June 2, 2021 - Day 1

Session 1.1 - 9-10:15am (MDT) - Law, Migration, and Marginalized Communities

Chair/Discussant: Blair Major (Faculty of Law, Thompson Rivers University)

"Migrant Justice and the Meat Industry in COVID Times"

- **Jen Rinaldi (Legal Studies, Faculty of Social Science & Humanities, Ontario Tech University)**
- **Shanti Fernando (Political Science, Ontario Tech University)**

COVID-19 has devastated migrant populations working in Canada's meat processing industry. There is a necessity, even an urgency, to unpacking how this was made possible through the lack of suitable labour or public health policy standards. In this paper we trace the timeline of the COVID spread at the Cargill meatpacking plant in High River Alberta through the spring of 2020 and the subsequent public response. This timeline follows the record of events provided by the United Food and Commercial Workers Local 401 in a public request for a stop work order to protect workers, and a Labour Relations Board complaint filed against Cargill and the Government of Alberta. These documents identify poor labour conditions that had already been established at Cargill, failures around protecting workers from COVID spread despite reassuring company narratives to the contrary, and the pressure put on workers to continue working despite health concerns.

"The Significance of Rights and Entitlements in Care"

- **Poland Lai (School of Administrative Studies, Faculty of Liberal Arts and Professional Studies York University)**

This paper proposes a conceptualization of care to inform debates about transforming Ontario's long-term care (LTC) system (also known as nursing homes) to respond to challenges associated with the intersection of aging, gender and disability. The need to reform LTC became more apparent in light of the COVID 19 pandemic. The first part of the paper introduces relational conception of rights and autonomy in the context of law (Nedelsky 2011) and then presents the theoretical debates about care (Herring 2013, 2016; Harding 2017). The second part explains the research methods used (legal analysis, document review and key informant interviews) and provides a short background on LTC in Ontario. A new legal framework (Long Term Care Homes Act, 2007) was implemented in 2010. By comparing the current and previous legal frameworks, I explain how the recent regulatory changes construct rights and entitlements of LTC residents while receiving care. The third part explores the limitations of a rights-based approach to receiving care and access to justice issues. Care conceived as rights and entitlements can change the conversation about the needs of residents: instead of being labeled as passive care

recipients being managed by their caregivers, residents are considered to be bearers of rights. However, there is a clear gap between the promise of rights and their realization. Legal mechanisms that were designed without careful consideration of how the circumstances of residents would impact their proper implementation. The result is that some LTC residents cannot benefit from the protections offered by law.

Session 1.2 - 10:30-11:45am (MDT) - Open Event Roundtable

Critical Perspectives on Arctic Oceans Governance, Sustainability and Justice

Moderator: Sara Seck (Schulich School of Law, Marine & Environmental Law Institute, Dalhousie University)

Building on the 2030 Agenda for Sustainable Development, 2021 marks the beginning of the United Nations Decade of Ocean Science for Sustainable Development (2021-2030). Sustainable development is often described as necessitating the balancing of three pillars: the economic, environmental, and social. Yet this leads to contestation over cross-cutting dimensions like equity and justice.

On a global scale, significant attention has been devoted to the environmental dimension of oceans governance to date, from ocean acidification to marine species. Meanwhile, the notion of a 'blue economy' is increasingly moving from the margins to the centre of conversations surrounding sustainable development. The High Level Panel for Sustainable Ocean Economy, created in 2018, recently released a report in which the Panel proposes transformations in key areas of ocean wealth, health, equity, knowledge, and finance, to be guided by principles including alignment with other international legal frameworks, and between land-based and ocean-based activities, as well as inclusiveness of human rights, gender equality, and respect for Indigenous peoples' rights.

This roundtable will bring together diverse voices to reflect on the relevance of these global frameworks – including their approaches to issues of equity and justice – for an Arctic context. The Arctic Ocean is not only integral to the health of our global social-ecological system, but is increasingly also a harbinger of change elsewhere, thereby providing significant insights for broader conversations on ocean governance, sustainability, and justice.

Participants:

- **Dalee Sambo Dorough (International Chair of the Inuit Circumpolar Council)**

As part of this roundtable, she will share reflections on the implementation of the rights of Indigenous peoples in the Arctic and upcoming issues of concern to the Inuit Circumpolar Council.

- **Tahnee Prior (Schulich School of Law, Marine & Environmental Law Institute, Dalhousie University)**

The 2030 UN Sustainable Development Agenda identifies regulatory and ocean governance systems as essential to advancing the ten targets of Sustainable Development Goal (SDG) 14 – 'Life below water' – which seeks to conserve and sustainably use oceans, seas and marine resources. Scholars and policy-makers alike increasingly recognize the importance of mainstreaming SDG 5 – focused on gender equality and the empowerment of all women and girls – across all other SDGs, including SDG 14. As a part of this roundtable, Tahnee will reflect on the degree to which principles for a sustainable 'blue economy' framework are being developed by states, corporations, civil society for the Arctic Ocean and coastal areas. More precisely, she will focus on whether gender equality is being mainstreamed into this framework and, if not, how this may be done.

- **Olga Koubrak (Schulich School of Law, Marine & Environmental Law Institute, Dalhousie University)**

As a part of this roundtable, Olga will contribute reflections on marine species at risk in sustainable oceans governance including legal barriers to, and solutions for, the application of dynamic ocean management tools to the protection of Canadian species at risk by balancing the legal principles of certainty and fairness with the ecological reality of change and uncertainty. For example, the Atlantic walrus (Odobenus rosmarus) is a culturally and ecologically important species in the Arctic, sensitive to human disturbances and climate change. It is currently managed by Fisheries and Oceans Canada and the Nunavut Wildlife Management Board, and has recently been designated as a species of Special Concern by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

- **Desai Shan (Community Health and Humanities Division, Faculty of Medicine, Memorial University of Newfoundland)**

As a part of this roundtable, Desai Shan will contribute her research findings on Maritime occupational health and safety challenges in the Arctic.

