The Windsor Review of Legal & Social Issues would like to extend our thanks and appreciation to:

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Windsor Review of Legal and Social Issues
Revue des Affaires Juridiques et Sociales de Windsor

10th Annual Canadian Law Student Conference

March 15 & 16 2017

Canterbury College, 2500 University Ave. W.

Welcome

On behalf of the *Windsor Review of Legal and Social Issues* and Windsor Law, welcome to the 10th Annual Canadian Law Student Conference. We are very pleased that you are able to join us and can't wait to share your extraordinary articles within our faculty.

One of the major goals of the Review is to expand and promote legal academia amongst law students across Canada. This Conference offers an invaluable opportunity to achieve this goal, as we strive to foster a collegial environment where student scholarship is highlighted, discussed, and enriched through thoughtful debate.

In addition to our Conference, we are excited to share with you the opportunity to be featured in our next Digital Companion. Launched last year, the Digital Companion showcases the very best papers from our Conference and is published on our website (www.wrlsi.ca). The third volume of the Digital Companion will be released in 2017 and will feature papers from this year's Conference.

Thank you once again for attending our Conference. For those of you traveling from outside of the city, we hope you enjoy your stay in Windsor. Please feel free to approach me, or any of the members of the law review, if we can be of any assistance.

Alex Henderson
Editor – In – Chief
Windsor Review of Legal and Social Issues

About Us

The *Windsor Review of Legal and Social Issues* is an entirely student-run and peer- reviewed interdisciplinary law journal. As a non-traditional law journal, our mandate is to promote an analytical, practical, and empirical approach to the study of law that incorporates the perspectives of multiple disciplines, in order to utilize the study of law as a vehicle for social justice.

Our journal is a resource for lawyers, students, academics, professionals, adjudicators, and public policy makers. Copies of the journal can be found in libraries worldwide and through electronic databases such as Westlaw, HeinOnline, and Quicklaw.

For more information, please visit our website:

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10th Annual Canadian Law Student Conference

-ITINERARY-

Time	WEDNESDAY MARCH 15
11:30AM-11:45 AM	**Check In:** Canterbury College, 2500 University Avenue West
11:45AM-12:00PM	**Welcome Address:** Alex Henderson, Editor-in-Chief, *Windsor Review of Legal & Social Issues*
12:00PM-2:00PM	**Ethics & Professional Responsibility** *Moderated by:* Noel Semple *Between Splendor and Mediocrity: The Neglected Psychological Dimensions of the North American Law School Experience* **Vincent Dalpé** *In Confidence, with Confidence: A Critical Comparison of Professional Duties of Confidentiality* **Noah Wernikowski** *@dvertising in the Digital Age: A #CDN #US Comparative Study of Lawyer Advertising Rules* **Jacqueline Palef**
	BREAK
2:15PM-3:00PM	**Resolving International Issues** *Moderated by:* Maureen Irish *The Foreign Account Tax Compliance Act: Detrimental Effects on State Sovereignty and the Rights of Canadian Residents* **Courtney March** *Arbitration as Restitution for Nazi-Looted Art: Alternatives to Litigation as Shown in Republic of Austria v. Altmann* **Julie Yan**
	BREAK
3:15PM-4:00PM	**Indigenous Law** *Moderated by:* Valarie Waboose *Indigenous Children in Custody – Legal Remedies Available to Repair Overrepresentation of Indigenous Youth* **Hilary Peterson** *Ktunaxa Nation and the Need for Judicial Recognition of Indigenous Freedom of Religion* **Sam Hale**
	BREAK
4:15PM-5:00PM	**Criminal Law** *Moderated by:* Evan Weber *Administrative Segregation: Managing Punishment Through Policy* **Harshi Mann** *No Chance at Immunity: Examining the Enhanced Modes of Reciprocity Available for White-Collar Crimes as Compared to Street- Crimes* **Benjamin Schnell**
	THURSDAY MARCH 16
11:30AM-12:00PM	**Check In:** Canterbury College, 2500 University Avenue West
12:00PM-1:30PM	**Health and Environmental Law** *Moderated by:* Marcia Valiante *Cultivating Public Health: Urban Farming as an Essential Municipal Tool to Address Unbalanced Food Environments and Household Food Insecurity in the Halifax Penninsula* **Jessica Rose** *The Unsustainability Trend: Environmental Rights & the Fashion Industry* **Elspeth Graham**

