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



Former Gov. General David Johnston on Trust

Interview by: **Justin Monahan 1L**

The Right Honourable David Johnston served as the 28th Governor General of Canada representing Her Majesty Queen Elizabeth II from 2010 to 2017. Born and raised in Sudbury, Ontario, Johnston went to high school in Sault Ste. Marie before going on to study at Harvard, Cambridge and Queen's. Prior to his appointment as Governor General, Johnston taught law at Queen's and U of T as well serving as dean at the University of Western Ontario law school, Vice-Chancellor of McGill and President of Waterloo. He spoke at Weldon about the themes and ideas of his latest book, *Trust: Twenty Better Ways to Build a Better Country*. Justin Monahan of Weldon Quarterly sat down with His Honour to discuss trust.

Justin Monahan: Your new book discusses how the traits of a trustworthy person are the same traits of a trustworthy nation. What led you to write a book about trust?

David Johnston: We wrote the book because I was worried about the erosion of trust in public institutions. And as we examined that, we realized that there's an impact on local organizations, neighborhoods, communities, cities, business, etc., all the way down to the individual.

We reversed that arc in three parts. The first is this one great trust in oneself: how do you make yourself a trustworthy person? Next, how do you make trustworthy organizations around you? And finally, how do you create a trustworthy nation? All of that requires trying to combat some of the things that erode trust.

JM: Would you say, on a national and individual level, that someone being trusting makes them more trustworthy? How are those two things interrelated?

DJ: Trust is both a noun and a verb. One's a state of fact, the other's an action. But I think if you are a trusting person and looking to place trust in someone, you look for a counterpart that reflects those same values equally. If you're a nation trying to engage in a

relationship with another nation, it's much easier to do with a trustworthy counterpart. Stephen Covey writes a book called "*The Speed of Trust*." The speed of trust is: the more trust you have in any transaction with another, the speedier, the less time it takes, the less cost involved. But the less trust you have, the slower, the longer it takes, and the greater the cost. If you're negotiating and you settle on a handshake. [We shake hands.] We do that, and I don't worry about it, you don't worry about, we never have to worry about enforcement.

Richard Devlin, David Johnston



JM: Because we both have trust in one another.

DJ: [Nods] But to turn to the law: we wrote a book called *Cyberlaw*, in which we looked at the impact of computers in the digital world on transactions and the movement from a paper based authenticity system to an electronic authenticity system.

You know, the Law Merchant of Medieval Europe would take months to travel from England to the Frankfurt Book Fair, for example. And he would enter into a contract for books to be sent to London. He would pay in advance, but how did he know that

shipment would be delivered? It was based on trust, not legal enforcement. Your family had been doing business for three or four generations, and you would never dishonor the contract. Because your family reputation would be gone.

JM: And your business would be gone.

DJ: You never thought you could relate this to a Contracts class, did you?

JM: No, and I've learned so much, I'm glad I skipped Contracts to be here.

But my family comes from business, so I understand what you mean. There can be no deal made without trust between parties.

DJ: We deal with that in another part of the book. Adam Smith is seen as the father of capitalism. And the objective of capitalism is, well, the free markets prevail, and the pursuit of private property will harmonize interests, so everyone will gain. But some of us don't believe that. Some of us believe sometimes free markets need regulation. And so did Adam Smith. We think of Adam Smith as a Professor of Economics. But he was a Professor of Moral Philosophy, not economics, at the University of Glasgow in 1775 when he wrote *The Wealth of Nations*. The invisible hand that we think today harmonizes the pursuit of private interest was not an economic framework, but a moral one.

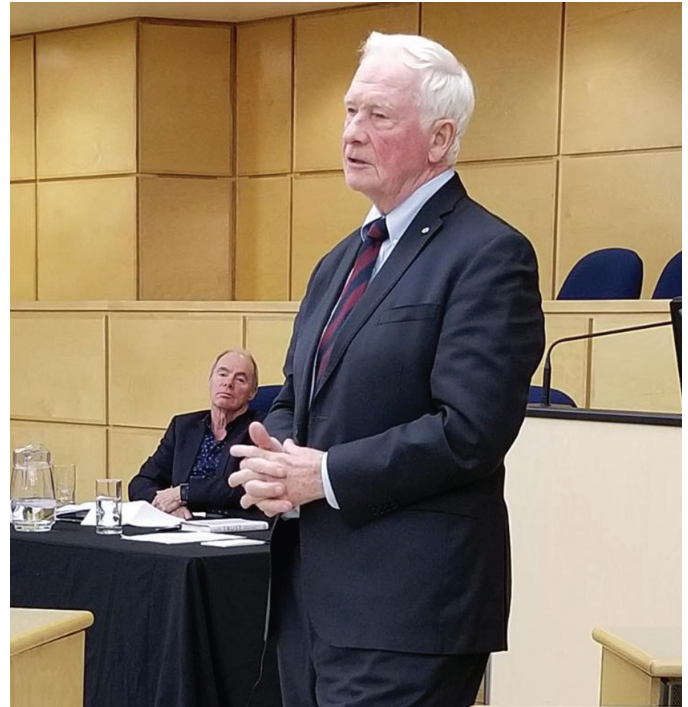
JM: You've written about Indigenous innovation and invention in your book, *Ingenious*. How do you think trust should play into Canada's beginning recognition of Indigenous justice systems?

DJ: One element of trust is when you've done wrong, face up to it clearly, don't minimize it, and apologize fully. And having done that, then move onto reconciliation. So, we say that no book about trust in Canada would be complete if it did not deal with our relations with Indigenous peoples, particularly in relation to residential schools. The apologies given by Prime Ministers Harper and Trudeau in 2010 and 2015, respectively, was an important starting point for us in dealing with that distrusting relationship that had emerged over two or three hundred years, but in particular over Residential Schools. Getting that right is an important step for healing the nation.

JM: And how do you think trust will play a role in the introduction of Indigenous justice systems into the larger Canadian justice system?

DJ: The first thing is simply understanding the history of our Indigenous people before the first European settlers. They did have justice systems and they had governance systems, so let's learn from them and recognize that in modern-day Canada, they wish to be vibrant, vital Canadians but they don't want to abandon their governance systems or their justice systems.

JM: It seems to me that, although very diverse, Indigenous justice systems seem to operate on a real sense of communal trust. Would you agree with that?



Richard Devlin, David Johnston

DJ: The Rule of Law with a view of justice is based on trust. We speak about the distinction between law and justice. Law is a statement of rules. Justice is a set of values. And if I were to start a law school tomorrow, over the door it would say, "Is Law Just?" We as lawyers take an oath to improve the administration of justice. Take, for example, the Doctrine of Frustration in contract. We ask whether that interpretation of the court—which is the Rule of Law, or statute—is consistent with our fundamental concept of justice. If it's not, it is our job to change it, and if it is, it's our job to reinforce it.

There's another part of the book where we speak about the importance of that in Canada. At Chief Justice McLachlin's retirement dinner, I was saluting her leadership in the Court. I said this will be seen, around the world, as one of the distinguished courts in justice for several reasons. One is the interpretation of the Charter of Rights and Freedoms, which was engrafted into our constitution in 1982, mixing two systems: the

Western Common Parliamentary Sovereignty system with the European Civil Law, where you have a statute, a governing code that impinges on the sovereignty of Parliament. You have unelected people who interpret Parliament. But as Canadians, we weren't quite ready to go all the way, so we put in a Notwithstanding Clause, as a kind of a statement—a very typical Canadian compromise. I remember scholars at that time were saying, "You can't make those two systems work." But that court made it work. Not perfectly, but the Charter of Rights and Freedoms in fact has been a vibrant part of our Constitution. And that contradiction, that same contradiction they have of 1763 saying we can have Civil law in Quebec and common law in the rest of Canada—they say, two systems of law? Two legal traditions of Western civilization in one place? It can't work. But that court made it work.

“If I were to start a law school tomorrow, over the door it would say, “Is Law Just?””

The other distinguished contribution of that court has been the carving out of a body of Indigenous law where you had no legislative framework to begin with. And you didn't have the basic principle of the law of conquest, which has served in most jurisdictions where Europeans have come in and taken over. And the law flows from that. But Canada's going back to a kind of shared concept, which is more bit difficult. But in a measured way, I think that court has carved out a body of Indigenous law that is getting us to a more trusting relationship.

JM: People don't trust lawyers. Have you heard this?

DJ: Some do, some don't. I've got three in my family, and I trust them. [Laughter]

JM: I've seen the rankings. We're just above used car salesman. My father was a car salesman, so I suppose I'm moving up.

DJ: My father was a car salesman for a time.

JM: But how do you think lawyers can become more trustworthy, or convince the public they are trustworthy?

