



Investigation Report

File: Kendra Gould v. Saint Mary's University and Society for Academic Freedom and Scholarship
File Number: 42000-30-H19-2138
HRO: Robyn Martelly
Date of Complaint: February 14th, 2020
Date of Report: March 13th, 2024
Section of the Act: Discrimination with respect to the provision of or access to services or facilities and/ or publication based on Aboriginal Origin contrary to s. 5(1)(a)(f)(q) of the Nova Scotia *Human Rights Act* ("the Act")
Method of Investigation: Administrative Investigation

A. Nature of Allegation

1. The Complainant, Kendra Gould ("Gould") alleges that she was discriminated against by the Respondents, Saint Mary's University ("SMU") and Society for Academic Freedom and Scholarship ("SAFS") with respect to the provision of or access to services or facilities and/or publication due to her Aboriginal Origin.

B. Undisputed Background Information

2. SMU is a post-secondary institution offering undergraduate and graduate programs in Halifax, Nova Scotia.
3. Gould was a student at SMU between Fall 2017 and Summer 2020.
4. Dr. John MacKinnon ("MacKinnon") is an Associate Professor of Philosophy at SMU. MacKinnon taught a Philosophy of Law course in the Winter term of 2018, which Gould was enrolled in.
5. SAFS is a non-profit organization founded in 1992 in London, Ontario. SAFS Newsletter appears three times a year and contains original articles written by its members about universities and higher education. A paper version of the newsletter is mailed to members and an electronic version is posted on the SAFS website.
6. The January 2019 Newsletter of SAFS included an article written by SAFS member and SMU Philosophy Professor, MacKinnon titled, "Indigenize This".
7. SMU is not associated with SAFS.

C. Parties and Persons Involved

8. Complainant:	Kendra Gould ("Gould")
Respondent 1:	Saint Mary's University ("SMU")
SMU Professor:	Dr. John MacKinnon ("MacKinnon")
Respondent 2:	Society for Academic Freedom and Scholarship ("SAFS")
Former SAFS President/Editor:	Mark Mercer ("Mercer")
Former SMU Indigenous Student Advisor:	Raymond Sewell ("Sewell")
Former SMU Conflict Resolution Advisor:	Bridget Brownlow ("Brownlow")

D. Complainant's Position

9. Gould's allegations are as set out in the complaint form signed on February 14th, 2020, and received on October 20th, 2020. Please note there was some uncertainty regarding dates and timelines.
 - A. September 27th, 2019, Gould spoke to an Intake HRO and made her Human Rights complaint against SMU and SAFS.
 - B. February 11th, 2020, the Intake HRO sent the draft complaint form to Gould for review.
 - C. February 14th, 2020, the Intake HRO revised the draft complaint form.
 - D. September 14th, 2020, the Intake HRO mailed out the formal complaint form to Gould for her signature. However, the deadline of September 11th, 2020, for Gould to file her complaint had passed. This was an oversight on the Intake HRO's part.
 - E. October 20th, 2020, the Commission received the signed complaint form, which appears to be backdated to February 14th, 2020, when revisions were made to the draft complaint form by the Intake HRO. The signature date was not updated or questioned.
 - F. December 16th, 2020, the Intake HRO spoke to Gould over the phone and apologized and explained that Gould needed to file an extension request to file her complaint because of an oversight on behalf of the Intake HRO, which was out of the Complainants control. The Intake HRO sent an email to Gould with the information to request an extension to file Gould's complaint.
 - G. Due to a backlog in complaints, staff resourcing and Nova Scotia going into in a provincial state of emergency due to a global pandemic on March 22nd, 2020, due to Covid-19. Gould's request for an extension to file her complaint was not granted until April 13th, 2021.

