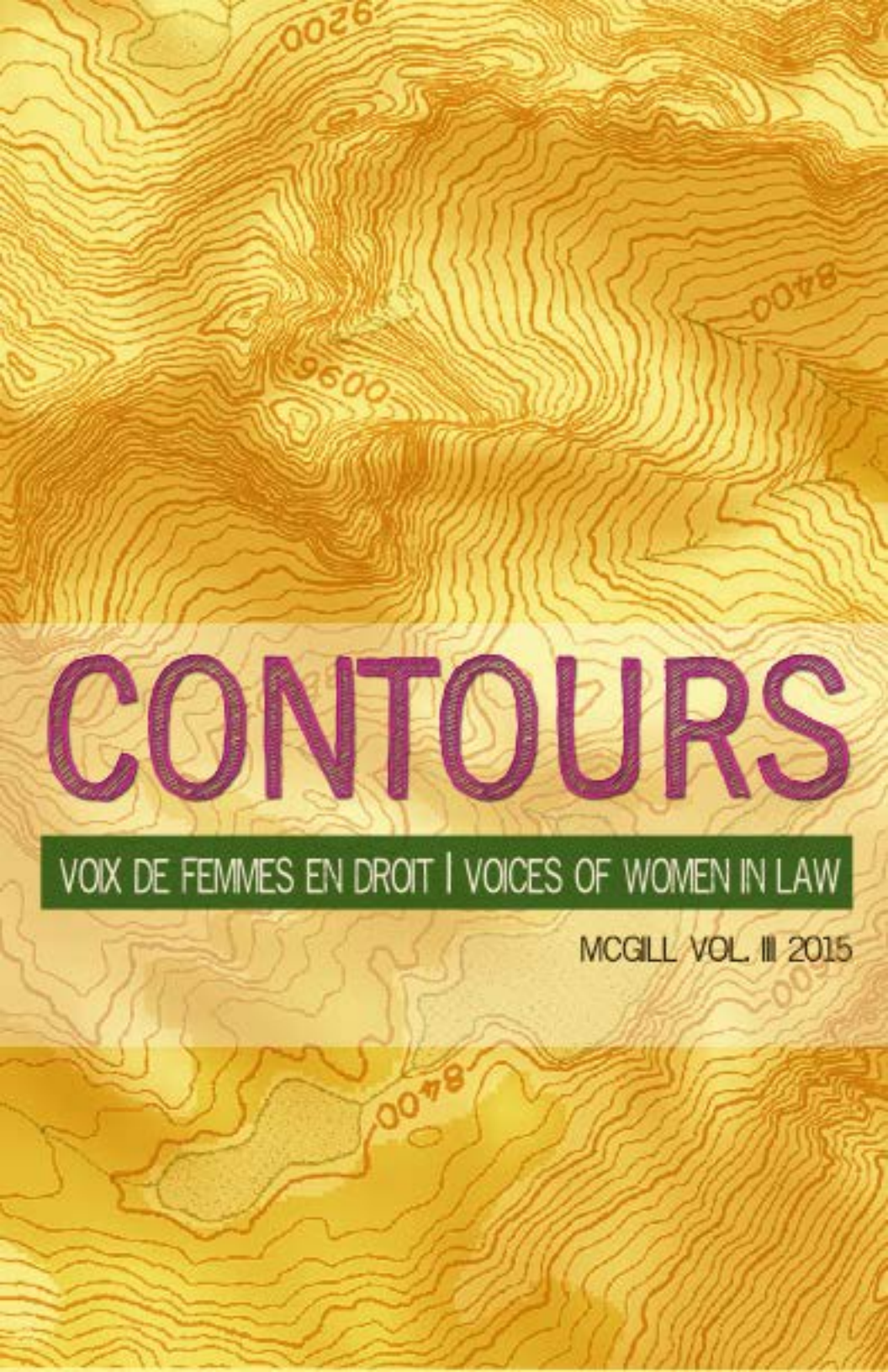
CONTOURS
VOIX DE FEMMES EN DROIT | VOICES OF WOMEN IN LAW
MCGILL VOL. III 2015

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MCGILL UNIVERSITY

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REFLECT

REIMAGINE

INTRODUCTION

Contours est une revue bilingue publiée annuellement grâce au travail des étudiantes et des femmes juristes à la faculté de droit de McGill.

We are ecstatic to invite you to read this third edition of *Contours*. Since its inception in 2012, the project has grown into something that students and professors alike look forward to each year.

The fundamental idea of *Contours* has stayed the same: it still maps and shapes the contours of debates, experiences, concerns, and aspirations around the intersection of women and the law. It is a space for women's voices and an invitation for us all to be in conversation. We share personal stories and artistic expressions of our experiences with the law and inquiries into issues or themes that inspire us, anger us, or touch us.

The boundless creativity and insight of the women at this faculty allows for a truly unique compilation. This year our authors offer critiques of stereotypes surrounding parenthood, harassment in the workplace, and surviving abusive relationships. They decry the government inaction that subjects migrant caregivers to vulnerability and disregards a national inquiry for thousands of missing and murdered indigenous women. They narrate the experience of sexism abroad while calling for a need to redesign the inherently sexist education perpetuated within the walls of law school.

These are real stories and experiences. Writing them is not always easy and we are grateful to our authors for making their private conversations public, and for demonstrating new facets and perspectives on women's complex relationship with the law.

Remember. Reflect. Reimagine.
Bienvenue dans la conversation et bonne lecture.

LA PETITE HISTOIRE D'UN PROJET COLLECTIF

PAR CHARLOTTE-ANNE MALISCHEWSKI
FONDATRICE DE CONTOURS
ÉTUDIANTE EN DROIT À MCGILL

J'étais assise dans la dernière rangée du Moot Court quand l'idée de cette publication m'est venue en tête. C'était mon deuxième mois à la faculté de droit et nous étions en train de discuter en petits groupes d'un texte d'une auteure qui offrait une critique féministe du concept de la personne raisonnable. Mon camarade de classe s'est tourné vers les femmes du groupe et nous a dit: « On sait ce que vous allez dire; laissez les hommes parler ». Choquée par son dédain flagrant, je me suis retrouvée incapable de m'exprimer et en même temps convaincue qu'il me fallait répondre. Bien que j'étais nouvelle à la faculté, j'avais déjà constaté plusieurs inégalités sexistes dans mes lectures, dans mes interactions à la faculté, et dans les histoires que j'entendais au sujet de la profession. Les femmes autour de moi avaient des opinions et des expériences très variées, mais j'avais déjà remarqué qu'elles parlaient souvent de soucis par rapport à la conciliation carrière et famille et aux formes de discrimination à l'embauche et à la promotion. Le commentaire de mon camarade de classe était, pour moi, la goutte d'eau qui fait déborder le vase. Je me suis mise à imaginer un projet sur les femmes et le droit avec des pages entièrement dédiées à la diversité des perspectives et des aspirations des femmes autour de moi.

Suite à quelques conversations avec mes camarades de classe, c'était clair que l'idée résonnait. Le projet est vite devenu un projet collectif. En peu de temps, nous avions reçu du financement de la faculté et des étudiantes et professeures se sont mises à écrire des articles.

L'idée à la base de *Contours* est simple : donner aux femmes une plate-forme pour s'exprimer a une valeur inhérente. Nous ne devons imposer ni des sujets, ni des perspectives. Au contraire, si nous

donnons aux femmes un espace libre pour leurs idées et réflexions, ce qu'elles nous diront aidera à mieux comprendre l'intersection des femmes et le droit et cela, en soi, est utile.

Nous voulions que nos lectrices, lecteurs, et contributrices soient autant ceux et celles qui désirent travailler dans le domaine des fusions et acquisitions auprès d'un cabinet national que ceux et celles qui veulent travailler dans le domaine de droit des réfugiés auprès d'un organisme à but non lucratif. Nous voulions mettre en valeur la diversité des expériences de femmes. Depuis sa création, *Contours* rejette les hiérarchies formelles et choisit à leur place un processus de collaboration et de critique constructive sans interférence avec le contenu des soumissions. Même si la façon de faire cela tout en étant efficace n'a pas toujours été évidente, le processus reste aussi important que le produit.

Nous avons lancé notre première édition annuelle en version imprimée et en ligne au printemps 2013. La réponse à la faculté et ailleurs a été à la fois rassurante et inspirante. Pendant les jours et les semaines qui ont suivi le lancement, les personnes autour de nous ont vivement accueilli *Contours*. Nos camarades nous ont raconté qu'ils avaient lu l'entièreté du magazine pendant la session et même pendant leurs examens. Quelques-unes d'entre nous avons reconnu la couverture dans les mains d'étudiants en droit dans le métro et dans l'autobus, et nous avons toutes vu des liens vers des articles se répandre sur les réseaux sociaux. Nous avons même reçu un message de l'ancienne juge de la Cour suprême du Canada, l'honorable Claire L'Heureux-Dubé, qui, plus tard, a accepté de se faire interviewer pour notre deuxième édition. Les réponses aux deux éditions publiées ont été extrêmement positives, et même ceux qui critiquaient certains articles ont exprimé leurs opinions tout en respectant l'importance du projet, ce qui a ainsi favorisé les mêmes conversations que le projet vise à alimenter.

Trois ans plus tard, je suis soulagée de voir que des remarques du genre de celle qui m'avait provoquée à l'origine sont plutôt l'exception, mais je suis aussi plus consciente des nombreuses façons, souvent insidieuses, qu'ont les concepts et la profession du droit d'être sexistes. Le projet se trouve maintenant dans les mains d'une équipe

fantastique de rédactrices et d'organisatrices qui ont pris le devant pour cette troisième édition et qui vont assurer la continuité de *Contours*.

J'ai souvent entendu des gens dire qu'ils ne veulent pas être définis par leur sexe et j'espère que ce sera un jour possible. En attendant, j'espère que les pages de *Contours* vous fourniront un terrain fertile pour renforcer la voix des femmes, célébrer les réalisations des femmes, combattre le sexisme, et cartographier les contours d'une profession et d'un monde dans lesquels nous pouvons tous être membres égaux.

REMEMBER

HOW TO REMEMBER[1]

BY ERIN MOORES
STUDENT AT MCGILL FACULTY OF LAW

I asked her for the interview by email. After a few days of silence, she wrote back.

Sorry for the delay in responding. I think it may have been the thought of dredging up old memories. But on the other hand… perhaps it will be a good thing if you get this story started.

Getting the story started. I imagined we'd start at the beginning and end at the end. When I listen to the recording of the interview again I hear myself asking for details about timelines, about the order of things. *When? How did you find out? Did you go to the police station?*

How long after you filed for divorce did he break down your door?

But that's not the way of memory. Things are not in order any more. Some things do not matter or have never mattered. At one point she says to me, "The thing is… I'm sure you'll understand. A lot of this stuff… you just don't want to remember it. So you just kind of forget the details." So we start somewhere in the middle.

At the beginning of the end of her marriage, her husband was arrested for exposing his genitals to a young female hitchhiker he had picked up while on a business trip. She found out from a coworker.

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1 To protect the anonymity of the interviewee, identifying information such as the names of people and places has been removed or changed. The article has also not been published in the online edition of *Contours*.

"I called someone in the town where it had happened," she says. A prosecutor maybe, or a cop, we're not sure. "Whoever I talked to was actually very forthcoming. I think there'd been one court appearance at that time. And the person I talked to said, you know, this is a situation of 'he said, she said.' I remember, he even said to me, 'The girl is not that credible.'"

You feel like you can hardly believe that this is happening to your life. You feel like you're sort of smattered against the wall.

Pregnant and the mother of small children, she stayed with her husband even after she confronted him, even after he was eventually acquitted or the charges were stayed — another thing we don't know. "We gave it another try," she says simply. There are many reasons why she stayed. "I didn't really want to believe the worst."

When he again was charged with indecent exposure — this time the complainant was a student at the college where he was teaching — she knew she had to separate from him. He moved out immediately without any fuss; he had no money and no job so she gave him some of her inheritance. She returned to work full-time from her unpaid leave, earlier than planned. He didn't pay child support, saying he would when he got a job.

"He was relatively reasonable at first, but he still had a measure of…" she pauses. *Control*, I think. "He knew what our kids were doing. I was even letting him come into the house to babysit them sometimes. Then I started to get the sense that he was going through my stuff, he was snooping and that sort of thing. But what prompted me finally to start the divorce proceedings were the support payments. He did get a job. He did not start support payments. And then I found out somehow that he had paid money to his brother that he owed him."

"It was a huge thing for me to take that step [to divorce him]," she says, "I knew at some level that with him, once I started taking control and drawing lines, I didn't know what was going to happen. And I suspected he would get angry, and he did. For quite a while."

YEARS LATER, THERE IS STILL A KIND OF HORROR IN HER VOICE WHEN SHE TELLS ME ABOUT HER FEAR OF SOMETHING HAPPENING TO HER KIDS, AS IF MAYBE IT IS ONE OF THE FEW THINGS THAT STILL FRIGHTEN HER ABOUT THIS PART OF HER LIFE.

She changed the locks and soon after, she remembers him banging on the garage door. "Somehow he got in, and we had words in the hallway. And he actually did hit me. Enough that there was a bruise." She jerks her head a little, to indicate the impact. "It was the first time he'd done anything physical. I did call the police. It took every ounce of energy I had, because I could have never imagined calling the police on my own husband."

"The police came. They didn't charge him. This was, you know, a middle-class couple, everybody seems reasonable, blah blah blah. I said to the police, 'He forced his way in; he hit me.' I then went to my lawyer and told her this had happened."

I remember, my lawyer was so pissed off because, she said, the police are supposed to charge him.

I ask if she wishes now that he had been charged.

"To be honest," she answers, "I was relieved he wasn't. I was still in the world of 'I can't believe this. He's the father of my kids. And I don't want this to escalate into something terrible. I just want to move on and settle it.'"

We go back and forth in time, filling in memories as they come. She tells me about how she survived after the initial separation; finding a babysitter for her kids; wondering if she would have to go into subsidized housing. Worrying about how to pay for a lawyer. "I was petrified — how do I go through the legal proceedings when it could cost thousands of dollars? So I went to legal aid. Which — again — was one of the most difficult things — walking in the door of legal aid where you think you'll never be."

"I got one year of subsidies from a welfare program to support working people. Honest to God, that was even harder than going to the lawyer the first time. Here I am applying to welfare. Then a social worker comes out to the house and that was so — to me — demeaning."

She describes how at the time, women trying to get support payments from unemployed exes had to find out for themselves if their ex-husbands were working, and bring the information to the Family Support Office. "I had to go in there, stand in line on my lunch hour. You'd be standing there, overhearing people cry."