DJ: I think it's a noble profession. When we become lawyers, we take an oath to improve the administration of justice—not the Rule of Law, justice. And we try to take that seriously. That's what you do in your studies here. If I was starting a law school tomorrow, I would make the decision that law is not simply an academic pursuit, but also a profession. And I would merge the apprenticeship of the knowledge of the law along with the practice of the law and the apprenticeship of the ethical framework of the law into one place. So I would teach law as you teach medicine. Where you teach the profession as well as the academic theory.

JM: Do you think the “Golden Rule” center of law is missing now?

DJ: The second part is teaching the how-to the practice the law, the first is teaching the cognitive discipline theory. I think you can teach all three, but if you say, give us three years and we'll teach you the theory, then we'll throw you into a bar admission course for a few weeks, and take some courses, you really don't learn. I think you learn best if you put theory and practice together. And I think the ethical framework comes in when you're actually dealing with actual problems, not just theoretical principles. But that would be a bit of revolution, that we would bring the law society and the law schools together and teach. When I taught at the Toronto Law School, we taught with one practitioner and one law professor. Frank Iacobucci and I, who later went to the Supreme Court, taught Corporate law, Corporate Finance, and we taught it with a practitioner. We had six different courses: all with a full time academic and a practitioner.

JM: One last question. Many law students, including myself, have a constant feeling of not deserving to be where they are. You were the Governor General of Canada. Does that sense of Imposter Syndrome ever leave you?

DJ: [Laughs] No. Never.

Weldon Quarterly would like to thank His Honour David Johnston for graciously making time to speak with us. Weldon Quarterly would also like to thank Jill Clark of the Rideau Hall Foundation and Professor Richard Devlin for making this interview possible.

[For the complete interview with the Rt. Hon. David Johnston, visit www.weldontimes.com] 



The Smith Shield Moot

A Reflection of Weldon Spirit

Jeremy Ryant 3L

I am often reminded of the opening words of *A Tale of Two Cities* by Charles Dickens when reflecting on the Smith Shield Moot: “It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity...”. One of the jarring, yet capitative elements of this famous opening is that it encourages readers to hold space for multiple and conflicting realities. The Smith Shield Moot pushes its participants to do the same.

While mooting, I felt simultaneously prepared and unprepared; confident and insecure; cool as a cucumber and ready to vomit; proud and humble; ready to fight and ready to flee. I would not have traded this incoherent cocktail of emotions for the world.

Every year, the Dean (or Associate Dean) addresses the crowd before the moot begins and explains that it is one of our school’s oldest and most celebrated traditions. In previous years, I thought that these words were no more than platitudes – window dressing on an evening with a somewhat elitist tenor. It was not until participating in the Smith Shield that I came to appreciate why it is such a special event, and specifically how it is a direct reflection of the collegial spirit that defines life as a Weldonite.

If one thing characterized my experience as a Smith Shield mooter, it was an overwhelming sense of community. Since 1L, I was fortunate to know upper years who led by example and made me feel like I belonged in law school. Whether it was small gestures like waving and striking up a conversation in the hallway or larger acts of kindness, supportive upper years played an instrumental role in showing me that law school works best when students put their heads together. There is no doubt that, through their actions, upper years ingrained a spirit of collegiality into the class of 2019.

In the weeks leading up to the moot, I received an overwhelming amount of support from my classmates. Without hesitation, fellow Weldonites volunteered

to test my ideas during practice rounds, acted as a sounding board for several half-baked legal arguments, and sent along lecture notes when my mind was less occupied with class than it should have been. Quite simply, I would not have been able to stand (somewhat) confidently in front of that podium but for my classmates’ steadfast support and friendship. Indeed, the one thing that kept me going during the moot was the knowledge that I was in a room filled with people who believed in me more than I believed in myself.

The one thing that kept me going during the moot was the knowledge that I was in a room filled with people who believed in me more than I believed in myself.

Beyond collegiality, one of the most remarkable elements of the Smith Shield is that there is no clear-cut path to selection. Yes, we all completed the 2L moot and went on to try out for the Smith Shield among a group of short-listed candidates. However, beyond this process, each of us developed a passion for oral advocacy on our own terms. Tina honed her public speaking skills and razor-sharp

analytical abilities as a teaching assistant and lecturer in Western University's English department. As an aside, she would also win the Smith Shield equivalent in baking desserts. Out of this world. Erin has a theatre background, evidenced by her instinctual reaction to the lights turning off in the middle of her arguments: "and... showtime!" Emma spent time in the 'real world' (scary) before coming to law school, where she developed common-sense approaches to problem solving. As for me, I am your run-of-the-mill political science nerd that joined debate club during undergrad and never looked back.

In that respect, students and faculty at this school should remember that – unlike so much of the substantive law we learn – there is no test for developing a passion for oral advocacy. What makes our moot program so special is that it creates space for us to explore elements of ourselves that we would

not otherwise take the time to probe. Moreover, it enables us to find our voice in a safe, supportive, and constructive environment. Indeed, there are many talented people who would not have gone on to be Smith Shield mooters or successful litigators if they were allowed to opt out of the moot program on which our school prides itself.

Truth be told, I am still unsure about the various ways in which the Smith Shield moot has impacted me. Likely, my fellow mooters feel the same way. However, I think I can speak on behalf of all of us by saying that it was an experience that we will not soon forget. Too often, law school can be isolating. The Smith Shield afforded us the unique opportunity to peer beyond our well-worn corners of the law building and work together in pursuit of a common end: not looking stupid in front of the whole school. ‡



Jeremy Ryant argued before the Supreme Court of Dalhousie in the 2018 Smith Shield Moot



A mistrial was declared in the high-profile murder trial of Dennis Oland in Saint John, NB. The ruling concerns the **appearance of impropriety during jury selection** on the part of a constable of the Saint John Police Force. The constable conducted police database searches beyond the basic criminal record check of potential jurors and conferred with the prosecution as they vetted jurors, which is not permitted. In an interview with the Globe and Mail, Dalhousie law professor Stephen Coughlan was quoted stating, "It's at some level very surprising that there's anyone involved in the criminal justice system who doesn't know this, because it's the sort of thing they certainly should know." Students who will be writing the exam in Coughlan's Criminal Procedure course this term should take note.

The former dean of law at Lakehead University, Angelique EagleWoman, **filed a civil suit against the law school for constructive dismissal and racial discrimination**. EagleWoman's alleges a hostile work environment and that the school's administration made decisions without consulting her while forcing her to carry a heavy teaching workload in addition to her duties as dean prior to her resignation in April 2018. EagleWoman, a Dakota of the Sisseton-Wahpeton Oyate, was the first Indigenous person to be appointed to the position of dean at a Canadian law school.

The Commission of Inquiry Respecting the Muskrat Falls Project entered its third month of public hearings. The Commission is primarily tasked with investigating and reporting on the delay and cost-overruns of **troubled mega-project**. Begun in 2012, the construction of the 824MW dam on the Lower Churchill River was expected to cost \$6.2B and be completed by 2016. The project has cost \$12.7B and remains incomplete as of November 2018. The project was announced

in 2010 by Premier of Newfoundland and Labrador Danny Williams and Premier of Nova Scotia Darrel Dexter, both alumni of this law school. Incidentally the head of the Inquiry, Justice Richard LeBlanc, is also a Dalhousie law alumnus.

The federal government has requested a seven-month extension to a 2017 Ontario court order requiring the administration of **solitary confinement** in federal prisons be made compliant with the Charter of Rights and Freedoms. The Liberal government introduced Bill C-83, which is intended to address the oversight issues surrounding solitary confinement, in October 2018.

The Liberal government in New Brunswick fell after losing a confidence vote on its throne speech, 5 weeks after an inconclusive general election. Blaine Higgs, the leader of the New Brunswick Progressive Conservative Party and former Irving Oil executive, became the province's 34th Premier. His government holds 22 of the 49 seats in the **New Brunswick Legislative Assembly** and will rely on the support of the populist People's Alliance who hold 3 seats.

Three help centres run by **Pro Bono Ontario** are scheduled to close in December as a result of a lack of funds. Requests for funding were denied by both the current Conservative government of Ontario and previous Liberal government. The program has historically been funded by private donations from the legal community, but donations have failed to bridge this year's \$500 000 budget shortfall.

The Chief Justice of the US Supreme Court issued a rare public rebuke from the head of the judicial branch to the head executive branch of the US federal government. In a statement issued by the court's public information office, **Chief Justice John Roberts**

asserted that “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.” The head of the executive branch has repeatedly characterized court decisions that have run counter to his administration’s agenda as lacking judicial independence.

