

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

All of our Panelists and Moderators

The Honourable Justice Russell Brown

Dean Christopher Waters

Faculty Advisor, Professor Claire Mummé

WRLSI Editorial Staff and Volunteers



Windsor Law
University of Windsor

TORYS
LLP



Windsor Review of Legal
and Social Issues

Revue des Affaires Juridiques
et Sociales de Windsor

11th Annual Canadian Law Student Conference

March 8 & 9 2018

Canterbury College, 2500 University Ave. W.

Welcome

On behalf of the *Windsor Review of Legal and Social Issues* and Windsor Law, welcome to the 11th 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.

The Review seeks to expand and promote legal academia amongst law students across Canada. This Conference offers an invaluable opportunity for presenters to engage with other law students, professors, and the public, and share their scholarship. We strive to foster a collegial environment where student work is 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 in 2015, the Digital Companion showcases the very best papers from our Conference and is published on our website (www.wrlsi.ca). The fifth volume of the Digital Companion will be released in 2019 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.

Courtney March
Editor-In-Chief
Windsor Review of Legal and Social Issues



Windsor Review of Legal
and Social Issues

Revue des Affaires Juridiques
et Sociales de Windsor

Notes:

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:

www.wrlsi.ca

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Social Issues
11th Annual Canadian Law Student
Conference

-ITINERARY-

Time	THURSDAY MARCH 8
9:00AM-9:45 AM	Check In: Canterbury College, 2500 University Avenue West
9:45AM-10:00AM	Welcome Address: Courtney March, Editor-in-Chief, <i>Windsor Review of Legal & Social Issues</i>
10:00AM-11:45AM	<u>Technology and the Law</u> <i>Moderated by: Claire Mummé</i> <i>Moving Past Misleading Metaphors: Comparing Machine to Man Prevents Legal Personhood for Artificial Intelligence</i> Nimisha Dubey <i>Implications of Cryptocurrency on Foreign National Officials, Money Laundering and Terrorist Activity: How Emergent Financial Technology could Aid in Deterring Criminal Activity</i> Akiva Stern <i>Municipalities Failing the Human Rights Code and AODA through their Uber Licencing</i> Horia Tabatabaei Soltani <i>“Does Roomba Know All of My Secrets?” Re-Examining the Consumer Privacy and Data Implications of Domestic Robot Use</i> Stefano Tesoro <i>Privacy Changes in the Face of Modernity: Intellectual Technology and Artificial Intelligence</i> Taraneh Etemadi



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Notes:

12:00PM - 1:00PM	The Honourable Justice Brown of the Supreme Court of Canada Keynote Address Windsor Law – Moot Court Room 1100 and 2102
1:30PM- 2:15PM	<u>Immigration Law and Transitional Justice</u> <i>Moderated by: Sujith Xavier</i> <i>Dignity in Memory: Lessons for Reconciliation and Truth in Post-War Sri Lanka</i> Archana Ravichandradeva <i>Analyzing the Approach of the Courts and Government and the way they treat Permanent Residents and Foreign Nations</i> Modasir Rajabali
2:30PM- 4:00PM 12:00PM - 1:30PM	<u>Criminal Law</u> <i>Disclosure in the 21st Century: A Comparative Analysis of Three Approaches to the Information Economy in the Guilty Plea Process</i> Myles Anevich <i>A Balancing of Rights: Sentencing Sexual Assaults Perpetrated Against Unconscious Victims in the Supreme Court of the Northwest Territories, 2000-2017</i> Conal Calvert <i>R v Gladue [1999] - An Overview of Mistakes and Solutions, the Impact of Colonialism and Situations of Anomie and Strain in Judicial Decisions</i> Sukhraaj Shergill <i>Attempting to Regulate Stereotyping In Sexual Assault Cases Through Jury Instructions</i> Rubaina Singh

