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YOUR QUESTION PERIOD
SENATE INITIATIVE OFFERS NEW OPPORTUNITES TO THE PUBLIC

This year, following a tumultuous period in which Justin Trudeau cast off his thirty-two Liberal senators in favour of younger, more PR-friendly caucus members, the newly self-styled Liberal caucus has launched a public campaign hoping to reinvigorate both the Senate and themselves. Led by caucus leader James Cowan, the Liberal senators have introduced a series of initiatives in order to open the Senate to the public and prove the upper house’s worth as a source of open discourse, informative research, and progressive policy suggestions.

Spearheading this effort is the “Your Question Period” program, a website deriving its concept from the hugely successful “We the People” platform in the United States. For those unfamiliar with either site, both offer an online form that individuals can fill out with a question which government officials can subsequently bring to the floor. “Your Question Period” offers Canadians the chance to submit their questions to the Liberal caucus, whose office reads the questions and selects some to be read aloud to the Senate during the question period. I had the opportunity to interview Senator James Cowan about the initiative, and he offered some interesting insight on its value and potential.

Speaking about the inspiration behind this approach to public interaction, Senator Cowan discussed his caucus’s new found independence, its freedom from the Liberal party, and its desire to do things differently in the Senate. The Senator spoke of the “Your Question Period” site, and the other caucus initiatives, as new platforms through which social issues
Happy Halloween, Osgoode! Because Candy

My relationship with Halloween is complicated. I like to compare it to eating half a pound of gummy bears in one sitting, or attempting the cinnamon challenge. They may seem like great ideas, but once I start to follow through on them, I abruptly regret my actions. Halloween should come together so much better than it does. Prima facie, the combination of candy, adorable children in costumes, and adrenaline-pumping scary movies seems like a high unbeatable combination. But when I spiral down the black hole of eating my fifth Kit Kat of the hour, opening my door to super stoned sixteen year-olds holding pillowcases, and failing to sleep a full night since spending an evening with Linda Blair, Halloween slowly begins to surpass rush hour on the Donview bus as my archenemy. And yet, people seem willing to forgive and forget, year after year. I hesitate to attribute the deluge of jack-o-lantern-themed Pinterest crafts and friends’ Instagrams of “baby’s first Halloween” (God, I’m so old) to the sustained sugar high of many, many pumpkin spice lattes. No – there must be something more playing at play. While I staunchly cling to the age old truth that anyone who describes themselves as “really into Halloween” cannot be a quality human, I’m tempted to bracket my cynicism of all things orange and black. I cannot be the only one who has longings for a magical world, a place where magic is and always was. As Lin-Manuel Miranda sang in Hamilton: “Hear me out.”

Hearing the phrase: “You have two minutes left in this interview!”: How no one has raised a ballyhoo about how disturbingly similar the OCI process is to The Hunger Games, I’ll never know. It’s basically the same dystopian, annual death match (we assemble ourselves in single file, march out into the fray, and fight until only the winner is left standing), right down to the (largely arbitrary) reaping, without the popcorn.

Closed-Book Exams: Or take home exams, or essays, or seminar presentations. How do professors ever expect us to become competent lawyers if they force us to adapt to new situations, like – gasp – writing an exam without a summary-crutch? Everyone knows the legal profession just consists of mechanistically applying the same formula to situations which differ in only the most menial details, thereby allowing us to circumvent the need for an original thought to ever tumble through our heads. The audacity!

Hearsay Rules: You are Alice, Professor Berger is the Cheshire Cat. Down the rabbit hole you go.

A Sunday morning without brunch: No explanation needed. For more information, please see Jurisodidacta on page 16.

Correspondingly, a post-exam evening without alcohol and mindless TV: I don’t even know what one of those looks like.

Your first Tax Law lecture: Be honest, you only took this class because you figured you would be able to do your own taxes, without the help of your begrudging accountant friend or cruel social experiment disguised as one of those diabolic computer programs meant to sort out your taxes for you. Yeah, you haven’t taken math since tenth grade and you couldn’t do long division if someone was holding a gun to your head. But there are, like, calculators, right? Yeah, good luck with that.

First family function after beginning law school: I’m not sure which is scarier: all of my distant relatives suddenly asking me for legal advice, or the prospect of them following my fourth-glass-of-wine take on hologram wills. Merry Christmas to all and to all a barely coherent and definitely negligent estate planning session!

Buying your first (proper) suit: I don’t mean pairing an ill-fitting HM blazer with those pants in your closet that may not be dress pants, but definitely aren’t jeans either. It’s a fact universally acknowledged that your first proper suit will cost roughly the same as a semester’s worth of textbooks. Where’s the space on bursary applications to record expenses for ridiculously overpriced business attire, designed to make you look like the soulless paper pusher you’re about to become for the low, low price of ~$70k, three years of your life, and a not-so-small portion of your sanity?