Years later, there is still a kind of horror in her voice when she tells me about her fear of something happening to her kids, as if maybe it is one of the few things that still frighten her about this part of her life. "I think that's a thing a lot of women worry about, and I certainly did, about things getting out of control. It was such a relief that he was not asking, say, for joint custody. The lawyer explained to me what happens if you get into the custody battle, into people interviewing your children. And I just had a huge fear of my kids getting drawn into something like that… And then at the end of the day, someone else is making a decision? About what's gonna happen to your kids? I'd heard enough horror stories, about judges who — you know, where it's kind of a crapshoot. And that — that was frightening, actually."

The "peak of his craziness" happened one night while he was picking up their kids. He taunted her that he was going to take the kids and not bring them back. She ordered her older children to get out of the car. "I tried to get my youngest out, [who] was strapped in the car seat," she says, "The window was open, [my ex-husband] was in the driver's seat. He threw up his hand and hit me in the side of the face. And then he takes off squealing with my son in the car. I was petrified."

On the recording, I hear myself asking questions a lawyer or a cop would want to know. Well, when was it? What happened next? Was your husband there when the police were there, or not? What time was it, what day? Did you call the police first, or your lawyer? What time did he bring your son back? I see how every time she could not

correctly answer the question would count, in the spectacle of law, against her "credibility," her "reliability."

I remember, it was a weekend.

I called my lawyer and she was so good. She got me to go to her apartment. She took the whole story down; her secretary was there typing it. Monday, she went into court. I was there. She found the same judge that had heard us before. Worked her way into the sequence of things, asked for a few minutes. And managed to get a restraining order. For a year.

I remember, the judge said, "Isn't it a little late for all this? These people have been separated for almost three years."

She wrote everything down in a dollar store notebook. She got a panic button; a friend helped her record his phone calls. "I realized I needed to be totally alert. The blinders were off. I felt like he could go over the edge. I had to let [my kids' school] know that the father's not allowed to come pick up the kids. I was afraid. I was nervous."

When I first met her, of course I did not know all of this. I knew a university-educated woman from an otherwise unremarkable middle-class, white Canadian background. I knew a happy, loving person with a seemingly constant positive outlook on life. You would never know she'd been through all of this, now. I ask her when she started to come out the other side.

"There was a book recommended to me by a counsellor I contacted right at the beginning, when I learned that he had been charged with indecent exposure the second time," she answers. "That book was called *Letters from Women Who Love Too Much*.[2] It was about a lot of professional women who'd gotten involved in relationships that were not good for them. I started reading that book. I thought, this is me. You're drawn to bad relationships and you're supporting this person, going along with it, enabling it. That opened my eyes. From there on, I said I need to change the way I'm behaving. I need to face up to

2 The book referred to is Robin Norwood, *Letters from Women Who Love Too Much* (New York: Simon and Schuster, 1985).

things. I need to stop denying. I joined a support group that helped me get on the path. And I'm still on the path."

You'd never know she'd been through so much. In fact it was this that had preoccupied me enough to ask for an interview. What do we think a woman who has lived through such things should look like, act like? How had she made it "out the other side," when so many do not?

"Well, this is what you learn. You just persist," she shrugs, like she's talking about learning a new sport. "You just persist. And you come out the other side."

But I know it cannot simply be this, because so many women persist and some do not make it. From her story — started in the middle somewhere, and never really having ended — one cannot find one definitive answer. Good decisions at the right times. A good lawyer. The willingness to "take the blinders off" before it was too late. Luck.

Learning to seek help, and being fortunate enough to get it.

We won't know. You don't get the answers you want with memory. At the end of the interview, she tells me she knows that, too. "I bet if you were to ask him for his side of the story," she says, not angrily or regretfully, but simply observing the way things are, "He'd say, 'That's not the way it happened.'"

ON A NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN[1]

BY MOLLY CHURCHILL
STUDENT AT MCGILL FACULTY OF LAW

On December 9, 2014, Rinelle Harper spoke before the Assembly of First Nations. This brave young survivor, eagle feather in hand, added her voice to the chorus of people throughout the country calling for a national inquiry into missing and murdered Indigenous women in Canada. A month previously, two men had tried to add this 16-year-old from Garden Hill First Nation to the heart-wrenchingly long list of Indigenous women in Canada who have been murdered or gone missing since 1980 — a list which the RCMP reported in May 2014 as being 1,181 names long, and to which more names have since been added. More than one thousand, one hundred and eighty-one women and girls — gone. More than one thousand, one hundred and eighty-one women and girls who lived, laughed, rejoiced, struggled, persevered; who had talents, weaknesses, gifts to share, pasts that shaped them, futures to live — gone. More than one thousand, one hundred and eighty-one women and girls. Words fail me. I cannot

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1 A first draft of this piece was originally written on December 9, 2014. Thank you to friends and family who provided constructive feedback in terms of both style and substance, especially to Tom Churchill and to Aaron Mills. On January 9, 2015, after taking into account the feedback received, I published the article on Rabble.ca at the following link: http://rabble.ca/babble/news-rest-us/on-national-inquiry-missing-and-murdered-indigenous-women. It has been slightly updated for publication in *Contours*.

convey the weight of the grief captured in this figure. The many faces, voices, and stories it represents.

The Canadian government has repeatedly refused to answer calls for a national inquiry. Not even two weeks after Rinelle Harper pushed for the start of such an inquiry, Prime Minister Stephen Harper stated that an inquiry "isn't really high on [the government's] radar." This statement has outraged many of us – and rightly so. But, as a non-Indigenous woman and a Canadian citizen, I am writing this as a challenge to all of us: let us not feel righteous in our outrage; let us not pat ourselves on the back for pointing fingers at the federal government. Instead, let us redirect those fingers towards ourselves, and ask ourselves what role we have to play, what we can do. The sickening, saddening, enraging rate at which Indigenous women and girls in this country face violence is unconscionable. Something must be done. A national inquiry would be but a small step in the right direction. We need to push further.[2]

At its very root, the rate of violence against Indigenous women in this country is tied to colonial ways of relating between Canada and the Indigenous people of Turtle Island. I don't think that is a controversial statement. Neither is it controversial to state that sexism is also at the root of this violence. The interacting forces of sexism and colonialism are killing Indigenous women and girls across this country at an alarming rate, and my tears and anger are no solution.

This violence is directly tied to Canada's colonial history and ongoing colonial practices, to which many of us are all too often blind. It is tied to our history of tearing Indigenous children away from their families and communities, placing them with White families or in institutions with the intention of stripping them of their language, culture, identity, and pride. It is tied to the childless communities left behind. It is tied to our persistent attempt to delegitimize and silence

2 In late February, the Assembly of First Nations will be holding (or will have held, by the time this is in print) a National Roundtable on Missing and Murdered Indigenous Women and Girls, to attended by families of victims, Indigenous leaders, and provincial/territorial and federal ministers. The Roundtable has been organized in part in reaction to the lack of action at the federal level. There will also be a public People's Gathering on the topic at Carleton University on the same day.

THE INTERACTING FORCES OF SEXISM AND COLONIALISM ARE KILLING INDIGENOUS WOMEN AND GIRLS ACROSS THIS COUNTRY AT AN ALARMING RATE, AND MY TEARS AND ANGER ARE NO SOLUTION.

Indigenous ways of knowing and being. It is tied to the persistent underfunding of health and social services to Indigenous communities. It is tied to our delirious notion that the land of this country is here for the taking, to be exploited unreservedly. It is tied to our amnesia about our country's own past.

Yes, a national inquiry into murdered and missing Indigenous women is needed. But no, this will not be enough. Yes, we should call on the federal government to fund such an inquiry. But no, we cannot be content with stopping there. What we need is a national conversation on settler-Indigenous relations, and it is up to us to engage in it. A national conversation will require more energy and conviction than it takes to call on the government to start a national inquiry. But the good news is that it does not require being high on Harper's agenda to make it happen.

We have strayed so far from the right path of peace, friendship, and respect — the values that are supposed to guide settler-Indigenous relations. This path, laid out in early treaties and on-going agreements between Indigenous peoples and the British Crown, is perhaps best captured by the important concept of the Covenant Chain and by the 1764 Treaty of Niagara. The vision painted by those three words — peace, friendship, respect — is so very different from the reality we live in today of structural inequality and denial of rights. We cannot wait for the powers that be to start a conversation. This is something that all of us, non-Indigenous and Indigenous alike, need to participate in. It is a conversation that movements such as Idle No More are helping to start. We all must join. How can we live well together?

I urge us all, particularly those who are non-Indigenous like me, to remember that a conversation cannot be had without listening. I think we have a lot of listening, unlearning, and learning to do. We have a lot of visioning to do.

For a non-Indigenous person, there are many ways to get started. You can become informed about current pressing issues nationwide through APTN news — either on TV, their website (www.aptn.ca/news), or Twitter (@APTNnews). Keep an eye on public lectures by leading Indigenous thinkers at your local university – there may even be a listserv you can sign up for that will send you information on such events. Take advantage of Twitter — you can follow Idle No More, Indigenous scholars, Indigenous activists, and Indigenous politicians. Embrace the diversity of views and start engaging critically with the conversations already happening. Push your comfort zone; be curious, humble, and respectful. You can turn to good old-fashioned books (authors to check out might include Marie Battiste, J.R. Miller, John Borrows, Taiaike Alfred, Michael Hart, John S. Milloy, James (Sákéj) Youngblood Henderson, to name but a few). You might even decide to organize an educational event in your community — many teach-ins were held a couple of years ago with the start of the Idle No More movement. There are so many ways to get involved in this important conversation about establishing and maintaining relations of peace, friendship and respect.

In this national conversation, the voices of Elders and of those who have been most silenced should be given priority. Indigenous women and girls like Rinelle Harper should be given room to speak, not just as victims and survivors of sexualized colonial violence, but as women and girls with visions of what the right way of relating is. "Love, kindness, respect, and forgiveness." Those are the words Rinelle Harper asked the AFN gathering to remember last December.

Love, kindness, respect, forgiveness. Peace, friendship, respect. We need to reinvigorate this conversation and ensure it is no longer sidelined. It is up to us to join, with open heart and open ears, this crucial conversation.

(FEMALE) LAWYER: SIGNS AND SYMPTOMS OF A GENDERED LEGAL CULTURE

BY ANONYMOUS

"This is my junior lawyer, but don't worry she's smart."

"This is my junior lawyer, but don't worry she got one of the highest scores at the Barreau."

"This is my junior lawyer, but don't worry she works hard."

These are some of the many ways I am introduced by my boss. I cringe every time my status as a lawyer is qualified, because it is accompanied by a female body. Yet no one else seems to notice these qualifiers.

This female body, and the way it was socialized female, is a concern for my boss and for this profession. In order to be a good lawyer, I am told, I must not smile or nod or do anything resembling feminine habits of social interaction. In his attempts to "make a good lawyer out of me," my boss has punished my female habits of nodding or smiling with hand slaps, frowns of disapproval and verbal reprimands. I have yet to see a male colleague verbally or physically reprimanded for smiling or nodding, but they are lawyers — no qualifier needed.

In the wake of serious sexual assault allegations against Bill Cosby and Jian Ghomeshi, I have wondered about my toxic workplace environment. While I have not been assaulted, I have definitely experienced my share of gendered harassment. I see the analogies to these other situations: the perpetrator was my boss, there are witnesses, and people know that women in my office are being mistreated. Unfortunately, I am not alone. In fact, all female lawyers I know have experienced various degrees and amounts of gendered harassment.

What is it about the legal culture, even in human rights firms, that still does not recognize, or does not want to recognize, the gendered nature of this profession and the impact it has on women working and living in it?

I was shocked to hear in my year-end review that people found that I was demotivated, lacked passion and did not show enough initiative (three things that I had never heard used to describe me). Sadly, I did not have the courage (or rather a safe space) to express the fact that these are symptoms of a toxic workplace, a workplace where women are devalued, harassed and discouraged.

Not only does the victim get blamed for the effects of the harassment, but she cannot present her side or suggest the root causes of these issues. If I did, I'm afraid it would only add to my list of faults; I would be overly sensitive, or not cut out for the legal world.

I do not write this to scare female law students. I write this to warn, empower, create dialogue, and shift the legal culture. Both men and women are responsible for this shift. Both need to be able to identify when women are being mistreated and undervalued. It may be strange to some, but many people do not know they are the victim of harassment — it can be subtle and creative. After all, a workplace is loaded with "normal" power dynamics, especially in the hierarchical world of law. Some of us do not want to admit that we are experiencing harassment, as if admitting that we are the victims of something that we have no control over is our fault or evidence that we cannot make it in law.

BOTH MEN AND WOMEN ARE RESPONSIBLE FOR THIS SHIFT. BOTH NEED TO BE ABLE TO IDENTIFY WHEN WOMEN ARE BEING MISTREATED AND UNDERVALUED.

However, the symptoms of this harassment may be easier to recognize. If you or a colleague are lacking motivation, passion, or any other of the qualities she entered the workplace with, it is a sign that the culture at the workplace needs to be critically assessed.

We have all heard of all the women who leave the profession and I have no doubt, as I myself am searching for an escape route, that this insidious and pervasive gendered harassment is a large part of the problem. So, instead of blaming the bright and hardworking woman for not performing, we need to ask what is getting in the way of her performance, what might be weighing her down and impeding an otherwise qualified lawyer.

We need to look critically at our profession and address these issues. Until this profession undergoes a drastic cultural shift, all lawyers must recognize gendered harassment and speak up against it.

A NUMERICAL PORTRAIT OF CANADIAN SEXUAL ASSAULT

BY ANNIE O'DELL
STUDENT AT MCGILL FACULTY OF LAW

460,000
The number of sexual assaults in one year
Reported to a survey

15,200
The number of sexual assaults in one year
Reported to the police

5,544
How many sexual assault charges were laid in one year

2,824
How many sexual assault charges were prosecuted in one year

1991
The year the Supreme Court ruled
that including a complainant's sexual history
Was necessary to ensure a fair trial

1983
The year a man could no longer rape
His wife

273.1(1)
The article in the *Criminal Code*
That defines consent

97
The percentage of police-reported sexual assaults
With a male offender

83
The percentage of women with disabilities
who have been sexually assaulted

80
The percentage of women who know their offenders

60
The percentage of college-aged men who admitted
they would sexually assault
If they would not get caught

25
The percentage of women who will be sexually assaulted
And admit it

17
Someone is sexually assaulted in Canada
Every 17 minutes

16
The age of consent

10
The percentage of men who will be sexually assaulted
And admit it

8
The percentage of sexual assaults against adult men
Reported to the police

6
The percentage of all sexual assaults
Reported to the police

3
The number of times Ewanchuk was convicted of rape
Before *R v Ewanchuk*

2
The average sentence on a sexual assault conviction
In years

0.3
The percentage of sexual assaults that end
In conviction

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¿EL SEXO FRÁGIL?

