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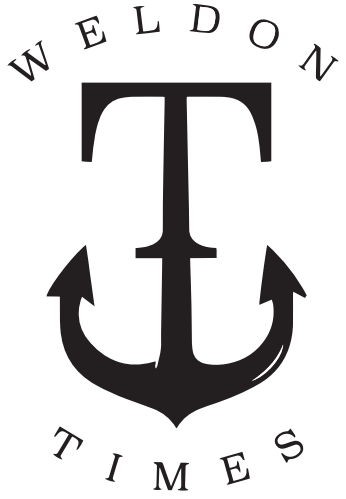

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Dalhousie University sits on Mi'kma'ki, the traditional territory of the Mi'kmaq.

MMIWG Report Calls for Increased Indigenous Cultural Awareness in Canada's Justice System

Madison Ranta, 1L

Released on June 3, the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) laid bare the genocide perpetrated by colonial Canada against Indigenous people. Mandated to examine and report on the systemic causes of violence against Indigenous women, the inquiry took more than three years to hear testimony from thousands of witnesses.

Among its findings, the inquiry's commission reported that Indigenous women and girls are sixteen times more likely to be murdered or go missing than white women. Calling this level of violence a "Canadian genocide," the commissioners recommended a number of reforms to Canadian settler institutions, including the justice system. These include the hiring of more Indigenous judges and police officers and potentially creating a separate court system for Indigenous peoples.

Included in the hundreds of calls to action within the report are specific requests to media, health service providers, and police services organizations. The report also includes eight calls to action for all Canadians. These include reading the final report, speaking out against violence against Indigenous women and girls, learning about the "true" history of Canada and colonization as it relates to Indigenous people, and becoming an ally to help hold governments accountable to the report's calls to action.

Marion Buller, Chief Commissioner of the inquiry, said in a press conference on June 3 that the report's calls to action should be seen as "legal imperatives" necessary to help end the cycle of violence faced by Indigenous women.

The MMIWG report comes four years after the Truth and Reconciliation Commission (TRC) released its final report and calls to action regarding Canada's residential schools.

Naiomi Metallic, an assistant professor and chancellor's chair in Aboriginal law and policy at Dalhousie University's Schulich School of Law, says that one of her favourite recommendations in the MMIWG report is call to action 1.7, which asks all levels of government to work together with Indigenous communities to create a national Indigenous human rights ombudsperson, as well as a national Indigenous Human Rights Tribunal. The commissioners state in their report that the ombudsperson and tribunal would receive complaints from Indigenous people and communities regarding Indigenous human rights violations and would have the power and resources to "conduct thorough and independent evaluations of government services for First Nation, Inuit, and Métis people and communities to determine compliance with human and Indigenous rights laws."

> *"It's a matter of meeting people's needs. This is about respecting fundamental Indigenous and human rights."*

Metallic says such a service is well overdue. "It's a matter of meeting people's needs," she states. "This is about respecting fundamental Indigenous and human rights."

Metallic notes that the MMIWG had a "crazy

ridiculous mandate" in terms of the amount of time and money they were allotted. She added that the MMIWG inquiry was given similar resources for its investigation as was given to the Cohen Commission, an inquiry that looked into the collapse of the 2009 Fraser River sockeye run in British Columbia.

"Not that that particular breed of salmon isn't important, but they had about the same budget and the same time period," she says. "They [the commissioners] acknowledge in the outset of the report that it's not perfect and they didn't hear from everybody, and if they could have had two more years of a mandate it would have been an even stronger report."

While some of the calls to action in the MMIWG report echo similar sentiments from the TRC's final report about the need for actors in the justice system to receive better education on Indigenous issues, Metallic says the MMIWG report expands on necessary reforms to ensure that human rights are protected in family law, public law, and criminal law.

Governments and law societies are specifically asked in the report to implement "mandatory intensive and periodic training of Crown attorneys, defence lawyers, court staff, and all who participate in the criminal justice system" on Indigenous cultures and histories.

The report also calls for further examination of the Gladue principles in Canadian courts. Named after the *R v. Gladue* case, a Canadian court can request a pre-sentencing and bail hearing report called a Gladue report when considering the sentencing of an Indigenous offender. These reports aim to consider how an offender's Indigenous ancestry could have impacted their life when determining appropriate sentencing. The Supreme Court of Canada stated in 2012 that "failing to take Aboriginal circumstances into account would violate the fundamental principle of sentencing."

Call to action 5.15 asks that governments "consider Gladue reports as a right and resource them appropriately, and create national standards for Gladue reports." The report also asks for governments to evaluate the impacts that such reports can have on violence against Indigenous women and to "apply Gladue factors in all decision making concerning Indigenous women."

With more than four months having passed since the MMIWG report's release, Metallic says she doesn't think the report has been given the same amount of attention as the final report produced by the TRC in 2015.

"The TRC was about residential schools, and I think some people are like, 'but the schools closed, it's in the past, and we'll learn from that,'" Metallic says. "But this [the MMIWG report] actually requires us to engage with something that is ongoing. Women being killed and murdered and raped, and a justice system that is built in a way that is completely allowing this to happen. I wonder if that is in part why people are looking for any excuse not to have to really engage with it."

> *"We're trying to make this information accessible and understandable, to make sure that current lawyers and people who are getting out of law school now will have a better appreciation of the issues."*

Moving forward, Metallic says that the Schulich School of Law is planning to consult with students on ways that the school can include more Indigenous content in upper years. This includes the introduction of new courses with an Indigenous focus.

"It's incumbent upon those of us who want to see real justice happen to continue fighting to help students understand this," Metallic says. "We're trying to make this information accessible and understandable, to make sure that current lawyers and people who are getting out of law school now will have a better appreciation of the issues. That's the best we can do."

The Weldon Times would like to thank Professor Metallic for graciously making time to speak with us. To read the full interview visit weldontimes.com

Ellen Williams

President

Year: 3L

Ellen is a true maritimer, self-proclaimed *cat lady*, and devoted coffee drinker. Born and raised in Amherst, Nova Scotia, she attended Mount Allison University where she obtained a Bachelor of Arts in political science. After graduation, Ellen ventured out of Nova Scotia to pursue a Master's Degree in Political Science in Regina, Saskatchewan, where she met her now husband, Reagan (you may know him as one of the karaoke guys.) In 2017, they got married, travelled Europe for three weeks, and began their first year of law school together in Section C. After graduation, Ellen will be articling with Alan Gold in Toronto.

In her role as LSS President, Ellen supports the executive team and acts as the official liaison between students and the administrative team. This is achieved through weekly meetings with the Director of Student Services, Dana-Lyn Mackenzie, bi-weekly meetings with Dean Cameron, sitting on the Dalhousie Law Alumni Association, and sitting as a voting member at Faculty Council. These opportunities allow the LSS to bring forward student concerns, areas of interest, and questions. While the position may read as one focused on supervising daily operations and attending meetings, Ellen believes the position is better thought of as being the biggest supporter of the LSS.

As LSS President, Ellen is focused on supporting the executive team, advocating for students, and laying the framework for future LSS teams to succeed. Many of the LSS executive members are entering their 2nd term (& 3L). This has given the LSS a unique opportunity to create and implement institutional memory protocols, revaluate how the society functions and ensure the LSS are, and continue to be, the voice of students. The LSS has already made positive reforms, which are reflected in the recent overhaul of the constitution, LSS rebranding, updates to executive duties, and a redesign of the committee structure.

This year, Ellen's priorities include continued advocacy for student wellness and mental health. In a school setting, the focus on wellness starts at the foundation and is achieved by making the daily pressures of student life as manageable as possible. Small changes, such as scheduling events when students are actually able to attend them, alleviates scheduling fatigue. With so many events on offer, from skill-based workshops to guest speakers, students shouldn't have to miss lunch or society meetings to attend.

This leads to another priority: helping Weldon students be the best they can be. Recruitment is one of the most stressful parts of law school. Students should not be penalized for missing assignments or midterms because they have been extended an in-firm interview that conflicts with the due date. Every student deserves the opportunity to land their dream job without fear of academic penalty.

Last, and certainly not least, advocating for students doesn't end at the Weldon doors. With a desire to ensure the law profession continues to work towards inclusivity and diversity, it is important to work with the Nova Scotia Barrister's Society, the Advocate's Society, and the network of strong Dal Law alumni.

DAL LAW STUDENTS' SOCIETY

Daniel Roth

Vice President Executive

Year: 3L

Daniel was born and raised in Edmonton, Alberta, but is excited to now call Halifax home. Daniel graduated from the University of Alberta School of Business with a Bachelor of Commerce and a Certificate in Business Leadership. During his undergrad, he went on exchange to the United Kingdom, participated in a study tour to China, and interned on the board of the Edmonton Symphony Orchestra and Francis Winspear Centre for Music. Daniel also served as an executive member of his undergraduate faculty association and was part of the competitive debate team. Prior to starting law school, Daniel worked in project management on the business services side of a global law firm.

In his third year of law school, Daniel is competing as a member of Dalhousie's Jessup International Law Moot Court Competition team. Outside of school, you are most likely to find Daniel walking the Halifax Harbour Boardwalk and taking innumerable photos of George's Island, which he is excited to see is planned to open to the public next summer. After graduation, Daniel will be articling with a full-service Atlantic regional firm, working in their Halifax office (which is conveniently located near Cows Ice Cream!)

Returning for a second term as Vice President Executive of the LSS, Daniel remains focussed on balancing short and long term goals: ensuring the LSS is meaningfully supporting students today and laying a foundation so future iterations of the LSS may succeed. As VP Executive, Daniel is responsible for the operations and governance of the LSS: organizing locker rentals, committee appointments, elections (with the Elections Committee), publications (with the Publications Committee), and office hours. He regularly works with the other LSS Executives to ensure that projects remain on-schedule and that meetings run efficiently. Last year, Daniel spearheaded a project to clean up the LSS Constitution and began transitioning the LSS onto Dalhousie's Brightspace content-management platform.