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A third fun fact is more personal - while I am the only Dean of Osgoode (so far) who began teaching elsewhere at York - in my case, as an Assistant Professor in the Department of Political Science, in the Faculty of Arts, which I joined in 1997. O-Week Chair Steven Broadley

1. People used to regularly swim in the pond behind Osgoode.
2. York University had Canada’s first sexuality and gender class.
3. York was built in the 1960’s during the height of the Cold War. Rumor has it that the reason York was built so far outside of the city was to act as a government organizing centre in the event of a nuclear attack on Toronto. This rumor was given greater weight when I visited the Diefenbunker in Ottawa and there is a map showing that York sits just outside of the third (or final) blast radius of the nuclear weapons at the time, meaning a number of buildings could quickly be converted to a government operations/rescue and recovery effort. Just a rumor though.
4. Jack Layton used to be a professor at York.
5. York has a fairly large telescope. The astronomy club hosts pizza parties allowing you to see distant objects (like Saturn!).
6. Bethune College is named after a famous Canadian doctor who went to China and fought in the Chinese civil war for the Communist side, and was friends with Mao.
7. They did a study a few years back to determine the political leanings of the various faculties. The most self-described communists were found in the Math Department.

Vice-Provost Students, Janet Morrison

"Here are two fun-facts that speak to why I love York:

1. 33% of York students speak English as a second language
2. Our Track & Field team lives a commitment to excellence – in 2013, the men’s team won the Canadian Interuniversity Sport national championship"

Dean Lorne Sossin:

“There are many wonderful stories about York of significance for Osgoode. For example, York University began in 1960 without any dedicated space, and so had to borrow some from the University of Toronto to get started – the space U of T gave York was Falconer Hall, where it was located during 1960-61, and is now home to U of T’s Law School. At the time, U of T’s Law School was located at Glendon Hall, in the location that was soon to be ceded to become York’s second home!

The Osgoode faculty member with arguably the deepest roots at York is Professor Stefan Wood. Not only was he born to a York family (his father was a Geography Professor at York) but he is also the only Osgoode Professor to be born at York (his parents lived on campus the whole time!)

A third fun fact is more personal – while I am the second Dean to have a degree from Osgoode after it had joined York (Patrick Monahan was first), I am the only Dean of Osgoode (so far) who began teaching at York in my case, as an Assistant Professor in the Department of Political Science, in the Faculty of Arts, which I joined in 1997."

Osgoode Faculty member with arguably the highest profile is Dr. Mamdouh Shoukri. Prior to assuming his current role as York University President and Vice-Chancellor, Shoukri was a successful Lions Men’s soccer team: a Track & Field team is the Canadian Interuniversity Sport national championship 2010-2013, York’s Men’s and Women’s Lions soccer teams.

President Toby Samson, Legal and Literary Society President

“York University has been ranked as Canada’s greenest university for two years in a row, and the 14th greenest university in Canada in 2011.”

and, lastly:

Jeffery Herneaz, Student Caucus Chair

“Rachel McAdams is an Alumna of the York University Fine Arts Theatre Program.”
Embarking on the Road to Change
New Initiatives Follow Action Committee Recommendations

HANNAH DE JONG & SABREENA DELHON > CANADIAN FORUM ON CIVIL JUSTICE

In October 2013, the Action Committee on Access to Justice in Civil and Family Matters released its final report, A Roadmap For Change. The report outlined detailed recommendations, and called on diverse justice system stakeholders to improve access to justice in Canada. The “nine-point roadmap” advocated for increasing funding for legal aid, strengthening the Early Resolution Services Sector, making access to justice a central part of professionalism, and transforming courts into multi-service centres for public dispute resolution.

Last January, the Action Committee held a Colloquium of over 100 leaders in the civil and family justice field to address the key recommendations presented in the final report. Colloquium participants attended workshops, and drawing from various disciplines and jurisdictions, shared innovative solutions to common access to justice roadblocks. These discussions were captured in the Colloquium Report. Released in June, this crucial follow-up to the final report functions as a guide and idea bank for service providers and other stakeholders to implement Action Committee recommendations.