- **Margherita Paola Poto (Faculty of Law, UiT The Arctic University of Norway (Romssa/Tromsø)**

As a part of this roundtable, Margherita will share reflections on her current research project which brings together water defenders and innovators to re-evaluate the legal ordering of water governance — focusing specifically on access to information, participation, and access to justice – through a lens of empathy (ability to enter in communion with the emotions of others), compassion (ability to feel together) and care (ability to take restoring actions).

11:45-1pm (MDT) - Graduate Student Workshop - Alt-Ac Careers

Moderator: Elise Wohlbold (Department of Law and Legal Studies, Carleton University)

********located in the "Virtual Hallway and Gathering Room" "Grad Student Corner" breakout room*

Want to know more about Alternative Academic Careers? There are increasingly more PhDs making an impact across industry, government, research, multilateral organizations and start-up ventures than those on the tenure track. Come hear two PhD candidates and a doctoral graduate speak to their experiences of finding meaningful work outside of the professoriate.

Speakers:

- **Garrett Lecoq (PhD candidate, Carleton University)**
- **Aysegul Ergul (PhD, Policy Advisor, Treasury Board of Canada)**
- **Nasreen Rajani (PhD candidate, Carleton University)**

Session 1.3 - 1-2:15pm (MDT) - Law and Indigeneity

Chair/Discussant: Kirsten Anker (Faculty of Law, McGill University)

"Tracking the Path of Gladue: Results of a National Study on Gladue in Canadian Courts, 2017-2020"

- **Jane Dickson (Department of Law and Legal Studies, Carleton University)**
- **Kory Smith (Department of Sociology and Anthropology, Carleton University)**

In 1999, the Supreme Court of Canada handed down its decision in R v Gladue, lending meaning to section 718.2(e) of the Criminal Code and requiring judicial consideration of Indigenous social context evidence in any setting in which an Indigenous person is facing a possible loss of liberty. These 'Gladue requirements' include information about an Indigenous offender's personal, family, and community history that goes to the question of moral blameworthiness, and a set of options for the court's consideration in sentencing. Unfortunately, the direction given to courts in Gladue and reiterated in *R v Ipeelee* has not lowered the incarceration rate of Indigenous peoples. In the absence of systematic national data elucidating whether, how, and in what form courts receive Gladue information, it is impossible to fully understand why Gladue is failing to achieve its remedial goals. In 2017, we received a Social Sciences and Humanities Research Council Insight Grant in support of a three-year, national survey of lower court experiences with Gladue, focussing on access to Gladue information, the quality and sufficiency of the information received by the courts, and whether and how that information assists in crafting fit sentences for Indigenous offenders. This paper reports the views of the courts regarding their ability to access Gladue information, the strengths and weaknesses of that information across different manners of presentation to the courts (e.g., full, standalone Gladue reports or 'letters', standard presentence reports with Gladue content or perspective, and oral submissions), and what Gladue information matters and why.

"Networks of Colonial Governance: Department of Indian Affairs Legal Aid, 1870 to 1970"

- **Jacqueline Briggs (Centre for Criminology and Sociolegal Studies, University of Toronto)**

In this paper I present the central finding from my archival study of a Department of Indian Affairs legal aid program for 'status Indians' charged with murder from the 1870s to 1970: I argue that the DIA legal aid program was co-produced by a network of settler legal actors (focusing on judges, crown and defence lawyers, Indian Agents, DIA and DoJ bureaucrats) who were motivated by logics of self-interest, and who were engaged in various modes of colonial governance. Judges, for example, were engaged in a 'protective' mode of colonial governance when they criticized the DIA for failing to provide adequate aid as the federal guardian of 'Indian wards of the state'; defence lawyers were engaged in 'enrichment' governance when their participation in DIA legal aid was motivated by status and payment; and Indian Agents engaged in a modality of 'brokerage' via legal aid as they mediated between coercive central state objectives and the realities of governance 'in the field'. My study demonstrates how colonial governance was distributed across this network of settler legal actors, and enhances our understanding of how a 'positive' practice such as legal aid nonetheless facilitated the consolidation of the settler criminal justice system over Indigenous persons and communities in the 20th century.

"The Canadian Human Rights Act: Federal Law and the Indigenous Experience"

- **Patricia Rickett (University of Alberta)**

Indigenous peoples regulated under federal jurisdiction are at a disadvantage when safeguarding their human rights under the Canadian Human Rights Act (CHRA). The limitations of this Act, in addressing systemic discrimination facing Indigenous peoples, was extensively documented in First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2 (Caring Society case). This case was exposed to a partial Tribunal that mishandled the case, government retaliation and other set-backs, including government appeals on other legal technicalities. The Complainant's held that the Canadian government discriminated against more than 100, 000 Indigenous peoples, on the basis of race, by providing 'chronic and purposeful' underfunding for child and family services delivered to First Nations on reserves. This discriminatory practice provided an incentive for child welfare agencies to remove Indigenous children from their homes, communities, and cultures. The government was ordered to immediately 'cease its discriminatory practices,' but has failed to comply with the Tribunal's order. The Caring Society case not only sets an important precedent as a direct challenge to discrimination at a systemic level, it also demonstrates the limitations of the CHRA in mitigating systemic discrimination facing Indigenous peoples across Canada. The research for my paper draws on Canadian case law and anti-discrimination provisions to explore the effectiveness of the CHRA in mitigating systemic discrimination facing Indigenous peoples on reserves. My study reveals the limitations of the CHRA in challenging discrimination at a systemic level.