The **US mid-term elections** resulted in the first Democratic Party majority in the House of Representatives since 2011. The Republican Party retained a slim majority in the Senate. The elections saw a number of firsts including the first Indigenous Congresswomen, Deb Haaland of New Mexico and Sharice Davids of Kansas, the first Muslim Congresswomen, Rashida Tlaib of Michigan and Ilhan Omar of Minnesota, the youngest-ever person elected to Congress, Alexandria Ocasio-Cortez of New York, and the first openly gay person to be elected Governor, Jared Polis of Colorado. All are Democrats.

The federal government appealed to corporate Canada with a **fiscal update offering accelerated capital depreciation**, up to 100% in the first year, on new

corporate capital expenditure. The tax writes offs will apply to a range of capital purchases including new machinery, transport equipment, green technology, limousines and private jets. The government will borrow to make up the loss in revenue. Current polling suggests a competitive race between the Liberals and Conservatives, a weakening NDP, and slight gains for the Greens with less than a year until the next federal election.

As Weldon Quarterly went to press, the same government was holding its 3rd reading of a bill to **force striking Canada Post workers back to work**. The workers are asking for pay equity and new policies that recognize the shift away from letter delivery toward parcel delivery. The constitutionality of the new bill is unclear; in 2016 an Ontario Superior Court judge found that back-to-work legislation passed by the government of Stephen Harper in 2011 violated the rights of free association and expression under ss.2(d) and 2(b) of the Charter of Rights and Freedoms. Incidentally, the 2011 decision involved a labour dispute with striking Canada Post workers. See CUPW v R., 2016 ONSC 418. ¶



Senator Thomas McInnis on Bill C-45

Interview by: **Anthony Buckland 1L**

Senator Thomas McInnis has a bachelor's degree from Saint Mary's University and a law degree from Dalhousie University. Before he was appointed as a Senator in 2012, he practiced law specializing in property and commercial law. He started the firm McInnis, Mont & Randall with two friends, and has also practiced with Boyne Clark, and Weldon McInnis. He won the 1978 provincial riding of Eastern Shore and was shortly after appointed as Minister of Transportation. He has also served the province as Minister of Municipal Affairs, Minister of Education, Minister of Community Services, and Attorney General. In this interview Senator McInnis tells Anthony Buckland about his time at Dalhousie, gives some advice for outgoing students, talks about some of the reasons he voted against cannabis legalization, and tells us some of the benefits and the problems likely to be encountered in the future.

Anthony Buckland: First, let me start by saying thank you on behalf of Dalhousie Schulich School of Law for your agreement in giving this interview. You hold a law degree from Dalhousie Law; perhaps you might begin by telling us a little about your time as a law student here at Dal.

Senator McInnis: It was an interesting time. The thing about law school is that you meet a number of students that will be friends and acquaintances for life. Many of them will go out into practice, and you notice when you have a case, and there is a lawyer who is a former classmate on the other side, there is always a friendlier approach to it. When I was there we started the Progressive Conservative Law Club, and of course other parties caught on and we had a model parliament. That was an awful lot of fun. Planning for that, debating and arguing and so on, and that continued right through law school. So, you meet all the students and a lot of them remain life-long friends and acquaintances. It's a time you should cherish. Everyone is busy but there is a lot of great times to be had there.

AB: Doubtless, times have changed since you graduated, nevertheless, are there any wise words of advice you might offer to current students; particularly those 3Ls who will soon be embarking on their articling and legal careers?

Sen. McInnis: If you are thinking about setting up your own practice, and many do, make sure you get good guidance and make sure you have a mentor that you can talk to from time to time. It could be a retired judge, a senior lawyer, or a retired lawyer. Make sure you have some contact to keep you grounded because there can be a lot of pitfalls where you don't have the experience of a senior person in the firm. You have got to be patient and prepared to put in long hours. That's to be expected. Preparation is everything. Law school teaches you the law, but it is quite a different world out there in practice.

“You have the provinces, territories, and various municipal jurisdictions who, quite frankly, weren't ready, and still aren't, trying to deal with the legalization.”

AB: As almost anyone who isn't living under a rock knows, Canada has just recently legalized the possession, consumption, and restricted sale of cannabis. You voted against Bill C-45, might I ask your reasons for doing so?

Sen. McInnis: The federal government rushed the legislation. This is not politics – the Senate is a lot less political than the Commons. So, this legislation was announced without any research during a campaign and a fictitious date of July 1st was put on it. I felt that they should have delayed the proclamation for at least a year. But of course, it was an election promise and we have an election coming up – I understand all that. But, what we thought was needed, and what we managed to get, was the Bill needed to be studied in five different committees. The Senate operates on committees; we have an international reputation for doing a superb job. There is every profession you can talk about in the Senate, and they scrutinize bills. They bring in expert witnesses to talk about them. So, we had this bill before the social committee, the legal committee, transport, security, and technology committee. We felt that the government were writing the bill on-the-go. Senator Dean, who was in charge

to deal with employees coming to work high? What are we going to do at the US border? What about transportation safety – how are the police force going to enforce this? It can't be a breathalyzer, they can't make the person get out of the car and walk the yellow line – this has been thrown out in the US and it will probably be thrown out here too. So, you have got these law enforcement problems, and then you have the provinces, territories, and various municipal jurisdictions who, quite frankly, weren't ready, and still aren't, trying to deal with the legalization. How are they going to test someone driving while high? How is all this going to happen? So, these are the reasons I voted against it. We got some amendments passed, but I thought we were just flying by the seam of our pants. There was absolutely no reason why this couldn't have been extended out another year to give everyone an opportunity to plan and deal with the implementation.



of the bill in the Senate, he moved 29 amendments to fix government mistakes. Even in the House of Commons they moved 20 amendments. So, we knew, at least that was my interpretation, that the bill was not well thought out. They did not consult with the indigenous communities. When we looked at this bill we thought, 'what effect is this going to have on children, youth and young people?' And, as I said, indigenous communities. What about effects on mental health? What plan do we have in place for the work place; what rights do supervisors have to plan

AB: Many Canadians have worries about the legalization of cannabis. What were some of the worries that constituents and citizens expressed to you about the legalization of cannabis?

Sen. McInnis: I think the big reason was that the police force had no way of controlling this: driving while high. The other reason was the effect on youth. The definition of a 'young person,' I think 18 is terribly young. I think you will see this change to age 22 or 23 as more reasonably defining a 'young person;' a change in government would probably bring this

about. Another worry is edibles. Those have been shoved aside for the moment, but they will be there in a years-time. So, with children in the home worries arise. Another is how are the police going to control personal growing? Are they going to just come to the front door and ask to have a look? The likely response will be 'well, where is your search warrant?' Those are some of the reasons. Those challenges are going to be there. The provinces weren't ready and the NSLC isn't ready – they rushed in and got nine stores open but there aren't that many outlets open for people. This could have been handled better later on.

AB: Although you voted against bill C-45 in its entirety, were there certain parts of the bill that you might have voted in favour of? If so, what areas or clauses?

Sen. McInnis: Unfortunately, you have a few things that you are concerned about in the bill and so you have to vote against it. This, I think, is analogous to prohibition because you had the criminal element providing alcohol in prohibition days and that is similar to today. One of the things that, I think, will be a good thing is that it will get criminals out of the business. Over time, that will happen. Having the product inspected at every stage will, I think, be good for the health of people in terms of what it is they are going to be inhaling. I think government revenues, if not wasted and if they are properly directed to healthcare, mental health, palliative healthcare, and educational programs, then it will be a good thing if those things come to pass. We need to keep it out of the hands of the young. I have had a teacher tell me that it is quite prevalent in the high-schools.


AB: Some argue that the legalization of cannabis will free up valuable court space and resources for other, more serious offences. The same might be said of police resources as well. What is your opinion on that position?

Sen. McInnis: I think the jury is still out on that one. I think there will still be a fair number of cases. If the police forces are able to get a mechanism to determine whether someone is high or not, then you are going to have lots of cases in court. Minors using, if enforced, will bring about quite a number of cases in the courts. I remember practicing in the 1970's, and the breathalyzer was a major issue, our firm had all kinds of cases and you could try to defend the person against the breathalyzer and many cases we had were thrown out. These are cases that will be similar to marijuana and driving while high. It will bring up a great number of court cases.

AB: Do you see any economic, social, or medical benefits to the legalization of cannabis? For example, the tax revenue from cannabis sales is likely to be substantial, couldn't this revenue be used to increase social welfare, access to justice, and education programs?

