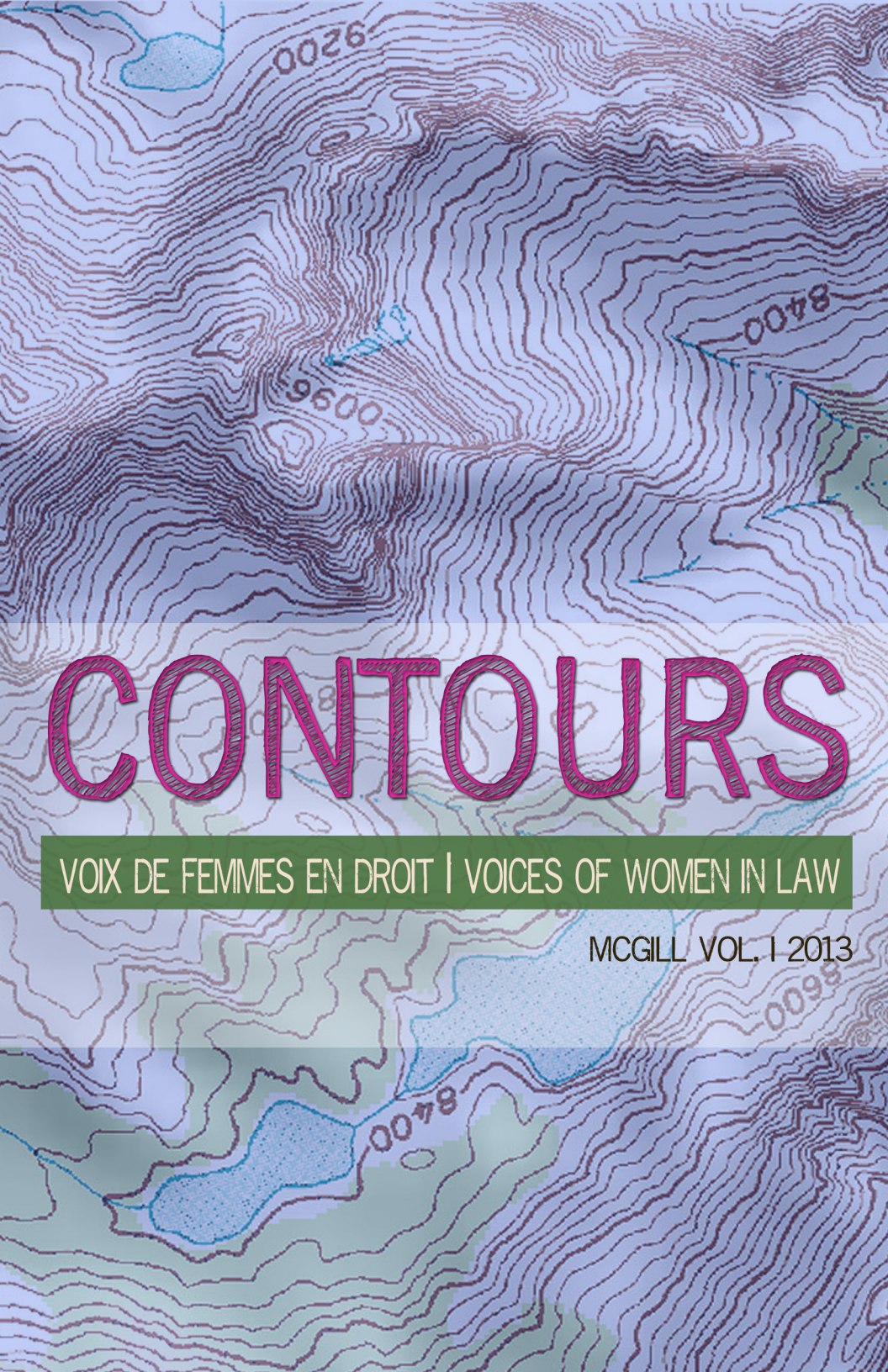
CONTOURS
VOIX DE FEMMES EN DROIT | VOICES OF WOMEN IN LAW
MCGILL VOL. I 2013

CONTOURS

VOIX DE FEMMES EN DROIT | VOICES OF WOMEN IN LAW

MCGILL UNIVERSITY

This publication was compiled by Charlotte-Anne Malischewski and Erin Moores. Unless otherwise noted, each article was written by the author during the 2012-2013 academic year for this publication. Please do not reproduce any of the articles without permission from the author.

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CONTOURS

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CONTENTS

EXPLORING

INTRODUCTION

In the atrium at the McGill Faculty of Law, there are two photographs side by side. The one on the left, from 1904, is of a group of twenty or so men standing on the stairs of what we now call Old Chancellor Day Hall. The photo on the right was taken one hundred and five years later, in 2009, but at first glance you might not notice that. It also shows a group of about twenty people, standing in the same spot in a black and white image. They are dressed to imitate the men in the 1904 picture, right down to fake moustaches. But everyone in the photo is a woman.

Comme la plaque à côté de la photo de 2009 nous l'explique, cette photo a été prise pour mettre en évidence ce qui a changé depuis 1904. Sur la plaque, des femmes anonymes qui nous racontent des histoires sur l'expérience des femmes à la Faculté de droit de McGill. Certains d'entre elles évoquent des expériences d'oppression, d'autres d'occasion, d'autres de tristesse ou de déception, d'autres de succès.

We created Contours because of these kinds of stories.

Ce que la photo de 2009 nous dit est vrai. Il est maintenant possible de prendre une photo qui n'aurait pas été prise en 1904 et un espace existe maintenant pour que les femmes puissent s'exprimer et être reconnues par le droit. Mais nos voix restent encore, à bien des égards, absentes dans la grande histoire du droit.

We want and need more.

Contours is a project to map and shape the contours of debates, experiences, concerns, and aspirations. It is a space for women's voices and an invitation for us all to start a conversation. The title of the publication will necessarily be interpreted differently by each contributor and reader. Women's relationship with the law is fluid and complex and we hope Contours will reflect this.

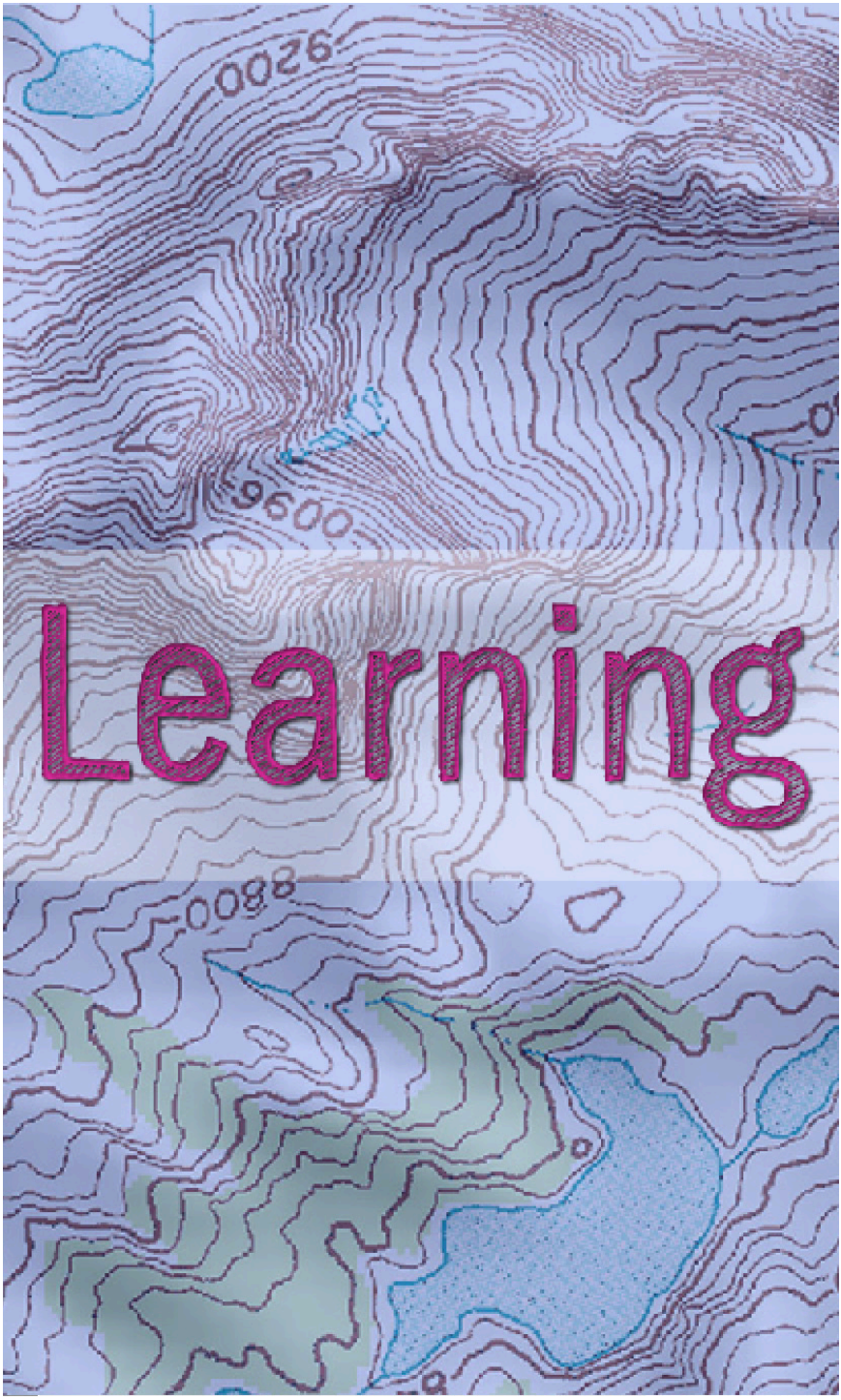
Dans cette première édition de Contours, nous avons demandé aux femmes à la faculté de parler de femmes et droit. Nous avons accueilli des réponses argumentatives et émotionnelles, théoriques et expérientielles, par écrit et de l'art, parce que nous croyons que toutes ces formes d'expression sont utiles pour développer notre compréhension des intersections entre les femmes et le droit à différents niveaux. Nous avons reçu une grande variété de réponses.

For example, some contributors profile female professors and jurists to find out how they approach their work and its relationship with their family life. We learn

from student Talia Joundi about how the justice system in Canada is failing migrant workers. Alumni Abigail Radis and Suzanne Jackson give us a how-to on creating a student-initiated seminar that can fill some of the holes in the law school curriculum around gender issues and the law. Shauna Van Praagh tells about the lessons a law professor can learn from the laundry. And Helena Lamed and an anonymous student remind us, in two very different ways, that no matter what, women must keep asking questions, keep raising our hands in class, and keep making our voices and stories heard.

Nous sommes une équipe de collaborateurs passionnés. Cette première édition de Contours a été possible parce que beaucoup de femmes à la faculté ont cru en ce projet et ont voulu y participer. Nous l'avons fait ensemble.

Enjoy. Reflect. Discuss.


Learning

INHIBITED SUCCESS

BY ANONYMOUS

A FIRST-YEAR FEMALE STUDENT AT MCGILL FACULTY OF LAW

What the heck happened to you?

Law school.

Huh?

Law school. It's hard.

Ben, alors tu te dégonfles? Déjà? Ça a pas prit très longtemps! T'as vraiment pas changé.

Si, mais…

Mais quoi?

C'est difficile de prendre sa place parmi tout ce monde prodigieux.

T'as raison, je ne te reconnais vraiment plus…

Et moi non plus. C'est grave, tu crois?

Mais non, arrête un peu. T'exagères.

But still, how can I go back to being you? me?

You can't.

Why not?

Because you need to be different, and you're still changing into the person you need to be for the work you are going to do.

T'es sure?

Certaine. Lâche pas, mais arrête quand même ton mélodrame. Je paris que t'es pas la seule à te sentir comme ça et tu sais bien que la vie est remplie de moments difficiles à traverser.

Pourtant y'en a qui le cache bien.

Ça veut dire quoi, ça?

Ils ont tous l'air heureux et bien dans leur peau. Ils sont tous intelligents, aimables, des gens vraiment bien quoi.

Mais tu sais derrière tous ces sourires, c'est probablement la même angoisse que toi. La seule différence c'est que toi t'as toujours eu du mal à la cacher ton insécurité.

You're mean.

Keep calm and carry on. That motto got you through a lot before, and it will again now. No one ever said it was going to be easy.

Je me suis jamais fait cette illusion!

Sometimes I don't recognize myself at all. What happened to that ambitious, driven, 20-year old who got so much done? I think she'd be disappointed to see how much things have changed. How I barely express myself at all, and when I do it comes out wrong or a lot less articulate than what I used to say back then. She would probably ask "what happened?" There is only one answer: "Law school. What you always wanted."

The truth is, many people have an abstract notion that law school will be synonymous with success, that you're somehow on your way to "making it" in life and that with success comes the assumption of happiness.

What happens when law school inhibits you? I thought law school would give me the tools I'd need to reach a position of influence, but somehow I feel as though it has silenced me more than it has empowered me. I don't feel important enough to speak and when I do, I feel inadequate and that I probably should not have said anything at all.

So why is that? Why is it so hard to find my place in this group of accomplished people? If law is what I always wanted, and if I was good enough to make it through the selection process, then why is it so hard to "do" law school?

It wasn't until I read "Stories in Law School: An Essay on Language, Participation and the Power of Legal Education" by Shauna Van Praagh that I realized that this problem was far from being unique to me. And what a relief! In her article, she explains how "unless some connection between personal narrative and institutional change is forged, students may be silenced by "too much" context, unable to find any common and powerful language with which to create standards and offer answers." It is almost as though law (or perhaps, the way that it is taught) is so far removed from what many of us have experienced in the past that it silences us, perhaps into some form of submission to a larger, formal, legal discourse.

As I read on and got to the section where she discusses a study conducted at Yale Law School about differences in performance between male and female students in their first year of law school, I was saddened to read that there was a correlation between women's low participation rate in classes and their lower marks as compared to the relatively higher participation rate and marks of their male counterparts. The study also concluded that women and students of colour often have feelings of incompetence, dissatisfaction along with low levels confidence and self-esteem.

To me, all this begs the following question: Why does law school socialize so many women like myself to a subdued, passive state? Why isn't it empowering? And what can we do to make it more empowering?

To me, the first step is to acknowledge that the study of law in Western countries has historically been, and continues to be, a privilege reserved to a selected few. A place that has traditionally favoured white males and that has taken a long time to accept individuals that do not fall into this category such as women, students of colour, and students with disabilities, among others. I see a link between this history of inequality and these unjustified feelings of incompetence and dissatisfaction amongst some female students like me in law school.

Understanding where these feelings come from and that they are part of a much larger, systemic history gives me relief. Now I know that they have little to do with what I am actually capable of accomplishing and more to do with the history of any legal education.

These feelings are a historical, social construction of what used to be considered the truth. Namely that women were less worthy and less capable of engaging with and practicing law than men. That simply is not true. Otherwise how would the Supreme Court of Canada be headed by women like Beverley McLauchlin? She may be the first women to hold the Chief Justice position, but that doesn't mean other women before her weren't competent. Women

"LAW SCHOOL HAS BEEN FAR TOO ACCOMMODATING TO MEN AND TO MASCULINE WAYS OF THINKING. IT'S TIME THAT CHANGED. IT'S TIME WE STARTED INTEGRATING REAL-LIFE NARRATIVES TO EXPLAIN LEGAL PRINCIPLES AND IT'S TIME WOMEN SPOKE UP ABOUT WHAT THE LAW SHOULD AND COULD MEAN."

didn't just get smarter overnight! What about judges like Claire L'Heureux-Dubé, Marie Deschamps or Rosalie Abella? These women didn't get to their positions just because of their looks.

It's for the law to accommodate women, too. Law school has been far too accommodating to men and to masculine ways of thinking. It's time that changed. It's time we started integrating real-life narratives to explain legal principles and it's time women spoke up about what the law should and could mean. Otherwise all the work and progress that was achieved thanks to those impressive pioneers like Annie MacDonald would go to waste, and we can't let that happen. There's alot more work that needs to be done and I say "aye!" It's time I took a stand.

"You can still change. You need to change. Mais c'est ton choix.

How?

Be greater than you are.

What?

Dare to shine, with everybody else. T'en es capable.

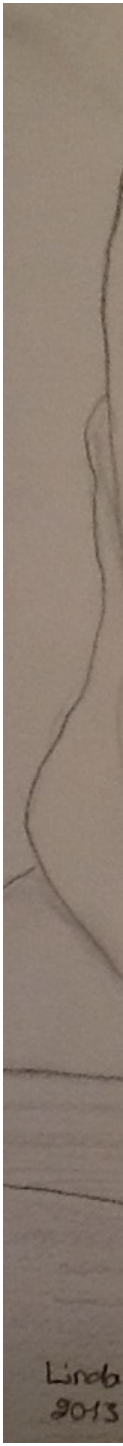
Amen."

