Contours

volume VII

VOICES OF WOMEN IN LAW
VOIX DES FEMMES EN DROIT

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VOICES OF WOMEN IN LAW
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MCGILL UNIVERSITY 2018

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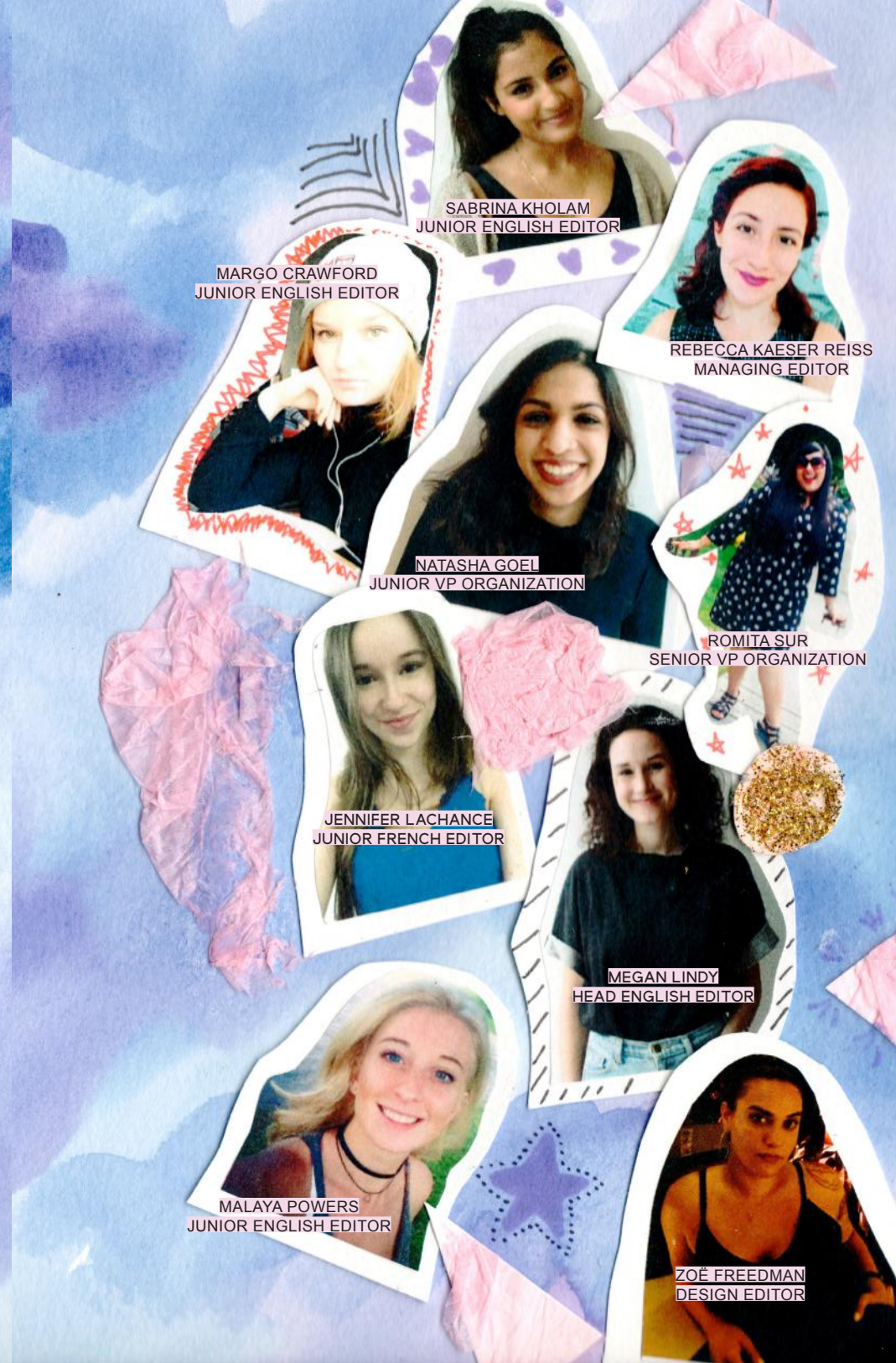
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FOREWORD

You are holding a journal filled with stories of strength and hope. *Contours* allows us to be honest. Honestly, in law school, that hasn't been easy. Like being thrown back into high school with its anxiety and uncertainty, law school can summon demons we thought we'd banished years ago. These demons lurk and linger, always to remind us of our experiences hitting barriers we did not realize we still had to break down. It has not always been easy to reconcile the burning desire to fight injustice and suffering with the need to stay in the wings, train, and wait to licence: when we are lawyers, we will have the power to end it. Many meaningful battles rage right here, within the walls of our law school. Everyday through these halls, between these library stacks, and in our classrooms, we find ourselves surrounded by phenomenal humans whose mere presence in the profession signals strength, vitality, and wisdom. The stories in these pages embody these and many more characteristics because they represent the honest experiences, thoughts, and concerns of tomorrow's jurists. Women of all backgrounds are entering the legal profession at accelerating rates and that means a new type of lawyer is coming - the type you get to meet here.

This year has been marked by many significant events -- every year is, really -- but one that stands out is the shifting approach taken in popular culture towards systemic discrimination and harassment of non-male persons. *Contours* Vol VI spends a great deal of time on

topics that will be familiar to anyone who has followed the #MeToo and #TimesUp movements. Some pieces name these specifically, but all of them speak to each other. If we don't fight racism, we can't fight sexism. We can't be advocates with any kind of integrity if the intersectionality of our identities is not addressed. If we do not change the scripts in our profession, through better recruitment processes, a willingness to accept human emotion, and redefined markers of success and strength, time and culture will render it redundant. Most importantly, we must be willing to accept our failures and listen to the people the law could not or did not protect. Behind each submission to this journal are the stories and lives of real people. Sometimes they are the authors' own stories, and sometimes they are those of people we don't know, but they are all real and they each say something we all need to hear.

For us, there are different things that have proven significant during our time in law school. For example, being more aware than in any other space we've occupied of the full weight and significance of a life lived; or being keenly aware of how your identity and what it means influences the direction a discussion will take. Surrounded by intelligent people of conviction, it is hard to remember sometimes that the "problems" we look at in case law happen to "us" too. Vol VI is important for *Contours* because it not only marks our first submission entirely from outside of New Chancellor Day Hall, but what we would characterise as the most raw issue yet. Some of the stories in these pages will be difficult to read because they recount real trauma. However, we can no longer be willfully blind to all the extra difficulties that come with being a woman in law school. We encourage you to reflect on them, but also take time for yourself when reading them and to take a break if you ever find their contents overwhelming or triggering.

Too much of what the law does erases our humanity -- maybe because some think it is not glamorous enough, or maybe because we hate failure. Take the style of cause in criminal cases. Sure, we identify the accused person -- rightly so -- but in common parlance we repeat *their* names, their stories: "*Ewanchuk*", "*Seaboyer*", "*Jobidon*". In so doing, we give ourselves license not to look at the part that makes us uncomfortable. Vol VI invites you to look. To quell the burning need to fix it, to get legal, and just take a moment to look and listen, and sit with truth in all its significance. In the contours, with the people trying to be heard, we get to live inside and outside of Law simultaneously. We can inhabit the legal world we've already begun to build, and we don't have to pretend that everything is fine. The pieces in this journal express the difficulties of being a woman or a person of colour going through experiences as typical as recruitment, or as shocking as being a victim of sexual assault, but only really understanding the powers and elements at play through our legal education. It is important for us all to remember that it is a legal system, not a justice system. We talk about how the system is not doing enough. It will not, because it was built to keep us out. In *Contours*, though, we are not afraid of stories that destabilize the core of the system, for there is space to learn and grow together. To work toward a future where we are not shackled to our demons, but propelled forward by meaningful and supportive relationships with each other.

Please read, listen, and reflect on the importance of each piece and how it pushes towards a better legal profession.

Thank you for supporting *Contours*. We hope you enjoy Volume VI!

REBECCA KAESER REISS AND ROMITA SUR

A Case for Emotional Intelligence in the Law School Curriculum

ESTHER DIONNE DESBIENS
MCGILL FACULTY OF LAW ALUMNA

Each of you has met with a doctor about a health concern at some point in your life. These concerns can be very serious and potentially life threatening. You are in a vulnerable position, meeting someone who has the expertise to help you. In that moment, what skills do you look for in your doctor? In an already stressful situation, ideally the doctor would reassure you, listen to your concerns, and respond to your needs.

Now, imagine you are facing a legal crisis and you meet with a lawyer for help navigating it. Like being in a doctor's office, you feel a similar sense of vulnerability. The consequences of having your issue unaddressed can also be incredibly serious, like losing your family home, the custody of your child, or even your liberty. What kind of lawyer would you want to interact with? A robot who remembers all the rules? I did not think so. How about one that listens, that cares, that is attentive to your needs and lived experiences?

As a society, we need more emotionally intelligent lawyers, to ensure clients who need the help of lawyers are treated well. Law schools and law societies need to make emotional intelligence a priority.

MY EXPERIENCE

The need for greater emotional intelligence in the legal field was confirmed during my legal clinic course at the Law Faculty. I was selected for a legal placement at a shelter for women. I was told I would encounter many different legal issues—housing, criminal, family, immigration—and that most of the clients would also be facing other serious issues such as homelessness, domestic violence and mental health challenges. Before starting my placement, I tried to review these areas of law. What I did not realize at the time was that substantive law would be the last thing I should have worried about. It was the interactions with the clients that I would be the least prepared for.

On my first day, I had many client meetings. I froze. The women I met were facing very complex situations; some were in crisis, many really needed to talk. I did not know where to start. What would I have needed in my law student toolbox to know how to react?

I know that some people are "taught" how to swim by being thrown in the deep end, however, I appreciated the safer alternative of taking baby "strokes" through swimming lessons. I think that starting with baby strokes is a more effective way of learning something new before diving into the real world to put your skills into practice.

WHAT WE NEED

Considering that many law students end up practising law, law schools should make room for a new course on emotional intelligence. This course could address topics such as empathetic lawyering, active listening, lived experience, trauma, and mental health.

We learn the theory, but the practical skills are often neglected. Law schools should foster practical skills—we owe that much to our future clients. At McGill's Faculty of Law, using the framework of the legal clinic course would be a good place to start. In addition to having the practical portion of the course which consists of working with a community organization, the legal clinic course could have an in-class portion in which students could discuss systemic issues and perfect relational skills through hands-on exercises. The in-class portion could even be available to all, so that anyone could take advantage of a course which aims to develop practical skills.

Law schools should start emphasizing these important skills because training future lawyers to be more in tune with their emotions will improve client interactions. The adversarial system is flawed and creates a tension between opposing parties, but this tension should not extend to the client-lawyer relationship. We need empathetic lawyers.

"Lawyers should listen with their hearts, not just with their ears."
- PATRICIA SETH

THIS WOULD BENEFIT CLIENTS

Clients are often unhappy with the way their lawyers interact with them. Patricia Seth, who was a representative plaintiff in a class action suit against Ontario for the abuses experienced at the Huronia Regional Centre institution, came to speak to my Disability Law class (a rare occasion to hear directly from the actual parties in law school). Seth said, "lawyers should listen with their hearts, not just with their ears." I thought that was so beautifully put, and a course on emotional intelligence would help students develop the skills to thoughtfully listen to their clients.

Individuals do not trust lawyers. I remember telling people from my hometown that I was going to law school, and many jokingly responded something along the lines of: "You must be a good liar." The common perception of lawyers is not great. Consequently, repairing the damaged relationship between lawyers and clients might help change this perception.

Lawyers should be sensitive to the lived experience of their clients. This includes considering their identity, challenges, and oppression. Mari Matsuda said in her talk on *Multiple Consciousness as Jurisprudential Method* at Yale Law School that lawyers should choose "to see the world from the standpoint of the oppressed." It is about putting yourself in the clients' shoes. Lawyers should therefore think of—and be sensitive to—all the emotions flowing through clients, who, if they need to be talking to a lawyer, are obviously feeling an array of emotions.

THIS WOULD BENEFIT LAW STUDENTS AND LAWYERS TOO

Law students are generally unhappy in law school. Many lawyers are not satisfied with their work environment. This reality has been studied extensively, and the conclusions are usually along the same lines: law students and lawyers struggle with depression, anxiety, sleep deprivation, and substance abuse, among other things. A University of Toronto study that will soon be published found that successful lawyers were more prone to mental health challenges. Having a course on emotional intelligence would not only benefit clients, it would help law students recognize their own emotions, and develop tools to better respond to them. This could extend to their legal practice.

It is time to challenge the status quo; it is not helping anyone. If law is a human endeavour, lawyers need to add some humanity to their practice, particularly when their clients have personal stakes at play. Let us change our curriculums and priorities to include emotional intelligence because the legal profession must evolve for the benefit of all.

Telling Each Other's Stories

ALIAH EL-HOUNI
MCGILL FACULTY OF LAW ALUMNA

as a young girl, i recall being a subject of discussion among my peers. one day, on my way home from school with my siblings, i heard two boys in my class having a heated argument about me.

I was not particularly close to either of them; we did not share a homeroom or a friend group, but I knew them by name and reputation, and we often took a similar route home. On this particular day, they were walking just behind my siblings and me, within easy hearing distance (a fact I believe they were well aware of) arguing about whether I was white or black.

The boys, clearly aware of their audience, took on the debate with a lot more fire than they probably felt. Of the two, one was black and the other was white, and each had taken the position that I shared their racial identity. With very little real argumentation, a great deal of repetition, and raised tones, they debated this issue to no firm conclusion as we walked home.

I think back to this experience sometimes because it was not the last time that my identity would be the subject of debate. Locating myself within the scripts identified by the people around me has never been easy. I always felt less like I was trying to find my way, and more like I was trying to make one.

As a young woman entering the legal profession, the idea of path-making is far from original. Fighting against the scripts of our profession is, however, a difficult task. Similar to the debate of my childhood classmates, the legal profession is filled with dichotomies, which are defined by their own rigid scripts: public or private; crown or defence; billable or pro bono. The space in between these choices often seems non-existent. Further, legal and political feminism is littered with similar dichotomies. Polarized stances are not uncommon and scripts of what it means to be a certain kind of feminist are prevalent.

My own experience of law school and its associated activities has been one of navigating these scripts. I have been incredibly fortunate to have the opportunity to meet and engage with people of many different lived experiences and histories in my time in law school. I have learnt about perspectives that I had never before encountered, and connected deeply with individuals who have shared pieces of their lives with me in ways that will never leave me. I have come to see the complexities of their stories, and the inadequacy of the scripts that might be used to describe them, or that they may be expected to follow.

These experiences have helped me see that we need to be considerate of how we tell each other's stories. As future lawyers and jurists, a lot of what we are being taught to do is about engaging with other people's stories. Their lived realities are the basis of our profession. As much as that fact may be buried beneath laws, precedent, and politics, I think many of us hold it close to our hearts. How we tell those stories in the legal context is often highly fractured. Individuals and experiences are reduced and identities are erased in order to create a familiar formula and lead to an expected outcome.

