

## Dialogues

### Contemporary Challenges to Feminist Advocacy (part two)

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Here is the second half of our round of Dialogues coming out of the University of Victoria Association for Women and the Law (UAWL) conference in March 2007 in Victoria, British Columbia. (See our Summer 07 issue for the first half of this group of papers, featuring Susan Boyd on current challenges in family law, and Gerry Kilgannon's look at the activities of Women Elders in Action.)

In this issue, we are very pleased to offer barbara findlay's excellent keynote to the conference, "Ruminations of an Activist Queer Lawyer," as well as Habiba Zaman's commentary on immigrant accreditation in the Canadian context.

Enjoy!

## Dialogues

### Ruminations of an Activist Queer Lawyer

barbara findlay

Since I was invited to write this article, based on my March 2007 keynote at the UAWL conference, the Vancouver Rape Relief Society has launched a judicial review in the decision of the B.C. Human Rights tribunal in *Nixon v Rape Relief* (2002). So instead of doing a traditional case comment, I am going to revisit the case as a lawyer/activist and, in the process, reflect on the law's construction of human rights.

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I will begin by locating myself in the discussion because we must always, I think, locate ourselves in the discussion. It's not that my experience is the touchstone of truth. But if a proffered truth cannot explain my experience, I doubt it is 'truth.' And I have found that if I am not explicit about my location in relation to a question, I am less likely to find a workable truth.

I have often been at the margins of a centre. I entered the legal profession in 1977, when there were very few women practising law. I had to get a psychiatrist to certify me as sane before I could be called to the bar, because I had been in mental hospitals.

When I realized I was a lesbian in 1967, gay sex was still illegal under the Criminal Code, and homosexuality was a mental illness under the DSM (the psychiatric bible of diagnoses). I always told my confidantes in the workplace that I was a lesbian, and I never denied it if I was asked. But the norms of the time dictated that the question was rarely asked.

I had gone to law school with the not uncommon hope that I would be able to make a difference to people who needed a voice. As a feminist, I also went to law school with a healthy dread of the socialization process of a professional school.

After I got called to the bar, I worked with a union-side labour firm, then with the Legal Services Society. I taught at the Faculty of Law at UBC and ultimately ended up in private practice, doing a general practice for queers with an emphasis on equality and human rights cases.

In my non-lawyer life, I worked as a feminist—women's bookstore, women's health collective, women's study group, women's conferences, etc., etc. I had arguments with

men, the basic, tiresome ones – why they should not call women ‘girls,’ why ‘he’ did not include ‘she,’ whatever the grammar books said. I taught “Women and the Law,” which was a law school seminar invented shortly after I graduated from UBC.

In the ’70s, lesbians were regarded as the Problem of the women’s movement, since (non-lesbian) women were afraid that if People knew there were lesbians in the group, the whole group would lose credibility since People would think all feminists were lesbian.

So, although there were lesbians in every women’s organization, often in leadership positions, lesbians were *sotto voce* in the women’s movement.

As a lesbian, I absorbed society’s view of myself as someone who was evil, or criminal, or crazy, or all three. As a woman, the choices I was offered were very few. A law professor on our first day of classes in first year said, “I feel sorry for the girls in the class. You can be fluffy and incompetent, or ball-breaking, cigar-smoking bitches like Mary Southin.” (The next day, all thirteen women in the class had a cigarillo.)

Since I have been called to the bar, I have three times watched the Supreme Court of Canada find a reason to deny equality rights to lesbians and gay men: in 1979, when it decided that a classified ad in a newspaper was not a public service, thereby avoiding the question of whether sexual orientation could be a proper basis for discrimination; in *Mossop* (1993), where the Court decided that since the federal government had deliberately chosen not to include ‘sexual orientation’ when it amended its human rights legislation, Mossop could not claim human rights protection as a gay man; and in *Egan* (1995), where the Court said that although a gay man was entitled to Charter protection from discrimination on the basis of sexual orientation, he was not entitled to relief because, in Egan’s case, the discrimination was permissible.

The experience of being a lawyer – and therefore a member of a privileged group in Canadian society – who did not herself have the same civil and human rights as everyone else in the country has been the central paradox of my life and my lawyering. It is the backdrop for my preoccupation with understanding how someone is both privileged and oppressed at the same time.

In the early ’80s, I went to an unlearning racism workshop. It changed my life in the same way that feminism had. I got a conceptual framework that helped me to understand the way that I, as a white person, contributed to the establishment and maintenance of racism in this country.