This year, seeking to provide future Executive Committees a strong foundation, Daniel is focussed on streamlining and institutionalizing best practices for the LSS. Key projects include unifying and standardizing reporting structures, developing comprehensive turnover mechanisms, and continuing to review the Constitution to ensure it is an effective tool that keeps the LSS running smoothly.

If you have any questions about how the LSS operates, or any suggestions for how it could work better, you are encouraged to contact Daniel at vpexecutive@dallss.com or stop by the LSS Office during his weekly office hours.

DAL LAW STUDENTS' SOCIETY

Nicholas Foran

Vice President Finance

Year: 3L

Nick chose to run for VP-Finance for a few reasons. Although he had never been a huge participant in university events, he recognized that they add tremendous value to an institution. Motivated by this knowledge, and by his recognition of Weldon as a very close environment, Nick decided he wanted to play a part in fostering that sense of community. Nick's role as VP-Finance allows him to assist the Weldon community a few steps removed from the front lines.

Nick also loves Excel. It's probably his favourite program in the Office suite, and getting to use it for the LSS budget is an utter joy. That being said, Nick enjoys the other duties included in his position, and this enjoyment motivated him to run for a second term. He really enjoyed doing the job last year, and it's made him even more prepared. He got a better sense of how the LSS works as an organization, and how they interact with other pieces in the School. He was also able to identify some problems that he's hoping to fix over the remaining months.

Nick's biggest goals for the year are making funding more accessible to students and societies and increasing the transparency of how the LSS as a whole manages its finances. The biggest issue students brought to his attention was how long it takes for funding to come available. Nick is currently working with the LSS Committees to restructure their bank accounts to address this issue. With broader access to all LSS resources, Nick believes they can better utilize available funds and remove their reliance on DSU disbursements to fund the LSS annual budget.

DAL LAW STUDENTS' SOCIETY

Meghan Faught

Vice President External

Year: 2L

Meghan grew up in small towns across Northern Ontario, from Thunder Bay to Tara, where her parents instilled her with a love of nature. She completed her undergraduate degree at the University of Waterloo, obtaining a Bachelor of Arts and Business with a major in History. After her graduation in 2015, she moved to Tofino, BC where she attempted to surf, ate a lot of delicious food, and fell in love with running (made easy by the surroundings!). Afterwards, Meghan moved to the other side of the country and completed her Master's in Environmental Policy at Memorial University in Newfoundland. Her researched focused on private sector sustainability mechanisms in the global fisheries sector. She absolutely loved living in Newfoundland, even if she was a tad put off by salt beef. A love of learning, challenges, and helping others brought Meghan to law school and into the role of VP External.

In Meghan's spare time she loves to read (yes, really!), cook with her girlfriend, and hike with their two dogs. They have loved exploring everything the East Coast has to offer!

As VP External, Meghan is responsible for representing the interests of the Law Student Society and its members to external organizations, and to keep law students informed about external events. Meghan sits on the Dalhousie Student Union council as the Faculty of Law representative, as well as on the Dalhousie Law Alumni Association Board of Directors.

This year, Meghan's goal is to keep students informed about what happens at council and, more generally, about any external events. Every motion she votes on in council is done with law students in mind. Meghan is cognizant that law students have many competing responsibilities and are often inundated with information. For these reasons, she aims to keep updates brief and to the point. It is also Meghan's pleasure to help organize the annual Feed Nova Scotia Food Drive with the Law Library. Friendly competition always brings out the best in everyone!

Meghan encourages any student to reach out with concerns or questions.

DAL LAW STUDENTS' SOCIETY

Cydney Kane

Vice President Student Life

Year: 3L

Cydney Kane is a born-and-raised Haligonian. After obtaining her Bachelor of Science in Biology at Mount Allison University, she returned home to pursue her JD at the Schulich School of Law. In the Winter semester, she will be participating in the Dalhousie Legal Aid Clinic program and will represent the school at the national Laskin Moot in Quebec City. Following graduation, Cydney will be articling with a mid-sized Halifax firm and intends to practice civil litigation. Outside of academics and the LSS, she works part-time as a dance teacher on weekends, coordinates a Pro Bono project, sits on the Board of Directors for two non-profit organizations, and volunteers with social justice and health-related charities. Cydney is passionate about criminal justice reform, promoting the importance of tissue and blood donation, and Domus.

In her final year of studies, Cydney is excited to return to her role as Vice President Student Life of the Law Students' Society for a second term. As VPSL, she is responsible for:

- Managing and creating content for LSS social media platforms;
- Overseeing and assisting law student societies; and
- Planning low-key and inclusive events for law students.

Cydney ran for re-election because she not only greatly enjoyed the position last year, but also because she wanted to leave the Schulich Law community a little better and brighter than she found it.

Cydney's goals for this year largely center on establishing the longevity of some of last year's improvements (such as social media pages, new table and Square booking systems, and society registration) and beginning some new and exciting initiatives. Over the summer, for example, Cydney built an online shop where all LSS products and event tickets can be sold in one central, transparent, and secure place. This shop will save the LSS more than $300 every year in unnecessary fees—money that can instead be put towards funding societies!

Cydney also intends to focus more of her portfolio on wellness and mental health initiatives. She is ecstatic to formally announce that Justice Clément Gascon of the Supreme Court of Canada will be speaking at Law Hour on Thursday, January 16th, 2020 on mental health in the legal profession.

If you'd like to discuss social media, event planning, student societies, getting involved, wellness, or small fluffy animals, send Cydney an email at vpstudentlife@dallss.com or drop by the LSS office.

DAL LAW STUDENTS' SOCIETY

Nicole Kelly

Vice President Academic

Year: 2L

Last year, Nicole Kelly served as the Section A Representative (AKA the best section) and 1L Executive Representative. Nicole is excited to be part of the LSS for another year.

Nicole earned her Bachelor's and Master's Degrees at the University of Guelph, where she also had the odd experience of serving as Teaching Assistant in the courses she had taken during her undergrad. This experience showed Nicole first-hand how different teaching techniques can change the student experience. This experience motivated Nicole to run for VP Academic: she wants to ensure the curriculum develops and evolves with student opinions and needs in mind.

As your VP Academic, Nicole acts as the liaison between students, faculty, and administration for everything academic related. Part of this responsibility includes sitting, alongside other student representatives, on the Faculty Council, Academic Committee, and Teaching Awards Committee. Nicole has really enjoyed working with faculty to keep communication open and to make sure everyone is receiving the best learning experience possible.

Nicole is also responsible for the CAN's database (currently located on the LSS Brightspace page). Nicole found CAN's to be a very helpful tool in 1L. She spent a great deal of time over the summer updating the database and improving its organization. Later this year, Nicole will be putting out a call for CAN's for classes that require up-to-date CAN's and for newer classes that don't have any CAN's. Keep your eyes out for that email!

Another part of Nicole's job is to print thousands of Rolling Evaluation forms and stuff them into envelopes for our professors each semester. The Rolling Evaluations process gives students the opportunity to provide feedback early into a course, helping to ensure they are on the same page as their professors. These evaluations allow students to tell professors what is or isn't working in the learning environment before it's too late into the semester. Due to the waste of paper and class time it takes distributing them, Nicole is working to move this process online.

Nicole also has a side-project on the go. She's been working with the LSS to collect old textbooks and find them good homes. You may have noticed the table outside of the LSS office this summer, and the cart in the student lounge this September, filled with free old textbooks. At the beginning of October, the LSS donated the leftover textbooks to the Textbooks for Change Foundation to aid in their mission to provide accessible education across the world. Nicole is also the administrator for the "Dal Law Textbook Exchange" Facebook page.

Nicole is looking forward to working with you this year. If you have any academic-related questions or comments, please reach out at vpacademic@dallss.com.

DAL LAW STUDENTS' SOCIETY

Alyssa Lamont

1L Executive

Year: 1L

Alyssa was raised on the outskirts of Ottawa and moved into the heart of our nation's capital to pursue her undergraduate degree. At Carleton University, she completed a Bachelor of Arts with a double-major in Law and English. Graduating in 2017, she took a couple years off to work and travel. She is very excited to have learned how to both surf and ski in the winter of 2018!

Alyssa became part of the LSS because she regretted not being more involved during her time at Carleton. This year, and for all her time at Weldon, she intends to be as involved as possible. She wants to connect with her peers and future colleagues and to give back to the school community. As the 1L executive, Alyssa supports the executive team and represents the interests and perspectives of 1L students. Her goal is to ensure that the class of 2022 has the best experience possible over the next three years by incorporating their feedback into the LSS's objectives for the year.

DAL LAW STUDENTS' SOCIETY

To learn more about the LSS go to
www.dallss.com
or visit the
Dalhousie Law Students' Society
Facebook page

Impeachment: How a Legal Process Turns Into a Political Act

Robert Belanger, 2L

As the Republican Representative stood to denounce the Democratic Party and its impeachment conduct, an aide awkwardly hid behind a grade-school style poster that was smeared in red and adorned with the Soviet Sickle and Kremlin. "37 Days of Soviet-Impeachment Proceedings" was plastered on the board in big bold letters. "This is Soviet Style Rules! Maybe in the Soviet Union you do things like this!" Scalise stated.

Without approaching the absurdity of this historical analogy, it is clear that the second highest ranking Republican in the House was not trying for a strong legal argument. Scalise knows the House has a broad constitutional right to conduct an impeachment. No, this stunt was purely political.

Scalise was engaging in the Republican strategy regarding the Democrats' Impeachment Inquiry: smear and steer. Smear the Inquiry and, at the same time, steer the public's focus away from President Donald Trump's conduct. The Republicans are treating impeachment as a strictly political issue in which the law serves as nothing more than a tool to score political points in their battle to gather support for the President. Though I will explain the legal background of impeachment in this article, it's clear that the crux of the process will be political.