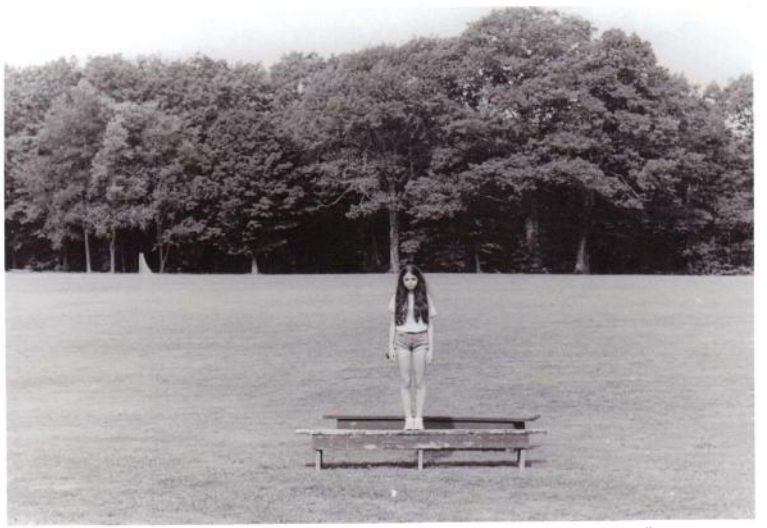
This happens in law, but it also occurs between friends, colleagues, and feminists. In telling each other's stories, sometimes we paint each other with scripts that can obscure or even erase complexities that lie beneath the surface. Often this is done in an effort to make sense of each other's conduct, or, to cast another in a certain role within a familiar narrative. I think that our most important responsibility as legal professionals will be to try to avoid doing this. When faced with the stories of women, men and people of all genders and racial identities, heritages, and sexual orientations, how do we avoid fracturing their stories when so much of our profession is governed by scripts?

> "WE NEED TO BE CONSIDERATE OF HOW WE TELL EACH OTHER'S STORIES."

My time in law school, the people I have met and the advocacy and academic work that I have done has helped me appreciate how inadequate these scripts are; how much about the experiences of the people around me they hide or erase, covering them up with an accepted narrative that flattens out their identity and sense of who they are. This has been a significant struggle for me throughout my life that I have been able to confront in law school. I have often seen myself placed into scripts, as I was when my classmates debated whether I was white or black. Honestly, I still struggle with how to tell my own story today.

I believe that there is a new wave of feminism and advocacy on the horizon. It is one that will be less concerned with locating each individual's identity and fixing them within the scripts that come

along with them, and more concerned with looking at the picture as a whole. It will look to the past, and account for the ways in which the violence of our history has shaped our interactions in the present. Its focus will not be on holding individuals responsible for that past, but rather recognizing the harm it has done and working to undo it. It will require telling new kinds of stories when faced with old acts of discrimination and violence; changing language, changing narrative, and making space for the things that lie beneath the surface.



ZOË FREEDMAN

In some places, this is already happening, but in our profession, I believe that this change will come slowly. Following scripts that assign responsibility and erase context has been the way of our legal institutions for generations. I am thankful to have been a part of legal institutions like *Contours* that aim to tell a different kind of story. I hope that there will be more of them, and that by telling and reading each other's stories in the most compassionate and sincere way possible, we will start to move away from the scripts and start to write new stories for our future, and the future of our profession.

Reflections on Race

SARA E.B. PIERRE
STUDENT AT MCGILL FACULTY OF LAW

Defining myself has always been an important way for me to simultaneously create and unveil my identity. For a long time, my badge of honour was being a dancer, then a competitive dancer, and then a dance teacher. Everyone knew about my dancer identity and no one questioned it. For the past three years, I have prided myself on being a law student. Everyone in my life knows about my advocate identity, and no one questions it.

My race, however, *is* something that people question. In countries where most people are lighter than me, like Canada and the U.S., many people see me as black. At summer camp, I would tell my fellow counsellors: "I'm just as much white as I am black…you've seen my mom, and *she* doesn't believe in the one drop rule". When I'm in a country where most people are darker than me, I am often seen as white. In Haiti, one little girl called me "'ti blanc", and in The Gambia, one of my colleagues referred to me as "la blanche". "I'm black too, you know" I told them.

Yes, I am not like you, but I am like you too.

My mom always dealt with the race issues at home. Even though she's the white one. She probably gets it from her mom, who buys me and my siblings exclusively black angels because she wants us to know "angels aren't just white with blonde hair", contrary to what TV, movies and Bible illustrations taught us. My mom told us that we were A-Quarter-Irish-A-Quarter-English-And-Half-Haitian. "No not Asiaaan; HAItiaaan" I would tell my elementary school classmates. That was before the earthquake, back when children didn't know the country existed.

For a long time, I didn't know the word mulatto. That was before mixed kids were seen in commercials and stock photos. When I learned the word, I was happy; *finally, a word that described me*! That was before I learned that it's just another word for a mule. When my high school librarian said, "you're a mutt like me," I was happy. That was before I considered the comparison to a dog. When one white camp

counsellor colleague painted half his face black, and a black camp counsellor colleague painted half his face white, and they, along with my sister and I, presented ourselves proudly at "twin supper," I was happy. *Finally, they accepted me for being both!* That was before I learned about Blackface.

Before I began dating, I didn't know I had to worry about white guys with black or mixed-girl fetishes. I didn't know I had to worry about black guys who exclusively dated light-skinned girls. I didn't know that my *#mixedkids #throwbackthursday* Instagram posts of my siblings and I playing on the beach, would become part of the trending and "novel" phenomenon of mixed babies. My pictures were from before people were obsessed with mixed babies.

What I knew then, is the same I know now: who I am. What I knew then, and what I know now about my identity, is still sometimes rejected. What I wanted before was validation for my existence. What I want now is assurance that the acceptance of my identity is not a fleeting trend.

What do I know?

I know that I am mixed. I know that I am biracial.

Yes, I am black. Yes, I am white. I know that I am black and white.

No, I am not black. No, I am not white. I know that I am not black or white.

I am both, and neither, and something else.

That's what I know now.

I Do Not 'Fit'

BRITTANY WILLIAMS
STUDENT AT MCGILL FACULTY OF LAW

I imagine myself standing in front of a mirror preparing for a law firm recruitment event. Instead of practicing my best flashing smile, I am making sure that none of my natural hair is out of place. I should be going over my firm flashcards, but instead I am coaching myself on how to not be too loud when I am there. Black women are often caricatured as overly boisterous and taking up a lot of space—should this consume me? I am preoccupied, but not by the things that *should* preoccupy me— instead I am caught up in how my Blackness will be perceived inside some of the biggest law firms in the city and I am terrified. Terrified that the work I will do to get recruiters to like me will be all for naught—that they have already discounted me because of my skin. That I will be let down because, ultimately, they are looking for 'fit'.

The elusive 'fit'. The intangible thing that lands you the spot. The ever-indescribable method with which firms choose who will join them, who will become one of the many, who will belong. 'Fit' has been described to me in so many different ways. When it all boils down, 'fit' is the way in which firms choose their candidates. 'Fit' could be how similar your work ethic is to the associates. It could include how much the hiring committee sees themselves in you. 'Fit' could even be an arbitrary gut feeling. No matter how ambiguous 'fit' may be, one thing *is* for sure—fit is not for people who look like me.

There is no question that White students still make up the vast majority of those entering law school. McGill University's 2016 Faculty of Law entering class was made up of only 21% of students that self-identified as visible or racialized minorities. It is also safe to say that out of those entering law school, a large fraction will become lawyers. These lawyers, given the prestige and notoriety of an institution like McGill or other noteworthy law schools, will fill the ranks in the largest law firms in major cities. It can be assumed, then, that the vast majority of those in large firms are probably White.

"My people, for all the hardships we have had to face, are resilient. History shows that we cannot be kept down for too long."

What does this mean for recruitment? If we as students are to 'fit', do students of colour not sit at a disadvantage by the mere fact of being just that—a student of *colour*? A quick look at the websites of some of the biggest firms demonstrates a disproportionate number of White students making up the ranks of those hired each year during OCIs, Course Aux Stages and other recruitment processes. Is it that students of colour are not applying? Is it that they are underrepresented in the applicant pool in general? If these are the ways in which recruitment processes are panning out, do we not owe something more to students of colour to increase their numbers? Or is it that, at the end of the day, the people who are hiring do not see themselves in students of colour and overlook them, thus leaving them in the dust?

I spoke to a Black McGill Law alumni, who went through the recruitment process not too long ago. He had a lot to say of the process, and most was positive. He went through the Montreal process twice. The first time was as a 1st year law student, but both he and the hiring associates knew he was not yet ready for the commitments of summer work. His second time around, he felt that partners and associates were receptive. He could not perceive any biases in the conversations he had. Some lawyers went as far as to say that he would receive an offer from their firm. He spoke fondly about his upbringing and how 'not getting things because you are Black' was not a rhetoric that was entertained in his home. So, he went into the recruitment process with the mindset that he would get what he merited.

Ultimately, he was not successful.

He spoke quite candidly of this fact. He knew he had worked hard and recognized that a lot went into the decision-making process for any firm hiring students. He hypothesized the reasons he failed to gain employment. One word that he brought up that struck me? "Fit." He reiterated what I have heard many times – though he did not really know what it was, what he *did* know was that 'fit' was quite homogenous. That whatever criteria the firms were using, it almost always skewed in favour of Whiteness.

I should make it clear that this is not meant to be a "woe is me and my people" piece in which I talk about how hard it is to be me in this process and profession. That is not up for debate here. My people, for all the hardships we have had to face, are resilient. History shows that we cannot be kept down for too long.

What I want to stress is that regardless of the work that students of colour do to push themselves forward, neither the recruitment process nor the profession were ever built with us in mind. As such, considerations should be made for visible minority students and the role that 'fit' plays in the process. There are so many different ways to make a change—increased representation of people of colour on hiring committees, firm employment equity policies or, at the very least, a general desire to work toward sensitization to the plight of students of colour in the recruitment process. Recruiters, administrators, students and all others who play a part should take time to consider how these processes are different for students of colour and what they can do to level the playing field.

I know that my forthcoming applications do not paint me to be the most competitive candidate. For all the good that my charm and quick wit does, grades and language skills are important and I am not quite 'there'. I know that, despite the colour of my skin and my heritage, I am fighting an uphill battle. My worries lie less in my inadequacies and more in the fear that, if I *am* selected, I may become less of who I am to fit in a box that was never intended to include people like me. That I will be whatever negative things they think of me, and that I will let my people down and further perpetuate the underrepresentation of Black students like me in places like those.

Or maybe, just *maybe*, everything will work out and I will be forced to conquer one of the most challenging things in my law school career. Until then, I will do my very best to prepare for something I was never expected to be 'fit' for.

OCI's? Swipe Left.

BY AN ANONYMOUS UNMATCHED 3L

INTRODUCTION

As you stare at your phone, willing it to ring, you wonder if you're the only one who really felt that spark… Maybe it was all just in your head… Why didn't the firm reciprocate your feelings? You really felt something, and for once you thought it was real. What went wrong? Firms may tell you that "there is no satisfactory answer," and that "it was a numbers game," but I'm here to tell you the truth.

Legal employment recruitment—particularly the on-campus interview (OCI) process—needs to change. This stale and unfair process needs to be completely shaken down to allow new people the chance to succeed. Much like the dating game, employment recruitment has winners and losers. For the losers, it appears that there is no consolation. This is a game of luck, one that largely favours men.

PROBLEMS WITH EMPLOYMENT RECRUITMENT

Legal employment recruitment is not a chance to genuinely get to know candidates. OCI day might leave you feeling like you were great on paper but not memorable as a person: good grades, extra-curricular activities, interesting work experience… What more could you have done when you have spent countless hours primping and refining your profile?

17 minutes is not enough. As Bay Street legal recruiters have articulated, it is difficult to make a genuine connection in so little time. OCIs are like speed dating—the process rewards candidates who quickly make an impression (the "knight in shining armour"). This is not the right way to hire employees; biased interviewers direct shallow conversations by asking subjective and often trivial questions. Therefore, OCIs are based on first impressions at best unless you're one of the lucky few with strong personal connections.

Firms look for a conversation that "flows". As successful candidates and many career offices have repeated, if they can see themselves wanting to grab a drink with you after a long day, then you've succeeded. This short-sighted popularity contest undermines important academic values, such as getting good grades and being a well-rounded person. Although it can be argued that many facets of life are based on popularity, commercial firms need money makers, and money makers are not successful because of their popularity. They bring in clients because of their ability to work hard, pitch services, make difficult decisions, and understand clients' needs in an increasingly entrepreneurial profession. Thus, students should be tested on these kinds of skills in a concrete way, rather than placing so much (subjective) emphasis on personality.

Firms often send white, heterosexual, upper-middle class men to interview candidates. I would say that 80% of my interviewers fit this profile. We made polite small talk, but nothing too memorable (like scraping the bottom of a barrel when you're on an awkward first date). It is challenging to establish a connection with someone so different from you. For example, one male lawyer told me during an awkward interview that "if you can't talk sports, you'll never make it in law!" I guess good grades, extra-curricular activities, and good interview skills aren't enough to be taken seriously.

Another part of the problem is that interviewers ask inconsistent questions. They ask some students fluffy questions ("so, where do you go to the gym?"), while asking others to share their greatest accomplishments. Naturally, those who shared their accomplishments had a greater opportunity to market themselves. If interviewers aren't asking standard questions that allow us to tell them what they want to hear, we cannot succeed.

The OCI process is much kinder to male law students,

particularly those who remind interviewers of their younger selves. If I were a man, no one would have insinuated that I am uptight and "almost too polished." Rather, I would be "serious," "focused," and a "leader." Interviewers tend to treat male candidates like buddies. As one successful candidate mentioned, partners were making dirty jokes and swearing with him from day one. They would never do that with a female candidate for fear of getting into trouble. Naturally, conversations are much more "organic" (as recruiters put it) for male candidates, and in a personality contest, this is the key competitive advantage that men possess. This perpetuates a workplace culture that normalizes rape culture, thereby alienating non-male employees. Perhaps it is in male employees' interests to recruit those students who will not encourage them to change this culture?

To make matters worse, firms cover it all up with the concept of "fit". Many candidates are not given a fair chance because they do not "fit" the mold. Think about it. You've got good grades, leadership skills, communication skills, research skills, enthusiasm, and the ability to work in teams. You're great on paper, but that spark apparently just isn't there. Somehow, you don't fit in. Even though you match the criteria they put up on NALP. Now, why is that? I know! Fit is a malleable, pathetic excuse to exclude candidates who could challenge workplace norms. It merely covers up this inherently flawed system.

CONCLUSION: WHAT CAN WE DO TO FIX THE FLAWED PROCESS?

We need concrete criteria to evaluate candidates (the *lawyers* of tomorrow, not the *buddies* of tomorrow) rather than fit and personality. The current process perpetuates unfairness in the profession, and we must take action. Because this isn't Tinder (that's a whole other op-ed). This is our careers. This is our chance to change a workplace culture that has only ever benefitted one group in society: the white male. That needs to change.