POR STEFANIE SANTANA
ESTUDIANTE DE DERECHO DE MCGILL

Nací mujer en una familia donde el poder matriarcal arrasa con el machismo latino. Mi abuela se sobrepuso a la sociedad conservadora del Perú y fue la primera en ponerse los pantalones en el vecindario, imponiendo así una moda que impactó el estilo y la mente de las vecinas: las mujeres también llevan muy bien los pantalones.

Así fue como une abuela y siete tías me inculcaron, con ejemplo, que entre la mujer y el hombre no hay diferencia, y que todo está a nuestro alcance. Mi abuela siempre dijo que el hombre cree ser la cabeza… pero la mujer es el cuello que la hace girar donde a una le dé el gusto.

Sin embargo, así como existen mujeres emancipadas en Latinoamérica, hay demasiadas que aún son ultrajadas, de eso soy testigo. A sus 15 años, Diana se vio forzada a dejar su pueblo, pues sus padres ya no la podían mantener. Sin educación secundaria, sus opciones en la ciudad no eran muy alentadoras: prostitución, mendicidad o ayuda doméstica. El escoger la tercera opción la llevó a mi casa. Llegamos a ser muy buenas amigas y confidentes. En nuestras largas conversaciones, yo le contaba de la ira que sentía por no tener el ultimo CD de moda, y ella de su madre, que en las lejanas montañas de la Cordillera de los Andes tenía que soportar a un hombre abusivo que la embarazaba casi cada año y atendía sus partos con la misma brutalidad como atendía a sus vacas. Nuestras vidas y preocupaciones dan testimonio del contraste de realidades que existe en Perú. Recuerdo que sentía tristeza por Diana, pero una tristeza

LE SEXE FAIBLE?

TRADUCTION PAR SUZANNE ZACCOUR
ÉTUDIANTE EN DROIT À MCGILL

Je suis née femme dans une famille où le pouvoir matriarcal rase le machisme latino. Ma grand-mère a surmonté la société conservatrice du Pérou et a été la première à porter des pantalons dans le voisinage, imposant ainsi une mode qui a eu un grand impact sur le style et l'esprit des voisines: les femmes aussi portent très bien les pantalons.

C'est ainsi que ma grand-mère et mes sept tantes m'ont inculqué, par leur exemple, qu'entre un homme et une femme il n'y a aucune différence, et que tout est à notre portée. Ma grand-mère a toujours dit que l'homme croit être la tête… mais la femme est le cou qui la fait tourner vers là où elle en a l'envie.

Cependant, tout comme il existe des femmes émancipées en Amérique latine, il y en a trop qui sont injuriées, j'en ai été témoin. À 15 ans, Diana a été forcée de quitter son village parce que ses parents ne pouvaient plus subvenir à ses besoins. Sans éducation secondaire, ses possibilités en ville n'étaient pas très tentantes: prostitution, mendicité ou aide domestique. Le choix de la troisième option l'a menée chez moi. Nous en sommes venues à être très bonnes amies et confidentes. Dans nos longues conversations, je lui parlais de ma frustration de ne pas avoir le dernier CD à la mode et elle de sa mère, qui dans les lointaines montagnes des Andes devait supporter un homme violent qui la mettait enceinte presqu'à chaque année et s'occupait de ses accouchements aussi brutalement qu'il s'occupait de ses vaches. Nos vies et préoccupations témoignent du contraste entre les réalités qui

AHÍ, ENTRE TODA ESTA MARAVILLA, TUVE EL HONOR DE CONOCER GRUPOS DE MUJERES AGRICULTORAS VALIENTES. HARTAS DE LOS ABUSOS DE MARIDOS Y COMERCIANTES, ELLAS TAMBIÉN SE PUSIERON LOS PANTALONES. SON LIDERESAS RESPETADAS POR HOMBRES Y MUJERES, Y TRABAJAN POR MEJORAR LA CONDICIÓN ECONÓMICA Y SOCIAL DE SUS COMUNIDADES.

conformista del tipo "así es la vida".

Han pasado los años y debo confesar que al recordar esas vivencias me invade un sentimiento de horror. Horror porque a pesar de que se me había dejado en claro la igualdad de género, la sociedad y la realidad del país fueron anestesia suficiente para adormecer mi sentido crítico. Nunca me cuestioné si la realidad de Diana era "normal" y mucho menos si era justa. El camino por recorrer hacia una sociedad consciente de la justa condición de la mujer es aún largo y tedioso… pero no imposible.

En el 2013, recorrí el Perú profundo al trabajar en un proyecto propulsado por una ONG canadiense. Llegué hasta lo profundo de la selva, los picos más altos de la cordillera y los desiertos más áridos. Son lugares mágicos donde el tiempo parece haberse perdido entre el ruido de los animales y las conversaciones en quechua. Ahí, entre toda esta maravilla, tuve el honor de conocer grupos de mujeres agricultoras valientes. Hartas de los abusos de maridos y comerciantes, ellas también se pusieron los pantalones. Son lideresas respetadas por hombres y mujeres, y trabajan por mejorar la condición económica y social de sus comunidades. Han mejorado la calidad y la diversidad de sus cultivos, han obtenido contratos internacionales, han proveído electricidad a sus comunidades y la lista continuaría por muchas líneas. Es increíble que tanto progreso haya sido logrado por manos femeninas con tan pocos recursos económicos, mayormente provenientes de ONG internacionales. La intervención gubernamental brilla por su ausencia y corrupción, pero esa es otra historia.

LÀ-BAS, ENTRE TOUTES CES MERVEILLES, J'AI EU L'HONNEUR DE RENCONTRER DES GROUPES DE COURAGEUSES FEMMES AGRICULTRICES. FATIGUÉES DES ABUS DE LEUR MARI ET DES COMMERÇANTS, ELLES AUSSI ONT ENFILÉ LES PANTALONS. ELLES SONT DES LEADERS RESPECTÉES ET TRAVAILLENT POUR AMÉLIORER LES CONDITIONS ÉCONOMIQUES ET SOCIALES DE LEURS COMMUNAUTÉS.

existe au Pérou. Je me rappelle que je ressentais de la tristesse pour Diana, mais une tristesse conformiste du genre « c'est la vie ».

Les années ont passé et je dois avouer qu'au souvenir de ces vécus, un sentiment d'horreur m'envahit. Horreur parce que malgré qu'on m'ait fait comprendre l'égalité entre les hommes et les femmes, la société et la réalité du pays ont été un puissant anesthésiant pour endormir mon sens critique. Je ne me suis jamais questionnée à savoir si la réalité de Diana était « normale », et encore moins si elle était juste. Le chemin à parcourir vers une société consciente de la juste condition de la femme est encore long et fastidieux… mais pas impossible à traverser.

En 2013, j'ai parcouru le Pérou en profondeur en travaillant sur un projet propulsé par une ONG canadienne. Je me suis rendue jusqu'au plus creux de la jungle, aux pics les plus hauts des Andes et aux déserts les plus arides. Ce sont des lieux magiques où le temps parait s'être perdu entre le bruit des animaux et les conversations en quechua. Là-bas, entre toutes ces merveilles, j'ai eu l'honneur de rencontrer des groupes de courageuses femmes agricultrices. Fatiguées des abus de leur mari et des commerçants, elles aussi ont enfilé les pantalons. Elles sont des leaders respectées et travaillent pour améliorer les conditions économiques et sociales de leurs communautés. Elles ont amélioré la qualité et la diversité de leurs récoltes, obtenu des contrats internationaux, fourni l'électricité à leurs communautés, et j'en passe. Il est incroyable qu'autant de progrès ait été accompli avec si peu de ressources financières, provenant majoritairement d'ONG

Ver que mujeres viviendo en el pulmón olvidado del país sobresalen y triunfan es un símbolo que una revolución está surgiendo. La esperanza es aún más grande al ver que estas mujeres tienen la meta de cambiar la realidad de sus hijas. Tienen bellos sueños de verlas profesionales y triunfadoras. Las mujeres están caminando ese camino largo y tedioso hacia la igualdad. Los espasmos del terrorismo y el machismo no las han entorpecido. La realidad y la sociedad no las han adormecido. La mujer no es el sexo frágil.

internationales. L'intervention gouvernementale est absente et corrompue, mais ça, c'est une autre histoire.

Voir des femmes vivant dans le poumon oublié du pays exceller et triompher montre qu'une révolution est en train de surgir. L'espoir est d'autant plus grand que ces femmes cherchent à changer la réalité de leurs filles. Elles ont des jolis rêves de les voir professionnelles et triomphantes. Les femmes sont en train de parcourir ce chemin long et fastidieux vers l'égalité. Les spasmes du terrorisme et le machisme ne les ont pas entravées. La réalité et la société ne les ont pas endormies. La femme n'est pas le sexe faible.

FOTOGRAFÍAS DE / PHOTOGRAPHES PAR STEFANIE SANTANA

LOST IN TRANSLATION

– Let's stop slut-shaming ourselves, shall we? –

BY ANONYMOUS

I knew about her, and I told you.
I've been weak, you led me on.
It was never going to be
just your problem.
I should've said no.
It was not right.
I knew you had
promises to keep.
I fell for your kiss,
your sweet talk.
I should've ran away.
I should've left alone.
We could've just slept.
I broke her heart.
I never meant to be the evil one.

I knew about her, and I told you.
You did not care, I trusted you.
You said it was
your problem.
So I said yes.
It's what we both wanted.
I wasn't the one who had
to be faithful.
I fell for your kiss,
your sweet talk.
I stayed.
We left together.
We fucked.
You broke her heart.
I never meant to be the evil one.

I should've been a good girl. I am a woman.
I should've played hard to get. I don't play games.
I should've left you wanting more. I know what I want.
I should've gone back home. I followed you.
I should've said We kept on drinking,
"Don't open the bottle!" flirting.
I should've just kissed you. I undressed you.
I should've kept my dress on. You undressed me.
I should not have begged for it I wanted it so badly
on the first date. *on the first date.*

The fact that we kissed, that we fooled around,

that we touched, that we laughed, that I said

"I really want you" doesn't mean I'll feel the same tomorrow,

doesn't mean I'll want to do it again,

doesn't mean I owe it to you.

REFLECT

SKETCHES OF A LAW TEACHER

BY SHAUNA VAN PRAAGH
PROFESSOR, MCGILL FACULTY OF LAW

> "[F]reedom is daily, prose-bound, routine
> remembering. Putting together, inch by inch
> the starry worlds." – from "For Memory" by Adrienne Rich

In Adrienne Rich's poem, routine remembering is the daily route to bring together the starry worlds in which we find our freedom. If we substitute creativity for freedom, choreography for routine, and community for starry worlds, we find key elements of what it means to teach: words to describe what teaching demands and entails and builds. Always on the lookout for inspiration as a law professor, whether in the words of feminist poetry or elsewhere, I was struck two years ago by a contemporary dance show in which the choreographer invited the dancers themselves to create individual interpretations on stage. Each dancer presented her unique steps and gestures; together, the dancers constituted a complex community in motion – its members listening and responding to each other, while expressing themselves. Creativity, choreography and community came together as a striking representation of the ideal law learning experience, students working together with the guidance and support of their teacher, each encouraged to speak with his own words or offer her own interpretation.

I shared the image with my second year law students that year, students for whom prose-bound routine can feel divorced from

LE DROIT EST FONDÉ SUR NOTRE VIE COLLECTIVE ET STRUCTURE NOS PROJETS PARTAGÉS. À CE TITRE, LA RECHERCHE DE MODÈLES ET DE MÉTAPHORES EST POUR LE DROIT TRÈS IMPORTANTE, SURTOUT SI ON VEUT BIEN COMPRENDRE ET DÉVELOPPER SES SOURCES ET SES SITES.

starry worlds or freedom found in feminist poetry. And I continued to develop the lessons I had gleaned from the experience. What follows is a reflection written for an interdisciplinary colloquium focused on the city of Montreal. In it, I tie together the image of the dance with the interweaving of individual trajectory and collective project that characterize our lives together and the meaning and potential of law – whether in a neighbourhood or in any community of teaching and learning, doing and dreaming.

À l'automne 2012, au Théâtre Maisonneuve, Danse Danse présentait Diptych – une œuvre créée et chorégraphiée par José Navas, le fondateur et directeur artistique de la Compagnie Flak de Montréal. Connu pour l'intensité et l'émotion de ses créations originales de danse contemporaine, Navas utilise pour la première fois dans Diptych une technique surprenante pour un chorégraphe qui investit toutes ses énergies dans l'architecture du mouvement : il laisse aux danseurs et danseuses la liberté et la responsabilité de quelques séquences improvisées. Toujours architecte principal, il accepte la souplesse et la surprise ; il donne aux individus la possibilité de trouver et montrer leurs propres gestes, leurs idées, leurs façons de communiquer et de vivre ensemble.

J'ai été frappée par cette leçon pour moi comme professeure qui dirige mes étudiants et étudiantes dans l'espoir qu'ils trouvent leurs propres voie et voix, leurs propres gestes et interprétations du monde. Mais, plus encore, j'ai été frappée de découvrir qu'elle s'appliquait au droit, et à la recherche d'une meilleure compréhension du droit et des normes dans nos vies, en mettant l'emphase sur l'épanouissement organique, en répondant aux voix des participants, et en révélant une souplesse incontournable. Le droit est fondé sur notre vie collective et structure nos projets partagés. À ce titre, la recherche de modèles

et de métaphores est pour le droit très importante, surtout si on veut bien comprendre et développer ses sources et ses sites.

Tout comme la danse contemporaine selon Navas, le voisinage dans les quartiers mixtes de Montréal est aussi un de ces modèles ou métaphores pour le droit. Ces quartiers de Montréal ont chacun leur musique distincte et leurs mouvements uniques. Ils ont leurs propres rythmes et leurs propres harmonies, leur propre caractère et leurs propres dissonances. On peut certainement identifier les règles de danse ou de quartier qui sont explicites, autoritaires, ancrées dans des pratiques et des politiques, dans des codes, des constitutions et des chartes. Mais on peut aussi trouver – avec un peu d'attention et de sensibilité – des coutumes implicites, des possibilités de variation créative, des espaces pour des interactions inattendues et des points de repère dynamiques. C'est la diversité sociale en action, et ce que Roderick Macdonald, ancien président de la Commission du droit du Canada, appelle « le droit du quotidien ».