Impeachment is a constitutional legal issue within the United States system, enshrined in four sections of the U.S constitution. The most debated term is Article II s.4, which states that the President should be removed from office and impeached for "treason, bribery, or other high crimes and misdemeanours." The meaning of high crimes and misdemeanours has been argued extensively. "High crimes," however, is not a criminal standard. The Founding Fathers, who changed the section from "maladministration" to "high crimes," meant the term to be used when the President abuses his or her office. Charles Black, a predominant American legal scholar who wrote extensively on the Nixon impeachment, created a three-part test for "high crimes and misdemeanours." The elements are fulfilled if the President's act:

1. Weakens the legitimacy of the presidency;
2. Corrupts the political and governmental process; and
3. Is such that the American public would view the act as morally wrong

The Founding Fathers did not provide clear guidelines on such acts, but it is clear that the Founders were cautious of balancing the powers between the executive and the legislator and that they intended for impeachment to be used in only the gravest of circumstances.

The remaining impeachment sections lay out its procedures. Article I Section 5(2) gives the House of Representatives the sole power of impeachment, which also means that Congress gets to write the rules on how impeachment proceedings are done. The House of Representatives will conduct the initial proceedings and will then vote to impeach or not. Afterwards, the Senate has the final say on if the President is to be removed.

Article I Section 3(6) gives the Senate the power to try the President on the charges. Essentially, Senators act as jurors voting on whether the President is to be removed from office. This process is a quasi-judicial standard. Senators are not trying the President in a criminal trial; the President does not need to be found guilty beyond a reasonable doubt. While these proceedings may seem judicial in nature, political interpretation plays a large factor in determining the rules for impeachment and how a congressman votes on impeachment.

With this legal template, the American Congress will have to determine whether Trump's actions constituted "treason, bribery or other high crimes, and misdemeanours." I believe that the application of Black's test makes it abundantly clear that they do. Trump, based on my interpretation of the evidence, held up military aid, vital to the security of Ukraine, to put

pressure on the Ukrainian President to investigate one of Trump's potential opponents in the 2020 presidential election. This action weakens the legitimacy of the presidency. We do not know if the President is basing his foreign policy on self-interest or the interest of the United States. This weakens the government's ability to function as it weakens the legitimacy of the 2020 elections. Finally, this action is objectively morally wrong. Using presidential powers and resources to extort a foreign power for personal political gain is a gangster-esque tactic that no person should find tolerable in a democratic society.

> *"Scalise was engaging in the Republican strategy regarding the Democrats' Impeachment Inquiry: smear and steer. Smear the Inquiry and, at the same time, steer the public's focus away from President Donald Trump's conduct."*

What Donald Trump did constitutes a high crime and misdemeanour. It is Congress's obligation to impeach. The official accusation made by the House of Representatives, that Trump "enlisting the assistance of foreign governments" for personal political reasons, is unprecedent at this level of government. The partisan nature of Congress, however, has transformed this process into a political event.

With little legal room to maneuver, impeachment has become a complete political process. Both parties are trying to frame turn the issue into a favorable talking point for the 2020 elections. The Democrats try to take the substance of the facts—that Trump asked a foreign leader to impact U.S elections—to make a clear and concise argument that what Trump did was impeachable. Part of the reasons why the Democrats began impeachment proceedings in this case is that the facts are readily ascertained and easily understood. The transcript of Trump's conversation with the President of Ukraine is available online. Furthermore, mounting evidence is fleshing out both the extent of Trump's involvement and his intent to force the Ukrainian government to investigate his political rival. The Democrats hope they can sway public opinion by clearly explaining that Trump's actions were blatantly wrong with simple, concrete evidence, strengthened by the corroborating testimony of senior government officials. By keeping their argument simple, the Democrats hope that they can sway enough voters that Trump will be removed as President. The Republican-controlled Senate is unlikely to remove him, but a successful impeachment process would bode well for the Democrats in 2020.

The Republicans have not yet come down on a firm strategy for how to attack the Inquiry. Instead, they're throwing everything at the wall to see what sticks. Republicans have made attacks on the fairness of the process, attacks on the character of the witnesses, and some have claimed that Trump carried out a quid pro quo, but for a valid purpose. Other Republicans claim that Trump was right to investigate Biden because Biden is corrupt. Whether intentional or not, this shotgun approach muddles the process and obfuscates the truth of any claim. Democrats want a clear narrow argument; the Republicans are doing everything possible to warp that argument.

Republicans are not taking a legal approach, but a strictly political one. They are trying to focus on issues not related to Trump's conduct in order to influence public perception. How the public reacts to these tactics will impact how the Republicans conduct themselves throughout the process. If public sentiment shifts towards impeachment, it will be interesting to see if any Republicans defect from the President and concede his actions are impeachable.

I am not going to make any predictions on how the impeachment proceedings will conclude. Like any political moment in this day and age, the situation can change in a moment. We have no idea how the public will react to the public hearings and how it will impact the positions of the two parties. I believe that what Trump did was impeachable, but the current political climate and cult of personality that surrounds the President ensures his political capital. The law may set the rules for impeachment, but how Congress votes on it and how the public reacts to it, are strictly political events. In this case, it's not who can make the more convincing legal argument for impeachment, but who can put up the best political fight.

LEGAL NEWS BRIEFING: Fall Edition

Bill 207: Conscience Rights (Health Care Providers) Protection Act

In Alberta, Bill 207 passed its first reading on November 7. The bill was introduced by Daniel Williams, a member of the United Conservative Party. Bill 207, the Conscience Rights (Health Care Providers) Protection Act, seeks to assert **health providers'** *Charter* right to the **freedom of religion and conscience**. The bill would allow Albertan health care providers and religious health care organizations to refuse to provide services conflicting with their beliefs, such as abortion and assisted suicide.

Korean Legal Clinic

In October, the Korean Legal Clinic launched in Toronto. The clinic is a pilot project set to run for six months and is funded by the Korean-Canadian community, as well as law firms Osler, Hoskin & Harcourt LLP, Gowling WLG, and McCarthy Tétrault. The GTA-based clinic is the first of its kind, offering **free legal advice** in Korean to Koreans who have a gross income equal to or less than $60,000. Executive director Marie Park views the clinic as a step forward to improving **access to justice** for the community.

Québec Public Inquiry Commission Report

The Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec was released on September 30. The inquiry was created in December 2016 as a response to what is commonly referred to as the "**Val-d'Or events**." The "Val-d'Or events" refers to cases of Indigenous women who suffered abuse and mistreatment from police in the city of Val d'Or between 2002 and 2015. This series of events culminated in the inquiry's mandate: to prevent or eliminate **systemic discrimination** and violence in the **delivery of public services to Indigenous peoples** in Québec, such as health and social services and police services. The hearings lasted for thirty-eight weeks with 765 witnesses and 423 written declarations. The Honourable Jacques Viens offered 142 recommendations for improvement in areas such as police services, justice services, correctional services, and health services. Specific recommendations included offering a public apology to First Nations and Inuit people, implementing the United Nations Declaration on the Rights of Indigenous Peoples in Québec, and setting up regional Indigenous police services.

Bill 17: Disclosure to Protect Against Domestic Violence (Clare's Law)

In Alberta, Bill 17, Disclosure to Protect Against Domestic Violence (Clare's Law), received Royal Assent and will come into force in 2020. This legislation, introduced by the United Conservative Party, allows at-risk individuals to apply for **disclosure of information** regarding whether their partner has a **history of violence**. Clare's Law will also allow police the option of disclosing such information to at-risk individuals even if they are non-applicants. The bill is based on a 2014 United Kingdom scheme that developed in response to the murder of a woman by her ex-partner who—unbeknown to her—had a history of abusing other women.

Zero Carbon Bill

On November 7, New Zealand's **Climate Change** Response (Zero Carbon) Amendment Bill passed its third reading. The bill was introduced by the Liberal party, but later garnered support from the National party as well. Its aims include reducing the country's **methane emissions**, ensuring the country becomes largely **carbon neutral** by 2050, and establishing an independent Climate Change Commission to help ensure the government achieves its goals.

Bill 136: Provincial Animal Welfare Services Act

Ontario proposed new legislation, the Provincial Animal Welfare Services (PAWS) Act, to replace its long-standing animal welfare model, the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) Act. The OSPCA stopped providing services last June after its **enforcement powers** were ruled as **unconstitutional** by an Ontario judge last January. PAWS—which passed its first reading on October 29—was introduced by the Solicitor General of Ontario, Sylvia Jones, with the objectives of improving protection of animals from abuse and neglect, strengthening the province's enforcement system, and proposing harsher penalties for offenders. Notably, while the OSPCA was a private charity enforcing public laws—and was often subject to criticisms for its lack of transparency—PAWS will be publicly-funded and have a **public enforcement model** with increased oversight and transparency. If passed, the legislation will come into force on January 1, 2020.

Bill 205: The Human Tissue and Organ Donation (Presumed Consent) Amendment Act

On November 6, Bill 205, also known as the Human Tissue and Organ Donation (Presumed Consent) Amendment Act, passed its first reading in Alberta's legislature. Section 4(1) of the current act allows an adult individual to consent to **donatin**g their **tissues and organs** for various uses upon their death. If the adult individual is incapable of giving consent, or if the individual is a minor, then section 4(2) allows certain people, such as the individual's spouse or adult sibling, to give consent for the individual. Bill 205 proposes to amend this legislation by adding language to the effect that if no decision has been made regarding organ donation at the time of the individual's death, then the individual will be **presumed to have consented** to donating their organs and tissues for transplantation. This amendment would exclude individuals who are minors, in addition to individuals who have not lived in Alberta for a year prior to their death.

Impeachment Inquiry

Chief Justice Howell, a federal judge in the United States, asserted the **legality and legitimacy** of President Trump's impeachment inquiry. The judge stated that the House Judiciary Committee has the **right to access redacted portions** of Robert Mueller's report, including documents and witness testimonies, and ordered the Justice Department to hand over the grand jury material to the Committee by October 30, 2019.

