WELDON

QUARTERLY

Winter 2020

Since 1975

A publication of the Weldon Times

The Weldon Quarterly is written and published by the law students of Dalhousie University.

Dalhousie University sits on Mi'kma'ki, the traditional territory of the Mi'kmaq.

The Arrest of Meng Wanzhou and the Rule of Law

Micah Boyes, 2L

Over a year after the arrest of Meng Wanzhou, Canadian relations with China continue to deteriorate. The United States issued a warrant for Meng's arrest in August of 2018, charging her with committing bank and wire fraud in order to avoid US sanctions on Iran.

Meng is both the Chief Financial Officer of Huawei and daughter of its founder. Huawei is a multinational technology company at the centre of the US-China trade war. Against this geopolitical backdrop, Canada faces a decision about whether to allow Huawei to be a part of constructing Canada's 5G networks. Huawei is the global leader in 5G technology and shunning them could set our country behind in the global market.[1] However, the US has voiced strong security concerns regrading Huawei, alleging that all information that goes through Huawei is at the disposal of the Chinese government.[2]

> *"It is important that Canada does not compromise our values. The rule of law must be upheld."*

In response to Wenzhou's arrest, China arrested two Canadians, Michael Spavor and Michael Kovrig, who have been held in China without access to their lawyers or family. The two men were charged with stealing Chinese state secrets,[3] but there has been no evidence supporting these charges, and the move has been widely seen as retaliation for Meng's arrest. The Chinese government has denied any link between their arrests and Meng's arrest, but has said that problems in the Canada-China relationship will disappear if Canada releases Meng.[4]

China, Canada's second largest trading partner, has also utilized economic sanctions in the wake of Meng's arrest.[5] In March, China banned the import of Canadian canola, ostensibly due to insect infestation in imported shipments of canola.[6] In June, the import of Canadian beef and pork was banned, after Chinese authorities reportedly found a banned additive in a shipment of pork products. This ban was lifted in November after an outbreak of African swine fever in China's domestic supply of pork.[7] These tactics are typical for China. In 2010, an imprisoned Chinese dissident won the Nobel Peace Prize, and in response, the Chinese government cancelled trade negotiations with Norway and imposed sanctions on Norwegian salmon imports into China[8] —even though the Norwegian government is not involved in awarding Nobel prizes.

The Canadian government has faced pressure, both to release Meng and to allow Huawei to build Canada's 5G networks. However, it is important that Canada does not compromise our values. The rule of law must be upheld.

When authorities in the United States are seeking to arrest and extradite an individual, the request must be made through the Department of Justice's Office of International Affairs.[9] In the case of a high-profile individual such as Meng, the decision to pursue charges would be made at senior levels of the government. Canada has an extradition treaty with the US, one which requires the offense for which extradition is requested to be a crime in both countries. Dalhousie law professor Rob Currie, speaking

to CBC News in 2018,[10] said that as long as the requesting country's application is in order, then Canada is legally obligated to arrest the subject. Presuming the US request was in order, Canada rightly arrested Meng while she was at the Vancouver airport. To forgo arresting an individual for fear of reprisal would have been a craven violation of the rule of law.

Having arrested Meng, the next step is for the extradition trial to occur without political interference. The judge is not deciding whether Meng is guilty of the crimes she is charged with, but whether the evidence presented by the foreign government is enough to warrant extradition. If extradition is ordered, then it would go to the Attorney General's office for review. At this stage, the 'political offense exception' could come into play. This exception allows Canada to reject extradition requests that are politically motivated. It is important that at all stages, the process is free from political interference from both sides.

Former Deputy Prime Minister of Canada John Manley has suggested that a prisoner exchange should be enacted in order to secure the two detained Canadians release, saying that he is concerned that the United States will come to a trade agreement with China and withdraw the extradition request, resulting in Meng's immediate release, which will leave Canada with no leverage in order to get the Canadians released. However, despite the potential cost to Canada's economy and international relationships, a prisoner swap would do even further damage. Such a move essentially acknowledges that the Chinese tactics are effective and would set a dangerous precedent for the future: that Canada can be bullied. In addition, the move would damage Canada's credibility with our allies, particularly with the US.

In short, Canada cannot do business as usual with China. Not only has China shown itself willing to use hostage tactics and economic sanctions to further its diplomatic goals, it also stands accused of numerous other crimes including creating internment camps for Uyghur Muslims and police misconduct in cracking down on protests in Hong Kong. Canada, by steadfastly following the rule of law and not bowing to political pressure, can show strength on the world stage in the face of a powerful opponent.

"To forgo arresting an individual for fear of reprisal would have been a craven violation of the rule of law."