-ITINERARY-

12:00-PM 1:30PM	**Health and Environmental Law (Continued)** *Assessing the Potential Risk of Genetic Discrimination from Future Developments and Uses of CRISPR* **Avery Lee** *Gender ID Law in Canada: The Introduction of the Self-Determination Principle* **Brendan Cooke**
	BREAK
1:45PM- 3:00PM	**Media, Technology & the Law** *Moderated by:* Annette Demers *99 Problems, but the Law Ain't One* **Karas Elbardisy** *A Plea for Privacy: A Call to Preserve Ontario's Protection Against Revenge Porn* **Francesca D'Aquila-Kelly** *10,000 Steps Behind: Fitness Trackers and the Health Sector From an Ontario Privacy Perspective* **Monica Carinci**
	BREAK
3:15PM- 4:00PM	**Administrative and Labour Law** *Moderated by:* Claire Mummé *Punishment Before Liability: Charter Applicability to the University Tribunal System* **Rabiya Mansoor** *After Saskatchewan Federation of Labour: Sounding A Death Knell for Back-to-Work Legislation?* **Alex Treiber**
	BREAK
4:15PM- 5:00PM	**Legislative Reform** *Moderated by:* Marion Overholt *The Living Tree in Hibernation?: Towards a Canadian Constitutional Right to Health Care* **John Petrella** *Protecting Sex Workers' Security – Past, Present, and Future Prostitution Policy in Canada* **Lianne Roberge** *Dogs on Death Row: Why Capital Punishment Still Exists in Ontario Through the Current Legal Status of Animals as 'Personal Property'* **Nimisha Dubey**
	BREAK
5:15PM- 5:30PM	**Closing Address and Awards Presentation** Alex Henderson, Editor-in-Chief, *Windsor Review of Legal & Social Issues*

Between Splendor and Mediocrity: The Neglected Psychological Dimensions of the North American Law School Experience
Vincent Dalpé**

Going to law school, in popular culture, seems to be valued. Law students tend to be viewed as high achievers following the footsteps of some of society's most influential actors. Yet this view—that of the pathway to success—largely overshadows some of the more disheartening realities of the law school experience. Stress, anxiety and emotional hardship unfortunately also form part of many students' journey. This presentation aims to provide a critical look at some of the psychological dimensions of the law school experience. In doing so, this presentation will argue that emotional distress has largely remained unaddressed in law schools and in the legal profession, thus sustaining a climate leading to the development of undesirable coping mechanisms such as substance abuse—in turn frequently leading to instances of professional malpractice. This presentation thus stands as a plea for the recognition of the importance of the issue of psychological distress, an issue undermining the legal profession more than is generally imagined.

** Vincent Dalpé is a third year doctoral student at the McGill University Faculty of Law, under the supervision of Professor René Provost. His dissertation is supported by the Social Sciences and Humanities Research Council of Canada, and focuses on the challenge of legal pluralism for the development of international criminal law. His research interests include international law, criminal law, legal theory, and law and emotions. Prior to enrolling in graduate studies, Vincent has practiced briefly in a boutique class actions law firm in Montreal.

In Confidence, with Confidence: A Critical Comparison of Professional Duties of Confidentiality
Noah Wernikowski**

For many professions, the duty to maintain confidentiality or protect privacy is central to its relationship with the public. With a focus on Saskatchewan, this paper discusses three professional duties of confidentiality: those of physicians, psychologists, and lawyers. It draws heavily on professional codes of conduct, statute, and jurisprudence to compare both the ethical duty of confidentiality each profession owes their clients and the extent the law can compel members of each profession to divulge their confidential information. After concluding that confidential information shared between lawyers and their clients receives far greater protection than that shared between other professions and their clients, the paper concludes by offering an explanation for the discrepancy.