Bill 41 – 2019: Declaration on the Rights of Indigenous Peoples Act

British Columbia's Bill 41 passed its first reading on October 24. Introduced by the Minister of Indigenous Relations and Reconciliation and developed in coordination with the First Nations Leadership Council, the legislation seeks to promote the development and implementation of an action plan for the government to ensure BC laws align with the **United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP). UNDRIP is an international framework that outlines the minimum standards for the survival, dignity, and well-being of Indigenous peoples. It was adopted by the General Assembly of the United Nations in 2007. Bill 41 would also require public annual reports of the government's progress on the action plan, as well as allow BC to enter into decision-making agreements with Indigenous governing bodies. If passed, BC will become the first **province to implement UNDRIP into its provincial laws**.

Election 2019:
Regionalism Resurging

Micah Boyes, 2L

On October 21st, 2019, Canada elected its 43rd Parliament. The reigning Liberal party, led by Justin Trudeau, won 157 seats, a decrease of 20 from the total at dissolution. The Andrew Scheer led Conservatives won 121 seats, up from 95 at dissolution. The Yves-Francois Blanchet led Bloc Quebecois won 32 seats to become the third party, up from the 10 seats they won in 2015. The NDP, led by Jagmeet Singh, lost 15 seats and now only holds 24. The Greens, led by Schulich alumni Elizabeth May, won three seats. May has since stepped down as Green Party leader in favor of interim leader Jo Ann Roberts. Lastly, Jody Wilson-Raybould won her seat as an Independent MP, rounding out the 338 seats in Canada.

The election results have increased regionalist sentiments in certain parts of the country.

The Bloc Quebecois had a good showing in Quebec, over tripling their seat total. This result came as something of a surprise, considering that Quebecers have largely eschewed the idea of separation from Canada in recent years: a 2016 Angus Reid poll found that 82% of Quebecers agreed that Quebec should stay in Canada. Furthermore, in the 2016 Parti Quebecois leadership race, only one candidate, Martine Ouellet, committed to holding a separation referendum in her first term as premier. She received only 16% of the vote. And in 2018, Quebec elected a CAQ majority government whose leader stated they would never hold a referendum on leaving Canada.

So why did an increasing number of Quebecers vote for the Bloc? The answer is that while Quebecers do not want to leave Canada, they do want more power and autonomy. Quebecers have embraced a different form of nationalism, one that supports a strong Quebec within confederation.

> *"The answer is that while Quebecers do not want to leave Canada, they do want more power and autonomy. Quebecers have embraced a different form of nationalism, one that supports a strong Quebec within confederation."*

The increased vote for the Bloc Quebecois was not an attempt to return Quebec independence to the radar of federal politicians. Rather, it was the latest instance of the Quebec voters displaying their mutability.

One of Quebec's greatest political strengths has been its willingness to vote for different political parties. Let's take a quick look through history. In 1958, Diefenbaker's Conservatives took fifty seats in Quebec; less than a year before, they'd only won nine while the Liberals took sixty-two. Trudeau Sr. won seventy-four of the seventy-five Quebec seats during the 1980 election. But in the next two elections, Mulroney won fifty-eight and then sixty-three seats in Quebec. In 2011, the NDP under Jack Layton took fifty-nine seats in Quebec despite having previously only having three MPs in the province. And in 2015, forty Quebec seats went to the Trudeau Jr. Liberals.

The unpredictable nature of Quebec's voting patterns means that they are a tantalizing opportunity for every political party. This was evidenced in our most current election. None of the leaders from the large national parties were willing to take a strong stance on Bill 21, which banned the wearing of religious symbols by people in positions of authority. Trudeau, Scheer and Singh all said they opposed the bill, but none of them would commit to intervening in the court challenge. Trudeau claimed he was taking the strongest position of the three by saying that the federal government "might" have to intervene. The reason for each leader's hesitancy is that the bill is popular in Quebec: a Forum survey shows that sixty-five percent of Quebecers approve of the law. So, despite the fact that fifty-nine percent of Canadians disapprove of the law, the weight of Quebec public opinion held sway over the parties.

The other development arising from the election is increasing western alienation and the birth of the Wexit movement. The goal of Wexit is for the western Canadian provinces, mainly Alberta, to separate from Canada. The idea is that the movement will do for Alberta what the Bloc has done for Quebec.

Wexit supporters, however, are really missing the point. Quebec, with its unique culture and history, could not get a mandate from its citizens to leave Canada despite holding two separate referendums. It seems, then, rather unlikely that Alberta—let alone other, poorer, western provinces—would vote to leave Canada following the re-election of an unpopular Prime Minister. This has not stopped Wexit proponents from declaring that the 2023 Alberta election will be a referendum on the province's separation.

Quebec has historically done two things with its votes. One, they have, especially recently, elected representatives that are focused mainly on Quebec. In every election since the Bloc's inception in 1991 until 2011, the Bloc won the most seats of any party in Quebec. During that time, the Bloc was either the second or third largest party in the House of Commons.

The Wexit movement is attempting to follow a similar path, but its premise is flawed. I would suggest most Albertans would be worse off if they were independent from Canada. The moderately free trade that exists with other provinces has great benefit for those working in the Albertan economy. An independent Alberta would still not have access to tidewater, so it's not clear that independence would make it any easier to build a pipeline, which seems to be one of the West's largest concerns.

The second thing that Quebec has done with its votes is be unreliable in which party they support. This is in sharp contrast to Alberta, which has heavily favored right-wing parties in both provincial and federal parties in every election since 1965. Quebec's mutability has the benefit of forcing parties to cater to them, to make them work to earn Quebec's votes. Contrastingly, Alberta's rigidness means their votes are taken for granted: center and left-wing parties can largely ignore their concerns because there's little chance they'll win Albertan seats anyways.

"Quebec's mutability has the benefit of forcing parties to cater to them, to make them work to earn Quebec's votes. Contrastingly, Alberta's rigidness means their votes are taken for granted."

A Wexit party has the potential to make Albertan election results less predictable. It could show that Albertans are willing to vote for different parties that listen to their concerns.

However, it is not clear that a Wexit party would have any great beneficial effect on Alberta's interests. Compare a potential Wexit party to the Reform Party, which was founded in 1987 in response to Western discontent in Mulroney's PC government. The party operated until 2000,

at which time it became the Canadian Alliance, which lasted until 2003, when it merged with the Conservatives to form the current Progressive Conservative Party. During the Reform/Alliance party's existence, the Liberal party formed three successive majority governments, during which time the Liberals never had more than 4 MPs from Alberta. A party focused primarily on western issues only resulted in Liberal majority governments.

It seems unlikely that a Wexit party could have anything other than a similar effect. The Conservatives took thirty-three of thirty-four seats in Alberta in the most recent election. Were a Wexit party to gain support in Alberta, they would be gaining at the expense of the only party that has both a potential to form government and has any electoral incentive to be sensitive to Alberta's concerns. Further, the center and left-wing parties will not suddenly have reason to focus on Alberta's concerns if they start voting for parties concerned with separation.

> *"A Wexit party has the potential to make Albertan election results less predictable. It could show that Albertans are willing to vote for different parties that listen to their concerns."*

The Melting Iceberg: Dr. Diane Saxe, Climate Change, and the Greenhouse Gas Pollution Pricing Act

Monica Dairo, 2L

About Dr. Dianne Saxe:

Dr. Dianne Saxe's career in environmental law spans over forty years. From 2015 to 2019, Dr. Saxe was unanimously appointed by all MPPs to the role of Environmental Commissioner of Ontario. In this role, she was an independent officer of the Legislature who reported on Ontario's environmental, energy, and climate performance. Currently, she heads Saxe Facts, an organization providing strategic advice on climate change and the environment. Her main vision is to inspire people to act on environmental issues.

Monica Dairo: *I know you're going to lecture on this shortly, but do you have any predictions for Ontario's appeal to the SCC regarding the decision on the Greenhouse Gas Pollution Pricing Act?*

Dr. Diane Saxe: Well, I am not a constitutional law expert, I am an environmental and climate expert, but I think the decision of the Ontario Court of Appeal was very well written, very well reasoned and I would expect the Supreme Court [of Canada] to uphold it.

MD: *As I understand, carbon pricing is a mechanism meant to price carbon pollution on large industries, providing an incentive to reduce carbon.*

DS: Take out the "on large industries" and that's right.

MD: *Do you believe the mechanism in the federal Greenhouse Gas Pollution Pricing Act is an effective measure?*

DS: There are two mechanisms under the federal *Greenhouse Gas Pricing Act*. One is for large industries, one is for everybody else who uses fossil fuels. It's a common misbelief that carbon pricing is only about industry. In fact, most of the carbon pollution, especially in Ontario, comes from individuals.

So carbon pricing is a tool to provide financial incentive for reducing climate pollution. It [also] rewards innovation [and] levels the playing field because fossil fuels have been subsidized with public money for a hundred years and continue to receive very large subsidies, so carbon pricing levels the playing field.

MD: *Are there any international mechanisms combating climate change that you're excited about?*

DS: Well, the Paris Agreement was a bloody miracle, and one of the reasons I'm very concerned about this election is that if Canada turns away from serious climate action, which two of the parties running propose to do, I think we put the Paris Agreement in real jeopardy. It is our best chance of not being toasted, roasted, and grilled. We're in serious trouble, the window is closing.

So the Paris Agreement definitely excites me, and that requires all countries to do what they can. Especially the rich dirty ones and, you know, there are nearly 200 countries in the world and Canada is in the top 10 polluters - not just per capita, but as a country. We are really big polluters.

MD: *Since Canada does contribute greatly to global pollution, aside from federal actions, is there anything in Nova Scotia, locally or provincially, that you think is going well?*

DS: Well, Nova Scotia is at least going to have a cap-and-trade system. It's a very little one and not very ambitious, but it's a place to start. I think that the regional municipality of Halifax having

adopted the climate emergency declaration in January this year—that's a really good sign. It will only count if they put real money behind it. I understand that they are waiting for a report back to Council later this year.