[1] https://www.thestar.com/business/opinion/2019/11/26/five-reasons-canada-should-let-huawei-help-build-our-new-5g-networks.html

[2] https://www.cbc.ca/news/politics/canada-warned-of-fallout-on-five-eyes-relationship-if-huawei-allowed-on-5g-1.5370992

[3] https://www.scmp.com/news/china/diplomacy/article/3010517/china-charges-canadians-michael-kovrig-and-michael-spavor

[4] https://business.financialpost.com/opinion/why-canada-shouldnt-agree-to-swap-meng-wanzhou-for-the-two-canadian-prisoners-in-china

[5] https://tradingeconomics.com/canada/exports-by-country, https://tradingeconomics.com/canada/imports-by-country

[6] https://www.cbc.ca/news/business/china-justifies-canadian-canola-ban-1.5044661

[7] https://globalnews.ca/news/6135142/china-lifting-meat-ban-canola-producers-association/

[8] https://www.brookings.edu/articles/chinese-non-military-coercion-tactics-and-rationale/

[9] https://www.theglobeandmail.com/canada/article-how-does-extradition-to-the-us-work-a-look-at-what-may-be-next-for/

[10] https://www.cbc.ca/news/politics/meng-huawei-extradition-1.4937146

The Virtue of a Proportional Response

Robert Belanger, 2L

In an episode of *The West Wing*, a television show about a fictional presidency during the late 90's and early 2000's, President Josiah Bartlet faces an early challenge: a U.S plane has been shot down by Syrians. Angry and eager to respond, Bartlet scoffs at the Joint Chiefs' of Staff suggestion that the US respond proportionally, remarking, "What is the virtue of a proportional response?" Bartlet wants to escalate the situation with a heavy use of force that would demonstrate US military might. He wants a disproportional response; he wants to send a message. He tells the Joint Chiefs to provide him with stronger military option.

The Joint Chiefs follow the President's orders. They present a disproportional response to President Bartlet, listing the costs of such a response. If the US escalates the crisis, innocent civilians will die, the US will violate international law, isolate itself from the international community, and, possibly, start a war. At that moment, President Bartlet realizes the "virtue" of a proportional response and decides it's just not worth it.

This episode, while fictional, reflects the recent drone strike on Iranian general Qasem Soleimani. The situations are eerily similar. The President is presented with a "menu" of options including a proportional response, a slightly stronger response, and a disproportional response. The difference lies in the decision: President Trump chose the disproportional response and now we are seeing the costs.

The consequences of this decision are dire. First, by violating international law, the US isolates itself from the international community. Targeting a person may be legal in international law according to a specific test. First, the situation must be an armed conflict or not. If there is an armed conflict, then international humanitarian law (IHL) applies. If there is no armed conflict, human rights law applies, and the use of deadly force can only be justified in cases of self-defence.

"The difference lies in the decision: President Trump chose the disproportional response and now we are seeing the costs."

In this situation, I do not believe there is an armed conflict involving the United States that would justify the application of IHL in this situation. There are two types of armed conflict. An international armed conflict and a non-international armed conflict. An international armed conflict is when states resort to armed force against another state. In this case, the United States would have to be at war with Iran for there to be an international armed conflict to justify an attack on Soleimani. Admittedly, tensions may be high between the United States and Iran, and it can be difficult to determine the exact moment an armed conflict begins as no formal declaration of war is needed. For example, Iran's missile attack on a US air base likely constituted a military action. But prior to the drone strike, the US was not at war with Iran, so no International Armed Conflict existed at the time.

A non-international armed conflict is a conflict where a non-state actor is involved. For example, the US fight with ISIS is considered a non-international armed conflict. Because of the connection between Soleimani and non-state paramilitary groups, such as Hezbollah, there could be an argument Soleimani qualifies as a Hezbollah combatant—but his role within this

organizations was not likely large enough for such an argument to succeed. Furthermore, though the American rhetoric against Iranian backed para-military groups is strong, it is difficult to determine if the United States is actually in an armed conflict situation against Iranian backed para-militaries.

If there was no armed conflict at the time, the only remaining justification for America's actions is self-defence. The self-defence argument requires an imminent threat to the United States that could only be prevented by killing Soleimani. The United States government has used a similar argument in the media but has not consistently or precisely explained what this imminent threat was. The Secretary of Defense denied that there was an imminent threat, but then the administration flip-flopped and said there was one.

After applying the legal test, there is a weak legal argument Soleimani could be considered targetable under international law. There were past situations when Soleimani could have been a valid target under IHL. During the height of the Iraq war, Iranian para-militaries were in an armed conflict and there was a strong legal justification to attack Soleimani. However, neither the Bush nor Obama administrations did so, likely because of the costs of such a strike—costs President Trump seems not to have considered.