I began to co-facilitate unlearning racism workshops, hundreds of them over the next twenty years. I belonged to a group called AWARE (Alliance of Women against Racism Etc., the 'Etc.' being all of the other oppressions). We had a policy that we were to always have a woman of colour and a white woman as co-facilitators of the workshops because we found that everyone listened differently to someone who was affected by racism in the same ways as themselves: white people trusted a white facilitator; people of colour did not. The opposite was true for the facilitator of colour.

In AWARE, we also proceeded on the assumption that racism, or any other form of oppression, was not simply, or even mainly, an intellectual matter that could be changed by more or different information. We understood racism to be something that affected us – white people and people of colour – in every aspect of lives, from the way we understood ourselves and thought about ourselves, to the way we felt about ourselves and felt about others like us.

I remember a community workshop (a three-day residential workshop) in which we divided people along other axes of oppression: gender, sexual orientation. When it came time to divide the straight people from the lesbians, the question arose as to where the bisexual people belonged. We facilitators were taken by surprise, since it had not occurred to us to think about this question in advance. I was adamant that bisexual people did not belong in the lesbian group because they “participated in male privilege” and “did not share the same experience as lesbians.” I am embarrassed to say that I ‘won’ the argument, and the bisexual woman was put into a caucus group by herself.

I tell that story often because I remember the absolute moral certainty of my position.

The view I held was the commonly accepted view among lesbians at the time. We had, after all, carved spaces for ourselves at great personal cost. We came out in women’s groups that didn’t want to acknowledge us; we had confrontations and hurtful conversations with women we had thought were our friends about why it was necessary to have lesbian caucuses in women’s organizations, a place for lesbian women to breathe, to be able to be authentic with each other, to sort out our feelings and our fears.

When I think about it now, I do not know what it was that made me so adamant. I think it was the feeling that I had so little space, as a lesbian, that I should not have to move over for someone who wasn’t ‘really’ one of us. We lesbians did not trust bisexual women. I think we somehow believed that they would take the stories of our lives back to their men.

We were wrong.

I was wrong.

By focusing on ourselves, on our own fears, we forgot that bisexual women were oppressed by the same society, and for the same reason, that lesbians were – because we dared to challenge the exclusive hegemony of men.

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Women-only groups, lesbian-only groups were absolutely critical to our understanding of ourselves. They still are. Nothing takes the sting out of the experience of being humiliated because you are female, or because you are lesbian, more than hearing other women describe how the same thing happening to them. It is quite literally the only way to redraw the boundaries of self that were violated by sexism or homophobia.

That is why organizations like Rape Relief, Women against Violence against Women (WAVAW), and Battered Women Support Services (BWSS) started as women-only peer-support services for women who were victims of male violence: to offer a space where a woman could come to understand that the violence she experienced was not her fault, whatever her husband/boyfriend/date or a stranger said.

But early women-only groups in Vancouver tended to be white-women-only groups. And there was no comfortable place for lesbians.

You would think that my experience as a white lesbian in the women's movement would have enabled me to think more clearly than I did at the time about the situation of white women.

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Though I have watched the Supreme Court of Canada deny my rights as a lesbian, I have also watched that court transform the legal situation for gay men and lesbians in the country. In *Vriend* (1998), that court said that if a province was going to offer human rights protection, it could not protect only some marginalized groups. The court read in sexual orientation to the list of protected grounds in the Alberta Individual Rights and Protection Act. In *M v. H* (1999), the court held that it was contrary to the equality guarantees in the Charter to offer a protective regime on relationship breakdown to heterosexuals but not to gay or lesbian partners.

And within ten years the law was transformed. In 1992 there was not even protection against discrimination in the BC Human Rights Act: lesbian co-mothers risked losing all contact with their children if their relationship broke up; lesbians could access sperm

from medical sources only by portraying themselves as straight; there were no inheritance rights on intestacy; two people of the same gender could not adopt a child together.

By 1993 there was no piece of legislation, federal or provincial, that affected gays and lesbians in BC in a discriminatory manner.

So I believe in the power of law to work change.



I came to transgender issues by coincidence. A trans woman phoned me in a panic the day before she was to leave for her sex reassignment surgery to see if I could speed the production of the necessary bureaucratic approval for her surgery in time for the operation to proceed. That was in 1993.

I intervened, with no clue about what I was doing or how the system worked. I was successful only because the approval had already been granted, and I was able to convey good news to my client.

Shortly after, I was approached by the High Risk Society, an organization that offers emergency services to transgendered street people in the Downtown Eastside, the poorest part of Vancouver. They wanted to write a report on transgendered people and the law. There was, at the time, exactly one piece of writing on that topic in all of Canada. It was 1994.