PORTRAIT OF MALALA YOUSAFZAI

BY LINDA EL HALABI

STUDENT AT MCGILL FACULTY OF LAW

This is a portrait of Malala Yousafzai, the young Pakistani activist who defied the Taliban in her region by advocating the right for girls to go to school. In October 2012, she almost died after the Taliban shot her while she was returning home on a school bus. They were threatened by a girl who liked to read. Malala's strength and courage is testament to the power of education in changing women's lives. It all started with a book.



WHAT YOUR NEIGHBOUR SAID THE OTHER DAY...

PAR MIREILLE FOURNIER
ÉTUDIANTE EN DROIT À MCGILL

Cet éditorial est inspiré du commentaire suivant, entendu dans un cours de droit privé : *« Les femmes gagnent moins d'argent que les hommes, c'est une réalité économique. Ce serait une injustice de leur donner le revenu moyen tous genres confondus, parce que cela les mettrait en meilleure position que ce à quoi elles auraient pu aspirer avant l'accident. L'économie est une science qui ne fait que décrire la réalité, au fond, c'est juste. »*

Je ne connais rien de l'économie. Ni du droit d'ailleurs. Je suis étudiante ici et ce texte s'appuie sur des observations personnelles sur ce que nous faisons en école de droit, qui justifierait de répondre lorsqu'on pense avoir entendu un commentaire sexiste ou autrement discriminatoire dans un cours de droit. Mon but ici n'est pas d'expliquer pourquoi le commentaire ci-haut est discriminatoire, je vous réfère pour cela, à un de vos vieux *course-pack* de droit privé. Ici, je me contenterai d'argumenter que lorsqu'on ressent ce drôle d'inconfort à l'écoute de l'un de nos collègues, il faut y remédier, et qu'il n'en est pas que de notre conscience personnelle.

Soyons honnêtes, nous avons choisi le droit parce qu'il change quelque chose dans le monde. C'est aussi simple que ça. Le droit a ce que les arts libéraux lui envient : il change quelque chose. En cela, il n'est pas une science, et il ne décrit certainement pas la réalité. Enfin, permettez-moi de vous rappeler l'évidence même, mais ce qui provoque ce changement, c'est ce que le juge a écrit, ce que le juge a emprunté au bouquin d'un prof que vous connaissez, ce

que le législateur a dit. Vous m'avez compris, ce qui change quelque chose, ce sont les mots des juristes.

Ce que nous faisons, tous les jours en école de droit, c'est nous gaver de mots que d'autres juristes ont prononcés ou écrits. Voyez que je n'exagère pas. Nous relisons à l'infini des sections de la loi de 1867 ou de la *Charte*, nous apprenons par cœur des paragraphes aux tournures alambiquées des vieux lords britanniques, nous allons jusqu'à compiler au fil des ans des résumés étrangement exhaustifs qui couvrent absolument tout ce que le prof a pu dire et oublier de dire pendant une année entière. Nous sommes des juristes parce que nous sommes dans ce bain de mots « si important. »

Vous me pardonnerez cependant de travestir la question de Lord Reid (dont nous avons déjà abusé) : *who then in law [school] is my neighbour?* Et la réponse : nous ne savons pas. Notre « voisin en droit » peut être n'importe qui. Il peut, dans deux ans, être clerc pour un juge de la cour suprême, celui-là même dont vous buvez les paroles par peur d'échouer le quiz du prof. Kong, dans vingt ans peut être partenaire, dans vingt-cinq ans, premier ministre. Nous ne savons pas qui sont ceux dont les mots seront « bus » par nos semblables dans quelques années. Voilà autant de raisons de leur répondre tout de suite, pendant que vous pouvez…

L'obligation de répondre n'en est pas qu'une de la conscience individuelle. Elle est d'une nature collective qui découle de ce que nous faisons et de qui nous sommes. Et pour ceux et celles qui se demanderaient toujours *pourquoi répondre?* et bien, je me contenterai de reprendre l'indestructible argument de Lord Sankey dans le *Persons case (para 65) : the obvious answer is why [the hell] not?*

Bien à vous,

Mireille

10 WAYS IN WHICH LAW SCHOOL HAS CHANGED ME

BY AISHAH NOFAL

STUDENT AT MCGILL FACULTY OF LAW

1. Gone are the days of leisure reading.
Oh, how I miss the days when I would curl up in bed with a cup of tea and indulge in a good book. Ain't nobody got time for that. Nowadays, I still curl up in bed with a cup of tea but it is accompanied by a course pack.

2. …Although I seem to have caught up on every show ever aired.
My eyes may be too sore for leisurely reading, but I've somehow managed to make time to watch every kind of TV show online. I study for half an hour, and then watch a half-hour show. I study for an hour, and then reward myself with a one-hour show. Sometimes I watch things I don't even like, but I'll do anything to take a break from my readings.

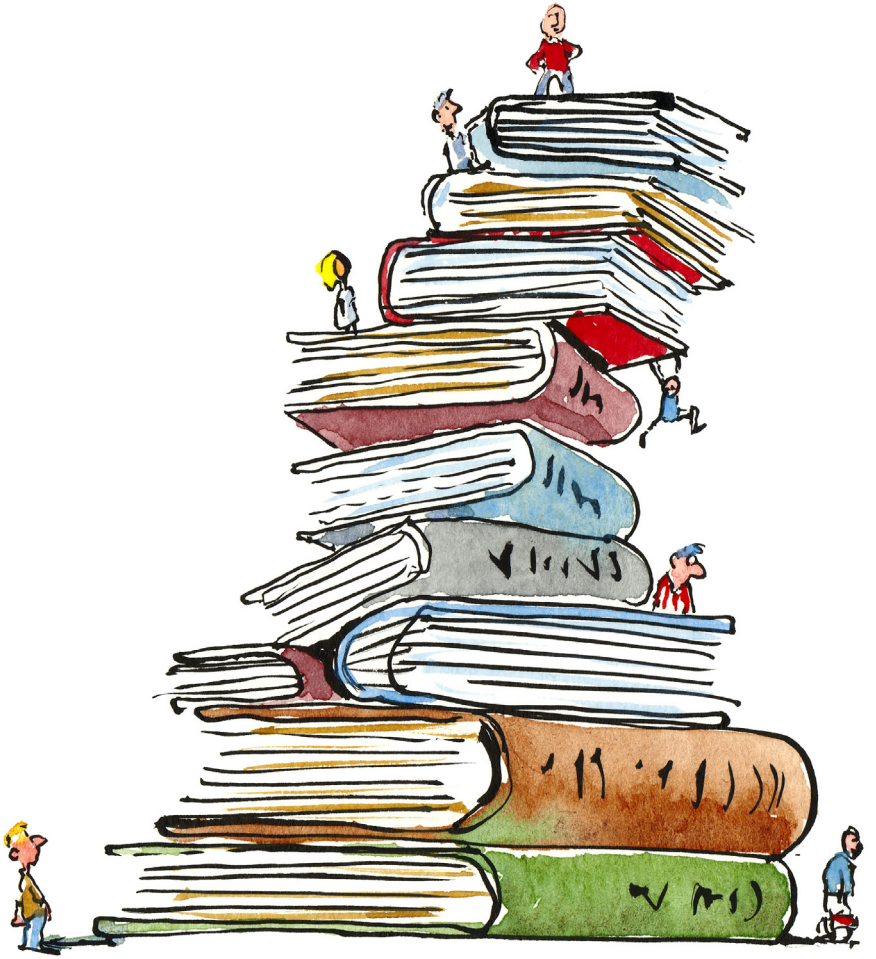
3. Procrastination has evolved.
I've reached a new level of procrastination. I'm not saying that I procrastinate more, but there are always far too many readings for the hours available in a day. So, even though I'm doing work every day (not as much as I should be doing), the unread readings accumulate exponentially and I never seem to catch up- then exams come rolling in and I realize how much crap I'm really in.

4. I don't feel as comfortable participating in classroom discussion.

In my undergrad, I always participated in classroom discussion. If I had something to say, I would say it out loud; however, in law school I'm always second-guessing myself. I'm always self-conscious about saying something 'wrong' and about what others might think.

5. I never have any idea how well or how poorly I did on an assignment/ exam once I've submitted it.

I used to be able to gage how my exams went, but not anymore. Now, I get the same grades on the things I think I've bombed as I do on the ones I felt more confident about. In law school, my instincts always fail me.



By HikingArtist

6. Latin.
Who says a major in Latin is obsolete? Lately, there seems to be Latin everywhere. I did my undergrad in Business. The only Latin I learned was caveat emptor (let the buyer beware).

7. On the one hand there are no straight answers for anything…the other hand doesn't have any either.
Long gone are the days when I would solve an equation in my Finance class, arrive at an answer, and either be right or wrong. As Professor Jukier once put it in class, you should begin every answer with "on the one hand" and follow it with "on the other hand".

8. Farewell multiple choice.
I miss the days where at least 60% of my exams were multiple choice. I ain't seen none of that here…

9. Sharing is caring.
I am pleasantly surprised to see that most of my peers are very generous with their notes. I've heard all of the common horror stories about people ripping out pages from textbooks to get an upper hand over the next person, and I am very happy to say that I haven't seen any of that at McGill.

10. We're all in this together.
I guess this is kind of related to the previous point, but it's definitely worth mentioning because it's much more than sharing notes. Everyone helps each other out. When I'm stressed, there's always someone there to help me put things into perspective or to remind me that they're stressing out just as much!

ESTABLISHING A FIRST YEAR SEMINAR: SUGGESTIONS & CHALLENGES

BY SUZANNE JACKSON AND ABIGAIL RADIS

MCGILL FACULTY OF LAW ALUMNI

Dear Future Student-Initiated Seminar Organizers,

During the fall 2010 semester, a group of students at the McGill Faculty of Law organized and ran a seminar on Sexual Assault Law. We identified a gap in our law faculty's curriculum and developed a student-run course by following models of comparable seminars at other law faculties.

This letter aims to inform and inspire. It seeks to provide advice to students at fellow law faculties who are interested in setting up a student-initiated seminar focused on sexual assault law, on related issues pertaining to gender and the law, or simply on any topic of interest not being addressed in your course offerings. Whoever you may be and in whatever year or faculty, we hope that these reflections will be of some assistance in the creation and success of your course and also, that you will encourage others to implement comparable projects.

Why did we decide to organize a course on Sexual Assault Law?

During our first year of law school, a number of us attended an inspirational lecture by activist and teacher, Jane Doe. She encouraged us to establish a course on sexual assault law at our faculty in order to address the systemic issues

surrounding the prevalence of crimes of this nature.

As first year law students, we grappled with the questions that she posed to the audience: What are you going to do about the prevalence of sexual assault in society? How will you work and engage with a woman who asks you to represent her in a sexual assault case? Those of us who reflected on these questions after her lecture admitted that that we did not yet have a response to her questions.

Knowing that a course on sexual assault law was not offered at our law faculty, and knowing that none of the courses offered at the faculty engaged with the topic in any depth, a group of student organizers decided to develop our own course. It would be a pass-fail, 3-credit student-led seminar that would allow us to examine sexual assault law from a critical third-wave feminist, critical race, and anti-oppressive perspective. While an extremely supportive professor acted as our faculty supervisor, the course was entirely student-led. Our supervisor neither attended our weekly classes, nor closely monitored the development and weekly structure of our course.

Advice on the Creation of Your Student-Initiated Seminar:

Organizing our course required a significant amount of administrative and substantive academic planning and work. Throughout this process, we learned a number of lessons - the most salient of which are listed here:

1. If at all possible, speak with students who have developed comparable courses in order to share and learn from their experiences. Speaking with students and professors who have conducted student-initiated and professor-led seminars will give you guidance on the best way to present your course to faculty administration, on effective navigation of the course approval process, and on what you can do to ensure the successful development of your course. For instance in our case, we used a course taught by an inspiring team of professors at the University of Ottawa Faculty of Law as our model. Their support for the development of our course was crucial to its success.

2. Begin planning your course as early as possible. At our school, student-initiated seminars are rarely approved, which is often due to either an insufficient course structure, or low student enrollment. However, if you begin the process at an early stage, you can also begin engaging in a dialogue with the administration that will enable you to most effectively develop your syllabus. It is also essential to prepare yourselves for a significant workload stemming from the development of the course, both prior to and during the semester.

3. We spent a significant amount of time during the summer before the

course and throughout the semester developing the structure of each class. We included a variety of in-class discussion questions and issues to consider throughout the duration of the course. Additionally, we created summaries of the assigned readings. As these readings were often quite extensive, we requested that student presenters address only selected components of their assigned portions. I highly recommend adopting this course structure students found it to be an engaging method that helped them focus on the crucial ideas behind the theme of the course. Moreover, I highly recommend that the organizers establish firm deadlines for completing these structural components of the course in order to ensure that the students and the presenters receive the necessary materials within an appropriate time frame.

4. We encourage identifying a group of students with a similar vision to share the organizational responsibilities. An equitable division of tasks amongst organizers should be established at the start of the course in order to make certain that tasks are effectively accomplished and fairly distributed. Face-to-face organization meetings should be held on a regular basis to resolve issues, in order to avoid the confusion caused by long email chains. In our case, coordinating of six different schedules was difficult; however, regular meetings can create a plan around which organizers can budget their time.

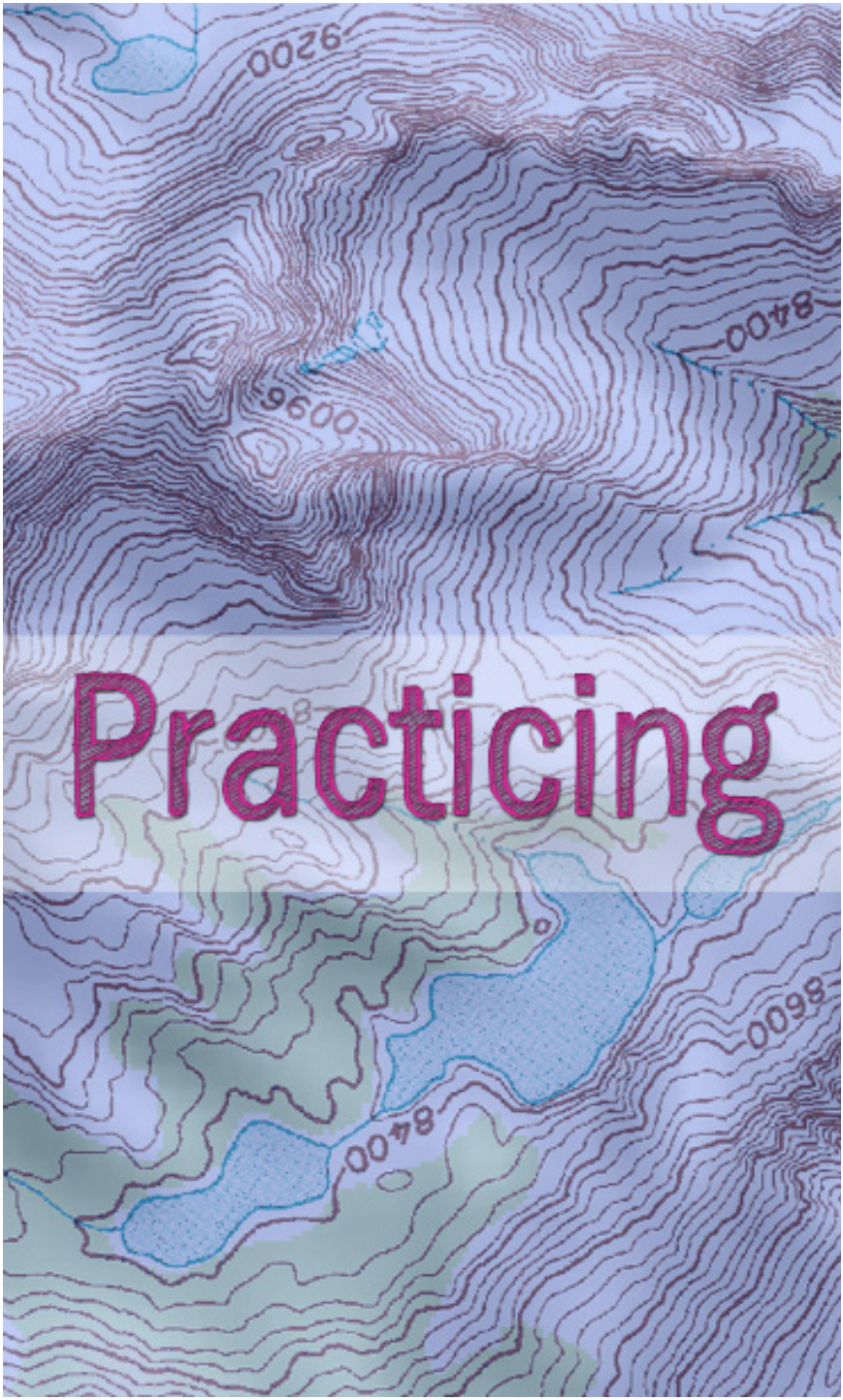
5. Due to the likely sensitive nature of your course subject, safe-space exercises should be conducted at the start of the semester in order to define and come to agreement on shared understandings of how an open and respectful discussion should operate. We also strongly encourage student-initiated seminars to hold regular and pre-set healing circles, or other appropriate restorative justice models, throughout the semester. While we learned a great deal from participating in our course, and while students' experiences in the course were largely positive, issues inevitably arose within the classroom. Without the model of the healing circle, we were unable to provide an effective forum for addressing these issues, which made it difficult for us to re-establish the safe space.