So where are we now, exactly one year after the release of A Roadmap For Change? What initiatives are underway across the country in response to the Action Committee’s recommendations? We are pleased to report that since the release of the Action Committee reports several ministries and other justice organizations have multi-stakeholder collaborative initiatives underway or in-progress. These initiatives bring key recommendations from the Action Committee to life – particularly with regard to creating “local and national access to justice implementation mechanisms.” Selected activities from across the country are presented below, and we look forward to bringing you updates as this work evolves. Several of these initiatives were profiled in the July 2014 issue of the Canadian Forum on Civil Justice newsletter.

Alberta
Joint Action Forum: The Joint Action Forum held its first meeting in 2013 to begin a process that would improve access to justice in Alberta’s civil and family justice system.

Reforming the Family Justice System initiative: The RFJS initiative is a collaboration between government, the Courts, and a number of organizations, academics and professionals that work within the family justice system.

Saskatchewan
The Dean’s Forum on Dispute Resolution and Access to Justice: The forum draws together a selection of Saskatchewan’s legal system stakeholders to address provincial access to justice challenges.

Manitoba
A2J Update: Three Manitoba Chief Justices released an update on access to justice initiatives in their home province. Activities include: ongoing improvements to the Manitoba Courts website, the development of the ‘Cameras in the Courtroom’ pilot project, and the expansion of access for media by designating space within the courts for media reporting and interviewing.

Ontario
The Treasurer’s Advisory Group (TAG) – The Action Group on Access to Justice: The Law Society of Upper Canada has formed a special committee on access to justice. TAG has already been participating in numerous collaborative initiatives, including a new handbook for dealing with everyday legal problems, and a course on child protection at Osgoode Hall Law School.

Nova Scotia
Access to Justice Co-ordinating Committee: In June, the Nova Scotia Department of Justice announced the launch of the Access to Justice Co-ordinating Committee (A2JCC). Led by Justice Minister Lena Metlege Diab and the Honourable Chief Justice Michael MacDonald, the Committee seeks to address issues of efficiency, navigation, and cost in Nova Scotia’s family, civil and criminal court systems.

British Columbia
Social Lab: In June, the BC Law Foundation funded a two-day workshop to explore how a social lab could be used to improve the family justice system for children and families in the province. The participants are now working on establishing a Steering Committee to move this initiative forward.

Convened at the invitation of the Right Honourable Beverley McLachlin, the Action Committee on Access to Justice in Civil and Family Matters is focused on fostering engagement; pursuing a strategic approach to reforms and coordinating the efforts of all participants concerned with civil justice. The Canadian Forum on Civil Justice is pleased to play a support role in the execution of research and dissemination activities for the Action Committee. Reports from the Action Committee can be found at www.cfcj-cfjc.org/collaborations.

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Are you looking for a challenging and stimulating environment where you can roll up your sleeves and dig in to the business of law? Come and put down roots with Lerners. With over 80 years of experience, we’ve grown to be one of Ontario’s leading law firms. We’ve nurtured the professional and personal growth of hundreds of students. Let us help you maximize your talents and energies so you can become the best lawyer you can be!

To get the whole picture, visit www.lerners.ca.
**Indigenous Bar Association 26th Annual Conference**

**Enriching Canada with Indigenous Laws and Perspectives**

**SCOTT FRANKS ▶ CONTRIBUTOR**

The Osgoode Indigenous Students Association (OISA) attended the Indigenous Bar Association’s (IBA) 26th annual conference in Calgary on October 2 to 4th. Elder Clarence Wollg welcomed the IBA back to the location of its first conference, and introduced participants to Treaty 7 territory with prayer and smudging from a sitting position. All were welcomed to the conference by a drum song performed by men from the Siksika Nation. Eight members of OISA’s executive attended the conference to learn more about how Indigenous legal traditions and perspectives can enrich traditional legal education and courts in Canada.

Co-presidents Jessica George and Scott Franks presented OISA and Osgoode’s achievements and plans to the Indigenous law student associations attending from the University of British Columbia, University of Saskatchewan, University of Calgary, and University of Toronto, among others. Indigenous student leaders at other law schools asked about developing Aboriginal law camps similar to Osgoode’s first annual Anishinaabe Law Camp, and in moving towards a career panel model that OISA will promote in the winter term. Jessica and Scott will bring these experiences and initiatives of other student associations back to Osgoode, which include ideas for an Indigenous student-mentoring program, financing, enriched curriculum, bringing cultural activities to combat student stress, and speaker series. OISA also looks forward to increased partnerships with the other Indigenous Student’s Associations – especially University of Toronto – hoping there can be more collaboration between our schools.

