation. It has been identified as a major issue and time consuming for both MacKay, the founding Director, and Bagambiire the first Black Director.<sup>48</sup> Given the many substantive issues that need to be addressed it is unfortunate that funding issues have been a major drain on the Director's time. While the Law Foundation of Nova Scotia has provided a generous grant which covers the administrative costs of operating the Programme, it had to be supplemented by a \$15,000 grant from the Nova Scotia Government to produce anything close to a balanced budget in the Programme's first year of operation. This grant was a one time government initiative but the Law Foundation has recognized the need for more funding in respect to the administrative structure and increased its support for the 1990-91 academic year.

Funding from the private sector to provide a living allowance for the Black students was clearly a one time, stop-gap remedy and major efforts were concentrated on having the Nova Scotia Government commit itself to ongoing funding which could be used for the Black students in the Programme. In October, 1989 at the opening of Dalhousie Law School's new library then Premier John Buchanan (now a Senator) made a promise of funding which, according to an understanding between the Premier and the Dean, was to provide funding for the Blacks at a level equivalent to the federal funding of First Nations peoples. Using this commitment and *Marshall Inquiry* recommendation 11, that the I.B.M. Programme be funded by both the federal and provincial levels of government, the Director, MacKay, Dean, Innis Christie and Advisory Board co-chairs Donald Oliver (also now a Senator) and Catherine Martin lobbied the provincial government by letters, phone calls and personal meetings with the Attorney General and people in his Department. The general response was a deafening silence.

In spite of these efforts there was still no official confirmation of the provincial government's position as the 1990-91 students entered the Pre-Law Programme in August, 1990. To further complicate matters, phone calls to the provincial government were not returned and operating

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48. *The Law Programme for Indigenous Blacks and Micmacs: Final Report to the Law Foundation of Nova Scotia 1989-90 Term* (MacKay, May, 1990) and Davies Bagambiire's first two reports: — *Report Number Three Regarding Law Programme for Indigenous Blacks and Micmacs at Dalhousie Law School, Halifax* (August, 1990) and *Report Number Four Regarding Law Programme for Indigenous Blacks and Micmacs at Dal. Law School, Halifax* (December, 1990).

within the proper channels (a process that had been going on for months) did not yield results. The unofficial indication was that the Nova Scotia Government would provide \$50,000 but that was considerably less than the \$130,000 budget submitted to the Provincial Government. At this juncture past Director MacKay and Director Davies Bagambiire met with the Advisory Board to develop a strategy to deal with the government on the funding issue. The decision was to hold a high profile press conference and call upon the Nova Scotia Government to honour both its promises to implement the recommendations of the *Marshall Inquiry* and the personal commitment of the Premier. Dean Innis Christie decided to support the strongly worded press release and joined Jean Clayton, secretary to the Advisory Board, Catherine Martin, co-chair of the Board and Directors MacKay and Davies Bagambiire.<sup>49</sup>

The Nova Scotia Government did deliver on its unofficial promise of \$50,000 but refused to increase this amount in response to what then Attorney General Tom MacInnis described as the “unprofessional tactics” of the Dalhousie Law School in holding a press conference that was designed to embarrass the government. In spite of his earlier annoyed reaction, Tom MacInnis did make some efforts to secure increased funding from the provincial cabinet and assisted in efforts to acquire funding from various branches of the federal government. There was, nonetheless, a clear sense that the I.B.M. Programme would have to pay, at least in terms of delay, for its effrontery in attacking the provincial government and calling into question its sincerity in promising to implement the recommendations of the *Marshall Inquiry*.<sup>50</sup>

Funding has fallen into place for the 1990-91 academic year but the process of pursuing it was an exhausting and frustrating one. The Dalhousie faculty who offered the 1990 Pre-Law course had to do so without any assurance that they would be paid for their efforts and fund raising consumed much of the new Director’s time. There was also an uneasy sense that you had to “behave properly” in order to be funded by the Provincial Government.

There is no question in our minds that many of the Black students in the I.B.M. Programme would not be able to take advantage of the Programme if funding were not available to subsidize their expenses. One of the clear consequences of racism is economic disadvantage. Thus, we

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49. The details of this rather interesting funding battle and the newsclippings it generated are included in *Report Number Three Regarding Law Programme for Indigenous Blacks and Micmacs at Dalhousie Law School, Halifax* (D. Bagambiire) August, 1990.