Session 1.4 - 2:30-3:45pm (MDT) - Sex Work, Human Trafficking, and Nonconsensual Pornography: Policies and Policing

Chair/Discussant: Miriam Zucker (Faculty of Law, University of Toronto)

"What We Know about Sex Work but Don't Know about Prostitution in Canada"

- **Debra Haak (Queen's University)**

In 2014, Parliament enacted the Protection of Communities and Exploited Persons Act, legislation aimed at denouncing and deterring prostitution in Canada. A comprehensive review of the provisions and operation of the new legislative regime is mandated and at least five constitutional challenges to some of the new criminal offences enacted by PCEPA have been commenced. Empirical evidence about prostitution, sex work, and sex trafficking in Canada is relevant to both the legislative review and to the constitutional litigation. This paper examines what is known and not known about the commercial exchange of sex in Canada since PCEPA was enacted by examining peer-reviewed empirical literature from social sciences, health sciences, and psychology for the period 2014 to 2019. It raises concerns over how research findings are translated into knowledge claims. On a pragmatic level, it identifies whose experiences and which harms are and are not reflected in the existing body of empirical literature. On a conceptual level, it exposes continuing concerns over the failure to recognize a distinction between 'prostitution' and 'sex work' as they are used in legal analysis and in empirical literature. On a theoretical level, it considers how the different and divergent positions of Parliament and the majority of scholarly empirical researchers in Canada about how to understand prostitution and sex work have the potential to result in imprecise and potentially inaccurate translation of research findings in the context of both constitutional litigation and the pending legislative review.

"'They Just Want the Image Taken Down': Informal Responses to Nonconsensual Pornography"

- **Alexa Dodge (Department of Political Science (Law, Justice, & Society) Dalhousie University)**

Growing concern with the nonconsensual distribution of nude/sexually explicit images (i.e. nonconsensual pornography) led to the creation of Canada's Criminal Code provision for nonconsensual intimate image distribution in 2015. The creation of criminal offences for this act in Canada and many other international jurisdictions may be seen as evidence that the issue has been taken seriously and adequately addressed. However, the majority of victims do not choose to utilize the criminal law in response to this act and many victims have expressed the desire to access non-criminal alternatives for support. My presentation will mobilize restorative justice theory and anti-carceral feminist theory to explore options for responding to this act outside of

the criminal justice system. Namely, I will consider the efficacy of informal responses to nonconsensual pornography offered by Nova Scotia's CyberScan unit. CyberScan is a division of the Nova Scotia Department of Justice tasked with assisting victims of nonconsensual pornography and "cyberbullying" outside of the criminal justice system. This unit is an ideal case study for evaluating alterative responses, as it represents a first-in-Canada approach to responding to these cases through informal avenues. My presentation will provide insight into the stated needs of victims in the aftermath of nonconsensual pornography, the shortcomings of relying solely on criminal justice interventions, and the possibilities for informal and restorative responses outside of the typical criminal justice system.

June 3, 2021 - Day 2

Session 2.1 - 9-10:15am (MDT) - KEYNOTE ADDRESS

"Racism, Anti-Racism, and Protest Movements in Canadian Society: Where do we go From Here?"

Professor Emerita Frances Henry, FRSC*

This keynote address will briefly survey the history of racism and anti-racism research, actions and non-actions that have taken place in Canada since the turn of this century. It will also briefly discuss the possible ways forward to achieve more substantive, transformational change in our institutions.

**Dr. Frances Henry, Professor Emerita, is considered to be one of Canada's leading experts in the study of racism and anti-racism. Since the mid seventies when she published the first study of attitudes towards 'people of colour', she has consistently pioneered research in this field. Her most recent book, co-authored with colleagues is* The Equity Myth *published by UBC press which reports the results of a four year national study of race, racialization and Indigeneity at Canadian universities. Other books include the fourth edition of the* Colour of Democracy *(Nelson) and* Racism in the University: Demanding Social Justice and Inclusion *published by the University of Toronto Press.*

Professor Henry has been a member of the prestigious Royal Society of Canada since 1989. She has served on its social science Fellows selection committee as both a member and chair from 2014-17. In addition she continues to be the Canadian delegate to the Inter-American Network of Academies of Science's 'Women for Science' for whom she has conducted research and written several well received reports.

Session 2.2 - 10:30-11:45am (MDT) - Parenting, Regulation, Affect, and Power

Chair: Brenda Cossman (Faculty of Law, University of Toronto)

"Jurisdictional Scaling Practices of Childcare"

- **Mercedes Cavallo (Faculty of Law, University of Toronto)**

In this presentation, I aim to show that legal practices associated to different legal frameworks regarding childcare in Buenos Aires enact contingent and multiple phenomena of childcare, by scaling their networks of actors, institutions, and resources for the purpose of governance. My argument is that jurisdiction spatiotemporalizes different configurations of childcare by delimiting their networks of actors, institutions, and resources. Delimiting is seen as a scalar technique. This is why I refer to legal practices as jurisdictional scaling practices.

"Feeling Justice: Campus Sexual Violence and the Legal Imagination"

- **Daniel del Gobbo (Faculty of Law, University of Toronto)**

Campus sexual violence reform, like every other field of law, is conducted in an emotional minefield. My paper explores how law and policymakers working on campus sexual violence reform have been inspired by collectively generated emotions and publicly felt experiences that help to shape what counts as "justice" in the legal imagination. Focusing on events surrounding the Dalhousie Dentistry scandal in 2014-2015, I explain how emotional incitements in the case contributed to a political and discursive infrastructure that supported formal, adversarial, and punitive responses to campus sexual violence. Correspondingly, I explain why alternative modes of legal and political formation that challenged the premises of the formal law, including the restorative justice process employed in the case, were misread by some commentators as being a form of "weak justice" and therefore part of the problem. My paper does not argue that particular emotional reactions are right or wrong – they just are – but that law and policymakers should critically reflect on and assess their political force.

"The Clash of Parenthood Presumptions and Lived Experiences of Trans Headed Families"

- **Ido Katri Segev (Faculty of Law, University of Toronto)**

When trans and nonbinary people ask that their gender identity be recognized as parents, and especially when using their own bodies to conceive, they become inconceivable, exposing the gaps between what the law imagines as natural and the realities of lived experience. Trans-headed families find that their family formation can contradict what the law perceives as the child's best interests, state interest, and nature. The talk will read through the interrelations of family law and administration using queer performativity, critical trans studies, and affect theory. It will show that parenthood by both trans and non-trans parents constitutes the omnipresent meaning it supposedly denotes. Paternity is almost always based on affinity-related assumptions, while maternity is anchored on an act that can no longer be denoted genetic, the act of giving

birth. The article will suggest that while the law is moving towards legal recognition of subjective gender identity, sex is still imagined as immutable truth determined at birth, which is given a pivotal role in the designation of parental privileges and responsibilities. Exposing the truth-making power of both sex and parental designations, the article will critically consider, can the law reimagine what makes a parent and can it reimagine what it is to be pregnant? Or to give birth? and can trans claimants do so?