Sen. McInnis: I think that's absolutely correct. Wouldn't be wonderful if they could get it into healthcare? I chair a committee on the Eastern Shore on healthcare, and in rural Nova Scotia getting a doctor is becoming a great challenge and this is not unique to Nova Scotia – it's right across the country. It is real challenge to get doctors, young or old, to move to rural Nova Scotia. If the government can free up or get money through this [revenue from cannabis] to assist in defraying the cost of becoming a doctor it would be marvelous. Tuition and the cost of student loans are incredible, so if money can be shifted to help cover those costs with the agreement that doctors would give five years to Nova Scotia, I think it would be wonderful. If that can come from the sale of cannabis, then great, fantastic! But let's not waste it. Let's get it back into the health and education of youth in respect to the harms of drugs. If we have the revenue, let's try to get it into healthcare to try to defray the cost of many of the physicians who are carrying tuition debts almost analogous to the cost of a mortgage. It would be a wonderful thing if the government could do that.

Weldon Quarterly would like to thank Senator Thomas McInnis and Tara Hutchinson for graciously making time in the Senator's busy schedule to speak with us.

[For the complete interview with Senator McInnis, including his transition from law to politics, visit www.weldontimes.ca] 

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Reefer Madness in Rural Canada

Opportunity and Crisis for Cultivators

Dr. Nicholas Van Allen 2L

Lisa: “Cheer up, Dad. Did you know the Chinese use the same word for ‘crisis’ as they do for ‘opportunity’?”

Homer: “Yes! Cris-itivity!”

As always, Homeric wisdom can be applied to a situation we now face. For farmers, the move to legal cannabis is a perfect crisi-tunity. It’s one hell of an opportunity for agriculturalists to access a new crop. Yet, it’s created a crisis point for farmers – everyone is moving fast to get a stake in an industry that is completely unpredictable, both in terms of the legislation and the market.

Surprise Announcements

One of the tricky parts of the shift toward legalized cannabis cultivation occurred this past summer. Cultivators who had already moved into the industry expected that there would be two classes of cultivation allowed – greenhouse or indoor growing. As federal government had voiced serious concerns in 2017 regarding keeping pot out of the hands of children and away from the black market, it was expected that only greenhouses and indoor growing facilities would be permitted since only they could secure their product effectively. At the OrganiGram facility in New Brunswick, for example, the indoor growing environment is heavily laden with security steps before one can even enter the building. Without resorting to The Sting-styled tactics, nobody’s getting in who isn’t allowed. However, this summer saw regulations unleashed which made it clear that outdoor growing will soon be allowed. Nobody expected this. Certainly not those growers who’d invested in secure facilities.

All outdoor growers will have to do is ensure that the cultivation site prevents unauthorized access, substantially reducing the overhead associated with cultivation. Not to be deterred, indoor and greenhouse growers quickly asserted that they will have a purer product than outdoor growers, and that consumers will favour that purity. Whether a

Jimbo Jones-styled pot smoker will be able to tell the difference between an indoor-grown-filled bowl and an outdoor remains to be seen.

“
**Farmers wanting
to cultivate
must deal with
Kafkaesque
bureaucracy
before they
can profit from
growing pot.**
”

Licensing

Getting into the cannabis cultivation industry isn’t easy, even for outdoor growers. While consumers now have the freedom to smoke-up, it would be entirely inappropriate to say that legalization has created freedom for cultivators. Not just any farmer can toss a few seeds in the ground. Licenses must first be obtained.

To get such a license, under the Cannabis Act Regulations, a cultivator must hold security clearance. The Minister designated may conduct checks at any time to see if applicants or holders

of security clearance pose “a risk to public health or safety,” looking into criminal records and files of law enforcement agencies to determine this. In other words, farmers wanting to cultivate must deal with Kafkaesque bureaucracy before they can profit from growing pot.

Those farmers who are used to working with governments, such as former hemp growers and tobacco farmers who already have decades of experience dealing with regulation, see nothing difficult in legislative requirements. Yet navigation the laws create an added cost for most cultivators. Following the principle relating to necessity, mothers, and invention, smart entrepreneurs like those at the company Cannabis Compliance Inc. have already figured out that some farmers may not want to deal with the government themselves. Their company’s plan is to help farmers negotiate the licensing process, easing that bureaucratic burden. That said, any cultivator moving to put seeds in the ground will forever have to know that “the Inspector” is watching. (Farmers named Joseph K. better keep an eye out.)

Edibles and Drinks, Tomorrow’s Cannabis

So, it’s a mess with regard to growing facilities and getting licenses. Up soon is the arrival of cannabis-infused foods and beverages. That’s the next step. And it’s only a year or two out. Many companies are already moving ahead with getting facilities in place for such processing. This will affect farmers.

Consumers who are afraid to smoke, for example, might be okay with downing a granola bar or pop infused with cannabinoids, ever increasing the demand for cultivators’ raw product. In other words, not only has this past year been unpredictable with regard to growing, but the future is, too. It’s a potentially sticky situation. (Soda pun fully intended.) All said, farmers are some of the savviest business people that this nation has to offer. They have, after all, centuries of experience negotiating agricultural, consumer, and governmental unpredictability. Even with the past year being a difficult and unpredictable one, farmers will move forward and figure out how to profit within the system.

As Dr. Hibbert advises: “You can’t let a single bad experience scare you away from drugs.” 🍪



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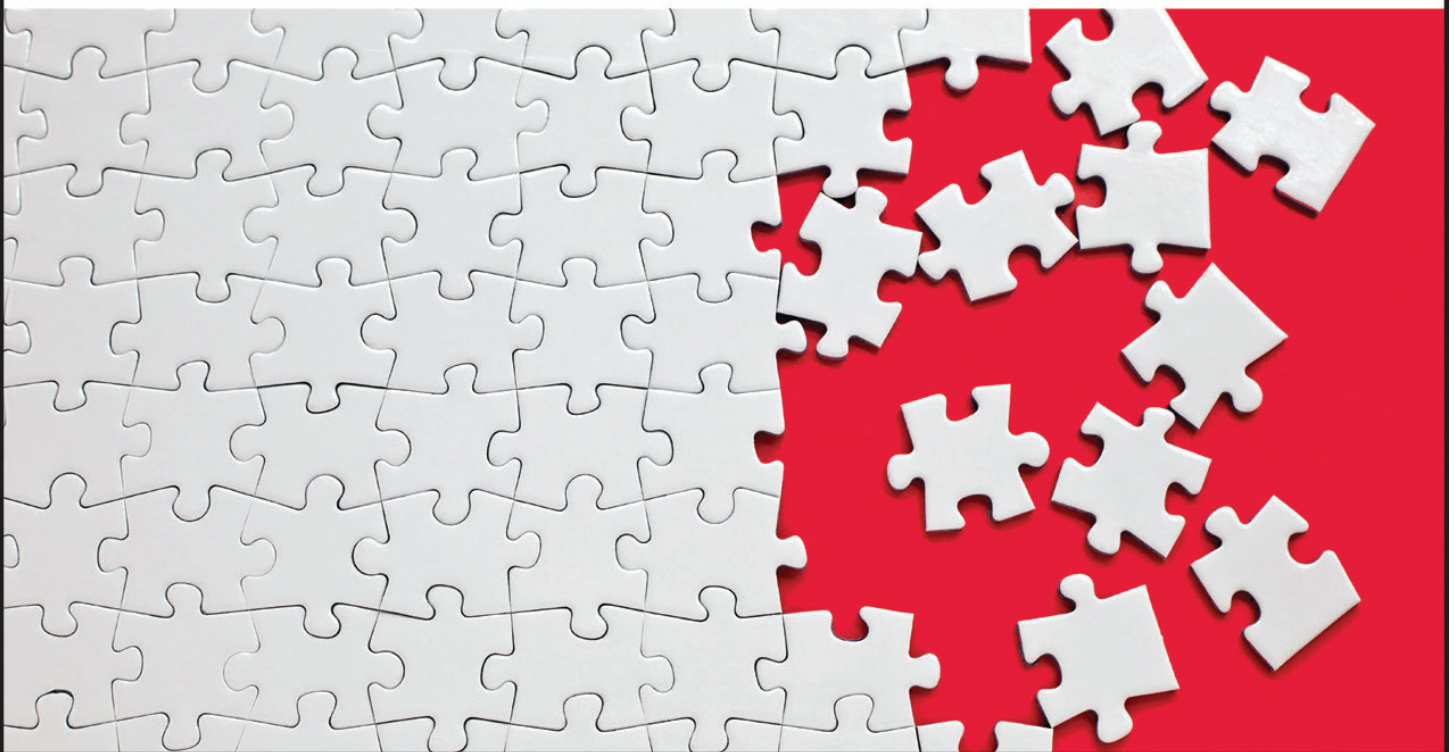
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Employers Bud In

Cannabis in the Workplace

Chelsea Cox 3L

“Cannabis is legal, but if you consume it at home - you’re fired.” This is a reality for many Canadian workers following the plant’s legalization on October 18th. A variety of organizations, from Air Canada to the Calgary Police Service, have banned cannabis consumption by employees both on the clock and off, citing “safety concerns.” A lack of understanding about the individualized effects of cannabis and fear over residual intoxication have been pinpointed as reasons for a ban. Air Canada stated that the safety of “our customers and employees is our top priority... and we are acting out of an abundance of caution.”