The main conference focused on the question of how Indigenous legal traditions and perspectives might enrich traditional legal education, courts, and communities in Canada. The Honourable Justice Murray Sinclair questioned the assumption whether Canada should or can be enriched by Indigenous laws and customs. Justice Sinclair emphasized the importance of Indigenous laws and traditions to Indigenous peoples, communities, and practitioners. Lawyers David Nahwegahbow and Jean Teillet reflected on “hunting for justice” in the Canadian courts, on the uncertainty of “wins” and “losses” in Aboriginal law, and the viability of the courts for achieving “justice.”

Highly relevant to institutions like Osgoode Hall Law School, John Borrows, Jeffrey Hewitt, Tracey Lindberg, Sakej Henderson and others shared their experiences bringing Indigenous laws, traditions, and peoples to Canadian legal education. John Borrows highlighted Osgoode’s Anishinaabe Law Camp in his home community of Neyaashiinigmiing and a recent fasting ceremony at the University of Victoria as two examples of building the foundations for Indigenous laws in Canadian legal education. Sakej Henderson shared the special connections between law, laughter, love and the heart in Indigenous legal traditions - not “the romantic kind of love we find in European family courts.” Tracey Lindberg drew attention to the danger of perpetuating problematic aspects of the Canadian legal system when introducing Indigenous “perspectives” and “cultures” to the courts. Jeffrey Hewitt shared the story of the hummingbird and the forest fire, and the importance of doing “all that one can.” All the panelists emphasized the need for sustained, critical, experiential, community and land-based Indigenous legal education. The only question that remains is how to best to implement these ideals in each law school.

Each OISA executive also attended workshops related to Metis rights, and treaty law such as the United Nations’ Declaration on the Rights of Indigenous Peoples and other international treaties that affect Canadian Indigenous people, child welfare, missing and murdered Indigenous women and bundle protocol, access to justice, northern issues including residential schools, and reclaiming Indigenous place names.

While the conference was an immense learning experience, it was also a wonderful occasion to meet and share experiences with students from other law schools, and to network with many of the leading Indigenous legal professionals. Connections were made and, in some cases, OISA representatives reconnected with peers and classmates from years before.

OISA is actively sharing this experience with other members and the broader Osgoode community, and will introduce initiatives and projects for membership approval and implementation. For more information on the speaking events and panels that took place during the conference, please visit the OISA website at www.oisalaw.com.

**Jessica George (Co-President)**

I value the opportunity I had to travel to the IBA and to represent OISA and Osgoode. It was an inspiring weekend. While many moments and themes stand out for me, I think that what I will always carry with me is the Honourable Justice Murray Sinclair’s simple reminder that students with a knowledge of Indigenous issues and the problems that face Indigenous communities have a special responsibility to use that knowledge, especially as law students and lawyers, to effect change. I am excited to bring the knowledge I gained at the IBA back to Osgoode and to start that change among the OISA membership, and the broader student population.

**Terrance Luscombe (External Communications):**

What I found most useful about attending the IBA was seeing very experienced litigators talk practically, tactically, and strategically about Aboriginal rights litigation. Jean Teillet, for instance, was especially refreshing and brought dry, legal analysis back into the real world – and the real world back into dry legal analysis.

**Sabrina Molinari (Speaker Series Coordinator):**

The most valuable thing I found at the IBA was the interactions I had with fellow Speaker Series Coordinators from other law schools across Canada. Meeting with these individuals provided me with many ideas and potential contacts for upcoming speaker series/panel discussions. The most exciting discussion I had was making all speaker series events more accessible across Canada, school to school. Based on this idea, starting in the winter semester, a few schools have agreed to film their discussion panels so...
Sports, Business, and the Cable Bundle Bubble
Will the current sports economic system come crashing down on its own weight?

MICHAEL SILVER > CONTRIBUTOR

There is no denying that sports is big business. The NBA just signed a new television deal for 24 billion dollars over nine years. The NHL Canadian television deal was for 5.2 billion dollars, and is now suggested to have been less than the rights were actually worth. The television rights deals seem to be continuously increasing in value. However, this system may be unsustainable.

Gone is the era of sports as a small family business, or a hobby for millionaires and billionaires. Run sensibly, sports franchises can bring in gigantic revenues, largely based on income from television. The Los Angeles Clippers, following the Donald Sterling scandal, were recently sold for over 2 billion dollars. Other franchises may sell for even greater amounts.

One would be hard-pressed to find sympathy for the players who routinely earn multimillion dollar contracts for playing a game at a high level. However, the current collective bargaining agreements in many sports are structured to give players only a limited percentage of the league revenues. These collective bargaining agreements were premised on the fact that the owners required a large portion of total league income in order to avoid losing money. This understanding failed to account for the massively growing revenues. If all that the owners required was a share of revenue capable of covering team expenses, as they suggested was the case, the owners would require a much smaller percentage of total league revenues. The players are well aware of the changing league finances, and will fight in the next set of collective bargaining agreements for a much larger share of league profits.