- H. April 13th, 2021, Gould's request for an extension was approved by Senior Legal Counsel at the Nova Scotia Human Rights Commission.
- I. May 2021, it appears that Gould's complaint form was amended, and the signature dating February 14th, 2020, from the draft complaint form was used.
- J. The amended complaint form from May 2021, added subsection (f) which is publication and updated question 2 and question 8.
- K. November 24th, 2023, the Investigations HRO amended the amended complaint form to correct the Respondent, SAFS's name and sent it to Gould for her signature on November 27th, 2023.
- L. November 27th, 2023, HRO received the amended complaint form signed by Gould and sent a copy to each Respondent for their records.
- M. The original complaint form signed February 14th, 2020, is attached as Appendix A, the amended complaint form from May 2021, is attached as Appendix B, and the amended complaint form signed on November 27th, 2023, is attached as Appendix C. The complaint form provided by Gould is summarized as follows:
 - N. Gould is alleging that she was discriminated against by her professor, MacKinnon who taught a Philosophy of Law course in the Winter term of 2018, which Gould was enrolled in.
 - O. Gould alleges that her professor and SAFS member, MacKinnon wrote an article about her in the January 2019 SAFS Newsletter titled "*Indigenize This*".
 - P. Gould alleges that the article mocked her as a student, her grades at SMU, and that MacKinnon stated SMU does not owe Indigenous peoples acknowledgement about unceded territory because the Mi'kmaq had nothing to do with founding SMU.
 - Q. Gould alleges that MacKinnon went on to make derogatory remarks about how Indigenous students who received an education on the reserve need to stay on the reserve because they don't have the proper education for university.
 - R. Gould stated that this incident has affected her as she felt judged, demeaned, mocked, and labeled as a "*Dumb Indian*". Gould stated that she was embarrassed and made to feel like she didn't belong in a post-secondary institution and was afraid of retribution for reporting MacKinnon.
 - S. Gould tried to resolve the matter by reporting it to SMU President, (Robert Summerby-Murray) SMU Mi'kmaq Advisory committee, the Friendship Centre

and participating in SMU's informal conflict resolution process with Raymond Sewell ("Sewell") SMU Indigenous Student Advisor and Bridget Brownlow ("Brownlow") SMU Conflict Resolution Advisor on November 28, 2019.

T. Gould did not provide a rebuttal to the Respondents response.

E. Respondent's Position (SMU)

10. Legal counsel representing the Respondent, SMU, provided a response summarized as follows:

- A. SMU strongly denies any allegation of discrimination against Gould.
- B. Legal counsel for SMU stated in their response that *"the Complaint was filed out of time and the Commission's decision to grant the Complainant's request for an extension of time to file the Complaint was unreasonable and a breach of procedural fairness as it failed to advise the University of the fact of the Complainant's Complaint or the Complainant's request for an extension. The Commission further failed to provide the University with an opportunity to make submissions in response to the Complainant's request for an extension as is its legal right."*
- C. Legal counsel for SMU stated in their response that *"The Newsletter Article, which is the alleged form of discrimination at issue according to the Complainant, was published by SAFS in the January 2019 SAFS Newsletter. The Complaint was filed February 14, 2020, more than twelve (12) months after the publication of the Newsletter Article in January 2019."*
- D. Legal counsel for SMU stated in their response that *"The University will suffer prejudice if the Complaint is referred to a Board of Inquiry. In the intervening time, the Conflict Resolution Advisor is no longer employed by the University, and the Indigenous Students' Advisor is no longer employed in that role."*
- E. Legal counsel for SMU stated that SMU did not write or publish the article titled *"Indigenize This"*. SMU says MacKinnon was the author and his decision to write the article was not connected to his employment.
- F. SMU states that the Gould's allegations were addressed in accordance with its *Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination* and the Complaint.

F. Respondent's Position (SAFS)

11. Mercer, who is representing the Respondent, SAFS, provided a response summarized as follows:

- A. In SAFS's response Mercer stated that, *"As president of SAFS, I am the editor of the newsletter. SAFS is a non-profit, volunteer organization of over 300 mainly Canadian academics and others. The society is dedicated to academic freedom, freedom of expression on campus, the merit principle in university decisions, sound scholarship and high academic standards, and due process in all university procedures."*
- B. In SAFS's response Mercer states that, *"The SAFS Newsletter of January 2019 contained an article by SAFS member and Saint Mary's University philosophy professor John E. MacKinnon entitled "Indigenize This." This article contained references to "Q," who Kendra Gould has correctly identified as herself. Ms Gould had been in one of Dr MacKinnon's courses and the article reports events involving Ms Gould. The article's factual accuracy is not disputed in Ms Gould's complaint."*
- C. In SAFS's response Mercer states that, MacKinnon's article was not about Gould, but about SMU and indigenization initiatives. Mercer went on to state that MacKinnon did not mock Gould, kept her identity confidential by referring to her as "Q", and stated in his professional opinion that "Q" was academically unprepared for university and projected a sense of entitlement.
- D. Mercer states that as the editor he removed the article from the SAFS website in September 2019, on the request of MacKinnon, after Gould revealed herself to be "Q".