> *"In foreign policy, the main question that must be asked is, "what are we trying to achieve."*

One of these costs is the compromising situation the strike has put the United States in. In foreign policy, the main question that must be asked is, "what are we trying to achieve." But I have no idea what the Trump administration is trying to achieve. The President reacts so impulsively that he clearly doesn't consider the long-term consequences of his actions. There appears to be no long-term objective. If he is trying to intensify the conflict against Iran, weakening the Kurds—a vital ally in the region—is counterproductive. If he is trying to instigate a regime change, a direct strike will only embolden the Iranian hardliners while pushing moderates to the side. If he is trying to eliminate a dangerous enemy, he didn't consider how entrenched the IRGC is in Iran nor how replaceable Soleimani is. It is not apparent what the President is trying to accomplish. His inconsistent and erratic strategy has weakened the US in the Middle East.

> *"As is, 176 people died when the Iranians shot down a commercial airliner—an action Iran would not have taken but for the drone strike on Soleimani."*

Another cost is the amount of death that will result from the strike. The potential human costs make this strike immoral. This action could have led, and may still lead, to conventional warfare. As is, 176 people died when the Iranians shot down a commercial airliner—an action Iran would not have taken but for the drone strike on Soleimani. American military bases were ill-prepared for the missile retaliation by Iran and were lucky there were no fatalities. This attack had serious moral consequences Trump does not appear to have considered.

So, what is the virtue of a proportional response? The Soleimani assassination answers that question. A disproportional strike leads to uncertainty, the death of innocents, and an increase in hostilities. The US has the capability to unleash terrifying military force but often holds back because the human costs of military action are too high. We have been lucky that the attack on Soleimani did not escalate too drastically, but the costs are still too high. 176 innocent civilians died because of the strike, the international community's trust in the United States continues to fade, and there seems to be no end goal in fixing relations with Iran. A fictional President understood the consequences of aggressive military action. Unfortunately, the real-life President did not.

LEGAL NEWS BRIEFING: Winter Edition

Huawei CFO Meng Wanzhou's Extradition Hearing

On January 23, the BC Supreme Court concluded its **extradition hearing** for Meng Wanzhou. The hearing sought to determine whether Meng's actions constituted a crime in Canada and whether Canada could comply with the United States' extradition request. On December 2018, Meng was arrested in Vancouver on charges of misrepresenting Huawei's relationship with Skycom, an Iran-based affiliate, in **contravention of US sanctions** on Iran. Associate Chief Justice Heather Holmes must decide whether Meng can be charged with "double criminality," a principle that states that the accused can be extradited for her crimes only if her actions could be considered crimes in the extraditing country. If Wanzhou's actions are found to satisfy this principle, then she may be extradited. If they are not, then the case will continue to the second stage of the extradition process: a hearing to determine whether there was a violation of her rights during her arrest.

Bill C-92

Bill C-92, *An Act Respecting First Nations, Inuit and Métis children, youth, and families*, came into effect on January 1. The bill passed its first reading back in February 2019 and was sponsored by the Minister of Indigenous Services. The first part of the bill asserts **Indigenous peoples' rights and jurisdiction** over the child and family welfare systems involving Indigenous youth. It sets out principles that must be considered in the provision of child and family services to Indigenous communities, such as the **best interests of the child**, **cultural continuity**, and **substantive equality**. The second part of the bill outlines the process by which Indigenous groups can claim these rights and jurisdiction. Groups who would like to take over child and family services must work with their respective province and with Indigenous Services Canada to discuss arrangements within a one-year time frame.

SCC on Standard of Review

In the recent decision of *Canada v. Vavilov* a majority of the SCC has revamped and clarified the framework for **standard of review**. The last time the SCC delved into this topic was in 2008 with the *Dunsmuir* decision. The SCC has made it clear that there is a **presumption** that the test for judicial review should be **reasonableness**. This presumption is rebutted in cases where the legislature has made it clear that a different standard is to be used, or where the rule of law requires the **correctness** standard be applied.

The PACT Act

The Senate approved the *Preventing Animal Cruelty and Torture (PACT) Act* on November 25. This bill was introduced by Theodore Deutch in January 2019 with the intent of revising pre-existing legislation about **animal crushing**. The 2010 legislation criminalized only the **distribution of videos** featuring animal crushing. The PACT Act expands on this legislation by also criminalizing the act of animal crushing, which can include crushing or suffocating animals. If convicted, the criminal can be fined or face prison for up to seven years.