- ETHICS & PROFESSIONAL RESPONSIBILTY -

** Noah Wernikowski is a third-year law student at the University of Saskatchewan's College of Law and a member of the Editorial Board of the Saskatchewan Law Review. Noah received a Bachelor of Journalism with Distinction from the University of Regina and worked as a communications officer and freelance journalist, both prior to and while attending law school. In June 2017, he will clerk at the Court of Queen's Bench for Saskatchewan in Regina.

@dvertising in the Digital Age: A #CDN #US Comparative Study of Lawyer Advertising Rules
Jacqueline Palef**

Most people would prefer the convenience of a cell phone as opposed to having to use a pay phone and would prefer to buy a color television instead of a black and white television. No one wants to move backwards when it is possible to move forward. Yet, lawyers in both Canada and the United States have called for a total ban on lawyer advertising. A ban that the U.S. lifted in 1977, and Canada held onto until the 1980s. So why would lawyers want to move backwards instead of moving forwards? Today, lawyers in Canada believe that lawyer advertising "has led to the commoditization of personal injury and other practice areas, eroded the public perception of lawyers, and threatens the administration of justice." This new era of advertising has been referred to as the "Trumpification" of lawyer advertising. This paper will determine what changes, if any, need to be made to the Law Society of Upper Canada's Rules of Professional Responsibility and the ABA's Model Rules of Professional Conduct to bring lawyer advertising into the digital age.

** *Jacqueline Palef is a third year student in the Dual JD Program at the University of Windsor and the University of Detroit Mercy Faculty of Law. She holds an Honours Bachelor of Arts from Queen's University, majoring in Political Studies.*

-RESOLVING INTERNATIONAL ISSUES -

The Foreign Account Tax Compliance Act: Detrimental Effects on State Sovereignty and the Rights of Canadian Residents

Courtney March**

There is an estimated 8.5 to 33 trillion dollars of American wealth held in offshore accounts. In an effort to crack down on tax avoidance and evasion, the US Congress passed the *Foreign Account Tax Compliance Act* ("FATCA") in 2010. FATCA's method of enforcement requires that all US citizens report particular account information to the Internal Revenue Service ("IRS"). It also requires Foreign Financial Institutions to surrender US account holder information to the IRS. Both parties risk economic sanctions if they fail to comply. The FATCA intergovernmental agreement ("IGA") with Canada enables an excessive and unwarranted overreach of American jurisdiction into Canada. This extraterritorial influence on Canada's sovereignty is unprecedented, unfair and in need of reform.
The first half of this paper gives a history of the events leading to the enactment of FATCA, outlines jurisdictional principles, and provides a brief summary of the Canada-US tax treaty in effect today. The second half of this paper outlines the operation of FATCA, provides arguments that favour FATCA, illustrates FATCA's harmful impact, and concludes by proposing a reform to the IGA and amendments to the legislation itself in an effort to make it less damaging to Canadian citizens and financial institutions.

** *Courtney March is a second year student in the J.D. program at the University of Windsor. When she's not promoting tax law, she can be found in the gym, on her bike, talking about David Bowie, or watching Seinfeld.*

Arbitration as Restitution for Nazi-Looted Art: Alternatives to Litigation as Shown in Republic of Austria v. Altmann

Julie Yan**

Recognizing the gaps in the existing legal system, this paper will argue that disputes relating to looted art should be decided by binding arbitration rather than litigation. In reaching this conclusion, this paper analyzes the case *Republic of Austria v. Altmann* as depicted in the film *Woman in Gold.* At issue in *Republic of Austria v. Altmann* was a Holocaust victim's longstanding struggle to regain six paintings looted by the Nazis in the 1930s. The parties in this proceeding resolved the matter by an Arbitration Agreement.
I have chosen to discuss this film because Hollywood has offered strong depictions of litigators but has been sparse on portraying mediators and arbitrators. Contrary to other films which often dramatize the courtroom, *Woman in Gold* shows that litigation is often protracted, subject to countless appeals, delays and mounting frustration. Therefore, this movie explores a practical real life account of a dispute involving art and cultural property and how it is resolved by arbitration, in a more efficient and sustainable manner.