On peut ainsi imaginer une promenade dans les rues du Mile End et d'Outremont avec des arrêts sur notre circuit – là où nous sommes invités à entrer. Commençons avec une visite chez « Au papier japonais » sur Fairmount. Ici nous sommes initiés au papier « washi », fait à la main au Japon et destiné aux mille et un usages imaginés par les clients eux-mêmes. Stores, invitations, abat-jours, collage, animaux, peintures : un matériau et une base, transformés dans les mains des enfants, adultes, enseignants, artistes. Faisons encore quelque pas pour arriver chez « Manu Reva » : une boutique coopérative de potiers québécois. Ici encore, un seul matériau de base, mais l'évidence de plusieurs personnalités, techniques, passions, et objectifs. Les clients sont invités à choisir les petites œuvres d'art – à donner, à garder, à s'en servir, à s'en inspirer. Si la promenade nous donne faim, rendons-nous chez « Cheskie » sur Bernard : boulangerie juive hassidique populaire chez les clients qui viennent y chercher leurs « pains hallah » pour Shabbat, mais aussi acheter biscuits et pâtisseries riches en chocolat pour n'importe quelle occasion. Ici aussi, une entreprise spécialisée mais néanmoins ouverte aux variations, goûts et désirs divers.

Allons au-delà du papier, de la poterie et de la pâtisserie, pour visiter d'autres sites d'apprentissage situés ici et là accueillant des enfants

appartenant aux communautés diverses qui constituent le quartier. Arrêtons-nous au parc Outremont pour une petite séance dans le carré de sable. Voici un espace partagé, dédié à la création et au développement des outils d'interaction avec l'autre. Les petits se regardent ou s'ignorent, ils apprennent à parler en découvrant que la qualité multilingue de leur ville se reflète ici, ils trouvent des façons de communiquer alors que leurs parents ou leurs grands-parents ressentent plus vivement les différences qui les séparent. Continuons notre promenade vers la cour de l'école primaire Nouvelle-Querbes – une école alternative, marquée par l'autonomie nécessaire et soutenue, la citoyenneté dans une communauté ouverte aux projets individuels et créatifs, et une approche à l'enseignement qui insistent pour que les jeunes posent des questions, apprécient leur société dans toute sa complexité, transforment leur vie quotidienne en grande expérience de recherche et d'apprentissage.

Visitons enfin les écoles secondaires du quartier en comparant les cours d'« Éthique et culture religieuse » donnés par les professeurs, différents mais tous inspirants, dans des institutions ayant des histoires et des visions uniques. Dans chaque salle de classe de ce cours obligatoire, nous trouvons des discussions complexes, menées par des voix jeunes, curieuses et passionnées, respectueuses des identités et des croyances, non seulement de leurs propres pairs adolescents mais aussi de tous les membres de la société autour d'eux. C'est une conversation qui continue au-delà des murs d'école, entre individus, familles et communautés d'une part, et institutions, écoles et décideurs politiques de l'autre.

Voici donc une promenade qui sera chaque fois modifiée, ponctuée par d'autres arrêts, demain ou la semaine prochaine. C'est particulier à ce quartier mais la dynamique est la même partout à Montréal : un mélange d'histoires, d'expériences, de produits et de personnes. De la perspective du droit et de la diversité sociale, ces arrêts sont des sites qui inspirent les modes de gouvernance, l'articulation des politiques, la rédaction des règles et l'interprétation des normes. Nous trouvons dans nos quartiers de Montréal, parfois la confrontation et les conflits, parfois la collaboration et la créativité, mais surtout la coexistence et la construction. Les voisines et les voisins sont finalement comme les danseurs et les danseuses : prêts à suivre les lignes directrices

de la chorégraphie, capables d'offrir des contributions importantes et originales à la création de l'œuvre, et beaux à regarder dans leurs propres interprétations et gestes. Ce qu'ils construisent constitue notre quotidien et aussi nos rêves – précisément les ingrédients du droit, enseignés et appris jour après jour.

L'APPRENTISSAGE PAR PROBLÈMES COMME PÉDAGOGIE FÉMINISTE :

ENTREVUE AVEC ALANA KLEIN

PAR SUZANNE ZACCOUR
ÉTUDIANTE EN DROIT À MCGILL

La professeure Alana Klein enseigne et étudie le droit pénal, les droits humains et le droit de la santé à la Faculté de droit de McGill. Depuis deux ans, elle enseigne le cours de preuve criminelle en utilisant la méthodologie du « problem-based learning », ou apprentissage par problèmes.

Question : *En quoi consiste l'apprentissage par problèmes? Quels sont ses objectifs?*

Réponse : Les conceptions de l'apprentissage par problèmes diffèrent, mais l'idée générale est que les élèves prennent entre leurs mains leur propre apprentissage. Traditionnellement, le droit étatique a été présenté comme une vérité absolue et unique, une conception mise de l'avant par l'enseignement classique en cours magistral. La ou le professeur·e dispense les connaissances, répond aux questions et révèle aux étudiant·e·s comment le droit est structuré et pourquoi. L'apprentissage par problèmes se fait de façon plus autonome, et les présentations magistrales sont limitées. Son but est de développer une habilité à critiquer le droit, à le replacer dans son contexte social et à reconnaitre ses limites. Les élèves construisent et découvrent les

catégories du droit par leurs propres explorations. Elles et ils sont appelé·e·s à travailler sur des situations factuelles dès le début du processus d'apprentissage, afin d'éveiller leur conscience aux enjeux juridiques. Il ne s'agit pas de résoudre le problème mais de comprendre le fonctionnement du droit en contexte et de découvrir les mécanismes dont il se dote pour aborder ces enjeux.

Question : *Pourquoi avoir choisi cette méthodologie? Est-ce un choix féministe?*

Réponse : Ce n'était pas un choix délibérément féministe, mais certainement une décision influencée par mes valeurs féministes et cohérente avec celles-ci. J'aime d'ailleurs à penser que tous mes choix comme professeure sont influencés par les critiques féministes du droit et ma pratique du féminisme.

Question : *En quoi l'apprentissage par problèmes est-il une forme de pédagogie féministe? Quels avantages les étudiant·e·s en retirent-elles/ils?*

Réponse : Dans mon cours, j'évite toute hiérarchie superflue. C'est d'autant plus pertinent que le droit de la preuve criminelle s'est bâti avec une déférence injustifiée envers l'autorité et la hiérarchie, déférence qui en a parfois entravé le développement logique, conscient et réfléchi. L'apprentissage par problèmes se fait surtout en petits groupes, ce qui contribue à réduire le sentiment de hiérarchie. Les élèves m'enseignent autant que je leur enseigne. Elles et ils travaillent de concert pour trouver leurs propres solutions, dans une forme d'apprentissage actif. Je mise donc sur leur intelligence pour leur donner l'occasion de s'enseigner entre elles et eux, d'apprendre ensemble.

Mes élèves ont également tendance à arriver à des résultats qui n'ont pas de sens à leurs yeux et à me demander de les justifier, d'expliquer pourquoi le droit arrive parfois à ces réponses absurdes. Je les encourage à critiquer le droit et à lui donner un sens. C'est particulièrement important pour celles et ceux qui pensent que leurs idées ont moins de valeur que celles qui leur sont imposées de l'extérieur. Cet apprentissage critique et autodirigé est à mon sens féministe.

L'apprentissage par problèmes me permet aussi de diversifier les

méthodes d'enseignement à la Faculté. C'est bénéfique pour les étudiant·e·s qui sont moins à l'aise avec les méthodes d'enseignement traditionnel. L'apprentissage itératif, collaboratif, qui donne beaucoup de feedback et d'opportunités de se corriger rend l'enseignement plus riche.

Il me semble d'ailleurs que mon cours est plus populaire auprès des femmes, mais je ne pourrais pas dire à quel point c'est dû à la méthodologie, par opposition au sujet d'étude.

MON COURS VISE À FAIRE COMPRENDRE AUX ÉLÈVES QUE LA « VÉRITÉ » EST APPRÉHENDÉE PAR LE DROIT DE LA PREUVE CRIMINELLE D'UNE CERTAINE MANIÈRE, QUI REFLÈTE DES BIAIS SEXISTES. ON RETROUVE CES BIAIS NON SEULEMENT DANS LES CONCLUSIONS DU DROIT, MAIS AUSSI DANS LES MÉCANISMES QUI SERVENT À ATTEINDRE CES CONCLUSIONS.

Question : *Parlez-nous davantage de ce sujet d'étude.*

Réponse : Le livre est basé sur le procès de l'Australienne Kathleen Folbigg, condamnée pour le meurtre de ses enfants morts dans des circonstances mystérieuses. L'autrice argumente que l'accusée, qui est toujours en prison, a été condamnée à tort. Elle explore comment l'interaction des stéréotypes sur la maternité, des connaissances médicales et du processus légal mène à des erreurs judiciaires.

Contrairement à mon choix de méthode d'enseignement, celui du livre est consciemment et explicitement féministe. Le livre s'intéresse aux croyances populaires et aux préjugés sur le genre, et à leur impact sur le droit et la médecine. Je crois que la façon dont le droit traite de la maternité est un sujet d'intérêt pour les étudiantes féministes.

Mon cours vise à faire comprendre aux élèves que la « vérité » est appréhendée par le droit de la preuve criminelle d'une certaine manière, qui reflète des biais sexistes. On retrouve ces biais non seulement dans les conclusions du droit, mais aussi dans les mécanismes qui servent à atteindre ces conclusions.

Matsuda a écrit : « The students who excel in law schools — and the best lawyers — are the ones who are able to detach law and to see it as a system that makes sense only from a particular viewpoint ». C'est ce que je veux apprendre à mes élèves. Mon cours les incite à garder une distance critique par rapport au droit, à le comprendre en l'observant de l'extérieur, notamment grâce à la critique féministe du droit. En s'appropriant la matière par l'apprentissage par problèmes et en intégrant une perspective critique, mes élèves sont invité·e·s à reconnaitre la valeur de la prise en compte de subjectivités multiples, plutôt que de considérer la subjectivité de l'État comme la seule possible.

Question : *En plus du sujet d'étude et de l'enseignement par apprentissage, y a-t-il d'autres aspects de vos cours qui se rattachent à une pédagogie féministe?*

Réponse : Je personnalise mon enseignement. Plutôt qu'un seul examen final anonyme, je donne plusieurs travaux et beaucoup de feedback. Ça me permet de reconnaitre ce qui pose problème aux étudiant·e·s individuellement, et d'éviter l'enseignement à « taille unique ».

Il m'est aussi arrivé de faire des examens dans lesquels tous les personnages étaient féminins, en leur donnant par exemple des noms d'activistes canadiennes. C'est notre façon, à nous les professeur·e·s, de nous amuser en préparant les évaluations!

THE INTERNATIONAL WOMAN:
MIGRANT CAREGIVERS AND VULNERABILITY TO ABUSE IN THE WORKPLACE

BY MÉLISSA CEDERQVIST
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Introduction

In 1984, Audre Lorde wrote "The Master's Tools Will Never Dismantle the Master's House" challenging white academic feminists about their positions as knowledge-producers and revealing the dangers inherent in the presumption that this group could claim to speak for all women. She spoke about the impossibility of a homogeneous experience of womanhood and emphasized the importance of recognizing difference. In particular, she highlighted that professional women constitute a class unto themselves, reliant on the cheap domestic labour of other women, predominantly women of colour, who have made it possible for this former class of women to enter the workforce in large numbers. Lorde wrote:

> But community must not mean a shedding of our differences, nor the pathetic pretense that these differences do not exist... If white American feminist theory need not deal with the differences between us, and the resulting difference in our oppressions, then how do you deal with the fact that the women who clean your houses and tend your children while you attend conferences on

feminist theory are, for the most part, poor women and women of Color?[1]

Economic globalization has produced an international workforce wherein many groups, and especially women, experience systemic marginalization in their migration for employment opportunities outside their country of origin.[2] In Canada, this is true for those working under federal migrant worker programs like the former Live-in Caregiver Program (LCP). Caregiver programs[3] in particular raise a vast number of immigration law, labour law, human rights, and public policy issues[4] and challenge common narratives of solidarity among all women.

PINAY[5] is a Filipino women's organization in Quebec founded in 1991, which promotes the "basic rights and welfare of the Filipino migrant workers in Canada."[6]

Canadian Demand for Domestic Workers

Caregiver programs exist because the demand for domestic workers in Canada, with similar pay and conditions, would be "impossible to fill without foreign recruitment, even during periods of high unemployment."[7] The program allows an advanced capitalist country like Canada to gain access to labour that is particularly vulnerable, unfettered by unionization, and lacks workers' rights.[8]

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1 Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House" in *Sister Outsider: Essays and Speeches* (Berkeley: Crossing Press, 2007) at 110-114.
2 E Lee and M Johnstone, "Global Inequalities: A Gender-Based Analysis of the Live-in Caregiver Program and the Kirogi Phenomenon in Canada," (2013) 28:4 *Affilia* 401 [*Lee and Johnstone*].
3 "Caregiver programs" refer to the former "Live-in Caregiver Program" and similar programs that have existed in a number of forms throughout Canada's history.
4 L. Langevin, "Trafficking in Women in Canada: The Federal Live-in Caregiver Program," (2007) 31:2 *International Journal of Comparative and Applied Criminal Justice* 191 [*Langevin*].
5 The author volunteers with PINAY through Pro Bono Students Canada.
6 Oxman-Martinez, Hanley, and Cheung, *Another Look at the Live-in-Caregivers Program: An Analysis of an Action Research Survey* Conducted by PINAY (Montreal: 2004) at 6 [*PINAY*].
7 Abigail Bakan and Daiva K. Stasiulis, "Making the match: Domestic placement agencies and the racialization of Women's household work." (1995) 20 *Journal of Women in Culture and Society* at 309 [*Bakan and Stasiulis*].
8 Lee and Johnstone, *supra* note 2 at 405.