"Indigenous Parents and Child Welfare"

- **Robert Leckey (Dean, Faculty of Law, McGill University)**

Drawing on interviews with lawyers and social workers who work with significant numbers of Indigenous parents in child welfare, the paper reports those professionals' perceptions of the child-welfare system. The project unfolds against the backdrop of Indigenous children's disproportionate presence in child and youth protection, one seen as a continuation of the Sixties Scoop and the residential schools. Participants report on the difficulties of finding Indigenous foster families, provincial law's unsuitability to remote Indigenous communities, and the widespread ignorance of Indigenous history, customs, and family practices on the part of professionals running the system. Participants suggest there is potential for further alternative or restorative-justice processes, echoing sentencing circles, and they emphasize the extreme power imbalance between the agents of the settler state and parents drawn into the child-welfare system. Numerous participants point to the need for greater training on the part of the system's agents. Drawing on interdisciplinary literature on professional identity formation and continuing education, the paper questions the extent to which such training is the solution. This inquiry raises issues of the extent to which child welfare run by the settler state can be "fixed" or "modified."

Session 2.3 - 1-2:15pm (MDT) - Reimagining Access: Collective Rights

Chair/Discussant: Kory Smith (Department of Sociology and Anthropology, Carleton University)

"Has the Retreat from Multiculturalism Solved the Problem of Intra-Group Vulnerability?"

- **Miriam Zucker (Faculty of Law, University of Toronto)**

In the last fifty years, we have witnessed a pendulum shift in the relations between the liberal state, the individual and cultural minorities. The pendulum begun its move when assimilationist and monocultural models were increasingly displaced by multicultural models. Whereas older models of citizenship emphasize the (direct) right-duty based relations between the state and the individual, multicultural models have added the group to the equation. Feminist critics have

drawn attention to inequalities within cultural minorities. They highlighted the disproportionate costs that women are likely to incur when a multicultural agenda is adopted.

Since the beginning of the new century, we have witnessed another shift on this pendulum. Developments across the industrialized world mark a perceptible retreat from multicultural agendas towards nationalism and 'civic unity' agendas. These developments indicate that the feminist criticism on the issue of internal minorities is not only outdated, but also that its focus on multiculturalism leaves some important aspects of this issue off the radar. Allegedly, these shifting agendas should have rendered the discussion on internal minorities less relevant, even redundant. However, recent examples illustrate how non-accommodating treatment of cultural differences have rather reinforced the vulnerability of women to patriarchal oppression. One example is the termination of programs that provided specialized support for victims of domestic violence from traditional-ethnic minorities in the UK. Another example is Quebec's "religious symbols" law. My presentation will demonstrate how these examples point to barriers on the access of minority women to public resources as a significant factor that contributes to their vulnerability to oppressive treatment.

"Peaceful Assembly's Content: A Preliminary Analysis for Charter Purposes"

- **Basil S. Alexander (Faculty of Law, University of New Brunswick)**

What are the key elements of peaceful assembly that ought to be protected under the Charter? Since peaceful assembly is by far the least considered Charter's fundamental freedoms, I intend to present preliminary analyses to answer this question, particularly given the past, continuing, and growing role of demonstrations. Issues that I hope to explore include: potential state obligations to facilitate peaceful assembly, as well as not be confrontational; the key elements and characteristics of peaceful assembly; the role and importance of collective dissent mechanisms; and what considerations ought to apply to assemblies given demonstrations' varying spectrum and nature. It will be particularly important to identify potential Hoheldian rights for demonstrators that have corresponding duties on others for peaceful assembly to be effective.

This examination of peaceful assembly's detailed content is my next step for this area. In the past, I illustrated how demonstrations and the law interact on the ground, with the reality that law usually has immediate negative consequences on demonstrations (see UBC L Rev article). I then argued that peaceful assembly ought to be analyzed as an independent free-standing freedom instead of applying the Charter's expression framework (see West J Leg Stud article). As part of that, I also argued that association's substantial interference test is a better vehicle to develop peaceful assembly`s content, especially since one must consider the underlying content to do a proper analysis. A better understanding of peaceful assembly's core content can therefore contribute to greater Charter protection than currently available.

"Law and Religious Communities in COVID-19"

- **Blair Major (Faculty of Law, Thompson Rivers University)**

The Canadian federal and provincial governments have broadly restricted civil liberties in an effort to combat the spread of COVID-19. The ways in which this has been discussed in society at large—resisted by some, supported by others, and justified by governments—tells a fascinating story about our understanding of civil society and its relation to our individual social lives. These discussions are slowly but surely working their way through our judicial institutions.

It is this process, of the broad social dialogue working its way into the language and system of the law, that I set out to explore in this paper. I will examine this process in relation to the COVID-19 governmental orders that affect religious life. Paying particular attention to the language used by a variety of stakeholders (e.g. religious communities and governments), I will map this aspect of the unfolding COVID-19 pandemic story onto our existing legal jurisprudence. This will have two important outputs. First, it will shed new light on the law's capacity to articulate and respond to the competing interests and concerns surrounding religious life. Secondly, it will help us think through the way that the law will evolve following the COVID-19 pandemic. In this regard, I draw attention to voices and experiences that might otherwise be hidden from view, and comment on the significance of excluding or including them for the future of the law in Canada.

Pre-Recorded, In-Demand, Simu-Live Session Co-Sponsored with the Canadian Peace Research Association (CPRA – ACPR)

How to Present Your Academic Research

*****located in the CPRA "Lecture Hall"***

Chair/Moderator: Franke Wilmer & Joanna R. Quinn

2:00-2:45pm [*Episode TL14, TL15, TL16*]

This is a pre-recorded discussion where two experienced scholars, Dr. Wilmer and Dr. Quinn meet to discuss what directions graduate students interesting in presenting their academic research can take. They discusses innovative ideas and how students may want to champion and publish them. They share unique ideas with future generations of students interested in peace research.