-RESOLVING INTERNATIONAL ISSUES-

** *Julie Yan is currently completing her third year of law at the University of Manitoba. She holds an Honors Bachelor of Fine Arts (Studio Art) degree from the University of Western Ontario. Julie has a keen interest in Nazi-looted-art litigation due to her background in the arts and her Jewish heritage. Julie is looking forward to starting her articling position at Manitoba Prosecution Service.*

-INDIGENOUS LAW-

Indigenous Children in Custody – Legal Remedies Available to Repair Overrepresentation of Indigenous Youth

Hilary Peterson**

I completed this paper in December 2016 for Youth Criminal Justice Law.The *Criminal Code of Canada* and subsequently the Supreme Court of Canada (SCC) explicitly require that when Indigenous people are sentenced through the justice system unique factors affecting Indigenous people must be considered and accounted for during sentencing.This paper considers the relevant and applicable law surrounding sentencing of Indigenous people in the criminal justice system and applies it to youth sentencing. This paper predominately focuses on the Preamble and Section 3 of the *Youth Criminal Justice Act*.

** Hilary Peterson is in her third year of law at the University of Saskatchewan. Last summer she worked under the Ontario Ministry of the Attorney General, as a Summer Law Student with the Windsor Crown Attorney's office.

Ktunaxa Nation and the Need for Judicial Recognition of Indigenous Freedom of Religion

Sam Hale**

Indigenous peoples have a fundamentally and irreducibly spiritual relationship with the land. Given the profound connections between sacred lands and Indigenous survival, Indigenous nations have carried their fight to protect their sacred sites to the courts. Historically, Canadian courts have failed to embrace a multi-juridical understanding of Indigenous spiritualities, and as such, have ignored any practice that falls outside of the Court's Eurocentric cultural understandings. However, this is not insurmountable. *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resources Operations)* represents the first opportunity for the Supreme Court of Canada to recognize the destruction of an Aboriginal sacred site as a violation of section 2(a) of the *Charter*. Continued on next page.

Ktunaxa Nation and the Need for Judicial Recognition of Indigenous Freedom of Religion Continued

Through analysis of the importance of sacred sites in Indigenous religious traditions, examination of existing Indigenous sacred sites jurisprudence in Canada, and consideration of the upcoming *Ktunaxa Nation* decision, this paper will argue that Indigenous spiritual traditions fall under the ambit of s. 2(a) and merit a level of *Charter* protection equal to that enjoyed by other religious denominations in Canada. In contrast to the judiciary's historical refusal to protect Indigenous spiritual rights in land, official recognition in *Ktunaxa Nation* of the Ktunaxa's religious rights would be a positive, and necessary, step towards meaningful recognition of Indigenous religious freedom under the *Charter*.

** *Samantha Hale is completing her third year of a combined JD/MSW degree at the University of Windsor, Faculty of Law. She holds an Honours Bachelor of Arts in Canadian Studies from McGill University.*

-CRIMINAL LAW-

Administrative Segregation: Managing Punishment Through Policy
Harshi Mann**

Broad correctional discretion stemming from policy rather than legislation has failed to uphold the Rule of Law in Canadian prisons, specifically in the management of administrative segregation. Under administrative segregation, an inmate can be confined within the same four walls for up to 23 hours a day, in solitude, for an indefinite number of days. Administrative segregation is regulated by federal legislation that permits the Commissioner of Corrections to make rules for the management of Correctional Service Canada (CSC). These rules, or policy directives, are what correctional staff and officers adhere to when making day-to- day decisions in the course of their duty. Although this policy-making power is granted under the federal legislation, the content of the policy guidelines are not prescribed by law. They are a set of minimum standards developed by the Commissioner – not through the democratically elected legislature. The over-reliance on policy rather than legislation in the prison bureaucracy leaves an excessive and dangerous legal gap between the legislative framework and the decisions made by correctional officers. The author examines how an over-reliance on policy in the management of segregation has lead to clear cases of abuse. The author concludes by outlining the possible avenues for change in the management of administrative segregation. The recommendation is a strong legislative framework that provides meaningful guidance in decision-making within the difficult prison environment.