The labour force participation of Canadian women began to rapidly increase in the 1970s consistent with other advanced capitalist countries. Along with this change came the increasing dependence of families on two incomes, creating "what has been described as the crisis in the domestic sphere."[9] The lack of adequate public options meant the work of raising children and domestic labour remained in the private sphere.[10] In Canada, federal and provincial cuts under neoliberal policy reduced the number of affordable day care options. These conditions "exacerbate[d] a demand for care workers, while economic inequity fuel[ed] women from less wealthy countries to accept global employment options."[11]

As a result, families with means have sought migrant women to meet their need for domestic and child-rearing labour,[12] deflecting demand for public day care options by acquiring such care privately. This allows "Canadian women (mostly white) [to] access relatively high-paying, high-status professions through employing affordable live-in caregivers (mostly racialized)."[13]

Caregiver Supply

There are strong push factors which account for a woman's willingness[14] to give up "personal careers, family support, and the familiarity of home for the benefit of their family" for years at a time in order to take up employment as a caregiver elsewhere.[15] The effects of globalization on the economy of countries like the Philippines are a primary motivation for this outflow of women migrants. This stems from the unequal global economic order within which the women find themselves, caught in an exchange "between rich countries and impoverished countries."[16]

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9 Bakan and Stasiulis, *supra* note 7 at 307.
10 *Ibid* at 304.
11 Lee and Johnstone, *supra* note 2 at 403.
12 PINAY, *supra* note 6 at 11.
13 Lee and Johnstone, *supra* note 2 at 410.
14 It must be noted that there are male migrant caregivers although women make up the majority.
15 *Ibid* at 408.
16 Louise Louise Boivin, "Les femmes dans l'engrenage mondialisé de la concurrence, étude de cas sur les travailleuses des services d'aide à domicile au Québec" (Montréal : *Conseil d'intervention pour l'accès des femmes au travail*, 2007) at 39.

The 1980s economic crisis left the Philippines indebted "to Western banks and subject to the stringent requirements of the International Monetary Fund" which has resulted in much economic hardship for its citizens.[17] In order to finance its debt, the government of the Philippines has increasingly relied on the exportation of female domestic workers. It has encouraged such migration by setting up "schooling and recruitment agencies, and remittances [have become] a crucial part of building their nation's economy,"[18] bringing in an estimated $25 billion US a year.[19] What drives the search for employment abroad, even with poor working conditions, is lack of opportunity at home. And even as the number of people forced to migrate continues to increase, migration is often touted as a policy solution for poverty and underdevelopment in sending countries.

The transnational family structure is also essential to understanding why caregivers are often willing to tolerate the working conditions of the programs. Migrant caregivers are often a major provider for their families. As many as 83% of caregivers support family overseas during their employment.[20] A 1994 study among Vancouver live-in caregivers said that such support makes up on average 33.4% of the caregiver's gross earnings.[21]

Caregivers typically hope to become permanent residents and be reunited with their family, but it must always be remembered that such movement is not the freest choice, as the need to support family explains what "drives women from disadvantaged countries to migrate … [and] accept conditions that Canadian citizens would not."[22]

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17 Lee and Johnstone, *supra* note 2 at 404.
18 *Ibid* at 404.
19 "Remittances to Developing Countries to Stay Robust This Year, despite Increased Deportations of Migrant Workers, Says WB." The World Bank: News. April 11, 2014. Accessed February 20, 2015. <http://www.worldbank.org/en/news/press-release/2014/04/11/remittances-developing-countries-deportations-migrant-workers-wb>.
20 *Ibid* at 20.
21 Geraldine Pratt, "From Registered Nurse to Registered Nanny," 232
22 Langevin, *supra* note 4 at 197, 203.

THERE HAVE BEEN CHANGES TO THE CURRENT CAREGIVER PROGRAM SUCH AS THE REMOVAL OF THE FORMAL LIVE-IN REQUIREMENT. HOWEVER, THE VULNERABILITY STILL REMAINS BECAUSE RESTRICTIVE WORK PERMIT CONTROLS KEEP CAREGIVERS SUBSERVIENT TO THEIR EMPLOYERS. SUCH VULNERABILITY AND ABUSE MEANS THAT ANY SERIOUS VISION FOR WOMEN'S EQUALITY IN CANADA WILL HAVE TO INCLUDE EQUALITY FOR FEMALE MIGRANT WORKERS.

Vulnerability and Abuse

It has been measured that among caregivers 18.5% report some form of abuse including "working outside of job description, low salaries, unpaid overtime, long hours, racial discrimination, verbal abuse, sexual harassment, and 'slave-like conditions.'"[23] The situation of caregivers is a women's issue as well as an issue of class, race, and citizenship status.

The former live-in requirement meant that the employer's immediate control over the caregiver's food, space, sleep and social network made the caregiver vulnerable to intimidation and threat.[24] It also meant that the caregiver had little recourse to a clear boundary between their on-duty and off-duty time.[25] Even for live-out caregivers, the long hours and isolation on the job leads to vulnerability to abuse.[26] As a result, many caregivers report feelings of being "under surveillance and socially isolated."[27]

Racist bullying by employers and their children has been reported by caregivers who are women of colour in Quebec and Canada along with bullying which denigrates the caregiver's work or social class.[28]

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23 PINAY, *supra* note 6 at 16, 18.
24 Hsiung and Nichol, "Policies on and Experiences of Foreign Domestic Workers in Canada," 770 [*Hsiung and Nichol*].
25 *Ibid* at 770.
26 PINAY, *supra* note 6 at 21.
27 Hsiung and Nichol, *supra* note 24.
28 Groupe de travail québécois ad hoc. "Portrait des aides familiales au Québec," (2009) at 31, 39.

Abuse mainly goes unreported because the caregiver feels compelled to tolerate the situation until they can obtain their permanent residency application.[29] Many have been threatened openly by their employers with deportation or a call to immigration services.[30]

Some commentators have likened the LCP to a "modernized version of forced labour or servitude" because of the inaction or complicity of governments which allow these women to live under the "constant menaces of unemployment and deportation [which] suggest[s] a tacit denial of economic and social freedoms."[31] Similar language has been used to characterize live in caregivers as a "captive workforce" put in "a situation of vulnerability" which erects barriers for the changing of employers.[32] Because of work permit restrictions, caregivers risk losing months of work between leaving an abusive employer and finding another placement, a situation which also puts their completion of the program at risk. There have been changes to the current caregiver program such as the removal of the formal live-in requirement. However, the vulnerability still remains because restrictive work permit controls keep caregivers subservient to their employers. Such vulnerability and abuse means that any serious vision for women's equality in Canada will have to include equality for female migrant workers.

Conclusion

Caregiver programs are often the only opportunity that many migrant women have to work in Canada and provide for their families. Yet the structure of these programs engenders an employment context that makes caregivers vulnerable to abuse and exploitation.

Audre Lorde's warning about assumed homogeneity amongst women remains relevant. Approaches to gender equality that are uncomfortable engaging with difference in anything but the abstract tend to overlook situations of working-class, non-citizen, and racialized women like migrant caregivers. Doing so would require challenging

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29 PINAY, *supra* note 6 at 13.
30 *Ibid* at 14.
31 Emilie Giroux-Gareau, "L'encadrement Juridique," 44-45.
32 Langevin, *supra* note 4 at 194.

capitalism, racism, imperialism and the assumption that all women have the same priorities or the same idea of what liberation and equality look like.

Fighting for women's equality means going beyond advocating for greater representation of women as jurists, politicians or managers. Such a focus inevitably excludes the struggles of the majority of women who do not fall into these categories and ignores how women in the professional classes may also engage in exploitative and abusive practices towards the women who perform the very work necessary for their entry into such professions. In addition to demonstrating the great courage and tenacity of women navigating caregiver programs, the concrete situation of migrant caregivers acts as a litmus test for claims of solidarity among all women, an ideal which is currently more often preached than practiced.

QUEBEC'S BILL 20: AN ATTACK ON WOMEN'S RIGHTS

BY PAT NOWAKOWSKA
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Our western society has witnessed successive waves of feminism. These brought us recognition as equals in terms of voting, property ownership, participation in the work-force, the right to choose our marital unions, the right to be protected against sexual assault within our unions, the right to leave these unions, the right to contraception and the right to decide whether to carry an early pregnancy to term. These are our legal rights and their tenor is harmonious with a certain categorical morality: one that affirms that we can make choices with respect to our bodies, our sexuality, our reproduction, and our participation in social and economic life. The state proudly aligns itself with this morality…

However…

It is mind-boggling how a province as officially committed to women's rights as Quebec would table a Bill that so blatantly undermines a woman's right to choose. This commentary explores the amendments proposed by Bill 20 and, in the spirit of trying to understand its logic, explores the possible underlying reasoning for its regressive policy regarding women and their reproductive choices.

Recently, Quebec's Health Minister, Gaétan Barrette, introduced Bill 20: *An Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted*

procreation, with an eye to "optimize the utilization of the medical and financial resources of the health system with a view to improving access to family medicine and specialized medicine services." The Bill purports to meet its objectives through two principal motions: the first part concerns family physicians, imposing quota obligations on practitioners at the penalty of reduced remuneration; part two pertains to assisted procreation activities, namely in vitro fertilization (IVF) with an aim to reduce, if not completely overturn, public funding for practice.

On its face, the two rather unrelated parts speak to an increase in services provided in the former, and a reduction in costs in the latter. Budgetary austerity clearly forms the principal motivation; how the cuts in IVF funding will affect families, and/or individuals of lower socio-economic status is an argument that is equally important, albeit not the focus of this commentary.

For the sake of this critique, let us focus on women, educated and actively contributing to the tax base as professionals: women who chose to focus on supplying society with their skills before turning their attention to populating this society with children. Both of these contributions are important and we must abstain from judging the prioritization of one contribution over another (read: the right to choose remains with us!). But in terms of an economical utilitarian approach, those who choose to enrich the workforce and the tax base during their "reproductive primes," and then subsequently brave the biological challenges and bring us children, are valuable members of society. The choice to balance motherhood with work has been long fought for but it is undeniable that the main beneficiary of this choice is society.

Let us suppose then, that funding cuts to IVF are a message that declares: you can finance your own tribulations of assisted reproduction, our pockets are empty. Unfortunate and unfair as it is, this is a choice the state is in a position to make. To stipulate that there be an age cut-off for IVF financial assistance is likewise very unfortunate, but in the hands of the legislator. The justification for this limitation relies on greater risks of health complications which will "burden" our fragile health care system.

However, Bill 20 crosses the line by making a 42-year-old woman's choice to go through IVF an offence, and making the physician consulting this woman a co-offender. According to the Bill, physicians who treat women undergoing or considering IVF above the age of 42 will be liable to a fine between $5,000 and $50,000. The underlying assumption implied by this offence is that women over 42 considering IVF, and their physicians, are somehow negligent of the health risks associated with such a delicate undertaking. Or perhaps the underlying assumption is that the physicians aiding these women are a wasted resource, whose time and energy are better spent on other patients with other issues. The first assumption contradicts the idea that women can make intelligent choices with respect to their health and the well-being of their offspring; the second assumption creates a sort of hierarchy for health and patient needs that offends morality altogether.

Compound this with the fact that even if said women are willing to pay for the services out of their own pockets, the choice to even consider IVF past the age of 42 is still an offence. Even if these women travel to another province or country, this choice still remains an offence and no physician is permitted to give subsequent care to said women. Likewise, any healthcare worker who directs a person to an assisted reproduction clinic outside of Quebec could be similarly fined.

Age discrimination? Class discrimination? Gender discrimination? Constitutional issues? Wait, there's more! Article 10.2 of the tabled Bill stipulates that parties to a parental project involving outside genetic material must submit to a psychosocial assessment at their own expense, before embarking on assisted procreation activities. The Minister will decide (has not yet, but will) on the assessment criteria. The implications here do not touch only on women past their "reproductive primes" but on all individuals with fertility problems, including same sex couples, as well as individuals considering donating genetic material to such a project. What is the underlying assumption of this clause? "Y'all must be crazy" is the only one that comes to mind.

OUR RIGHT TO CHOICE AND OUR RIGHT TO CARE STAND HAND-IN-HAND HERE. WE HAVE BANDED TOGETHER AS A SOCIETY AND AS WOMEN TO CHASE THE STATE OUT OF BEDROOMS, BUT BILL 20, IT WOULD SEEM, THREATENS NOT ONLY TO IMPOSE ITSELF INTO OUR SEXUAL PRACTICES, BUT INFILTRATE DEEP INTO OUR WOMBS — AN IMPOSITION REPUGNANT IN EVERY SENSE AND WITHOUT ANY JUSTIFICATION.

That's not all. One article states that "except in cases determined by government regulation, the physician must make sure that an in vitro fertilization activity has been preceded, as applicable, by a period of sexual relations or a number of artificial inseminations determined by government regulation." The logic? Supposedly (a) that IVF is the first choice for women desiring a pregnancy and this must be stopped; (b) perhaps that heterosexual relations are a forgotten art and must be a revisited option; or (c) artificial insemination is not getting its fair share of attention in a parental project…? How this physician "must make sure," and the appropriate "period" of these preliminary steps, is still to be decided by government regulation. The utilitarian argument for this clause escapes all rationale. Will there be a legislative meeting consecrated to mulling over regulation on how doctors will gain knowledge of their patients' sex lives and how rich these ought to be before considering IVF? Does our National Assembly have no better issues to attend to?

The abovementioned amendments have been critiqued through only one optic: the perspective of a woman choosing a pregnancy late in life, a hypothetical woman that chose to establish herself professionally before embarking on motherhood. The implications are no less insidious for all men and women, of all ages, who experience fertility problems including individuals rendered infertile after being treated for cancer by chemotherapy or radiation, same-sex couples, and couples simply unable to conceive. Returning to the perspective of the 42-year-old woman, science is not on the side of the legislator: the American Society for Reproductive Medicine recommends age 55 as a maximum for IVF treatment and the McGill University

Health Centre's Reproductive Centre treats women until age 50.

As a final slap to the feminist face, Bill 20 tables a motion that imposes minimum caseloads on family physicians at the penalty of grossly reduced remuneration. This stands to disproportionally affect practitioners that strive to create a balance in their commitments to their practice and their family (most often female practitioners). The underlying assumption must be that family doctors, when not seeing loads of patients, must be spending precious time on the golf course, ignoring the fact that family doctors, on their off-times, can also be family people. This matter is however amply addressed by the Quebec Federation of Medical Specialists and the Quebec Federation of General Practitioners.

What is still needed in the chorus of the voices decrying this Bill are the women's rights groups: those of us that hold the right to choose as dear and inalienable. Our right to choice and our right to care stand hand-in-hand here. We have banded together as a society and as women to chase the state out of bedrooms, but Bill 20, it would seem, threatens not only to impose itself into our sexual practices, but infiltrate deep into our wombs — an imposition repugnant in every sense and without any justification. Bill 20 is slated for approval this spring. Writing to your Member of National Assembly is one way to let your voice be heard.

ANECDOTES

BY EMILY HAZLETT
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Last winter I took a Spanish class at UQAM. During a break from verb drills, I found myself telling one of my classmates about legal job recruitment, which I was doing at the time. I told him about the endless job interviews in law firms, the cocktails and the dinners. I confessed that I was afraid I might end the process without a job.

He assured me otherwise: "Emily, you're so smart, I'm sure you'll get a job. You're going to be a great legal secretary."