And so there's a lot of people who are coming to understand the issue, and understand that we really have to make serious changes and fast. But I won't get really excited until we start making those changes. Talking about it is an improvement, but it's not action.

MD: *It's been like this for years, though, government's inaction towards climate change.*

DS: I think it's starting to come home to more and more people. I mean I just walked passed that crane that fell down a block from my hotel [a month ago] and it's still there a month later. Because it's difficult and expensive and complicated to clean up even one crane that falls down in a strong wind—the impacts of the climate crisis are just starting to accelerate, we haven't reached the "new normal", we are just beginning to see the end of normal. So more and more people are becoming aware that we have to be frightened, we have to take action, and that the window is closing.

It was very interesting to see the report from Environmental Defence that the fossil fuel industry has met with government on average four times a day for the last seven years, and very often trying to prevent more rapid action on climate. So, it's going to take public action, public demands.

Social scientists tell us that if 3.5% of the population changes, then that could be enough. Are we getting close to 3.5%? Well, Quebec had 500,000 people on the street a couple of weeks ago. No place else in the country did. It's still possible.

MD: *I read a feature on your MJSDL Keynote Lecture—**Environmental Accountability in Ontario**, and you had mentioned the challenges you faced as Commissioner, especially regarding the government of the day and their political priorities. As an environmental lawyer, can you speak about the differences between the Commissioner role and your previous work as an environmental lawyer? Any similar challenges or tasks?*

DS: There have always been challenges. I don't think there's been an easy year since I started in 1974. But as an environmental lawyer in practice, my focus was how can I solve my client's problem, what can I do for my clients—that's the job of a lawyer in practice. As Commissioner, my job was what could I do for the province, which is a much harder, much better question, and now without my office or my staff, the question is how can I inspire people to act. So that's what I'm trying to do!

MD: *Do you have any thoughts on the Children's Rights litigation in Quebec?*

DS: Great idea, worth a try. I mean law is slow, [litigation like the Children's Rights litigation] usually doesn't work. But it's still worth a try, and every once in awhile you get amazing out of it, as happened in the [***Friends of the Oldman River Society v. Canada (Minister of Transport) [1992] 1 SCR 3***] case. It does happen from time to time.

MD: *Since the Weldon Times circulates around the law building, do you have any suggestions for law students about climate action?*

DS: So, one thing I was thinking is that every law school needs to redo their curriculum, to deal with sustainability, particularly climate, at every stage. If you're talking about breach of contract, is anybody talking about how a force majeure has changed? Act of God isn't what it used to be. Most lawyers and law schools are ignoring the climate issue, and one of the great things about being a law student is that you learn how the world really works, how decisions are made, how conflicts are resolved. [The] climate crisis is going to make those conflicts harder and bigger and tougher, so law students need to have those skills [and] they need to understand at least the basics of the science and be able to think about these challenges in every part of their curriculum, so ask your dean what they're doing about it.

Also, please ask them to look at my website: saxefacts.com, @envirolaw1, dsaxe@saxefacts.com!

The Weldon Times would like to thank Diane Saxe for graciously making time to speak with us.

An Interview with Joel Pink, QC

Alyson Sutton, 2L

Joel Pink, QC received his LLB from Dalhousie law and is one of the biggest names in criminal defence in Canada. He has been practicing law since 1969 and has represented clients in all levels of court including the Supreme Court of Canada. Joel has lectured at Cambridge University in the UK, University of Windsor Law School, and here at Schulich. He was also the recipient of the J.C. Milvain Chair in Advocacy at the University of Calgary Law School. Joel served as President of the Nova Scotia Barristers' Society from 2008-2009. Alyson Sutton sat down with Mr. Pink after his Law Hour talk at Weldon in September.

Q: *What do you think is the hardest part about being a criminal defence lawyer?*

A: I think the hardest job is to get people to understand what the justice system is all about. Because, as you heard in one question, do they label you along with your clients, and a lot of people do [if they have not] ever been involved in the justice system, but once involved they have a different understanding of what your role is. You know, they think that we get people off and put people back on the street who have committed serious crimes and that's not necessarily so. If the Crown has the facts and they can prove the facts to make up the essential elements of the offence then your client is going to be found guilty. That's all there is to it. We're not miracle workers and we tell that to our clients all the time, we don't pull rabbits out of the hat, you created the facts, we take the facts and apply it to the law as we know it, and then the judge makes his decision. Or we render the opinion that if the matter goes to court you're going to be found guilty, so that's what our role is.

Q: *Do you think it's gotten worse with the rise of social media and the easy way in which we spread information now?*

A: We never had social media, now we have social media, and from a defence point of view that's one of the first places that we look to find out what in fact the complainant is saying. Because they normally go to social media to explain to their friends that "such and such" never happened, or "I'm getting even with Johnny Doe," "I've gone to the police," and we find that on social media.

This is not social media but I was recently representing a teacher in PEI and the complainant was explaining to the judge how she had been sexually assaulted by the teacher, and at the time she graduated from school she wanted to get rid of him, never wanted to talk to him, and she just hated him. But after she went off to university she wrote letters to the client saying how much she misses him, she can't thank him enough for what he did for her and things of that sort. So, we go to social media and if we can find something on social media where the complainant has said certain things, we will download that and it will come back to haunt them. We have one case going now and there is something like 8,000 text messages after the alleged incident between the complainant and my client. Now, it will be for the judge to decide if she is telling the truth or not, but I leave that to the judge to decide. Social media today is a big thing

Q: *With high profile cases that get into the media really quickly, do you think that affects the jury system and the jury process nowadays?*

A: Well, you see the jury system has just changed. At one time we had pre-emptory challenges, but now we don't have any. Now the only challenges we have are challenges for cause, now on a jury trial, the first 12-14 names pulled out of the hat are on the jury unless you can show cause as to why [they] shouldn't be there.

Q: *Is there anything since you started, that has shocked you about criminal defence that you*

didn't expect, in a good way or a bad way?

A: Well, let me put it this way, I started about fifty years ago. There were three provincial court judges in Halifax: Judge Eadie Murray did the sitting, Judge Nathan Green did the county, and Judge Martin Haley did Dartmouth. There were three Crown prosecutors: Elmer MacDonald, Dave Thomas, and John Connors. Now, today, we have at least six judges in Halifax, we have another five to six in Dartmouth, that's even, we now have I think about twenty-six to thirty-six Crown Attorneys in Halifax and Dartmouth. The prosecutors used to come in with files under their arms and now they come in with transfer boxes. Just the other day I felt sorry for the Crown Attorney. She had something like seven transfer boxes that she had to deal with that day. It's just blossomed and we're bursting at the seams and if something doesn't happen, either by getting more Crown Attorneys or appointing more judges and more courtrooms, the thing is going to come to a standstill.

Q: *And that's something that is probably not special to the province of Nova Scotia?*

A: No, that's spread across the country. We're in crisis. But, as they say, if you build a new courthouse, that doesn't get you votes and that's what they're concerned about. The justice system is the lowest thing on the totem pole and it's a shame. The courthouse here in Halifax is terrible, Dartmouth is worse, but if you go to Port Hawkesbury or to Bridgewater or to Yarmouth they have beautiful courthouses, but yet in the capital city where most of the work is done, we have to put up with conditions from the 1800's.

Q: *Do you think that's because of a stereotypical assumption that there is no money in criminal defence/criminal law and it's a resource where money shouldn't be spent?*

A: No, I don't think it's from the politicians' point of view, it has nothing to do with the defence counsel—that is beside the point. Nova Scotia Legal Aid provides an excellent service to the community and many of their clients that they handle I could not possibly handle, but they have the know-all and the be-all to do what they have to do, and they do a good job. But you know, if you increase the size of the police forces, then you see more crime. The Halifax Regional Police Force has grown tremendously over the years so therefore we have more crime but less people to deal with it. That's the problem and there is no easy solution because no one is willing to put the money into the pot. It's all monetary.

Q: *As a criminal defence lawyer do you feel responsible to be a speaker for that and to talk about this issue publicly?*

A: I did just recently, there was an article published in the magazine HALIFAX and they did an interview with me some months ago. At that time, I said it was great that we now had a mental health court, domestic court, because they serve a very big role in the administration of justice. And we should have more of that because a lot of people going through the system have mental health issues and we just need to find the people able to treat them. I made that public and the Chief Justice of the Provincial Court saw me and said thank you very much, the Director of Public Prosecution, I told him that it seems we need this, that and everything else, and he thanked me very much. But all we can do is say, "Okay, it's not working the way it is now," and unless something happens, I'm not saying the justice system would come to a grinding halt, but the delays will get more and more and cases will be thrown out because of unreasonable delay.

Q: *And there is nothing you can do if you don't have the resources to deal with the overflow?*

A: That's right. You know cases today are so much with this whole issue of disclosure. We at one time used to get a Crown sheet, a few statements, and now people are getting transfer boxes of disclosure and the costs to the individuals, unless they go through Legal Aid, is almost prohibitive. In some cases, the costs go into the six-figures and that is all on a time basis of having to review everything. So what we try to do is convince our client to be truthful with us, tell us what the truth is from the very beginning and it will save them a lot of money in the long run. But some people do not want to plead to anything.

Q: *And then the trials just get longer and longer?*

A: We used to do murder cases in four or five days, now six weeks. Not many people can afford to hire a private lawyer, just to review it takes hours and

hours. I have one file going now where there is over 120,000 pages—it's unreal, especially when it comes to white collar crime. One time we could do a murder case by ourselves, but today in order to do it properly you need three people. You need the lead litigator, you need someone you can talk to, to plan strategy, and you need a researcher. That's what you need, and you can't do it without it, and if you do it without it and miss something then you end up with ineffective assistance of counsel and that's the last thing you want to have to go before the Court of Appeal and justify why you did this, or why you didn't think of this. And if you didn't do it and you don't have a reason, you will be held responsible and your client will get a new trial.