6. Also potentially of great worth is the expertise of and facilitation by an effective and experienced professor, particularly within the initial few meetings of the class. We highly recommend establishing the following course structure: weekly student presentations and student-led discussions, supplemented by guest lectures from professors, practitioners and community activists. By sharing the responsibility of teaching the course evenly among the organizers, we strongly believe that the learning experience becomes significantly richer. Although the course was graded on a pass/fail basis,

"THE SIGNIFICANT GAPS IN LAW SCHOOL CURRICULA AND THE PREVAILING AND PERVASIVELY DISMISSIVE AND SEXIST RESPONSES TO ISSUES SUCH AS SEXUAL ASSAULT WITHIN SOCIETY NEED TO BE PROPERLY ADDRESSED BY LAWYERS WHEN THEY BEGIN THEIR EDUCATION IN ORDER TO TRULY CHANGE SOCIETY'S INEQUITABLE REALITIES."

we were continually impressed by how prepared and engaged students were in the course, evident by the significant amount of work that they invested in their presentations. We would also recommend holding guest lectures on your topic both within your course and within the campus community in order to significantly expand and diversify the learning experience of the students and the campus community. To conclude, we strongly encourage you to develop a student-initiated seminar on an under-acknowledged topic, such as sexual assault law. Within law faculties, we are rarely given the opportunity to engage in a thoughtful, critical, and anti-oppressive examination of the law. The significant gaps in law school curricula and the prevailing and pervasively dismissive and sexist responses to issues such as sexual assault within society need to be properly addressed by lawyers when they begin their education in order to truly change society's inequitable realities. Student initiated seminars can help, by offering a crucial support framework for student empowerment. We believe that these experiences should be cultivated whenever possible.

A longer version of this piece first appeared in the The National Association of Women and the Law's 2011 manual 'The Gender and the Law Manual: An Introductory Handbook for Law Students.'


Practicing

WOMEN IN THE LAW

BY HELENA LAMED

DIRECTOR OF LEGAL METHODOLOGY, MCGILL FACULTY OF LAW

Women in the law face the same challenges as men do, at any given time, depending on the economic circumstances: right now, the about-to-graduate are worried about finding, keeping and liking a job, connected in some way with law studies. But many women face the challenges more acutely, more urgently, with the added pressures of work-family balance, "choices", real or illusory, about looking after children, and about wanting to look after the people and society around them, to "help", to "make a difference", "to feel satisfied". Women in law school who already feel something of this tension, that something will have to "give" in order to make a place for themselves, will find confirmation and understanding in Carol Gilligan's work, from *In a Different Voice to Joining the Resistance*. However muddy her science, she describes the experience of women losing their own, distinctive voices in order to sustain relationships, be they personal or professional. She calls on women to listen to their voices of resistance and to let them be heard, for they are authentic agents of change. I wish I had read her first book when I was starting out, rather than 20 years later. I don't think I would have done anything differently, but at least I might have understood why I found it so difficult to find a place in the law.

I graduated from McGill law school thirty years ago, after having done a BA in English and Economics and graduate work in comparative literature, all at McGill. (I can never be grateful enough for the sense of belonging and of limitless possibilities that this stodgy, dusty institution has given me.) About 35% of the Faculty was women; I don't know how

many were finely tuned to gender issues, but I know I was not. I thought the battle had been won, wherever it had taken place. I did not think about inequality in hiring, I really had no idea what work in law would mean, I just thoroughly enjoyed studying law. It appealed to my love of detail, my respect for authority, and to a desire to belong to a community with the power and commitment to "make things better." The practice of law in 1982 mostly meant private practice, with some in-house and government jobs, but most graduates went to work in firms. I wrote one letter to a very large Montreal firm, (now merged and re-merged) for an articling position, had an interview, got a job.

The practice disappointed me as much as the study had thrilled me. The hierarchy in the law firm appalled me. I did not understand about billing, and thought that looking after a matter meant doing the work well, but felt unhappy about putting down all my time, because I was inexperienced and slow. I kept trying to reach compromises, find the human element, work it out, not fight, even though I was a whiz with the Code of Civil Procedure and felt almost guilty at the thrill I experienced in the courtroom, and at my success there. I could not articulate the yucky feeling I sometimes had in meetings with the clients and the senior (male) lawyers; I know now it was that resisting voice, mocking me for being proud of always having the right document to hand my senior, knowing the last detail of this or that, fast on the photocopy, basking in a word of praise for research well done. The voice was despising me for being so dependent for confirmation of my worth in the profession.

At one point, about seven years into practice, I gave it up to look after my first child. But as soon as I left practice, I looked for something else, anything, and taught some law courses in a technical college. I raised a family with joy and heartache, with a toe-hold, no more, on the profession, missing the company, the suit jackets, "let's have lunch", the sense of something my own, however unsatisfactory. I decided to return to work, and for a few years had a small solo practice, had to give it up, things happen. I was indignant at a newspaper story of a woman who had done law school and joined the bar, but who could not find work as a lawyer, only work as a paralegal in a firm. The firm would not let her use the designation "Maître" in her job. It did not want her confused with the "real" lawyers. A male lawyer I knew remarked to me about this story: "What difference does it make? I never use my title, I don't feel the need to". You don't know what you have until it's gone. And you, my friend, could afford to be casual,you were at no risk of losing your title, but a lot of women are.

How could I have known that I had fallen under the spell of the "Mommy" backlash of the early 90's, the accumulated years of Reaganite conservatism? I just could not bear visiting with my child, then children, for an hour a day. Maternity leave and part time work were by then part of firm culture,

but only just, put into place with sighs and concessions not only by the male partners but by senior women partners who proudly boasted of delivering right after a closing and of returning to work within a couple of weeks. Part-time work was evidence of "going soft", of only half-hearted commitment to the firm, and the passport to second- class citizenry in the law firm. Many of the women I knew toughed it out through the childhood years, with nannies, missed events, tears, midnight oil and determination. Maybe they heard their partners tell them, "I am not getting up in the night because I am the higher income earner", and still got up, or maybe they were the higher income earners, or maybe they had the support they needed, or listened to their voices saying, "do it, do it". They are partners in firms, judges, senior government lawyers. I am full of admiration for them they are models for women in the profession. Others left; the women Susan Pinker interviews in her book *The Sexual Paradox*, or some of those described in *Bar Codes: Women in the Legal Profession*, "chose" to get out, didn't care whether the ceiling was glass or not, because the climate and culture of law practice was fundamentally alienating and unsatisfying. The question women must ask is about the authenticity of that choice. Which voice is making the choice? How authentic is it?

Determination by women lawyers have made family policies integral to law firms now, and men are also included. This is a good thing. Many other good things have made it better for women in law: now more than 50% of graduates and the top of law classes are women; the Bar has to pay attention. Mobility within and between jurisdictions is now not only accepted but valued (used to be you changed firms and there was "something wrong, you know, unsteady" about you) and more options are offered to women in law. Pay equity achievements, changing mores, equality laws, and technology have, in theory, made law more open to women. However, the growth of the larger law firms, the lure of big profits in boom times (and the need to preserve partner profit in down times) take their toll, and every so often you still hear about large firms "cleaning up the dead wood", meaning getting rid of unproductive partners. Of course, some are men, but it is shocking when those put out the door *en masse* are women.

Women in the law have to find and keep their voices. Speak in class and speak in the boardroom. Don't speak only for the sake of speaking, but don't be silenced either, don't leave thinking "I could have said that, I knew that". Don't make yourself small and unheard. Speak your knowledge and vision. Above all, don't give up, don't toss it, stay working, stay in the profession, however you do it. The profession needs you to make it better, and work, especially for women, is the key to maintaining a sense of oneself.

ACADEMIC PROFILES: ALANA KLEIN & DIA DABBY

BY ALLISON RENDER

STUDENT AT MCGILL FACULTY OF LAW

Alana Klein, Assistant Professor
Research Areas: Health law, criminal law, human rights

Alana Klein did not initially plan to become an academic – she saw herself working in an NGO. However, while clerking for Justice Louise Arbour at the Supreme Court of Canada she found she was drawn to more academic questions, ones that couldn't be answered through policy advocacy alone.

She decided to pursue graduate studies in law at Columbia University, returning to McGill in 2007 as a Boulton Fellow. In between, she worked as a

"DON'T FORGET YOU HAVE AN IMPACT ON THE WORLD AROUND YOU...I DON'T WANT MY WOMEN STUDENTS TO SILENCE THEMSELVES FOR FEAR OF NOT KNOWING."

policy analyst at the Canadian HIV/AIDS Legal Network.

Klein says being a feminist has an impact on her research and her teaching. It provides a critical angle to her work and draws her to study the lived reality of law. Her work on participatory approaches in health care, for example, is informed by feminist ideas. She says her focus on active learning approaches is both beneficial to students consistent with some feminist conceptions of learning.

While Klein was reticent to give advice to students interested in academic careers, because individual circumstances can vary, she did offer an anecdote.

At the beginning of the year, she asked her Criminal Procedure students to write down when they thought the police should be able to stop people on the street, before they knew what the law is. Klein said one student, who is a women's rights advocate, particularly appreciated being told that the students would someday be writing laws.

The classroom, she says, should be a place to work out feelings in a thoughtful way. Students should not be afraid to share ideas without taking a strong position, or that are not yet fully formed.

"Don't forget you have an impact on the world around you…I don't want my women students to silence themselves for fear of not knowing."

Dia Dabby, DCL Candidate
Research Areas: Constitutional law, religion and the law, legal pluralism and legal education

Dia Dabby initially applied to law as a "throw-away thing", because she couldn't find a supervisor for her first choice program: a master's in constitutional politics. Ten years later, Dabby is completing her doctoral studies in law, with plans to go into teaching.

Dabby said she has long known she was drawn more to academia than to legal practice. While completing her law degrees at the Université de Montréal, she did research for several professors. She articled with the Court of Quebec and was called to the Quebec bar in 2008.

For her doctoral work, she is conducting a comparative constitutional examination of children's rights to freedom of religion and equality.

Dabby says some of her research applies feminist approaches, but she doesn't personally identify as a feminist. However, she is concerned about challenges facing women in academia and is planning a coffee hour for doctoral students the topic. While more women are entering law schools at all levels - Dabby's D.C.L. class is more than two-thirds women – there are still challenges in academia.

Women compose 42 per cent of overall academic staff in Canadian law faculties, and closer to 50 per cent of staff below the rank of full professor.[1] However, according to eigenfactor.org, women account for only 24 per cent of authors on legal papers published between 1990 and 2011.

"WOMEN ACCOUNT FOR ONLY 24 PER CENT OF AUTHORS ON LEGAL PAPERS PUBLISHED BETWEEN 1990 AND 2011."

Since publishing is key to career advancement, such disparities can have an impact. Dabby says she won't speculate about the causes of this disparity, but has personal knowledge of the circumstances that may influence it.

"My mother is a university professor who did her doctorate while we were growing up, and used to write her thesis after we went to bed."

[1] Canadian Association of University Teachers, "CAUT Almanac of Post-Secondary Education 2011-2012"

CLOSE-UP WITH DR. VRINDA NARAIN

BY NOUR RASHID

STUDENT AT MCGILL FACULTY OF LAW

Nour Rashid, Student at McGill Faculty of Law (NR): What is your current research focus?
Dr. Vrinda Narain, Constitutional Law professor at McGill's Faculty of Law (VN): Currently, I am conducting research on post-colonial constitutionalism, exploring the transformatory potential of constitutions.

NR: How do feminist legal theory, social diversity, postcolonial studies, and critical race theory enrich your study and interpretation of law?
VN: It encourages me to consider a variety of different perspectives and to engage with different realities.

NR: What were the most challenging and rewarding aspects of your lawyering experience before joining the faculty at McGill?
VN: Providing free legal aid and ensuring access to justice.

NR: What is your personal teaching philosophy?
VN: I want to teach my students to learn how to question.I would like my students to become critical thinkers and engaged citizens.

NR: What are some ways you would encourage your students to engage in learning outside the classroom?
VN: Participate, organize, get involved with the wider community.

NR: What advice would you give to aspiring young women entering the field of law and wanting to create social change through the legal system?
VN: I think it would be a bit presumptuous of me to offer advice! But I would encourage them to Reclaim their space, and never be afraid to speak truth to power.

TIPS FROM THE TRENCHES

BY MARGERY PAZDOR

STUDENT AT MCGILL FACULTY OF LAW

After working her way up in the airline industry and being told she couldn't be promoted any further unless she had an education, Julia (not her real name) went back to school and obtained a law degree. Twelve years into her career, I spoke to her about her experiences working in large, small, and medium-sized firms. I asked her about her work, her experience with work-life balance, and the social situation in law firms. We covered it all: from salary negotiations to sexual harassment at work. Here are some of the highlights.

On the benefits and drawbacks of bigger and smaller firms:

Working at a large firm has great benefits. You have their reputation, you don't have to look for work because they've already got all the clients, there is a steady structure, and there is great access to resources such as assistant support or research resources. On the other hand, I don't think you get as interesting work, particularly as a junior lawyer, which means that the learning experience is not as interesting or diverse.

For me, I found the medium firm to

"TO BE A SUCCESSFUL LAWYER AND TO HAVE A SUCCESSFUL LIFE YOU NEED TO BE QUITE VIGOROUS ABOUT BEING SELF-PROTECTIVE."

be the ideal, and it was a very valuable learning experience for the first 5 years. I was going to court several times a week during my articling year, running my own cases, meeting with clients. There were also times that I was put into high-pressure situations that I didn't feel that I was qualified or capable of, but you learn and you learn fast and that in and of itself brings a certain confidence. It's not what I would choose for the long term, though, in part because the firm politics tend to be pretty extreme.

Working in a small firm has been the most pleasant atmosphere to practice in for me. Your relationships are close, you get very bonded to the people that you work with, and it tends to be positive relations for the more part. There is good communication in a small firm and more immediate decision making, so those are all positives. But, it can be a challenge from a resources perspective in terms of access to legal assistance, paralegal assistance, research resources. It can also be more volatile and more susceptible to changes in the economy or workload.

How have you managed to maintain work-life balance?

That has probably been one of the biggest challenges of a legal career for me, and I think that is partly due to my personality and partly due to the reality of the practice of law. There seems to be this hard-core culture in law where work is the centre of your universe and in order to be respected you have to demonstrate that you are a workaholic. That was what I felt, and that's what I gave into for many years.

I think I've come a long way in establishing balance in my life. To be a successful lawyer and to have a successful life you need to be quite vigorous about being self-protective. Protected from your partners, from your clients—generally setting up a healthy boundary of barriers around you to keep people from sucking you dry. I think if you're good at what you do there is no end to the demand for what you have to offer, so if you don't set up the boundaries, you can find yourself way out of balance.

It's true that whenever you start in a new area you have to invest time and energy to get the skills, and so being a workaholic for the first 3-5 years might make sense, but after that point it becomes a pointless exercise and is a detriment to you, your family, and I think to the community as well because it promotes burnout. I

think the workaholic culture is why there are lots of people who drop out of law, there is lots of drug and alcohol abuse, and [there are] lots of mental health issues.

On negotiating for salary:

Something I found interesting is that people were reluctant to talk about their salary. I never had any hesitation—if someone asked me what I was being paid, I would tell them. But that was really uncommon in law firms, and I've seen partners use the fact that people were not telling each other what they were making in order to set pay scales pretty randomly.

I recommend two things for negotiating salary. First, find out what you're worth, and second, ask for $10,000 more.

The first step is to know what you are worth—find out what the standard salary is. Talk to people at your own firm and at other firms of comparable size doing similar work (confidentially, of course). You can also use the ZSA recruitment website to find out the average salary for lawyers in whatever part of the country you are looking for work in.

The second step is to ask for $10,000 more than what you think you are worth. And this is really, really hard for women. You know what everyone else is getting paid, and then you go in and ask for $10,000 more? That is difficult. But you have to do it. When you are progressive and up-front about discussing your salary expectations, there is respect that comes with that. If you duck the issue or let them undervalue you in negotiation, you lose the respect of the people hiring you, and you come to be seen as the weak link.