G. Issues to be Considered

Does the evidence support a case of discrimination, on account of Aboriginal Origin as alleged by the Complainant?

If the evidence supports a case of discrimination, on account of Aboriginal Origin, does the Respondent have a valid, non-discriminatory defence?

H. Evidence for Individual Allegations and Issues

Witness Information

12. HRO contacted Gould on Oct 17th, 2023, HRO asked Gould what the outcome of the resolution process was with SMU.
- A. Gould stated there was no resolution or outcome through SMU's resolution process.

B. Gould stated that she felt like SMU excused MacKinnon's behaviour and gave excuses as to why MacKinnon wrote the article, and stated MacKinnon was dealing with personal issues at home.

C. Gould stated that she was supposed to receive an apology letter from MacKinnon, which Gould stated she did not receive.

13. Oct 26th, 2023, HRO contacted former SMU Indigenous Student Advisor, Raymond Sewell ("Sewell"). Sewell did not respond by the time HRO's Investigation Report was submitted.

14. Oct 26th, 2023, HRO contacted former SMU Conflict Resolution Advisor, Brownlow.

A. Brownlow did respond to HRO's request and stated "*I am no longer employed by SMU except as a part-time faculty member. My position was terminated after 20 years on January 18th, 2023, and I have significant limitations on what I can say.*" Brownlow stated she would only speak to the HRO informally.

B. HRO did not speak to Brownlow, as she would not be able to provide information on this matter.

I. Documentary/Other Evidence

15. HRO reviewed the "Indigenize This" article written by MacKinnon, which Mercer published in the SAFS January 2019 Newsletter. The article is attached as Appendix D.

16. HRO reviewed SMU's Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination, attached as Appendix E.

17. HRO reviewed SMU's Declaration of Respect, attached as Appendix F.

18. HRO reviewed SMU's Code of Student Conduct, attached as Appendix G.

19. October 20th, 2023, HRO requested SMU's Employee Code of Conduct similar to the Student Code of Conduct posted to SMU's website.

A. Legal Counsel for SMU stated "*SMU has numerous policies that set out responsibilities for employees, and the relevant one here is the Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination. Some workplaces call such a document a Code of Conduct.*"

B. SMU did not provide an Employee Code of Conduct aside from the Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination.

20. HRO reviewed a document titled “Disciplinary Action against Me by My University”. The article was written by former SAFS President, Mercer and posted to his website, which is attached as Appendix H.

21. October 27th, 2023, HRO requested a copy of the written apology that MacKinnon was required to provide Gould through SMU’s informal resolution process.

A. Legal counsel for SMU stated that *“The University does not have a copy of the written apology, but understand it was provided to the Complainant.”*

J. Other Information

22. In September 2019, SMU and Gould engaged in an informal resolution process pursuant to SMU’s Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination.

23. SMU states Gould’s allegations were addressed in accordance with its Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination.

24. The Acting Director and CEO at the time granted an extension for Gould to file her human rights complaint.

25. Former SMU Conflict Resolution Advisor, Brownlow is employed by SMU in the Political Science Department as a Part-Time and Limited Term Faculty member.

26. Former SMU Indigenous Student Advisor, Sewell is employed by SMU in the English Language and Literature department.

27. MacKinnon and Mercer are both employees of SMU and colleagues in the Philosophy department.

K. Analysis

Does the evidence support a case of discrimination, on account of Aboriginal Origin, as alleged by the Complainant?

28. Section 4 of the Nova Scotia *Human Rights Act* states that:

“For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic,

referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.”