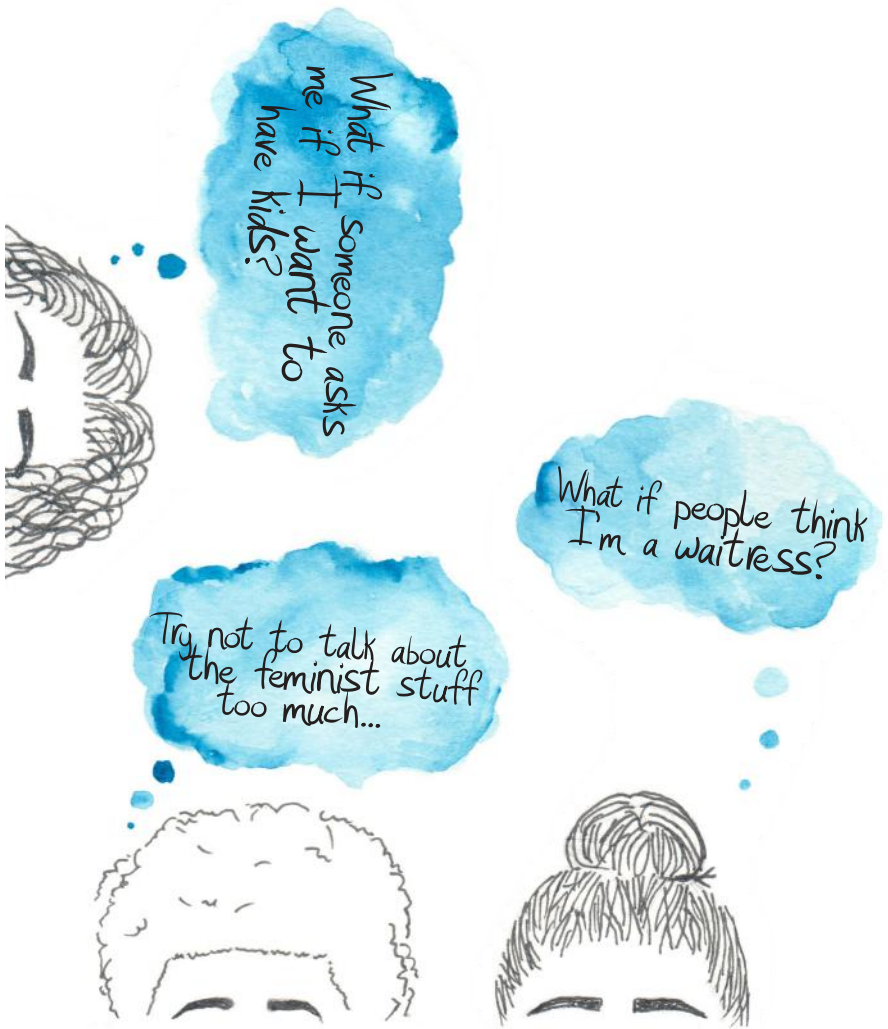
If you got a job, congratulations! You have found your

match (for now). Surely you have worked hard to survive law school. However, it's important to recognize which privileges made it easier for you to get a job. If you don't believe me, just look at Davies' 2018 Toronto summer class (on their website). Out of ten summer students, only three women were hired, only one of whom is a woman of colour. When you are involved in future recruitment, be mindful of why it was easier for you. *Appreciate* candidates' differences. Seek out diversity. The profession needs it. Private practice must change and it starts with recruitment. Firms ought to start by asking standard gender-neutral questions, using the same rubric for everyone.

If you didn't receive an offer, remember that OCIs are not the only way to find work. That dream job is out there staring at the stars and wondering where you are. Maybe you're just not looking in the "right" direction (I hate when my mom says that, but she can be right sometimes!). Your failure in a skewed OCI process does not make you a bad future lawyer. And you still deserve to find that perfect match. You must continue to fight, whether you move onto another recruitment process or pursue another avenue. Keep doing everything you can to smash that glass ceiling. If we work hard enough, we can eventually achieve our goals and fix the legal recruitment process.

On our Minds

ANNA KIRK & GABRIELLA SETTINO
STUDENTS AT MCGILL FACULTY OF LAW



"The fishbowl effect"

A feeling that your every move is observed and scrutinized. Those who have participated in recruitment processes know the feeling all too well, and find themselves looking inward to an uncomfortable degree.

A Day in the Life of a Female 1L

ADRIANA CEFIS
WITH CONTRIBUTIONS FROM THE WOMEN OF 1L
STUDENT AT MCGILL FACULTY OF LAW

5 AM Wake up early to spend 33 minutes blotting different foundations on my face so that I look natural enough not to scare anyone, but not so made up that people judge me while I spend anywhere between 2 and 16 hours in the law library.

I'm sure men don't think about this.

Honestly, the gender pay gap should be reversed to compensate for the time I spend on this stuff. Maybe if I sell out and go corporate I'll add this time to my billables...

5:33 AM How is one supposed to dress fashionably in winter? I see all of these other women in kick-ass heeled boots and I mean, good for them, but if I do that I will actually slip and split my head open.

Why is this white blouse so sheer?
Does it look unprofessional if I put a tank top under it?
Do I wear a skirt and tights and freeze my legs off?
I guess at some point they'll become numb and I won't feel them anyway.
Dress pants it is.

I swear it's easier for men to dress professionally.

Maybe I should invest in a pantsuit

6 AM Grab a coffee and head to the library. Resume reading.

10 AM Oh. My. God.
I've been so engrossed in my studying that I didn't realize I got my freaking period

and I bled through my one pair of dress pants. Great.

On the bright side I've marked my territory - those third floor seats are hard to come by

10:25 AM More coffee. More life. :)

10:35 AM Constitutional law, question period.
How is it that whenever someone puts out a microphone white men magically appear behind it?
Honestly, where's the diversity?

10:38 AM $ I bet you 5$ that if one of my female colleagues raises her hand the first words out of her mouth will be: "Sorry / I was just wondering / Quick question..."
Why do we feel the need to justify or apologize for taking up time and space? We deserve to be here. We shouldn't have to worry about being seen as overly assertive or annoying.

10:41 AM Also, why is this person talking about interjurisdictional immunity? Isn't this case about paramountcy?

I should ask. I should be the change I want to see in this world.

10:43 AM "Sorry, I was just wondering, why would this not be a case of paramountcy?"

10:44 AM I AM A HYPOCRITE.

12 PM Head to the basement to grab [redacted] lunch.
Why aren't there any healthy vegetarian options?
Why does everything have so much sugar in it?
Grab coffee and a banana instead.

3 PM I just wasted 3 hours of my life explaining how feminism isn't evil to a male colleague. He kept pressing on because "it's so important to understand these issues from the perspective of a woman."
My dude, does my gender make me responsible for educating you on this topic? Go read a book.

3:02 PM Back to the library.

3:46 PM THREE HOURS. At a rate of 1 page per 1.3 minutes I could have jumped [redacted] 138.6 pages ahead in my readings.

3:47 PM I could have watched three episodes of Narcos.

3:48 PM I could have drafted a proposal for a cool research project. I could have changed the world.

3:49 PM I should [redacted] probably focus.

4:35 PM Something else I've been thinking about: the faculty hosted a speed-meeting event with female lawyers and one of the guests stated that women can have everything they want, family and a career, just not all at once.
Seriously though, I want children but when am I supposed to find the time to grow a human when I have to get through four years of law school and articling? It's not like I can be taken seriously if I go on mat leave a year into a new job either. So four years of school, one year of articling, four years of working for a firm if all goes according to plan

that brings me to ... 9 years.

I'm just trying to get through first term of law school, why do I need a nine-year plan?

4:36 PM NINE years. And then who takes care of the kid? I didn't work that hard to stay at home.

I should find a house-husband.

4:36 PM So, where does one find available and datable men here???

5 PM Why am I shaking?

5:01 PM Because I've only eaten coffee and a banana today.

6 PM Quick gym break then it's back to the library. Honestly the only break I feel justified in taking.

11 PM Time to leave the library.
In our first week we got an email proudly proclaiming the library is open 24/7. It also warned against studying there alone late at night as a woman. I love it when my University uses scare-tactics to reduce harassment instead of addressing it head on.

11:01 PM The scare tactics work, this place is creepy as heck.

11:21 PM Open Netflix.
Consumer feminism is a stain on the movement, I think as I rest my head on

my 40$ Urban Outfitters pillow that says "feminism" in ombre colours.

11:42 PM Close Netflix. I should be studying. I feel like such a slacker. Everyone else works so hard and my friends seem to be absorbing the material.
Do other people take breaks?

12:30 AM Well, time to get a healthy 4.5 hours of sleep.
So glad I'm working this hard for a B.

You Can Have One, But Not Both

VALÉRIE BLACK SAINT-LAURENT
STUDENT AT MCGILL FACULTY OF LAW

I made a life-changing decision last year, and I still battle with its consequences. When I found out I was pregnant, shortly after starting law school, I decided to have an abortion.

Although I have written on this topic before, and have addressed the personal reasons why women may choose to terminate a pregnancy, I have not addressed a systemic issue that may also contribute to women making this decision. As a young woman on the verge of starting a legal career, being a mother seemed essentially unfeasible. The legal profession is still very much tailored to fit the reality and needs of male practitioners. While laws have evolved to ensure women have proper maternity leave and do not face discrimination for being pregnant, motherhood still seems to be a constant fight in the workplace.

Just this week, I received an e-mail from the AADM (Association des Avocats de la Défense de Montréal) saying that it would be addressing the complaints of female defense lawyers who say they have been forced to continue with proceedings despite being heavily pregnant and in their right to postpone them. Women also still face discrimination with regard to being hired by a firm if they are the age women tend to have children. Last year, a colleague of mine told me that she would likely have a hard time being hired as a defense lawyer because criminal law is still very much a “boys’ club”. Hiring a 29-year-old recent graduate seemed counter-intuitive given that she would probably only stay a short amount of time before taking maternity leave. Although only a personal opinion, the sentiment reflects how our field addresses this topic.

The legal field’s reluctance to hire women who may become mothers is indicative of the many types of issues young professional women have to deal with - the profession’s inability to adapt to the realities of motherhood being one of them. The long hours, hectic schedule, and the workload make managing a family an overwhelming task. When I was hoping for reassurance from successful women jurists, I received the contrary. Justice Abella, during a Q&A she gave at McGill’s Law Faculty last year, mentioned that a healthy work-life balance was realistically impossible. She said that the key to managing a family when you are building a legal career is to have a very supportive and present partner. During a lecture given by prac-

titioners for our Legal Ethics and Professionalism course, a female defense lawyer stated that as a way to deal with the difficult choice of having a family or a successful legal career, she decided to freeze her eggs in order to "cheat the fertility clock." I was baffled by this, to say the least. When I had the chance to meet Justice Arbour during my undergrad, I asked how she envisioned the legal world for young women jurists, and her answer was pretty bleak. She told me that although significant improvements have been made, the world of law is still so far behind in this area.

In September 2016, while there were other reasons that informed my decision to terminate my pregnancy, the pressure of feeling like I would be seriously compromising my career was on the top of my list of arguments in favor of having an abortion. Reflecting on this now, I sadly still feel like the argument stands. I wonder if there will be a time in my career when I will not feel like I am sacrificing my success for my desire to have children – The vision presented by the women jurists before me tells me that this will not be the case

I do not feel that women are properly supported in their choice of motherhood when they are striving to become successful jurists. Actually, I often feel that it is a case of "you can have one, but not both." The few times I have mentioned this to male friends or colleagues, I have been told "Well, that's just the way it is. It sucks but biology made it so that women must bear the burden of pregnancy." Oh! Trust me, we do – and in many ways they will never even fathom! It seems ridiculous to me that women must also pay the price of this "natural lottery" with their career. We are in 2018, and there is no excuse for not doing better in this area. With all the worries that come with pregnancy, the fear of jeopardizing one's career should not be one of them.

"Yes" Means "No": How the Concept of Consent Was Weaponised Against Voluntary Female Sex Work

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Over the past few centuries, sex work has gone from an acceptable 'vice', to the target of Victorian legislation, to an act of female resistance. Since the 1970s, its abolition has been construed by some in academia as necessary for achieving gender equality. Though the abolitionist movement has not retained the momentum it built during the last two decades of the twentieth century, there is still a significant number of authors proclaiming the need to criminalize this profession. As this work will show, some of these abolitionists focus their arguments on consent, presenting the concept as either irrelevant to the legality of sex work due to the level of harm inherent to the profession, or as something that all sex workers are incapable of giving due to their lack of agency. It will subsequently be argued that this is but one of the many tactics employed by this section of the abolitionist movement, tactics that together constitute a modern-day moral crusade which attempts to oversimplify a complex experience.

Abolitionist rhetoric relies on numerous studies corroborating the view that sex work surpasses the level of harm one can consent to. For example, celebrated abolitionist Melissa Farley has posited that sex workers are exposed to the following: higher rates of death and PTSD occurrence, at least one life threatening experience, routine harm and chronic health problems.[1] More controversially, Farley has argued that sex work meets and can exceed the legal definition of torture, another practice in which consent has no legal effect.[2] However, it is not only the presence of harm that fuels the abolitionist belief that consent is irrelevant when it comes to commercial sex. For them, sexual acts are not something one can trade in. Instead, they are differentiated from any other type of bodily labour, as the sexual intimacy they involve is supposedly tied to one's self and its commodification is held to be the final stage of self-alienation.[3] As Janice

1 Melissa Farley, "Prostitution, Trafficking and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly" (2006) 18:1 Yale JL & Feminism 109 at 112–115 [*Farley 2006*]; Melissa Farley & Howard Barkan, "Prostitution, Violence and Stress Disorder" (1998) 27:3 Women & Health 37; Melissa Farley, "Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized" (2004) 10:10 Violence Against Women 1087 [*Farley 2004*]; Melissa Farley, "Prostitution and the Invisibility of Harm" (2003) 26:3-4 Women & Therapy 247.

2 *Supra* note 1, Farley 2006 at 114-115, 122.

3 Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988) at 207; Sheila Jeffreys, *The Idea of Prostitution* (North Melbourne: Spinifex Press, 2008) at 176; György Lukács writes that commodification "stamps its imprint upon the whole consciousness of man: his qualities and abilities are no longer an organic part of his personality". See György Lukács, *History and Class Consciousness: Studies in Marxist Dialectics* (Cambridge, Mass: MIT Press, 1971) at 100.

G. Raymond notes, legal systems which do not outright criminalize sex work – much like the Canadian system following *Bedford* – send "the message to new generations of men and boys that women are sexual commodities".[4]

When the public is faced with the image of the sex worker stripped of all agency and subjected to routine harm, abolitionist views can seem sensible, and changing current laws seems necessary. However, one should consider these abolitionist claims with sex work's sociolegal history in mind. Before the nineteenth century, in the U.K. most matters relating to sexual relations belonged strictly to the private sphere, a domain the law could not encroach. It wasn't until the late 1800s that the law began to aggressively intrude upon the private sphere through the regulation of sexual conduct, most notably that of sex workers and men engaging in same-sex sexual conduct.[5] These legislative actions were the response to a moral panic which had constructed sex workers as immoral by virtue of their profession, and blamed their immorality not just for their individual collapse, but for that of the family *and* the nation.[6] 'Social purity' crusades overtook nations like the UK, forcing their legislatures to enact a series of vagrancy laws targeting sex work, with Canada following suit by similar provisions into the Criminal Code in 1892.[7] The move towards moral pluralism in the later part of the twentieth century saw sex work decriminalised in many Western states although activities that took place in public, such as soliciting and advertising, as well as the purchase of services continued to be suppressed in countries like the U.K.

The abolitionist movement's tactics are reminiscent of these nineteenth century moral crusades. The first of such tactics, is controlling discourse. The control of public discourse on the issue of sex work allows for the construction of a social reality in which certain

4 Janice G Raymond, "Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution" (2003) 2:3-4 J Trauma Practice at 322.

5 See Jeffrey Weeks, *Sex, Politics and Society: the Regulation of Sexuality Since 1800* (New York: Pearson Education, 2012) at 85-100.

6 "Purity of the family must be the surest strength of a nation" according to Rev. W. Arthur in "The Political Value of Social Purity" (1885) as cited in Jeffrey Weeks, *Sex, Politics and Society: the Regulation of Sexuality Since 1800* (New York: Pearson Education, 2012) at 91; Max Nordau, *Degeneration* (1892) as cited in Jeffrey Weeks (2012) at 96.