A lot of medium and large firms will have a pretty strict pay scale, and they don't try to pay their associates outside of that scale. But you should know what that scale is when you go in there so you know what to expect and what you are worth on that scale.

Of course, if you decide you are worth $100,000, you ask for $110,000, and they offer you $100,000, then you should take it. There is no point in negotiating yourself out of a job. But know what you are worth and stick to it.

On the social dynamic and alcohol:

I found that the social environment outside of the actual practice was surprisingly interconnected with the practice. You do have to fit in; you do have to do more than show up just 9-5. People have to trust you, which means you have to do socializing, and a lot of it revolves around alcohol. You can abstain and still participate, but you will be seen as the nerdy kid. Socially, it can be a very tricky environment.

I've seen some ugly incidences. When lawyers let off steam, there is excessive drinking, and a lot of things that go on that I don't think is good for the culture as a whole, and that can be very destructive to families and to working relationships.

It's a binge drinking culture. Not unlike an extension of the university

"I SAW AN INDIVIDUAL, A "RAINMAKER," WHO MOLESTED A SECRETARY AT A PARTY IN FRONT OF MANY OTHER PEOPLE. SHE WAS FIRED AND HE WAS LATER PROMOTED TO PARTNER."

culture. One beef I've always had is when spouses aren't invited to Christmas parties. You have people in this environment where there is alcohol being consumed, spouses are excluded, people get drunk, affairs happen, other things happen—I've been groped by partners, inappropriate things have been said—and then you've got to look at these people the next day and work with them. To me, that's an embarrassing side of the profession, particularly because I had naively had some idea that as a lawyer I would be privileged to work among a higher, more dignified class of people, and that was really dumb of me. I think because of the lack of balance in lawyers' lives, when you put a couple of drinks in their hands they act equally out of balance, and that leads to all kinds of problems.

My way of surviving is: I go to those functions, I arrive on time, and I leave promptly by 9:30. You put in an appearance, everyone is having a nice time, and right when everyone is having that really nice time, that's when it's time to get out.

As a woman, you don't want to be seen as anti-social, but you do want to avoid the debauchery. Sexual harassment is alive and well in the workplace and particularly comes out at those sorts of parties.

I had a career before law, and I have found law to be worse than other environments I have worked in. I think it has to do with a lack of balance in lawyers' lives. There is also a bit of social awkwardness amongst some lawyers, male lawyers in particular. I don't know if that's a lack of social skills, or if it's a product of the big egos involved, but there tends to be a bit of a caveman approach. I think that attitude precedes sexual harassment, and all the alcohol does is allow people to do that more openly. It all starts with the attitudes.

There also don't seem to be any consequences for this behaviour to the partners that engage in it. It seems to be brushed under the rug with a "boys will be boys" attitude. Women don't complain very often, partly because it won't get you anywhere, so you have to avoid the situation, or deal with it when you are in it, but it's a tricky thing. When I say deal with it, I mean, take his hand off your ass, for example. Or, if it's a drunken lunge kiss, you can step out of the way and let him hit the wall.

In one instance I saw an individual, a "rainmaker," who molested a secretary at a party in front of many other people. She was fired and he was later promoted to partner. The incident had no effect at all on his career; it was like

it never happened. The firm's way of fixing the problem was to keep the rainmaker and make the secretary go away; essentially to cover it up.

As another example, at a barbeque that was after an office golf tournament where people had been drinking all day long, I saw a partner, this person I am supposed to respect, kissing his secretary. It so happened that I knew his wife, so now do I have to be part of the lie? I do if I want to keep my job. So those are the kinds of ugly situations that you can find yourself in that are very challenging ethically.

"I WOULD EXPECT LAW TO BE ONE OF THE MORE PROGRESSIVE FIELDS, BUT IT'S NOT WHEN IT COMES TO WOMEN'S ISSUES AND SEXUAL HARASSMENT."

I once had a junior lawyer grab my breast while ripping a name tag off my lapel and screaming, "you're such a fucking stuck-up bitch" in my face while I was talking to a potential articling student at a recruitment dinner.

Things like that would happen pretty consistently about a couple of times a year in all of the firms I have worked at except the small one I am at now.

The funny thing about the sexual harassment is that even as I am talking to you right now, I feel like I shouldn't be saying it out loud. There is a code of silence around it that I think is very destructive. As women, we have responsibilities, and I see mine as not being out drinking with the partners at midnight. But at the same time I don't feel like I should be the subject of that kind of behavior. It was humiliating and embarrassing and degrading and infuriating and so many things and a constant irritant that you had to have that sort of armor up all the time because if a partner is being nice to you, you don't know if it's because he likes working with you, or because he wants to grab your ass.

As women lawyers, we need to talk about and raise these issues in the workplace. As women generally we need to talk to our friends, and we just have to keep the issue present—that means breaking the code of silence. I struggle with that myself. I didn't report any of the people who assaulted or harassed me. I knew that if I had reported, I would have been the one gone and they would still be there.

I do think the culture is starting to change. For example, both men and women are starting to refuse to go to the Christmas party if their spouses aren't invited. I don't want to leave you with the impression that the practice of law is full of these lechers—it's not true. They certainly are out there, but it's not the majority, and I think that these incidences are on the decline because I think people are starting to get it.

It's disappointing that the change is so slow. Again, I would expect law to be one of the more progressive fields, but it's not when it comes to women's issues and sexual harassment.

INTERVIEW WITH DR. ESMERALDA M.A. THORNHILL

BY LILLIAN BOCTOR
STUDENT AT MCGILL FACULTY OF LAW

Lawyer and human rights and anti-racist educator, Dr. Esmeralda M.A. Thornhill, is a Professor at the Schulich School of Law at Dalhousie University and was the O'Brien Fellow in Residence at the McGill Centre for Human Rights & Legal Pluralism in November 2012. From 1996-2002, she was the first scholar to hold the James Robinson Johnston Endowed Chair in Black Canadian Studies. Professor Thornhill developed and taught *Black Women: The Missing Pages from Canadian Women's Studies* at Concordia University, which was the first accredited course in Black Women's Studies at a Canadian university. She is a member of the Barreau du Quebec and the Nova Scotia Barristers' Society.

R v. RDS (1997), a crucial Supreme Court decision on race and the judicial system, set out grounds for determining reasonable apprehension of bias in the court system by judges and establishing limits to the application of social context in judging. Marking the 15th Anniversary of the *R v. RDS* decision, Dr. Esmeralda M.A. Thornhill led a seminar at the McGill Faculty of Law on the continuing impact of this case on the legal community and it's significance for students today.

McGill law student and freelance journalist Lillian Boctor spoke with Dr. Thornhill in November 2012 about *R v. RDS*, the unfulfilled promises that this case brought forth, 'race' literacy, women in law, racism in Canada and in the legal field, and the current state of legal education in Canada.

Lillian Boctor (LB): Professor Thornhill, you led a seminar at the McGill Faculty on Law on the case R v. RDS and it was framed within the concept of 'race' literacy. What is 'race' literacy, what does it signify within the legal profession and law school and why is it important for students to reflect upon the R v RDS case?
Dr. Esmeralda M.A. Thornhill (ET): I don't know what 'race' literacy signifies or means in law school, because it has not yet been discovered. 'Race' literacy means understanding the hard and durable grammar of 'race' that textures people's lives day in and day out. It means that one grasps or comprehends the racial dynamics of how 'race' operates in people's lives in terms of relationships, opportunities, or disadvantage. In addition, it means understanding the racial hierarchies, often left in silence, but which are set up and structured, not just in terms of who gets to be in positions of dominance, and who gets to be the subordinated or be the subaltern, but really, who gets to be the heroes and heroines in the national narrative; who gets to be included front and center stage; who gets to be excluded; and who is fit to be marginalized or left at the second, third rate position. To understand all of that, to me, is part of 'race' literacy. But even more important, for me the understanding is such that the 'race' literate person realizes s/he cannot either passively, either unwittingly, or deliberately, set about and do or pose and act or gesture which is racist. There is an anti-racist commitment once you become 'race' literate. There should be; if not, it's phony.

It has been 15 years since the Supreme Court handed down the R v. RDS decision, and I felt that it was fitting that students first of all understand that 15 years already have passed and that there were promises held forth by that

decision, promises which are far from being fulfilled. It was important also for students to understand the significance of R v. RDS in the Canadian context, because I believe that we should be educating for critical consciousness - particularly when it comes to law. R v RDS is a case that holds great significance in the Canadian context, not only for people of African descent, but it should also be significant for all women. Unfortunately this does not hold. Perhaps because the judge was a Black woman…who knows? But the importance of this case is that it is the first time really that our Supreme Court of Canada was compelled to address the issue of racism; and it would be interesting for students to do a scan and look critically to see how the Supreme Court of Canada did actually address racism. Did they address it effectively? Was it in an open way? Was it transparent? Or was it reluctantly or grudgingly addressed? I think that those are things we need to look at it because those insights give us the signposts, or indicators, to understand whether change is happening, or not.

LB: The dominant narrative in Canada is that racism doesn't exist and if it does, it is couched within terms of discrimination or prejudice. The imagery of the "mosaic" is used to describe cultural or racial difference in Canada, or the "melting pot" of the United States. What is your response to the claim that racism does not exist in Canada?
ET: First of all, it is rather seductive to use the "mosaic" or "melting pot" metaphors or imagery. While they do use the "melting pot" in the U.S., well there still are pretty big lumps remaining because everything hasn't melted up together. And in Canada, by contrast, while we say "mosaic," the black tiles stick out and they are usually relegated to the periphery or sedimented on the bottom.

The proximity of the United Sates to Canada is a blessing and a bane at the same time. It is simultaneously a benediction and a malediction, in the sense that we Canadians tend to self-righteously pat ourselves on the back and point with indignant outrage to the U.S. and proclaim that we are not like the "big bad U.S." So in that sense, because of the proximity of the U.S., a so-called greater evil, we have not been forced to look in the mirror at ourselves. The consequence of this is that the national narrative or myth is a discourse that says instinctually, with a knee jerk reaction, "no racism here." However, that discourse is belied not only by the demographics of the country and the images of what or who gets exported as a "Canadian," in the most simple things, but it is also belied or betrayed by the fact that, for example, there is a vacuum in terms of Canadian legal pedagogy, in the teaching and learning of law. We do not address 'race' and the majority of us do not know how to address 'race.' All of these reasons or factors inform my decision to conduct this seminar with students on R v. RDS.

LB: What was your experience as a young Black woman starting law school, and how was it different or similar to someone starting law school today?
ET: Everything has changed and nothing has changed. What I mean by every-

thing has changed is that it is not necessarily only or exclusively a "Community-of-One;" there are others now; not only that, there are others of African descent out in the field as practitioners, advocates, researchers and jurists; so that is a significant change. In terms of legal culture, nothing much has changed, because the same kind of daily micro-aggressions continue happening to students of colour, and the curriculum is still conspicuously silent on issues of 'race.'

What I find to be more than irritating - it is really almost indecent - is that in the Academy, we educate students, our lawyers-to-be; our bar societies and professional corporations license them; they proceed to take a professional oath to provide the best possible defense; and then they go forth, presumably equipped to deal with and offer these services to the public. But there have been great seismic shifts in the demographics of Canada. It is a multiracial country, it is not the British colony of the 1800s. When a lawyer sits in front of me, or a client who looks like me, and takes a retainer to provide the best possible service, there is a presumption of her/his competence. If it is someone who looks like me, there is an assumption that s/he understands how 'race' plays out as a material reality in my life; that if it is a legal problem where 'race' figures, s/he will comprehend why there has to be some corrective. If not, we keep re-inscribing and re-generating epistemological violence. For example, we do not have collective remedy for collective relief for racial invective or racial vilification. I am thinking of the Bou Malhab v. Diffusion Metromedia CMR inc., which took thirteen years to get to the Supreme Court of Canada. A well-known broadcaster in Montreal riled with racial invective against Arab and Haitian taxi drivers over the air, live, during one of his radio shows. Every level of the court declared that what the broadcaster actually did was wrong and racist. The action before the court was a class action suit for damage and injury because at the time there were eleven hundred Arab and Haitian taxi drivers in Montreal. Six out of the seven sitting judges of the Supreme Court of Canada, the last authority in the land, essentially said no injury had been done, and that even if there had been injury, the group of eleven hundred was so large that any injury would have been diluted. One single Justice, Rosalie Abella, disagreed and she dissented. If we talk about context and justice from an African descendent point of view, that decision was very damning because it was a cancellation of everything that is our reality as peoples of African descent. If we cannot find reparation, relief or remedy from the law for the material reality of racism in our lives, then what is left to us?

I think that is important for students to understand RDS's promise of social context, because RDS ushered in "social context training" for judges. But then, when we look at the treatment of RDS by scholars in subsequent years, we are left to wonder, do they really understand "social context?" Or is it just another catch phrase we can now deploy to camouflage the real issues, which we are really not prepared to address? Or are too uncomfortable to confront? That is why we have words like "diversity," even "multiculturalism." There is nothing wrong with multiculturalism in and of itself, however, its practice in Canada is

creating more deficits than correcting them.

LB: What hope do you have that this lack of 'race' literacy and acknowledgement of 'race' in Canada and in legal education can change, and what form would that take?
ET: I think that law is too important a tool to abandon ever. So we have no choice but to make the law responsible to us. And that is why it is important for students to be critical, to develop that sense of critical thinking. It does not matter what colour they are, it doesn't matter what persuasion they may be, but that critical understanding is the kind of professional rigour and ethical commitment that one should bring to the profession because law should be liberatory and emancipatory for everyone. Law should uplift us and it should somehow nurture us in terms of saying "Yes, you exist, you are real, and when wrong has been done to you, we as a society, using the arm of law, we will affirm you and we will check whatever wrong is happening." When for example racism runs untrammeled through a society wrecking lives with impunity and cancelling out the belief that young people should have in themselves, we are forced to hold law and legal education accountable, law being the panacea. When we go forth as professionals of law we should have a higher understanding of how to use the law meaningfully and not just use it unwittingly, unconsciously, or in ignorance to create more harm - and that is where the ethical commitment comes in.

To date, this might sound harsh, but it's an objective description, I would say that there is an institutional disregard in general when it comes to 'race' on the part of our institutions of learning, and not just law. I am talking about all the university, post secondary, and collegiate levels, but there is also an institutional disregard in terms of legal professional corporations. Why is it that when it comes to 'race' there are not standards set, a baseline that legal professionals are required to know? How can we accept that there is the promise upheld of representation before the courts, but the lawyer may not even understand or may even feel intimidated by the idea of 'race?' You may have sympathy, but sympathy is not what we go to court with. We go to court with knowledge, rigour, skills and cold hard facts.

I do believe in law, and the possibilities of law. As an educator, I also believe profoundly in the possibilities of education, but I am also acutely mindful of the limitations. So when it comes to accountability for 'race,' we cannot entertain defenses of "academic freedom" or "good intent." We are not talking good faith here, we are talking about behaviour and what is necessary in order to do a good job. We do not talk good faith when it comes to teaching children in kindergarten or elementary school about the computer and the keyboard. We have well passed that stage. When we discovered that the world was round, we abandoned teaching that the world was flat. We need to wake up. Demographics have changed. We know that there is a need; there are societal problems that hinge on 'race' and we know that law has yet to really address them. If we are truthful with ourselves, we will understand that we have to start addressing 'race,' and that comes with a whole slew of new implications in terms of whose perspective

and intimate knowledge gets called upon to articulate "x", "y" and "z."

LB: Why did you become a lawyer and what advice do you have for women of colour starting law school today?
ET: What I have found in my own personal career are layers upon layers upon layers: you realize, "I need another tool from the toolbox." So you go and get another tool from the toolbox. And then you go on and you realize, "I need yet another tool from the toolbox." And that is basically how it has happened with me. I taught human rights education for a long time and I have always said to young women, no matter what racial group, that there are several things which every girl-child should have: a course in physical self-defense; a course in technology; a course in mathematics to be able to manage finances and money; and finally, law courses, in order to understand what your rights are and how you must invoke rules and recognize when procedure is being distorted or not followed. And all of that would make for a well-rounded human being who could effectively hold abusive authority accountable.