-ITINERARY-

FRIDAY MARCH 9

11:30AM-
12:30PM

Law Reform

Moderated by: David Tanovich

*Wearing Red: Systemic Racism and Gang Related
Clothing Evidence*

Sean Reginio, Rachel Parry, Dragana Bukejlovic

*Photographic Lineups and the Need for a Codified
Rule*

Kyle Kuczynski

A Fee-Nominal Idea

Julie Nguyen

2:45PM-
1:45PM

International Law

Moderated by: Christopher Waters

The Rotterdam Rules

Sara Ruhani

*Making the Defence of Duress Fairly Available to
Refugees Facing Criminal Inadmissibility in Canada*

Danyal Rawjani

*Separating the Doctrines of Necessity and
Proportionality in Investor-State Arbitration*

Theodore Milosevic

**Thank you for joining us at the 11th Annual
Canadian Law Student Conference.**

We hope to see you next year!

Courtney March
Samantha Hale
Dragana Bukejlovic
Taraneh Etemadi

WRLSI 2017-2018 Executive

-LLM PROGRAM-

Windsor Law's LLM program has two distinctly unique characteristics.

- An emphasis on rigorous scholarship centered on our institutional themes of **Access to Justice** and **Transnational Law**.
- An innovative experiential learning component that allows students in the **LLM with Certificate in University Teaching and Learning** stream to complete a certificate in university teaching, and to engage in law teaching during the course of their study.

Students may choose from two streams: a one-year (12 month) regular LLM or a two-year (24 month) LLM with Certificate in University Teaching and Learning. The central requirement for both streams is the completion of original publishable research. This major written piece of original research, or thesis, may be submitted as one single document or as a set of related publishable papers addressing a single research question and totaling approximately 100-125 pages.

Students enrolled in our innovative **LLM with Certificate in University Teaching and Learning** program have a unique experiential learning experience. In year 1, students will complete the University of Windsor's University Teaching Certificate. In year 2, they will be designated as Teaching Fellows and have the opportunity to complete a teaching practicum at the Faculty of Law.

Formalized university teacher training and law teaching experiences are unprecedented experiential learning opportunities among Canadian LLM programs. **No other Canadian Master's Program in Law offers this.** Windsor Law's LLM offers students the opportunity to be integrated into a scholarly community. Given the small size of the program, students will engage closely with faculty members who are leading experts in their fields.

2:00PM-
3:00PM

Diversity and Representation in Law

Moderated by: Annette Demers

Equity, Race and Transformative Legal Education
Simone Akyianu

Dispute Resolution, Still a Man's World
Liz McLellan

Corporate Board Diversity: Where Are We Headed? Increasing Indigenous Representation on Corporate Boards
Kimberly Gosel

3:15PM-
3:45PM

Closing Address and Awards Presentation

Courtney March, Editor-in-Chief, *Windsor Review of Legal & Social Issues*

- TECHNOLOGY AND THE LAW -

Moving Past Misleading Metaphors: Comparing Machine to Man Prevents Legal Personhood for Artificial Intelligence

*Nimisha Dubey
Windsor Law*

This article focuses on Artificial Intelligence (“AI”) programs and their ability to “learn” through a process called “machine learning”. Machine learning refers to a subfield of computer science concerned with computer programs that are able to learn from experience and thus improve their performance over time. As a result of this capability, many artificial intelligence programs have autonomously created works that would fall under copyright protection if they were created by a human.

The author takes the position that the application of the “human-person” metaphor to determine legal personhood prevents artificial authors from receiving copyright protection for their original works. Instead, those rights subsist in their human counterpart; the “person” recognized by the law, even though they did not contribute to the creation. As a potential remedy, the author explores alternative metaphors proposed by legal scholars and applies those alternatives to artificial authors. Through this analysis, the author hopes to show why the application of metaphors to AI programs is not useful, since these technologies are incomparable to anything created before them. Instead, the author explores the ways in which the current law can be used or reformed to protect the copyrights of artificial authors by placing emphasis on analyzing the function of the technology, as opposed to its form.