High Risk gathered together representatives from various parts of the gender variant communities: cross-dressers, transgendered people, pre- and post-operative transsexuals. After examining what trans people were doing in other, primarily American, jurisdictions, the committee chose deliberately to use the word 'transgender' as the umbrella term to include all gender-variant people.

*Finding Our Place*, as the report was titled, concluded that trans human rights complaints could be advanced for transsexuals under the head of 'disability,' since 'gender dysphoria' – the diagnostic term for transsexualism – was recognized as an illness under the DSM. But the risk of proceeding in that manner was that only transsexuals would be entitled to human rights protection. There was also controversy within the trans community about the claim that gender dysphoria was a disability. Some thought that gender variance, like homosexuality, was not a 'disability' at all, but a normal variation in the human condition. Others worried that if transsexuals described themselves as non-disabled, they would lose access to the publicly funded Gender Clinic and sex-reassignment surgery.

In American jurisdictions, trans equality rights were beginning to be advanced under ‘sexual orientation’ and under ‘sex,’ pretty much equally.

Our report considered whether ‘sex’ would be an adequate ground under which to advance human rights complaints and concluded that it was not a surefire outcome since protection on the grounds of ‘sex’ was customarily applied in situations that assumed a bi-gendered reality. Sexual orientation seemed inapt. And so the report recommended that ‘gender identity’ be added as a protected ground under the Human Rights Code.



Language, naming, is critical to the struggle of any marginalized group. It is critical that the group decide for itself what words come closest to describing its experience. I did not attend the committee meetings at which language was considered because, as a non-trans lawyer, I would have had a disproportionate impact on that discussion.

*Finding Our Place* became an organizing document. When the BC Human Rights Commission held hearings around the province to take suggestions for amendments to the Human Rights Code, there were submissions at virtually every session that ‘gender identity’ be added as a protected ground.

As it happened, British Columbia was the first Canadian jurisdiction to consider the question of human rights recognition. The language adopted by the community here became the language in other parts of the country.

Meanwhile, on the legal front, there had begun to be successes for trans people, following in the analytic footsteps of gay and lesbian people. The first case, *Sheridan v. Sanctuary Investments* (1999), concerned a pre-operative transsexual woman who had been denied the use of the women’s washroom in a gay bar in Victoria. Her complaint was on the ground of sex (gender) and physical or mental disability. After her complaint was filed, she made an application to amend her complaint to proceed on the ground of ‘gender identity’; the tribunal held that it did not have jurisdiction to add a ground to the Code.

Tami Sheridan won.

There was jubilation in the trans community when *Sheridan* was announced.

The next thing that we did was to organize a conference about transgendered rights. I was the only non-trans person on the organizing committee. One hundred people showed

up for the first-ever Canadian trans conference. The air was electric with the excitement of people discovering themselves.

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My friend Nancy Rosenberg said it best:

“We don’t have a right to be comfortable.  
We have a right not to be discriminated against,  
But we don’t have a right to be comfortable.”

We had been talking about transgender women in women-only spaces – women’s change rooms. One of us shuddered at the idea of seeing a penis in the change room.

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Simultaneous with the organization of the Justice and Equality Summit, there were meetings with representatives of the Attorney General. The NDP was in government; hope was in the air. Perhaps the Human Rights Code would be amended to include ‘gender identity.’ The main concern of the Attorney General was spaces where people were naked together – change rooms, that sort of thing. The Attorney General proposed that the exception for ‘public decency’ remain in the Code.

I advocated for that solution. In meetings with trans people, and then at the Justice and Equality summit, I argued strongly for that solution as a stepping-stone to full equality. I explained that there were provisions with respect to ‘public decency’ in the Criminal Code; that we would never succeed in having the legislature pass an amendment to include gender identity without it.

I was wrong.

I was wrong for three reasons. First, it was my own transphobia that made me certain that a solution that included the possibility of a woman with a penis in a women’s change room would not, could not, fly. Second, it was not my place, as a non-trans person, to advocate for one position or another. Third, my voice – my experienced lawyer voice – inevitably spoke louder than it should have. I was not being asked to speak as a lawyer – I was a member of the organizing committee. So my too-loud-lawyer’s voice was inappropriate in the setting.

The conference was a resounding success. Afterward, though, some people in the organizing committee were angry with me. Others were not, and they saw the angry ones as ungrateful. A schism began to happen in the trans committee.



At that point, I realized that I had to leave the committee. My participation was divisive. The group might well have arguments and divisions, but those divisions should not be centred on a non-trans person.