I personally do not have a problem with hierarchy; the issues begin when hierarchy or power are not exercised in a proper or fair-minded way, when it is exercised in biased ways, in underhanded or unfair ways. What I would say particularly to women is, yes, we are all oppressed, but not all women are equally oppressed. Apart from the common denominator of being women, we have to abandon essentializing and we must understand that everybody comes with their identity intersected in different ways with different priorities, different experiences and different values. If we are both sitting as we are right now in this room, and I can see what is behind you, and you can see what is behind me, then we share the same common denominator: our spatial reality. However your vantage point and therefore your perspective, differs from my own vantage point and perspective. Once we understand that truth, then we will stop believing that any one individual group, nation or collectivity can sit forever unchallenged at the Center of Scrutiny. Basically that is the challenge for those at the Center of Scrutiny who so feel entitled, and who have dressed-up what is being done there in robes of formality and ritual so as to impart and entrench some kind of tradition, or some kind of unshakeable, unchallengeable standard - which is wrong. Your vantage point is just as good as mine and if we respect the fact that we come from different spaces, and that we are occupying different locations, then there is an immediate respect that happens and we will listen patiently to each other. We may still differ but we will at least listen to each other, instead of one of us thinking she has the entitled right to impose her view on somebody else.

LB: Thank you so much Professor Thornhill.
ET: You are very welcome.

WOMEN AND THE LAW: WHAT ABOUT THE CHILDREN?

BY STEPHANIE CLARK
STUDENT AT MCGILL FACULTY OF LAW

There are women out there who work in big law firms. There are women who have made partner. There are women in senior in-house counsel positions, ones who have started their own NGOs and ones who have started independent law firms. These women have been successful at balancing their demanding careers with having children. So there you have it, ladies: everything you need to know about your life after law school.

I'm not entirely happy with this incredible vague depiction of what my life options are post-bar school. I'm looking forward to finding that elusive work-life balance. The vague stories I've heard make it seem that there's a way to work in a demanding law career,but no one seems to want to illustrate that process. I hear that a lot of women have found that balance but I don't know what it entails. I've looked at books in the library that celebrate stories of women who have been able to have children and attain partnership at big law firms, but these stories don't talk about how they do it. I want to know how people have managed to do it, what kind of landscape they're doing it in and how that landscape is expected to change. I plan on having children one day, and I also plan on being way too busy in my career because I'm like that. The best way to learn something is to ask people, so I did exactly that. Below you'll find the fruits of my inquiries of five women, each in different demanding positions in their legal careers, each of whom have balanced their successful careers with having children. And they're

going to talk about how.

Here's my disclaimer. The women that responded are all married women in heterosexual relationships. And that's fine for a starting point. I get that not everyone wants their wishes granted by the Diaper Genie, and there are zero things wrong with that. I don't wish to imply that they have nothing to worry about as far as work-life balances go. I also know that there are way more people having children than just married hetero women– do same-sex couples have the same opportunities to have children while working a legal career? What about single moms? Single dads? I have no intention to discriminate or focus solely on one type of couple; I want to emphasize that I'm merely looking for a starting point to a really important social conversation. Like all equality battles, discussion is an essential starting point, so I strive to present my findings in a way that everyone will be able to glean something from it.

I want to lay out the playing field. What does a woman's legal career look like, first and foremost? The current numbers in Canada can be summarized as follows:[1]

- In 2010, women made up 37% of the practicing lawyers in Canada.
- Of those women, 28% reported participating in a flexible work arrangement, compared to 21% of men.
- 50% of lawyers in general felt their firms had some work to do in their provision of flexible work arrangements.
- 51% of women were senior partners compared to 71% of men.
- 40% of women had an alternative partnership arrangement, such as part-time or salaried compared to 18% of men.
- The average cost to a firm including investment costs (such as training and development) and separation costs when an associate leaves, potentially because of work-life tension = $315,000.

Apparently flexible work arrangements are possible, both for men and women. There's your statistical glimpse into the world in which these mythical women had been able to balance their children with their legal careers, and where some men are doing it, too. However, what I'm most interested in is the process by which these women managed a successful career-woman balance.

First, I wanted to know if these women's careers affected when they decided to have children. I know that it's not a conscious decision for everyone and I approached the topic with that in mind.

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[1] Catalyst. Catalyst Quick Take: Women in Law in Canada. New York: Catalyst, 2012 http://www.catalyst.org/knowledge/women-law-canada ; more statistical information on the demographics of lawyers in Canada can be found here: http://www.flsc.ca/_documents/2010-Statistical-Report.pdf

"I BECAME PREGNANT WITH MY FIRST CHILD WITHIN WEEKS OF BECOMING PARTNER IN A BAY STREET FIRM. IT WASN'T INTENTIONAL, BUT I HAD ALREADY HAD ONE MISCARRIAGE AND WE HAD DECIDED TO KEEP TRYING, IRRESPECTIVE OF PARTNERSHIP."

For Jodi L.H. Butts[2], the decision to have children meant altering her career path.

"Being a partner in a small firm means responding when the servers go down, helping your clients when they need you without a lot of back-up or getting to the office when the office security alarm goes off. You need to respond regardless of the hour. That didn't seem conducive to motherhood to me," she says, reflecting on the career changes she made. "Nor did big firm life, where a substantial part of your performance assessment hinged on the quantity of your hours. So I chose to go in-house and successfully started my family two years into that role."

Apparently, an in-house position may be more conducive to having children. However, that's not to say that it's impossible to make it work in a big firm.

Kristin Taylor[3], a partner at Cassels Brock, has worked on Bay Street throughout her legal career, even when her children were very young.

"I became pregnant with my first child within weeks of becoming partner in a Bay Street firm. It wasn't intentional, but I had already had one miscarriage and we had decided to keep trying, irrespective of partnership. I didn't alter my career plans around my children, but my miscarriage certainly put the importance of having children in perspective."

I had been under the impression that big law firms are scary and inhuman and eat up your entire life, so it's good to know that some flexibility exists even there.

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[2] Jodi L.H. Butts is married and the mother to two children. She is a graduate of the University of Windsor (B.A.) and the University of Toronto (M.A., LL.B.). She is a member in good standing of the Law Society of Upper Canada, called to the bar in 2000. She was a founding partner in the boutique litigation firm, Brannan Meiklejohn Butts LLP, where her practice focused on plaintiff medical practice, long-term disability benefit disputes and employment matters. From 2004 to 2012, Jodi served at Mount Sinai Hospital in various capacities, including Vice-President, Corporate Services and General Counsel, and most recently as Senior Vice-President, Corporate Affairs and Operations.

[3] Kristin Taylor obtained her LL.B. from Osgoode in 1993. She summered and articled with Fraser & Beatty and continued on as an associate and partner (as F&B became FMC). She moved to Cassels Brock just 2 months ago, having been in Toronto since starting law school.

Like Kristin, Dunniela Kaufman[4] never planned to have her children at any particular time. "I believe that all people have to be flexible in their career plans for very few people's paths go exactly as planned. I married an American and moved to Washington, DC. This was not in my plan and in fact, I actually moved back to Canada after obtaining an LL.M in DC so as to avoid the very situation that I find myself in. At a high level then you could say I did alter my career plans in order to have children, as leaving the jurisdiction that I practice in certainly altered my career path."

"I NEED A SITUATION WHERE I HAVE THE FLEXIBILITY TO BE THE KIND OF MOTHER THAT I WANT TO BE."

Motherhood can change a woman's perspective in all kinds of unpredictable ways, but I nevertheless thought it helpful to provide some of the ways that women have changed their work habits after having children.

As Catherine McKenna[5] explains, even if you don't plan to have children at any particular time, some changes occur as a result. "Once I had children, my time became much more precious to me and I was less interested in doing something that I wasn't passionate about. My focus is on doing fulfilling work and having control over my schedule."

Jodi found that her in-house counsel position worked especially well for her family, since the emphasis in her position tended to be more on efficiency than on billable hours, on "more effective compliance, risk management and better business decision-making with less time and money."

Dunniela found that her children became her focus, and was able to find a situation in big law that worked for her. "I need a situation where I have the flexibility to be the kind of mother that I want to be. Children require a lot of attention and so if you are the primary caregiver, that inherently takes away some bandwidth that you have available for your job. You can try to do it all at the same time, or you can make the right decisions to create "balance" in your life."

Kirstin was also able to make the balance work in big law by taking some time off and embracing technology. "After I had children, I slowed down my ca-

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[4] Dunniela Kaufman obtained her LLB from UBC in May of 1996. She articled and was called to the Bar of BC in May of 1997. She left the practice of law in March of 1997 and moved to Ottawa to work on Parliament Hill during which time I wrote the Ontario Bar and was called to the Ontario Bar in November of 1998. She obtained her LLM from Georgetown University Law Center in September of 1999 and began her legal career as an international trade lawyer at Fraser Milner Casgrain in November of 2000. She worked at FMC until October of this year (2012) at which time she started my own law firm, Kaufman Trade Law.

[5] Catherine McKenna, mother of three, is the co-Founder & Executive Director of Canadian Lawyers Abroad

reer - even though it was at the outset of being made partner. I worked much less in the office and less hours overall. I took on fewer non-billable commitments. I balanced it by focusing on clients for whom I had primary responsibility and being accessible. I learned to work productively from home when my daughters were asleep." Being a partner, however, also meant that she was back at the office after shorter maternity leaves.

These women did not find that their shift in focus adversely affected their careers. Kirstin and Dunniela both returned to full-time work when their children reached a certain age.

Dunniela recently started her own firm, and she attributes her ongoing career success to her dedication while at work. "I continued to work very hard and meet the high standards. With my second child, this became harder and I have now decided to go out on my own, which is working out fabulously."

Kristin is back full-time at big law, and credits her position at work prior to having children to the balance she maintains now. "I think the timing of when I had my children worked well in that I had already built my reputation and trusted relationships and I had flexibility because of it. I didn't need to be as visible or to prove myself. Partnership - at least at that time - also permitted me the ability to reduce my hours and commitment temporarily, for almost 8 years, without impairing my job security. I didn't ask permission. I just did what worked for me, my family and my clients."

An ongoing theme here is that women seem to be increasingly doing whatever they want, as long as they meet the bottom line of what their clients need. One way to meet this requirement is to carefully select the clients one takes on, after evaluating how fulfilling the work is going to be. The caveat seems to be that a woman may only have this luxury after already establishing herself in a legal career.

Another way that women have been able to make it work is by balancing their partner's career demands with their own. Jodi credits her work-life balance to an ongoing discussion with her partner. "Parenting is a team sport and, I believe, the only way to not make joint decisions throughout, built on many daily conversations, is if early on, one of you elects to relegate their career to the other's. If you both want to be successful and pursue the highest achievements possible, you better work out a joint plan.

Dunniela found a similar situation. "It absolutely has to be a decision that you make as partners. You cannot both go full tilt and properly care for your children. In my case, life has worked out that my husband can pick up the slack when my career is demanding, as he works for himself."

Kirstin has also built her life around a balance with her partner's career.My partner's career was quite demanding at the time my first daughter was born, but he transitioned to working from home a few years thereafter and that has created more flexibility for me. He has been incredibly supportive."

As well, many women advocate external childcare. According to Dunniela,

"I THINK I AM A BETTER PERSON AND THEREFORE A BETTER LAWYER SINCE BECOMING A MOM."

"Either you have to hire a third party to give your children the care that they need or you have to make a decision that one of you is going to pull back slightly from your careers. We also have a great live-in nanny.

"Having very good childcare arrangements was key in our situation," says Catherine.

I was also interested to know that having children influenced these mothers' careers in indirect ways as well. Jodi notes that, "When I returned to work lots of folks commented on my more surgical hand, that it is I was much more precise and deliberate in terms of what I took on and was much more deliberate and delicate in terms of how I responded to challenges."

Dunniela found as well that "I think I am a better person and therefore a better lawyer since becoming a mom but there is nothing that I can directly point to."

According to Kristin, "Having children has made me a better lawyer in many ways. They've taught me patience. I've also learned how to juggle in ways I didn't think were possible and how to be hyper-efficient and organized."

Catherine also notes how her children have changed her perspective on her career, "I've learned from my children to be more mindful and to enjoy the moment. Although I'm still working on this - I'm a huge multi-tasker!"

These women have all noticed changing attitudes towards mothers in the legal workplace. Dunniela says,, "I think women today are not afraid to stand up and say that they need the flexibility to parent their children. As long as you continue to do your job and meet/exceed expectations, employers seem more open to facilitating this."

Kristin also sees positive changes. "I think men are beginning to share more and more childcare responsibilities. Technology also has made it less essential, at least for my practice, to sit at a desk on Bay St. There also is an appreciation on the part of firms that they have to make the transitions around maternity leaves successful."

For a deeper analysis of women's attitudes in all careers, I turn to Reva Seth,[6]

[6] Reva began her career as a lawyer in Toronto. She holds an LLB (Western) and an LLM (International Trade & Competition Policy). For her second book, The MomShift: Finding the Opportunity in Maternity, Positive Stories of Post Baby Success (Random House: January 2014) she has interviewed over 500 women, who counter to the dominant narrative on this issue all achieved greater professional success after starting their families.

"EACH TIME A WORKING MOTHER DECIDES TO STEP AWAY FROM HER CAREER, THE LAW FIRM THAT'S INVESTED IN HER LOSES OUT, AND THE REALIZATION OF THIS BUSINESS REALITY IS FUELING THE CREATION AN INCREASING NUMBER OF PROGRAMS DESIGNED TO HELP RETAIN TALENT. "

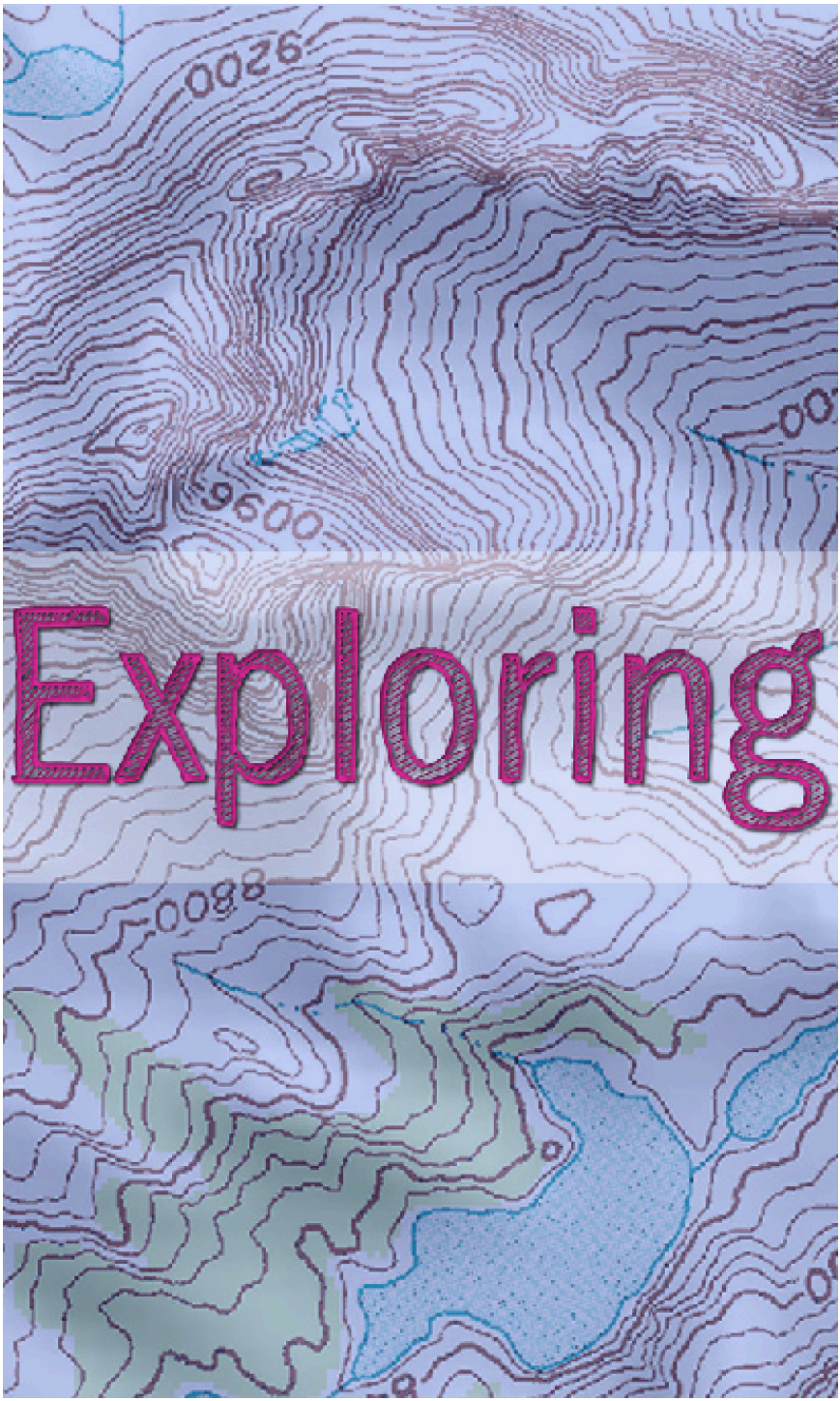
who has interviewed over 400 women about their balancing careers with families.