** *Harshi is a third-year J.D. candidate at Queen's University. She holds a Bachelor of Arts in Political Science and a Certificate in Urban Studies from Simon Fraser University. Next year, she will be articling at Fasken Martineau DuMoulin in Vancouver, British Columbia.*

No Chance At Immunity: Examining the enhanced modes of reciprocity available for white-collar crimes as compared to street-crimes.
Benjamin Schnell**

The Canadian legal system has an inherent tolerance towards white-collar crime when compared to street crime. This tolerance is epitomized through the Competition Bureau's Immunity and Leniency program for violation of the *Competition Act*. While there is certainly a valuable public policy objective grounding the creation of these provisions, a clear separation arises when comparing their existence and enactment with the penalties associated with violating the *Criminal Code*. More poignantly, the reciprocity available through the *Competition Act* vastly exceeds that available within the criminal justice system. This disparity is of particular concern when comparing the treatment of violations of the *Competition Act* to non-violent *Criminal Code* offenses, such as theft and drug trafficking. This disparity in tolerance largely spawns from the degree of the conspicuousness of the respective offenses, which is predicated on society's fear of victimization.

** *Benjamin Schnell is in his second year at Western Law. Prior to law school he spent four years working at Correctional Services Canada. Following school he hopes to work as a Crown.*

-HEALTH & ENVIRONMETNAL LAW-

Cultivating Public Health: Urban Farming as an Essential Municipal Tool to Address Unbalanced Food Environments and Household Food Insecurity in the Halifax Peninsula

Jessica Rose**

This presentation explores the likely benefits of introducing urban farming as a permissible use in the Halifax Peninsula land use by-law. Despite Canada's status as a relatively wealthy nation, many Canadians and residents experience significant barriers in accessing high-quality foods that support health. Of the ten provinces, Nova Scotia has the poorest record of adequate food access. One aspect of food access is geographical: living within easy access to nutritious food. Research emerging from various nations demonstrates that neighbourhoods with less access to grocery stores than to unhealthy fast food and processed food — referred to as "unbalanced food environments" — tend to experience poorer health outcomes.
Municipalities should make use of their land use planning powers to zone for farming in urban areas, thereby facilitating access to healthy foods, reducing the incidence of unbalanced food environments and supporting food access equity across the country. The presentation will focus on the Halifax Peninsula, but is pertinent to all municipalities in Canada.

** *Jessica Rose is a third-year JD student at the Schulich School of Law, Dalhousie University. Before studying law, Jessica completed her undergraduate studies in psychology at the University at British Columbia. Jessica is particularly interested in food justice, criminal and prison law, and off-grid living.*

The Unsustainability Trend: Environmental Rights & the Fashion Industry

Elspeth Graham**

With the advent of "fast fashion" clothing has become disposable. Increased consumption of fashion products in recent years is staggering and has had profound environmental and social consequences. Long and complex supply chains, characteristic of the trillion-dollar fashion industry, obscure the true costs of clothing. While labour and human rights concerns have received some attention, there has been considerably less discussion surrounding the environmental consequences of the fashion industry. Continued next page.

Addressing both areas, including where they intersect, is essential to increasing sustainability. This paper intends to facilitate the discussion of these issues. The paper considers legal frameworks with the potential to govern the fashion industry, including existing gaps and insufficiencies. International environmental law, international human rights law, and business responsibility are all identified as having a role to play in responding to these issues. Key players at all levels of decision-making must be engaged, including States, corporations, and the public. Recommendations specific to these actors are provided, including the development of sustainability frameworks, financial incentivization, as well as promoting access to information, participation, and justice.

** *Elspeth Graham is a third year law student at Western University. She previously completed an Honours Bachelor of Arts at Western University, majoring in Classical Studies and English Language & Literature. Elspeth is interested in environmental and human rights law, particularly in an international context. She recently completed a legal internship with the Permanent Mission of Canada to the United Nations in New York, and intends to pursue a legal career in public international law.*

Assessing the Potential Risk of Genetic Discrimination from Future Developments and Uses of CRISPR