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Coincident with developments in the trans communities of BC, some women's organizations were organizing to object to trans participation in women-only space. On 8 September 1999 the BC Human Rights Tribunal decided *Mamela v. Vancouver Lesbian Centre*, which held that the organization had improperly discontinued Mamela's membership in the organization. By the time the case got to hearing, the Vancouver Lesbian Centre no longer existed, and no one appeared for the VLC.

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For women victimized by male violence, the essence of safety (as safety is constructed by the women at Rape Relief) is to be among other women. In a place without men. Rape Relief provides a telephone crisis line and a transition house for women who are victims of violence. Everyone who works or volunteers there is screened to ensure that she agrees with the following principles:

1. Violence is never a woman's fault
2. women have the right to choose to have an abortion,
3. women have the right to choose who their sexual partners are, and
4. volunteers agree to work on an on-going basis on their existing prejudices, including racism.

Kimberly Nixon was victimized by male violence: abuse by her partner, attacks on the street. She had received counseling from Battered Women's Support Services, another all-woman feminist agency in Vancouver. Having recovered from the trauma of her own victimization, she decided to volunteer at Rape Relief.

She had no difficulty with the screening questions. Kimberly is a feminist.

But in the middle of the first evening of volunteer training, the facilitators told Kimberly that she had to leave because, they said, she was not a woman.

Kimberly filed a human rights complaint.

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As a post-operative transsexual woman, Kimberly is, in law, female. Under the BC Vital Statistics Act, a transsexual woman, upon production of a certificate from the surgeon who performed the sex-reassignment surgery, is permitted a new birth certificate that shows her gender to have always been female.

But the people at Rape Relief did not agree that Kimberly was female. And they did not agree that they had to defer to the law's determination of who was female.

They took judicial review of the decision of the BC Human Rights Commission to refer Kimberly's complaint under the human rights legislation of the province. Rape Relief argued that Kimberly could not take advantage of protection against discrimination on the basis of sex. That ground, said Rape Relief, was properly understood as a ground to protect women from oppression by men. Nixon's case was more properly a question of discrimination on the basis of 'gender identity,' a ground proposed by the Human Rights Commission as an additional ground under the Code. Because that ground had never been incorporated into the legislation, Rape Relief argued, Nixon had no human rights protection. And, argued Rape Relief, the investigation of Nixon's complaint had taken such an unconscionably long time that it should not be allowed to proceed to hearing.

Rape Relief lost.

Mr. Justice Davis held that the definition of 'sex' in the Human Rights Code had to be read in light of the provisions of the Vital Statistics Act with respect to changing gender, and that Kimberly was therefore entitled to protection on the ground of 'sex.'

The immediate result was that Kimberly Nixon's complaint could proceed since, as a post-operative transsexual woman whose birth certificate carries an 'F,' she was a woman. And she had been expelled by Rape Relief.

Foreclosed from arguing that Kimberly was not protected from discrimination on the basis of 'sex,' Rape Relief took another approach at the human rights tribunal, arguing that in order to be a volunteer at Rape Relief a woman had to have been (treated as) female from birth. I bracket (treated as) because transsexual women experience themselves as always having been female.

Rape Relief sees transsexual women as men: men in skirts, men whose only motive in going to an all-women's space is to invade it. The wolf in sheep's clothing. On that construction, transsexual women are not only unwelcome, they are dangerous to the Real women who are the clients and staff of the agency.

¶

I was painfully reminded of the time that I so adamantly argued that bisexual women should not participate in lesbian space because they were not ‘real lesbians.’ When I think about it now, I don’t now know what I meant by “participating in male privilege,” but that was the rationale we used to exclude bisexual women. We lesbians discounted women who said they were bisexual, believing them to be either cowardly lesbians afraid to come out, or thrill-seeking heterosexuals who would break our hearts and retreat to the safety of heterosexism.

In the unlearning racism work that I do, some of the most anguished work involves women of colour who look white, or were raised white, or both; or olive-skinned women whose heritage was Italian or Greek, not African or South American or indigenous, but experienced mistreatment because of the colour of their skin.

Is there something about being oppressed that makes us oppressive?

Another queer activist lawyer, on the other side of the trans issue, told me that “women’s spaces were always being attacked.” “Why couldn’t women have just one small corner which was their own?” she lamented.

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Resistance to oppression requires, as a first step, that you understand yourself to be oppressed. The second wave of feminism was powerful because it built itself on consciousness-raising sessions, on women telling their histories to each other and recognizing the ways that their lives were constricted by sexism and male violence. New concepts emerged, such as sexual harassment.