50. There was speculation in the local papers that one of the reasons that the provincial government was resisting full funding was the presence in the Programme of Black activists such as Rocky Jones and Evangeline Cain-Grant who have been vocal in challenging the government. C. Saunders’ “Minority Lawyers bother cabinet”, *Halifax Daily News*, August 13, 1990.

recommend that securing ongoing funding continue to be a top priority of the Programme as the climate for such financial support may quickly fade as the *Marshall Inquiry* and its recommendations recede into the background. However, we also recommend that the burden of pursuing this funding be shared by the Director of the I.B.M. Programme, the Dean of the Law School and the relevant sub-committee of the Advisory Board. If too much of this burden is shouldered by the Director's/he will have insufficient time to discharge the other responsibility of the Director's job. We also suggest that this search for secure funding explore options in the private and philanthropic as well as governmental sectors. This is particularly important at a time when government funding is being cut rather than expanded. A secure financial base would allow all concerned with the I.B.M. Programme to get on with the challenge of implementing this important initiative.

### *VIII. Mixing Minorities: The Challenge of an Integrated I.B.M. Programme*

As we indicated in our discussion of the origins of the I.B.M. Programme, both the Black and Micmac communities would have preferred to have their own separate Programmes. There is a general problem with lumping minorities together. Despite the commonality of racially driven disadvantaging by white society, they often have different needs and values. This is the case with Blacks and Micmacs as well. Because the Law Foundation only had the funding for a single Programme and because the Dalhousie Law School did not have the administrative resources to offer two Programmes, this was an issue upon which the white establishment of the Law School exercised closure. The question we would now like to reflect upon is how well did this integration work within the first year of operation?

At the student level, it appears that the Blacks and Micmacs cooperated quite well but there were clear differences in learning styles which were not adequately accommodated in the tutoring system. Since each subject area had two tutors there were opportunities to divide the students on a Black/Micmac basis and this was occasionally done. However, when the idea was suggested of making this split on a more permanent basis in the second term it was rejected by the I.B.M. students.<sup>51</sup> During the first year there were few divisions along Black/Micmac lines.

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51. Dorothy Loomer, who worked with the I.B.M. students on computer skills during the 1989-90 term and did a research paper on learning skills for Blacks and Micmacs, is convinced that the support structure could be improved by allowing for greater differences between the two groups.

One of the problems in the 1989-90 I.B.M. group is the fact that there was only one woman who consequently felt on the outside. Interestingly, the 1990-91 I.B.M. group has six women and four men and all four Micmac students are women. Based on observations of the Pre-Law Programme and the first term of the 1990-91 year it would appear that the Black and Micmac students get along well. There appears to be close ties between many of the women in the Programme and if any people are left on the outside it is the four Black males.<sup>52</sup>

A picture of general harmony is not so evident at the Advisory Board level. While there was widespread cooperation in the early Board meetings, by the middle of the year there was clear tension between the Black and Micmac representatives of the Board. This tension relates both to substantive issues such as the proportional representation of the two groups on the Board and in the I.B.M. student group, but also the style and manner of the two groups at Board and sub-committee meetings. The Black and White members of the Board were more outspoken in expressing their concerns, whereas the Micmacs indicated that their more quietly expressed concerns were sometimes not heard. This contrast in style may be explained, in part, by the fact that more of the Black and White representatives are legally trained. In an effort to redress this imbalance, Professors Mary Ellen Turpel and Trish Monture were added to the Advisory Board as representatives of the Aboriginal Bar.<sup>53</sup> There are no Micmac lawyers at the present time.

It is our view that the I.B.M. Programme must take greater account of the differences between Blacks and Micmacs but a separation into two Programmes does not appear justified at the present time. In any event, neither the Law School resources nor financial support would support two separate Programmes. Furthermore, in our opinion, there are some real advantages in allowing Black and Micmac students to learn about each others experiences and to find points of commonality and difference in their shared experiences of racism.<sup>54</sup>

The problems appear to be more acute at the Advisory Board level and we recommend that the tensions which have been officially ignored to date, be squarely acknowledged. To some extent this has already

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52. With the controversial departure of Davies Bagambiire as Director in January, 1991, tensions were created between the Black and MicMac students that added to the stress of first-year law school. This is a topic for another day.

53. These two First Nations women only attended a couple of meetings before resigning as part of the controversy surrounding the departure of Davies Bagambiire as Director.