Simply put, the current system cannot last forever. The ballooning revenues are based on television networks craving live programming. They believe that in an era of PVRs and streaming services the only way to ensure viewership is to offer live programming that people will not be willing to watch later. The networks have entered into an arms race, seeking to outbid each other for precious live programming.

Many of the important bidders in these processes are American cable networks. They seek live programming in order to increase viewership, and maximize advertising dollars, but also in order to increase their number of subscribers. The model is that as a cable network increases its offering of live programming, they are able to attract more and more subscribers. However, the majority of cable network subscribers will have the network available to them as a part of a subscription package.

Subscription packages are the norm in television. Consumers are not able to select the specific channels that they want to receive, but have to select a package. Generally the package will include many channels that the consumer has no real interest in receiving. Each channel receives a share of the total fees paid for the total package. This share is bargained for between the cable providers and the cable networks. Because consumers demand the live sports that a channel like ESPN can offer, ESPN is able to bargain for extremely high rates, and knows that cable networks, and consumers will be willing to pay.

This increases revenues at networks like ESPN (FOX sports 1, NBC sports network, TSN, and Sportsnet), and allows the networks to continuously increase their bids on live sports content, furthering the cycle. However, from a consumer perspective the bundle system is undesirable and unfair. Consumers are willing to pay for the content that they actually want, but do not want to subsidize networks that they have no intention of ever viewing, as they are forced to in the bundle system. There is a growing push to allow à la carte cable subscriptions, in which viewers are able to decide which channels they want, and only pay for those.

This system would reduce revenues for the cable networks. This is because under the current system, almost all packages include the main sports networks. If people who have no interest in sports were given the choice, they would drop this portion of the subscription, and would stop subsidizing the interests of sports fans. The networks might respond by increasing subscription fees to those who were willing to pay for sports, yet this increase would likely result in a further decrease in subscriptions. Either sports networks would predominately cater to the elite, or they would experience significant decreases in revenue.

The decreased revenue to the sports networks would result in them being forced to reduce their bids on live sporting events. The leagues would experience a corresponding decrease in revenue.

The shift in cable bundles is likely to happen after the next round of negotiations on collective bargaining. Thus, the percentage of league revenues going to owners should be lessened, as should the total value of league revenues. Combined, these factors might finally result in many owners being unable to cover the operating expenses of their teams, just as they have been claiming until recently.

The change in the finances of sports that would follow from allowing à la carte cable subscriptions would be monumental. Franchises would be sold for significantly less than the value at which they were purchased and teams would restructure, amongst other consequences. Potentially, leagues might even be forced to decrease their number of teams to compensate for the lost revenues.

Sports faces many challenges, including issues of concessions, and illegal behavior of players and owners. However, in the near future, the largest challenge looming for professional sports leagues may be the unsustainable business model that they have constructed around cable television fees.

Leagues may pay lip service to alternative revenue streams such as international markets or the internet, but these alternatives cannot possibly compensate for the inevitable burst of the television revenue bubble.
Sports and Real Life
What the Experience of One Sports Journalist Can Tell Us About Media in Canada

ROB HAMILTON » STAFF WRITER

ON FEBRUARY 15TH 2014, Baltimore Ravens running back Ray Rice punched his fiancée in the head in the elevator of an Atlantic City casino, knocking her unconscious. The casino’s cameras captured the incident, the details of which became known to the Ravens mere hours later. Sometime thereafter, the National Football League also became aware of Rice’s actions and the existence of the videos.

Precisely when the league came to know about the incident has engendered considerable controversy. In short, the league gave Rice a laughably tepid two-game suspension, after which video of the incident surfaced publicly. The league then went into damage-control mode, blaming Rice for not being forthcoming with them about the contents of the videos, absolving themselves of responsibility. Subsequent reporting, however, cast these claims into serious doubt. It has become clear that both the team and the league knew the true nature of the incident before Rice’s disciplinary hearing and before the videos became public. Despite this, NFL commissioner Roger Goodell, in a post hoc attempt to justify the league’s insipid response and pernicious obfuscation, continued to maintain that the league was unaware of the true nature of the incident.

This situation evidently became too much for Bill Simmons, one of ESPN’s most popular personalities. On his podcast, which last year was downloaded over 32 million times, Simmons said:

“Goodell, if he didn’t know what was on that tape, he’s a liar. I’m just saying it. He is lying. I think that dude is lying. If you put him up on a lie detector test that guy would fail. For all these people to pretend they didn’t know is such f–king bullsh-t. It really is. It’s such f–king bullsh-t. And for him to go in that press conference and pretend otherwise, I was so insulted. I really was.”