Bill 153

On December 12, Ontario's Bill 153, *An Act to amend the Long-Term Care Homes Act to provide spouses with the right to live together in a home*, passed its second reading. The bill was first proposed by Catherine Fife, a member of the NDP. This bill proposes to amend the Residents' Bill of Rights in the *Long-Term Care Homes Act, 2007* to add the **right for spouses to continue living together despite different long-term health care needs**.

International Court of Justice on Myanmar

On January 23, The United Nations' International Court of Justice ordered the country of Myanmar to protect the **Rohingya**, an ethnic minority living in the Buddhist-majority country. The lawsuit was brought forward by the country of Gambia, on behalf of the Organization of Islamic Cooperation. Judge Abdulqawi Yusuf stated that **Myanmar must take measures to prevent acts prohibited in the 1948 Genocide Convention**, such as killing members of a group, from being committed. The court also ordered Myanmar to inform the court of its progress every six months until the court makes its final decision.

Bill S-202

Bill S-202 passed its first reading on December 10. The bill, *An Act to amend the Criminal Code (conversion therapy)*, was introduced by Senator Serge Joyal. If passed, the bill would criminalize the act of **advertising conversion therapy services** and the act of **materially benefitting** from the provision of conversion therapy to a minor.

US District Court of Massachusetts on Search and Seizure of Electronics at US Borders

On November 12, the United States District Court of Massachusetts declared in *Alasaad v McAleenan* that the government's **search and seizure of electronics** at US borders were unconstitutional. The American Civil Liberties Union and Electronic Frontier Foundation brought the suit to court, representing eleven travellers whose devices had been seized and searched without warrants. Judge Denise Casper ruled that the government requires a **warrant** to search and seize devices and that the search can only be done if officers can demonstrate that there is **reasonable suspicion** of contraband within the devices.

Bill S-204

On December 10, Bill S-204, *An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs)*, passed its first reading. The bill is sponsored by Senator Salma Ataullahian. The bill proposes to amend section 7 of the *Criminal Code* by adding new crimes related to **human organ trafficking**. The bill also proposes to amend the *Immigration and Refugee Protection Act* by making a **Canadian permanent resident or foreign national** who is suspected to have engaged in organ trafficking **inadmissible to Canada**.

European Union (Withdrawal Agreement) Act

The European Union (Withdrawal Agreement) Act, a bill that sets out the arrangements for the **UK's withdrawal from the European Union**—including details on how Brexit will proceed with its divorce bill—received Royal Assent from the Queen on January 23. The bill was first proposed by the government in October 21, 2019. The UK will formally depart from the EU on January 31.

CBA-NS Section Profile:
Law Students' Section

Sydney Hull, 3L

The Canadian Bar Association – Nova Scotia Branch law student section was awarded the 2019 CBA-NS Section Award of Excellence. Current section chair and 3L student at Dalhousie University's Schulich School of Law, Sydney Hull, summarizes recent events hosted by the law student section below.

Connect: Women in Law

A staple in the student section programming is a joint meeting with the Women Lawyers' Forum titled "Connect: Women in Law". This event provides women identifying lawyers and law students the opportunity to chat and discuss career options. Typically, the ratio is four students to one lawyer. It is set up in a "speed networking" style, where groups are given approximately twenty minutes to chat before rotating to the next lawyer to repeat the process. One reason the event is so well liked is that many law students, especially those in their first or second year, do not know any lawyers personally. As a consequence, they lack first-hand knowledge about the realities of practicing law. The welcoming, laid-back nature of the event gives students the ability to ask questions and have frank discussions with successful women lawyers. Many students have remarked that they come away from the event with a more nuanced understanding of careers in law. The 2019 event took place on November 5, had around 30 attendees, and was sponsored by the Schulich School of Law Career Development Office (CDO).

"The welcoming, laid-back nature of the event gives students the ability to ask questions and have frank discussions with successful women lawyers."

Health Break

Anyone who has been through law school knows that, generally speaking, the exam period is not a fun time. Students often forget what fresh air feels like and opt for ready-made meals or takeout over homemade, healthy meals. Recognizing this, the student section hosts "health breaks" each exam period, where nutritious snacks and drinks are given out to students entering the law building on their way to the library. In addition to refreshments, pens, highlighters and sticky notes are also made available as many pens and highlighters begin running dry during the back-end of the exam season. Plus, law students can never have too many sticky notes…

What to Do If?

Often, it is easy for students to be swept up into the law school narrative of jobs and linear career paths. While a career-focus is very important, working a non-legal summer job in 1L or 2L can leave students feeling uneasy and behind their colleagues who *do* find legal employment. In March 2019, the student section and CDO teamed up to create a panel on what students can do with their summers if they did not land law jobs. The session also highlighted how skills gained from non-law roles can make students attractive to

future legal employers. The panel featured upper-year students who had previously worked non-law summer jobs, CDO staff, and firm representatives who discussed the subject from different angles and shared resume and cover-letter writing tips.