Dr. Quinn is President of the College of New Scholars, Artists and Scientists of the Royal Society of Canada. She is Associate Professor of Political Science and Director of the Centre for Transitional Justice and Post-Conflict Reconstruction at Western University, where she is cross-appointed to the Faculty of Law and affiliate-appointed to the Department of Women's Studies and Feminist Research

Dr. Wilmer is a Professor, International Relations, Montana State University who specializes in conflict and conflict resolution, international law, public policy, international relations and

foreign policy. This is a pre-recorded discussion where an experienced politician discusses how students can present their academic research.

2:45-2:59pm ***[Episode TN20]*** Simu-Live Q & A in CPRA Networking Lounge Break-out Room

Session 2.4 - 2:30-3:45pm (MDT) - Legal Geography, Cultural Heritage, and Cities: Making up Legal Spaces

Chair/Discussant: Pierre Cloutier de Repentigny (Faculty of Law, University of Ottawa)

"Unsettling Montreal"

- **Kirsten Anker (Faculty of Law, McGill University)**
- **Tina Piper (Faculty of Law, McGill University)**

To unsettle is to provoke disquiet, to disturb what was previously comfortable or taken for granted: in our case, the modern project of managing the space of a city through property law and urban planning. To the extent that "settlement" formed both the de jure and de facto bases of colonial government, unsettlement also specifically resonates as a critique of colonial practices, and as the possibility of a decolonial counter narrative. Coming out of our experience teaching property law transsystemically through the lens of indigenous (Haudenosaunee and Anishinaabe), civil and common law traditions, this paper unsettles three geographic features of the city of Montreal and their management within infrastructure projects: roads, rivers and a mountain. Inspired by the approaches of environmental history, new materialism, posthumanism, and indigenous jurisprudence, we reinsert the materiality of the objects of city governance to show how they constitute the law in specific ways. Within our empirical project – which will rely on primary sources including archival materials, deeds, planning documents and interviews – we explore the manner in which the state, through measures to ensure urban safety or defence, movement of goods and people, and sanitation, imposes a logic of management on these geographic features that can, through the lens of the latter's materiality, be perversely regarded as unsafe, restrictive and unhealthy. Showing up the dominant legal narrative as irrational and even contradictory creates the space for us to develop an alternative, "unsettled" paradigm.

"Comparative Critical Urban Property Law Approaches to Sustainable Cultural Heritage Spaces"

- **Sara Ross (Schulich School of Law, Dalhousie University)**

Among the different approaches taken by states and municipalities for the preservation of urban heritage spaces, some common themes can be drawn out. Notably, the effectiveness of frequently

used protection tools such as heritage designation and listing do not tend to provide enough protection to avoid demolition or the harmful alteration or neglect of the heritage assets of a space or property in question. One key problem identified here is the difficulty in balancing the public and private interests implicated in heritage preservation decisions, strategies, and aspirations. One proposed manner of addressing this difficulty is through a heritage easement agreement (or, heritage covenant) as a servitude for a public purpose that can provide for property tax incentives or grants when the property owner enters into the heritage easement agreement with a municipality, heritage trust, or non-profit organization. This paper examines the heritage easement form as it is applied in Canada's common law provinces and civil law province of Quebec, and will do this within the larger comparative context of how this kind of property law tool might be applied for critical cultural heritage property protection purposes. More broadly, this paper draws on an ongoing project examining local property and planning law and policy shaping urban redevelopment decisions, which can serve as an arena for the differential treatment of relationally vulnerable groups in a manner contrary to international guiding framework for sustainable urban (re)development like the UN International Guidelines on Urban and Territorial Planning. the UN "Recommendation on the Historic Urban Landscape", or UN-Habitat's New Urban Agenda.

"'I Have Pulled Down A Monument To Outlast Bronze....' Monuments As Vessels Of The Past In A Post-Oppression Present"

- **Miroslaw Sadowski (Faculty of Law, McGill University)**

Major events, important historic and contemporary figures are vital for the creation of national identity, and thus often become immortalised in public spaces in the form of monuments – places of memory. But what happens when these places are reminders of a corrupt memory, a past that many would rather forget? Should they be removed, as if the people and the events they commemorate never existed, never took place, or should they be kept as sites of conscience, present-day reminders of a painful past? What may be their new role in the cityscape? And, ultimately, who has the right to be remembered, and who has the right to be forgotten within a city's network? The purpose of this paper is to answer these questions on the basis of the changes implemented in the past decade by a number of governments in post-communist and post-colonial countries which have begun a second wave of decommunization and decolonialization aiming to purge the public sphere of the relicts of the communist and colonial past, in some cases both at the same time, and the societal and legal debates that ensued. The author also hopes to place the recent resistance against oppressive monuments, a significant part of the 2020 BLM protests, into a broader context of the role monuments have as vessels of the past in a society, as well as demonstrate how it is a consequence of belated policy changes in several Western countries.

June 4, 2021 - Day 3

Session 3.1 - 9-10:15am (MDT) - Environmental and Social Regulations: Lessons for the Future

Chair/Discussant: Alexandra Bahary-Dionne (Faculty of Law, University of Ottawa)

"Climate Change and Legal Education: A Case Study of Canadian Law Schools"

- **Ling Chen (Faculty of Law, McGill University)**

This paper investigates climate law teaching and learning at Canadian law schools in the context that climate law is arguably evolving as a new field for legal practice and research. While some law schools have introduced stand-alone courses or integrated climate law modules into more conventional courses, most of them have not done so in any systematic way. I argue that Canadian law schools must do their part in the fight against climate change by educating future climate lawyers and scholars and producing climate-related legal knowledge.