In response, ESPN suspended him for three weeks, prohibiting him from writing, using twitter, or appearing on TV, radio, or podcast. Why was he punished in such a manner when ESPN’s Stephen A. Smith was suspended for only two days for suggesting that Rice’s fiancée contributed to her beating by provoking him? Why was he suspended for stating what the network’s own coverage had already implied? The answer, as many have already suggested, is the $15 billion “Monday Night Football” deal between the NFL and ESPN. Simmons was disciplined for being too critical of ESPN’s business partner. While ESPN’s coverage had presented the facts that would allow one to deduce the league’s duplicity, Simmons stated the case unequivocally. Punishing Simmons also sent an undeniable message to other reporters: keep the volume on criticism of the league low. In other words, disciplining Simmons created a chill effect on journalists in the company, reminding them to self-censor without having to issue explicit edicts constraining their coverage.

So, what do the trials and tribulations of one sports journalist have to teach us about real life?

Earlier this month it was revealed that Postmedia had purchased the Sun Media chain of newspapers. The purchase includes 140 weekly newspapers, 27 small market dailies, and 5 major daily papers. As a result, several cities, including Calgary, Edmonton, and Ottawa, will join Vancouver on the list of cities whose major news publications share a single owner. It will also give Postmedia about 30% of the Canadian newspaper market. The advantage for Postmedia is clear: by sharing content and centralizing aspects of their operations, the company can offer advertisers more eyes at a relatively lower cost to the media company.

That advertising revenue drives the media market is nothing new. Postmedia CEO Paul Godfrey stated as much in discussing the acquisition, saying that the acquisition will help drive increased digital and print advertising revenue. Increased reliance on advertising revenue creates a real danger that the interests of advertisers will restrict the scope of news coverage. The same chill effect that Bill Simmons’ suspension created for ESPN reporters can exist in media outlets reliant on large advertising clients. There is an inherent danger when the subject of the news is also paying the bills.

This chill effect can emanate from other sources as well. Dr. Robert Everton has closely analyzed the reporting in the CanWest Global newspapers (acquired by Postmedia in 2010) of one particular incident of Israeli-Palestinian violence. Everton found that the papers, including the National Post and some of the country’s biggest dailies, were repeatedly mistaken about key facts. This was due, in part, to the fact that sources relied on for the stories were from an incorrect report from the Israeli military. Though the military acknowledged the account was mistaken, the CanWest papers failed to adjust their reporting. Although the military acknowledged the account was mistaken, the CanWest papers failed to adjust their reporting or acknowledge their mistakes, instead continuing to run stories with plainly mistaken facts. That this happened against the backdrop of then CanWest owner Izzy Asper’s unequivocal support of Israel and...
An Idiot’s Guide to Salary Caps
How much are sports figures being paid, and who controls their salaries?

GLEB MATUSHANSKY > STAFF WRITER

HAVING RECENTLY PARTICIPATED in the Hockey Arbitration Competition of Canada, I realized I knew almost nothing about the NHL salary caps. Below is my “idiot’s guide to salary caps,” for anyone else who might have been living under a rock.

A salary cap is an agreement or rule that puts a limit on the amount of money a team can spend on player salaries. The cap can be in the form of a per-player limit, a total limit for the team’s roster, or a combination thereof. Several sports leagues, especially in North America, have implemented salary caps to keep overhead low and to ensure parity between teams, to encourage competition and to allow less-wealthy teams to sign top players. Salary caps can be a major issue in negotiations between league management and players’ unions through arbitration, notably leading to strikes by players and lockouts by owners. Examples of salary cap systems include the NHL, NBA, MLS, CFL and others.

The benefits of salary caps are the promotion of parity between teams and controlling costs. The salary caps prevent wealthy teams from signing too many star players that end up sitting on the bench simply so that opponents don’t get them. With the salary cap, each club has roughly the same economic power to attract players. This plays into the mission of the various leagues and sports in general - to ensure a quality spectacle that is not a foregone conclusion. If only certain teams were to win year after year, the magic of sports will be lost and the competition will lose its luster; fans will come to less games and might tend to gravitate towards the teams that can consistently buy expensive players to ensure wins. Ad revenue would also theoretically drop due to fans’ disinterest in the outcomes of such games. Teams with less financial means would likely not remain viable for long, and may eventually cease to play. A prime example are the Cleveland Browns in 1946-49 in the All-America Football Conference, losing only three times in four years, and winning every championship, causing the league to fold.