Name tags

A new joint initiative between the law student section and the CDO in 2019 was providing reusable metal nametags to the incoming 2019 1L class. Thanks to generous sponsorship by the CDO and CBA, all current 1L students received a nametag during their welcome week. The nametags have both environmental and professional benefits: they look sharp while simultaneously reducing waste generated by school events. Through the CDO, which generally handles registration for networking events, the hope is that students can bring their own nametag for mixers at local firms. This will reduce the need for single-use lanyard nametags. 2L and 3L students also had the opportunity to purchase the tags for a subsidized cost. The student section hopes to continue providing the nametags to future Schulich Law classes in years to come!

Stress-Free Social

First held in March 2019, the "Stress-free Social" developed from a desire to offer something different to law student CBA members. The section decided to create a space where students can connect with their classmates in a laid back, casual environment. The only rule during the social was no talking about law school – including classes, exams, OCIs, articling, etc. Instead, students were encouraged to get to know other facts about their colleagues, such as non-law hobbies and interests. While friendships are quickly made in law school, the main connecting factor can easily become students' shared concerns about school and finding employment. The first event in 2019 was well received, so one each semester was planned for the 2019-2020 academic year!

The 2019-2020 CBA-NS student section executive are Sydney Hull (3L), Katie Short (2L), Robbie Mason (1L) and Delani Thiel (1L). All are students at the Schulich School of Law. If you have an idea for a joint meeting or panel with the law student section, feel free to reach out to Sydney or Katie: sydney.hull@dal.ca; kathleen.short@dal.ca.

Student's attending the CBA-Student Section Stress Free Social night

Brexit:
OK OK, What's Next?

Matthew Frick, 2L

With the President being impeached, Australia burning, and the tensions between the US and Iran increasing, Brexit has quietly slipped into the backs of our minds. The recent UK election gave Boris Johnson a clear parliamentary majority and enough strength to pass his long-awaited withdrawal agreement. With Brexit (hopefully) concluding at the end of January, the world can take a step back and evaluate the chaos that engulfed the UK over the past couple of years.

Dr. Vincent Powers recently visited Schulich to lecture on the difficulties the UK has experienced while dealing with Brexit. In the past couple of years, Dr. Powers has shifted his specialty into "Brexit Law", helping businesses negotiate the uncertainties they may face regarding future trade between the UK and the European Union.

Dr. Powers compared the situation in the UK with a large family who have all decided to go on vacation. Now they're sitting at home, arguing about where they should go, all the while wasting away their vacation time. The root of this chaos was not one mistake, but rather a broad misunderstanding of the work involved in leaving the EU.

Dr. Powers spoke about a number of issues plaguing the British negotiators. However, he also points to the more significant problem of the Referendum. The question in the referendum was defective, so the answer was defective as well. Multiple studies after the referendum showed that a number of UK citizens did not understand the question, and that a portion of them did not know that they were already in the EU. Dr. Powers explained the process of the referendum as the UK government asking the people if they wanted Tea or Coffee – to which the people responded, "I want a BMW".

Brexit Law is a new area for lawyers and judges to explore, and it is an area that Dr. Powers believes will still be relevant for decades to come. When asked what other countries are learning from watching the UK, Dr. Powers said that the biggest lesson is for countries to reform from within. The UK were never fully happy with being in the EU. While they were still in it, they had managed to negotiate a number of issues in their favour, such as reducing the amount they had to pay and keeping the British Pound. Now that they are leaving, it's very hard for the UK to negotiate an agreement they would like, and it will be very hard for them to negotiate/modify their trade deal after they leave. The UK had more power to change their situation when they were in the European Union.

The recent Withdrawal Agreement has passed parliament, and the UK is set to leave the EU on January 31st, 2019. After this, the UK will enter a transition period for a year to work out the kinks. With a brand-new set of laws about to be enforced, businesses and individuals all over the world will be contacting their lawyers to make sense of the new regulations. I have to agree with Dr. Powers when he says that a lawyer who chooses to study Brexit Law will have constant work for the rest of their life.

How to Shake the Winter Blues… by Being Green!

Tips from the Environmental Law Students Society
by Mark Pulak (1L)

The days are getting longer.

But when I say longer, I don't mean more sunshine. The Halifax skies are as grey as ever. The days are longer in the sense that I'm sleeping less. School work is piling up. We've got readings, pleadings, a factum here, a memorandum there. Of course, there are also job applications and interviews. Societies. Intramurals. Pro Bono…

And families! I nearly forgot that one.