Implications of Cryptocurrency on Foreign National Officials, Money Laundering and Terrorist Activity: How Emergent Financial Technology could Aid in Deterring Criminal Activity

*Akiva Stern
Windsor Law*

Corruption of foreign nationals has become rampant globally. They take advantage of their own political positioning to engage in illegal activities, only to find safety and protection in western countries for their illegitimate assets. To this end, the Canadian government passed the *Corruption of Foreign Public Officials Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to help curb the illegal activities.

With new technological innovations new questions arise, such as how these acts intend to account for new ways of transacting business digitally. With Blockchain technology becoming more prevalent, along with the use of Cryptocurrencies such as Bitcoin, one cannot help but wonder if the statutes consider these new types of transactions, and whether they can help or hinder criminal activities of the parties in question..

-DIGITAL COMPANION-

Exclusively reserved for student work, the *Digital Companion* features the very best papers presented by law students at the Annual Canadian Law Student Conference held each March in Windsor, Ontario.

To read past volumes of the Digital Companion, please visit our website at:

www.wrlsi.ca/category/digital-companion

-CALL FOR PAPERS-

The *Review* would like to invite submissions for publication in our next volume.

As an interdisciplinary law journal, the *Review* strives to use the study of law as a vehicle for social change and publishes papers that explore the law in its social context, and the impact that social issues can have on the law. Domestic and international concerns relevant to Canadian society also play a key focus in papers selected for publication. ***Submissions that advance meaningful scholarship are accepted on a rolling basis with evaluations in Fall 2017. A two-step peer review process is conducted by the Editorial Board and external referees. Only papers that pass an internal evaluation by the Editorial Board will proceed to external review.***

Entirely student-operated, the journal is published annually and endeavours to be a resource for professionals, students, and academics.

Please send submissions to:

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-TECHNOLOGY AND THE LAW (CONTINUED)-

This paper sets out to analyze each of these statutes, along with possibilities for economic sanctions, and propose how the Acts might be amended to account for such emergent technologies, as well as, several other suggestions that could be transposed into this regime. The paper asserts that, while still in its infancy, these new technologies could become more of an opportunity than a risk for the Canadian government in combatting illegal activity.

Municipalities failing the Human Rights Code and AODA through their Uber Licencing

Horia Tabatabaei Soltani
Windsor Law

The following paper proposes that municipal licensing of Uber is a service that should be subject to the Ontario Human Rights Code (OHRC) and the Accessibility for Ontarians with Disabilities Act (AODA). The approach in which municipal governments license Uber for operation impacts how the OHRC is applied. Take for example, when a municipality asks Uber for a levy-fee in order to cover the cost of increasing accessible cars in the taxi service, they are offsetting Uber's responsibility, which entails a duty to accommodate, a duty to not discriminate and a duty to provide accessible services. This has a negative and positive impact. Positive as it is a step forward in comparison to not asking for a levy-fee and or not demanding Uber to provide accessible cars. The negative aspect is that many municipalities do not ask for a levy-fee and do not demand Uber to provide accessible rides. Furthermore, Uber is a third-party contractor who is providing a service to the cities it operates in. Therefore, it should be held to the AODA standards. The current structure municipals are taking in licensing Uber and exempting it from meeting accessibility standards is working against the AODA and the OHRC. To illustrate this, the paper will first examine the licensing scheme of Uber in three municipalities. Then it will analyse the OHRC and AODA in relation to duties of a service provider. Finally, the paper will look at two current American lawsuits against Uber, as there are presently no case law in Canada regarding this matter.

-TECHNOLOGY AND THE LAW (CONTINUED)-

“Does Roomba Know All of My Secrets?” Re-Examining the Consumer Privacy and Data Implications of Domestic Robot Use

*Stefano Tesoro
Windsor Law*

Skeuomorphic design cues not only impact our collective understanding of robotic technologies but also implicitly determine whether we consider robotic innovation to be a societally beneficial goal.