29. In order for Gould’s allegations to be substantiated, it needs to be demonstrated that she was treated differentially by SMU and SAFS and that this treatment had the effect of imposing a burden, obligation or disadvantage upon her not imposed upon others, and that the reason for this being imposed upon her was based on her Aboriginal Origin.
30. In the *“Indigenize This”* article it appears that MacKinnon tried to keep Gould’s identity confidential by referring to her as “Q”.
31. In the *“Indigenize This”* article MacKinnon states that there were only twenty-six students enrolled in his Philosophy of Law class. By MacKinnon stating facts in the article that Gould would know, Gould was easily able to identify herself as “Q”.
32. In SMU and SAFS’s response, they do not dispute that MacKinnon was referring to Gould as “Q” in the article titled *“Indigenize This”*.
33. In MacKinnon’s article titled *“Indigenize This”* MacKinnon made statements such as:
 - A. *“On a steamy afternoon in early August, a ceremony was held on the campus of Saint Mary’s University to raise the Mi’kmaq Grand Council flag, where it continues to waft alongside the provincial and national flags, making us, apparently, not just a Nova Scotian and Canadian, but also a Mi’kmaq, institution. This was, and remains, curious, since the Mi’kmaq had precisely nothing to do with the founding and flourishing of Saint Mary’s University.”*
 - B. *“The material in Philosophy of Law is demanding, but, precisely because of this, invigorating and rewarding for those who are capable and committed.”*
 - C. *“I prepared a review sheet for the students, devoted an entire class to review, and, the following class, administered the test. Marks ended up ranging from 0 to 98. Q earned a 9, that is, a 9 out of 100.”*
 - D. *“For a student who cannot function in written English, how is this even possible? Are Mi’kmaq students not being taught English in school? Or is English, even if taught, given short and derisive shrift? If so, on whose direction? The Government of Nova Scotia? The Minister of Education? The Mi’kmaq Grand Council? Since failure to learn English*

well can only jeopardize the prospects of the students themselves, why, petty cultural politics aside, is this tolerated? Does “indigenizing” the academy entail non-indigenous students, in addition to shouldering their own considerable responsibilities, doing work that Mi’kmaq students should be doing for themselves? Is this what educational bureaucrats mean by “service learning”? How many academic regulations have been relaxed or ignored, how many transcripts tampered with, how many grades inflated and pseudo-subjects concocted in deference to the imperatives of “indigenization”?”

E. “The first institution of presumptive higher learning that Q attended has clearly debased itself, dispensing university credit on the cheap. And yet, I have little doubt that, in time, she will manage to navigate her way through the thicket of academic regulations and requirements at, and earn a degree from, Saint Mary’s.”

34. It must also be considered that there is a history of systemic racism in Nova Scotia regarding historically marginalized vulnerable groups. There are long-standing stereotypes about the Mi’kmaq people, and this historical context must be considered, as it may have played a part in SMU, MacKinnon, and SAFS’s actions, whether intentional or not.
35. In SAFS’s response, Mercer stated that paper or electronic copies are sent to various university administrators, civil liberties groups, journalists, libraries, and others.
36. Although MacKinnon requested to have the January 2019 “*Indigenize This*” article removed from the SAFS website, printed copies had already been distributed and the damage had been done.
37. Gould tried to resolve the matter by going to the President of SMU and participating in SMU’s informal resolution process but was not satisfied with the process or outcome.
38. SMU having a Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination, does not mean that individuals who experience harassment and discrimination will be satisfied with the outcome of SMU’s resolution process.
39. Gould stated SMU’s resolution process was not completed because Gould did not receive the written apology letter from MacKinnon.
40. The Commission is not required to contact the respondents for a submission in the process of determining if an extension to make a complaint should or shouldn’t be granted.