54. The pros and cons of dealing with Blacks and Micmacs in a single Programme have been considered by the Dalhousie Transition Year Programme which has operated on an integrated basis for nearly 20 years, See, *Breaking Barriers*, *supra* note, 9.

happened at an informal level. It may also be necessary to make some structural alterations in the operation of the Board and its sub-committees to accommodate the differences of Blacks and Micmacs both with respect to substantive issues and political styles. It is not our role to suggest the precise nature of the changes, which could range from minor changes to two separate Advisory Boards. This is a matter to be worked out between the members of the Black and Micmac community representatives with only background support from the university and Law School members of the Board. It is our hope that a single Board structure can be satisfactory but this is not something we should impose on the two affected communities.<sup>55</sup>

### *IX. Challenging the Established Order: Accommodation and Change*

One of the most fundamental questions facing the I.B.M. student is when should s/he accommodate the existing legal order and when should s/he attempt to change it. While every law student brings a different background to law school, the Black or Micmac student often comes from a background and cultural perspective that is far removed from that of the traditional law student. It is this different perspective and cultural experience which will enrich the law school and ultimately the larger legal culture. These differences also accentuate the culture shock for I.B.M. students in entering first year law. In order to maintain their perspectives I.B.M. students will have to challenge the traditional ways of doing things in law school. At other times, they will have to accommodate practices that are alien to them but are part of "thinking like a lawyer".

As discussed in a previous section of this article, one component of the Pre-Law Programme is designed to explore these problems of culture shock. This does not mean that the problem is resolved at that stage but only that the students are alerted to it. In time, the differences between the students and the Law School should diminish as the Law School takes on and includes Black and First Nations perspective in its curriculum, materials and research. Thus the transformation of materials, curriculum and research is intimately connected to the overall success of the I.B.M. Programme in respect to the inclusion of students. The way in which students are taught is also important and there has been little progress on this front.

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55. In practical terms, a Director might be put in a difficult if not impossible position if s/he is advised by two separate community boards. At the time of writing the Board has been down-sized and has squarely addressed some of its tensions and problems at a retreat. There is some optimism that it is back on track.

The need to walk the fine line between changing and accommodating the system presents itself at every stage of the I.B.M. experience. It must be addressed in the Pre-Law Programme, the tutoring structure, course changes, selection of speakers and preparation for the job market. In respect to speakers, students need to be exposed to both traditional and non-traditional legal role models. In the former category are members of the local Bench and Bar who did during the first year of the Programme take an active interest. Furthermore, the Racial Forum and other events allowed students to hear local community leaders from both the Black and Micmac communities as well as leaders of national stature such as legally trained activist, Ovide Mercredi, of the Assembly of First Nations.

In speaking about exposing I.B.M. students to the different role models we have some unease because it suggests an air of paternalism. It is because of this that it would be ill advised to assume that all I.B.M. students will want to go back to their communities and be legal aid lawyers, family lawyers or pursue Aboriginal land claims. Indeed, some may want to be corporate lawyers, public administrators or business people. While community involvement is a factor in the admissions process, it would be wrong to impose as a term of admission to the I.B.M. Programme that these students must return to their communities and use their legal skills to fight oppression. It is certainly our hope that many will do so but it would be fundamentally inappropriate to mandate it. Supporters and promoters of the I.B.M. Programme must be aware of the individual differences between I.B.M. students and the dangers of placing too much of the burden of changing the law school, the law and the world on their shoulders. The battle to transform the law schools should not be fought on the backs of the vulnerable minority student.

An important part of the Director's role is to be a counsellor and confidant for the students and in that capacity to assist them with the identity struggle that many may feel in first year law. Depending on the particular backgrounds this is a much more difficult problem for some than others. Like white women, Black and Micmac women have the burden of operating in a predominantly male culture that exhibits elements of sexism as well as racism. While most law schools, including Dalhousie, are improving with respect to general issues, it would be naive to suggest that there are no barriers in this regard.

The difficulties implicit in coming to law school from a different perspective have been identified as a major source of drop outs from law school. In that regard, the I.B.M. Programme can take some pride in the fact that none of its students have dropped out to date. There were students who entered the 1990 Pre-Law Programme who did not complete, but that, we think, appears to be explained by personal



problems in those people's lives rather than an institutional flaw in the Pre-Law Programme. We would recommend, however, that even more extensive efforts be made to ease the culture shock of entering law school. One aspect of this could be a Programme of cross cultural awareness for students, faculty and staff to make them more sensitive to perspectives from outside the traditional legal paradigm. We would also recommend that more attention be paid to the impact of law school on the families and other people attached to the individual I.B.M. students.<sup>56</sup> Human supports for students are at least as important as those related to the academic skills.