A few months later I was indeed working for a law firm. One night I left work and grabbed a cab home. The taxi driver looked back at the large impressive building I had just left and asked whether I worked there. I said yes and he seemed pretty impressed. He then asked me what it was like to work for such an important business as a receptionist.

"But you're so young!" he said, when I told him I wasn't a receptionist. Then he asked me whether I'd seen the most recent episode of Suits.

The next day after work I told a friend about this encounter. Also an aspiring lawyer, she could relate. The week before she had been asked whether she was a receptionist, not by a taxi driver, but by opposing counsel on a deal she had spent weeks preparing.

IN MY EXPERIENCE, SEXISM ISN'T ALWAYS DIRECT. NO ONE HAS EVER TOLD ME I CAN'T BE A LAWYER BECAUSE I'M A WOMAN, BUT LOTS OF PEOPLE HAVE ASSUMED I'M NOT A LAWYER, BECAUSE I'M A WOMAN.

Months later I was given a tour of the Court of Appeal of Quebec. I walked the halls and through the courtrooms, thinking how amazing it would be to one day plead before the Court. The judge I was with pointed to a wall lined with photographs of past and present judges, many of them recognizable justices whom I admire. He began telling me about one judge's swearing-in ceremony, and found the picture on the wall. Two men and a woman stood in the foreground of the picture. Seconds later, I was surprised when he referred to the judge who was sworn in, the judge whose picture I was looking at, as "she." I'd assumed the judge was one of the men in the picture.

In my experience, sexism isn't always direct. No one has ever told me I can't be a lawyer because I'm a woman, but lots of people have assumed I'm not a lawyer, because I'm a woman. Sexism today is often insidious. It's often based on assumptions, many assumptions that we all, myself included, share.

This has important consequences on how we talk about sexism and engage in discussions about gender equality. By treating all sexism as equally worthy of moral condemnation we make it difficult for people, both men and women, to recognize their own assumptions. If discussions about gender equality are inclusive, candid, and aspirational, rather than punitive, it can make more closeted sexists aware of their own bias.

LETTRE SUR LE SUCCÈS

PAR MIREILLE FOURNIER
ÉTUDIANTE EN DROIT À MCGILL

Cette lettre a été écrite rapidement. Je vous présente mes excuses mais je n'ai pas le temps d'écrire. Un peu pressée, je m'interroge sur le succès. C'est un mot qui a fait bien du chemin ici à la Faculté. D'où vient donc le succès? Où va-t-il? Pourquoi le poursuivons-nous et à quoi nous mène-t-il?

Succès vient du latin *succedere* qui veut dire « suivre » – de la même famille que « succession ». Il ne s'agit pas de dire que le succès mène à la poursuite jusqu'à ce que mort s'ensuive, seulement qu'il suit la même logique linéaire du temps. Le succès suit une ligne droite, il va droit devant si on veut, et nous entraine à sa suite.

Le succès suit ou emprunte un chemin, une carrière – du latin *carraria*, route ou chemin. À l'école de Droit, on prend les « cheminements » et les « parcours » au sérieux. Non sans détours, non sans arrêts de passage, mais sans s'attarder trop longtemps, le succès avance. « C'est important de continuer à avancer dans la vie ». Lorsque nous disons « avoir du succès », nous disons essentiellement que nous avançons.

Poursuivre le succès, c'est aller quelque part. Sans doute sommes-nous libres de définir là où nous nous rendons, mais sommes-nous vraiment libres d'aller? Nous décidons où nous allons, et le succès, c'est d'y parvenir. Ainsi, poursuivant le succès, nous sommes toujours un peu de passage. Que fait-on, que dit-on lorsqu'on est de passage? Moi, je dis: « j'aimerais bien m'arrêter pour discuter, mais je suis pressée, je vais quelque part », ou encore « je ne resterai pas longtemps, je dois partir bientôt ».

Ce sont ces phrases dites en passant, qui parfois nous arrêtent et quelques fois nous dérangent.

Évidemment, ceci n'est qu'une suggestion. Je n'ai pas vraiment pris le temps d'y réfléchir (qui a le temps pour ça?), mais il me semble que la poursuite du succès nous amène souvent à dire « je n'ai pas le temps ». Pas le temps pour quoi? Pour qui? À qui disons-nous le plus souvent que nous sommes trop pressées, que nous n'avons pas beaucoup de temps, que nous devons partir? Est-ce que cette poursuite nous amène vraiment là où nous voulons (là où nous devons) être?

D'autres questions, au lieu de « où vais-je? », « où ai-je envie d'aller? », pourraient être par exemple « où suis-je? », « que fais-je? », mais surtout « avec qui? ». Malheureusement, je ne peux pas répondre ici, je n'en ai pas le temps. Il faut que j'y aille, mon succès m'attend.

Bien à vous,

Mireille

REIMAGINE

I WON'T WAIT IN THE LOBBY:
THOUGHTS ON PARENTHOOD IN LAW SCHOOL

BY MARYAM D'HELLENCOURT
STUDENT AT MCGILL FACULTY OF LAW

My first step as a newly-admitted McGill student was to have my student ID made. It was August in Montreal, the excitement of a new adventure upon me. I put on casual yet tasteful attire, proudly achieved a picture-perfect hairdo and headed downtown. My baby safely strapped in his stroller, I queued at Service Point to make the great news official: I was now a McGill law student! I was almost through the line, with just two people standing before me, when the person supervising the queue politely asked me to leave. I was a little bit puzzled and at a loss for words for a moment. He said, "This area is for students only, parents need to wait in the lobby."

There is a fact seldom mentioned about law students: some of us – actually, a bunch of us – have children. We are taught the merits of shielding our personal lives from our professional personas in legal ethics class and many of us believe in this. So we are parents at home and students at the faculty, and each role is of no consequence to the other. Some of us switch from parent to student during the metro ride to campus; others just have the time it takes for the light to turn green as they cross Peel on their way from the McGill day-care building.

Once we are in the classroom, does it even matter that some of us have children? Maybe having a child is just an irrelevant piece of information. As legal scholars, aren't we trained precisely to pick out the relevant facts from a case? After all, the quality of a legal

opinion or the brilliance of analytical reasoning are in no way linked to parental status.

Maybe being a parent is relevant only as a hindrance, an unfortunate circumstance that compromises a student's chances of success. Indeed, spending restless nights pondering over remedies for odontogenesis might sound very scholarly, but believe me (or Google) it is not the best way to prepare oneself for the intellectual challenges of legal education. On the other hand, typical student nightlife can be just as restless: hitting the bars on Crescent Street, dancing the night away, arguing with a soon-to-be ex? Maybe even doing all of that at once?

There is this idea that law students with children are accomplishing a feat, like we are unsung heroes, doing what so many thought impossible. In fact, "I don't know how you do this" is the most common statement I hear when I first mention my child. I have even been told on occasion that I was "a hero."

Being a parent and a law student is not heroic. It is, or maybe should be, simply ordinary. If you ask law students who are parents, you might be surprised to hear that they don't necessarily struggle; some of them even find that having children while studying is an asset. I don't mean to minimize the challenges, because there are important difficulties that students with children face, and not all are equal. You might find that experiences differ depending on the student's gender, living situation, financial means, the age or (dis)ability of their children, how many children they have, or their citizenship status. Dealing with the routine tasks of parenting, like daycare drop-offs and pick-ups, bath time, mealtime, story time — all in the middle of a 48-hour take-home exam — is certainly a challenge; it is even more so for a single parent or for a family that has just arrived in Canada with no support network.

However, the biggest difficulty in being both a law student and a parent is this concept that law students are not parents; this idea is based on an abstract and purely fictional idea of who the typical law student is or should be. While law is often conceived of in the abstract, and often resorts to fictions, this approach doesn't have to,

MOST PARENTS OR PARENTS-TO-BE WITHIN OUR RANKS, WHILE STRIVING FOR MEANINGFUL CAREERS, ALSO ACTUALLY WANT TO BE INVOLVED IN RAISING THEIR KIDS, AND NOT JUST ACT AS PROVIDERS. THESE ARE CONCERNS THAT DIRECTLY AFFECT LEGAL EDUCATION, ACADEMIA AND LEGAL PRACTICE.

and shouldn't, apply to legal education. Instead of shaping law school around the needs and aspirations of an imaginary student, one who is notably a relic from a relentless past of shameless privilege and discrimination, we should allow law school to reflect the changes in its own student population. Both the staff and students of the faculty should be aware that parenthood exists and belongs on both sides of the classroom — in clubs, at coffeehouses, on exchange and even on an internship. We pride ourselves on the relative diversity of our student body, but this also means allowing norms to shift accordingly, or even better, to push for change. Part of that change is in recognizing that there are students at our faculty who are parents, or intend to become parents, without watering down their ambitions or making heartbreaking compromises.

Most parents or parents-to-be within our ranks, while striving for meaningful careers, also actually want to be involved in raising their kids, and not just act as providers. These are concerns that directly affect legal education, academia and legal practice. And let's be honest, students with children might more readily embrace the work/life balance credo, but a lot of students who are not concerned with having children also contemplate a kind of life that won't keep feeding the statistics about alcoholism and depression in the legal profession. All students would likely benefit from a law school more mindful of parenthood within its ranks.

Keeping the issue of parenthood quiet and out of sight is simply reinforcing the *status quo*, which in turn reinforces gender disparities in our faculty and in the workforce. While the fathers in law school can put their stability and maturity forward to potential employers, it is likely to be very different for mothers. There are still prejudices in the

professional world that women who have (or want) children need to fight in order to reach their career goals. Law school can and should be a space of empowerment, a jumpstart towards resisting such systemic discrimination. The first step is to openly acknowledge parenthood within the law faculty.

I for one won't be switching from parent to student at the door because I know my faculty is open to change, and that as students we have a role to play in fostering that change. At McGill Law, our children are welcome in class, breast-feeding is allowed everywhere, and parents don't have to "wait in the lobby." We have the opportunity to change the idea of the typical law student and I am seizing it.

ILLUSTRATION BY MARYAM D'HELLENCOURT

ABSENCE, NOT ABUNDANCE:
WHERE TO BEGIN WITH GENDER ISSUES IN ARCTIC COMMUNITIES?

BY RACHEL KOHUT
STUDENT AT MCGILL FACULTY OF LAW

& TAHNEE PRIOR
PHD CANDIDATE AT BALSILLIE SCHOOL OF INTERNATIONAL AFFAIRS, UNIVERSITY OF WATERLOO

We met at an enlightening conference at Queen's University over one year ago, titled "Arctic/Northern Women: Law and Justice, Development and Equality." Held by the Tromsø-Umea-Arkhangelsk-Queen's (TUAQ) Network on Gender and Law in the Arctic Region at the Queen's Feminist Legal Studies Department, it was a rare gathering of academics and professionals working on gender issues in Arctic communities.

We were both delighted to have not only presented, but also participated in the discussions at the conference. We both finally felt that we had found a network that best housed our interdisciplinary research. Yet, we had two concerns upon leaving the conference. First, these discussions simply do not happen enough in Canada; and second, we were struck not only by the sheer absence of research and literature on gender research in Arctic communities, but also by how little research there was in Canada compared to our Arctic counterparts.

Sweden has already prioritized research on human trafficking in Nordic countries. Norway has already highlighted their concerns of increased immigration of Russian brides for Norwegian men across the Norwegian-Russian border. The Finnish Academy is currently funding a project on Human Security in the Barents Region with a gender component. Yet, the Canadian Women's Foundation is the only organization at the forefront of research on human trafficking in the Canadian context. Although we applaud their efforts, there remains very little information to date on how human trafficking could adversely affect Arctic communities.

As we both study gender issues in the Arctic — Tahnee from an environmental perspective and Rachel from a health perspective — we consistently feel overwhelmed by the lack of dialogue on the dimension of gender across the Arctic.

As two of the youngest presenters at this conference, we thought to ourselves: what does this lack of research say for the next generation of scholars, researchers and scientists about the future of research on gender issues in Arctic communities? What foundation are we laying?

And if we feel that we have such a quiet voice in these sectors, do women in the communities most affected by resource development feel they can speak up? This makes us both cautious as how to best proceed forward.

Some may argue that we should no longer be concerned with the impact of extractive industries in the Arctic with Canada's oil and gas industry at the cusp of a downhill spiral. This is not a permanent reality: extractive industries are already present in Northern communities, with further development in the not-so-distant future as the global community continues to vie for this 'undeveloped' terrain. So, why are we not being proactive, raising the voices of women to ensure equal representation in business and policy negotiations relating to the Arctic?

With the recent release of the "Extracting Equality — A Guide" by UN Women and Publish What You Pay, we felt an even greater need to express our concerns from the perspective of women in the Arctic

AS WOMEN AND RESEARCHERS IN CANADA, WE ARE ESPECIALLY CONCERNED BY A LACK OF AVAILABLE QUANTITATIVE DATA ON HUMAN TRAFFICKING IN THE ARCTIC. REPORTS WITH ANECDOTAL EVIDENCE OF SEXUAL VIOLENCE AND THE HUMAN TRAFFICKING OF INDIGENOUS WOMEN IN BOTH THE CANADIAN AND ARCTIC CONTEXT EXIST.

regions. The first report of its kind, this guide analyzes how best to approach gender issues in the extractive sector to ensure women are involved in natural resource governance models. However, there is no mention of human trafficking in the report. Even so, how is this the first report of its kind?

As women and researchers in Canada, we are especially concerned by a lack of available quantitative data on human trafficking in the Arctic. Reports with anecdotal evidence of sexual violence and the human trafficking of indigenous women in both the Canadian and Arctic context exist. However, little research focuses on the risks associated with a clear demographic shift as resource extraction in the North leads to an influx of individuals from outside the region.

A lack of knowledge, monitoring, and social services is leading us to a problematic scenario. Further, the exclusion of indigenous and non-indigenous northern women from roundtables and policy-making fora, located north and south of the Arctic Circle, strikes us as very unlikely to contribute to an inclusive solution. Although there is no mention of the impact of extractive industries on gender or human trafficking, the 2015 Arctic Human Development Report has flagged similar concerns, highlighting significant gaps in our knowledge of the gendered dimension of changes in the Arctic.

But the question then arises: where to begin with such little information, data, opportunities for participation, collaboration or support? We felt best to start writing our concerns down in hopes of gathering support from others who feel the same.