Concerns are being raised about the appropriateness of outright bans and the implications they have on employee privacy. There is also concern regarding how the policies were developed, with the Calgary Police stating that limited consultation was undertaken to inform the policy.

While bans on intoxication in the workplace are common across industries, bans that stretch into an employee’s home life are not. Typically for substances like alcohol a “fit for duty” approach is taken, where employees can drink on their own time but can’t show up to work with alcohol in their system. This is the approach that many other companies are taking towards cannabis use.

The Ottawa Police Department is one example a fit for duty approach being utilized for cannabis use off-duty. Highlighted by their Deputy Chief, “Cannabis is not illegal ... and we didn’t feel we were in a good ground to say that we should prohibit our members from using it. Instead... you’ve got to come to work and be ready to do your job.”

Many of the organizations that have introduced off-the-clock cannabis bans still allow other drugs, such as alcohol and prescription medication to be used, effectively placing cannabis in a category of its own. This inconsistency highlights a lack of knowledge about cannabis alongside more general concerns surrounding employee privacy and entrenched stigma.

Cannabis is used by a variety of people for a variety of reasons in a variety of forms. Blanket bans show a lack of regard for this variety instead clumping use into a single category. Blanket prohibitions are blind to the fundamental differences between CBD and THC strains as well as the spectrum of cannabis use.

There is also an inherent presumption that employees are unable to judge the parameters of appropriate cannabis use. Consumers are generally trusted to know their limits, whether it’s two glasses of wine or a few tokes from a joint. A “fit for duty” approach incorporates this, with the standard of “come to work with the ability to do your job”. An outright ban disregards the concept of an informed consumer and trusted employee.

“While bans on intoxication in the workplace are common, bans that stretch into an employee’s home life are not.”

Inconsistencies with an organization’s alcohol and prescription drug policies also undermine general statements referencing safety concerns. A consistent ban on any mind-altering substance supports a claim for strict safety policies, while a ban on one substance and not another supports stigmatized policies and outdated prohibitionist ideals.

Companies with blanket bans in place should seek to become informed employers that respect the novel legality of cannabis and variety of social use. Unnecessary limits on employee autonomy should be met with resistance and questions about true purpose and intent. Reactionary prohibitionist policies show a cautious approach by employers, but they also represent an ignorant bias. Consistent bans for all impairing substances or consistent allowances should be the standard within and across organizations. †



Rolling With the Times

The Fall and Rise of Legal Cannabis

Ziad Lawen 1L

On October 17th 2018, Bill C-45 came into effect in Canada making it the second jurisdiction in the world to legalize the recreational use of cannabis. The Cannabis Act was passed in late 2017, 4 years after Uruguay's legalization in 2013. As the number of jurisdictions in which cannabis is legal grows, the questions arise of where did criminalization come from and where is it going?

In the US, the criminalization of cannabis has roots in Harry Anslinger's US Federal Bureau of Prohibition of the 1930s. Alcohol prohibition grew out of the mid-19th century American Temperance Society (ATS). Fueled by fears of what alcohol consumption could do to an individual's body, mind and soul, the ATS spearheaded what became the prohibition movement. Throughout the early 20th century, individual states began to prohibit alcohol until momentum grew for a nation-wide prohibition. The temperance movement was based on the notion that drinking was a sin and the saloons where drinking occurred were morally, socially and spiritually corrupt gathering places for undesirables. This is not an uncommon idea. In the 17th century, the Ottoman Empire forbade the drinking of coffee as it was often consumed in parlours that were associated with unwanted political and social activity. Nonetheless the movement succeeded in pressuring the US federal government to ban alcohol for all

but medicinal purposes (literally prescriptions for beer). Prohibition led to the creation of the Bureau of Prohibition in 1919.

When Prohibition was repealed in 1933, largely as a result of the undesired consequences of alcohol prohibition (think Al Capone) and a resistance from the American public (who barely reduced their alcohol consumption), the Bureau of Prohibition was left with an enforcement apparatus with nothing to enforce. The program was transferred from the Department of Justice to the Treasury Department where it became an arm of the Internal Revenue Service responsible for taxing alcohol. Prior to the end of Prohibition, Anslinger was on record claiming that cannabis has no real substantial negative effects to the body or mind. However, with new laws came a new perspective and Anslinger turned against cannabis. Focusing on certain evidence, selective anecdotes, and ignoring the research of physician Walter Bromberg who concluded that drug use and criminal activity are not causal, Anslinger pushed forward his agenda against the plant. In 1933, when the details of alleged cannabis-user Victor Licata's murder of his family emerged, Anslinger stoked the fear of cannabis. Licata was labeled the "axe-murdering marijuana addict" by the yellow press and the popular media joined the anti-cannabis campaign with titles such as "Stop This Murderous

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Smoke” and “Reefer Madness.” The 1937 Marihuana Tax Act made cannabis functionally illegal through exorbitant excise taxes and America has never looked back. Years later, the beat poet Allen Ginsberg was quoted as having said, “a marvelous project for a sociologist will be a close examination of the actual history and tactics of the Narcotics Bureau and its former chief power, Harry J. Anslinger, in planting the seed of the marijuana ‘menace’ in the public mind and carefully nurturing its growth over the last few decades until the unsuspecting public was forced to accept an outright lie.” As went America, so went most other jurisdictions.

In 2018 in Canada, the lie seems to be dissipating and there seems to be a growing awareness of the benefits of cannabis legalization internationally. The legalization of the plant would allow more efficient use of police resources in countries like Mexico and South Africa. Other nations like New Zealand see Canada’s decision as a logical precedent for future legalization. For smaller, economically-limited nations like Lebanon, legalizing cannabis-related activity may be an opportunity for economic development. In a recent report to the Lebanese government from McKinsey, a consulting firm, cannabis legalization

was presented as a viable source of new jobs and revenue. Cannabis is a natural fit for a region and climate to which the cannabis plant is native. Lebanese farmers have been harvesting the plant to for hemp fibre and hashish-based products for as long as anyone can remember, and the people of the Lebanon have been happily enjoying its consumption for at least as long. The economics of cannabis cultivation is encouraging; a Lebanese farmer may earn US\$200 per kilogram of hashish, compared to only 33 cents per kilogram of wheat or potatoes. To everyone’s surprise, Lebanese politicians have warmed to the idea and there has been serious discussion about legalization despite strict laws against cannabis in neighbouring countries. For some in the Lebanon it makes social sense while for others the plant is an economic opportunity.

Global attitudes toward and demand for cannabis seem to be combining for inevitable, wide-spread decriminalization. Efforts to demonize and control the plant have failed. The world wants to buy and consume legal cannabis and more jurisdictions are rolling with the times. Canada and Uruguay have sparked international interest in cannabis and other jurisdictions are sure to follow their example. ♪



Blazing Blasé

Dispatch From Los Angeles, CA

Emma Chapple 3L



The legalization of cannabis across Canada was big enough to make news in the much of the United States – certainly if you tuned into Today on the morning of October 17 you would have caught their puntastic “O Cannabis!” segment.

But in California, the news barely made a dent. Perhaps because recreational cannabis was legalized when residents voted “yes” on Proposition 64, or the Adult Use of Marijuana Act, on November 9, 2016. You would be forgiven for not knowing that – as you might recall, a lot was happening in America that day.

California is one of nine states where recreational cannabis is legalized. A handful of other states have decriminalized it, or legalized it for medical use. This legal patchwork is pretty typical for the U.S., where state’s rights are arguably more important than a centralized federal government. Without the benefit of a POGG clause, most questions of legality and regulation are left to the states (and very frequently, local ballot referendums every two years).

That’s not to say the executive branch doesn’t have any influence. After all, these are the folks who brought us the War on Drugs and “Just Say No.” Before his recent firing, former Attorney General Jeff Sessions was known for his crackdown on cannabis, and formally recommitted the U.S. to the War on Drugs via a document which, suspiciously, Canada also signed. There seems to be a divide between the federal government’s priorities and the relatively lax attitude in California, Colorado and the like.

Of course, Canada is the largest territory to legalize recreational cannabis thus far and I wanted to know what my classmates, two years into legalization thought. Their response? “Wasn’t it already legal in Canada? It was everywhere when I went to Vancouver last year.”

O Cannabis indeed! 🍪



Professor Archie Kaiser on Decriminalization of Drugs

Weldon Quarterly: At the conclusion of your article, *A Partial Ceasefire in Canada's War on Drugs*, you raise the interesting possibility that legalization of cannabis in Canada will lead to a more humane and rational policy toward all drugs. How would you respond to the problem that easier access to the harder drugs which currently remain criminalized may increase the potential for harmful use?