Q: *And your credibility slowly dwindles away?*

A: Yes, that's what happens, and it doesn't take much to shoot down your credibility, and as lawyers, that's all we have.

Q: *So, the litigation is very team-based nowadays?*

A: Yes, especially on the major cases. You do the assaults and the impaired driving, you don't co-counsel on that. But on the major cases, the frauds, the theft over $5,000, the more serious assault charges, the answer is yes, you need at least two lawyers and that of course costs a fortune.

Q: *And the second lawyer is as senior as you or would they be a junior?*

A: No, they'd be a junior.

Q: *So, it would be a mentoring opportunity for them to see it all play out?*

A: Yes, and sometimes we just write off their time because it's just too expensive, and sometimes you have to reduce your time/fee in order to allow your client to afford your service.

Q: *And you're still trying to manage a business and pay bills?*

A: That's right. I remember when Westray was going on [a Nova Scotia mining disaster], we made an application for government assistance with funding, and we went before Murland Dunn and estimated it would cost one million dollars to do it. He laughed. He was from a different age, but at the end it was over a million dollars. I didn't do it, but that's what it cost the government. A sexual case can well cost you in the six figures, but that's what it takes today.

Q: *Do you think the rise of civil litigation for sexual assault is affecting the justice system? Do you think sexual assaults are not being dealt with criminally and people are just suing instead?*

A: I don't see that as a trend. I'm sure that is the case where a lot of victims are suing, even if the accused is acquitted. But I don't see the increase, once again it's a matter of costs. Some lawyers will do it on a contingency of 30%, but not a lot of those cases will ever get to court because they usually settle.

Q: *Do you think that is at all indicative that victims are not finding justice through the justice system, so they are looking for it elsewhere?*

A: That could be.

Q: *Final question: If you had one piece of advice for someone wanting to do criminal defence, what would it be?*

A: Be prepared to work hard and get yourself a proper mentor who can assist you during the early stages of the practice.

After the interview, Mr. Pink spoke about the toughness criminal defence lawyers require. He admitted that he had received threats from members of the public due to his involvement in certain files. He mentioned an occasion when, shortly after driving to his office, he received a call from the police advising him they had received a threat that someone had put a bomb in his car. He also mentioned occasions where he required police escorts due to more serious threats. But he was also candid in admitting that sometimes he receives calls to his office phone and tells people "to get in line." He said he wasn't in the business of educating people on the system and that dealing with the public opinion is just part of the job, but he does admit it requires a thick skin.

The Weldon Times would like to thank Joel Pink for graciously making time to speak with us.

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Supreme Court Decisions

FALL DOCKET | SEPTEMBER-OCTOBER

Threlfall v. Carleton University

Relevance – Labour Law | Pension Payment

Quebec – Civil – By Leave

George Roseme **disappeared** in 2007. The former professor at Carleton University had a **pension plan** that **stopped payments once he died**. Learning of Roseme's disappearance, Carleton argued that they no longer had to pay Roseme's pension and that his former partner, Lynne Threlfall, had to pay back the **benefits received since his disappearance**. Threlfall argued that under Quebec law, a missing person is presumed to be alive for seven years unless proof of death is found. Roseme's body was found six years later, and he was determined to have died one day after he disappeared. The Supreme Court majority agreed with the lower court rulings that Threlfall must repay the pension payments she had received after Roseme's disappearance. The Court noted that the pension payments were to stop once Roseme died, which was one day after he disappeared, and not the later date when his body was found.

R.S. v. P.R.

Relevance – Private International Law | Divorce Law

Quebec – Civil – By Leave

A husband filed for **divorce** in Belgium three days before his wife filed for the same in Quebec. The husband stated that he intended to take back **$33 million in gifts** he had given to the wife, which would be legal under **Belgian law** but not Quebec law. Both asked the courts to stay the application of the other. The application judge said the Quebec court should continue with its proceedings because it was unlikely the Belgian decision allowing the husband to take back the gifts would be recognized. The Court of Appeal argued that it was possible for the Belgian decision to be recognized in Quebec, and that the Quebec proceedings could be stayed. The Supreme Court majority agreed with the Court of Appeal. The SCC also decided, however, that the application judge's decision to hear the case in Quebec should still stand because higher courts can only interfere with decisions of lower courts when they have made a legal mistake or serious factual mistake.

R. v. Poulin

Relevance – Criminal Law | Charter of Rights and Freedoms

Quebec – Criminal – By Leave

Poulin committed **sexual crimes** between 1979-1987, was charged in 2014, convicted in 2016, and sentenced in 2017. Being **old and in poor health**, he asked for a conditional sentence. Poulin argued that s. 11 of the ***Charter*** meant that he should have the **benefit of the lowest punishment** available for his crimes at any time over the period between when he committed the crimes and his sentencing. The sentencing judge and Court of Appeal agreed with Poulin's interpretation, but the majority of the Supreme Court said Poulin's understanding of s. 11(i) was incorrect. They stated that the sentencing judge should look only at the punishments available at the time the crime was committed and at the time Poulin was sentenced, not the entire scope of time in between. Poulin died shortly before the Supreme Court heard the case.

Fleming v. Ontario

Relevance – Police Powers of Arrest

Ontario – Civil – By Leave

Fleming was on his way to join a counter-protest in Caledonia, Ontario, in 2009. He was carrying a Canadian flag on a wooden pole and walking down a street beside the protestors. Police officers driving by saw him and were wary of potential violence between the two groups of protestors. An officer told Fleming he was under **arrest to prevent a breach of peace**. Fleming subsequently filed a statement of claim against the province and the police officers, claiming wrongful arrest and the violation of his *Charter* rights. Fleming was successful at trial, but the Court of Appeal disagreed, finding that the police had the authority at common law to arrest him, and ordered a new trial. The Supreme Court allowed Fleming's appeal and said the trial judge's order should be restored. They stated that the police **cannot arrest someone acting lawfully** because they think it will stop others from breaching the peace.

Denis v. Côté

Relevance – Criminal Law | Evidence

Quebec – Civil – By Leave

Côté was arrested on charges related to possible political corruption. Denis, a **journalist** with Radio-Canada, gave television reports on the charges that contained information from **confidential sources**. Denis refused a legal order from Côté to reveal her sources, claiming she did not know the identities of all her sources. The Court of Quebec said Denis did not have to reveal her sources because she didn't know who they were, but the Superior Court noted Denis knew the identities of some informants and would have to provide that information. The Court of Appeal said it didn't have the power to decide the issue. The majority of the Supreme Court ruled that the Court of Appeal didn't have the power to decide Denis' appeal, because the right to appeal only exists if a written law says so. They also ruled that the Court of Quebec should examine the issue again, because the Crown had new evidence.

Keatley Surveying Ltd. v. Teranet Inc.

Relevance – Intellectual property | Copyright

Ontario – Civil – By Leave

Ontario has an **electronic land registry system** run by Teranet Inc. In 2007, Keatley Surveying launched a class action lawsuit against Taranet on behalf of land surveyors who provided survey plans to the land registry. They argued that the surveyors, not the Crown, had **copyright** in the survey plans they had created, and that Teranet was infringing this copyright by storing and copying the plans. In 2016, a judge decided the class action could not proceed because Ontario owned the copyright. The Court of Appeal agreed. Unanimously, the Supreme Court agreed that Ontario owned the copyright in the survey plans. They said that the survey plans fell under s. 12 of the *Copyright Act,* which concerns Crown copyright.

Pioneer Corp. v. Godfrey

Relevance – Civil Procedure | Competition Act | Class Action

British Columbia – Civil – By Leave

Mr. Neil Godfrey launched a class action in B.C. against Pioneer and Toshiba, arguing that these companies engaged in **price-fixing** of their optical disc drives and concealed this practice from consumers. The federal *Competition Act* says that such a lawsuit has to be launched within two years. Pioneer said the claim against it was made too late because the period for Godfrey's suit ended in 2010 and the class action was launched in 2013. The certification judge gave Godfrey permission to go ahead with the class action regardless, and the Court of Appeal agreed. The majority of the Supreme Court also agreed that the class action could go ahead, saying that the **two-year deadline to file a lawsuit could be extended** if the person could not have known about the problem beforehand.

An Interview with Senator Doug Black

Delani Thiel, 1L

On September 17th, Schulich welcomed the Honourable Doug Black, Q.C., an Albertan Senator and Weldon alumni. During his visit, Senator Black spoke at a special Law Hour event and took part in the Awesome Alumni Lunch series, where he shared many fond Weldon memories and pieces of advice for law students.

Throughout his speech, and during our interview, Senator Black discussed a wide variety of topics, including career advice, his journey to the Senate, and current trading and energy industry issues. Woven into each of these subjects were two fundamental messages. First, Senator Black stressed the significance of upholding the Weldon Tradition, which he believes is the competitive advantage gained from studying law here. Second, he implored students to recognize that the privilege of studying law at Dalhousie is accompanied by the duty to assume leadership roles in society.

“First, Senator Black stressed the significance of upholding the Weldon Tradition, which he believes is the competitive advantage gained from studying law here. Second, he implored students to recognize that the privilege of studying law at Dalhousie is accompanied by the duty to assume leadership roles in society.”

Senator Black has certainly risen to the challenge of serving his community. Not only has he been a Senator since 2013, but he’s been involved in many committees and foundations in support of the arts and education. Most notably, he is a founder of Lakecrest School in St. John’s, Newfoundland and Labrador, and previously acted as the board Chair for both the Michaëlle Jean Foundation and the University of Calgary. Additionally, Senator Black is Governor Emeritus of The Banff Centre and co-chaired a committee that successfully raised $130 million for the centre’s revitalization. He achieved all of this while also practising as a corporate lawyer.