There is no simple answer to when students should challenge the system and try to change it and when they should accommodate it in order to achieve useful legal skills. Some people feel that skills can be learned in a value neutral fashion and separated from students' values and belief system. We do not accept this dichotomy. The focus on skills is important and many Black and Aboriginal students come to law school to acquire the tools of a lawyer. However, in acquiring these skills there will be some change in the student's value system. From the perspective of these "two white guys", the I.B.M. Programme will be a failure if it turns Black and Micmac students into three-piece-suit lawyers who are more colourful clones of their white counterparts. The same concerns emerge in respect to women where some would argue that you have to act like a man to make it in the male world. In some respects you do probably have to act "white" and "middle class" to think like a lawyer but this should not be allowed to destroy your identity as a person from a minority group. We do not have much evidence to work with on this vital problem of accommodation and change and thus can only reflect upon the importance and magnitude of the issue.

#### *X. Conclusion:*

Clearly it is too soon to provide a conclusion on the I.B.M. Programme at Dalhousie Law School, and besides conclusions tend to invoke a sense of closure that would be incompatible with the underlying premises of such a Programme: anti-racist institutional reconstruction. However, it may be appropriate to add a few comments to identify some of our aspirations for the Programme, all the time recognizing that other players in the process almost certainly have different ideals.

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56. This is a problem that was flagged in the Micmac Bachelor of Social Work Programme offered by Dalhousie's Maritime School of Social Work. Indeed, family pressures were a major source of student drop outs in the Programme. These issues and others are explored in *Breaking Barriers, supra*, note 9.

It is not our role as two "white guys" involved in launching the I.B.M. project to define its vision in the eyes of Blacks and Micmacs in Nova Scotia. Whatever aspirations and dreams we might have for the Programme it is not really our dream. Aboriginal artist, Duane Dussome to our mind captures the vision of the I.B.M. Programme with this painting "Dreamer's Reach". The original art work hangs on the wall of the second floor atrium at the Weldon Law Building outside the corridor which leads to the students' lounge. It is also used as the backdrop for the recruiting poster and is sold as a limited edition print with funds going to support the Programme. It is a painting about hope and transformation which captures the tone of the Programme and speaks to the longing of those who have been excluded to finally be given access.

What is needed to make the Programme work are visionary people but it is important that we in the white majority community do not attempt to appropriate a vision that arises from the experiences of racial oppression. While whites must not appropriate the pain<sup>57</sup> nor interpret the vision of those who have been victims of racism, they do have an important role in making programmes such as the I.B.M. Programme work. In that regard Dalhousie has been quite fortunate in its first year of operation. While there were some negative and racist remarks by white students and the formation of a small student group who opposed affirmative action as an interference with libertarian values, this was the exception not the norm. Students were generally in support of the I.B.M. Programme and more than forty students applied for eight tutoring positions. Furthermore, a volunteer bank of another dozen students were willing to assist with social events, funding, recruitment and research.<sup>58</sup>

Staff at all levels were interested in the I.B.M. initiative but had considerable to learn about cross-cultural awareness and making the Law School a more inclusive place. The one Black woman on staff, Murlee Williams, who is philosophically opposed to the I.B.M. Programme, did nonetheless assist with an early September programme on cross-cultural awareness and organizing a series of benefit dances. She also provided the usual student support services from the Associate Dean's office that she provides for all students. Lynn (Richards) Clarke, who is part time secretary to the I.B.M. Programme,<sup>59</sup> was the organizational backbone of the Programme during its first and second years of operation. As

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57. P.A. Monture, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yas-Gah" (1968), 2 *Can. J. of Women and the Law* 159.

58. The detailed structure of the tutoring programmed and the volunteer bank are included in *Interim Report on Dalhousie's Law Programme for Indigenous Blacks and Micmacs* (submitted to Law Foundation of Nova Scotia by W. MacKay, January, 1990).

59. Half her time is spent as secretary to the I.B.M. Programme and the other half as an

testimony to the importance and quality of her efforts, the students in the I.B.M. Programme lobbied Davies Bagambiire to keep Lynn as secretary in spite of political pressures to hire a Black or Micmac woman in that position.

At the Faculty level there was widespread support for the Programme and a willingness to do what time allowed to assist with the I.B.M. effort. First year professors when called upon to assist the tutors in setting and evaluating examination questions, invariably responded in a positive fashion. The first year professors could have been used more extensively as a resource pool to improve the value of the tutorials. There was, however, a willingness to be involved and help make the Programme work.

