ON NOT "GETTING IT"

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Although there has been increasing awareness regarding equity and access issues in the legal profession, that awareness has tended to miss the multi-faceted nature of the problem. The author discusses how the recognition of one kind of barrier may not assist in the recognition of others. Understanding race or gender does not necessarily imply understanding disability or sexual orientation. Students, faculty and practitioners need to challenge and question their assumptions, to guard against barriers to entry and to really belonging.

Bien qu'il y ait une prise de conscience grandissante en ce qui touche les questions d'égalité et d'accès dans la profession juridique, on tend à négliger la nature multidimensionnelle du problème. L'auteur examine comment la reconnaissance d'un seul type d'obstacle peut ne pas aider à en reconnaître d'autres. La longévité des stéréotypes relatifs à l'orientation sexuelle et aux handicaps physiques illustre cet argument et encourage les élèves, le corps professoral et les avocats et avocates à remettre en question leurs postulats.

The Bertha Wilson Task Force Report[1] signalled the legal profession that it has much to do in order to achieve true equity internally. My premise is that this is more of a challenge than we realize. The theme of my presentation is that there is a relatively high capacity to not "get it." Even people who are knowledgable about one dimension of equity and access may be quite clueless about other dimensions. Those whom one might assume to be natural allies are not necessarily so.

As a starting point, I think it is helpful to recall Clara Brett Martin. Clara Brett Martin became the first woman member of the bar in the British Commonwealth when she was admitted as a barrister and solicitor to the Law Society of Upper Canada in 1897. In a perverse way, her initial struggles to be admitted gave her an advantage over women today. The one problem Clara Brett Martin never experienced was getting people to acknowledge that gender was a barrier. Gender was explicitly made a barrier: in many quarters, unapologetically so. In contrast, most of the struggle now is to secure acknowledgement, both formal and real, of the barriers to entry and to really belonging.

It is, however, for another more significant reason that I consider a reference to Clara Brett Martin to be a useful starting point. While it is important to remember and celebrate her determination and perseverance in becoming a lawyer, it is also important to remember the not-so-rosy side. As Connie Backhouse, in *Petticoats and Prejudice*,[2] has revealed, Clara Brett Martin was also anti-Semitic, as was quite typical of the bar

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1 Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993).

2 C. Backhouse, *Petticoats and Prejudice: Women and Law in 19th Century Canada* (Toronto: The Osgoode Society, 1991) at 323-24, 434-37.

at the time. That is not something to celebrate, but it is important as a reminder of a general point. The fact that someone supports and even pioneers one dimension of equity does not necessarily mean that they understand other dimensions. Even equity activists may be, actively or passively, part of the larger problem.

I recently served on a selection committee for an employment equity officer position — not at Dalhousie Law School. At my suggestion, one of the questions we asked of candidates was what they saw as the similarities and differences between the different target groups. As committee members we all had the same reaction; it was by far the most poorly answered question, and this from a diverse group of people who had substantial experience in dealing with equity issues. I was disappointed but not surprised that almost all the interviewees found it hard to conceptualize different dimensions of equality.

If I had to identify the moment when this point about the difficulty of gaining a multi-faceted conception of equality really came home to me, it would be several years ago, at a session discussing race issues. Most of the participants in the discussion were white. For part of the discussion we broke down into smaller groups with one person reporting back to a plenary session. I said little during our small group discussion. However, the one point I did make was that, although there were some differences, there were parallels between issues of disability and race (this comment was made from my perspective as someone who is visually impaired). Two Aboriginal women in the group seemed to agree with my point, but it was not pursued. I did not elaborate, nor was I asked to. Our report to the plenary was made by a white male who was very active in Aboriginal rights. I mention that because I think it meant he felt an ability to connect with issues of race. His report was more or less a point-by-point recitation of everything that everybody had said, except that he made no reference to what I had said. My initial reaction was to feel a bit slighted because what I had thought to be an important point had been ignored. But it did not take long before I revised my interpretation of what had happened. He had not included my comments because they had not registered as significant, and they had not registered as significant because he did not really know what I was talking about. He could not grasp the connection between issues of race and disability; he could not understand what racism has to do with how well someone can see. I started to realize that things that seemed obvious to me were far from obvious to others, even those genuinely concerned with equity matters.