7 Such as the *Vagrancy Act 1824*, the *Contagious Diseases Acts* of 1864, 1866 and 1869 and the *Criminal Law Amendment Act* 1885.

individuals - in this case socioeconomically marginalised women who are the ones most likely to be penalized for engaging in sex work- can be controlled and manipulated.[8] This social construction is done through claims-making, a process which transforms a social condition, such as sex work, into a problem of public concern that requires drastic solutions.[9] Claims-making in turn is advanced by a moral crusade, a strategy that relies on "atrocity tales" about the victims and considers the problem's existence unambiguous.[10] Although the morality that abolitionists rally around no longer stems from the religious dogma that inspired their nineteenth century U.K counterparts, but rather from a supposed respect for women's autonomy, all of the features of a moral crusade are present in the strategy of this abolitionist movement. For example, activists often relay horror stories about sex workers and present the high rates of violent incidents as evidence.[11] However, the body of research they reference is not fully reliable. First, most studies that produce percentages cannot be considered to have empirical results, as the lack of a comprehensive legal framework means the total number of sex workers in Canada is unknown. Second, Farley's studies, which hold a prominent place in the movement, have been disputed numerous times. A report she co-authored was criticised for not undergoing peer review and for having no ethics approval, while the Court of first instance in *Bedford* found that she used inflammatory language, and that she let her opinions guide her research.[12] During the cross-examination hearings, Farley also seemed to dispute the conclusions of her own research by acknowledging that PTSD cannot be definitely linked with sex

8 See Ann M Lucas, "Race, Class, Gender and Deviancy: The Criminalization of Prostitution" (2013) 10:1 Berkeley Women's LJ at 49. Speaking of sex work in the U.S, Lucas notes that "street prostitutes -predominantly poor women and women of color—disproportionately suffer police harassment and arrest […] Thus, although women working on the streets comprise a small minority of all prostitutes, they account for ninety percent of those arrested for prostitution."; Dolores Fernández Martínez, "From Theory to Method: A Methodological Approach Within Critical Discourse Analysis" (2007) 4:2 Critical Discourse Studies as cited by Yuka K Doherty & Angelique Harris, "The Social Construction of Trafficked Persons: An Analysis of the UN Protocol and the TVPA Definitions" (2015) 26:1 J Progressive Human Service at 22.

9 Ronald Weitzer, "The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade" (2007) 35:3 Politics & Society at 448.

10 Joel Best, *Threatened Children: Rhetoric and Concern About Child-Victims* (Chicago: University of Chicago Press, 1993) at 28; Joel Best, *Random Violence: How We Talk about New Crimes and New Victims* (Berkeley: University of California Press, 1999) at 103.

11 *Farley 2006, supra* note 1 at 130 – 131.

12 Macleod, Jan & al, "A Commentary on 'Challenging Men's Demand for Prostitution in Scotland': A Research Report Based on Interviews with 110 Men who Bought Women in Prostitution" (2008), online: http://www.scot-pep.org.uk/sites/default/files/download-files/a_commentary_on_challenging_mens_demand_for_prostitution_in_scotland.pdf ; *Bedford v Canada* (*AG*), 2010 ONSC at paras 354–355, 4264, 102 O.R. (3d) 321[*Bedford*].

work.[13] Third, much like the moral crusaders of old, modern abolitionists do not acknowledge any grey areas in the problem they are presenting, claiming instead that regardless of consent, all sex work exploits women.

> "...the discourse that constructs the sex worker as a victim also presents women and men of higher socioeconomic standings, those most likely to enter academia and thus engage in this discourse, as 'white knights'."

Still, it is undisputable that some sex workers are victims of other people as well as of their own circumstances. However, acknowledging their victimhood through a moral crusade is quite dangerous. The images employed by these modern abolitionists, of the buyer as a heterosexual male and of the 'prostitute' body as a distinct female one, are not accidental. In fact, the gendered ideology that sees all women as victims is perpetuated through the introduction of the category of 'prostitute' within that of 'woman'. Where the sex worker was once constructed as a 'moral deviant' she is now constructed as a 'victim'.[14] This construction too, is not without purpose; victimhood after all necessitates saviours. For that reason, the discourse that constructs the sex worker as a victim also presents women and men of higher socioeconomic standings, those most likely to enter academia and thus engage in this discourse, as 'white knights'. To advance their crusade, the concept of consent thus becomes an agent of essentialisation that perpetuates the class ideology which sees working class women, those most likely to be penalised for being sex workers,[15] as intellectually inferior due to their lack of agency.

A reform of the current legal framework surrounding sex work seems to be the best way to strike a balance between protecting the rights of the victimised and respecting the agency of the marginalised. Such reforms could include the creation of a wider network of programs supporting those who wish to exit sex work, and of more professional opportunities for individuals 'at risk' of entering the

13 *Bedford, supra* note 12 at para 321.
14 Shannon Bell, *Reading, Writing and Rewriting the Prostitute Body* (Bloomington: Indiana University Press, 1994) at 40.
15 Lucas, *supra* note 8 at 110.

profession involuntarily.[16] We must also stop normalizing the use of words with negative connotations, such as 'prostitution', one of many words which have legitimized certain perceptions of sex workers.[17] Hopefully, such reforms will not only make voluntary sex work safer, but will also counter the effects the abolitionist movement has had on the public consciousness by compelling the populace to acknowledge the humanity of sex workers.

16 See Matthews, Roger & Helen Easton, "Prostitution in Glasgow: A Strategic Approach" (2012), online: <http://www.academia.edu/2925588/Prostitution_in_Glasgow_A_Strategic_Review> for commentary on the success of the implementation of such reforms in Glasgow, UK.
17 See Yuka K. Doherty & Angelique Harris, "The Social Construction of Trafficked Persons: An Analysis of the UN Protocol and the TVPA Definitions" (2015) 26:1 J Progressive Human Service at 39, where the authors discuss the need for neutral words that will replace those with negative connotations in relation to victims of trafficking.

Unreliable Testimony: A Reflection on #MeToo and the Cultural Reception of Women's Stories

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Last year's #MeToo movement is a testament to strength in numbers. Through women speaking out in solidarity, previously ignored accusations became public scandals and the pervasiveness of sexual violence became one of the year's biggest news stories. Without in any way diminishing this triumphant moment, I want to examine why the same stories that are poorly received when they come from individual women are accepted when women speak as a group. Early Weinstein accusers were blacklisted and early Cosby accusers were painted as participants in a racism-driven conspiracy, but these same women became heroes after dozens of others shared similar experiences. As these high-profile stories illustrate, the negative reception of sexual assault accusations can go beyond skepticism and into the realm of public shaming. Ordinary women who are assaulted also face silencing and shaming, as evidenced by the chronic under-reporting of sexual assault.[1]

There are many factors underlying this backlash against accusers, but I will talk about the one I have experienced personally: the dismissal of women as "crazy". Dismissing someone's valid concerns as "crazy" is a form of gaslighting- that is, of manipulating someone by causing them to question their sanity and their experience. While especially dangerous in the context of sexual assault, gaslighting can be used against women whenever their perspectives are inconvenient. In my case, my perspective became inconvenient after my friends tried to pressure me into a threesome and guilted me for saying no. I confided in a mutual friend who went back to them with the story, and my friends denied it by convincing everyone that I was crazy and had made it up. They were so adamant that I believed it myself, especially when everyone they told believed them over me. I was ostracized for a while, but eventually I apologized and rejoined the group. I never regained my credibility with those friends,

1 "The Criminal Justice System: Statistics", online: Rape, Abuse and Incest National Network < www.rainn.org/statistics/criminal-justice-system>.

and there was a running joke that I was oversensitive and tended to imagine things.

Prior to this experience, I had heard other women called crazy- often by ex-boyfriends, but sometimes, as in my case, by a group of people- and thought nothing of it. Eventually I came to understand that there are cultural reasons that stories casting women as volatile are easy to accept. The idea that women tend to be less emotionally stable than men has a long history, culminating in the 19th century with the recognition of hysteria as a medical category.[2] As a slur, "crazy" is more or less empty in that it can refer to a wide range of behaviours; it draws upon a broad stereotype of people with mental illness as deluded, dishonest, and irrational. The intersection between sexism and ableism is particularly troubling because sexual abuse can contribute to mental illness and mentally ill women are at a higher risk of sexual violence.[3] Although it is a chameleon concept, shifting according to the demands of the situation, there are two major types of "crazy" women relevant in the context of sexual violence. The first is the drama-queen, an over-sensitive, catastrophizing woman who exaggerates or imagines that she has been assaulted. The second is the manipulative, vindictive woman who fabricates her assault maliciously, as when Amy from the novel and movie *Gone Girl* staged her own kidnapping and rape to get back at her cheating husband. If the aggressor is powerful, then the second caricature is more likely to apply. There are many famous examples: Anita Hill, who broke new ground for women by accusing American judge Clarence Thomas of assault in 1991, was accused of fabricating her assault to undermine his career; Mia Farrow, Woody Allen's ex-wife, was accused of fabricating his sexual abuse of her daughter as leverage in their

2 Ada McVean, "The History of Hysteria" (31 July 2017), online: McGill Office for Science and Society <www.mcgill.ca/oss/article/history-quackery/history-hysteria>.
3 "Victimization: One of the Consequences of Failing to Treat Individuals with Severe Mental Illnesses", (28 January 2017), online: Mental Illness Policy Org < mentalillnesspolicy.org/consequences/victimization.html>. ; "The Effects of Sexual Assault" (6 December 2016), online: Washington Coalition of Sexual Assault Programs <www.wcsap.org/effects-sexual-assault>.

divorce settlement; Lucy DeCoutere, one of the accusers in Canada's high-profile *Ghomeshi* case of 2016, was accused in court of using publicity from the trial to further her acting career. In all these cases, far from gaining financially or reputationally, the women were demonized, as is standard for many accusers of high-profile men. Given this pattern, women would have to be deeply misguided in order to believe that bringing a false assault accusation is advantageous. Yet, the irrationally of false accusations in cost-benefit terms becomes irrelevant when women are stereotyped as irrational, emotionally driven, and dishonest. Their actions do not have to make sense.

Since the crazy woman stereotype is so flexible, virtually any behaviour that deviates from a narrow standard of victimhood can become evidence. This standard renders most instances of sexual violence invisible by narrowing the criteria for what qualifies as sexual assault. It is based on prevalent myths about rape: that only certain kinds of women are raped, that only violent assault qualifies as rape, and that all survivors respond by being traumatized and avoiding the assailant afterwards.[4] The effect has been to make survivors doubt that their experiences qualify as rape, even when they clearly match the legal criteria. When survivors who do not match the standard are brave enough to come forward anyway, they are far likelier than model victims to be stereotyped as crazy. If the assault was not dramatic enough, or was not perpetrated by a stranger, or was "only" harassment, all this can play into the hysterical woman stereotype. If the woman continued to talk to her assailant or had consensual sex with him on other occasions, this can play into the Machiavellian liar stereotype. In the Jian Ghomeshi trial, the defense framed Lucy DeCoutere as a liar by suggesting that she opportunistically "forgot" about sending flirtatious emails to Ghomeshi after the alleged assault.[5] Given the thirteen-year time lapse between the alleged assault

4 "Myths About Rape", (January 2018), online: Rape Crisis England & Wales < rapecrisis.org.uk/mythsvsrealities.php>.
5 Ruth Spencer, "Lucy DeCoutere on the trauma of the Jian Ghomeshi trial: 'After everything I went through, Jian is free'" *The Guardian* (25 March 2016), online: <www.theguardian.com/world/2016/mar/25/jian-ghomeshi-trial-lucy-de-

and the trial, imperfect memory should not have come as a surprise. Implicit in the defense's argument is the idea that a real victim behaves in a certain way- namely, she performs trauma- and anyone who reacts in a different way cannot have been assaulted. It is in this context that DeCoutere's memory lapse looks like an effort to hide essential evidence. In a parallel case, Asia Argento was lambasted by the media in Italy because she had sex with Weinstein on several occasions following her alleged assault. In Ronan Farrow's New Yorker exposé, she explained that she continued the relationship because the abuse she had suffered left her feeling intimidated and childlike in his presence. Nonetheless, Farrow repeatedly distinguished her story as "complicated", as though her contact with Weinstein after the assault in some way made her story less straightforwardly about abuse.[6]

In addition to the credibility issues which women in general face, there are additional burdens placed on racialized women. The Hollywood-fueled "angry black woman" stereotype, for instance, dovetails with the idea that women are crazy; both stereotypes are about silencing legitimate complaints by painting the person making the complaint as irrational and over-reacting. Many of the accusers in the famous Hollywood cases have been rich, famous and conventionally beautiful white women, which means their experience and its reception is not representative. In Canada, indigenous women are three times as likely to be victims of violent crime as other women, and the rate of sexual assault is two times higher for women with disabilities.[7] Unfortunately, the same women who are more likely to be assaulted are also more likely to face intersectional discrimination when coming forward.

coutere-interview>.

6 Ronan Farrow, "From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories" *The New Yorker* (22 December 2017), online: <www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>.

7 Canada, Canadian Centre for Justice Statistics, *Measuring violence against women: Statistical trends* (Ottawa: Statistics Canada, 2013), online: <www.statcan.gc.ca/pub/85-002-x/2013001/article/11766/11766-2-eng.htm#r1>.

The #MeToo movement reminds us that sexual assault is everywhere, even though the stories which inspired it are not about ordinary cases of sexual violence. It is important to remember that preventing backlash by coming forward in numbers is only possible in certain types of cases. Serial predators of the Cosby and Weinstein variety, who primarily assault women they barely know, are not representative of the majority of perpetrators of sexual violence, who generally abuse women they know.[8] If we want more women to feel safe speaking up for themselves, we need to look past the obvious villains and ask how women are being silenced in everyday life, including by people who do not intend to silence women. When I was sexually assaulted, the same friend who had discredited me was appalled, encouraged me to go to the police, and couldn't understand my reluctance. It was painful and ironic to realize that he had no idea that he was part of the reason I was afraid of being disbelieved. Apparently, just as the denial of systemic racism can coexist with hatred of far-right xenophobes, people who gaslight can be just as angry about sexual violence as anyone else. High-profile stories of assault provide a venue for anger that is far away, but what they reveal is a need to look inward and around.

8 Canada, Canadian Centre for Justice Statistics, *Gender Differences in Police-reported Violent Crime in Canada, 2008* (Ottawa: Statistics Canada, 2015), online: <http://www.statcan.gc.ca/pub/85f0033m/2010024/part-partie1-eng.htm>.

When you Realize Your Story is not but a Whisper

ANONYMOUS
MCGILL FACULTY OF LAW ALUMNA

[CONTENT WARNING]

I found out today that you had a baby with your wife—weeks after learning that there were stories about you that roared louder than mine in the nooks and crannies of the bay we both called home. Turns out my stories were mere whispers, and when merged with the others, my stories became a part of a chorus. I am no longer just one woman. We are women. *Plural.*

Getting up off the carpeted-floor to find my knees bloodied from the combination of repeated motions and pressure placed on my back. Being on my stomach and realizing that the home you usually found between my legs no longer sufficed—you were curious and went northward, with little discussion or notice. Realizing that long distance worked for you because it allowed you the freedom to find warmth in other beds—with stories still surfacing to this day. Forgetting your phone was often just an excuse to forget about me while you found another. Learning later that sex need not be so submissive. *You loved me with a love that was not love.*

Although our story knew its own traumas, it's not you who haunts me most while I sleep.