THE WOMAN SPEAKS LAW

BY JESSICA MAGONET

STUDENT AT MCGILL FACULTY OF LAW

The woman speaks law
to the courtroom of men

she speaks law loudly and proudly
distinguishing precedent
extinguishing dissent
she examines and cross-examines and re-examines the witnesses
and the evidence
she shows no deference

the woman speaks law
for it is the language
she has always spoken
the language that forged
Athena's sword
and siphoned blood
into a pound of flesh

wearing Armani armour
(tailored-tight)
the woman fights,
not for what is right
but to hear her bold voice ring
off marbled walls
and her authority is written in lipstick
red as the blood on her client's hands

her swift tongue is a scalpel
piercing the prosecution
her swift wit is a needle
weaving a hermetic defense

the woman speaks law
and returns home
where she unzips her skirt
unclasps her bra

she returns home
to cold pasta
and to a husband
who asks her for the last fucking time if she even cares about him enough to call
if she is going to be late for supper
she stands awkwardly, her lips half-opened

words tremble
tentatively
at the tip of her tongue.

LAW AND LITERATURE

BY JESSICA MAGONET

STUDENT AT MCGILL FACULTY OF LAW

She had plans for the rest of her life
She wrote them on tiny note cards in tiny letters
She laid each card out side by side
As she lined suits with stitches in the depth of night

He had long curls and a piece of land
Dotted with sheep and potato plants
He had gold coins and slick bills
They fell deftly into her delicate hands

She had his gaze
She had his hand
The white veiled her eyes
In a gossamer web

He had plans for the rest of his life
He professed them profusely to the party members
He had a vision, and now, a wife
He ascended to power in short steady steps

He had the nation
He had her hand
He closed his wife in his mansion on his piece of land

She had a room of her own with a view
A broad, tidy desk and a heavy oak chair
She had long hours in the afternoon

To pen the novel that she had long planned
In the evening, she appeared, on cue
To furnish his parties
To hold his strong hand

When night fell, they lay side by side
And went through the motions of married life

They each held a pen,
They each held a hand
Soon, their words would govern the land.

APPEL À LA DÉSOBÉISSANCE GRAMMATICALE

BY RENÉE BRASSEUR
ÉTUDIANTE EN DROIT À MCGILL

Cours de grammaire 101

Vous rappelez-vous votre réaction, à vos débuts à la petite école, lorsque vous avez entendu pour la première fois quelque chose qui ressemble à ceci : « Le pronom "ils" représente le féminin et le masculin. Même s'il y a un grand groupe de filles et un seul gars, vous devez utiliser "ils" pour représenter tout le groupe »?

Je te dis que dans ma classe, les gars étaient contents, ils avaient gagné… (Et, ce n'était que le début de leur victoire qui s'éternise...)

Cette règle doit être invalidée. Elle ne fait que perpétuer les stéréotypes. Ne fait que laisser davantage d'espace aux hommes dans nos textes, dans nos conversations et dans nos têtes; alors que cette place ne leur revient pas.

Le genre masculin utilisé pour exprimer la neutralité

Dans l'histoire, le féminin n'a pas eu cette chance de représenter le genre neutre, contrairement au masculin, d'où la création d'une inégalité entre les sexes[1]. Privé de cette chance, le genre féminin sera

1 Cameron, 1985; Hellinger, 1990; Pusch, 1984; cités par Irmen, Lisa et Nadja Robberg (2004) « Gender Markedness of Language: The Impact of Grammatical and Nonlinguistic Information on the Mental Representation of Person Information », *Journal of Language and Social Psychology*, vol. 23, no 3, septembre, p. 272-307 [*Irmen et Robberg*]. Voir aussi: Irmen, Lisa et Julia Kurovskaja (2010). « On the Semantic Content of Grammatical Gender and Its Impact on the Representation of Human Referents », *Experimental Psychology*, vol. 57, no 5, p. 367-375.

CHANGER LES RÈGLES GRAMMATICALES NÉCESSITE DU TEMPS, DU TEMPS ET ENCORE TROP DE TEMPS. PENDANT TOUT CE TEMPS, LES FEMMES CONTINUENT À ÊTRE SOUS-REPRÉSENTÉES DANS LES DISCOURS. UN CHANGEMENT DES RÈGLES S'IMPOSE, ET SEUL UN MOUVEMENT SOCIAL POURRA EXERCER L'INFLUENCE ET LA PRESSION NÉCESSAIRES.

peut-être toujours interprété comme portant des informations liées au genre biologique[2]. Il est temps que ça change. Notre représentation mentale du genre biologique d'une personne est construite à partir des indices grammaticaux de genre et des stéréotypes sexistes[3]. Pour s'éloigner de l'influence des stéréotypes, doivent être privilégiés les formes linguistiques non ambigües ainsi que les indices de genre explicites dans le contexte[4]. Toutefois, à l'extérieur des contextes formels où le discours est préparé, puis présenté, l'application de ces moyens peut demander un trop gros effort. Ainsi, il semble presque impossible de se rapprocher d'une représentation masculine-féminine juste et représentative… à moins de trouver des moyens dérogatoires, non normatifs.

Mais alors, le rôle du juriste dans tout ça?

Les juristes sont de grands et d'excellents communicateurs. Ils savent faire passer leurs idées, développer une argumentation convaincante, et on leur attache prestige et influence. Tout cela façonne les contours de leur devoir envers la société.

Les juristes sont familiers avec les règles juridiques et naviguent à travers le système juridique avec aisance. Ils ont toutes les raisons de l'être dans le système grammatical aussi. Règle de droit et règle grammaticale peuvent être comparées. L'une est élaborée par un processus que l'on dit démocratique; l'autre pas. C'est-à-dire que

2 *Ibid* à la p 299.
3 *Ibid*; Garnham, Alan, Ute Gabriel, Oriane Sarrasin, Pascal Gygax et Jane Oakhill (2012). « Gender Representation in Different Languages and Grammatical Marking on Pronouns: When Beauticians, Musicians, and Mechanics Remain Men », *Discourse Processes*, vol. 49, no 6, p. 481-500.
4 *Irmen et Robberg*, *supra* note 1 à la p 299.

l'une est la création du parlement (constitué de membres élus) ou du système judiciaire; l'autre est dictée par une autorité non élue (par exemple, l'Académie de la langue française, Le Bon Usage) et le système judiciaire est inexistant.

L'avantage du système judiciaire est qu'il constitue un moyen de se faire entendre. Il permet ainsi aux règles d'évoluer au rythme des conflits présentés, puis de mettre au jour des problèmes systémiques. Or, les tribunaux grammaticaux n'existent pas. En l'absence de ceux-ci, la question de l'évolution des règles se pose.

En effet, les règles grammaticales sont vieilles de centaines d'années. Changer les règles grammaticales nécessite du temps, du temps et encore trop de temps. Pendant tout ce temps, les femmes continuent à être sous-représentées dans les discours. Un changement des règles s'impose, et seul un mouvement social pourra exercer l'influence et la pression nécessaires. Les règles sont difficiles à modifier, et presque impossibles à réinventer, et ce, d'autant plus qu'elles nous ont été inculquées à partir de de l'âge de 5 ans, et imposées comme des règles auxquelles il ne faut surtout pas déroger. Le non-respect des règles grammaticales engendre des sanctions sociales. Mais alors, le juriste ayant accès à plusieurs tribunes, avec toute la persuasion dont il est capable et fort du prestige qu'on lui attribue, est dans les mieux placés pour initier un changement grammatical.

Les juristes doivent lancer un appel à la désobéissance grammaticale, mouvement en tout point semblable à la désobéissance civile. La désobéissance grammaticale se définira comme suit :

> *la désobéissance [grammaticale] désigne une violation publique, pacifique et conséquente […] d'une règle institutionnelle ou d'un ordre d'une personne en autorité, violation qui heurte des convictions profondes d'ordre religieux, éthique ou politique de la personne, dans le but de respecter la priorité de sa conscience et éventuellement de contribuer à changer […] la règle ou l'ordre social.*
>
> (Adaptation de la définition de désobéissance civile du professeur Guy Durand, 9 juin 2012, parue dans *Le Devoir*)

Rappelez-vous, l'avocat doit soutenir le respect des lois, conformément à son Code de déontologie, mais pas celui des règles grammaticales.

Exemples d'actes de désobéissance grammaticale

Pour une utilisation du genre féminin neutre : débuter son texte par une formulation du genre « Le féminin englobe les deux genres pour alléger le texte »; ou, utiliser le féminin quand le genre de l'auteur d'un jugement ou d'un article est inconnu.

Exercice

Ce texte n'était pas neutre, et ne représentait pas justement les femmes. Je vous propose de faire l'exercice de repérer les expressions faussement neutres, puis de les réécrire de manière à y inclure les femmes. Et à l'avenir, pensez-y.

MONTRER LA PORTE AU SEXISME :

UN REGARD SUR L'ENSEIGNEMENT DU DROIT

PAR SUZANNE ZACCOUR
ÉTUDIANTE EN DROIT À MCGILL

Il y a un siècle, une femme graduait de la faculté de droit de McGill pour la première fois. Ce n'est pourtant que 92 ans plus tard qu'Annie Macdonald Langstaff était admise au Barreau, à titre posthume.

Il y a un an et demi, j'assistais à mon premier cours de droit. Assise aux côtés de 50 autres personnes ayant choisi le droit pour changer le monde, j'apprenais de ma professeure que le droit est la dernière facette de la société à changer.

D'une certaine façon, il n'est pas surprenant que le milieu juridique demeure patriarcal malgré ses allures de parité. Sans doute ne faut-il pas non plus s'étonner de ressentir le sexisme jusque dans la salle de classe, ou même dans les décisions de justice. Ce sexisme, tantôt criant, tantôt insidieux, colore le matériel qui constitue la base même de l'apprentissage du droit; ainsi, il ne peut qu'imprégner les formules, les réflexes et les connaissances de celles et de ceux qui seront les juges, les avocat·e·s, les juristes et les professeur·e·s de demain. À leur tour sources de droit, on peut avancer qu'elles et ils perpétueront les inégalités solidement ancrées dans le milieu juridique, et que ces dernières continueront d'être acceptées sans être remises en question par les générations de juristes futures. Sombre portrait, n'est-ce pas?

Pour échapper à ce cercle vicieux, un enseignement féministe rompant avec le statu quo et confrontant les biais sexistes se fait indispensable.

L'enseignement non sexiste reconnait, tout simplement, l'existence des femmes. Il prend acte de leur présence comme étudiantes, autrices de doctrine, juges, législatrices, juristes et sujets de droit. Cette reconnaissance commande d'abord l'utilisation d'un langage féminisé, c'est-à-dire inclusif, à l'oral comme à l'écrit. Or, les professeur·e·s s'adressent le plus souvent à « tous » ou aux « étudiants », et réfèrent systématiquement aux « avocats ». L'emploi du masculin, que l'on prétend à tort neutre et universel, est un mécanisme d'exclusion. Qu'ils soient conscients ou non, les choix qui dictent le langage portent un message et forment l'imaginaire. Il est plus difficile pour une étudiante de s'imaginer avocate ou juge si cette possibilité n'est jamais explicitée. Le recours aux exemples fortement genrés sont également un frein à l'inclusion, voire aux ambitions, des jeunes femmes. À chaque exercice et à chaque examen, l'étudiante lit et commente des situations fictives qui perpétuent les stéréotypes de genre, situations dans lesquelles, par exemple, elle retrouve pour personnages le patron, l'avocat, le juge, le ministre, le client… et occasionnellement la secrétaire. De son côté, l'étudiant se voit partout représenté et ne remet pas en question la position dominante à laquelle il est destiné.

Parmi les juristes femmes, ce sont peut-être les autrices de doctrine qui sont les plus oubliées. Dans la plupart des listes de lectures obligatoires, elles sont largement minoritaires. S'il est vrai qu'historiquement les femmes ont été exclues (par les hommes) du milieu académique, elles sont aujourd'hui certainement assez nombreuses pour accompagner l'enseignement de la moitié d'un cours et ainsi contrecarrer la majorité doctrinale masculine. Il est tout à fait possible de créer une liste de lecture paritaire tout aussi pertinente et de même qualité que celle qui ne glorifie que le travail masculin. Un enseignement non sexiste doit ainsi impérativement reconnaitre le désavantage historique et actuel des femmes comme académiciennes, et tenter d'y remédier en offrant aux étudiantes et aux étudiants un contenu signé à 50% par des autrices.

Par ailleurs, l'enseignement non sexiste doit, en plus de tenir compte des femmes, s'intéresser aux enjeux qui les affectent spécifiquement.

EN 2015, NOUS SOMMES DES MILLIERS D'ÉTUDIANTES À AVOIR ÉTUDIÉ LE DROIT À MCGILL DEPUIS ANNIE MACDONALD LANGSTAFF. D'ICI MA GRADUATION, J'ESPÈRE AVOIR CONVAINCU L'ENSEMBLE DES PROFESSEUR·E·S DE LA NÉCESSITÉ DE TENIR COMPTE DE CETTE RÉALITÉ.

La critique féministe du droit ne doit pas, comme c'est souvent le cas lorsqu'elle n'est pas simplement ignorée, être cantonnée à la seule séance du cours qui lui a été réservée. Elle doit plutôt, conjointement à d'autres perspectives critiques, servir de cadre d'analyse général. Ainsi, les dimensions genrées des jugements qui traitent notamment d'avortement, de discrimination, d'agression sexuelle ou de divorce doivent être relevées, et les étudiant·e·s doivent avoir l'occasion d'en discuter. Les arguments et expressions sexistes, comme le « bon père de famille » ou le fameux « *boys will be boys* », doivent également être indiqués et critiqués. Lorsque les juges l'omettent, il revient aux professeur·e·s de placer les litiges en contexte, faisant ainsi de la lutte inachevée pour l'émancipation des femmes un facteur incontournable de l'analyse.

Finalement, un enseignement féministe doit favoriser un environnement d'apprentissage égalitaire et non oppressif. Bien que les professeur·e·s manquant de respect à leurs étudiantes ou faisant des remarques grossièrement sexistes soient en minorité, l'expérience des étudiantes dans la salle de classe diffère de celle de leurs collègues masculins. En effet, les étudiantes doivent typiquement composer avec un manque de confiance renforcé par les biais et comportements sexistes de leurs camarades et professeur·e·s. Ainsi, des recherches ont observé que les étudiantes avaient davantage tendance à exprimer leurs idées de manière hésitante, indirecte et interrogative (« je ne suis pas certaine, mais je crois que…», « je me demandais si… », « pensez-vous que…? », etc.) et à parler moins fort et moins longtemps. De leur côté, les étudiants prennent plus souvent la parole sans l'avoir demandée et lèvent la main plus rapidement. Il s'agit d'un problème qui dépasse l'individu·e: l'ensemble de la classe ainsi que l'enseignant·e participent à cette dynamique genrée. En effet, les étudiants sont plus souvent interrogés et cités et reçoivent plus de commentaires, alors

que les étudiantes sont davantage interrompues et contrôlent moins l'évolution des discussions[1].