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In litigating to exclude trans women from Rape Relief, the organization was forced to make arguments that, if they were accepted, would narrow human rights protections for everyone in the country. Everyone.

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What does privilege feel like?

It feels like *comfort*.

It feels like *welcome*.

It feels like *safety*.

It feels like *respect*.

It feels like self-esteem.



Just as we buy clothes that we know, by their price alone, must have been made by underpaid labourers in Third World countries...

Just as our material comfort depends on the colonization and exploitation of entire nations of underpaid workers, so our emotional well-being as privileged people depends upon there being people who suffer.



Human rights legislation invites us to think in categories. Either male or female. Either white or not white. Either able-bodied or disabled.

Decoded, human rights legislation directs Us to treat Them as if they were like Us. The unarticulated Norm is a straight, white, able-bodied man who was raised Christian and middle class, who is neither too old nor too young, who is well-educated and has neither a criminal nor a psychiatric record. Norm, and his wife Norma.

Human rights legislation constructs those of us with spoiled identities as being like Norm— but for our race, gender, sexual orientation, religion, age, ability, etc., etc.

If we happen to experience – for example – racism and sexism and homophobia because we are lesbians of colour, we are offered neither language nor paradigms to understand our lives.

Some people talk about the ‘intersection’ of oppressions. ‘Intersection’ has even grown a suffix to become ‘intersectionality.’ But if you unpack ‘intersection,’ you find a word that describes two lines crossing. Oppressions are not lines. Oppressions do not ‘intersect.’ I may live at an intersection, but I am not an intersection. To describe oppression in terms of intersections is worse than unhelpful. It is misleading, obfuscatory. It hides more than it illuminates.

We are offered neither language nor paradigms to understand the most complex facts about identity: that we are all part of the mainstream, the norm, and we are all, or have been as children, part of the disadvantaged minority. We are, as adults, both privileged and disadvantaged.



Sometimes I think of identity as a grammar of oppression. This culture privileges some human traits and circumstances and devalues others. It ignores more still. But a

combination of privileges and oppression manifests itself differently than any privilege, any oppression on its own.

The privilege of education inflects the oppression of homophobia, so that one is seen as eccentric, not crazy. Racism compounded with poverty manifests itself differently than it does compounded with wealth.

And we are offered neither language nor paradigm to understand our lives if life changes parts of our identities. If we grew up being treated as white, and discover as adults that we were adopted from the reserve into a white family...what are we? If we were married and had children before we came out as lesbians, does that mean we were always lesbians, though mistaken? Or did we 'used to be' straight? What is a 'disability'? If a person with poor eyesight can see with the help of eyeglasses, does s/he have a disability? Is poor eyesight a disability in Rwanda, where eyeglasses are not readily available? - as opposed to Canada, where they are.

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Though Rape Relief lost its case before the BC Human Rights Tribunal, which ordered it to pay to Kimberly Nixon the highest damage award that, till then, had ever been awarded, Rape Relief took judicial review in the BC Supreme Court.

The Court held that the BC Human Rights Tribunal was wrong to say that Rape Relief had discriminated against Kimberley. It was not discrimination, said the Court, because one of the elements that Kimberly had to prove to win her case was that she had suffered an injury to her dignity. Since no transsexual woman would expect to be accepted at Rape Relief, Kimberly had suffered no injury to her dignity. In any event, the court argued that non-profit organizations that are formed for the purpose of assisting a group of people protected by the Human Rights Code – women, or people of colour, or people with disabilities, or lesbians, for example – *did not have to comply with the Human Rights Code*.

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Oppression has these characteristics.

It is relational. Oppression does not exist except between people.

Oppression exists in a country's ideology, its commonly accepted view of itself. It is a socially sanctioned idea about who is better than whom.

That socially constructed merit/demerit system is one that we absorb as part of who we understand ourselves to be. We take in the disparaging ideas that a culture has about someone whose race is not white, whose sexual orientation is not heterosexual, whose religion is not Christian, whose language is not English.

As a lesbian in the late 60s, I understood myself to be crazy, criminal, and evil. But I understood that *I* was the problem. I had no concept of a homophobic culture. Indeed, I was *unspeakably* crazy/criminal/evil. The only information about people like me was in courses titled “Deviance.”

As a white person, I have been taught that I am ‘normal.’ A real Canadian. My ancestors, I was taught, were the pioneers, the settlers, bravely carrying the truth of Christianity to the Indians.