Sports’ version of a pump-and-dump can also occur if there is no cap on the expenses of a team. For example, a club signing a high-cost contract to sign star players, to reap from their popularity with branding, promotion and merchandising, only to find themselves backed into a corner because they overspent last season. There is a risk of unmitigated overspending, especially in situations in which long-term stability of the team/league, or the financial viability of the team is secondary in the owners’ minds to winning. By allowing a team to enter a financially precarious situation, there is risk that spectator sports will lose their backbone, their loyal followers, who might tune out altogether disillusioned with the sport or its administrators.

Some examples that exist of current salary caps:
• Following the NHL lockout, the cap was set at $39 million per team, with a maximum of $7.8 million (20% of the team’s cap) for a player. The cap has been raised since $69 million/team, $13.8 million/player, and there is also a lower limit as to what teams must pay players - the original limit was set to 55% of the cap, or $21.45 million. Players, agents or employees that violate the cap face fines of up to a million dollars, whereas teams face fines of up to $5 million and forfeiture of draft picks, deduction of points and/or forfeiture of games. The highest salaries for the 2014-15 season are $14 million (Shea Weber), $12 million (Sidney Crosby).
• MLS: for the 2014 season, the salary cap is $3.1 million per team for the players in the first 20 rosters spots; there is an extra salary allowance for designated players – Beckham signing $6.5 million a year pre-empted this rule (nicknamed the Beckham rule), whereby a team is allowed players that normally wouldn’t fit within the cap to attract international talent. The maximum salary for any one player is $387,500. Designated players count as $387,500, while players in the lower roster spots, nicknamed off budget players, have much lower minimum salaries.

“The with the salary cap, each club has roughly the same economic power to attract players.”

The system that is present in European soccer is mainly based on the new Financial Fair Play regulations implemented in the 2011-12 season. The regulations limit the spending of clubs relative to their income, an alternate system to the salary cap. While there are differences between the leagues themselves, mostly related to the franchise model versus promotion/relegation model, in which teams are at a threat of dropping to a lower division thus adding excitement, international competitions for which teams qualify (such as the Champions League for the top ranked domestic teams) allow teams to compete year after year against worthwhile rivals, even if they are ultimately dominant in their domestic league (i.e. Barcelona, Real Madrid). Some European association football leagues considered salary caps in the early 21st century. However, measures have been more focused on ensuring clubs spend responsibly rather than as a tool to create parity.

This is because there is a wider variety of leagues for each sport and players can freely move between the leagues, thus allowing players to move from capped teams to uncapped teams. As well, the fact that international competitions exist, which go beyond mere pride to include major opportunities in the form of lucrative TV broadcasting rights, encourage clubs to ensure dominance of their national leagues in order to reach those European competitions; unlike in the American leagues where salary-capped clubs don’t compete against teams in rival leagues without salary caps, needing a unanimous conversion. As well, the lack of a central governing body with ultimate power, like in the NHL, allows UEFA to only have control of the international competitions but not the domestic leagues themselves. The fact that clubs can also be promoted/relegated would wreak havoc on salary caps, as teams that get relegated would suddenly be much higher than the lower division’s cap.

The result has been the FFP regulations. They were implemented to introduce a more level playing field, whilst being cognizant of the unique challenges of football management in Europe, where billion-
**Why the Toronto Maple Leafs haven’t won the Stanley Cup for nearly half a century**

Part two of three

KENNETH CHEAK KWAN LAM | STAFF WRITER

Prior to the cancelled 2004 to 2005 season, the Leafs had an ill-advised pattern of trading away 1st-round selections for unproven and/or unspectacular (and sometimes rental) players in order to make a run (albeit a short one at best) in the playoffs. They would also opt for band-aid solutions in the form of signing relatively-big names but past-their-prime unrestricted/Group III free agents (at least 51 years old) to long-term expensive contracts in order to fill roster voids on a short-term basis. For instance, Leafs Nation should remember how former General Manager John Ferguson, Jr. infamously traded away the rights to future Star Goaltender Tuukka Rask to the Boston Bruins for inconsistent counterpart Andrew Raycroft (who won the 2004 Calder Memorial Trophy before regressing significantly the year after) on June 24, 2006 and then made a nearly-identical mistake less than a year later by trading yet another 1st-round pick and a 4th-round pick to San Jose Sharks for unproven Starting Goaltender Vesa Toskala and uninspired forward Mark Bell on June 22, 2007.