41. The Commission did consider any possible prejudice towards Gould, SMU and SAFS when granting the extension, and did not believe the granting of an extension would bring any prejudice to either party. A Board of Inquiry would be most appropriate to make a determination regarding timeline questions.
42. SMU stated in their response *“The University will suffer prejudice if the Complaint is referred to a Board of Inquiry. In the intervening time, the Conflict Resolution Advisor is no longer employed by the University, and the Indigenous Students’ Advisor is no longer employed in that role.”*
43. Upon further investigation it was found that Brownlow is still employed by SMU in the Political Science Department as a Part-Time and Limited Term Faculty member.
44. Upon further investigation it was found that Sewell is still employed at SMU as Assistant Professor in the English Language and Literature department.
45. All though Sewell and Brownlow are employed in different roles, there is nothing to suggest that they could not be called upon to partake in a Board of Inquiry process if needed, and therefore there would be no prejudice if this matter was to be referred to a Board of Inquiry.
46. Between June 2021 and January 2023, both parties attempted to reach a resolution to resolve this matter and were unable to successfully utilize the resolution process through the Nova Scotia Human Rights Commission.
47. It appears that SMU is trying to deflect their responsibility onto MacKinnon and SAFS by saying MacKinnon made the decision to write the article, and SAFS published the article, but it’s not connected to MacKinnon’s employment.
48. It must be considered that MacKinnon and Mercer are both employees at SMU and colleagues in the Philosophy department. Mercer has been employed at SMU since 1999.
49. It must also be considered that aside from Mercer being the President of SAFS from May 2015 to May 2023, he was also the Editor when the article *“Indigenize This”* was published by SAFS.
50. In 2020, Mercer received disciplinary action by SMU when he wrote an article that was offensive to others. Please refer to Appendix H - Disciplinary Action against Me by My University.
51. HRO requested Employee Code of Conduct. Legal Counsel for SMU stated *“SMU has numerous policies that set out responsibilities for employees, and the relevant one here is the Policy on Conflict Resolution and the Prevention and Resolution of Harassment and Discrimination. Some workplaces call such a*

document a Code of Conduct.” It appears that Legal counsel may be trying to direct the HRO’s investigation by stating what documentation is relevant to the HRO’s investigation.

52. In SMU’s Declaration of Respect under responsibility and accountability, it states *“We recognize that our personal behaviour and actions have consequences, and we commit to the responsible enjoyment and exercise of our rights, with respect for the rights of others. We will be trustworthy and answerable for our conduct, decisions and obligations and we will comply with all applicable laws, regulations, policies, and procedures.”*
53. Intentional or not, this matter does directly relate to MacKinnon’s employment, as he was clearly talking about a student that he taught at SMU, that student being Gould.
54. It appears that SMU is not taking an equitable approach to accountability and discipline to their employee’s actions.
55. At question, is whether Gould was discriminated against due to her Aboriginal Origin. It appears that as a result of MacKinnon writing the article *“Indigenize This”* and SAFS publishing the article in January 2019, Gould may have faced discrimination.
56. There are a number of reasons that a recommendation for a Board of Inquiry is most appropriate for this file:
 - A. SMU raises questions around the timeline of the complaint, and the extension granted. This would most appropriately be reviewed at a Board of Inquiry.
 - B. The article contains discriminatory, anti-Indigenous language and rhetoric.
 - C. SAFS’ editor at the time, Mercer, was a colleague of MacKinnon’s at SMU. He faced discipline action himself for publishing another article the following year.
 - D. All though SMU alleges these actions aren’t tied to MacKinnon’s employment, the content of his article was directly related to his employment at SMU and his role as a professor. The article was written in such a way that Gould could be identified as the subject matter as she was the only indigenous person in her class at the time, which is how the article came to Gould’s attention.

If the evidence supports a case of discrimination, on account of Aboriginal Origin, does the Respondent have a valid, non-discriminatory defence?

57. The Respondents, SMU and SAFS do not have a valid, non-discriminatory defence.

J. Recommendation

58. An Investigation Report does not determine whether there has been discrimination. It determines if there are allegations which, if proven on a balance of probabilities, could establish discrimination on the grounds alleged in the complaint. A Board of Inquiry can only be appointed by the Human Rights Commissioners, not by Commission staff. The appointment of a Board of Inquiry is the final internal step in the Commission's process and a number of factors have to be considered by the Commissioners before a Board of Inquiry is appointed, such as deciding whether or not it is in the public interest to appoint a Board of Inquiry.

59. I recommend, based on the available information, the complaint be referred to a Board of Inquiry pursuant to Section 32A (1) of the Human Rights Act to determine whether discrimination has occurred.

K. Document List

60. Appendix A - Original Complaint Form Signed February 14th, 2020.

61. Appendix B - Amended Complaint Form, May 2021.

62. Appendix C - Amended Complaint Signed November 27th, 2023.

63. Appendix D - Indigenize This Article

64. Appendix E - SMU Conflict Resolution Policy

65. Appendix F - SMU Declaration of Respect

66. Appendix G - SMU Code of Student Conduct Policy

67. Appendix H - Disciplinary Action against Me by My University