But oppression is not a one-way phenomenon. It is reflexively constructed by our individual and collective reactions to the experience of oppression, of ourselves and of others. I am not simply a passive recipient of the (mis)information of this oppressive culture. I am also a participant in that culture. Every time that I hear a racist remark and do not contradict it, I offer my agreement and support to the continuation of racism. Every time I hear a homophobic remark and do not object, I am participating in my own oppression.

So it is not *only* the case that I am oppressed; I am also an agent in the oppression of myself and others. I am an agent for, or an agent against, this society’s oppressions.



Oppression is discussed as if it is about one person/many people oppressing one person/many people: perhaps discriminating against them; perhaps calling them names; perhaps simply not taking them into account.

That description is fundamentally mistaken.

Each of us who is oppressive has also been oppressed. That is not to say that *at a particular moment* one person is not oppressing, or harming, or assaulting, or discriminating against, or calling names at another. But it does mean that to understand classes of people as oppressors and classes of people as oppressed, oversimplifies and obfuscates day-to-day dynamics in a dangerous way.

I recall a situation in an unlearning oppression workshop that I was co-facilitating with a white person who had a disability and an Aboriginal person who was able-bodied. The

able-bodied Aboriginal person proposed to smudge and to acknowledge that the land we were meeting on was First Nations land. The disabled white person pointed out that smudging – smoke – could be harmful to anyone with compromised lungs.

A heated argument ensued. The Aboriginal person said that they had never heard of anyone in their community getting sick from smoke, and, in their view, this was just one more way for white people to forbid Aboriginal people from performing their traditional rituals. The person with disabilities responded that disability issues were never taken seriously, that only issues of race seemed to count as true issues of oppression because no one ever thought about the physical consequences for people with disabilities of things like smoke and scents.

Who was right? Who was wrong?

I suggest that to answer that question is to fall into the trap of Western either/or thinking: that there is only one right answer. To ask that question is to put the question at the wrong level.

Instead, ask yourself the question this way: How can we have a meeting between the two most important people in Canada if one insists on smudging and the other is allergic to smoke. What would you do?

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Oppression is not simply the bad treatment of one person by another. If that were so, then all mistreatment would collapse into “that’s life,” or “it happens to all of us.”

A fundamental feature of oppression is that the oppressor is the person who, in relation to that feature of his or her identity, is in the dominant group. By definition, they start with the socially conferred power of being part of the norm.

Conversely, a fundamental feature of being oppressed is that the person who is being oppressed is, in relation to that part of his or her identity, in the target group, the out group, the undominant group, the oppressed group in society. By definition, they start with the (dis)advantage of being part of the margin(al) in society, with respect to that aspect of themselves.

¶

Kimberly Nixon appealed the judgment of the BC Supreme Court to the BC Court of Appeal, asking to have the decision of the BC Human Rights Tribunal restored. The BC Court of Appeal said that it was true that the BC Supreme Court had made a mistake in

holding that Kimberly had to prove an injury to her dignity as an element of discrimination. But, said the Court of Appeal, that did not change the result of the case. The BC Supreme Court was *correct* that human rights legislation does not apply to societies that have as a principle goal the advancement of a group protected by human rights. So: women's groups don't have to admit women of colour, or women with disabilities, or transgender women, or women of a religious minority, or... anyone they don't want to admit. Groups formed to advance the rights of religious minorities don't have to admit women. Groups for people with disabilities don't have to admit people with HIV/AIDS.

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Oppression is not simple. It is not the case that “homophobia is homophobia is homophobia,” or that “racism is racism is racism.” Straight people react differently to gay men than they do to lesbians. White people react differently to rich people of colour than they do to poor people of colour. Some feminist women react differently to transgender women than they do to non-transgender women.

Human rights legislation cannot touch those pieces of our lives. The law is clumsy and ham-handed when it tries to address oppression.

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Though Kimberly Nixon was denied leave to appeal to the Supreme Court of Canada, which left her with a loss in the court of law, by the time her case was concluded almost every women's group in Canada, including the national women's organizations and women's sexual assault crisis centres, had adopted trans-inclusive policies. Though Kimberly Nixon lost the battle, she won the war for trans acceptance among women's groups

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To use the law to support progressive goals, it is always necessary to proceed in court hand-in-hand with community groups that are working to educate, pressure, beguile, or insist upon ‘normal people.’ Without their support, a legal victory will win the battle but lose the war.

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(My answer to the ‘two most important Canadians’ question I posed earlier - smudging or allergies? Hold the meeting outside).