Avery Lee**

Whenever a new and revolutionary piece of technology starts to emerge, it often comes with a shroud of promise and uncertainty. Likewise, this decade is marked by the emergence of CRISPR which promises the potential to cure a wide range of genetic diseases and genetic predispositions. However, despite the obvious potential health benefits of CRISPR, its future use may be subject to unintended negative consequences. The first half of this paper explores the extent and likelihood that the old concern of designer babies and the more recent concern of genetic discrimination would be reinvigorated by future developments of CRISPR. In particular, the author theorizes that the moderate increase of genetic discriminate in the near future would largely be mitigated by further developments of the technology and society in the far future. This paper then finds its ground back in the present reality by examining whether genetic discrimination is really a problem worthy of legislative action and whether the proposed Bill S-201 would create an adequate regulatory framework. Essentially, the author advocates for a regulatory framework that maintains an appropriate balance between preventing genetic discrimination and facilitating medical research.

** *Avery is a second year law student at the University of Western Ontario. He holds a Bachelor of Arts in Psychology and Philosophy from the University of Western Ontario*

Gender ID Law in Canada: The Introduction of the Self-Determination Principle

Brendan Cooke**

Canada has recently borne witness to substantial changes in gender ID laws. The vast majority of trans Canadians now live in jurisdictions where a gender marker change can be obtained without sex-reassignment surgery. In this paper, I analyze these changes from a law reform perspective, and argue that they originate in a narrative originally introduced into Canadian jurisprudence by XY v Ontario. I suggest that the narrative, and the assumptions about gender identity upon which it relies, was seminal with respect to these legislative changes. The self-determination principle, I argue, is a legal formulation of this narrative, and XY v Ontario, as distinct from other trans jurisprudence from the Human Rights Tribunals, was the first authoritative introduction of this into Canadian law.

***Brendan Cooke is a law student at McGill University, in his third year. Originally from Newfoundland, Brendan aims to complete his law studies in December, and to move into practice as a lawyer shortly thereafter. Brendan is interested in access to justice issues, human rights law, legal pedagogy, and the intersection of mathematics and law. He currently works as a director at a legal information clinic in Montreal, volunteers at a legal aid clinic for trans* persons, and recently competed at the Winkler Moot in class actions.*

-MEDIA, TECHNOLOGY AND THE LAW-

99 Problems, but the Law Ain't One

Karas Elbardisy**

Popular culture reaches every segment of our society and the legal system is no exception. The focus of popular culture is American law and American legal culture. This often leads to misconceptions of the practice of law, particularly in Canada. This misinformation can cause clients to have unrealistic expectations of their lawyers. It can, in certain situations, cause greater legal problems for clients. Practicing lawyers should be aware of these misconceptions in order to better serve their clients' needs and interests. In order to begin a dialogue about this issue, the first portion of this paper will analyse the iconic Jay-Z song *99 Problems* and assess the legal principles at play in the song within a Canadian criminal legal context. Subsequently, this paper discusses the use of rap lyrics in criminal trials and some of the implications that accompany this new practice. Finally, culminating in an argument for the inclusion of popular culture in law school across the country because it creates well-rounded lawyers. This paper does not constitute a comprehensive solution to the growing misconceptions of our time, but it aims to start a discussion and perpetuate continuing focus on this important social issue.

*** Karas Elbardisy is a third-year law student at Robson Hall Faculty of Law, University of Manitoba. He has a Bachelor of Arts in Psychology and a minor in Political Studies. After law school, he hopes to establish a practice in litigation, although he is unsure what area of law he wishes to practice.*

A Plea for Privacy: A Call to Preserve Ontario's Protection Against Revenge Porn

Francesca D'Aquila-Kelly**

The need to preserve the privacy of the individual has been a steadily growing issue and concern. This need has been uniquely influenced by the increase in intimate image sharing, an activity that seldom existed before the ubiquity of personal cellphones and computers. This type of behaviour has brought an increasing concern for privacy protection advocates since individuals are being exploited by having their images distributed without consent. This trend, commonly referred to as "Revenge Porn," is a relatively new phenomenon whereby an individual, while in possession of sexually explicit video footage and/or visual material (i.e photographs), subsequently uploads that content onto a public website and/or otherwise shares that information to the public.Examining the new tort of public disclosure of embarrassing private facts shows that privacy is a fundamental right worthy of protection in civil disputes, particularly when the wrongful act is the non-consensual distribution of intimate images—Revenge Porn. By analyzing the criticisms and shortcomings expressed by opponents to the tort's existence, salient recommendations to address the same can be made. Furthermore, a discussion of the comparable laws in other Canadian jurisdictions will aid in affirming the importance of legal recourse in Ontario against this type of privacy invasion.