Whether the desire to be involved in his community was innate or instilled at Schulich, Senator Black reassured students they can learn any necessary leadership skills during their time at Weldon. He encouraged students to take advantage of the many opportunities to develop important leadership qualities. He particularly emphasized that effective leaders learn how to reach consensus and be tough at strategic moments. Reaching a consensus, he cautioned, entails not just swaying people to your side of the argument, but also genuinely listening to others. And to be strategically tough, a person must possess and exercise the courage to say “no” when required and know how to disagree without being disagreeable. These skills are especially important when a new lawyer is first starting to develop a practice and brand. At this stage, when free time is likely to be a luxury, it’s critical to choose goals and causes that are worthy of being championed.

These qualities were also a benefit to Senator Black’s political career. Though he describes

his Senate election campaign as the "craziest task he's ever undertaken," he earned the votes of nearly 430K Albertans and now holds the distinction of receiving the most votes for an elected politician in Canada. Appointed in 2013 as a Conservative, Senator Black changed his political affiliation to the Independent Senators Group in 2016. Not only did this change grant flexibility to vote in a way that most benefitted his constituents, it also allowed Senator Black to work more collaboratively with fellow Senators without the preconceptions and restraints of party lines.

Nonpartisan cooperation and coalitions have been essential to advancing the mandate of Senator Black's constituency and in aiding his work as the Chair of the Standing Senate Committee on Banking, Trade, and Commerce. Overall, he describes the present political scene as a "difficult time for Alberta in the Confederation". Senator Black voiced the frustrations that Albertans, and Canadian farmers in general, are feeling as they suffer the consequences of the federal government's strained relationships with formerly close trading partners. Moreover, Senator Black advocated for Alberta's energy industry. While noting that Canada's energy sector accounts for twenty percent of our GDP and employs more than two million people, he lamented the passing of "prejudicial" bills C-48 and C-69. In an effort to defeat these bills, Senator Black recounted how he formed coalitions and gathered the support of Senators from various parties. However, when the time came to vote, these Senators were reluctant to defy their party's policies and, ultimately, passed both bills. Because Senator Black is one of a handful of Senators who has won an (albeit non-binding) election to secure his Senate appointment, he seems more comfortable exercising the powers available to the Senate in order to support his province. Contrastingly, his unelected colleagues are understandably reluctant to impede the agenda of our democratically elected Members of Parliament. Regardless, these setbacks have not discouraged Senator Black, who vowed to be more inclusive and make the Senator coalition even bigger for the next controversial vote.

Throughout his stories, Senator Black also peppered in career advice for students. For instance, while explaining why he left the Conservative Party, Senator Black strongly emphasized the importance of maintaining relationships. He also noted that politicians and legal professionals can often experience isolation and are plagued by high rates of mental health issues. So, the Senator cautions, it's especially important to practice self-care via stress outlets and maintain a strong support network of friends and family. Unsurprisingly, Senator Black also recommended students maintain perspective on what's truly important in life, and recommends they engage in community service as a way of avoiding being consumed by their careers.

> *"Reaching a consensus, he cautioned, entails not just swaying people to your side of the argument, but also genuinely listening to others."*

It was a pleasure to welcome Senator Black back to Weldon and to hear about his impressive accomplishments since graduation. His achievements are a shining example of how the values and wisdom that permeate our school can be harnessed for public service. Undoubtedly, Senator Black is one of thousands of Weldonites serving their communities, but his story may be more "high-profile." However, as Senator Black noted, prestige is irrelevant in public service: "[your contribution] doesn't have to be big, it just has to be." It matters only that you accept the challenge of public service and use the experiences and knowledge gained at Weldon to make a difference in your community, in whatever form is meaningful to you.

The Weldon Times would like to thank Senator Doug Black for graciously making time to speak with us. To read the full interview visit weldontimes.com

Space: The Next Gold Rush

Ziad Lawen, 2L

In 1903, the Wright brothers could not have fathomed an extra-terrestrial mining industry. At the time, human flight—now considered a staple in our modern society—was breaching of our species' capacities. Simply, it was still a thing of dreams inspired by our wing-bound friends. But just sixty-six years later, humans converted the miracle of winged-aerial flight into orbit-exiting space rockets. The Americans did so in their great competition against the USSR. They took the physics behind war head missiles and broke the skies. This was supposed to be our new silk road—one giant leap for humankind.

But fifty years after that first moon landing, space has become a somewhat forgotten frontier. The live broadcasts of the Space Shuttle Challenger and Space Shuttle Columbia Disasters, occurring in 1986 and 2003 respectively, chilled the Western media space-frenzy. The 1986 disaster actually resulted in a thirty-two month hiatus of NASA operations. In 1966, the annual fiscal budget for NASA was at an all-time high of 4.41% of America's annual budget. In 2019, it is at its lowest ever, sitting at 0.49%. If the entire American fiscal policy is $1.00, NASA is given half a penny. This shift in fiscal focus has effectively stunted realistic space endeavors. That being said, space ventures offer great resource for life on Earth, promote unified cultures, and endorse the world of sciences, fact-based realities, and adventure. And perhaps most importantly, they can be profitable.

Space Mining Developments

Of the many exciting developments in space, space mining is the one that holds the most astonishing potential. A single asteroid or meteorite can range in value from low billions to hundreds of trillion dollars. Take the potato-shaped asteroid 16 Psyche. In 2022, NASA plans to investigate its mining potential. The asteroid is composed of 95% metals such as Nickel, Iron, Platinum, and Gold – with an absurd value of the asteroid at $700 *quintillion*. However, the existing problem, as is common with all aerospace activities, is cost-effectiveness.

In 2010, the Japanese Aerospace Exploration Agency's Hayabusa mission brought back an asteroid sample. While this was the first time in human history anyone had collected an asteroid from space, it was reported to consist of mere "dust-particles"—dust that came at a cost of $250 million. To mine the more promising asteroids, there needs to be a sufficient level of stability to process the mining, but current scientific technologies are unequipped to support any such endeavor. The lack of gravity makes the work nearly impossible.

Therefore, *in-situ resource utilization* has been the starting point for space-mining: "mine it in space, use it in space." The most common target of this strategy has been the most common necessary: fuel in the form of water.

If investors begin taking interest in hydrogen fuel, it may serve as a great catalyst for the elimination of fossil fuel use here on Earth. But it's already being used for spacecraft propulsion. The sensitive part of increasing its use, however, is that is requires the mining of the moon.

A meta-analytical publication on lunar mining claims that there are substantial concentrations of water ice on the moon. The lunar water source could be used for life support, radiation protection, and rocket propulsion. If it were put to such use, it would cut costs by 50% for satellite missions. Different start-ups from around the world, like Honey Bee Robotics and TransAstra, have brought forth both innovative and traditional mining techniques as solutions for lunar water-mining. Clearly, the lunar water supplies have become the

focal point of many initiatives.

NASA has targeted these ice water-rich areas as geolocations for their Artemis Program. The Artemis Program will be the launching point for discovering the unknown parts of the moon, establishing a launch pad for the grand objective of a Mars landing, and developing technologies that will greatly decrease major costs for further extra-terrestrial travel. United Launch Alliance, a private Aerospace firm, has its own initiatives. The company has already placed a demand for low-Earth orbit water supplies as to establish the first stages of a Lunar water-mining industry.

Simply put, a water mining station on the moon would make the entire industry much cheaper and allow for a more effective use of financial resources. Again, this is the common hurdle all interests must overcome. Spurred by Elon Musk's first-ever reusable rocket, the industry now has the technology to save a majority of their investments on each of the rockets that leave orbit. Considering it used to cost $35 million for a single-use rocket, this is a paradigm-shifting innovation. In light of the current changes, Goldman Sachs has stated that "the psychological barrier to mining asteroids is high, the actual financial and technological barriers are far lower." The question is whether mass society can adapt to the current developments.

The Outer Space Treaty and the Legality of Space Mining

One step for adaptability is a resolution to the legal issues. Who has the right to own an extracted resource? What are the priority rights to mining claims? There are other operational concerns, such as the right to non-interference in mining operations and regulatory clarity without excessive regulations.

Ownership Rights

The Outer Space Treaty entered into force in 1967. Article II of the treaty declares that "outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means". This prohibits states from ownership claims of the moon but does not necessarily prevent the ownership claim of extracted resources. The moon and celestial bodies have been seen as analogous to the law of the high seas, which allows international waters to be fished and seabed to be mined. Therefore, Lunar mining will be legally compliant with article II of the Outer Space Treaty. The US' *Space Resource Exploration and Utilization Act* (2015) gave further comfort to investors by establishing that ownership rights may be asserted over resources found on or within an asteroid.

> *"Mining in space is just another wrinkle in the many ways that space exploration will broaden our horizons."*

Priority Rights to Mining Claims and Non-interference

While mining on the moon is still a theoretical situation, a question of priority rights to mining sites is now pertinent. While a public registry may establish priority rights, how large can a claim be? How long should the exclusive mining rights last? May a mining company locate and claim the resource remotely, or should there be a requirement for physical presence on the mining site to make the claim? The physical presence requirement, while establishing a higher threshold for mining claims, would further protect against claims with little to no active intention to mine.

Once the mining site is claimed, how can the company feel secure in their freedom from interference from competitors? There may be a need for a "zone of non-interference"

established in the registry. This registry would serve as notice to interested parties that a claim has succeeded, thus preventing potential interference.

Regulatory Clarity without Excessive Regulation

Article VI of the Outer Space Treaty requires that states "authorize and continually supervise" the activities of their nationals. Compliance with this article is generally seen as requiring states establish a process in which private or public companies may apply for and receive authorization for their space missions. With all the economic promise of space tourism, space mining, Lunar inhabitation, and further celestial exploration, vital regulations will become clear as time passes.