Archie Kaiser: First of all, we have to appreciate that pervasively the war on drugs has been a failure for all substances. The topic du jour is cannabis and it has been a quicker journey to rationality and the perception that the war on drugs has been futile with respect to cannabis. We have the message quite firmly in our heads that to prosecute people for cannabis use was inconsistent with our traditions of criminal law and that it ultimately caused a reduction in public respect for our legal institutions. Criminal law has failed to control the major issues associated with drug use and distribution. We've now begun to see that a proper response is to at least legalize cannabis and try to use a public health lens, as well a criminal justice lens, in understanding what character our law should take with regards to other drugs. Cannabis legalization has been very beneficial in terms of opening the doors to a public health perception of its use. That said, I am also hopeful, not yet optimistic but hopeful, that some of these same insights can be transferred to other more hazardous drugs.

If we begin prioritizing public health in these domains, we should have a different legal regime. It won't necessarily be, in my opinion, legalization that is most appropriate to promote public health, indeed that may be wholly unsuitable for some drugs such as the opiates, such as the cocoa derivatives, such as methamphetamines. Legalization may be unsuitable but decriminalization of small amounts helps us to appreciate that people may make bad health choices but that doesn't necessarily mean that they should be criminalized and there may be other ways of controlling the distribution of substances while still protecting society. So the more insightful and progressive public law response may have quite a different character; you're not going to have the

Nova Scotia Liquor Commission selling opioids. That would be a dangerous course and an unjustifiable one, particularly with opioids which, for example, we know caused British Columbia to declare a public health emergency. We do have to figure out how we can protect people from the hazards of these drugs while not encouraging their use. A simple response, not necessarily the only one, may be to decriminalize; may be to make some substances available for distribution through medical and pharmaceutical

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We have to appreciate that pervasively the war on drugs has been a failure for all substances.
”

channels for persons who are dependent while simultaneously offering them opportunities for changing their lives so they can be healthier and more productive.

That's not the only combination of public health and legal responses but, on the other hand, I think that what we are now doing in the opioid domain is just as counter-productive as the criminalization of cannabis and it is far more lethal. Its empirically elusive to find deaths attributable to cannabis consumption.

There are health issues, but nobody dies of cannabis consumption. People do die because of the harder drugs. We need to think about how to protect public health and ensure public safety without demonizing people and without enabling the primary benefits to be taken by people who become distributors through illicit channels. Writ large, you think of the drug cartels but there are also the small-time distributors of many substances who are violent and dangerous. We need to think about how to move all the drugs out of the illicit channels where they are uncontrolled and untaxed and where public health is not a priority at all. I hope that this is a Trojan Horse of rationality in public health.

WQ: There was a time prior to 1923 when there was no prohibition on cannabis. What brought about the original criminalization of cannabis?

AK: It was in the early 1900s that we began using the criminal law to control possession. In 1923 cannabis was added to cocaine and opiates. I understand there was no parliamentary debate so we didn't have what we ideally have in a democracy which is Parliament carefully surveying all the issues and providing opportunities for wide public consultation and having a vigorous debate. We didn't do any of that. We stumbled into the ritual use of the criminal law which then became habitual. It was pretty thoughtless and it seems that once we got into employing the criminal law to control drugs, we became addicted to prohibition. It was sad that we went from a laissez-faire outlook on all drugs, which was probably risky for our society, to within approximately fifteen years deciding we had to use the heavy hand of the criminal law for everything other than alcohol and tobacco which everybody now appreciates are far more harmful to our society than any of the substances that we currently criminalize. I'm not saying we should encourage use or minimize the hazards of other substances but the major killers are alcohol and tobacco.

WQ: To be fair, there was a movement toward the prohibition of alcohol and temperance around the same time as the criminalization of other substances.

AK: Yes but that was a short tour into prohibition and, big surprise, it didn't work. The fact that prohibition did not work for alcohol didn't translate into lessons for other substances. They gave up on alcohol, realizing it was always a fool's errand, but they left the other substances mired in criminality.

WQ: There was a connection between xenophobia and the prohibition of alcohol. There was the temperance movement but there was also a perception that beer halls and taverns were a gathering place for immigrants and union organizers that helped spur a reaction against alcohol consumption. Did xenophobia also play into the prohibition of cannabis?

AK: Some of the same racist and xenophobic notions infused the embrace of the criminal law for other substances outside of alcohol. You don't have to go very far in Canadian history to find outrageous and offensive things said about racialized groups and their nefarious use of substances to somehow or other contaminate society. It was not only fear-mongering but it was in the realm of the fantastic. It had nothing to do with the lived reality of anyone. That's part of the farce of the solemnity of the criminalization of cannabis and other substances. It emerged from this fantasy platform yet after that we took it for granted that it was the appropriate thing to do and that we had no alternative. We had to eventually declare in the 1980s a war on drugs. We lost our grip on the reality of drugs over a period of about 100 years. Maybe we are now recovering our lucidity in a public policy and in a public health sense.

WQ: You mention the war on drugs in the 1980s. In 1973, a Royal Commission led by Gerard Le Dain, then dean of Osgoode Hall, was tasked with looking into non-medical drug use in Canadian society and recommended the decriminalization of drugs in general and cannabis in particular. The Le Dain Commission concluded that the harms of prohibition far outweigh the harms of the substance itself yet Canada persisted in prohibition and participated in the war on drugs. Why?

AK: The Le Dain Commission offered an ideal process for forming public policy within a democracy. There were extremely wide public consultations. The approach was humane and grounded in social science and grounded people's lived experience. Quite understandably as a result, the Le Dain Commission did recommend a radically changed approach to the way in which we control substances. There have been other moments of insight since then. It was in 2002 that the Senate of Canada no less recommended a similar approach with respect to cannabis and there have been similar murmurings over the past 45 years much to the same effect; that we were pretty wrong-headed and pretty self-defeating. You

ask why we didn't adopt the wise counsel of the Le Dain Commission? I'm not sure. One can certainly think of the influence of the United States which was conducting a full-on, carpet-bombing war on drugs. Once you get into a war-type response, then you stop thinking and you just pursue the war because to admit that the war was wrong from the outset and people have been dying in its pursuit is too hard. It's too hard give up and it's too elusive begin thinking about what we should do that is more propitious in terms of public safety and public health. I've always found it difficult to understand the war on drugs. I'm not sure why we decided to cling to it so tenaciously.

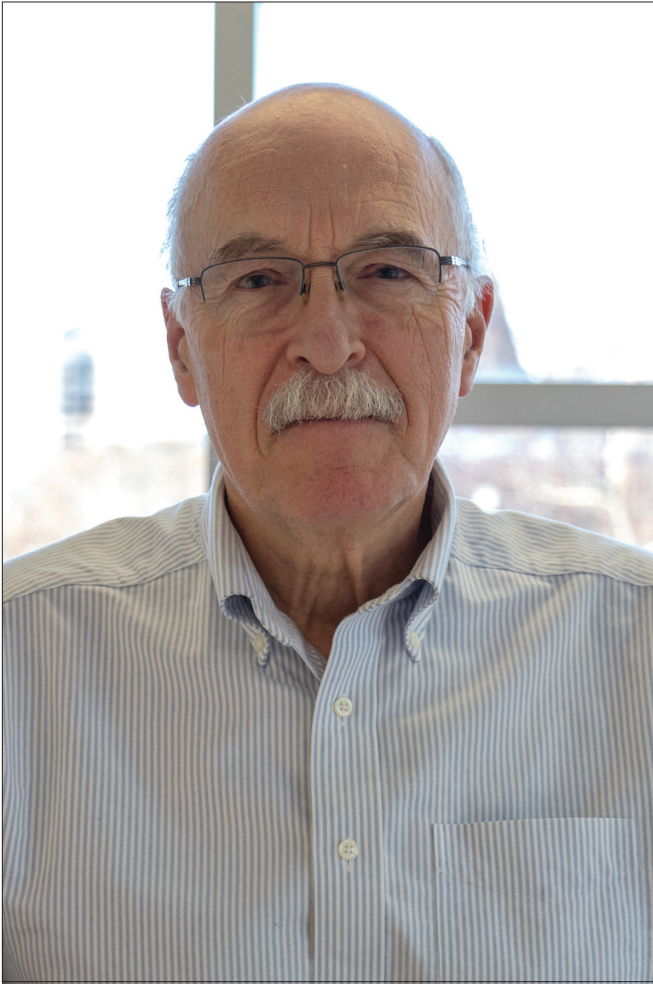


Photo: Luke MacGillivray

WQ: We stumbled into prohibition of cannabis in 1923 and we carried on in a daze in spite of evidence that prohibition wasn't working. What do you think made 2018 the right time to repeal the prohibition?