*barbara findlay QC was Kimberly Nixon's lawyer.*



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*Vancouver Rape Relief Society v. Nixon*, [2005] B.C.J. No. 2647 BCCA 601  
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## Dialogues

### Immigrant Women and Accreditation in Canada

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Academic research interest in the accreditation process is quite recent; hence, published literature on the accreditation process in Canada is not readily available. The identified issues involved in the accreditation process vary, ranging from skill utilization in the labour market, recognition of foreign credentials, integration of immigrant skills, and discriminatory barriers to credential recognition, to the integration of international physicians. Available literature unanimously agrees on the following issues: Immigrants' skills are underutilized; immigrants are underemployed and unemployed; the assessing of immigrants' education, training and job credentials is problematic for employers due to lack of standardized systems; there is an absence of a due process of accreditation; and the list goes on. These factors together generate systemic discrimination against immigrants based on country of origin, gender, age, and class and consequently, generate barriers. Generally, most literature deals with immigrants as a whole and bypasses women with regard to the accreditation process, even though immigrant women's experience significantly differs from that of men. In addition to their lack of access to information and the pervasive problems pertinent to the accreditation process, immigrant women are usually preoccupied with childcare and household chores mostly overlooked in the re-skilling process.

No single provincial or federal government agency or department deals with accreditation, and no universal and harmonized system exists for evaluating 'foreign' credentials. In spite of the government's recent commitment to accelerating the credential process for some, no national strategy exists to assist skilled immigrants, let alone female migrants, in entering the Canadian labour market. Immigrants are encouraged to come to Canada according to their education, experience and job skills, but once these immigrants arrive in Canada, their skills carry no value. As a result, these skills are wasted. More specifically, the skills of female immigrants, who mostly enter as dependents, are not adequately assessed and carry less weight in the selection of immigrants; female immigrants particularly thus face numerous barriers.

Most overseas immigration officers lack either information or knowledge about various occupational certification regulations and consequently do not pass on accurate information about accreditation procedures and regulatory bodies to immigrants. This lack of knowledge constitutes one of the major obstacles in many immigrants' settlement

process. After migration, many immigrants obtain information on accreditation procedures that incorporate language proficiency, work experience in country of origin, educational degrees, and training. Immigrants then realize that they must obtain recognition of their skills through several disjointed regulatory bodies. The wide range of professional associations (e.g., architects, doctors, engineers, lawyers, pharmacists, and so on) that evaluate immigrants' credentials often lack knowledge about educational systems and work experience in periphery countries. Indeed, no national or inter-provincial data bank exists that could shed light on these issues. Moreover, each province and territory sets different standards for recognizing degrees, training, and job experience from sending countries. For immigrant professionals, provincial requirements as well as occupation-specific regulations prevail for accreditation and licensing. Lack of uniform provincial requirements creates barriers for immigrants who migrate inter-provincially and hence, these immigrants have dual barriers.

Many skilled immigrants enter Canada hoping to do jobs similar to the ones they had in their countries of origin. The reality is that on arrival, many immigrants are forced into a process that is individualized, costly, and disjointed. Several institutions are key players in recognizing educational and professional skills and determining qualifications required for professional jobs (e.g., doctors, engineers, architects, university teachers and lawyers) or for certain categories of jobs (e.g., nurses, school teachers, daycare and homecare workers, and so on). These institutions include colleges and universities, various training schools (e.g., British Columbia Institute of Technology), hospitals, daycare centers, provincial and federal governments, and professional regulatory bodies for doctors, engineers, architects, lawyers, etc. Most immigrants – except those from English-speaking countries – are required to upgrade their educational skills, retrain in their professions, and get licenses from the individual professional bodies. Unless immigrants go through these procedures, they are never eligible to get their desired jobs.

### **Issues facing immigrant women**

In addition to the challenges of dealing with the complexities of the procedures, immigrants, especially immigrant women, face financial constraints in pursuing re-training or upgrading. For immigrant women, returning to school in order to get back to their original professions – on top of supporting their families – creates major dilemmas in their lives. Should they upgrade their skills immediately once they migrate? Who will support the family financially while they upgrade their skills? Who will take care of the children and household chores? Most immigrant women, to support their families, start part-time, low-paid, 'unskilled' jobs on arrival and consequently most of them never have opportunities to be accredited. Due to the patriarchal ideologies embedded in families of South and South-east Asia, men after migration in most cases initiate upgrading and re-

training, whereas women as spouses and dependants start low-paid, part-time, flexible-hours jobs. Patriarchal ideologies refer to the rule of men in socio-economic-political structures in the South and South-east Asia – although women challenge these ideologies both informally and formally. To counter patriarchal ideologies, immigrant women as well as their groups organize and resist. Even women who migrate as domestics or independent immigrants often spend years in low-paid jobs, so that they can sponsor family members such as children, spouses and parents as immigrants. Despite these challenges, most immigrant women from South and South-east Asia explore ways to get through the accreditation and the re-skilling process.