For years, I woke up in the middle of the night either screaming or crying after having the same dream: I would be pacing round and round the living room of the cottage we called home for a summer; the carpet changing to linoleum under my feet and the darkness so thick you could almost swallow it, with the moon being the only source of light. Eventually, I would end up in the bathroom where I would notice blood between my legs when there should not have been. I can still taste the salt on my lips from the tears on my face. My brain foggy. My head heavy. My stomach on fire. Over time, this recurring dream evolved. It started beginning with a man on top of me and a pillow on my face— *and it wasn't you.*

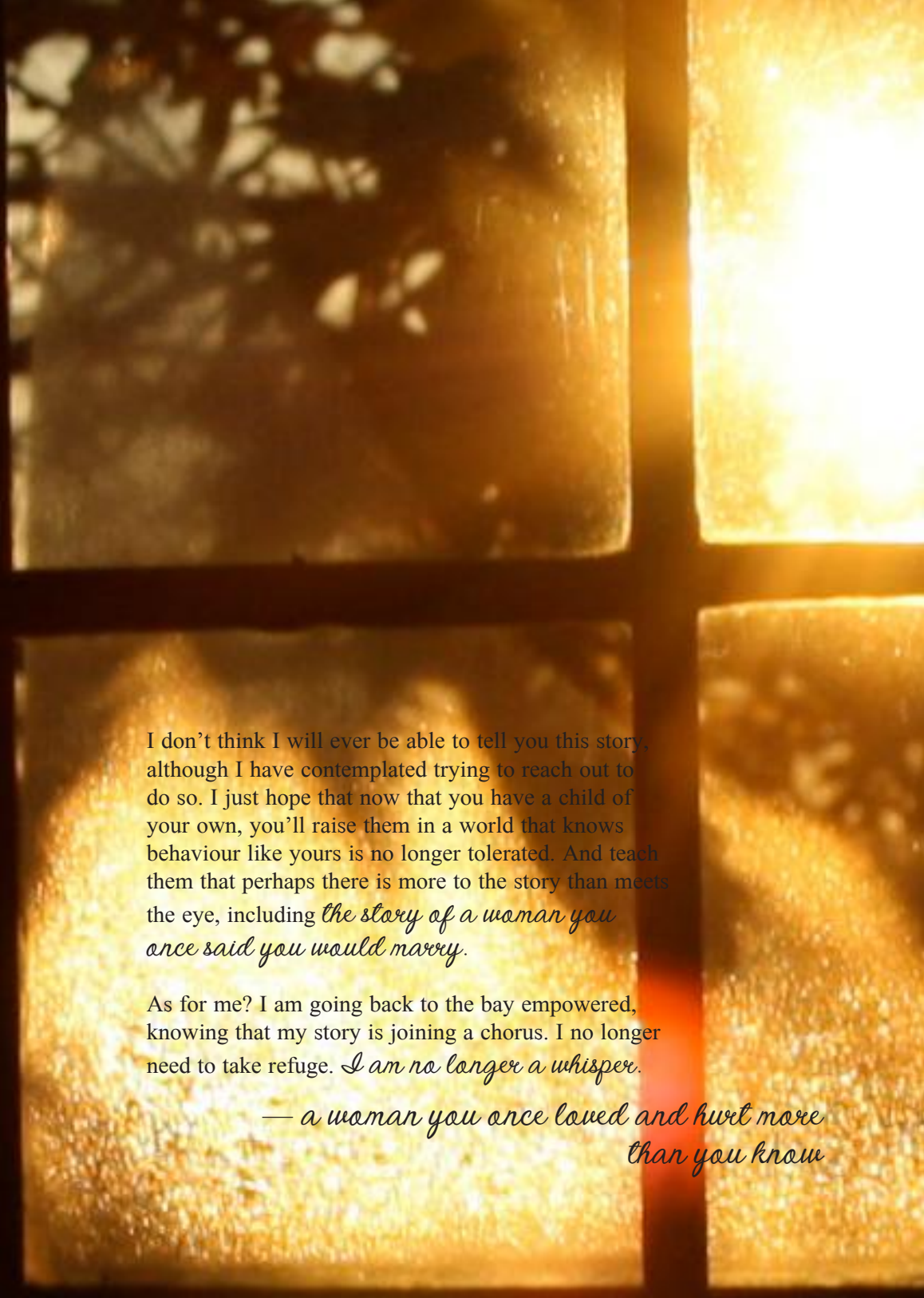
It took me years of therapy to realize this wasn't a dream. We had agreed to share the cottage that summer with the owner, who was present much more than he told us he would be, and would often unexpectedly stumble back to the cottage with copious amounts of vodka in tow. It was usually on those days he would come up behind me and touch me inappropriately in the kitchen. Then of all of

us would sit at the kitchen table eating and drinking more than we should have. I'd often go to sleep and would leave the two of you to keep going late into the night. I told you this made me uncomfortable but housing was limited and we weren't there much longer. When I look back, we chose convenience over security, me thinking naively that you'd be there should anything go wrong. *Where were you that night?*

That man ended up abruptly evicting us for trivial reasons. Sometimes I think that he knew what he did, and just couldn't look at me anymore. I never did see him after that. We ended up finding a temporary place to stay elsewhere. I never did tell you what happened, as by the time I made sense of it all, we had broken up and gone our separate ways. I once tried to reach out to you when I was passing through the bay we both used to call home, but you weren't interested in seeing me. *This story has weighed on me ever since.*

But here I am, about to graduate law school, and I know that I have a weak claim in the courts. I know who that man is, but I can barely piece together what happened, let alone what day it was or the moments leading up to that incident. I have since learned through therapy that brains have the ability to do this—they help you magically shelve your trauma so you can cope and continue functioning. You'll start remembering only when ready. But most days I wish I didn't remember anything at all and that I didn't also have the knowledge of the constricting limits of sexual assault law in my head. *It makes me feel powerless.*

While my legal education has made me realize my fragmented and foggy story would likely not stand the tests laid out by the courts, the people I have met in law school and the experiences I have had along the way have empowered me to tell my story. The same people that have founded and grown this very journal. Perhaps I can't bring forward a claim, and rely on the courts to seek the justice I so crave. Instead, I've opted to channel my energy into kitchen-table conversations and community mobilization. I even kick-started one such initiative on your birthday—a moment that stitched hope and resilience over wounds inflicted during our time together—wounds overflowing with trauma and angst. Before I knew it, *my story found refuge in a chorus I didn't even know existed.*



I don't think I will ever be able to tell you this story, although I have contemplated trying to reach out to do so. I just hope that now that you have a child of your own, you'll raise them in a world that knows behaviour like yours is no longer tolerated. And teach them that perhaps there is more to the story than meets the eye, including *the story of a woman you once said you would marry.*

As for me? I am going back to the bay empowered, knowing that my story is joining a chorus. I no longer need to take refuge. *I am no longer a whisper.*

— a woman you once loved and hurt more than you know

Ava After Unfounded

AVA WILLIAMS
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In the 11 months since "Unfounded" was published, I've had countless brave folks reach out to me to tell me that the same thing has happened to them. It breaks my heart every single time. While I'm never surprised by police (in)action regarding complaints of sexual assault (the statistics in "Unfounded" are too difficult to ignore), I'm continually baffled by the reasoning and flawed logic relied upon by the police officers that unfound these complaints.

We are told that because we were drinking, we consented. We are told that because we can still wear what we were wearing at the time of the assault, we didn't fight back hard enough. If we're too emotional, we are deemed to be "hysterical." If we are not emotional enough, then we are told that we are not trustworthy. Damned if we do, damned if we don't. When we report our sexual assaults, we report them to an institution that relies on swirling contradictions.

We are asked to give our account of what happened, of what we remember. We do so dutifully, straining ourselves to get every detail right. When we can't remember parts of the event, or mess up chronological details, we are called liars. Neurobiology of trauma is not something that is considered inside a police station.

Our rape kits tell stories that are then blatantly denied. We wonder why we even bothered to lay back on an examination table, our legs in stirrups, a stranger peering in between our legs. Why did we go through all that trouble just for a police officer to tell us that no crime occurred? Have these officers ever had to hear their likelihood of contracting HIV from their assailant? Have they ever been told that they have dirt and debris inside their vagina? I'm not a betting woman, but I would place money on the fact that they have not.

We bear the burden of a broken system. Our rapists walk free as the police officers who don't believe us continue to perpetuate rape myths that Justice L'Heureux-Dube decried before I was even born. We are not told that we have the right to request a detective of the same gender. We are not informed about other avenues we can take to achieve some sort of justice.

We suffer financial losses. We lose friendships. We doubt ourselves. We lose trust in the system.

And yet.

WE FUCKING SURVIVE.

In February, the night before "Unfounded" was published in print, I cried to my parents because I felt so vulnerable. What would people say? Would people believe me? Would people still want to be my friend? Would this affect my job prospects? My romantic prospects? These thoughts were essentially the reasons why I decided to speak anonymously. It was too much to share both my story and my identity with the country.
That is, until people started sharing their experiences with me. I realized that I was in a position where I could speak out for

people who felt like they could not. I have been so lucky to have support from my family, my friends, and my Western Law community. I also recognize that I am in a position of privilege as a white, upper-middle class, able-bodied, straight-passing, cisgendered woman. People will listen to me. I had the opportunity to tell me story and finally be heard. I hope now, when marginalized voices speak, we listen to them too. While the treatment I received by the police was unacceptable, I can only imagine what kind of treatment marginalized folks receive when reporting an assault.

The most recent piece in the *Globe and Mail*'s "Unfounded" series reported that over 37,000 cases are being reviewed. Police forces are "committing" to changing their practices and procedures. My police interview video is being used to train officers on what not to do. I really hope that things change. People have asked me why I haven't dropped my litigation against the London Police even though they have committed to implementing the Philadelphia model.

I haven't because unless change is court-ordered, I don't have faith in internal oversight bodies. I haven't because the case is a novel claim and could set important precedent. I haven't because I am still fucking angry – too angry to back down. I fight for the dozens of folks who have messaged me since "Unfounded," and the countless number of folks who haven't. I fight for the future and I fight for the past.
So, for everyone who felt my story resonate with them in some way: I thank you. My rallying cry is "I believe you."

The sword I wield is my truth. I'm ready for battle.

ARE YOU?

Strength: A Photo Essay

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Traditionally masculine markers of strength have long dominated the legal profession. Toughness, aggression, stoicism, and detachedness have been seen as qualities necessary to achieve success. The legal landscape is changing quickly as more women enter the profession. Outdated and sexist conceptions of strength must be overhauled. Strength comes in many forms and from many sources, living in one's individual truth and in one's power is strength.

This photographic essay explores the ways in which a variety of women in the legal profession experience and embody their power and strength.

Fatima

Jumuah (Friday prayers) in the SSMU ballroom was the first time I felt at home at McGill. Moving out for the first time at the age of 21 as a family-oriented person was difficult. Moving out for the first time and into an environment where I was not only faced with the usual imposter syndrome, but also the added layer of being the only visible Muslim woman in our entire entering class with not a single professor that looked like me was another level of difficult. I remember Dean Leckey talking about the importance of our life outside the law faculty and to not let it go after starting law school in his welcome speech. Jumuah is that space for me. In complete submission to God, I find my strength and power to deal with everything else in my life. Reminders here and there about not losing sight of the bigger picture which includes values like generosity, kindness, forgiveness, compassion and empathy. I guess it's odd – I feel empowered because I'm reminded to be and stay humble. I also get the chance to interact with other visible Muslim women who just get it.

To be clear: I am living my dream. I am a law student at the only law school I ever wanted to go to and I really am enjoying the experience. But there are days when it gets tough and on those days, I look forward to Jumuah.

Francesca

Dance has always been an extremely empowering and therapeutic outlet for me throughout my life, and has always made me feel strong and powerful for so many reasons. Inside the dance studio is where I learned to push my physical and mental limits, and learned that growth often comes from challenging myself. Dance has also given me the privilege of working alongside so many strong and inspirational women who have showed me that embracing hard work and supporting each other can produce amazing results. In the studio, all external factors vanish, and focusing internally on my own goals, all of which I have complete control, over is really empowering.

Breanne

I love the Hudson's Bay Company for a lot of reasons, like Bay Days and One Day sales and VIP discounts - but my love for the Hudson's Bay Company goes beyond an appreciation for a well-managed department store. The Bay is a place where I can buy clothes, shoes, makeup, perfume, and feel totally confident in myself. In a lot of ways, the Bay creates a space for me to focus on myself. Basically, the Bay makes me feel like a bad bitch. For me, feminism is about feeling confident in my femininity, and so I find that the Bay helps me be a better feminist. When I was 19 I worked at the Bay for about a year, and this was a time in my life where I was really figuring out who I was and who I wanted to be. In fact, my time working at the Bay was when I decided to actually try to get into law school. Another facet of my love for the Bay is its historical and cultural significance. The Hudson's Bay Company is, of course, a colonial instrument that was used to suppress Indigenous peoples. But, as a Red River Metis, the Bay is a symbol of perseverance and resilience. The classic Bay stripes are a reminder to me that Metis peoples are a strong people, and that they were able to transform a system of oppression into a tool for economic development and cultural preservation. For all these reasons, the Bay is a place that makes me feel strong and powerful.

Debbie

I grew up on the basketball court. It is where I learned about hard work, humility, trust, teamwork, leadership, failure, persistence, success… The lessons I've learned from my years playing basketball have shaped me.

That being said, I chose the court not only for the lessons I learned, but for the ones I get to teach. I think often men see me in the gym and think something along the lines of "she's a girl, so even if she's good she can't be that good". The court is where I get to show them that I can be that good. Better even. The basketball court is where I get to teach men that they should never underestimate a woman who works hard.

Now I'm in school to be a lawyer, hopefully one that will represent clients in court, so for me law school is kind of like a transition from one court to another. Though the court is changing, I'm confident that the lessons taught will stay the same.

Meghan

For long periods of my life, I struggled to find a home for myself. Somewhere I felt free, safe, and strong. I searched for a place both physically and metaphorically.

For a shorter period of my life, I identified Jen as my home. I rejoiced in feeling strong together.

It was when she taught me to stop searching for a home within others that I learned to find a home within myself. I did not need to fit through the narrow doorways of a house built for others; I had built the strongest home for myself within me—one she uncovered, and one where she will always live.

Zoë

I feel most powerful when I am surrounded by other women who empower me - my friends, my colleagues ... but especially my mother. My mother has taught me some of life's most valuable lessons: Don't pick at your pimples. Don't underestimate the value of a comfortable pair of shoes. Don't tell anyone that this old family recipe isn't actually Kosher.

But also: understand your position as a powerful woman and be conscious of how society perceives you for it. Set boundaries with people in your life, respect them, and insist that yours be respected, too. Treat other women as your allies, not your competition - empower them and everybody wins.

My mother reminds me of what it is to feel strong. She reminds me how to make the other women in my life feel strong, too.

There is definitely dairy in the Chicken Paprikash.

Brittany

The Legal Information Clinic at McGill is the place I feel most powerful. It is not only that I wield a certain amount of responsibility and that the Clinic would, bragging aside, fall apart without someone in my position. It is that I have taken this thing, law school, that has thwarted me and made me feel 'less than' and made it into something I look forward to being a part of, something that I can pass on to those in later years than me. The Clinic has been my saving grace and turning that into a powerful place has made me feel like I belong.

Navigating Millenial Dating Culture: A Lexicon for Jurists

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To Those Who Are Concerned,

It has come to our attention that members of the legal community have expressed concern about their lack of literacy with regards to the up-and-coming field of millennial dating culture. As two young jurists, we would like to offer lawyer-friendly definitions of some of the most frequently encountered terms that arise in interpreting obligations within the Millennial framework.

DTR (\ ˈdē \ • \ ˈtē \ • ˈär \), ***v.*** "DTR" stands for "defining the relationship". This is the stage at which parties determine whether the essential terms of their arrangement are clear. Note importantly that the essential terms, when it comes to Millennial dating culture, are never clear.

Hooking Up (\ ˈhůk \ iŋ \ • ˈəp \), ***v.*** The term "hooking up" refers to the practice of engaging in continuous offer and acceptance, but remaining firmly unwilling to be bound.

Dating Apps (\ ˈdāt \ iŋ \ • \ ˈap \), ***n.*** The rising popularity of electronic contracts has led to controversial decisions by the SCC (the Sarcastic Court of Courtship), such as those in *Grindr v Heteronormativity LLP* and *Bumble v Unwanted Sexual Advances Inc.* An individual using a dating app creates a dating profile. A dating profile takes the form of an offer to the world, where the offeror hopes to find an offeree with whom to potentially engage in romantic relations. Dating apps have become entrenched in the fabric of Millennial society.

Swiping Right (\ ˈswīp \ iŋ \ • \ ˈrīt \), ***v.*** The act of "swiping right" constitutes acceptance of an offer to the world. The implied terms of swiping right include: non-exclusivity, non-certainty, and can be terminated by either party at any time with no notice or other formality.

Ghosting (\ ˈgōst \ iŋ \), ***v.*** The tort of "ghosting" has recently presented one of the most troubling and controversial issues that the SCC has seen in generations. The tortious conduct occurs when, after a promise to contract, one party backs out without proper notification to the other. The SCC has identified the normalization of "ghosting" as having opened the floodgates to the phenomenon known as "flake culture".