If your cortisol levels just spiked, I sympathize. Just typing that list was anxiety-inducing and I know plenty of things are missing. Unfortunately, I need to remind you of one more thing – whether we can handle it or not.

Climate change is upon us and it's just getting worse.

Stressed yet? I've got more. Australia is on fire. World leaders can't agree on any meaningful climate action. The oceans are filling up with plastic straws. I accidentally used a paper coffee cup yesterday.

If none of what I have said so far has gotten you eco-stressed, bear with me. If you hate the word "eco-stress", bear with me. If you're already stressed about the environment, great!

Stress is unpleasant. When the source of the stress is something big and overwhelming and yet, at times, distant, it can be difficult to manage. My method of dealing with eco-anxiety is the same I use for my academic stress. It's called "doing something about it". And while it won't cure all eco-stress – the problem is way beyond any individual – taking small measures at a personal level can help treat that feeling of helplessness. Here a few of those small measures.

"My method of dealing with eco-anxiety is the same I use for my academic stress. It's called "doing something about it".

Eat less meat.

The global production of meat is a massive contributor to greenhouse gases, not to mention its detrimental effects on animals. Even making small reductions in meat-intake can make a huge difference if enough people do it. Food for thought!

Use less single-use plastics.

Until sea turtles learn the Heimlich manoeuvre, we should probably try to throw away less plastic. Instead of saran wrap, use Tupperware. The same goes for Ziploc bags. Try bringing cloth bags or even reusing a plastic shopping bags when you get groceries. As for K-Cups, use a French press—they even make thermos' that brew your coffee on the go!

Walk, bike, bus or buy a Tesla.

Cars pollute. Walking doesn't. Neither does biking. And while both activities are better for the environment, they are also better for your general well-being. Being active and outdoors improves mental and physical health. It's a win-win-win!

Contact your local MP and MLA.

The legislative action we need for the environment requires political will. I have friends who have worked as political interns and they've all told me the same thing – politicians and their staff read the letters sent to them. Representatives want to do right by their constituents. If there's a particular issue you're concerned about, tell them. If your representative voted for environmentally responsible legislation, thank them. Sending a letter with human emotion will elicit a human response. You can help build the political capital that's needed for green policies.

While these are just samples of the many actions you can take to reduce stress, they worked for me and provided relief from what often feels like an onslaught of bad news about the environment.

> *"Stressed or not, being environmentally friendly is a worthy goal in and of itself."*

There are added benefits of going green.

Stressed or not, being environmentally friendly is a worthy goal in and of itself. If you aren't weighed down by crippling eco-stress and just have regular stress or maybe even no stress, there are still good reasons to go green.

Being environmentally friendly can provide valuable social capital, moral superiority, and often a palpable sense of self-righteousness.

It's not the reason I turned to a greener lifestyle, but I won't deny the reality of it. When you are in the throws of imposter syndrome, knowing that you are more environmentally friendly than average can be a boon for your self-confidence. Likewise, shaming your colleague over a plastic straw at lunch time can provide just enough dopamine to get you to 5:00 PM.

Conclusion

Climate change and environmental degradation aren't going away any time soon. The anxiety from the looming crises borders on dread, but there's something honorable in doing what we can. Just like with school and work, doing your best is all that you can do. After that, you hope and expect others to do their part and then move on.

When it comes to the environment, doing your best is also the responsible thing to do. Unfortunately, relying on everyone else won't always work. People need reminders and that's okay. The changes can and will be difficult. But a collective problem requires a collective solution. And for the sake of our planet – and our mental health – there is no better time to get to work than right now.

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Supreme Court Decisions

FALL DOCKET | NOVEMBER-DECEMBER

Canada Post Corp. v. Canadian Union of Postal Workers

Relevance – Labour Law | Health and Safety

Federal Court – Civil – By Leave

In 2012, the Canadian Union of Postal Workers filed a complaint with a Canada Post depot in Burlington, Ontario, alleging a breach of the *Canada Labour Code* for failing to annually inspect the **entirety of a workplace**. The union argued that its members' workplace included all mail routes and delivery locations. An Appeals Officer with the Occupational Health and Safety Tribunal countered that only the parts of the workplace which Canada Post directly controlled, such as the depot, fell under the inspection requirement. After the union asked for judicial review, the majority of the Supreme Court ruled that the Appeal Officer's decision should stand. The Court found that the Appeals Officer acted within their decision-making authority in applying a **narrow interpretation** of the *Canada Labour Code*'s inspection requirement to this situation.