Immigrant women can be broadly categorized in three groups: (i) full-time homemakers; (ii) low-paid, flexible-hours workers who have some sort of training; and (iii) those who went to school for re-skilling. In the last category, very few successfully achieved their dream of working in their original profession as full-time workers. However, despite their precarious situations, most women I interviewed explored avenues that would re-skill them for the Canadian labour market.

Immigrants' narrations demonstrate the complex and often irregular processes of accreditation and re-training in certain professions. First, there are no rules or time limit for assessing the submitted projects. Many months can pass before a student receives the outcome and grade of a project. Second, the expectation to do the assigned but specialized project independently or without a reasonable level of supervision is an onerous demand on immigrant women. Third, long time lapses can occur between different levels of education and between meetings with professors or evaluators. Finally, spending money and time in the re-skilling process does not guarantee success. The whole process of re-skilling is full of impediments that may result in a waste of money and the loss of years out of immigrant women's lives. Many immigrant women give up, finding that they are either too old or too tired to obtain or compete for their targeted job.

In the name of re-skilling, a gendered division of labour emerges between men and women, and a racialized division of labour surfaces within the female labour force itself. Despite immigrant women's potential for upgrading, the female labour force in Canada reflects a class-based and racialized division of labour between those who are Canadian-born, mostly white and privileged, and those who are immigrants, i.e., born in the periphery countries and disadvantaged due to complex immigration procedures and disjointed accreditation processes. Immigrant women thus become 'the other' and racialized, and a division emerges. The immigration immigrant women into low-paid and 'unskilled' jobs, i.e., that hinder these women's access to social benefits such as Employment Insurance, medical and extended health care benefits, sick leave, disability benefits, family leave and pensions. The jobs many immigrant women perform are

tedious and repetitive, and, in certain cases, require heavy lifting. Doing these jobs often causes back pain, muscle pain, and even permanent disabilities. Many immigrant women do not end up in jobs related to their original professions, i.e., the professions they used to hold in their countries of origin. Nevertheless, a few women do attain their desired jobs, and these women's satisfaction level is naturally high.

### **Necessary measures**

There exists compelling evidence of the hurdles immigrant women must leap to properly establish their credentials and re-enter the labour market. There is a dire need for both federal and provincial governments to address these issues, for the sake of better utilization of human resources and enhanced productivity. The following measures need to be undertaken to assist immigrant populations, particularly immigrant women.

- A regulatory body needs to be set up to monitor the accreditation system and minimize variations in standards required across provinces. This body could set up a comprehensive database of foreign educational and training institutions and their standards. Working with universities, colleges, training institutions, and schools in Canada, this body could then develop the database to produce comprehensive, uniform regulations across Canada.
- A regulatory body could also develop mechanisms to translate foreign qualifications into Canadian terms. This could be done in terms of continents, countries and even within countries. For example, a master's degree in engineering from India or Holland could be deemed as equivalent to a master's degree in engineering in Canada. On the other hand, a master's degree in engineering from another country could be found equivalent to a bachelor's degree in engineering in Canada. A mechanism like this could help immigrants seek relevant jobs in the labour market right away, without bureaucratic hassles. Employers could easily check with the relevant agency when considering hiring immigrants with credentials from other countries.
- To develop a standardized and uniform system, federal and provincial governments need to cooperate with each other. This may greatly facilitate immigrant women's accreditation process. Further, co-ordination is required between and among provincial governments to facilitate the transfer of skills and experience across provinces.

It is evident that most immigrant women enter Canada as dependents – as wives, sisters, and daughters. All too often, due to their dependent status, immigrant women do

not receive the entitlements accorded to sponsored male immigrants. Unequal entitlements upon arrival not only foster the growth of gender disparity among immigrants, but also perpetuate the ideology of the 'male breadwinner' that most Asian countries endorse. The very process also perpetuates a racialized, gendered and class-based labour market.

Women still make up the majority of childcare providers, a role that takes them out of the labour market for certain lengths of time. Restructuring of childcare policy in two major provinces, i.e., in Ontario and BC, where most immigrants have settled, has created obstacles to re-skilling for immigrant women. It is clear that the struggle for childcare in Canada may be shifting from making childcare accessible for all women irrespective of class and race to 'fighting child poverty.' However, it is equally clear that child poverty among immigrants will not be eliminated without accessible childcare that provides immigrant women with opportunities to upgrade as well as to enter the labour force for the financial support of their families.