AK: I think there are probably many forces that coalesced. Some American states and some other nations either decided to legalize or decriminalize so we had a few pockets of a more liberalized outlook. These regimes were maybe experimental but they

held promise. At least some members of the law enforce community began recognizing that, as I think President Obama said, we can't arrest our way out of this. So we began to perceive the harms of the war on drugs in general, both with respect to cannabis and with respect to the harder drugs. Middle-class politicians who had emerged from a university culture found it easier to think about it being wrong to bust them or their sons and daughters; the whole notion of why should people who are otherwise productive, healthy, law-abiding citizens be branded with a criminal record was easy to adopt. Unfortunately, many politicians are still into what we might call the othering of persons who use other substances so that they find it harder to relate to the non-cannabis substance users. Its not as accessible as a desire to stop busting our kids for cannabis but I do believe we are beginning to see some fractures in the prohibition of other substances as well. What else helped to inspire the legalization of cannabis? Some of the political forces of the day were helpful; the Liberal party was looking for a way to outflank the New Democratic party and on this issue they were successful. The Liberals also distinguished themselves from the Conservatives who only latterly embraced the rationality of considering something other than prohibition. So in the last election this was something that an aspiring government could embrace and it would be politically profitable. I'm not so sure it was but it certainly helped project an image of being progressive. Many of the same arguments that were current in the years of Le Dain were simply reused but somehow they had more traction. I don't think the public was suddenly equipped with revelatory arguments that were inaccessible before; we were just re-using some quite common sense approaches to thinking about autonomous adult decision-making, the notion of harm, the appropriateness of using the criminal law. It was already there in the public policy ether. Somehow these forces came together to enable cannabis legalization to be both saleable in Parliament and in public. Suddenly we woke up and realized prohibition was failing and this is one of the domain where we could and should and were able to take action. It is certainly encouraging when people start being grounded and face reality. At least in this small domain, we are.

Weldon Quarterly would like to thank Professor Archie Kaiser for graciously making time to speak with us.

[For the complete interview with Archie Kaiser, visit www.weldontimes.com] ↕



Beyond Salad

Veganism

Samantha Addario 3L

The Student Animal Law Association of Dalhousie (SALAD) is not a vegan club. Rather, we are a group of Dalhousie students who deal in animal advocacy, animal welfare, animal rights, and other forms of animal protection including education and awareness-raising of animal issues. Every year, we offer a wide and unique range of events and opportunities to students of Schulich School of Law, of the broader Dal community, and to East-Coasters in general, having had folks join us at our events from all over the Atlantic provinces. We welcome folks of all walks of life to join us in our mission to, quite simply, help animals. Regardless of their dietary choices or restrictions.

Because we are a collective whose only real requirement for joining is caring about animals, SALAD tends to attract quite a few vegetarians and vegans. (Not the preachy kind! Just the kind that don't consume animals or animal products. We're really fun, I swear!). While veganism is only one of the ways a person might undertake to join the fight toward animal protection, our dietary choices have a huge impact on animal welfare and on the environment.

Statistics show that about 10% of Canadians are currently enjoying a plant-based lifestyle. Vegetarianism and veganism are on the rise! In the midst of the growing popularity of veganism in particular, you may have wondered: What exactly IS veganism?

Vegans are folks who, quite simply, do their best to always make lifestyle choices that are not the product of harm to any animal. Dietary choices are a big part of this, and tend to involve excluding all meat and meat products from one's diet. This means that vegans do not eat meat (including poultry and fish), eggs, dairy, and sometimes any other product produced by another species, like honey. Many vegans also choose to avoid things like leather and fur products, any form of animal entertainment (such as aquaria and zoos), and any personal care products that have been tested on animals.

We know what you're thinking: veganism sounds like a lot of work! It does take a little bit of planning and occasional research to live the happy, healthy vegan lifestyle. And we acknowledge that, for a range of reasons, there is no one thing that is ever just right for everyone. Many of SALAD's members do not enjoy a vegan lifestyle, but they demonstrate their compassion for animals in other ways.





SALAD, for instance, has a lot of really cool events on the go for the 2018-2019 academic year. For one, we continue to lobby our local governmental representatives in support of Bills S-203 and S-214, to end captivity of whales and dolphins and to ban testing on animals for cosmetic purposes, respectively. We are also planning a few educational movie screenings here in Halifax and some really amazing fundraisers to support North Mountain Animal Sanctuary in the Annapolis Valley. All of our events support animals in some way, and we invite you to join us at any and all of them if any of these mechanisms for defending animals are more your scene!

But because we know that veganism is not as laborious as people often believe it to be, we took a time-out from planning all of the amazingness above to produce this guide to eating vegan in Halifax for you. We at SALAD know that veganism is not hard work, the end result of which involves eating only celery. Veganism is, in fact, delicious, nutritious, and a lot of fun. And we know that this list of local hot spots for mouth-watering vegan eats will prove it to you!

You do not have to commit to a staunch vegan lifestyle in order to give any or all of these tasty treats a try. You can simply give one of these restaurants or dishes a try the next time you're in the mood to taste something new. You may never make a turn for the vegan, and that's okay. But you will get to eat a delicious, well-balanced meal that contains no animal products. And you may, as a result, gain a small glimpse into the lifestyle of – and, by extension, a better understanding of – one of Canada's few species who are growing in numbers and one of its most misunderstood animals: the vegan! ♪

On Campus

The Loaded Ladle: Offers FREE vegan lunch on Tuesdays, Wednesdays, and Thursday from 12:30pm until the food runs out.

Pete's To Go Go: Offers a minimal vegan selection, but it includes a delicious vegan Jamaican patty, a veggie and hummus sandwich, the occasional vegan soup, and a make-your-own salad bar with all the salad accoutrements you could ever dream of. They also offer vegetarian options, like various pasta salads and baked goods.

Vegan Restaurants

Springhouse (previously Fruition): All vegan and raw menu. Find them at the Seaport market.

Wild Leek: All vegan menu, including amazing juices and smoothies, and great daily specials.

enVie A Vegan Kitchen: All vegan menu, including raw and gluten-free options (plus vegan beer and wine!).

Vegan/Vegetarian Restaurants

Heartwood: Vegan and vegetarian menu. Cheese is the only non-vegan item on this menu, and they will make literally anything on their menu vegan for you if you ask them to.

Check out **Weldontimes.com** for the complete SALAD Guide to eating vegan in Halifax including options for burgers, pizza, Asian, Middle Eastern, Mexican, sweet treats and more!

Find us online at weldontimes.com

Bear Down!

Dispatch from Tucson, AZ

Jimmy Peterson 3L

Bear Down from the University of Arizona in Tucson, Arizona! Being an Arizona Wildcat has been a dream of mine since I was in high school cheering on the U of A basketball team and wearing U of A clothes everyday.

Living here for this short time has been so energizing and exciting from the weather to the campus, people, sports, school spirit, road trips, friends and relationships made, professors, parties, tailgates, music, culture, food, and so on.

Being in Arizona has broken down some liberal stereotypes. I am increasingly realizing that I have lived a sheltered life in Vancouver and Halifax compared to the experiences of middle Americans, particularly when I went to El Paso, Texas. El Paso is directly across the street and border from Juarez, Mexico, which was ranked as the most dangerous city in the world just a few years ago. This led to gang violence and shootouts every night and innocent civilians caught in the crossfire. El Paso is a city of 650,000 people. Yet, to create some stability there are nearly 150,000

employed or related to the military base in the city. Think about that. One-quarter of the city. These are the types of direct experiences that people face. They don't get to pick and choose who comes into their country shielded by the oceans like us Canadians generally do. Direct experiences shape people's views on immigration and the like. I may not agree with them, but people on both sides should first comprehend the other's perspective in order for there to be progress.

Coming to America is slightly different than most other exchanges. You will learn. You will be challenged. You will read. The Socratic method at Arizona leads to much stronger participation in classes from all students, and in my opinion, better critical thinkers and public speakers here than at Dal... not more intelligent, but the students are better prepared for practicing law at Arizona than at Dal.

School has been rewarding. You see great similarities between American and Canadian cases, but also subtle differences in the reasoning. Canadian judges often look to American caselaw. And the reverse happens. In



my first week here, unprompted, an Arizona Supreme Court family judge told me that he is closely watching BC's family law online system to see if Arizona can improve their system. While Tucson is admittedly a more liberal part of the state, Arizona is not just closed off from the rest of the world.

The professors are excellent. My Capital Punishment professor, Pete Eckerstrom, is the Chief Justice of the Arizona Court of Appeal here. He's so chill that when I missed his Friday morning class I texted him I can't make it because I'm hungover from Bar Review on Thursday night (Arizona's version of Domus) where I was drinking with his nephew. My Sports Law professor is the funny Joe Garagiola, the former Arizona Diamondbacks General Manager, and legal advisor to infamous George Steinbrenner. He's the senior vice president of standards and on-field operations for the MLB. In one of our classes, he was interrupted by a phone call from the legendary Joe Torre...safe to say we all tried to listen in.