Bell Canada v. Canada (Attorney General)

Relevance – CRTC Regulations

Federal Court – Civil – By Leave

Responding to public feedback, the Canadian Radio-television and Telecommunications Commission ("CRTC") made the decision to allow **American commercials** to be played during the **Canadian broadcast of the Super Bowl**, beginning in 2017. Prior to this, Canadian viewers of the Super Bowl broadcast were shown different commercials than viewers in the United States. Bell Media, who had purchased the exclusive rights to broadcast the Super Bowl in Canada, argued that this decision regarding commercials was outside the CRTC's **jurisdiction**. The Federal Court of Appeal agreed with the CRTC, but the majority of Supreme Court sided with Bell. Conducting **statutory interpretation** of the *Broadcasting Act*, the Court ruled that the CRTC has the power to require television broadcast companies to carry specific channels but not to require companies play specific versions of a broadcast.

Canada (Minister of Citizenship and Immigration) v. Vavilov

Relevance – Canadian Citizenship Eligibility | Judicial Review

Federal Court – Civil – By Leave

Born in Toronto in 1994, Alexander Vavilov learned in 2010 that his parents had been working as undercover **Russian spies** for his whole life. After trying to renew his Canadian passport, Vavilov was told by the Canadian Registrar of Citizenship in 2014 that he was not a Canadian citizen, due to the Registrar's interpretation of the *Citizenship Act*. The *Act* states that children born in Canada to employees of a foreign government will not be Canadian citizens, unless the parents are also Canadian citizens or permanent residents. The Federal Court ruled that the Registrar was correct. However, the Federal Court of Appeal and the entirety of the Supreme Court ruled that the Registrar's decision was unreasonable and invalid. The Supreme Court said the section of the *Citizenship Act* cited by the Registrar

was only meant to apply to people with **diplomatic privileges and immunities**, such as embassy employees, not undercover spies.

Canada (Attorney General) v. British Columbia Investment Management Corp.

Relevance – Constitutional Law | Taxation

British Columbia – Civil – By Leave

The British Columbia Investment Management Corporation ("BCI") is a **Crown corporation** that manages public sector pension funds. Created in 1999, BCI never charged **GST** for its services. In 2013, BCI filed a petition in the Supreme Court of British Columbia, seeking recognition that it did not have to collect GST because it was a Crown corporation. The Canada Revenue Agency argued that BCI had to charge GST, since they were providing a service. The federal government also argued that BCI was bound by the province of British Columbia's agreement to pay GST in certain circumstances under the *Excise Tax Act*. The majority of the Supreme Court agreed that BCI would have to pay GST to the federal government. Generally, a provincial Crown corporation cannot be forced to pay GST on its own property. In this instance, however, BCI was bound by British Columbia's voluntary agreement to pay GST to the federal government.

Yared v. Karam

Relevance – Family Law | Trusts

Quebec – Civil – By Leave

In Quebec civil law, a **trust** is considered to be a patrimony without an owner. After his then-wife was diagnosed with terminal cancer in 2011, Karam established a trust for their four children. Karam and Yared both contributed money to the trust to buy a home in 2012 before Yared filed for **divorce** in 2014. After Yared's death in 2015, the executors of her **estate** asked a court to include the value of the home held by the trust among her **assets** to be divided. Karam argued that the home was owned by the trust. The trial judge ruled that the value of the home should be included in Yared's estate, while the Court of Appeal disagreed. The Supreme Court sided with the trial judge, ruling that even though neither spouse owned the house, Karam had "rights which confer use" to the house that could be included in Yared's estate.

Resolute FP Canada Inc. v. Ontario (Attorney General)

Relevance – Contracts | Environmental Responsibility

Ontario – Civil – By Leave

In the 1960s, a pulp and paper mill in Dryden, Ontario dumped its mercury waste into nearby rivers, poisoning residents of the nearby Grassy Narrows and Islington First Nations. A 1977 lawsuit seeking damages resulted in the provincial government providing an **indemnity agreemen**t to the mill to cover any claims for **historic pollution damage**. In 2009, the owner of the mill's waste disposal site, Resolute Forest Products, filed for bankruptcy. The court allowed Resolute to abandon the site, but the provincial government argued that the company was still responsible for maintaining and monitoring the site. Resolute claimed that the indemnity agreement required the government to pay for maintaining the site. The Supreme Court ruled that the indemnity did not exempt Resolute from **environmental cleanup costs**. They said the indemnity agreement was intended only to cover the costs of historic pollution claims by third parties, not the cost of preventing future pollution.