Such design choices are meant to both enhance human usability and placate societal fears of unchecked automation. The use of such human-like interfaces, however, challenge our current model of user consent. Where feelings of trust and companionship are artificially cultivated through skeuomorphic design cues, personal service robots may be in a better position to manipulate the humans they are serving.

The question of who will regulate what aspects of robotic technology is an issue requiring the input of various stakeholders includes legislators, the courts, industry and society at large. When issues of fraud, privacy and data security frame the conversation about the responsible design of robots, both industry and government are confronted with a societal mandate to act. Through increased governmental policies advocating a privacy by design approach and through the individual choices of consumers, robot manufacturers can be compelled to change their current data management practices and models of user consent.

Privacy Changes in the Face of Modernity: Intellectual Technology and Artificial Intelligence

*Taraneh Etemadi
Windsor Law*

Artificial Intelligence (AI) is an innovative emerging technology that involves machine learning where a program is developed with the ability to learn through repetition. The machine learns as it is presented with more data, advancing what is output by the technology. Due to the reliance on obtaining information to develop an intelligence, this technology is privy to all kinds of information, including sensitive, personal and private data. As a result, it is important to ensure that privacy matters are sufficiently addressed by our legislation, the Personal Information Protection and Electronic Documents Act (PIPEDA), in order to launch and rely on this form of technology. This paper seeks to argue that there is a growing need to modernize our privacy regime and legislation in the face of growing technology, such as AI. The current legislative rules for privacy will be analyzed, discussing gaps in the current law and proposing amendments that can enhance the law's effectiveness and sustainability in protecting the privacy of Canadians.

-AWARDS-

JSD Tory Writing Awards – Best Papers

Presented to the author(s) whose papers submitted for the Conference are best suited for publication in the Windsor Review of Legal and Social Issues Digital Companion.

Windsor Review of Legal and Social Issues Prize

Presented to the top submission by a student registered with any faculty at the University of Windsor.

Canadian Law Student Conference – Best Presenter

Awarded to the best overall presentation by a student author at the Conference.

-DIVERSITY AND REPRESENTATION IN LAW-

Corporate Board Diversity: Where Are We Headed? Increasing Indigenous Representation on Corporate Boards

Kimberly Gosel

University of Alberta

After years of diversity initiatives focusing on gender parity on corporate boards, it is time for Corporate Canada to focus on increasing Indigenous representation in an effort to respond to the Truth and Reconciliation Commission's ("TRC") call to action directed toward corporations. After briefly examining the law surrounding corporate governance and business case for reaching gender parity on corporate boards, I demonstrate that increasing Indigenous representation is the next logical step for corporate board diversity initiatives based on the business case for doing so, the lack of a barrier to do so by law as well as an extralegal obligation based on the TRC call to action. Ultimately, I argue that response to this call to action can be facilitated through the use of shareholder proposals and update to the diversity policy requirement as put forth by the Canadian Securities Administrators.

-IMMIGRATION LAW AND TRANSITIONAL JUSTICE-

Dignity in Memory: Lessons for Reconciliation and Truth in Post-War Sri Lanka

Archana Ravichandradeva

Windsor Law

This paper problematizes the narratives of victory and peace in post-war Sri Lanka, and advocates that the laws and theories behind transitional justice need to consider a dignity analysis. Dignity in memory is an important part of bridging the peace vs. justice dichotomy that informs much of the discussion in transitional law. It is only when, as Edward Said argued, a war-torn population is given the right to a "remembered presence" that "acknowledges and listens to the lived experiences" of individuals that communities can move forward in the process of peace-building and reconciliation. Dignity considerations need to inform the laws and narratives put in place as post-war countries move forward from their violent pasts.