Reva has noticed a marked shift, "I think women (and men) entering professional careers are less willing to compromise when it comes to either their career plans and children. At law firms for instance, I've really noticed an increasing number of younger associates who are more open to the idea of having children before they make partner, for instance. There's also more role models for the different ways that they can combine a successful career and family life. Most of the women I spoke to feel very confident on this issue - which I think is great!"

From her perspective, there are definitely more changes that need to be made. "From a public policy perspective, more needs to be done when it comes to child care. From a private sector perspective, working mothers do have an increasing number of initiatives designed to help them stay engaged. Ultimately, each time a working mother decides to step away from her career, the law firm that's invested in her loses out, and the realization of this business reality is fueling the creation an increasing number of programs designed to help retain talent. These include mentoring programs and buddy programs designed to enable female associates remain engaged during their maternity leave."

Whatever programs or opportunities a woman finds in the legal world, though, it all seems to come down to choice. "Women today have so many choices and there so many different ways of successfully combining a professional career and family life. What works for one family/career/person won't for someone else. I would say it's essential to open to all the choice and be ready to change and adjust along the way."

I still don't have a complete picture of how I'll be able to balance my family with my legal career. I don't plan on having any kind of plan until it happens, because all of the variable and intensely personal factors that go into having a family make everyone's experience unique. However, I am more comfortable knowing what options exist and where the industry seems to be headed. Knowing where and whether I can be flexible with my career means worrying that much less that I'll be able to balance work and a family.


Exploring

WHO KILLED PATRICIA ALLEN?

BY ERIN MOORES

STUDENT AT MCGILL FACULTY OF LAW

I thought that writing this article was going to be simple. My idea was to take stock of all the photos on the walls in the Faculty of Law at McGill and write a short piece on some of the women featured in those photos. I'd finish with a commentary about why it matters whose photos we see every day: because of the effect this can have on our idea of who and what makes a *grand juriste*,. If I had time, I would also research some interesting non-male McGill grads to suggest as replacements for some of the photos of men to, you know, even things out a bit.

But like many creative projects, this piece had its own life. It started making decisions that I didn't feel I had much to do with. It was like what the Inuit tradition says about carving - that the shape that eventually emerges is already inside the stone, hidden there the whole time; the carver just reveals it, beginning to work without knowing what the shape will be. As soon as I began I saw that my initial idea was not necessary. There was a story that had to be told, and it was already there. It was there on our walls.

I started my research in the stairs that lead from the atrium down to the cafeteria. Of course, I recognized Professor Jukier right away, the lone woman among nine men in a photo from the 20th anniversary of the National Programme in 1984. The first photo on your right as you go down is of Isabel Dawson and Constance Short, two women who received their B.C.L. in 1936. The more I looked the more I found - in the Scott Seminar Room in Old Chancellor Day Hall, there is a photo featuring a dozen or so "Pioneer Women" of the Faculty. Outside the Moot Court is a photo of (presumably) all 26 female grads from the 1940's and 50's.

As I went through the other classrooms I found a few more, here and there. Of ten Supreme Court of Canada judges who are McGill grads, all pictured in the Moot Court, only one is female. In room 202 there are twenty-two frames on the walls, three of which feature women. Did you know Dionysia Zerbisias' name? Sylviane Borenstein? Do you know the name of the first woman to be elected a member of the Quebec parliament? I won't tell you - she's an easy one to look up. Even has a Wikipedia entry. I will, however, tell you the year she was elected: 1961. 1961. 1961.

I already knew about the Women's Corner, as I call it (to myself, of course), where there are only photos of women, all crammed into a little nook on the second floor hidden from most visitors to the faculty. In the nook there are the degrees of Florence Seymour Bell, who graduated from the Faculty in 1921. Wilhemina Holmes and Joan Gilchrist, who formed the first all-female law firm in Canada, are there too.[1] There are also the photos of Rosa Gualtieri and her niece Cheryl Rose Teresa Doran, who graduated from McGill in 1984 and in whose memory a scholarship was founded in 1989.

Stories of success. Stories of Firsts.

What I hadn't noticed before was the other nook.

It's on the second floor too, just on the other side of the building. I went there with my pen and paper, as I do. I looked at the photos. *Frances Norich (memorial)*, I wrote. I looked at the second photo. *Patricia Allen (memorial)*.

I thought for a moment about the photo of Rosa Gualtieri and her niece in the Women's Corner. I went back and looked at it again. Cheryl Rose Doran graduated in 1984; a scholarship in her memory established in 1989. In her photo she is young, in her twenties.

What happened to her?

Curious, I went back to the other side, to Frances Norich and Patricia Allen. For Frances, nothing was written; for Patricia, the following: That her friends wanted there to be a memorial in her name after she was tragically murdered in Ottawa. That they wanted the memorial to stand for the fact that her death should not be considered an isolated act of violence.

What happened to her?

I needed to know. I opened my computer; googled "*Frances Norich*." Did you mean Frances Norwich? In any case, the name was too common; adding "McGill" and "law" and "lawyer" gave me nothing useful. I googled Cheryl Rose next; all that turned up was the McGill Law Faculty's scholarships and award

[1] Juicy tidbit from the archives of the Montreal Gazette, 1953: the two wrote a pamphlet for women called Your Family Under Quebec Law, meant to help women understand the difference between the legal capacities of married and unmarried women. This was back in the day when married women were legally "incapable" in many ways - Mrs. Holmes and Miss Gilchrist clarify for us that practice came from the legal concept of "puissance maritale" (the husband as protector of the family) an idea dating from the Middle Ages. WTF.

page, and the LinkedIn bios of people who'd won her award. I searched for them again, this time using "droit" and "avocate." The internet could not tell me who those women were.

Then I searched Patricia Allen. As I typed the N at the end of her name, Google added the word "crossbow."

Here is the story that is on our walls.

The picture on our wall is not the only memorial to Patricia Allen. In December 1992, the Women's Urgent Action Committee in Ottawa unveiled a monument called Enclave, a memorial to all women murdered in the Ottawa-Carleton area. More than that, it was described as a monument to women who had fallen in the war that is violence against women.

The ultimate inspiration for it was a particularly bad year in Ottawa in 1991, a year that saw several brutal murders of women and of a 14-year-old girl in the city, culminating with the death of Patricia in November. Her estranged husband murdered her, in the middle of the day, on a downtown street. He shot her in the chest, as you've probably guessed by now, with a bolt from a crossbow.

Very sad, you might say, and really mean it. It is. She was only 31. Someone she knew well, someone she had likely loved very much at one time, killed her. The crossbow aspect of it makes the whole thing particularly gruesome and shocking (which shows us, in turn, how desensitized we have become to the idea of a person being attacked with a 'regular' weapon, say, a gun or a knife). But women are tragically murdered all the time. Why is this more important than focusing on the McGill grads on our walls who lived, who were Firsts, whose lives are part of what makes it possible for me, and other women, to study law today? Am I not just reinforcing the stereotype of women as victims, rather than focusing on the women who beat all the odds?

The reason I focus on this is because, as I said above, *women are tragically murdered all the time.*

Patricia's friends so appropriately remind us why we must see her photo and remember her, her more than the others. *Her death was not simply a tragic event. Her death was not an isolated incident.* What does this mean? We could start answering that question by asking another: who killed Patricia Allen?

This is the point in the story where, if we're not paying close attention, our legal education will fail us. If we don't pay attention, we might fall into the trap of thinking that the cause of Patricia's death was her husband shooting the bolt from the crossbow into her chest.

But the truth is something else.

You see, before Patricia was murdered, her lawyer contacted the police to report that the husband had been obsessively calling her and had even attempted to break into her home. The police replied that their hands were tied - Patricia's husband's behaviour did not at the time constitute a violation of the *Criminal Code*, including its provisions on criminal harassment - commonly known as stalking.

Now, let's ask again. Who killed Patricia Allen?

The police? Her lawyer? The Legislator? Patricia herself, for not being more adamant about getting protection? We can go even farther than this. At the most general level, Patricia was killed by a society that simply does not do enough to stop gender-based violence.

There is so much we know about violence by men against women. Women are three times more likely than men to be killed by their spouses. When domestic violence occurs, the victims are overwhelmingly (83%) female. It gets worse when you remember that, on average, women self-report violent crime only one-third of the time. It gets even worse when you remember that rates of violence against women were on the decline until 2009; since then they have plateaued. And still worse when we remind ourselves that rates of self-reporting of violent crimes towards women have gone *down*.[2]

Then, to get the full picture of violence against women, you can include harassment that does not include assault. Professor Robert Jensen of the University of Texas explains it all, in a recent commentary published in the Dallas Morning News that made its rounds on Facebook, entited *Rape is all too norma*l:

> "I use the term sexual intrusion to describe the range of unwanted sexual acts that women and girls experience — obscene phone calls, sexual taunting on the streets, sexual harassment in schools and workplaces, coercive sexual pressure in dating, sexual assault, and violence with a sexual theme. In public lectures on these issues, I tell audiences that I have completed an extensive scientific study on the subject and found that the percentage of women in the United States who have experienced sexual intrusion is exactly 100 percent. Women understand the dark humor; no study is necessary to describe something so routine."[3]

Why does this happen?

Again, others say it better than I could, with simplicity and clarity. I will just give you the explanation from the Canadian Women's Foundation website:

> "The roots of violence are founded in the belief that the needs, feelings, or beliefs of one person or group are more correct or more important than those of another person or group. This fundamental inequality creates a rationale for humiliation, intimidation, control, abuse—even murder. In our society, gender inequality is visible

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[2] http://www.swc-cfc.gc.ca/rc-cr/stat/wic-fac-2012/sec9-eng.html#tab10

[3] http://www.dallasnews.com/opinion/sunday-commentary/20130118-robert-jensen-rape-is-all-too-normal.ece

"WE ARE THE VIOLENCE WHEN WE DON'T RESIST. WE HAVE TO CHALLENGE STEREOTYPES EACH TIME THEY COME UP; WE HAVE TO CHALLENGE OUR FRIENDS WHO USE VIOLENT WORDS."

> in many areas, including politics, religion, media, cultural norms, and the workplace. Both men and women receive many messages—both blatant and covert—that men are more important than women. In this context, it becomes easier for a man to believe that he has the right to be in charge and to control a woman, even if it takes violence. This is not only wrong, it's against the law. There is no evidence that alcohol or mental illness causes men to be violent against women. Men who assault their partners rarely assault their friends, neighbours, bosses, or strangers."[4]

This is how it is. Women are not equal to men. This inequality is a form of violence, in and of itself. It's not just abuse, assault, murder or rape, that is violent. And violence is not just in the systemic discrimination of women in the workplace through unequal pay for equal work It's not just in the way we dehumanize and objectify women in the media. Violence is not just in the fact that we deal with violence against women by teaching women how to avoid being victims, rather than teaching men how not to be aggressors . Violence is not just in the fact that men still hold the overwhelming majority of positions of power in political and economic decision-making, and that men virtually still make the rules for everyone.

Violence is in all those places, but it's also everywhere else. It's in our lies, *Women just don't want to be politicians, though!* It's there when we believe stereotypes, *Women can't drive.* It's there when we ask women questions we would not dare ask men, *Do you know how to drive?* Violence is in our sexist jokes, *She's such a slut! Just kidding.* It's in our excuses for the unwanted advances of our male friends on women, *Come on, let it go, he's a good guy/he was drunk/his girlfriend just dumped him!* In our excuses for men's defensiveness and anger when they are refused sex, *Well, of course if you took your shirt off, he was going to think you'd sleep with him!* It's in the fact that men often do think women are

[4] http://www.canadianwomen.org/facts-about-violence

going to sleep with them if they take their shirts off. Violence is in women's voices when we tell each other it's no big deal, that this is the way things are, that boys will be boys. Violence is in men's voices when they say, *I don't rape women. I don't kill women. I am not the problem.*

We are the violence when we do these things. Moreover, we are the violence when we don't resist. We have to challenge stereotypes each time they come up; we have to challenge our friends who use violent words - like the ones above - and violent actions. We have to see violence in all its guises. If we don't, we just fall into the trap of thinking that once an aggressor is behind bars, the problem is solved; that 'toughening up on crime' will save us; that we can stop violence against women by teaching women how to stop violence against women. More responsibility falls on us because as law students we are not, in fact, like everyone else. We have and will have more power - and responsibility - than most to change the violent society in which we live, where women are tragically murdered all the time - on average once every six days in Canada - and where *rape is all too normal.*

Another reason to resist violence, to tell and re-tell Patricia Allen's story needs to be told, and re-told again, and why we should talk about her photo and not Marie Deschamps', not Annie Macdonald Langstaff's, it is because she was both the victim and the success A bright young female lawyer, and a murder victim. Hers is not a story of violence happening to someone else, somewhere else. As women in this faculty, we walk the same hallways that she did. We know that at one time, she was us. We would surely be unreasonable if we tried to deny that someday, we could be her.

I could find nothing online on the other women whose memorials appear on our walls. Now, 23 years after Patricia's death, there is relatively little to find on her too. A few articles on violence against women, stalking, or crossbow deaths that mention her in passing. If not for Patricia's photo, I might never have known her name. This is the final reason why Patricia's photo is so important to us - she will not have a Wikipedia entry, she was not a First, she was not a Pioneer. But her photos isn't important because she wasn't a first. It's important because she was not the last.

MIGRATION TO CANADA: AT WHAT COST?

INSECURITY AND EXPLOITATION; HOW THE FEDERAL LIVE-IN CAREGIVER PROGRAM CONTINUES TO VICTIMIZE MIGRANT WORKERS

BY TALIA JOUNDI WITH JERLIE PASCUAL, MYRIAM DUMONT ROBILLARD, AND JADE FABIANO
STUDENTS AT MCGILL FACULTY OF LAW

From their country of origin, through transit, and once arrived at their destination, the journey of migrant workers exposes the ongoing conflict between human rights and immigration laws. In Canada, migrant workers are confronted with federal and provincial laws that reinforce the precariousness of their status at each step of the labor migration cycle – from recruitment, to obtaining a work permit in a Canadian province, to seeking renewal of their permit and eventually repatriation.

A recent report produced by The Metcalf Foundation found that since 2000, the number of migrant workers employed in Canada has more than tripled (see Faraday, "Made in Canada," 2012) A growing number of these migrants are foreign domestic workers who enter Canada through the federal Live-in Caregiver Program (LCP). Migrant domestic workers must complete an equivalent of 24 months of full time work, or 3900 hours of caregiving work all the while residing

in the private household of their employer before they can apply for permanent residency status. This process must be completed within four years after entry.

The LCP allows migrants a direct path to permanent residency. The legal requirements outlined in the terms and conditions of the employment contract make it a precarious route; one that leaves domestic workers vulnerable and subject to exploitation. The path is also costly, riddled with employers, recruiting agencies and immigration consultants who disguise the challenges migration can involve, while also demanding exorbitant sums for their services. Migration is an emotional struggle – workers are separated from their families and are then faced with a lack of permanent status and isolation upon arrival to Canada.

Domestic workers in Canadian households often take complete responsibility of children in the absence of parents, or care for the elderly or persons with special needs. Once employed, their contract obligates them to live in the same house as their employer, and denies them the right to change employers. Workers are effectively tied to the employer whose name appears on their work permit. And yet, since employers do not have to register themselves, there is actually no official record of caregivers or where they work. The lack of control over their employment situation means domestic migrant workers are vulnerable in a number of ways. Members often face difficulty securing payment, accessing public programs, or meeting their work permits requirements and deadlines. Abuses range from being over-worked, not receiving the salary they deserve, as well as physical or verbal abuse.

The Association des Aides Familiales du Quebec (AAFQ) is a non-profit community organization dedicated to having the work of temporary workers recognized in Canadian society while also helping them to secure their rights. "Ce qu'il faut comprendre c'est que la relation employeur-employés est totalement inégale principalement à cause des critères imposés par le programme," commented Myriam Dumont Robillard, President of the Board of the AAFQ.

The power afforded to the employer keeps caregivers in a constant state of paranoia and terror. Workers not only face the threat of being dismissed from their only source of employment, but also the ever-present threat of having their permits confiscated and being deported. The AAFQ has found that many workers work up to twenty hours per day. Caregiving is also a racialized and gendered occupation, with 97% of workers being women, 80% who are originally from outside of Canada and 95% from the Philippines. On average, immigrant women in Canada earn 20% less than Canadian women.

The LCP sustains dependence in migration relationships at the cost of accountability and a more sustainable approach to immigration. With little attention paid to the rights of migrant workers in employment relationships, the exploitation that begins at the recruitment stage is only compounded at each successive stage of the migration cycle. The result, as the Metcalf report shows, is that "the laws construct the migrant worker – and migrant work experience –in ways that predictably produce significant insecurity and undermine the possibil-

ity of decent work."