Outside of Tucson, I have hiked the Grand Canyon multiple times. Done a hike and kayak tour of Antelope Canyon. Been to 2 NFL games in Phoenix. Hiked in Sedona. Checked out an unreal meteor crater. Viewed the Montezuma castle built by a Native American tribe over 1,000 years ago. Seen the old country Western gunfight towns of Bisbee and Tombstone where John Wayne and Clint Eastwood and others used to roam. Been to the Kartchner Caverns, voted the best caves in the US a few years ago. Driven across southern New Mexico and overlooked Mexico and Texas on El Paso's incredible aerial tramway.

Oh, and the students here like to drink as much, if not more, than they do at Dal!

I strongly recommend going on exchange and immersing yourself in the new environment and legal culture. Bear Down, Arizona! 🍷



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Supreme Court Briefing

UPCOMING DECISIONS | WINTER DOCKET

National Football League v. Canada (Attorney General), Bell Canada v. Canada (Attorney General)

*Relevance - Civil Procedure | Administrative Law
Federal Court | Civil | By Leave*

In what has been tipped to be a landmark case in administrative law, the SCC will revisit the standard of review for administrative tribunals set out in *Dunsmuir v. New Brunswick*. The court will consider two cases regarding administrative review. There is speculation that this will signal a change in the often-criticized test set out in *Dunsmuir*. *Bell Canada v. Canada (AG)* concerns the Canadian Radio-television and Telecommunications Commission (CRTC) decision to stop the practice of substituting American commercials for Canadian commercials during the Super Bowl. Usually, Canadian audiences are unable to view American **Super Bowl** commercials (even when watching on American TV channels) due to the practice of substitution. In 2016 the CRTC put a stop to this practice. Bell Canada appealed this decision to the Federal Court of Appeal which subsequently upheld CRTC's decision. That decision has been appealed to the SCC. The NFL is also appealing the CRTC's decision in a separate case to be heard in tandem with Bell Canada.

Minister of Citizenship and Immigration v. Alexander Vavilov

*Administrative Law | Civil Procedure
Federal Court | Civil | By Leave*

In another high-profile case scheduled to be heard in tandem with *Bell Canada*, the SCC will review the Federal Court of Appeals decision to overturn the Federal Courts affirmation of a government decision to revoke the citizenship of Alexander Vavilov, the child of two **Russian spies**, on the grounds that his parents were not lawful Canadian citizens at the time of his birth due to them being employees of a foreign government. Vavilov was born in Canada. His parents were registered Canadian citizens at the time of his birth but were arrested in the US in

2010 and returned to Russia. The Federal Court, in dismissing Vavilov's application for judicial review, ruled that the cancellation of Vavilov's certificate of Canadian citizenship issued to him in 2013 was permissible under the *Citizenship Act*. The Federal Court of Appeal quashed this decision, ruling that that the relevant sections of the *Citizenship Act* only apply to employees of foreign governments who enjoy diplomatic immunities or privileges. The Canadian government has appealed to the SCC.

Nevsun Resources Ltd. v. Gize Yebeyo Araya, et al.

*International Law | Human Rights | Civil Procedure
British Columbia | Civil | By Leave*

Respondents are Eritrean refugees who were conscripts in the Eritrean military **forced to work** at a mine that the appellant, a Canadian company, owns a majority stake in. Respondents claim that during their time working at the mine they were subject to international law and human rights violations including forced labour, slavery, and torture. The respondents allege that Nevsun was complicit in these violations due to its business relationship with the Eritrean government. The respondents seek compensation from Nevsun for breaching basic principles of international law. At the Supreme Court of British Columbia Nevsun sought a stay of proceedings on the grounds that Eritrea is the appropriate jurisdiction to hear the case, and that state immunity as well as the inapplicability of international law meant that the respondents could not be successful at trial. The BC Supreme Court refused Nevsun's application. The BC Court of Appeal dismissed Nevsun's appeal. Nevsun now appeals to the SCC.

Kathleen Blanchard v. R

*Criminal Law | Criminal Procedure
Quebec | Criminal | As of Right*

The appellant, Blanchard, was successful at trial in raising the defence of automatism. Blanchard was charged under s. 354(5) of the Criminal Code for refusing to comply with a demand to provide a breath sample. She had caused an accident while driving and

was arrested. She refused to submit to a breathalyzer test. At trial she raised the defence of automatism due to her state of intoxication. The trial judge accepted this defence and acquitted her of the charge under s. 345(5). The majority of the Quebec Court of Appeal overturned the trial judge's decision on the grounds that it would be absurd to assume that Parliament intended a criminal code provision regarding intoxication to be open to a defence of **automatism by intoxication**. One Justice of Appeals dissented on the grounds that a defence of automatism can be raised for any offence so long as it is not explicitly excluded by law.

Keatley Surveying Ltd. v. Teranet Inc.

*Intellectual Property | Property
Ontario | Civil | By Leave*

The respondent, Teranet, is a private company that provides and manages the Ontario electronic land registry service. All land survey documents for the province, which are prepared by land surveyors, are registered in the electronic land survey registry system. Teranet provides copies of land survey documents to the public for a fee prescribed by provincial statute. Teranet provides no royalties to the land surveyors nor is it required to by statute. 350 land surveyors, including Keatley, claim copyright in the land survey documents and have brought a class action lawsuit against Teranet for **copyright infringement**. At trial the Judge dismissed the action on the grounds that, once submitted to the electronic land registry system, land survey documents, including the copyright of these documents, becomes property of the province under s. 12 of the *Copyright Act*. The Ontario Court of Appeal upheld the lower courts decision. Keatley appeals to the SCC.

MCpl C.J. Stillman, et al. v. R

*Constitutional Law | Military Law | Criminal
Procedure Federal Court | Criminal | By Leave*

The appellants bring a constitutional challenge to s. 130(1)(a) of the National Defence Act (NDA) on the grounds that it violates their right to a jury trial under s. 11(f) of the Charter. S.130(1)(a) creates an offence under the NDA capturing all criminal offences under Part VII of the Criminal Code. S. 11(f) of the Charter guarantees the right to trial by jury for any offence which carries a **maximum punishment** of five years or more in prison except in a case under military law tried before a military tribunal. The issue is how to interpret "under military law," and whether this properly includes criminal offences not specifically related to military service offences under the Code of Service Discipline. The Court Martial Appeal Court (CMAC) held that they were bound by stare decisis in

their decision holding that s. 130(1)(a) of the NDA does not violate s. 11(f) of the Charter. However, in the recent 2018 case of R v. Beaudry CMAC held that s. 130(1)(a) does violate s. 11(f) of the Charter. The Supreme Court will have the final say on this, with a hearing tentatively scheduled for March 2019. An appeal from Beaudry is also scheduled for a hearing on the same day. Until the SCC gives a ruling, Court Martials are restricted to only trying offences under the Code of Service Discipline.

Patrick John Goldfinch v. R

*Evidence | Criminal Procedure | Criminal Law
Alberta | Criminal | As of Right*

At trial, the appellant's defence counsel was successful in an application under s. 276 of the Criminal Code to enter evidence about the complainant's **sexual history** on the basis that it would provide context to the jury regarding the nature of the relationship between the complainant and the appellant. The trial judge allowed the evidence on the grounds that its probative value outweighed any prejudicial effect. The appellant was acquitted of assault and sexual assault. On appeal, the Crown argued that the trial judge erred in allowing the submission of that evidence. The majority of the Court of Appeal agreed with one Justice dissenting.

Resolute FP Canada Inc., et al. v. Canada (Attorney General)

*Environmental Law | Contracts
Ontario | Civil | By Leave*

In August 2011 the Ontario Ministry of the Environment issued a Director's Order requiring the appellants, Resolute FP Canada Inc. and Weyerhaeuser, to perform remedial work and maintenance at a waste disposal site they previously owned. The appellants argue that they are indemnified of any costs from carrying out the order due to a 1985 **indemnity agreement** between the Ontario provincial government and two companies, one of which is now Resolute and the other was acquired by Weyerhaeuser. The wording of the agreement included that it is "binding upon and enure to the benefit of the respective successors" of the companies involved. All the parties moved for summary judgement on the issue of indemnity with the motions judge siding with the appellants. The Court of Appeal set aside, in part, the motions judge's decision. Resolute and Weyerhaeuser appeal that decision. ¶

**Look for our next addition of the
Weldon Quarterly in February 2019!**

In Memoriam

Beige Lussier

1995 - 2018



Photo: Beige Lussier

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