Flake Culture (\ ˈflāk \ • \ ˈkəl-chər \), ***v.*** Chief Lustice McLovelin has identified "flake culture" as a leading policy concern in this area of the law. It appears that the Court's prior lenience on holding people liable for the tort of ghosting has fostered a culture in which parties are more inclined to make agreements to agree, rather than finalizing the contract immediately.
"Flaking out" is a result of the normalization of the consequences of agreements to agree in Millennial contract law. Flaking out is a common outcome of agreeing to enter into a future contract without the presence of all the essential terms. Agreements to agree are not binding, thus permitting the party to flake out without any legal repercussions.

Friends with Benefits (\ ˈfrends \ • \ ˈwith • \ ˈbe-nə-ˌfits \), ***v.*** The doctrine of "friends with benefits" has been cited as having a close connection to the Millennial aversion to labels (i.e. contractual formalities). The "friends with benefits" doctrine has been construed by some courts as a modern form of unjust enrichment. Friends with benefits takes the form of unjust enrichment when one party is enriched with the benefits of a relationship and none of the commitment, while impoverishing the other party, who seeks commitment, by taking up their time and effort. Unjust enrichment will not be found in cases in which the liable party can justify the impoverishment. Though many have tried, the Sarcastic Court of Courtship has not accepted "fear of commitment" as a sufficient justification for this form of unjust enrichment.

Catfishing (\ ˈkat \ \ ˈfish \iŋ \), ***v.*** "Catfishing" occurs when an offeror, usually using a dating app, misrepresents the quality of the product or service they are offering. "Catfishing" can take the form of misrepresentation or, in extreme cases, the tort of deceit. Aside from rescission, courts may order damages for loss of time and/or opportunity. Such damages will be heightened in the case of a wasted Friday or Saturday evening. It is important to distinguish between misrepresentation and mere puffery. For example, posting a photo from when an offeror was five years younger may be found to constitute mere puffery, while adding five inches to one's height in his or her personal description would constitute misrepresentation.

BAE (\ ˈbā \), ***n.*** The term "bae" is often used by contracting parties to refer to one another on the rare occasion they share the intent to create romantic relations.

As your legal counsel, if you feel a sense of impossibility with regard to your dating prospects in this culture (i.e. when you just "can't even"), we recommend maintaining low expectations of the Millennial dating culture, and remaining consistently grateful for your learned friends.

Yours (but not only yours) truly,

Jill & Julia

Can't Touch This! Trinity Western, Nixon, and Human Rights Exemptions

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If they have little else in common, Christian fundamentalists and radical feminists share a history of using group exemptions to human rights laws to justify discrimination against LGBT communities.

As Trinity Western University (TWU) comes before the Supreme Court of Canada yet again, we have an opportunity to reflect on the place of exemptions to human rights laws in Canadian society. TWU's case challenges a decision refusing the university's law school accreditation on the grounds that its Community Covenant, which prohibits same-sex relationships, is discriminatory against queer people. What lies beneath the challenge is the presumptive validity of the covenant. Why is it legal for a university to ban same-sex relationships in its student body?

> If an educational or religious organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a common religion, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.[1]

This is the provision that enables TWU's covenant under British Columbia law. In essence, it allows membership discrimination by not-for-profit organisations.

The provision was used by the British Columbia Court of Appeal to validate the Vancouver Rape Relief Society's (VRRS) discriminatory exclusion of Kimberley Nixon from a volunteer training program.[2] Kimberley Nixon is a trans woman who had registered to train to be a peer counsellor for women victims of male violence. She had previously experienced physical and emotional abuse at the hands of a partner and wanted to provide the same relief services that she had been provided at the time. However, she was excluded from the program after being identified as trans by the staff. Nixon brought a human rights complaint forward on the grounds of sex-based discrimination, arguing that she had been excluded because she is trans.

The Human Rights Tribunal upheld her complaint and awarded her $7,500 in damages. The decision was appealed to the Superior Court—although the Superior Court is usually the court of

1 *Human Rights Code*, RSBC 1996, c 210, s 41. The quote is modified and omits other grounds of discrimination as well as other types of organisations for ease of reading.
2 *Vancouver Rape Relief Society v. Nixon*, 2005 BCCA 601.

first instance, they serve on appeal with regards to decisions by administrative bodies such as the Human Rights Tribunal, because those are considered administrative acts rather than court decisions. The Superior Court judge found against Kimberley Nixon, concluding that there was no discrimination.

The decision was appealed again, and the Court of Appeal decided that while there was discrimination, a specific exemption in the Human Rights Code of British Columbia prevented the court from finding VRRS liable. The Supreme Court of Canada declined to consider a further appeal, leaving the Court of Appeal's decision undisturbed.

According to the reasons of the Court of Appeal, "the behaviour of the Society meets the test of 'discrimination' under the Human Rights Code, but it is exempted by s. 41."[3]

The exemption under section 41 differs from the more common justification for discrimination, namely the *bona fide* requirement test. In Quebec, both the *bona fide* test and the group exception are rolled into one:

> A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.[4]

The Quebec provision features two separate exemptions. One for *bona fide* occupational requirements and one for non-profit requirements. This is indeed how it was interpreted by the Supreme Court of Canada in *Brossard v. Quebec*.[5] The Court established that the term "justified" in the provision requires objective justification, bringing the second exemption into line with the *bona fide* occupational requirement test of the first exemption.[6] Although the latter exception is set out as a group exclusion, I would argue that it is closer to being a *bona fide* requirement test.

3 *Nixon, supra* note 2 at para 9.

4 *Charter of Human Rights and Freedoms*, CQLR c C-12, s 20.

5 *Brossard (Town) v. Quebec (Commission des droits de la personne)*, [1988] 2 SCR 279.

6 Compare *Brossard, supra* note 4 at para. 67 and at para. 138.

The core issue can therefore be set out as follows: should human rights laws contain provisions that exclude non-profit organisations from its application without objective justification? I would argue that they should not. To allow such exemptions is anachronistic and contrary to the universal reach of human rights.

The core issue can therefore be set out as follows: should human rights laws contain provisions that exclude non-profit organisations from its application without objective justification? I would argue that they should not. To allow such exemptions is anachronistic and contrary to the universal reach of human rights.

As a party to the International Covenant on Civil and Political Rights (ICCPR), Canada has the moral and legal duty to "promote universal respect for, and observance of, human rights and freedoms."[7] Article 26 of the ICCPR provides that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination." This right is not subject to any explicit limitation. Conversely, the right of freedom of association is subject to restrictions "prescribed by law and which are necessary in a democratic society in the interests of […] the protection of the rights and freedoms of others."[8] Is section 41 of the British Columbia Human Rights Code contrary to Canada's international duties and Charter commitments?

Constitutional or not, s. 41 is deeply anachronistic. Human rights law is supposed to send a message of inclusion, not one of exclusion. By allowing for discrimination in the absence of objective justification—that is, without demonstrating that the distinction is reasonably necessary given the nature and purpose of the institution—group exclusions fail to meet the already-insufficient standards of negative human rights.

Despite the anti-feminist character of such exclusions, the provision was defended by a number of feminists in the context of the *Nixon* decision. Christine Boyle, co-counsel on the case, defended the Court of Appeal's decision in an article published by the Canadi-

7 *International Covenant on Civil and Political Rights*, 19 December 1966.

8 *ICCPR, supra* note 6 at art 22(2).

an Journal of Women and the Law.[9]

Without elaborating on Boyle's views on trans women—which can perhaps be best characterised as glacial indifference—her defence boils down to a belief that group exemptions are necessary and that restrictions are undesirable: group self-identification must be protected, and there can be no effective constraint on those rules. Ironically, her defence protects all sorts of chauvinistic men-only groups from human rights scrutiny, further entrenching the subjugation of women in society. While discrimination in employment and services is banned in most spheres, the chauvinism of gentlemen's clubs and male-only honour societies is reified.

Boyle does not elaborate much on the undesirability of restrictions on group exemptions. Rather, she seems to ground her acceptance of unrestricted exemptions on the presumptive desirability of excluding trans women. Restrictions to group exemptions shouldn't exist because they would force women-only groups to include trans women:

> Denying non-transsexual women the right to self-identify so as to organize and act collectively would be discrimination in itself—that is one of the things about rights: everybody has them. Thus, unless I can propose a constitutional means of doing otherwise, I fear that I have to accept the existence of men's groups, even those I consider anti-feminist, if I wish to defend women's spaces.[10]

The circularity of her argument fails to cogently discredit the position that objective justification ought to be required. Yet, this requirement is of intuitive appeal. A club dedicated to preserving Yukon history while excluding women from participation such as the Yukon Order of Pioneers appears to be morally repugnant in ways that the Victoria Men's Center isn't when it excludes women to foster support and companionship among people of similar concerns and experiences. Men's groups can even appear to be an essential tool of feminist organising, as shown by groups such as the National Organisation for Men Against Sexism and the growing field of masculinity studies.

Positions like Christine Boyle's are common in the

9 Christine Boyle, "A Human Right to Group Self-Identification? Reflections on *Nixon v. Vancouver Rape Relief*", (2011).
10 Boyle, *supra* note 8 at 517.

feminist movement. Michelle Landsberg, for example, compares Kimberley Nixon's desire for inclusion with sexual assault:

> [W]oman-centred services are besieged with enemies enough in this backlash era. What a twisted irony it is that the latest and perhaps fatal blow should be inflicted by someone who wants to be a woman – but doesn't hesitate to inflict potential ruin on a woman's service that tried to say 'no' to her unwanted advances.[11]

Those of us who see through the unprincipled exclusion of Kimberley Nixon will likely fall on the side of Lori Chambers who held that "[u]ltimately, section 41 is built upon the very contingent foundations that queer theorists and critical gender theorists question."[12]

I turn the question to the readers. Is there a space in Canada, in 2018, for group exemptions to human rights laws? Is there a reason to allow groups to distinguish, exclude, and prefer people even when those choices are not objectively justified by the group's nature and purpose?

We shouldn't let ourselves be distracted by the unnecessary confrontation between Trinity Western University, the Law Society of Ontario, and the Law Society of British Columbia. The real question is not whether accreditation can be withheld. The real question is whether TWU's covenant should be allowed to exist.[13] And the answer is:

11 Cited in Lori Chambers, "Unprincipled Exclusions: Feminist Theory, Transgender Jurisprudence, and Kimberly Nixon", (2007) 19 *Can. J. Women & L.* 305 at 325.
12 Chambers, *supra* note 10 at 329.
13 A further question would be the impact of *Caldwell et al. v. Stuart et al.,* [1984] 2 SCR 603 on objective justification and to which extent it was modified by *Brossard*, *supra* note 4. I think there is room to argue that *Caldwell*'s conclusions as to whether objective justification was established in the given case were mistaken. However, this discussion is beyond the scope of the present article and would not impact the position taken here with regards to TWU insofar as *Caldwell* involved employment and the role of teachers as models and religious educators, whereas TWU regards students.

'The Critical Need for a National Inquiry' that Empowers Indigenous Women and Girls

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Truth (seeking) and reconciliation with Indigenous peoples are inextricably linked. Seeking and accepting multiple *truths* for reconciliatory processes is the first of two important steps legal professionals should take to respond effectively to the Truth and Reconciliation Commission's (TRC) Calls to Action.[1] The second step, arguably more challenging, is to apply these truths in the Canadian legal system to actualize the full potential of reconciliation. The National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry) is an integral *truth*(s)-seeking process demanded and mobilized by Indigenous leaders and formalized through the TRC's Calls to Action that remains to invoke reconciliatory efforts.[2]

Despite its establishment and hearings, the National Inquiry faces continuous criticism from Indigenous women, communities, and allies due to commissioners and staff quitting, as well as the lack of consultations with Indigenous people as to how to (re)conceptualize and implement its mandate to reach desired outcomes. Although a mid-term report was released in November 2017 with reflections on the grievances of Indigenous women and girls, justice remains elusive.[3] The mid-term report explains that there is a "Critical Need for a National Inquiry" because "No one knows for sure how many Indigenous women and girls have been murdered or gone missing in Canada", with frightfully increasing statistics of violence.[4]

Indigenous women and girls remain unprotected by the law. Canadian jurisprudence on section 35(1) of the *Constitution Act,* 1982 has heavily influenced understandings of 'Aboriginal' rights, leaving the full potential of the protections offered by section 35(1) unexplored, especially for Indigenous women and girls.[5] In this piece, I will argue that the scope of section 35 should encompass contemporary social and political rights informed by Indigenous legal traditions to empower Indigenous women and girls, while reflecting more broadly on remaining challenges to support reconciliatory processes

1 Canada, Truth and Reconciliation Commission of Canada, T*ruth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015).
2 *Ibid* at no 41.
3 National Inquiry into Missing and Murdered Indigenous Women and Girls, "Our Women and Girls Are Sacred", Interim Report (Her Majesty the Queen in Right of Canada, 2017) (*NIMMIWG*).
4 *Ibid* at 7-8 ("Using 2011 population estimates and an updated version of Dr. Maryanne Pearce's database (July 5, 2016), Dr. Tracy Peter calculates that Indigenous women are 12 times more likely to be murdered or missing than any other women in Canada, and 16 times more likely than Caucasian women.")
5 *Constitution Act, 1982*, s 35(1), being Schedule B to the *Canada Act 1982* (UK), *1982*, c 11.

that the National Inquiry should voice.

WHAT INDIGENOUS RIGHTS APPEAR TO BE

In recognizing Indigenous rights with section 35(1), Canadian Courts apply the "integral to a distinctive culture" test articulated by the Supreme Court in *Van der Peet*.[6] Notably, Courts must consider whether the practices, customs, or traditions presently asserted existed prior to European contact.[7] These factors situate Indigenous practices, customs, and traditions in the past, neglecting that these contemporary cultural manifestations are evolving and dynamic.[8]Moreover, in the processes to revitalize their legal traditions, Indigenous communities are employing self-determination approaches to define Aboriginal rights for themselves.[9] Courts have been unsupportive of this approach. In *Pamajewon*, the Supreme Court disallowed the appellants' "broad right to manage the use of their reserve lands".[10] The claim to self-government was found to be at a "level of excessive generality" that failed to address the specific historical and cultural factors set out in *Van der Peet*.[11] In *Delgamuukw v. British Columbia*, the Supreme Court dismissed the argument that s. 35(1) can protect a right to self-government for invoking "difficult conceptual issues" framed in "excessively general terms".[12] Ultimately, Canadian jurisprudence places significant cultural practices that are in the past, with no potential to recognize self-governance claims.

Horrifically, with this understanding of s. 35(1), Indigenous women's rights to be protected from gendered and racialized violence are not recognized. They are encompassed in "broader social relationships" that Indigenous communities are striving to rebuild without legal support.[13] The National Inquiry shares: "The violence in Canada extends beyond "missing and murdered":[14]

6 *R v Van der Peet*, [1996] 2 SCR 507, 1996 SCJ No. 77 at paras 44-75 (*Van der Peet*).
7 *Ibid* at paras 60–67; John Borrows, "Aboriginal and Treaty Rights and Violence Against Women" (2013) 50:3 Osgoode Hall LJ 699 at 723 (*Borrows*).
8 Dimitrios Panagos, *Uncertain Accommodation: Aboriginal Identity and Group Rights in the Supreme Court of Canada* (Vancouver: UBC Press, 2016) at 104–105.
9 See, for example, Joyce Tekahnawiiaks King, "The Value of Water and the Meaning of Water Law for the Native Americans Known as the Haudenosaunee" (2006-2007) 16 Cornell JL & Pub Pol'y 449.
10 *R v Pamajewon*, [1996] 2 SCR 821, 1996 CanLII 161 at para 27 (*Pamajewon*).
11 *Ibid.*
12 *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 at paras 170-171 (*Delgamuukw*).
13 Borrows, *supra* note 7 at 707.
14 *Supra* note 3 at 8.