Analyzing the Approach of the Courts and Government and the way they Treat Permanent Residents and Foreign Nations

Modasir Rajabali

Windsor Law

The following paper discusses different elements and issues that were involved historically, and even more presently, in the context of how citizens and non-citizens are treated by the Canadian government and the Courts. The first part of the paper examines how cases involving foreign nationals, permanent residents and convention refugees were treated with regards to being inadmissible into Canada. This will be followed by an analysis on the security certificate regime with an illustration of the conclusions formed in *Harkat and Charkhaoui*. In this way, an accurate representation of the progression and change of policies from the Cold War to the post 9/11 era will be shown. Finally, the paper will examine the *Khadr* case thoroughly, in the context of terrorism and citizenship. This will illustrate the difference in the government's and Courts' approach between *Khadr* as opposed to *Arar* in terms of repatriation. The main theme throughout this paper will re-inforce the idea that citizenship at best has transformed into a racialized form in which any individual that opposes common norms of national security is alienated.

-CRIMINAL LAW-

Disclosure in the 21st Century: A Comparative Analysis of Three Approaches to the Information Economy in the Guilty Plea Process

Myles Anevich

Columbia Law School

The criminal justice system in the United States is no longer a system based upon trials, it is now a system of plea bargaining. Though the system of adjudication has changed, in the American federal system disclosure obligations on the prosecution have not kept pace. At the guilty plea stage disclosure obligations aren't minimal, they are practically non-existent. This paper sets the stage for the current state of the law in the American federal

system and then proposes three possible avenues for reform ranging from moderate to extreme. These reforms are a broad interpretation of *Brady* obligations in light of the seventh and tenth circuit's interpretations of *Ruiz*; a wholesale adoption of the American Bar Association's 1996 proposed reforms; or, adopting the Canadian approach to disclosure obligations at the plea bargaining stage. The paper concludes by suggesting the American Bar Association model would be impractical and instead supports either the broad interpretation of *Ruiz*, or the adoption of the Canadian model, both of which would in the end yield similar results and would bring about necessary doctrinal change.

A Balancing of Rights: Sentencing Sexual Assaults Perpetrated Against Unconscious Victims in the Supreme Court of the Northwest Territories, 2000-2017

Conal Calvert

Windsor Law

This paper analyzes the prevalence and sentencing of sexual assaults perpetrated against unconscious victims in the Supreme Court of the Northwest Territories between 2000-2017. Assaults fitting this profile constitute more than six in ten isolated incidents of sexual assault sentenced in that court. Based on an analysis of 104 sentencing decisions handed down by the court, this paper assembles a profile of the accused and the victims as well as the sentences delivered. This paper argues that the court has developed a sentencing regime for Indigenous accused who have been convicted of this subcategory of sexual assault in a manner that is culturally relevant and that balances their need to heal and rehabilitate with those of the Indigenous victim and community and in doing so fulfills the commission of *Gladue*.

-DIVERSITY AND REPRESENTATION IN LAW-

Equity, Race and Transformative Legal Education

Simone Akyianu

McGill

Despite efforts to broaden the scope and number of courses offered in law schools, legal education and curricula largely reflect liberal ideological paradigms. Moreover, the training of law students is set against the cultural backdrop of colourblindness, which influences passivity towards racial and social injustice. This paper calls for a shift in curricula and institutional priorities, such that law students and legal professionals are equipped with adequate tools and knowledge to become competent and compassionate advocates for social justice.

In this paper, I will draw upon Critical Race pedagogy as a fundamental tool to unearth the transformative potential of legal education. In doing so, I draw on personal reflections from 'Slavery & the Law', a foundational course I took at McGill University's Faculty of Law. I also critically interrogate the patterns and strategies that hinder and empower law students, and the legal profession more generally, to become agents of social change.

Dispute Resolution, Still a Man's World

Liz McLellan

Windsor Law

This paper discusses the different challenges women, both lawyers and clients, face in the dispute resolution system. Every dispute is different but in conflict there will always be cultural influences and historical considerations at play. The paper asserts that men still have the edge in dispute resolution mechanisms. Through a discussion of the conscious and unconscious gender bias that continues to permeate society, the legal community's favouritism toward male conflict communication styles and the female as a lawyer, it is argued that women remain inferior to men. Each subtopic is discussed comparatively between negotiation, mediation and arbitration.