Support was also shown by the Bench and Bar. Both groups had representation on the Advisory Board and both the Nova Scotia Barristers' Society and the Canadian Bar Association — Nova Scotia Branch — expressed their desires to assist students in job placements for the summer and at the end of law school. In the wake of the *Marshall Inquiry* the Bar was eager to be more inclusive of people from the Black and Micmac communities and the 1989-90 I.B.M. students had little difficulty in getting summer jobs with Nova Scotia law firms. Chief Justice Lorne Clarke deserves special note for having the I.B.M. students meet with him to teach him about their perspectives on the justice system in Nova Scotia as part of the summer course in Criminal Law. He also has spoken out in support of the Programme and attended events sponsored by it. Former Bar Society President, Bruce MacIntosh, and current Executive Director of the Bar Society, Darrel Pink, gave full support to the Programme and organized events to raise the consciousness of the Bar in respect to racial issues. Many other lawyers and judges offered to support the Programme in any way they could.

We do not believe that there has been a magical transformation of the Bench, Bar and the larger white Nova Scotian society as a consequence of the *Marshall Inquiry*. The roots of systemic racism run deep in Nova Scotia as they do elsewhere in Canada. Nonetheless, we are encouraged by the general show of support for the I.B.M. Programme from a wide range of constituencies. There is a significant and growing support structure to help Blacks and Micmacs turn their dreams in respect to law and justice into something closer to a reality in Nova Scotia. White Nova Scotians must work in harmony with those from the Black and Micmac communities to help them realize their dreams.

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Admissions Officer. As the I.B.M. Programme expands its scope and operations it may need a full-time secretary. Rose Godfrey, the other Admissions officer was also helpful in dealing with students from the Programme.

It would be unfair to charge the I.B.M. Programme or any other access programme with the burden of transforming legal education. In many respects the students in such programmes are vulnerable and are already being asked to sacrifice many things. The challenge is to change the attitudes of the general Law School population so that the Law School can become a more humane and inclusive place.<sup>60</sup> It is difficult to measure how much progress is being made on this front at Dalhousie but in our view there has been some progress. Minority values must be promoted in a context of freedom of expression, but people in positions of power at law schools should not be apologetic about taking what may be disparagingly referred to as a "politically correct" stance.<sup>61</sup> They should also be prepared for the kind of backlash that can be engendered in some segments of the Law School community.

Black and Micmac students will also have to cope with a legal profession which, like society at large, has elements of systemic discrimination. Will these students find jobs and if so how much will they have to surrender to join the legal establishment? How well have these students been trained for the practice of law in a society that is still plagued by racism, sexism and classism? There are more questions than answers about the I.B.M. Programme at this stage but these two "white guys" cannot help but have a guarded optimism about its evolution and potential.

There is something very encouraging about an established and respected institution such as Dalhousie Law School finally taking responsibility for the exclusion of Blacks and Micmacs from the legal profession. The presence of the Black and Micmacs students at Dalhousie has enriched the place and encourages a more polychromatic vision of the law. It is exciting to celebrate rather than penalize differences and the result is a challenging of some of our basic assumptions about the law and ourselves. There is an occasional glimmer of a transformed and more inclusive version of justice. Surely this is a dream worth pursuing.

It seems to us that the 1990's will be a *fin de siecle* period for Canada in that although there will be a certain optimism about commencing a new millennium, there will also be a strong sense of disharmony and discordance. The demands of Francophones, women, the First Nations and other minority groups, independently, cumulatively and collectively

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60. This is the essence of the Report of the Special Advisory Committee to the Canadian Association of Law Deans, *Equality in Legal Education . . . Sharing a Vision . . . ; Creating the Pathways* (June 2, 1991).

61. In our view law schools have always imposed politically correct values but there was little objection when the values were those of the majority community. The objection arises when the values promoted are those of the disadvantaged rather than the elites.

will necessitate a reimagining of Canada and a displacement of the social economic and cultural power of the current, white male anglophone elites. The failure of the Meech Lake Accord in June 1990 and the military clash at Kahnawake and Kanasatake in the summer of the same year are irrepressible examples of profound social and legal cleavages. Law, we believe, will inevitably be caught up in this historical drama and will perhaps play a vital role in its ultimate determination. The I.B.M. Programme recognizes this and attempts to positively respond to it by taking proactive steps to reconstruct legal education not just so that it provides equality of opportunity, but so that it reaches out for equality of results. It offers hope that the repressive influence of the ideology of sameness that has propelled legal education for so long can be displaced, to allow for the invocation of different world views and an/other legal education.