*** Francesca D'Aquila-Kelly is a third-year law student at the University of Windsor. She holds an undergraduate degree in Criminology from York University. She is currently Windsor Law's Peer Mentorship Student Coordinator and is responsible for the operation and development of the Peer Mentorship Program. Francesca is also the acting President of Windsor Law in Defence of the Wrongfully Convicted, a Career Services Advisor, and a member of the Graduation Committee.*

10,000 Steps Behind: Fitness Trackers and the Health Sector From an Ontario Privacy Perspective
Monica Carinci**

Any identifiable information collected by a fitness tracker is protected under Canada's *Personal Information Protection and Electronics Act*. If an individual shares data collected by a fitness tracker with his or her physician in Ontario the specific data shared, whether health related or not, immediately becomes personal health information protected under Ontario's *Personal Health Information Protection Act, 2004*. Despite these written protections, the current method of sharing fitness tracker data with physicians, directly through the patient, is inconsistent with the principles that are the foundation of privacy legislation in Canada. The author uses guidelines from the Canadian Medical Association and the results of recent privacy sweeps funded by the Office of the Privacy Commissioner of Canada to emphasize the risk to personal privacy when fitness tracker data is shared with physicians. An anticipatory approach is needed to mitigate the risk of using these devices and uphold the privacy principles that are the foundation of Canada's privacy legislation. Further, the author presents alternative methods of sharing fitness tracker data with physicians and discusses the disincentives that exist for technology companies that may want to collaborate with healthcare providers.

***Monica is a J.D. candidate at the University of Windsor. Prior to attending law school, she obtained a Bachelor of Arts with High Distinction from Victoria College at the University of Toronto, with a major in English and minors in Art History and Literature and Critical Theory.*

-ADMINISTRATIVE & LABOUR LAW-

Punishment Before Liability: Charter Applicability to the University Tribunal System
Rabiya Mansoor**

The University Tribunal system is the mechanism by which students are disciplined at the University of Toronto. While the University of Toronto as a whole may not be subject to *Charter* scrutiny, the University Tribunal may be subject to *Charter* applicability. Using analyses from two different streams of case law, this paper examines the strengths and limitations of *Charter* scrutiny. A specific practice, student's receiving a grade withheld pending review before a finding of liability has been made, is assessed under 11(d) of the *Charter*. In the conclusion, this paper examines the practical implications of *Charter* litigation at the University Tribunal.

***Rabiya Mansoor is in her second year of a combined JD/MA in Economics at the University of Toronto. After her first year, she worked at Downtown Legal Services, the university's student legal clinic, in the employment law and university affairs divisions. Rabiya has represented students in both discipline and appeal cases before the University Tribunal and the Academic Appeals Committee. Prior to law school, she completed her undergraduate studies at the University of Calgary in International Relations and East Asian Language Studies. After graduation, she hopes to pursue a career in labour law.*

After Saskatchewan Federation of Labour: Sounding A Death Knell for Back-to-Work Legislation?
Alex Treiber**

In *Saskatchewan Federation of Labour v. Saskatchewan* ("*SFL*"), the Supreme Court of Canada erased thirty-years of precedent by declaring a constitutional right to strike as a fundamental freedom protected by the freedom of association, s. 2(d) of the *Charter*. This newly found constitutional right to strike calls into question the constitutional validity of a variety of common legislative tools used by governments to end labour unrest and, in particular, back-to-work legislation. This Paper explores the evolution of the jurisprudence leading to this novel constitutional right and how, in light of this new framework, future government usage of such legislation will be heavily limited.