-INTERNATIONAL LAW-

Making the Defence of Duress Fairly Available to Refugees Facing Criminal Inadmissibility in Canada

Danyal Rawjani
Windsor Law

The paper focuses on the need for consistency in Canada when it comes to providing rightful refugees with the defense of duress when facing criminal assessment in their cases for refugee status. This has become necessary in light of recent world conflicts that has caused an increase in the number of refugees who have been forced to participate in war crimes for their and their family's very own survival.

By understanding both the Canadian and International legal systems and their standards for duress and through comparing and contrasting relevant legal doctrines and jurisprudence, the paper will show the confusion and inconsistencies judges face when deciding on whether duress should be an available defence. The paper also provides a solution of creating a hybrid approach to duress that encompasses cultural factors and circumstances while harmoniously combining the Canadian and International standard for duress, allowing Canada to provide a safe haven for refugees while remaining transparent, culturally competent and consistent.

Separating the Doctrines of Necessity and Proportionality in Investor-State Arbitration

Theodore Milosevic
University of Toronto

The doctrine of necessity, an exemption from state wrongdoing based in international customary law, and the doctrine of proportionality, an analytical approach used to determine state wrongdoing, are two separate principles in international law. However, these two concepts have been confused and conflated in the field of investor-state arbitration. This paper aims to unpack and address the confusion between these two doctrines, with the goal of ensuring doctrinal clarity in the future. To this end, the paper differentiates necessity from proportionality, highlights the apparent confusion between the two doctrines emerging from scholarly work and the 2015 International Centre for Settlement of Investment Disputes (ICSID) award in *Bernhard von Pezold and Others v Republic of Zimbabwe*, identifies two possible causes of the confusion between these doctrines, and discusses the importance of maintaining the distinction between these two doctrines in the investor-state field.

-CRIMINAL LAW-

R v Gladue - An Overview of Mistakes and Solutions, The Impact of Colonialism and Situations of Anomie and Strain in Judicial Decisions

Sukhraaj Shergill
Lakehead

This paper undertakes an analysis of the Differential Involvement Hypothesis, Negative Discrimination Hypothesis and Positive Discrimination Hypothesis prior to engaging in a review of American Jurisprudence regarding policies of invidious discrimination. The colonial past of Canada in combination with the doctrine of *terra nullius*, its applicability to Canada and the Supreme Court of Canada's findings with respect to Canada's fiduciary duty to Indigenous Peoples is then scrutinized before applying the Theory of Anomie and General Strain Theory in conjunction with the neoliberal understanding of the *cordon sanitaire* and *homo oeconomicus* to Canada's modern capitalist society.

R v Gladue, *Tsilhqot'in Nation v British Columbia*, *Morton v Mancari*, *Rice v Cayetano*, and the Truth and Reconciliation Commission's Final Report are primarily relied on to indicate that *R v Gladue* has many holes but must be seen as a legal response to a socio-legal problem. An adequate response must deal with the roots of the sociological part of the problem as well as the legal part. The courts can only handle the legal section which causes a solution to begin at the point one interacts with the justice system. A combined solution that deals with both the root societal causes of crime as a matter of policy, as well as a legal response to handle over-incarceration and inequality must be put in place.

Attempting to Regulate Stereotyping In Sexual Assault Cases Through Jury Instructions

Rubaina Singh
Windsor Law

The paper examines the role that jury instructions can play in addressing and preventing (or at least mitigating) stereotyping in sexual assault cases. This paper uses *R v Barton* as a case study to assess the sufficiency of the Court of Appeal of Alberta's proposed draft jury instructions as against other common law jurisdictions. While the Court of Appeal of Alberta seems to have picked up on the principle-based approach, as reflected in their proposed instructions, more could have been done. This paper delves further into the principle-based approach used by England to provide some practical and helpful solutions. The paper provides some additional pattern jury instructions that could be developed to make the Canadian model more robust and to better facilitate the fair and non-discriminatory adjudication of sexual assault cases in Canada. The tools to address the pressing problem of stereotypical and discriminatory treatment of sexual assault complainants by the Canadian criminal justice system are within our grasp and now we must commit ourselves to using them.