« L'impossibilité de quitter son emploi librement, sans mettre sa propre survie en danger en ne pouvant travailler pour quiconque au Canada durant plusieurs mois, revient à légitimer une forme de travail forcé dans les ménages canadiens, » says Dumont-Robillard. Although the Canadian government claims that temporary workers enjoy the same rights as other Canadian workers, these formal rights remain elusive as long as foreign workers are unable to enforce them.

« Dans ce contexte, nous pouvons soutenir que les critères du programme sont effectivement anticonstitutionnels en violant plusieurs droits fondamentaux, tel que le droit à la liberté et le droit à la vie privée, puisqu'elles ont également l'obligation de résider chez leur employeur, » added Dumon-Robillard.

Nevertheless, there are those working to support and bring attention to the experiences of migrant caregivers. The AAFQ has represented workers under the LCP at the political level both locally and internationally. They understand that it is imperative to provide live-in care givers an effective means of organizing in order to communicating their concerns to the public.

Jerlie Pascual arrived to Canada in 2000 under the LCP, started volunteering at the AAFQ and after receiving her permanent residency, began working as a full-time case-worker. With an open door policy and a busy telephone, catching her with a free moment is not easy. Her days revolve around supporting members emotionally as well as with their applications. "It's a learning process – and it's the caring, and the understanding and the never ending knowledge that I'm here for," Pascual said.

Pascual explains that women from the Philippines are encouraged to grab any opportunity to migrate in order to earn money to send back home. Entry to Canada as a skilled worker is difficult, and so, the LCP is a valued alternative. Nevertheless, Pascual is familiar with the dangers of the system. Once the women secure a job with a Canadian employer, they live under the threat of losing their chance to file for residency and are thus unlikely to speak out against unfair treatment.

"If you don't put in the requisite months, they will deport you – so what's the point of getting justice against the employer? They would rather embrace the abuse, because the alternative is seen as worse," she said.

Jade Fabiano is a third year law student at the University of Montreal works with the AAFQ helping members fill in immigration forms and work permits, while also informing them of their employment rights. "I think that as future female lawyers, we are given a voice to instigate social mobilization, to get the government's attention and eventually amend the live-in caregiver program's regulations," Fabiano said.

Canada has not incorporated conventions adopted by the ILO or the United Nations, such as the most recent International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Nevertheless, the principles laid out serve important policy guidelines.

"Notwithstanding our important legal corpus and several advances in combatting discrimination here in Quebec, achieving equality will require political leadership to translate this principle within the specific policies," added Fabiano.

Dumont-Robillard adds that,"À partir du moment où les lois canadiennes ne respectent pas les critères minimaux de réglementation de cet emploi fixés et acceptés par la grande majorité des pays à l'international, il devient difficile de légitimer le traitement que l'on réserve à ces femmes chez nous ; ces femmes qui, ne l'oublions pas, s'occupent de nos enfants, aînés et autres personnes qui nous sont chères afin de nous permettre de mener notre vie sans contrainte."

The experience of migrant workers under the LCP makes clear that foreign caregivers must be granted protection of their rights, which includes the right to change employers, the right to choose their place of residence, and the right to unionize as well as fundamental rights to security, liberty and dignity. Migrant works must be able to access adjudicative mechanisms in order to enforce their rights. The Metcalf Foundation recommends legislative amendments to ensure that all terms of migrant workers contracts and the right to a hearing on termination are enforceable before a competent administrative body. "Il s'agit bel et bien d'une vulnérabilité qui est choisie, créée et imposée par les lois canadiennes. En s'opposant à cette forme d'esclavage moderne, chaque individu peut faire pression pour que des modifications soient apportées à la loi. De très simples modifications peuvent faire toute la différence," says Dumont-Robillard.

Simply because the situation of migrant workers is shrouded in silence or misrepresented does not make the difficulty or their situation any less real or urgent. In order to make the situation recognizable to Canadians the situation of temporary workers needs to be confronted. This is the responsibility not only of NGOs and community groups but also, of policymakers, unions, solidarity networks and individuals across Canada.

The AAFQ launched a legal clinic this month to facilitate workers' access to justice, in particular, access to legal information, open to all caregivers working under the LCP. The clinic will be held twice a month in conjunction with la Clinique Juridique Juripop and Service Employees Union local 800 (Union des Employés de Services). Visitors are welcome at the AAFQ (20, Boulevard de Maisonneuve Ouest) anytime Wednesday to Saturday, or can learn how to support the AAFQ by visiting their website at aafq.ca.

SABBATICAL NOTES: FRAGMENTS ON LIFE AND LAW

BY SHAUNA VAN PRAAGH
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Laundry (April 2004, Ste. Alvère, France)

We have passed the ten month mark in Ste. Alvère and I think I have finally come to terms with the laundry. It has been a slow process. From curiosity to disbelief to rage to frustration to negotiation to acceptance to symbiosis, my attitude to and relationship with the laundry has evolved over time. I have now achieved the requisite degree of patience. I have just started a load of light-coloured clothes without any particular resentment and am able to sit down to write with the stop and start hum of the very slow and determined washing machine in the background.

The laundry acts as a symbol of the relentless day-to-day routine of taking care of a family and household. It is a concrete reminder of what being and acting as a mother entails, and it requires concentration, dedication, and a fragile equilibrium of mind and body. Washing clothes, drying them, sorting, folding, replacing, choosing, wearing, sorting again, washing again: the routine is necessary, mind-numbing, never-ending. And yet, there is something reassuring about laundry – clothes are lived in, sometimes loved, passed on, and continually cleaned and returned to shelves and drawers. As laundry manager, I am occasionally explicitly appreciated when I can track down favourite socks or produce a clean, dry sweatshirt in time for school. There is no break, however…laundry just stretches on and on, and that is why acceptance of its centrality is so chal-

lenging and so crucial.

Laundry existed before this year in Ste. Alvère, and it will be part of my life upon the return to Montreal. But laundry here is somehow special...thus explaining the intensity of my feelings about and towards it. First, the technical aspects had to be dealt with. The European front-loading washing machine is small. One set of sheets barely fits; a typical load is three or four pairs of

children's pants, three or four kids' shirts, and maybe two adult shirts and some socks. With three children, this means that I never get to the bottom of the dirty laundry basket and that I have to prioritize: kids' clothes, then kids' underwear and pyjamas, then adult clothes, then sheets and towels when there's time to do an extra load or two. I have tried to stuff extra clothes into the machine: things don't get clean and little holes appear in the shirts where, jammed in, they have rubbed incessantly through the entire cycle against something or other.

Then I had to figure out the soap. Little blocks of soap go into the middle compartment in a drawer that pulls out; next to that compartment is a space for fabric softener although figuring out which kind to use among the dozens of choices – some concentrated, some not – lining the shelves of Leclerc or Intermarché is beyond me. I bought powder instead of little blocks once, only to discover that the measuring instructions on the box were useless given the absence of anything in the box resembling the measuring cup represented on the back. Next, I had to register the incredible slowness of the machine in my mind. The machine goes round and round, then stops, then takes off again sounding like an airplane each time. The whole process – if I set the machine at "peu sale" or "rapide" (the fastest programmes available) – takes an hour and a half!

All of this means that my original schedule for life in Ste. Alvère had to be dramatically edited after the first few months. I had marked Wednesday and Saturday as laundry days, thinking that the kids were home on those days so that the laundry couldn't interfere with my academic work. Wednesday and Saturday thus became days in which I tried and inevitably failed to do four loads of laundry – laundry trailed into Thursday and even Friday, or into Sunday and even Monday. As of January, I changed tactics and tried to regain control over the laundry situation. I now start a load of laundry every night before going up to bed, dry it the next day, and fold it in the evening just before starting the next load. I can almost keep up with this routine – and only have to do a second load in one 24 hour period once or twice a week.

In addition to mastering the technical requirements and limitations of the equipment comes grappling with the relentless physicality of the process. The dryer takes just as long as the washing machine and seems to take up an incredible amount of very expensive electrical power. And there is something theoretically (and sometimes literally) appealing about hanging clothes up on a line overlooking fields, grazing deer, and neighboring horses, where the sun and wind gives them a fresh smell and feel. So I have incorporated hanging up clothes into the routine. When the weather is amenable – whole months have been excluded, of course, given the remarkable rainfall in the Dordogne – I carry the clothes and clothes pegs around to the back of the house and hang them up in the morning. They come back down at the end of the day – assuming the elements have cooperated – and the basket is used to transport folded clothes up the bedrooms and dirty clothes back down. All of this is good exercise, I suppose – but it takes time and energy in a way that throwing things in the dryer doesn't. The laundry

is literally present in my life morning, afternoon and night; it operates in an ongoing and draining physical as well as mental cycle.

The tangible features and challenges of laundry management come hand in hand with the psychological aspects. Understanding laundry is as important as actually doing it. Thus, stains have to be remembered and treated; delicate items separated from the jeans; baby clothes isolated (until Ari turned one, at which point I decided he had joined the rank of "big boys" as far as laundry soap was concerned); water softener tablets occasionally thrown in. And there are the expectations and disappointments. The hysterical tears when a particular t-shirt is dirty or wet on the very morning when its owner wants to put it on are all directed at me and my laundry failures. The fact that a sock has disappeared seems to be my laundry-related fault; the determined jumping and climbing in the red winter mud seem aimed at testing my patience and laundry skills. And yet, I am fiercely possessive about the laundry; convinced that only I can do it right, I insist - in what is sometimes a fairly maniacal and masochistic way – that only I can fulfill the ongoing laundry mission at our house.

The anger I have felt at the intrusion of laundry into my head, daily schedule, energy levels, and limited child-free time has gradually dissipated. Perhaps this is part of accepting the side-effects of having three small children; perhaps age and the pace of life in the Dordogne have helped me find a livable level of acceptance and patience. I have even begun to explore and appreciate the surprising aspects of my laundry self. With some emotional distance, I can see something strangely positive in the quiet centrality of the laundry in our lives.

First, there is the way in which human and especially family relations are tied up in the entire process. There is the quiet way in which René sits down with the clean clothes every evening and folds the tiny shirts and pants, placing them in shaky piles in the basket, and carrying them upstairs when he goes to bed. This is a time to sit together, drinking mint tea and watching whatever there is on our two or three French television channels, and there is a real intimacy in sharing the task of completing the laundry cycle. There is the way in which offering to add visitors' laundry to the pile, and hanging up other kids' underwear and socks, and handing back piles of fresh clean clothes to friends here for only a few days, cements friendship and understanding and a sharing of the experience of overseeing the day-to-day details of family life. And there are the ways in which the boys participate in, and are beginning to appreciate, the work entailed in laundry. Ari hands me clothes pegs as I hang up clothes in the sunshine; and Daniel and Micah throw their dirty clothes in the laundry basket at the end of the day, understanding now that pajamas need not qualify as dirty after only one or two wearings!

There is also the way in which laundry provides an easy and significant topic of conversation, and concrete link, with the other women I know in Ste. Alvère. Indeed, the realization that I am not alone with the constant pressure of family laundry and that every mother I have met here has also figured out a

way to fit laundry into the quotidienne, has perhaps been the most important contributor to my newly found calm. Sandrine hangs up laundry at 6:00 in the morning, talking with her baby Raphael as she does so. Janny – at whose home Ari goes to daycare - can always update me on the weather and the drying potential for the clothes on any given day, and we commiserate with each other when the rain comes too fast to rescue the clothes so that they stay sodden on the line for another day or two. Corinne, who comes to clean our house one morning every week, reassures me that the pace and quantity of laundry at our house is "tout à fait normal" for three active kids! And I can see Nathalie's laundry drying on the line whenever we drive past their farm on the way to Le Bugue – laundry that quietly gets done without getting talked about, squeezed in between milking goats and raising kids. They have all found ways to avoid overwhelming frustration, although they all are forthright about the work and demands and particular tasks incumbent on mothers. And I am happy to try to follow their example.

An hour and a half is up, the washing machine has stopped its strange whining noises that sound as if it is about to take off into the air at any time, and I will have to hang up the clothes inside today given the driving spring rain. I am off-schedule again, behind with my list of things to do, aware of the fact that it is Friday and that the remaining time in the week without children in the house is limited, and engaged in a never-ending dance with the laundry. We have surrendered to each other – the laundry knows that I will get it done, and I know that it will always be there. Rules

Rules (April 2011, Buenos Aires)

Last week, Micah learned about rules. He had to look up, and then write down, the definitions of Spanish words all related to rules: regla, ley, derecho, sancion. The exercise was fairly straightforward, at least for all the kids whose parents aren't law professors. For Micah, it was a homework hour of frustration as he carried the dictionary from one parent to the other, asking for help in choosing among the various options of meaning and being subjected to reflections on the inaccurate or partial definitions of the terms, and on the connections among them. There are formal and informal rules, we told him; different kinds of sanctions exist; 'derecho' can be 'law' or 'right' or 'straight', all with distinct connotations depending on context.

Most likely, the class was meant to come prepared to learn about what a rule is, and what happens if you don't obey. Even more likely, the Spanish teacher had prepared the exercise in conjunction with the French teacher who had given a test on 'consignes' the week before – a test that everyone, except for Micah and a new kid from France, failed miserably. The children were told to read all the questions on the test before starting to answer. The two who actually followed the instructions found out – at the bottom of the page – that they were

SHAUNA VAN PRAAGH
PHOTOGRAPH

to reply to only three of the questions and then to hand in the completed test. For Micah, it was particularly amusing to watch his classmates struggle through the questions, having ignored the very thing that the test was all about!

It's not a bad starting point, of course, for teachers to take seriously the need for children to learn about law. These kids will grow up into adult citizens with an obligation to act responsibly vis-à-vis each other, and an obligation to follow and obey the rules. In particular, rules regarding safety have to be conveyed, understood, and respected. Micah and his peers all had to pass a road safety test last year as they finished off fourth grade. According to the law, seatbelts have to be worn by all passengers in any car in Argentina. Pedestrians should cross only on a green light, or when they have checked in all directions for traffic. Cyclists, whether on bicycles or motorcycles, should wear helmets. Before age ten, then, children have the rules drilled into their heads – even before they reach the formal lessons on 'law'.

These kids, however, already know plenty about law and its significance. They know that children don't generally wear seatbelts (let alone sit in booster seats), and that the taxis in Buenos Aires usually don't even have any available for passengers in the backseat. Even if they know how to ride a bicycle – somewhat improbable given the lack of safe places to practice – helmets aren't part of the picture. They see adults on scooters and motorcycles carrying their helmets on

their arms, rather than actually putting them on their heads. They're used to crossing streets whenever there's a gap in the constant traffic. Some of them have been allowed – or even encouraged - to stand in the back of their parents' moving cars with their heads sticking up out of the sunroof. In eight months in this city, Micah has seen it all; over ten years, his Argentinian counterparts have absorbed it completely.

Earlier this year, in Colonia, we saw parts of an exhibit on human rights that included an excerpt from Kafka's "Ante la ley" reproduced at the entrance to the old walled town. It was remarkable to watch people stop to read the fairly extensive excerpt, and then to carry with them its messages as they strolled around as tourists. But the effect was dampened – or at least made strangely ironic – by the fact that an automatic voice message was triggered as each person crossed the threshold of the doorway: "Hola, bienvenidos!" The welcome was a perpetual installation in the stone archway, simply meant to greet visitors to Colonia. Combined with Kafka's reminder that the doorway to law is particular to each individual and thus dependent on how that individual leads her life, the "Hola" was comical in its lighthearted inclusiveness.

Maybe the combination – of welcome and warning – sheds light on the 'law' that even ten year olds in Buenos Aires understand, create, and respect. On one hand, the tacky tourist 'bienvenidos' could be turned into a comment on how seriously people here take the rules. Disdain for the official rule in Buenos Aires about cleaning up after one's dog, for example, translates into the complete irrelevance of that norm in the lives of most dog walkers and thus of all sidewalk users. The rules posted around the park next to Micah's school clearly state that people cannot enter with animals, cannot practice sports, should not throw garbage, and shouldn't walk on the grass. But Micah walks by that park every day and can't help but notice all the dogs running around, all the joggers on the grass, all the men practicing football, and all the piles of trash waiting to be cleaned up. It's hard - or perhaps hilarious - for him and his classmates to swallow a teacher's insistence that rules are meant to be obeyed.

Instead of just shaking a collective head about the pathetic adherence to the rules here in Buenos Aires – something that many porteños tend to do, particularly when they see we're law professors – it might be the case that the 'bienvenidos' could be turned into a serious invitation to look for 'real' law in our everyday lives. The fact that we still don't understand the rules regarding the right of way at intersections simply means that we aren't full participants in the highly complex legal system that governs drivers on Buenos Aires roads. There must be subtle normative understandings of how to behave and when to yield to others; in other words, the law must exist even if its content is opaque for those who aren't immersed in sustaining it and living with its consequences. This pluralist stance, this willingness to pay careful attention to where and how law is created and developed, seems particularly well-matched to the reality of this city. Fur-

thermore, it seems like a fruitful path to avoiding early cynicism among Micah's ten-year-old peers.

