

Diversifying the Bench

The Honourable J. Michael MacDonald, Chief Justice of Nova Scotia

As Canadians, we are all richer because of our differences.

The same goes for our institutions, including the judiciary. The more inclusive we are, the broader our perspectives and the more informed our decisions.

Furthermore, when citizens see themselves reflected at the highest levels of the legal system, they are likely to have more confidence in that system. Such representation can hold even more weight in racialized communities that for decades have been under-represented in the legal profession and over-represented in the criminal justice system.

In this regard, Nova Scotians now have reason for optimism.

The Provincial and Family Courts recently welcomed African Nova Scotian judges Ronda van der Hoek, Rickcola Brinton and Samuel Moreau, as well as Judge Catherine Benton, the province's first Mi'kmaw woman on the bench, and Judge Amy Sakalauskas, a gay woman. In the last year or so, the Nova Scotia Supreme Court was pleased to welcome aboriginal judge Timothy Gabriel, formerly of the Provincial Court, and Lester Jesudason, a Sri Lankan Canadian who presides in the Family Division.

Both the provincial and federal governments have expressed a commitment to continue these efforts to enhance diversity on our benches.

Nova Scotia's Chief Justices and Judges have made a similar commitment. In January 2016, we considered whether the judiciary had a role to play in enhancing diversity on our benches, recognizing of course that the actual appointments are made by government.

To this end, we asked Nova Scotia Court of Appeal Justice Linda Lee Oland to investigate and develop potential recommendations. This builds on the judiciary's work with Professor Michelle Williams, Director of the Indigenous Blacks and Mi'kmaw Initiative at the Schulich School of Law.

After an enormous amount of work, including many interviews with equity-seeking leaders in the legal community and beyond, Justice Oland provided us with a list of recommendations. All of them are thoughtful and practical, and all have been wholeheartedly endorsed by the Nova Scotia Chiefs.

Implementation of these initiatives is well underway. To help with that, we have enlisted an array of judges, lawyers, academics, and community leaders who will ensure the judiciary and its staff maintain diversity as a primary consideration in all its work.

More than 25 years after the Royal Commission on the Donald Marshall Jr. prosecution identified the need for increased Aboriginal and racialized representation in the system, we are starting to see real progress.

The judicial appointments in recent years have made us richer as a judiciary. I am not simply uttering platitudes — I am talking about real, tangible benefits.

In the past, decisions in the justice system have generally been made by people with relatively similar backgrounds and world views. Emma Halpern, Equity Officer with the Nova Scotia Barristers' Society, has noted, and I agree, that this approach can be limiting.

“Ultimately, we cannot escape our experiences and the world views that are born from those experiences,” she wrote in a 2009 article on the legacy of Donald Marshall Jr. “Our past experiences play a major role in how we view the world and therefore impact our decision making. It follows, then, that a crucial aspect of building an equitable legal profession is ensuring that decision-making roles are filled by people with a diversity of life experiences and viewpoints.”¹

One need only look to the Marshall Inquiry report, or the stories of Grand Chief Sylliboy and Viola Desmond, to know that African Nova Scotians and the Mi'kmaq have had a difficult history in Nova Scotia. It is important to have their perspectives on the bench, and I hope that our new [judicial mentorship initiative](#) will encourage more lawyers from these communities to apply to the judiciary.

Of course, our individual perspectives, however unique, cannot be the only consideration. Like our new judges, every judicial candidate must demonstrate experience, legal knowledge, intelligence, wisdom, fairness, patience, and courage. These criteria ensure the best and brightest make the cut.

There has been a lot of discussion about the need for a rich and diverse legal profession. But it is not enough to simply talk about it — it is crucial that our actions support our words. I believe the judiciary, with this initiative, is taking an important first step.

¹ *Equity and diversity in the legal profession: The legacy of Donald Marshall Junior*, The Society Record, Volume 27, No. 4, October 2009