Space: The Unifier

In 1969, man miraculously landed on the moon. Above us today exists the International Space Station, created by the unified efforts of fifteen nations. Astronauts and cosmonauts inhabit our orbit conducting cutting-edge research. To reach the ISS, all astronauts and cosmonauts travel via a Soyuz vehicle located in Russia. There are currently seventy-two different government space agencies, fourteen of which have launch capacity including, Israel, Russia, China, USA, India, and Japan. Space administrations have contributed massively to human experience on earth.

All innovations are concentrated on safely localizing humans through space travel. The focus, therefore, is on the human in all space travel. As such, space administration's innovations have time and time again positively impacted Earth society: from the technological innovations of GPS to cochlear implants, to social reformations like Doctors Without Borders and the modern environmental movements. Mining in space is just another wrinkle in the many ways that space exploration will broaden our horizons.

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Supreme Court Briefings

FALL DOCKET | NOVEMBER-DECEMBER

Uber Technologies Inc., et al. v. David Heller

Relevance – Employment law | Contracts | Arbitration | Unconscionability

Ontario | Civil | By Leave

Beginning in 2016, the respondent Mr. David Heller was licensed to use the UberEATS app to deliver food in Toronto. In order to use the app, the respondent had to accept Uber's **licensing agreement**, which stated that the appellant is governed by Dutch law and that any related disputes would be arbitrated in the Netherlands. The respondent brought a proposed class action on behalf of Ontario Uber drivers, arguing that they were entitled to benefits under the Ontario Employment Standards Act, SO 2000, c. 41. The Ontario Superior Court of Justice granted a motion by the appellant to stay the motion in favour of arbitration. However, the Ontario Court of Appeal allowed an appeal upon determining that Uber's arbitration clause was an illegal method of contracting out of the *Employment Standards Act*. The appeal court concluded that the arbitration clause was unfair and unconscionable. The SCC may lay down the governing test for determining **unconscionability** in dealing with arbitration agreements.

Her Majesty the Queen v. Justin James

Relevance – Criminal law | Charter Rights | Search and Seizure | Warrants | Exclusion of Evidence

Ontario | Criminal | As of Right

The respondent was acquitted of drug-related offences on the basis that his s. 8 Charter rights had been violated. The warrant issued was based on an ITO (Information to Obtain) that was twenty-three days old. The trial judge held that the length of time from the date of the ITO to the date of the search and subsequent arrest was such that there could be **no reasonable grounds to believ**e the respondent was carrying contraband at the time of the search. The judge excluded the drug evidence under s. 24(2) of the *Charter*. The majority of the Court of Appeal upheld the trial judge's decision. The Crown appeals to the SCC arguing that the lower courts erred in their rulings on both the s. 8 issue and the s. 24(2) remedy issue.

Danelle Michel v. Sean Graydon

Relevance – Family Law | Child Support | Retroactive Support | Jurisdiction of Court

British Columbia Civil | By Leave

The appellant and respondent were in a common law relationship from 1990-1994. During that time their daughter was born. The couple later split up and the respondent paid **child support** by way of provincial court order. The order was subject to a consent variation order. The respondent refused a request by the appellant for an annual review of the amount of child support paid by the respondent. There was no change in the amount paid for the duration of the daughter's childhood. The respondent stopped paying child support in 2012 upon the daughter reaching the age of majority.

In 2015, the appellant commenced an action to have **retroactive increase in child support**, dating back to 2001, paid by the respondent. The respondent successfully argued on appeal that the lower court had no **jurisdiction** to order retroactive child support because the

respondent had commenced the action at a time when the daughter (then 24 years old) was not considered a "child of the marriage."

C.M. Callow Inc. v. Tammy Zollinger, et, al

Relevance – Contracts | Breach of Contract | Good Faith | Duty of Honest Performance

Ontario | Civil | By Leave

The appellant owns a company that performs maintenance services for a group of condominium corporations that formed a Joint Use Committee (JUC). The JUC respondents entered into two two-year contracts with the appellant. One contract covered winter work and the other summer services. The winter contract contained a clause that allowed the JUC to terminate that contract early provided they gave ten days **notice** to the appellant. In either March or April of 2013, the JUC decided they would cancel the winter contract but did not provide notice to the appellant. Over the summer of 2013, the appellant provided free extra services to the respondents to incentivize them to renew the contracts.

In September 2013, the JUC gave notice to terminate the contracts. The appellant successfully sued for breach of contract on the grounds that the respondents, by failing to give notice as soon as they knew they were going to terminate the contract, acted in bad faith and breach of **honest performance** of the contract. The Court of Appeal overturned this decision, holding that the trial judge had expanded the **duty of good faith** beyond what the SCC had intended in its 2014 Bhasin decision. The court also held that there is no unilateral **duty to disclose** before the time stated in the contract. As such, JUC was required only to give ten days notice; failure to disclose earlier is not, the Court of Appeal held, evidence of bad faith.

Alexandre Collin v. Her Majesty the Queen

Relevance – Criminal Law | Causation

Quebec | Criminal | As of Right

The appellant was acquitted of **dangerous driving** causing bodily harm but convicted of dangerous driving. At trial, the appellant argued that the accelerator became stuck and that this had impacted his ability to stop the vehicle with the brake. The trial judge concluded it was the stuck accelerator that caused the complainant's injury, not the appellant's dangerous driving. The Court of Appeal disagreed, holding that causation is a question of law and that the trial judge failed to apply the correct legal test. The Court of Appeal held the correct test was whether the appellant's dangerous driving had been a **significant contributing cause** to the complainant's bodily harm. The Court then found that the stuck accelerator peddle impacted the already criminal driving of the appellant but did not, in this case, negate the significant contribution made by the appellant's driving to the complainant's injury.

Joanne Fraser et al, v. Attorney General of Canada

Relevance – Constitutional Law | Charter Rights | s. 15 Equality Rights | Pensions

Federal Court | Civil | By Leave

The appellants are female RCMP officers who temporarily reduced their hours of work through a job-sharing program offered by the RCMP. The appellants did this in order to care for their young children. The pension benefits were adjusted to be calculated in the same fashion as for part-time officers. The appellants were not given the option of treating the period for which they did not work as pensionable time, even though individuals who opted not to work at all and who took unpaid care and nurturing leave were given the option of buying back their pension. The appellants argue this calculation infringed their equality rights guaranteed by s. 15(1) of the Charter on the grounds that the rules are discriminatory on the basis of sex and the analogous ground of parental status. The Federal Court dismissed their case and the Federal Court of Appeal dismissed the appeal.

Atlantic Lottery Corporation Inc., et al. v. Douglas Babstock, et al.

Relevance – Torts | Disgorgement | Statutory Interpretation

Newfoundland & Labrador | Civil | By Leave

The respondents seek to bring a **class action suit** against the Atlantic Lottery Corporation (ALC), claiming damages stemming from ALC's video lottery terminal machines. These machines offer line games similar to slot machines. The respondents claim, in part, that these machines actually constitute a version of "**three card Monty**" and are unfair. The playing of three card Monty or a game similar to it for money is prohibited by the Criminal Code. The respondents request **disgorgement** (the repayment of ill-gotten gains) from ALC for the losses they suffered from the video lottery machines. A Newfoundland Supreme Court judge held that the class action suit could go ahead. The Court of Appeal struck some causes of action from the claim but held that disgorgement may succeed and that it was possible the video lottery machines constitute a version of three card Monty or a game similar to it. The SCC will have an opportunity to clarify the law around disgorgement as well as what counts as "three card Monty" for the purposes of the Criminal Code.

WELDON TIMES

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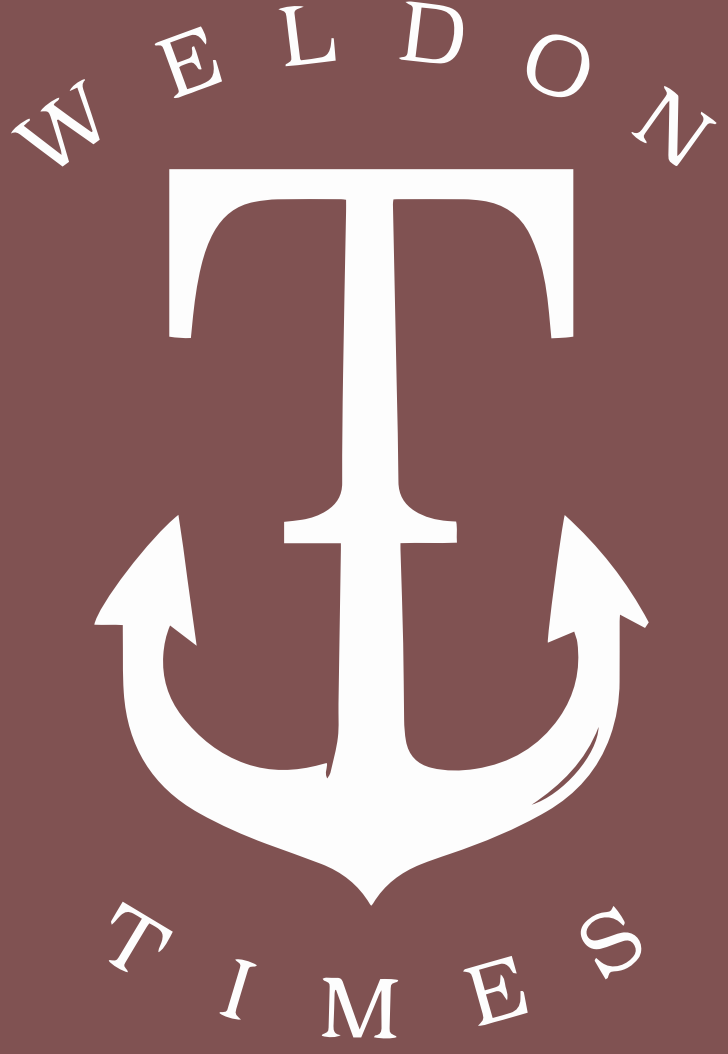

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