> Indigenous women are physically assaulted, sexually assaulted, or robbed almost three times as often as non-Indigenous women. Even when all other risk factors are taken into account, Indigenous women still experience more violent victimization. Simply being Indigenous and female is a risk.[15]

Given that section 35(4) explicitly provides that 'Aboriginal' rights are "guaranteed equally to male and female persons",[16] Indigenous women's rights should be enforced with section 35(1) and read with section 35(4) to mitigate this unfathomable discrimination. John Borrows outlines, however, that an application of the *Van der Peet* test to recognize an 'Aboriginal' right to self-governance for domestic violence would fail. Indigenous communities would have to demonstrate that "violence against women and proactive responses to it were vital to the means by which [they] sustained [themselves] prior to European contact."[17] Producing evidence of pre-contact practices related to violence against women and demonstrating its continuity is not conducive to the trauma-informed approach necessary to address Indigenous women's rights as employed for the National Inquiry.[18] Shin Imai notes difficulties in admitting oral evidence and obtaining a judgment within a reasonable amount of time given the abundance of evidence needed and resource constraints faced by Indigenous communities acting as plaintiffs.[19] Thus, jurisprudence on section 35(1) portrays a universal 'Aboriginality' which is not reflective of contemporary issues concerning self-government that are adversely shaping relationships with and within Indigenous communities.[20] Despite the National Inquiry's efforts, Indigenous women have no legal support for justice.

WHAT INDIGENOUS RIGHTS SHOULD BE

The scope of section 35(1) should be criticized to realize its full potential and informed by its rights holders. As Hannah Askew explains, processes to revitalize Indigenous legal traditions reveal that

15 *Ibid.*
16 *Supra* note 5 at s 35(4).
17 Borrows, *supra* note 7 at 724-726.
18 *Supra* note 3 at 22.
19 Shin Imai. "The Adjudication of Historical Evidence: A Comment and Elaboration on a Proposal by Justice Lebel" (2006) 55 UNB LJ 146 at 149–152.
20 *Supra* note 8 at 23.

the laws "manifest themselves through social experiences", such as resolving disputes.[21] Law and society are inherently interconnected. A reconciliatory approach to understand the protections offered by section 35(1) must expand its scope to include social and political rights. This expanded scope would acknowledge the fluid nature of Indigenous rights that are currently being reinvigorated within communities and are protected with international instruments. Notably, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides the minimum standard to respect Indigenous rights. Articles 21 and 22 of the UNDRIP in particular address the right to adequate social conditions with "particular attention to the […] special needs of […] women" and "full protection and guarantees against all forms of violence and discrimination".[22] Borrows further posits that the living tree doctrine can be applied to section 35(1), as Indigenous rights evolve and emerge with contemporary phenomena.[23] Interpreting section 35(1) as having an expanded scope with articles from UNDRIP and understanding its dynamic nature is, thus, in the spirit of both constitutional doctrine and Indigenous legal traditions.

As reconciliatory processes bring together both the Crown and Indigenous communities, section 35(1) should be understood with a joint responsibility to actualize its full potential to protect Indigenous women and girls from violence. To foster mutual trust, Borrows highlights that Indigenous governance could "function analogously to the checks and balances of federalism", where both governments could limit each other's actions with the aim of eliminating such violence.[24] Here, the focus of Indigenous rights would be on the rights holder. There is a danger, however, of making Indigenous rights too legalistic and neglecting spiritual dimensions. Inserting Indigenous legal traditions into the Canadian legal system may impede on a decolonized revitalization of Indigenous laws.[25] It is imperative, thus, that 'Aboriginal' rights in section 35(1) be informed by Indigenous legal traditions and applied in a transsystemic manner.

21 Hannah Askew, "Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools" (2016) 33 Windsor YB Access Just 29 at 34.
22 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGA, 61st Sess, UN Doc A/RES/61/295 (2007) at arts 21(2), 22(1)-22(2).
23 Borrows, *supra* note 7 at 729–730.
24 *Ibid* at 705, 714.
25 *Supra* note 21 at 44.

NEXT STEPS TO EMPOWER INDIGENOUS WOMEN AND GIRLS

The reinterpretation of 'Aboriginal' rights protected under section 35(1) is one example of creating space in the Canadian legal sphere for both Canadian and Indigenous governance to thrive. A revitalization of Indigenous legal traditions entails their distinct and peaceful coexistence with the legal traditions of settlers, as expressed by the Two Row Wampum Belt of the Haudenosaunee.[26] In order for the legal profession to support revitalization processes, such as the National Inquiry, which are meant to be reconciliatory in nature, several challenges remain to be addressed. The following areas should be prioritized to have a National Inquiry that empowers Indigenous women and girls:

1. Build trust between Indigenous communities and the Canadian legal system.[27]

The National Inquiry has found that the most significant issue concerning violence against Indigenous women is that there is an "overall lack of trust in the justice system – including the police, courts, coroners, and corrections – and a belief that women and families are not receiving the justice they deserve.[28] The most significant issue identified in the National Inquiry's mid-term report is "the role that police forces and the criminal justice system play in perpetrating violence against Indigenous women and girls."[29] Building trust requires reinterpreting Canadian laws, notably section 35(1) to reflect the government-to-government relationship envisioned by both the Crown and Indigenous communities. The scope of section 35(1) should reflect the complexity of revitalizing Indigenous legal traditions and support self-determination initiatives with an emphasis on gender.[30]

2. Link political and social issues to legal ones.

As noted above, in many Indigenous legal traditions, law and society are inextricably linked in how they affect everyday life. Being mind-

26 *Supra* note 9 at 459–460.
27 *Supra* note 21 at 45.
28 *Supra* note 3 at 30.
29 *Ibid.*
30 John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795 at 815–816.

ful of this connection is useful to realize the multifaceted impacts of court decisions on Indigenous political and social issues and the (dis) empowerment of Indigenous women and girls.

3. Let the rights holders define their rights.

It is important to remember that Indigenous rights are inherent to Indigenous peoples and Indigenous Legal Traditions. Ultimately, the interaction of Indigenous rights *with* constitutional rights and Indigenous rights as constitutional rights should develop in a transsystemic legal sphere that truly reflects Canada's legal pluralism.

4. Decolonize the relationship between Indigenous peoples and the Crown.[31]

This relationship extends to the Canadian legal system and institutions which should be made more aware and informed of Indigenous Legal Traditions.

Reconciliation is a means, not an end. To develop healthy relationships, we, as settlers, students, and jurists, have the responsibility to learn to accept *truths* for reconciliatory processes *and* apply them to actualize the full potential of making reconciliation tangible. The National Inquiry reports, "Family members and survivors made it clear that they were ready to tell Canada their stories and their solutions."[32] It's time to be active listeners and facilitate an effective and empowering healing process.

31 See, for example, the decolonizing approach taken by the NIMMIWG, *supra* note 3 at 22.
32 *Ibid* at 30.

Top 8 Reasons Animal Law Needs Feminism (And Vice Versa!)

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AT FIRST GLANCE, ANIMAL LAW AND FEMINISM MAY SEEM TO MAKE STRANGE BEDFELLOWS, BUT THERE ARE MANY WAYS IN WHICH THEIR AIMS OVERLAP. BOTH HAVE ARISEN IN RESPONSE TO A PATRIARCHAL SYSTEM, AND THE TWO DISCIPLINES HAVE MUCH TO LEARN FROM EACH OTHER. READ ON TO DISCOVER SOME OF THE MAIN AREAS WHERE THEY CAN MUTUALLY BENEFIT ONE ANOTHER, AND CORRECT EACH OTHER'S SHORTCOMINGS.

1. WIDESPREAD USE OF INAPPROPRIATE ANALOGIES IN ANIMAL LAW

Unfortunately, much of the current animal rights literature cited in legal discourse is rife with analogies comparing the plight of farmed animals to slavery, or to the holocaust. However earnestly the authors feel that animal and human suffering are morally equivalent, this tactic is insensitive to the very particular histories of slavery and genocide perpetrated on groups of marginalized humans.[1] Given the horrible history of perpetuating racist stereotypes by comparing people of colour to animals, to liken farmed animals to such sources of intergenerational trauma is misguided, hurtful and alienating to potential allies. We do not need these metaphors. Animals deserve our compassion regardless of whether we can relate their stories to human narratives.

2. LACK OF A LABOUR AND CLASS ANALYSIS IN ANIMAL PROTECTION DISCOURSE

Often, veganism is touted as an "easy" way to protect animals, but this claim belies a certain brand of unexamined privilege. Though it may be easy for people with a social and economic status that enables them access to fresh, nutritious food, the same cannot be said for everyone. For people living in poverty, or in "food desert" neighbourhoods, it is not so "easy" to go vegan.[2] Advocates of veganism should not make assumptions about the universality of their own experiences. A diverse audience may well be thinking "it is not easy for me, or my grandmother," and be immediately put off.[3]

1 Sue Donaldson & Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011) at 24.

2 See Food Empowerment Project, "Food Deserts", *Food Empowerment Project*, online: <www.foodispower.org/food-deserts/>.

3 Lauren Ornelas, "Gender and Race Redux" (Panel delivered at the Animal Law Conference, Portland, Oregon, 13 October 2017), online: <www.youtube.com/watch?v=4v6tT1Ja0Gc> at 00h:40m:50s.

Further, it is crucial to note that many agricultural and slaughterhouse workers are people of colour, often with irregular immigration status and few job prospects. When anti-cruelty investigations happen, it can result in immigration officials becoming involved, and deportations can follow. This unfairly punishes the workers whose employment conditions are extremely precarious.[4] To leave these factors out of the conversation around animal protection is a serious oversight, and one that could be remedied with an intersectional feminist approach.

3. CULTURAL IGNORANCE, MISUNDERSTANDING AND MISCHARACTERIZATION

Although there are some people within the animal protection movement who recognize and respect the importance of cultural differences around how animals are treated, there is still a lot of misunderstanding and tension. A prevalent example of this in Canada is the issue of Indigenous hunting rights. There is much internal disagreement over how this should be handled, and consensus may be hard to reach given the difficulty of reconciling Indigenous practices with prohibitions on killing animals. However, there is room for respectful dialogue and allyship nonetheless.[5] Many Indigenous groups have an immense respect for animals which aligns more closely with animal rights theory than does the Western tradition.[6] In contrast, it is the Western-capitalist economic model that created factory farms which are responsible for the billions of slaughtered animals and the miserable conditions under which they live and die. Demonizing hunting practices of Indigenous peoples demonstrates ignorance and cultural imperialism, and does

4 *Ibid* at 00h:42m:50s – 00h:43m:25s.

5 Sue Donaldson & Will Kymlicka, "Animal Rights and Aboriginal Rights" in Vaughan Black, Peter Sankoff & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Law, 2015) at 160.

6 See Paul Nadasdy, "The Gift in the Animal: The Ontology of Hunting and Human-Animal Sociality" (2007) 34:1 American Ethnologist 25 at 27; Bradley Bryan, "Property as Ontology: On Aboriginal and English Understandings of Ownership" (2000) 13:1 Can JL & Jur 3 at 16, 27-28; Benoît Éthier, "Pluralisme juridique et contemporanéité des droits et des responsabilités territoriales chez les Atikamekw Nehirowisiwok" (2016) 40:2 Anthropologie et Sociétés 177 at 183.

nothing to foster reconciliation between animal advocates and groups who hunt animals for cultural, religious, or sustenance reasons. Rather than focusing on the relatively tiny number of animals hunted by Indigenous people, animal advocates should be looking critically at the dominant system that instrumentalizes animals by turning their bodies into commodities to be bought, sold, and consumed under extremely cruel circumstances.

4. ANIMAL LAW AS A MICROCOSM THE DOMINANT PARADIGM

The animal protection field is not free from the problems which plague any other branch of legal practice. Although there are many amazing POC animal advocates who are doing great work, the overall landscape is remains depressingly white.[7] Though there are many reasons for this, the problems identified above are likely major deterrents to people from diverse racial and class backgrounds. Further, animal law is expanding exponentially, and women are leading the way, but the glass ceiling remains. The field is dominated by women at every level except the top. Executive roles at animal protection organizations are mostly held by men, whereas all other positions are overwhelmingly filled by women.[8] There are also numerous accounts of sexual harassment and discrimination within these organizations.[9] Animal allies must be mindful of avoiding these pitfalls to make the movement a safer, more welcoming place for people from all walks of life.

7 See Rachel Krantz, "Here Are 15 POC Vegan Activists You Need to Follow", *Mercy for Animals* (1 June 2017), online: <www.mercyforanimals.org/poc-vegan-activists-doing-amazing-work-you>.

8 Jennifer Fearing, "Gender and Race Redux" (Panel delivered at the Animal Law Conference, Portland, Oregon, 13 October 2017), online: <www.youtube.com/watch?v=4v6tT1Ja0Gc> at 00h:08m:30s.

9 Carolyn Walker, "Gender and Race Redux" (Panel delivered at the Animal Law Conference, Portland, Oregon, 13 October 2017), online: <www.youtube.com/watch?v=4v6tT1Ja0Gc> at 00h:59m:35s, 01h:04m:55s.

5. RELATIONSHIPS OF CARE AND INTERDEPENDENCY ARE VALUABLE

Much scholarship has been devoted to the feminist ethics of care in relation to animal rights theory, which will not be exhaustively rehashed here.[10] Suffice it to say that feminists recognize that there is no such thing as the "self-made man" which our patriarchal system values so highly. Rather, we are all connected through relationships of care and interdependency, and there is nothing wrong with that! Animal lives are often framed as less morally significant because their lack of certain cognitive capabilities makes them dependent on humans in some contexts, but this overlooks the fact that every human at some stage of life also lacks these capabilities (for example as babies, or if we become ill, or elderly). Our lives are no less valuable as a result.[11]

6. THE FUTURE DEPENDS ON IT

Ecofeminism and environmental law have direct links to animal law. If we hope to have a habitable planet for future generations, we must protect the environment and the diverse species that inhabit the Earth in order to maintain the biodiversity the ecosystem requires to function. There is a tendency in social justice movements to want to sidestep animal issues because of the danger of losing focus on human problems, but that ignores the fact that humans do not and cannot live in isolation from the natural world. Even for folks who have no interest in animal protection whatsoever, climate change and mass extinction are obvious areas of concern. There is also the danger that overuse of antibiotics in over-crowded factory farms is creating "superbugs" which could create a global pandemic that

10 See e.g. Josephine Donovan and Carol Adams, eds, *The Feminist Care Tradition in Animal Ethics: A Reader* (New York: Columbia University Press, 2007).
11 See Donaldson & Kymlicka, *supra* note 1.

will not discriminate between species.[12] If we care about people, and about a future for humans, we must also take seriously animal issues because our existence is innately intertwined with theirs. Many Indigenous groups have always understood this, and the separation of humans, animals, and the natural world is one of the great tragedies of Western cultural hegemony.

7. CLEAR LINKS BETWEEN ABUSERS OF HUMANS AND ANIMALS

In many cases of domestic partner violence and child sexual abuse there is a history of violence toward animals.[13] Consequently, many women who wish to flee a situation of domestic violence are less likely to leave if they have pets at home, because they know the pets will continue to be abused, and too few shelters accept pets.[14] As feminists, we need to recognize how important our relationships with companion animals are, to strengthen laws to protect them, to take seriously any reports of animal abuse, and to create spaces where women can go with their pets to escape abusive partners.