The connection I perceive is at the level of attitudes. Attitudes towards race and disability, to name but two dimensions of equity issues, are permeated by stereotypes about what someone can do or would be interested in doing or by fixed ideas about how things are done and what are the norms. In other words, there are assumptions or expectations that the typically male way, white way, middle class way, straight way or able-bodied way is the only or most acceptable way. Once one moves beyond that basic point, the implications in different contexts can be quite different, so that getting the basic point may not get you all that far. Understanding the gender dynamics of a particular context does not necessarily help one to notice, much less appreciate, the race or disability dynamics in the same or in a different context. This is a frequent refrain

from black feminists such as my co-panelist, Esmeralda Thornhill.[3] But if one can at least get into the habit of questioning and challenging assumptions, it is a start.

To illustrate my point, I want to elaborate a bit on the example of disability in the context of law school. My comments are based on an impressionistic assessment, but I am reasonably confident that there is a point which can be generalized. The point relates to how faculty colleagues relate to students with disabilities. I emphasize that I am referring to faculty colleagues who in general are quite committed to equity issues. As a starting premise, I take as given — a very generous assumption — that necessary accommodations for students with disabilities are in place. My comments deal with where things go from there. Although based on a very limited number of cases of students with disabilities in the law school, my experience is that when students with disabilities do well, there is a disturbing level of surprise among faculty. The assumption is clearly that students with disabilities are not expected to do all that well, *because of their disabilities*, so that if they in fact do well, it is something extraordinary. When questioned about that, the explanation given relates to the extra effort put in by a person with a disability in order to accommodate the disability. But this assessment comes from an able-bodied perspective. It fails to acknowledge that persons with disabilities of necessity find ways of coping with their disability that become second nature to them. Ways of doing things that others find hard to imagine become routine for the person with a disability. It should not be surprising that a student with a disability will do well, or that a student with a disability will be mediocre or do poorly. There are all ranges of students with disabilities just as there all ranges of students generally.

To assess a student with a disability who does well as extraordinary still leaves undisturbed, and actually reinforces, the general assumption that disability interferes with performance. It is the exception that proves the rule, the rule being an assumption that disability is associated with inferior performance. It is this mindset that impedes recognition of the potential of persons with disabilities when they are seeking access to law school, to articling positions or to permanent jobs.

In the Bertha Wilson Task Force Report, I found no real appreciation of the significance of attitudes toward disability as a barrier to access. The Task Force admittedly initially defined its mandate from the perspective of white, straight, able-bodied women.[4] To a certain extent, the Task Force came to realize the limitations of that perspective, but only up to a point.[5]

One minor illustration of the phenomenon of people committed to equity missing the full range of the issues came out of the implementation of one of the Task Force's recommendations relating to forging links between women lawyers, law faculty and

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3 *E.g.* E.M.A. Thornhill, "Focus on Black Women" (1985) 1 C.J.W.L. 153.

4 S. Lightstone, "Bertha Wilson: A Personal View on Women and the Law" *National* (Sept./Oct. 1993) 12 at 13.

5 See D. Pothier, "A Comment on the Canadian Bar Association's Gender Equality Task Force" (1993) 16 Dalhousie L.J. 484.

students. I attended a reception where a variety of women spoke about the challenges facing women in the legal profession. In some comments about articling interviews, one woman "joked" that she wished she could answer to the question about having children that she was a lesbian. The most charitable assessment of the comment is naiveté. This scenario could only be amusing to someone who had never had to worry about the potential repercussions of outing herself as a lesbian in an interview. There was a response from a lesbian clearly struggling with this question, which very pointedly expressed her feelings of vulnerability. This example of a lack of sensitivity around sexual orientation among those who make a point of worrying about gender equity is not an encouraging sign.

To conclude, there is more than one kind of limitation of vision. There is the physical kind of visual impairment that I have, but there is also the conceptual limitation of vision that a lot more of us share, myself included. It is the conceptual limitation of vision that constructs the real barriers to access to the legal profession. In the larger scheme of things, conceptual limitations of vision are a much more serious disability than visual impairments measured on an eye chart.