I start with a detailed analysis of climate law's internal cohesive operation, its distinctiveness, and its relationships with other areas of law and disciplines. Carefully considering the complex and dynamic nature of climate change and the fact that international climate law has motivated climate law developments in various modes and at different levels, I examine how and to what extent these unique features shape the objectives, structures, and pedagogies relating to climate law education. I also identify the opportunities and challenges facing law schools to have climate law as an independent curricular subject, by first emphasizing its intimacy and distancing with other subjects and then considering practical circumstances. Having selectively reviewed the curricula and teaching substances nd approaches of Canadian law schools, I showcase how these schools have engaged with climate change and explain the pathways through which climate law courses can be developed. Before the conclusion, I provide a set of normative questions about what law schools should do with interdisciplinary or even transdisciplinary teaching and the good practices and challenges.

"Responsibility in End Time: Environmental Harm and the Role of Law in the Anthropocene"

- **Pierre Cloutier de Repentigny (Faculty of Law, University of Ottawa)**

The concept of the Anthropocene has brought to the forefront of academic discourse the extent of anthropogenic environmental harm. From a meta-perspective, this harm is difficult to grasp; it is amorphous, all-encompassing and continuous, yet it is embodied, particular and immediate. It is a veritable viscous assemblage of causes, (in)actions, consequences and agency that reflects the inherent complexity and interconnectedness of ecology. Faced with this harm-assemblage, environmental law has proven to be ineffective and incapable of capturing the hyperobject of anthropogenic biosphere degradation—i.e. anthropocenic harm. This paper explores, using

critical environmental law methodology, the role of law regarding anthropocenic harm and responsibility. The first part critically conceptualises anthropocenic harm. The second part theorises the concept of responsibility for anthropocenic harm. Firstly, it looks at the meaning of responsibility in a collective context. Secondly, it contextualises collective responsibility based on the differentiated agency of humans regarding anthropocenic harm. The final part delves into the shortcomings of contemporary environmental law as a tool to address anthropocenic harm. Using marine biodiversity degradation in Canada as an example, it first highlights the disconnect between the methods of environmental law and the nature of and responsibility for the harm law should address. It then outlines a way forward for an anthropocenically responsible environmental law.

"Collective Access to Justice and Litigation Finance: A Comparative Analysis of Australian, Canadian, and English Developments"

- **Michael Molavi (Bonavero Institute of Human Rights, Faculty of Law, Mansfield College, University of Oxford)**

In the aftermath of the Global Financial Crisis of 2007-08, many states in the common law world have experienced sustained growth in the emerging industry of litigation finance (re: third party funding) in light of the perceived insularity of courtrooms from the instabilities and fluctuations of financial markets. In several jurisdictions, including Australia, Canada, and England, this industry has focused on class actions and collective redress mechanisms, given the high costs, risk exposures, and attractive rewards associated with mass litigation. Such 'litigation investments' have been legitimated as promoting access to justice, a fundamental human right and policy objective. This paper traces the historical and contemporary development of this legal dynamic of financialization by documenting the progressive liberalization of maintenance and champerty laws from the nineteenth century to the current period through a series of case studies, before exploring the legal economics of the emerging industry in the comparator jurisdictions. In so doing, this paper examines the access to justice potential in this new phenomenon for multilayer interests.

"Public Access to Online Hearings: Balancing Transparency with Privacy"

- **Jérémy Boulanger-Bonnelly (Faculty of Law, University of Toronto)**

The COVID-19 pandemic has forced courts to hold online hearings, and to consider how to maintain the open court principle in that context. The first goal of this paper is to provide a typology of the various measures adopted to that end in Canada. While some courts limit access to reporters only, others allow members of the public to attend if they register in advance, and others livestream their hearings. Categorizing those measures based on their accessibility will provide a clearer picture of the range of available options.

The second goal of this paper is to assess those options in light of the underlying values and purposes of the open court principle, as they are expressed by courts and authors.1 Thus far, the principle's broad interpretation has relied on de facto constraints which limit access to in-person hearings: not everyone can take a day off and find transportation to get to the courtroom. Those practical limits, while arbitrarily based on personal resources, have created an incentive structure which strikes a balance between transparency and the potential harms of unimpeded access. The absence of such limits in the digital context calls for a new incentive structure in order to maintain a similar balance. I will suggest that the most appropriate solution for trials is pre-registration, while live streaming is preferable at the appellate level. In both cases, however, judges should retain some flexibility, and existing limits on the recording and distribution of audiovisual content from the hearings should be maintained.

Session 3.2 - 10:30-11:45am (MDT) - Legal Pollination in Schools, Homes, and Courtrooms

Chair: Joanna V Noronha (Faculty of Law, University of Windsor)

Despite the porousness of legal study and practice, it is not uncommon for law to still be conceptualized in terms of discreet subject-areas or siloes – e.g. family law, criminal law, administrative law. Yet, it is at the points of contact between superficially distinct areas that legal rights and burdens are often negotiated in relationships between individuals, groups, institutions, regions and nations. Legal actors seeking to expand, contract, or reimagine rights may do so by borrowing doctrinal claims and discursive practices from disparate areas of law for deployment in their relationships.

This panel will examine this phenomenon through three case studies. Dr. Kelly will consider how discourses of safety and police-community relations that are generally associated with criminal procedure have been mobilized in school governance, with disparate impacts on Black and Indigenous students and students with disabilities. In a complementary presentation, Ms. Modeste will discuss how these discourses of school safety and policing contribute to the ongoing over-criminalization of African Canadian youth in Nova Scotia. Dr. Noronha will examine the ways in which the gap between family and contract law has been creatively inhabited by people in cohousing arrangements beyond the nuclear family, in order to negotiate the division of property and care labour. Dr. Paciocco will consider how contract law theories have been imported into criminal procedure in order to rationalize the practice of plea-bargaining, with the ironic result that defendants with limited power may see their trial rights bypassed on the putative basis that they are thereby empowered to maximize their options. Taken together, these three presentations consider the phenomenon of legal cross-pollination in relation to (in)equality and social vulnerabilities.