8. PRODUCTS MARKETED TO WOMEN ARE TESTED ON ANIMALS

Despite decades of activism, unfortunately in Canada and many other countries, cosmetic and household products are still routinely tested on animals.[15] Although animal research for medical and scientific purposes is a controversial issue, it is dif-

12 Giorgia Guglielmi, "Are antibiotics turning livestock into superbug factories?" *Science Magazine* (28 September 2017), online : <www.sciencemag.org/news/2017/09/are-antibiotics-turning-livestock-superbug-factories>.
13 See e.g. *R. v D.L.W.* 2016 SCC 22; Animal Legal Defense Fund, "*Animal Cruelty and Domestic Violence*", Animal Legal Defense Fund, online: <aldf.org/resources/when-your-companion-animal-has-been-harmed/animal-cruelty-and-domestic-violence/>.
14 Jessica Scott-Reid, "More women's shelters across Canada need to start accepting pets", *CBC News* (3 January 2018), online: <www.cbc.ca/news/opinion/pets-shelters-1.4472331>.
15 See Lesli Bisgould, *Animals and the Law* (Toronto: Irwin Law, 2011) at 201.

ficult to justify testing makeup and hairspray by inflicting painful burns, or forcing animals to ingest chemicals to the point of death. Makeup can be fun, and a great source of self-expression for feminist femmes of all stripes, but the patriarchal beauty standards foisted on us by the cosmetics industry are a lot less fun, especially given the extremely cruel methods used by many companies to bring these products to market.

CONCLUSION:

Notwithstanding the aforementioned areas for improvement, feminism and animal law make natural allies. Patriarchy is at the root of so many of the shared struggles that we face. There is so much common ground between the struggles for animal well-being and feminist activism that the two disciplines have a lot of potential for mutual enrichment by taking each other seriously.

Bringing American Women's Prison to Term: The Inadequate Treatment of Incarcerated Pregnant Women

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The number of incarcerated women in the United States is rising, with data showing a threefold increase from the 1990s to 2011.[1] American correctional facilities were designed for a male population, and thus, the growing presence of women in state and federal prisons poses new obstacles and responsibilities on the state's criminal justice system. In this regard, the system falls short in its ability to adapt and respond to women's gendered needs.[2] This gap is clearly displayed in the treatment of incarcerated pregnant women in the United States, where women's health remains compromised by poor prenatal care and the continued use of shackling during the labour and delivery.

LACK OF PROPER PRENATAL CARE

Most pregnancies carried to term by incarcerated women are considered to be high risk due to frequent histories of violence and smoking, alcohol, and substance abuse, and this risk is exacerbated in prison.[3] Many correctional facilities have no formal written policies outlining how pregnancies should be addressed, reflecting a systemic lack of codified regulations protecting the health of pregnant women who are incarcerated.[4] This leads to great variation between not only states, but also prisons. Correctional facilities thus provide no certainty that the pregnancy will be handled properly, as prisons offer far varying

1 R.J. Shlafer et al., "Best Practices for Nutrition Care of Pregnant Women in Prison" (2017) 23:3 J Correct Health 297 at 297.
2 *Ibid* at 298.
3 Ginette Ferszt "Who Will Speak for Me? Advocating for Pregnant Women in Prison" (2011) 12:4 Policy, Politics, & Nursing Practice 254 at 254. ("*Who Will Speak*").
4 *Ibid* at 255.

degrees of care.[5] With no uniform standards, prenatal health is likely to be compromised, as pregnant women may be placed in prisons with limited resting periods, no educational programs on childbirth, and poor sanitary conditions.[6] This all contributes to high levels of psychosocial distress among incarcerated pregnant women, support for which is underwhelming.[7] Thus, correctional facilities present shortcomings in standards that should reasonably be met, unnecessarily elevating the dangers of the high-risk pregnancies.

The inadequate management of nutrition is another example of how poor prenatal care in correctional facilities exacerbates the risks associated with pregnancy. Proper nutrition is key in ensuring the safety of the pregnancy and health of the child. While the eighth amendment in the Constitution of the United States protects the health of incarcerated individuals, federal standards of nutrition in correctional facilities falls through the cracks of this guaranteed protection. The food served to inmates, in many cases, lacks many of the nutrients essential for healthy pregnancy; the standard prison diets proves deficient in magnesium and fiber.[8] In doing so, the state fails to uphold its responsibility to protect the health of its prison population, endangering both these women and their unborn children.

SHACKLING

The practice of shackling pregnant women throughout the labour and delivery serves as another example of the state posing unnecessary and dangerous risks to the health of both the mother and child. The American College of Obstetricians and Gynecologists holds that restraining women in the process of delivery interferes with the physician's ability to assess the patient's condition. This impedes the doctor's ability to follow their practice with the proper amount of safety and care.[9] Shackling also poses many ethnical concerns, as the use of restraints unnecessarily increases the pain of labor and delivery for the mother.[10] Human rights concerns surrounding the practice of shackling were called out to the state and public's attention in a 1999 Amnesty International Report. While the Federal Bureau of Prisons banned the use of restraints during delivery for women incarcerated in federal prisons, the practice of shackling continues in jails and state prisons, which are subject to their own policies.[11] The continued use of restraints is evidenced by the fact that only 11 states have prohibited their use.[12] Women are thus unnecessarily subjected to increased pain and health risks in the vast majority of states during the labour and delivery.

REFLECTION

When discussing the need to uphold incarcerated women's rights with my family and friends, I was often met with hesitance and rejection. Some argued that these women should not expect to receive "frills" while in prison, framing the limited access to standard pre-natal care as a foreseeable consequence and a just price to pay for their crime. I disagree with this line of thinking, as I believe that unnecessary violence against any individual, no matter their criminal history, is always unjust. I thus propose two responses that might convince my friends and family to re-consider how lack of proper prenatal care and shackling are inherently problematic. Firstly, even if one accepts that it is just to subject an incarcerated woman to increased levels of discomfort due to her criminal history, the shortcomings and neglect of the state for proper care is fundamentally unjust as it invariably affects the life of an individual innocent and free of criminality, the child. One cannot separate the health of the mother from that of the child, and in failing to address the

5 Ginette Ferszt & Jennifer Clarke, "Health Care of Pregnant Women in US State Prisons" (2012) 23:2 J of Health Care for the Poor and Underserved 557 at 560 ("*Care of Pregnant Women*").
6 *Supra* note 3 at 558.
7 Ginette Ferszt & Debra A Erickson-Owens, "Development of an educational/support group for women in prison" (2008) 4:2 Journal of Forensic Nursing 55 at 55.
8 *Supra* note 1 at 298.
9 *Supra* note 3 at 255.
10 *Supra* note 5 at 567.
11 *Supra* note 3 at 255.
12 *Supra* note 5 at 567.

shortcomings of care, the state allows for the child to unjustly be harmed from such violence. Secondly, one cannot reflect upon this topic without recognizing that the state's neglect of prenatal care and abuse through practices of shackling does not affect us equally. This problem has a disproportionate effect on women of colour, as they make up the majority of the incarcerated women population.[13] We must thus recognize that the public and state's willingness to turn a blind eye to such violence fits within a larger problem of structural oppression and discrimination.

13 *Supra* note 5 at 558.

An Interview With *Contours* Founder Erin Moores: The Importance of Women's Spaces

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On January 19th, 2018, I had the privilege of interviewing Erin Moores, who was one of the founders of Contours back in 2012. She now works as an associate at Goldblatt Partners in Ottawa, Ontario. As Ms. Moores's work focuses heavily on labour and employment law as well as human rights, she is well placed to make important comments on the topic of women's spaces, especially in light of the #MeToo and #TimesUp movements.

NOTE: RESPONSES HAVE BEEN EDITED FOR LENGTH & CLARITY

ROMITA: Why was there a need to create *Contours* and how did women come together to create it?

ERIN: It just takes a couple of people to take projects such as these forward. In my cohort, there was an interest in feminist issues and people wanted to have a platform for women to express themselves. It was also very important that this be a women-centered project. So we got some funding from the Law Students' Association, and three other students and I brought this project forward. As time went on, we got the help [of] 6-7 people jumping onboard as editors.

We then sent notice to different groups, got a lot of student contribution, and we even put letters in professors' mailboxes to get them to contribute. When we published the first issue, we got a lot of e-mails, surprisingly from men saying how amazing this was and they had no idea their peers were even going through such things. Making the writing and the journal accessible helped in that regard. This was important for the creators of this journal. We wanted it [to] be something where there would not be a hierarchy of one [form of] expression over another. We wanted to recognize that people had different ways to express themselves. It was important to highlight that. If we gave value to academic writing all the time, instead of art, it would maintain the status quo.

In terms of backlash, we did not receive any in the publication of the first journal. In our second year, we had some guys who wanted to contribute but our vision for this journal was that it was a women-centered project that highlighted our voices and created a space for us. Hence, the core value for *Contours* was to have a space for women.

ROMITA: Do you feel that women's spaces in law school continue in the legal profession? Is there any backlash to efforts to create them?

ERIN: Yeah, in some sense, they exist, such as through bar associations, or The Women's Legal Mentorship Program of Ottawa for which there has not been any backlash so far. In my field, it hasn't been a problem since in my job, half of the partners are now women. But it is important for us to believe women when they share their experiences in workplaces, especially since they are challenging the status quo.
I remember once I was going to go for an interview in Montreal and the firm wanted to promote that they were trying to increase the number of women in the firm. So they decided to host an event and have a panel of five people, with 3 women and 2 men. All the questions asked after the panel were answered by men and they literally talked majority of the time. They mentioned their clients were looking for diversity. Only one woman in the audience brought up the irony.

ROMITA: Do you have any thoughts about the #MeToo movement? Do you think it will change anything for labour or employment law?

ERIN: I really hope that #MeToo is a turning point. There is safety in numbers for women who are coming forward. I remember when I was in law school we did a special edition in the *Quid* around consent and sexual assault and harassment. We wanted students to realize that these things happen in law school as well, and that [their] peers have experienced this. [We wanted to emphasize] that it was totally wrong to make excuses for a guy and to feel entitlement for women's bodies. #MeToo is empowering women, which is a nice change.

In the field of employment and employment law, this is causing some debate around the world. Some folks are saying that #MeToo has gone too far and that the public accusations by women is not solving any problems. However, it is more complicated than that. In the entertainment industry, men have gone their whole lives doing what they

wanted and they never paid for it. There are people who feel bad for these guys and there are people who think they deserve it.

It is also important to look at the intersection of race. Women of colour have been talking about this issue forever, especially in Hollywood, but people are only paying attention to it now because so many white women brought it up.

ROMITA: When it comes to cases of harassment where there is an aspect of intersectionality, say that the person being harassed has multiple identities - for example, they are a queer person of colour - do you feel current employment laws are sufficient to deal with multiple identity issues?

ERIN: To be honest, I don't know if they are even able to deal with it one at a time. Workers come to us even if they are white or straight regarding harassment and things don't get solved. When cases get more complex, people stop getting involved. This could be the manager or the head of an organization. Clearly something is wrong in how people are treated. We have a problem in the law and sometimes when discrimination is not blatant, it can be hard to prove.

ROMITA: Recently, a lot of female law students have spoken about how they are constantly being told that work-life balance does not exist and that you have to choose one or the other. Now that you have been in the workforce, do you find that this is true? Do you have any advice for students?

ERIN: When I used to work in NGOs before law school, I noticed that men were in management jobs and women were in the non-management ones. There are gendered stereotypes in society that are tied to the notion of care. In that environment, people look at [typically feminine] qualities, and the first thing they think of is being pregnant. However, not all women get pregnant and have other things going on in life. People don't have a good understanding of work-life balance and in high intensity professions like law, that is even lower.

For public servants there is a lot of burn-out and this is not particular to law. It is because we are busy and often there isn't room for flexibility. In public service, [the schedule is not as predictable as some people think,] and the work can go on for longer days in certain weeks. In private practice the focus is on clients and never to say no to them, so you find a way to make the job work.

Plus, sometimes [people see] men who have kids as better employees while women are not.

ROMITA: A lot of us have also been going through recruitment and a lot of folks have been talking about "fit", being treated differently as a female law student or even as a racialized student. How do you think students can prepare themselves in such situations? How do you think firms can do better?

ERIN: The 'fit' thing is kind of bullshit and no one should have a problem admitting that. What they are looking for [is] someone who can work a 12-hour day and have a beer with [them] after. It basically means they are looking for people who look like them and exclude certain groups of people. For example: mainstream good-looking women have better chances of being accepted. Firms don't often branch out to people not like them, so people stay in their comfort zone. Law firms have to change from their subjective question style in interviews. They don't test you or analyze the skills you will use in the workplace.

ROMITA: What is your favourite thing to do during your downtime? How do you de-stress?

ERIN: Sports, and I am unhappy when I can't do them. When I come home, I have a weird snack and watch brainless Netflix.

ROMITA: Do you still engage in feminist activities?

ERIN: Not so much in community activities. When I articled, I didn't know anyone here or any feminist initiatives, but it was good to take a break from activism during articling. I want to get back into the community. For now, I have been finding some events and also working with the Women's Leadership Mentorship Program in Canada.

This interview with Ms. Moores taught me how important it is to have mentors like her who can help guide students. There is no cookie-cutter way to build community among women and this makes access difficult. I hope these responses help readers understand that we need to make many changes in the profession. Building women's spaces helps facilitate a discussion and a collective way of advocating for the issues we face and the changes we require. Contours started as way to talk about feminist issues and build a community for women in law school. Look how far we have come in just 6 years.

DEVENIR FEMME

GABRIELLE LANDRY
ÉTUDIANTE EN DROIT À MCGILL

Quand j'étais à la garderie, je me suis fait enlever des mains mon jouet favori.
Rapidement, ma figurine de Spiderman a été échangée pour une Barbie.
Je suis repartie, l'air penaud, dans un coin, isolée.
Mais qu'est-ce que je vais faire avec une poupée?

Quand j'étais au primaire, je me souviens des mots de mon enseignante de maternelle.
Elle me disait de ne pas jouer dans l'herbe pour que ma robe reste belle.
Les traces de gazon sur ton jupon, c'est non.
Pourquoi? Lui ai-je demandé, pleine d'incompréhension.
Parce que les petites filles doivent agir avec élégance, m'a-t-on répété.
J'ai arrêté de jouer.

Quand j'étais au secondaire, j'ai commencé à être fertile.
C'était rouge, c'était encombrant, c'était inconfortable. Ça fait mal, la vie.
Je me souviens des commentaires de mes amis.
Ils me demandaient de ne pas leur parler de mes crampes menstruelles.
Parce que c'était un tabou, ça rendait les garçons mal-à-l'aise. *Too much information.*
Pourtant, les ados s'amusaient à dessiner des phallus partout sur leurs pupitres. *Isn't that too much visualisation?*
Ça semblait si simple parler de pénis, mais le système reproductif féminin était hors limite.
Je suis repartie en cachant mon tampon dans ma poche en trouvant tout cela insolite.
Quand j'étais au cégep, j'ai pris goût pour l'amour du plaidoyer.
Je défendais mon point, je prenais plaisir à argumenter, à écouter.
Mais quand je parlais avec entrain, on me suggérait d'arrêter de crier.
Mon niveau de décibels accepté par mes pairs semblait restreint.
Pourtant, je ne parlais pas aussi fort que mes collègues masculins.

À ma première année d'Université, on m'a dit de faire attention à comment j'étais habillée.
On m'a dit de ne pas trop boire, ni trop me maquiller.
Parce qu'à la place d'apprendre aux autres de nous respecter, c'est à nous de nous restreindre.
Si tu t'habilles comme **ça**… ensuite, tu ne peux pas te plaindre.

À 5 ans, les adultes savaient déjà plus que moi ce que je devais aimer.
À 7 ans, je n'avais pas la même liberté de jouer que mes homologues masculins dans la cour de récré.
À 13 ans, j'ai pris conscience du tabou qui emprisonnait mon entrejambe.
À 17 ans, j'ai appris à parler moins fort.
À 19 ans, j'ai compris qu'on apprend aux femmes à devenir des boucliers au lieu de dire aux autres de ne pas les attaquer.

« On ne nait pas femme, on le devient.[1] »

ZOË FREEDMAN

1 Simone de Beauvoir, *Le deuxième sexe 1*, Paris, Gallimard, 1949 à la p 285.

Contours

volume VII

Contours est un projet visant à cartographier et à donner forme aux contours des débats, des expériences, des préoccupations et des aspirations.

It is a space for women's voices and an invitation for us all to start a conversation.