L'enseignant·e féministe ou proféministe doit observer ces phénomènes et tenter de les modifier. Encourager la dissidence, la critique et le partage d'expériences personnelles peut être un incitatif à s'exprimer pour les femmes. Attendre quelques secondes avant d'interroger un·e élève permet aux plus timides de se convaincre de lever la main. Le ou la professeur·e peut également encourager la participation de tou·te·s les étudiant·e·s en variant les modes d'apprentissage, en incluant, par exemple, des activités en petits groupes, des meneuses et meneurs de discussion préalablement choisi·e·s et une diversité de travaux tant collaboratifs que compétitifs.

Rendre l'enseignement d'un cours parfaitement féministe demande sans doute un grand investissement, mais, en matière d'enseignement non sexiste, des changements très simples comme la féminisation peuvent faire une grande différence. Plus de la moitié des étudiant·e·s en droit de McGill sont de genre féminin, 60 d'entre elles et eux se sont joint·e·s à moi pour réclamer un enseignement non sexiste, et une douzaine de professeur·e·s ont témoigné de l'intérêt envers un projet en ce sens. En 2015, nous sommes des milliers d'étudiantes à avoir étudié le droit à McGill depuis Annie Macdonald Langstaff. D'ici ma graduation, j'espère avoir convaincu l'ensemble des professeur·e·s de la nécessité de tenir compte de cette réalité.

1 « Gender Issues in the College Classroom », Columbia University, Graduate School of Arts & Sciences Teaching Center, en ligne: <http://www.columbia.edu/cu/tat/pdfs/gender.pdf>.

STARTING A FEMINIST LAW FIRM

BY ANDREA TREDENICK
STUDENT AT MCGILL FACULTY OF LAW

Karin Galldin and Leslie Robertson are two feminist lawyers from the Ottawa-based feminist law firm Galldin Robertson. The firm was founded by Karin Galldin in 2007, and Leslie Robertson joined in 2009. I got in touch with them to learn more about what it was like to start and run their firm.

Andrea: *When you have a "feminist" law firm, what does that mean exactly? Do you refuse to represent male clients? Or is your client selection based on the nature of the claim — so long as the case is about fighting classism, racism, sexism or ableism, you will take it, no matter who the plaintiff is?*

Karin: The main components of identifying as a feminist practice are twofold: one is inward looking and reflective about the way that I work and the way that my colleagues work with me, and the relationships we create with our clients. These relationships are meant to be informed by a feminist ethic, so there is an accessibility component to that, but really it is a more collaborative and partnership-based way of working (more so than the conventional "lawyer as expert" dynamic). We organized our office based on beliefs that we really want to embody in our relationships with our community.

The other key of having a feminist legal practice is the outer face of it — what are we trying to use our skills to achieve in terms of our interactions with the legal system? For us, it was challenging dominant

systems rather than focusing exclusively on limited communities to work with. Our definition of feminism, as Leslie and I came to apply it, is sort of the lived impressions of various communities under hetero-patriarchal violence. I would say that largely, overall it was a work in progress over the years. Part of what you do when you identify as having a feminist practice is you commit to being reflective about your role in the legal system and your relationship with clients on an ongoing basis. But it was a sort of an extra level on which you can connect with potential clients and it was really satisfying in that sense.

Leslie: For me being a feminist practitioner means centering the experiences of our clients and working from an anti-oppressive framework. We take direction from our clients and work to empower them throughout these processes by having their voices heard as best as possible. A lot of the time our feminism is about process and how we respect and value our clients' experiences and needs.

We also prioritized advancing files that challenge violence, racism, sexism, homophobia, transphobia, etc. We did represent male clients and we did turn down files that were at odds with our values. We also included a statement about our feminist values in our retainer agreement that we sign with clients. It gives us a good opportunity to talk with prospective clients about how we see the issues involved in their cases and agree on how we would approach things from an anti-oppressive standpoint.

For the most as we very publically and explicitly identified as a feminist practice, our firm attracted like-minded clients.

Andrea: *On that line of that questioning, Alice Woolley wrote about zealous or resolute advocacy in* Lawyer's Ethics and Professional Regulation.[1] *The idea is that you must do more than just advance your client's interests, you must zealously advocate for those interests. Woolley believed that having a clear idea about which clients you are able to zealously advocate for, and those you will not, can avoid a lot of potential conflict. Is there benefit to implementing Woolley's*

1 2nd ed, (Markham: LexisNexis, 2012).

suggestions on client selection, and would you encourage this kind of thinking to other law students with strong leanings towards feminism or other social issues?

Karin: When we first started a few colleagues of mine did warn me to be careful because I could be liable for claims of discrimination because you're not going to be working with, for example, men who have been accused of committing violence against women, and I think the type of issues that Woolley raises are more entrenched in the legal community that we like to admit. I think there are lots of different ways in which lawyers signal to community members the types of clients that they are looking to work with, whether it's a way of indicating that lawyers work with well-heeled clients thereby suggesting a certain income level, or for example the way union-side labour firms signal that they only work for the employee side for clients. Ideologically, I think it is a fiction for us to say as a profession that we aren't selective with our clients. But more generally, there is a tension that I would like us to be able to unpack eventually as feminist lawyers, which is the tension between bringing your own feminist beliefs to working with clients and having it inform your work with clients versus being able to apply a client-centered analysis. I know there's some discourse out of human rights work particularly in the international context around actually expressing some caution for lawyers substituting some of their own values or beliefs for those of their clients and I think this is a tension there that we need to be alive to as feminist lawyers.

Andrea: *Well on a more positive note, on your website it says that you "work in the areas of human rights, civil litigation, family law, and employment and labour law" You also wrote "We are aware that women and trans people can experience oppression on different and intersecting levels." Do you think your firm, as a feminist law firm, is more appealing to clients who are lesbians, transgendered persons, persons who identify as female? Why do you think that is?*

Leslie: We have had clients tell us that they appreciate this approach and value being able to work with lawyers with whom they share feminist values. Most of what brings folks to lawyers are very personal issues and often experiences that can be linked to parts of their identities so I would think it's easier to work with practitioners that can empathize with these experiences and are explicit about understanding the intersections.

Karin: Yes because I think we have been careful to convey that, for us, trans women are women (for example we wanted to convey that gender is a means by which people are categorized and oppressed as much as sex) so there's been an understanding amongst Ottawa's queer community that we are focused on understanding their lived experiences as much as historical definitions of feminist advocacy. But more generally, I think the way that people connected with us was how much of a distance you feel like you are at from dominant systems, and do you feel like an outsider, and if you feel like an outsider, then here's a law firm that messages that we see this system as not entirely aligned with your needs, and with the needs of other communities that have been historically oppressed in Canada. Let's start with them because we won't have to do as much work explaining to them what our lived experiences have been.

Andrea: *Why did you decide to start a feminist law firm?*

Leslie: I was not the brave one who founded the feminist firm. That was my good friend Karin Galldin. I joined her in her practice, first as an associate at Galldin Law and then we later starting working in association as Galldin Robertson.

Personally, I didn't really fit in at law school and wasn't set on articling or practicing. I didn't participate in any recruitment and only applied for a few non-traditional articling positions. After graduating from McGill in 2007 I started a Master's in Social Work thinking that I might look to work in a more interdisciplinary environment. When I was working for a large national union I ended up turning my job into my articling position by asking my boss who was a lawyer to be my supervisor. I called to the bar just under the 3 year deadline.

I left the union to work with my friend Karin. It was an obvious fit as we were already collaborating on different non-law feminist projects (we were in a burlesque troupe among other things), were good friends, and I had admired her work and her firm since she had started it a few years prior.

Karin: I started this law firm, with a friend, because we both had some questions about our home within the legal system. We wanted to be able

I WANT TO SAY TO WOMEN BE COURAGEOUS, BUT BE CAREFUL AS WELL IN TERMS OF FINDING MENTORS AND FINDING SOURCES OF WORK. YOU HAVE TO REALLY BE ABLE TO STEP AWAY FROM THE PARADIGM THAT WE ARE SORT OF ASKED TO BUY INTO AROUND WHO A LAWYER IS.

to work directly with community members in a way that reflected our own beliefs about how to operate in the world while in possession of tools of great privilege. I was pretty stubborn about it — my first year out of law school I told myself that I was giving the system one last chance, or I'd give up on it for good! Now, with my vantage point I realize it's more complicated than that, but it really was a desire to be able to represent myself directly with community members in terms of how I could work with them and what I would like to do for them.

Andrea: *Solo practitioners have previously come to McGill to discuss their experiences starting a firm. The consensus seems to be that it is very hard and requires a lot of sacrifice — both time and money. I'd heard the start-up costs can be immense. What was your economic plan for starting your law firm?*

Karin: I think that's a good question because it is a conversation we need to have with more transparency when it comes to speaking with law graduates who have increasing amounts of debt. As a single woman, without a home, with a very aging and decrepit car, without a life partner, this is where you do become a lot more aligned with small business owners. Banks didn't feel that my business venture was reliable enough to offer me a significant amount of credit on, so the most supportive environment I found was the Ottawa Women's Credit Union, they were the only women's credit union operating in North America at the time (they also now no longer exist) so you have to be able to hustle, to be honest. The general point I want to convey is that you need to be really financially careful, and if you have the capacity to do something like buy a home (which is not accessible to a lot of people as it is, I know), that will really help you in terms of having credit. But I also think that as we move towards more virtual workplaces, solo practitioners will be able to rely on more technologies and won't have as many costs.

Andrea: *So did you ever work from home or was your plan always to immediately purchase office space?*

Karin: My previous employer Sack Goldblatt Mitchell really generously rented office space to me and my former business partner for the first couple of years, and it was a wonderful downtown Ottawa office space, but it also offered camaraderie and informal mentorship that was valuable to me. So I know that over the years small practitioners who have worked from home, or rent temporary office space on an as-needed basis, I think one of the things that these people really struggle with is where to find their community and how to connect with it. So I would encourage people who are opening up their own practices, women who are doing so to balance what you obviously need to be careful about in terms of overhead with your need to be supported, and have access to mentors and peers who will be able to empathize with you, laugh at things that really should be humorous, and make referrals!

Andrea: *When you speak about community, was there a certain point that you became "established" as a known figure and it took off from there?*

Karin: I would say that probably after two years I had established enough of a reputation that I would get referrals from other lawyers, either cold calls or have someone approach them for something that they thought raised an equality issue, or physical or psychological integrity issue, so I had stable source of referrals from other lawyers, also had the reputation in the community of being a feminist lawyer, so if a community member felt that was something they wanted as a characteristic in someone to work with they would call me, and I also had gained the trust of community groups at that point. So I was able to act as a resource for them, if they were looking for referrals, also to have conversations with them around what we were seeing in the community, so like what issues maybe existed in a more widespread phenomena within the community that we were concerned about. This is how we started working with sex worker advocacy groups in Ottawa, which turned out to be a really exciting and creative partnership.

Andrea: *Was there a case where you were able to assist a client above and beyond what they were expecting, or a case where you are particularly proud of how you handled the case?*

Karin: I'm happy with the entirety of what I do. The truth is, because you are working on issues that are really hard for people, not everyone you work with is going to feel great about the outcome. Or not everyone you are able to work with is going to be able to turn around, in all sincerity and thank you for the work you did with them. But if you set that aside and acknowledge that that's part of being involved in this system, there is really no means for me to say big case vs. small because so much of what we did was helping community members with small legal issues. But they were small legal issues that had a big impact on their lives. So really any work that I did that contributed to the dignity of the clients that I worked with, that's my goal. The legal system, the public rights granting institution is a matter of human dignity, being able to connect with it in an empowered way that I was able to do that in the course of my years in practice, and that's my gage, that's what I'm satisfied with.

Leslie: We've worked with a lot of amazing people and I consider it a feminist victory when our work with someone has helped empower them or contributed to a better sense of justice or restitution for them. Sometimes we achieved this through civil suits or human rights complaints that held perpetrators or institutions accountable, or by educating institutions and requiring them to change their policies and ultimately their cultures.

It was a victory every time I helped a client confront her abuser in family court and retain custody of her children. Or the case we intervened in that helped recognized the intended parental project of a queer couple in relation to their sperm donor.

Karin and I were also co-counsel representing a coalition of sex worker organizations in the *Bedford* case, a recent constitutional challenge that ultimately led to the Supreme Court invalidating the prostitution provisions in the criminal code. The *Bedford* trial was a huge victory for pro-choice feminists as it saw the Supreme Court valuing the lives of sex workers and striking down abolitionist laws that made their

work unsafe.

Andrea: *What general, last piece of advice would you give to young feminist law students who are interested in perhaps starting their own feminist law firm?*

Karin: I want to be able to encourage young women to have the courage to start their own law firm; the benefits that you will experience in terms of your personal wellbeing, your place in the community, and the work that you will be able to do will outweigh the stresses that come along with running your own practice and establishing a financial security for yourself.

I want to say to women be courageous, but be careful as well in terms of finding mentors and finding sources of work. You have to really be able to step away from the paradigm that we are sort of asked to buy into around who a lawyer is. Because, in all honesty, some of the best feminist lawyers I know are people who for example work part time in other areas, or you know, have a really good sense of perspective of the legal system that is also accompanied by a good sense of humour. So don't convince yourself that you should only behave a certain way as a lawyer.

I think you will find a lot more space and openness and compassion towards yourself if you allow yourself to imagine all the ways in which you can be a feminist lawyer, rather than try to fit yourself into the limited categories that dominant belief systems endorse about lawyers in Canada.

CONTOURS AIMS TO MAP AND SHAPE THE INTERSECTION OF WOMEN AND THE LAW. IT IS A SPACE FOR WOMEN'S EXPERIENCES, CONCERNS, DEBATES, AND ASPIRATIONS AND AN INVITATION FOR US ALL TO BE IN CONVERSATION. WE SHARE AND EXPLORE WHAT INSPIRES, ANGERS, AND TOUCHES US.

CES HISTOIRES SONT VRAIES ET VÉCUES. NOUS LES RACONTONS PARCE QUE CE QUE NOUS DISONS DÉTERMINE CE QUE NOUS PENSONS DE CE QUI SE PASSE, QUI DÉTERMINE CE QUI SE PASSERA. NOUS ÉCRIVONS POUR QUE NOS VOIX SOIENT ENTENDUES. NOUS RÉFLÉCHISSONS POUR TRANSFORMER NOS RÉALITÉS.

REMEMBER. REFLECT. REIMAGINE