** *Alex Treiber is an articling student at the national full-service firm McCarthy Tetrault LLP. He recently graduated from the Dual JD program at the University of Windsor and the University of Detroit Mercy. He hopes to practice in the area of labour and employment law this fall.*

-LEGISLATIVE REFORM-

The Living Tree in Hibernation?: Towards a Canadian Constitutional Right to Health Care
John Petrella**

Canada's public health care system is lauded as amongst Canada's greatest achievements. Canadians are extremely proud of their health care system and value it as a hallmark of Canadian society. Despite the prominent standing of the health care system in Canadian society, there is no constitutional right to health care. As a social right, Courts have shied away from enforcing a constitutional right to health care for fear that enforcing such a right imposes positive obligations on the state and has the effect of dictating policy. This paper contests Canadian courts reluctance to enforce social rights generally, and the right to health care specifically.

Drawing on concepts such as legal culture, the living tree doctrine of *Charter* interpretation, and Foucauldian discourse theory, I argue that Canadian Courts should be receptive to enforcing a Constitutional right to health care. Given the increasing reliance Canadian Courts afford to international human rights law and legal traditions in other countries, I also illustrate that the experiences of other countries as they relate to the constitutionalization of a right and the enforceability of social rights and the right to health care provide further indications that Canadian Courts should be receptive to enforcing the right to health care.

*** John Petrella, J.D. Candidate 2017 Western University. John holds Bachelor's and Master's degrees in Kinesiology from Western University.*

Protecting Sex Workers' Security – Past, Present, and Future Prostitution Policy in Canada

Lianne Roberge**

This paper contributes to ongoing discussions regarding prostitution provisions within the *Criminal Code* in an effort to proffer a viable legal approach to prostitution in Canada. It begins by exploring the recent evolution of prostitution law in Canada, including the Supreme Court of Canada's judgment in *Canada (Attorney General) v. Bedford* (2013) SCC 72, as well as the legislative response in *Protection of Communities and Exploited Persons Act* (*Prostitution Act*). This paper argues that the *Prostitution Act* takes a Nordic Model approach. As such, it explores two other jurisdictions that have implemented the Nordic Model and draws a comparison between the outcome and harms in those jurisdictions and the outcome and harms likely to be produced by the *Prostitution Act*. It contends that the *Prostitution Act* is unlikely to withstand a section 7 security of the person challenge under the *Charter*. It further contends that any law attempting to criminalize prostitution is unlikely to be constitutional based on the Court's ruling in *Bedford*. As such, this paper concludes by providing an alternative legislative response to prostitution post-*Bedford*, namely decriminalization.

*** Lianne Roberge is a third year law student at the Bora Laskin Faculty of Law at Lakehead University. Originally from the small northern town of Kirkland Lake, Ontario, Lianne completed her undergraduate degree at Carleton University, where she specialized in human rights, ultimately receiving a Bachelor of Public Affairs and Policy Management with Honours. Lianne has also studied in Accra at the University of Ghana.*

Dogs on Death Row: Why Capital Punishment Still Exists in Ontario Through the Current Legal Status of Animals as 'Personal Property'

Nimisha Dubey**

The author argues that in order to protect the lives and interests of animals, their legal status needs to be elevated so that they are, at the very least, considered "sentient property" with the basic right to life. This discussion focuses on companion animals in Ontario, with specific regard for pit bull dogs which are ban within the province. Currently, provincial legislation recognizes animals as "personal property" without any legal rights of their own. As a result, courts have the power to arbitrarily sentence a dog to be "destroyed" after attacking or causing harm to another animal or human. The issue concerning this state of the law, presented in both legislation and jurisprudence, is not only one of legality, but morality. After extensive analysis of the current legal setting of animals as "personal property", proposals for reform are presented and critiqued. In this discussion, the author argues that legal status of animals should be raised above it's current state, requiring courts to issue and enforce orders of rehabilitation for both animal and guardian for at least one year prior to considering euthanisation. The more complex discussion of livestock and poultry as personal property is left for a future study.

*** Nimisha Dubey is a second year law student at the University of Windsor who is passionate about improving access to justice within the private and public international law sectors. She believes strongly in the power of oral advocacy and hopes to establish a career as a litigator to encourage judicial reform and provide a voice for those that need it most. Nimisha is also a spirited animal rights activist and hopes to advance the field of animal law through her research and advocacy, while encouraging a lifestyle that supports the equality of all living beings. She looks forward to working at Canada's first-ever animal law firm this summer.*

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