Kosoian v. Société de transport de Montréal

Relevance – Civil Liability | Police Authority

Quebec – Civil – By Leave

In 2009, Bela Kosoian was given a ticket for not holding an escalator handrail on the

Montreal subway. When she protested, she was **arrested and fined**. A doctor subsequently diagnosed her with **post-traumatic stress and a sprained wrist resulting from the incident**, and she was found not guilty in municipal court. Kosoian then sued the arresting constable and the Société de transport de Montréal ("STM") who was responsible for training him. While the trial judge and the majority of the Court of Appeal ruled in favour of the STM, the Supreme Court unanimously disagreed. They stated that there was no law requiring Kosoian to hold the handrail and the STM was at fault **for failing to properly train** the constable who arrested her.

Desgagnés Transport Inc. v. Wärtsilä Canada Inc.

Relevance – Constitutional Law | Maritime Law | Contract Law

Quebec – Civil – By Leave

In 2006, shipping company Desgagnés Transport ordered parts from Wärtsilä. Their contract stated that Wärtsilä would have to pay a fine if the parts were faulty. When the ship had major engine failure three years later, Desgagnés sued Wärtsilä. The court had to decide whether **provincial contract law** or **federal maritime law** should decide this case. While selling ship engine parts falls under federal maritime law, the **sale of goods** is also governed by provincial laws. Only if provincial contract law prevailed would Wärtsilä be liable. The trial judge said provincial contract law applied, while the majority of the Court of Appeal said that federal maritime law applied. The Supreme Court unanimously ruled that provincial contract law applied because contracts for the sale of **ship engine parts** don't go to the **core of navigation and shipping issue**s that maritime law is meant to govern.

Montréal (Ville) v. Octane Stratégie Inc.

Relevance – Contracts | Municipal Law

Quebec – Civil – By Leave

The City of Montréal hired Octane in 2007 to help them plan an event. Octane worked with another company, PGB, to plan the event. Octane sent **invoices** to the city for its services but Montréal refused to pay the $83,000 invoice for PGB's work, arguing that Octane's contract with PGB did not involve the city. In addition, the city had **no contract** with Octane, and city laws dictated that Montréal must allow for companies to bid on contracts for services over $25,000. The trial judge, Court of Appeal, and the majority of the Supreme Court all agreed that the city had to pay Octane even though the municipality's contract law rules weren't followed. The Supreme Court determined that the rules surrounding restitution of prestations apply to municipalities.

R. v. K.J.M.

Relevance – Constitutional Law | Charter of Rights and Freedoms | Young Offenders

Alberta – Criminal – By Leave

K.J.M. was 15 years old when he stabbed someone during a fight in 2015. His trial was delayed and postponed multiple times. During this period, the Supreme Court released its decision in *R. v. Jordan*, which established that everyone charged with a crime has a **right to be tried within a reasonable time**. Eighteen months after he was first charged, K.J.M. asked for a stay of proceedings, arguing that the *Jordan* decision meant his case should have been heard and decided sooner. The trial judge disagreed, and K.J.M. was found guilty of assault and weapons crimes. The majority of the Court of Appeal agreed with the trial judge that K.J.M.'s case hadn't taken too long. The majority of the Supreme Court held that the case time limits from the Jordan decision also apply to **youth criminal trials**, but that K.J.M.'s trial had not taken too long.

R. v. Javanmardi

Relevance – Criminal Law | Manslaughter

Quebec – Criminal – As of Right

Mitra Javanmardi worked as a **naturopath** in Quebec, where naturopaths aren't allowed to

give **injections** to patients. Mr. Roger Matern, an 84-year-old with heart disease, visited Javanmardi's clinic and received an injection in 2008. He died later that night. Javanmardi was charged with **unlawful act manslaughter** and **criminal negligence causing death**. The trial judge found her not guilty on both counts because her actions were consistent with what a **reasonable and responsible person** would have done. The Court of Appeal disagreed, finding Javanmardi guilty of unlawful act manslaughter. The majority of the Supreme Court ruled that the trial judge's verdict should stand. They stated that Javanmardi's training and experience as a naturopath should be considered when deciding whether she acted reasonably in the circumstances.

R. v. Rafilovich

Relevance – Criminal Law | Proceeds of Crime

Ontario – Criminal – By Leave

Yulik Rafilovich was arrested for selling drugs, with police seizing $42,000 in cash from him that they believed were the **proceeds of a crime**. Before his trial, Rafilovich asked to use the seized cash to pay his lawyer. The trial judge approved this request. After Rafilovich pled guilty and was sentenced to jail, the Crown argued he should have to pay the same amount of money that was seized and subsequently **paid to his lawyer** as a fine. The sentencing judge disagreed, but the Court of Appeal ruled that Rafilovich would have to pay a $42,000 fine. Otherwise, they argued, he would be benefitting from the proceeds of crime by using illicit funds to pay his lawyer. The majority of the Supreme Court ruled that the trial judge had the power to decide whether or not to charge a fine and that the decision not to fine Rafilovich was valid.

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