-LAW REFORM-

Wearing Red: Systemic Racism and Gang-Related Clothing Evidence

*Sean Reginio, Rachel Parry, Dragana Bukejlovic
Windsor Law*

Systemic racism has taken a variety of explicit and implicit forms in Canada. Gang culture is another avenue through which implicit manifestations of systemic racism continue to exist. The majority of gang members in Canada are racialized. The specialized criminal provisions for gang affiliation and the stereotypes associated with such “gangsters” creates a regulatory landscape where people of colour are too commonly presumed guilty of criminal activity based on their race or the clothing they wear.

The law of evidence can be used to combat racial oppression and this paper proposes legislative reform that would significantly limit the admissibility of clothing evidence to demonstrate gang membership or criminal conduct. This paper will first outline the nature and prevalence of systemic racism against racialized individuals suspected of gang activity, then describe how these issues arise in the law of evidence specifically. As this discussion progresses, a specific legislative rule to address this systemic issue will be proposed, described, and defended from potential criticism by the defence bar, the Crown, and judges.

Photographic Lineups and the Need for a Codified Rule

*Kyle Kuczynski
Windsor Law*

Photographic lineup procedures figure prominently in police practices and criminal trials. They are a useful tool to help witnesses identify criminals, and are commonly used by triers of fact to convict accused persons at trial. Despite their usefulness as an investigative tool, certain lineup procedures can lead to an inaccurate identification and ultimately a wrongful conviction.

While the law of evidence has come a long way in creating safeguards to limit the prejudice of general eyewitness identification evidence, courts have not demonstrated the same level of concern in addressing the unique issues that improper lineup procedures pose. Due to the courts’ reluctance to enforce best practices and remedy the specific prejudice that flawed lineup procedures present, a statutory rule is required and proposed in this paper.

-LAW REFORM-

A Fee-Nominal Idea

*Julie Nguyen
Windsor Law Alumni*

The purpose of this paper is to explore the development of referral fees in both Ontario and Michigan, and to make a suggestion as to what an appropriate referral fee could be. On February 23, 2017 Convocation published that it would be agreeing, in principal, to a cap on referral fees, as well as further regulation regarding referrals, but did not specify the cap on the fees. This paper aims to answer the question of what a reasonable referral fee would be for a lawyer whose only input in a case is merely referring it to another lawyer outside of their firm. In order to answer this question, this paper compares the referral fee rule in the United States, specifically Michigan, and Ontario, beginning with the development of referral rules.

This analysis is done to show the implications of a more liberal referral fee rule and how a more regulated rule is required in order to best protect the legal profession and its clients. Furthermore, the advantages and disadvantages of having referral fees will be discussed in order to assess why referral fees are required, and the dangers of having them available to lawyers.

This discussion will lead to the ultimate proposal on a proper and reasonable referral fee concluding that a referral fee should be one that is nominal, that is, one that does not require taking a percentage of the final costs afforded to the referred lawyer.

-INTERNATIONAL LAW-

The Rotterdam Rules

*Sara Ruhani
Windsor Law*

The focus of this paper is on the effectiveness of the Rotterdam Rules in addressing some of the shortcomings of prior international maritime carriage conventions. The paper aims to provide an overview of current international maritime carriage laws which include the Hague Rules, the Hague-Visby Rules and the Hamburg Rules. After providing background information regarding prior conventions, the paper addresses how the Rotterdam Rules is well suited for the current landscape of international maritime transportation. The paper aims to establish that the drafters of the Rotterdam Rules successfully created a convention that promotes legal certainty, addresses the need for modernized rules in the current maritime transportation landscape and forms a mutually beneficial system for shippers, carriers and all other parties involved.