"The Rise and Fall of School Policing"

- **Lisa M Kelly (Faculty of Law, Queen's University)**

In 2008, Toronto became the first school district in Canada to adopt a School Resource Officer (SRO) program. The province of Ontario initially funded officers for thirty schools and later extended the program to forty-five. Across the country, other school districts quickly followed suit. Increasingly, cops were going to school. According to Public Safety Canada, the SRO programs aimed to "improve safety (real and perceived) in and around public schools, improve the perception of the police amongst youth in the community and improve the relationship between students and police." However, from the start, critics argued that this socializing discourse of community policing misrepresented an intimidating practice that exposes young people to heightened surveillance and criminalization. Advocates from Black Lives Matter, Latinx, Afro-Latin-America, Abya Yala Education Network, and Education Not Incarceration began concerted advocacy to end the SRO program in Toronto. After a series of contentious board meetings, the Board voted to terminate the program in the fall of 2017. This vote by Canada's largest school board marked a significant break from the decades-long trend of increased policing in North American schools. In this paper, I argue that the turn to policing reflects the institutional rise of "school safety" discourse. Over the last four decades, courts, policymakers, and the larger public have increasingly represented schools as dangerous places. This paper traces the political and legal stakes of this discourse for the students at the center of competing claims of protection and peril.

"The School-to-Prison Pipeline: A View from Nova Scotia"

- **Karlan Modeste (British Columbia Teachers' Federation)**

When school districts decide to engage police services to manage student peer conflicts and conflicts of authority between teachers and students, the consequences for Black and Indigenous youth can be staggering. The incidents that attract police scrutiny suggest that race, ethnicity, and social class are often factors that determine the level of response. In Halifax, Nova Scotia, these patterns are apparent in the criminal justice system where African Canadians continue to be over-represented in both the youth and adult systems. These patterns are replicated in the child welfare system. The overregulation of students of colour in Nova Scotia occurs against a historical backdrop of racial segregation and exclusion, including the expropriation of Africville from the African Canadian community in the 1960s. In this presentation, I will discuss my experience as a criminal defence lawyer working with the Black community in Nova Scotia and representing African Canadian youth in the criminal justice system.

"Nuclear Fusion: Housing, Property and Care Arrangements Beyond the Nuclear Family"

- Joanna V Noronha (Faculty of Law, University of Windsor)

In 2016, seniors outnumbered Canadians aged 14 and under for the first time in the country's history. The demographic shift means that a growing number of senior citizens is going to need publicly subsidized care at some point in their lives. The traditional mechanisms of the welfare state, which in much of the developed world helped support vulnerable groups, seem to be in

crisis and unable to extend or even maintain current levels of protection for the citizenry. On the other hand, traditional intra-family care-labour arrangements are becoming ever less important as a counterweight to state retraction, as multi-generational families become less and less common, in particular in compressed urban real-estate markets where most of the population currently lives. Apart from the state and the family, the market offers the commodification of care as an alternative, but it is no panacea: concerns regarding mistreatment, neglect, and abuse in caring facilities abound, and all stakeholders readily concede that those institutions are chronically understaffed. Individual contracting of third-party caretakers also comes with challenges related to labour conditions for other vulnerable populations, such as women and immigrants from the Global South. An important care deficit exists, and this yawning gap will most probably only expand as the population ages and diversifies further. Non-nuclear care relationships and structures, including communal arrangements, LGBTQ families, non-nuclear parenting as well as extra-familial types of cooperation such as cohousing arrangements have long existed at the margins of law and mainstream institutions and may be a source of creative energy. Legal scholars are well positioned to intervene and deal with issues such as negotiating care labour and property division both in times of optimism about the prospects of cooperative symbiosis and at its moments of crisis and dissolution.

"(How) Is Plea-Bargaining Justified?"

- **Palma Paciocco (Osgoode Hall Law School, York University)**

Plea bargaining is a dominant feature of the Canadian criminal justice system, particularly for racialized, Indigenous, and/or socioeconomically marginalized defendants, who often experience increased pressure to "plead out" for reasons ranging from economic and cultural barriers that make prolonged trials nonviable, to a heightened risk of receiving a heavy sentence if convicted at trial. Efforts to promote equality in our criminal justice system must therefore be centrally concerned with how plea bargaining is practiced. The formal regulation of plea bargaining is a relatively recent phenomenon, both Canada and the United States. In both jurisdictions, it developed over the past few decades as official attitudes towards plea bargaining evolved from repudiation, to resignation, to approval. The contemporary American endorsement of plea bargaining is generally animated by a contractualist theory whereby parties to a plea bargain maximize their respective interests through the free exchange of rights and entitlements. In Canada, the contractualist view has been declaimed by courts—but in recent years, it has made subtle inroads in our jurisprudence. Moreover, no coherent alternative has been expressly endorsed. The proposed paper maps out the competing justifications that can be offered for plea bargaining, considers how they inform Canadian jurisprudence, and assesses their implications for the regulation of plea bargaining. The paper is particularly attentive to the way in which contractualist justifications rationalize bypassing the trial rights of people who, because of inequality, have limited power and options on the putative basis that doing so empowers them and maximizes their options.

Session 3.3 - 1-2:15pm (MDT) - Language, Culture, and Public Space

Chair: Miroslaw Sadowski (Faculty of Law, McGill University)

Discussant: Frances Carnerie (Osgoode Hall Law School, York University)

"This Paper Would Like To Speak to Your Manager: Whiteness, Technoculture and Reckoning with the Karen"

- **Allison Lunianga (Law and Legal Studies, Carleton University)**
- **Jonathan Carlson (Law and Legal Studies, Carleton University)**
- **Leah Wilson (Law and Legal Studies, Carleton University)**

In the digital age, how we express ourselves in technoculture is increasingly important. One such articulation of the last decade is that of the "meme," and one meme that has been the centre of discussion in 2020 is "the Karen." The Karen Meme developed as a technoculture articulation of women wielding their white supremacy, privileged worldviews, and willingness to call on systems they know to serve them, and merged into a popular cultural soundbite. This project seeks to create a conceptual framework of the Karen as expressed in society and dually within technoculture. Analyzing 5 instances of "Karens," this paper studies the inputs of the Karen and how they make use of several modalities to achieve self-serving ends that uphold their beliefs, perspectives, and worldviews. The Karen is described as an entitled, older, white woman who lashes out when she does not receive her way, but there is much more at play than someone complaining. First, this paper analyzes what do Karens think they are entitled to? Second, how does whiteness and victimhood play into wielding of authority and privilege? Lastly, this paper prescribes the digital-space that Karen's occupy and how technoculture and meme culture has allowed for a newfound articulation of Karen, with direct prominence to racial hierarchy. We seek to explore the collective experiences of those within the power structures embedded in modern society. For us to understand this collective experience, we must establish the individualized and collective worldviews that continue to marginalize people of color.