However, it is far from easy to identify sites of law creation or promulgation, far from obvious to define the groups or communities within which rules are sustained and applied. The idea of doing a critical anthropological study of law – whether regarding rules of the road or any other facet of life in Argentina – is daunting. But maybe a grade five classroom is indeed the best place to start. Instead of teaching the children about rules and why they have to be read, understood, and obeyed, the lycée might do something truly groundbreaking if it asked the ten year olds about the law they observe, experience, and develop among themselves. If asked, they could probably articulate, with a high degree of sophistication, the rules of family relations, use of public parks, organization of clubs, completion of homework, and walking on the sidewalk and streets of Buenos Aires. They do need to be safe, to play, to learn. But getting there isn't simply a question of learning what the laws say and then doing what's dictated. Instead, the kids may need to learn how to create, and then live by, rules better tailored to their reality.

Also this past week, my Spanish teacher brought to my lesson a copy of the newly passed "Ley de proteccion integral a las mujeres" – a federal law, supported by the Argentinian National Women's Council. In it is an incredibly sophisticated, highly theoretical, and markedly feminist definition of violence against women. The piece of legislation has as its purpose the prevention, punishment, and eradication of all forms of violence, including, among others, physical domestic violence, inequality in the workplace, and limits on reproductive freedom. My Spanish teacher is now working for the Council, trying to develop workshops to increase awareness and thus compliance with the new 'Law.' She had brought the legislation to our class to discuss with me ideas for how to go about meeting its objectives.

At the same time that we read the words together, she told me that official statistics don't exist in this country for recording how many women are killed by their domestic partners each year. All the Council can do is gather approximate information by gleaning from local papers any stories of women dying as a result of physical violence. There is an obvious and striking gap between the promise of the law to eradicate inequality, and the reality on the ground of at least 200 violent deaths of women per year. The law makes Argentina seem almost utopic in its recognition and protection of women's dignity and integrity. The failure of police and social service protocols in the context of domestic violence signals a different reality.

Maybe, after finishing its limited lessons on law, Micah's class could visit the Council. The ten year olds would discover that the dictionary definitions don't get them very far. And the women might find that these ten year olds have a true wealth of collective expertise on the connections, and distinctions, between the reiteration of rules and the real changing of behaviour.

L'EXPÉRIENCE FÉMININE DANS LE DROIT

PAR LAURENCE RICARD
ÉTUDIANTE EN DROIT À MCGILL

Le rapport des femmes au droit est double. D'une part, il y a le rapport des femmes aux professions juridiques (je parle de professions au pluriel puisque naturellement des études en droit peuvent mener à différentes sortes de carrières). D'autre part, il y a le contenu même du droit et la façon dont celui-ci reflète la société – un miroir qui généralement montre avec assez peu de complaisance nos travers, notamment en termes d'où nous en sommes dans l'évolution du féminisme. Dans chacun des cas, la persistance de nombreux enjeux résultant d'une difficulté à intégrer l'expérience féminine aux conceptions traditionnellement masculines du monde tend à créer un effet de distorsion de la réalité. J'aimerais ici donner quelques exemples de ces problématiques et quelques pistes de réflexion pour y répondre.

Les femmes et le monde juridique

Aujourd'hui, les étudiantes sont majoritaires face à leurs collègues masculins dans les facultés de droit. Cet état de fait ne peut être que célébré car il signifie qu'au moins une étape a été franchie dans la conquête de l'égalité d'accès aux positions sociales de pouvoir. En effet, la connaissance du droit est un outil important pour comprendre les dynamiques de pouvoir au sein de la société et surtout, un levier d'action pour pallier à

plusieurs injustices.

Il y a encore toutefois un grand malaise, partagé par plusieurs, face au mode de vie qu'imposent les professions du droit. Les cas de congédiements dans les grands cabinets pour raisons de grossesse sont encore trop fréquents. Il est connu que ces mêmes cabinets imposent des charges de travail hors normes et demandent une disponibilité presque absolue à leurs avocats. Il y a plusieurs options de carrières en droit. Pourquoi donc se concentrer sur les problèmes propres à ces grands cabinets? Car en raison de la nature de notre système, ils tendent à donner le ton pour l'ensemble du milieu juridique. Dès qu'un étudiant ou une étudiante met le pied dans une faculté de droit, il se fait donner des stylos, des clés USB, des tasses, même des baumes à lèvres à l'effigie des grands cabinets. De façon généralement tacite, on construit chez l'étudiant ou l'étudiante en droit la conviction que le symbole ultime de la réussite dans cette profession est l'accession à ces milieux opulents (et l'opulence est tant du côté des salaires que des clients de ces firmes) du droit.

En quoi est-ce que cette domination des grands cabinets est problématique pour les femmes? Parce que l'éthique de vie et de travail qu'ils requièrent résulte d'une conception du succès et de la bonne qui ignore tout un pan de la vie humaine – celui dont les femmes se sont occupées pendant des siècles – soit la vie domestique. Afin d'obtenir le pouvoir qui vient avec les positions élevées dans la hiérarchie professionnelle du droit, les femmes se retrouvent dans l'obligation de choisir, bien souvent, entre leur vie privée et leur vie professionnelle. Si elles arrivent à combiner les deux, c'est bien souvent en déléguant les tâches domestiques à une autre femme. Le problème est tout aussi criant pour les hommes, bien que culturellement on n'en soit pas encore, malheureusement, à déplorer autant que les hommes n'aient pas assez de temps pour s'investir plus dans leur sphère de vie privée.

Les problèmes du monde juridique, sur ce point, sont symptomatiques d'un problème social plus généralement répandu. En misant sur l'égalité de pouvoir entre les hommes et les femmes, on a tendance à demeurer ancrées dans les principes de la première vague de féminisme et d'oublier qu'il y a une dimension beaucoup plus profonde à la domination historique des hommes et des femmes que la seule division des tâches : l'impact de cette division sur les idées et les concepts que nous possédons pour penser le monde. Il reste beaucoup de travail à faire pour changer les indicateurs par lesquels nous jugeons de la pertinence ou de l'importance d'une tâche pour la société. Mais ce défi de conceptualisation n'a pas qu'un impact sur le rythme effréné du monde des professionnels juridiques. Il a une incidence encore plus importante sur le contenu même du droit que ces professionnels appliquent.

Les femmes dans le droit

“LA DOMINATION MASCULINE A UN IMPACT SUR LE DROIT LUI-MÊME, PUISQUE LES JURISTES ONT UN IMPACT ÉNORME SUR LE CONTENU DU DROIT, ET QUE LEUR EXPÉRIENCE, LEUR VISION DU MONDE ET LEUR SOCIALISATION ONT UN IMPACT MAJEUR SUR NOTRE SYSTÈME JURIDIQUE. ”

La domination masculine a un impact sur le droit lui-même, puisque les juristes ont un impact énorme sur le contenu du droit, et que leur expérience, leur vision du monde et leur socialisation ont un impact majeur sur notre système juridique. L’exclusion historique de l’expérience féminine des façons de réfléchir aux rapports sociaux façonne divers domaines du droit. À titre d’exemple, j’aborderai deux notions qui gagneraient à être éclairées par une conception plus complète, c’est-à-dire qui tienne compte du vécu des femmes, de l’expérience humaine. Dans cette perspective, j’aborderai donc d’abord la notion de règlement de conflit, puis de celle de l’autonomie.

Le règlement de conflit est un des principes principaux objets du droit. Les tribunaux sont le mode de résolution de conflit par excellence de nos sociétés. Or, dans notre système, les tribunaux fonctionnent sur le modèle contradictoire, c’est-à-dire que deux parties s’opposent et se contredisent devant un arbitre – généralement le juge – et l’on considère que de cet affrontement ressortira la vérité, ou du moins ce qui s’en approche le plus. Cette façon de faire ignore totalement le fait que le conflit émane toujours d’une relation. En ce sens, en mettant l’accent sur la défense des droits de chacun plutôt que la relation qui les unit, le système juridique perpétue plusieurs clichés qui découlent de la domination des valeurs masculines: qu’il y a une vérité à découvrir, qu’il y a un seul responsable dans une situation de conflit, que les émotions n’ont pas leur place dans la résolution du conflit, que la situation « normale » est l’absence de relation, etc.

Que ce soit en droit de la famille ou en droit commercial, les conflits ne mettent pas toujours un terme aux relations, et on ne devrait pas souhaiter qu’ils le fassent. Ils en sont souvent simplement la ponctuation. Un système de résolution de conflit mature devrait permettre de rétablir une certaine confiance au sein de la relation initiale, lorsque c’est possible. Une telle approche nécessiterait une prise en compte des émotions liées aux revendications de chaque partie. Prendre en compte de façon sérieuse le rôle des émotions dans les relations sociales – il

s'agit bien de réhabiliter une facette universelle de l'expérience humaine qui a été dénigrée pendant des siècles en raison de son association à une idée historique de la femme faible.

Une redéfinition de la notion de résolution des conflits n'est donc qu'un exemple qui découle d'un plus grand enjeu, celui de la redéfinition des capacités et besoins de l'individu en fonction d'une compréhension plus complète de l'expérience humaine, soit une compréhension qui prend au sérieux le vécu des femmes. Pour ce faire, il faudrait redéfinir l'autonomie individuelle pour tenir compte de sa dimension relationnelle. Ce travail de redéfinition entraînerait des conséquences très réelles pour les femmes, dans la mesure où le droit qui nous régit est aussi l'expression des pouvoirs dominants actuels. Je donnerai à ce sujet un seul exemple parmi d'autres, pour montrer comment une conception relationnelle de l'individu nous permet de déconstruire le paradoxe apparent entre la vulnérabilité de certains groupes sociaux – dont les femmes et la nécessité de reconnaître leur capacité à l'autodétermination.

Au Québec, un exemple très clair (et d'actualité), est la situation des conjoints de fait dans le Code civil. La non-réglementation des unions libres découle du principe que la situation initiale est l'indépendance de chacun des partenaires. C'est-à-dire que si le droit ne s'en mêle pas, chacun des conjoints peut prendre la décision éclairée ou non de rester dans l'union, d'y investir tant de temps, d'énergie ou d'argent qu'il le voudra et d'en assumer les conséquences. Dans les faits, nous savons qu'en raison des charges maternelles mais aussi simplement de la culture encore très présente de la famille traditionnelle, il y a un très grand nombre de femmes qui tendront à consacrer leurs ressources à la vie domestique du foyer, alors que l'homme sera plus libre d'investir les siennes dans des secteurs plus monnayables. Notons que même si la situation est inversée, le problème demeure le même : on ignore dans les deux cas l'interdépendance naturelle qui s'installe dans toute relation intime. On refuse de voir que l'autonomie de chacun est grandement modelée par sa relation à l'autre.

Ce qui me semble commun à cette constatation et aux critiques que j'ai faites plus tôt au sujet de la masculinité des idéaux dans le monde du travail juridique, c'est l'oubli des impacts que la sphère privée a nécessairement sur la sphère publique. En envoyant les femmes au travail, en leur donnant un accès (encore souvent trop restreint) à des postes de pouvoir dans la société, qu'il s'agisse d'un pouvoir économique, politique ou académique, on a oublié que les femmes, avant d'être propulsées dans la sphère publique, exerçaient un rôle fondamental dans la société : la protection de la sphère privée. Et il ne s'agissait pas uniquement d'une tâche résiduaire, à défaut de pouvoir faire autre chose : il s'agit toujours d'une tâche importante, qui demande un investissement majeur de temps et d'énergie. En demandant aux femmes de se conformer aux standards masculins de réussite plutôt que d'ajuster ces standards au vécu historique des femmes – par exemple, en permettant à tous, hommes et femmes, de travailler moins pour consacrer plus d'énergie à leur sphère privée – on nie une partie essentielle de l'expérience humaine.

THE STICKPERSON'S GUIDE TO CANADIAN LEGAL HISTORY - LESSON #1: R V. EWANCHUK (OR THAT MOMENT WHEN NO LEGALLY MEANS NO)

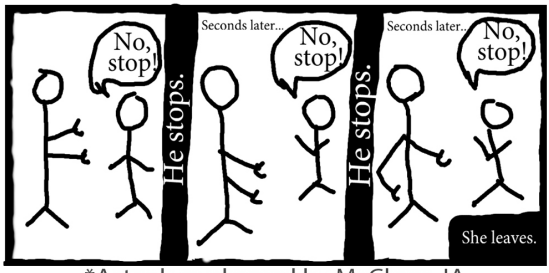
BY ANNIE O'DELL

STUDENT AT MCGILL FACULTY OF LAW

The Facts:

The romantic intentions* of the accused:

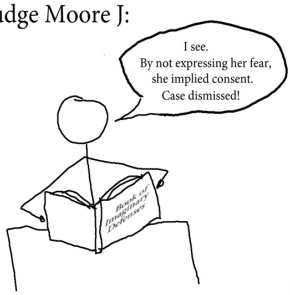
The three clumsy passes*:



*Actual words used by McClung JA

The Trial:

The trial judge Moore J:



The Complainant:

She was wearing shorts and a t-shirt.

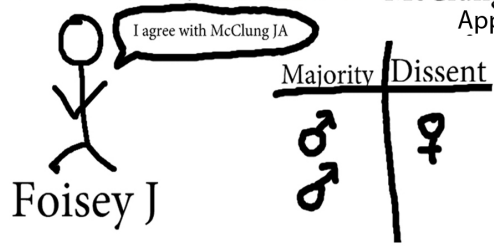
McClung JA: the complainant did not present herself to Ewanchuk or enter his trailer in a bonnet and crinolines. (para 4)

The Court of Appeal:

1998 ABCA 52

(para 21) ... Ewanchuk's advances to the complainant were far less criminal than hormonal. In a less litigious age going too far in the boyfriend's car was better dealt with on site -- a well-chosen expletive, a slap in the face or, if necessary, a well-directed knee. -McClung JA

Appeal Dismissed!



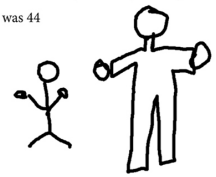
The CofA (cont'd):

This is the
DISSENT!!"

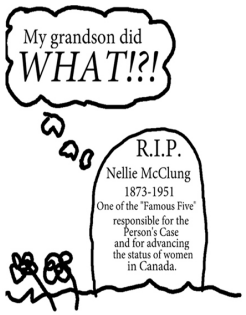
[29] To put what transpired here in context, it is noteworthy that at the time of the subject incident, the complainant was 17 years old; 5'1" tall and about 105 pounds and had met the Respondent accused, Steve Brian Ewanchuk, for a job interview. Ewanchuk was about 30 years old; over 6' tall and about 2 to 3 times the size of the complainant.

[30] It has been suggested that these facts are somehow irrelevant. I do not agree.

Actually he was 44



Fraser CJ

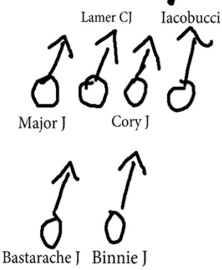


Meanwhile, at a local cemetary:

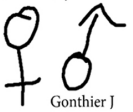
The Supreme Court:

[1999] 1 S.C.R. 330

Guilty!



Guilty!



"This case is not about consent, since none was given. It is about myths and stereotypes."

Guilty!

"Theses stereotypical assumptions no longer find a place in Canadian law."

The National Post (February 1999)

A published letter about L'Heureux-Dubé:

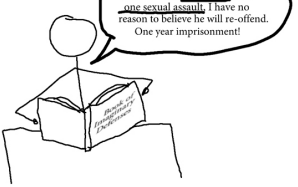
"The personal convictions of the judge, delivered again from her judicial chair, could provide a plausible explanation for the disparate (and growing) number of male suicides being reported in the province of Quebec."
-- Mr. Justice J. W. McClung, Court of Appeal of

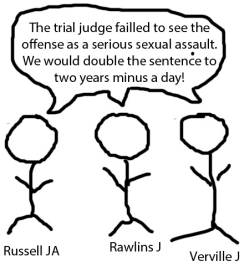
Historical Note:

L'Hereux-Dubé's husband did take his own life many years before. McClung claimed to not have known and said he was speaking off the record. He published an apology the next day.

Back to trial for sentencing... to the same judge...

The trial judge Moore J:
2000 ABQB 733





The CofA (again):
2002 ABCA 95

BECAUSE THE STORIES
WE TELL DETERMINE
WHAT WE THINK
ABOUT WHAT HAPPENS,
WHICH DETERMINES
WHAT HAPPENS NEXT

PARCE QUE LES
HISTOIRES QUE NOUS
RACONTONS DÉTERMINENT
CE QUE NOUS PENSONS
DE CE QUI SE PASSE,
QUI DÉTERMINE
CE QUI SE PASSERA