"Cultural Appropriation: Disputes Silenced Through Public Shaming"

- **Debbie De Girolamo (School of Law, Centre for Commercial Law Studies Queen Mary University of London)**

The topic of cultural appropriation is one that has taken a prominent place within the artistic community, within cultural groups and within larger society. There is much to consider within debates spurred by the phrase 'cultural appropriation'.

Disputes involving claims of cultural appropriation against artists are frequently reported in the media. The issues are plentiful: for example, some argue for the protection of cultural identity and cultural traditions to support claims of cultural appropriation; others argue that yielding to

such claims will lead to restrictions on artistic freedom. The issue of cultural appropriation is a complex one, moving across historical, political, economic, social, and legal boundaries.

Acts of public shaming seem to lead to resolution of cultural appropriation claims, with these acts stepping into the breach where law offers inadequate protections to prevent against cultural appropriation. This paper will consider the way in which cultural appropriation claims appear to resolve conflict involving artistic works which are subject to those claims. In particular, it will focus on the process of public shaming through media as a means by which these disputes are resolved.

Session 3.4 - 2:30-3:45pm (MDT) - Reframing Inclusion

Chair/Discussant: Alexa Dodge (Department of Political Science (Law, Justice, & Society) Dalhousie University)

"'Manufactured Females Exist Among Us': Sex Robots, Trans-Exclusionary Radical Feminism, and the Meaning(s) of Womanhood"

- **Tessa Penich (Law and Legal Studies, Carleton University)**

Representing part of my in-progress MA thesis, this paper examines opposition to the development, sale, and use of sex robots. No longer the subject of science fiction, sex robots have seen a flurry of media and scholarly attention; the perceived threat of this technology has also inspired a radical feminist advocacy group, The Campaign Against Sex Robots (CASR). I use a feminist critical discourse analysis to examine anti-sex robot articles, op-eds, petitions, campaigns, and presentations for their underlying ideological assumptions. My thesis traces how discourses surrounding sex robots (re)produce or refuse dominant understandings of personhood, subjectivity, gender/sex, relationships, and citizenship. In this paper, I specifically examine how 'real' womanhood is defined, understood, and 'defended' by anti-sex robot advocates. Many of the academics and activists who work alongside the CASR hold 'gender critical' (trans-exclusionary) radical feminist beliefs, and they speak to the dangers of trans women's so-called 'appropriation' of cis women's bodily experiences. Drawing on scholars who trouble the stability of binary biological sex, I argue that anti-sex robot discourses perpetuate a static ontological understanding of gender and power. How do fears of 'manufactured' womanhood link anti-sex robot discourses and backlash against trans visibility? What are the political implications of defending 'real' womanhood? Who or what can be a 'real' woman? How do fears of women being replaced by sex dolls or sex robots tie in to larger narratives of women's legal rights? Using sex-positive feminism and queer theory, I ultimately attempt to offer an alternative feminist response to sex robots.

"Justice Denied: Moving Towards a Trans-Inclusive Model of Access to Justice"

- **Evan Vipond (Gender, Feminist and Women's Studies at York University)**
- **Pierre Cloutier de Repentigny (Faculty of Law, University of Ottawa)** (non-presenting co-author)

Despite the recent adoption of legal protections for trans gender nonconforming people and modification of various laws and policy to accommodate this group, access to justice for trans people remains a considerable issue. Access to justice literature has yet to critically examine how gender identity and gender expression can create barriers to justice for trans and gender nonconforming people. As a marginalized and disenfranchised population, trans people experience heightened and additional barriers to justice that others typically do not. Trans people are thus both particularly affected by the current access to justice crisis and affected by barriers specific to their gender identity and/or expression. This paper seeks to address the gap in access to justice literature by attending to specific barriers to justice that trans persons face. These barriers include social and economic marginalization, exclusion from and underrepresentation within the legal system, the legal regulation and enforcement of the gender binary, the misplacement of trans persons in sex-segregated facilities, and transphobia within the legal system. This paper calls for an intersectional and holistic approach to access to justice for trans people. It offers solutions for increasing access to justice for trans persons and outlines what a trans-inclusive approach to access to justice could look like.

"'What's Wrong With This Picture?': Judging Justice-Involved Young Persons in Canada Through 200 Years of Policy and Practice Modernization"

- **Frances Carnerie**

In 2017, an exasperated Provincial Court Justice invited media into his courtroom in an attempt to obtain a treatment bed for an Indigenous, adolescent boy experiencing mental illness and substance abuse while facing criminal charges. Although heterodox, this paper argues for 200 years Canadian judges have served as judicial officials and ministers of justice, balancing obligations to the state, society, young persons, and profession when confronting adolescents in conflict with the criminal law. Policies and practices addressed here disparately impact Indigenous and racialized youth. During this time, global social and political upheavals barraged the judiciary with confusing criminological models, new theories in developmental psychology, legislative developments, and restricted resources – and for 200 years, judges have responded with work-arounds, activism, compassion, and sometimes, harshness. This paper explores the judgecraft deployed with justice-involved young persons, concepts of judicial role morality, and procedural justice as experienced by adolescents. Strategies and devices developed by judges historically are compared to those of contemporary courts. Conventional adversary judgecraft is compared to newer approaches, including non-adversarial models of therapeutic jurisprudence and problem-solving practised in new types of courts. Technocratic justice, that emphasizes speed, efficiency and cost-effectiveness, and the polycentric universe of politics and policies currently challenging contemporary courts, follow. The paper concludes that problem-solving has been alive and well and practised in Canadian courts dealing with justice-involved young

persons for centuries – just as the judiciary prepares to confront the concussive wave of modernization sweeping across the youth criminal justice system in the form of the COVID-19 pandemic.