Unfortunately, with the introduction of the salary cap, the Leafs are now forced to think long and hard about how they ought to spend because they now have to fit the contracts of their 23 NHL roster players within a spending ceiling, just like the other 29 NHL teams. The fact that the historical franchise has unlimited financial resources is no longer as beneficial because it cannot utilize the funds as a competitive advantage against small markets, given that the Devils received (originally, the team had one of its future 1st round selection taken away by the NHL after which it was restored but the franchise had to pick 10th/last in the 1st round).

This means that the Leafs can no longer resort to the old ways of doing things, i.e., by using their financial might to sign and typically overpay for unrestricted free agents (e.g., former General Manager John Ferguson inked talented but often-injured Centre Jason Allison to a 1-year contract worth $1.3 million on August 5, 2005; second-pairing Defenceman Pavel Kubina to a 4-year contract worth $20 million on July 1, 2006; and Winger Jason Blake to a 5-year contract worth $20 million on July 2, 2007). These deals masked the lack of young elite talent and superficial organization depth, all of which are the unavoidable consequences of decision makers continuously trading away the team’s top draft pick(s) in the NHL. In other words, the short-sightedness of Leafs management, which has been going on for years, was finally exposed and catching the sight of Leafs management, which has been gone on for years, was finally exposed and catching up to the team.

The situation is complicated by the fact that the Leafs are located in Toronto, a traditional hockey-crazy market. Given that a large portion of the fans are impatient and want to see a winner as soon as possible, they are not willing to wait for the team to rebuild. Leafs management are also hesitant to conduct a true rebuild because they do not want to upset the fans and endanger profits (after all, each of the 41 Leafs home games at the Air Canada Centre are sold out prior to the drop of the puck in Game 1, even if an inferior product is put onto the ice). As such, we are caught in this never-ending cycle of mediocrity: neither good enough to be a true contender for the Stanley Cup nor bad enough to secure a franchise-type player with high lottery picks in the NHL Entry Draft. By either barely sneaking into the playoffs (and then getting knocked out in the 1st round) or just missing the playoffs, the Leafs have further set themselves back because they will pick in the middle or lower-half of the 1st round in the NHL Entry Draft and it would be next to impossible to draft a program-changer (e.g., Sidney Crosby, Jonathan Towes, Steven Stamkos, John Tavares, and Drew Doughty) at that draft position (granted Shea Weber was surprisingly drafted by the Nashville Predators with the 49th overall pick in the 2nd round of the 2003 NHL Entry Draft). The more realistic outcome is that they will get a solid second-line player.

So how can we escape the cycle? What do we have to do to turn the fortunes of the franchise around and send the team down the right pathway? Stay tuned for Part 3 of my article.

“We are caught in this never-ending cycle of mediocrity…”

Wild Gesticulation and Whispers of Rhubarb
What I Learnt About Being a Lawyer From the Set of Suits

LILLIANNE CADIEUX-SHAW › CONTRIBUTOR

My partner and I are in the middle of a high profile divorce settlement. We are having a heated whisper-discussion on the best legal approach to the dissolution of this crumbling but lucrative matrimony.

“We need to respect the boundaries of their terms,” I whisper to him. “But frankly I don’t think our client is going to get the yacht.”

He looks me in the eye and nods slowly, ponderously. “Indeed,” he whispers back. “Quite the dilemma. I’ve often found with law that the best approach is rhubarb. Rhuuummmbarb. Rhubarb rhubarb rhubarb!”

I narrow my eyes. “Is the law a joke to you? That yacht is pure gold!” I try to play it straight but my upper lip twitches in a half-grin.

My partner’s eyes widen and his lips squeeze shut out of his side of his mouth and looks down at his yellow legal pad to regain his composure. He’s British so I take his wimpy insult in stride, but, I admit, we are playing a dangerous game with our nonsensical legalese. Once the giggles start, they are infectious and hard to control.

We’ve both been hired as extras on the set of Suits. I’ve been given the role of Upscale Lawyer #2. Part of the reason I took this job, and probably a large part of why I was hired, was the fact that I would be attending law school in a couple months. I figured it might be a good taste of what being a lawyer would be like.

Before we are called on, I attempt a little foray into method acting, clicking around the wood-paneled floor in heels and pearls, rustling the papers in my arms every now and then, looking at my watch with my brow slightly furrowed and mouth a grim line, imitating what I imagine someone important would do if they had somewhere important to be.

The scene is one in which Mike Ross and Harvey Spector stand before a judge and debate an issue probably integral to the plot of the show, but I’ve never seen it so I couldn’t tell you.

What I can tell you is this:

- The scene lasts all of thirty seconds, but the extras are there for a total of eight hours.
- Coffee and sugar are provided.

These two key components mean the extras are bored out of their minds, but also wired like eels. It’s a dangerous combination.

We are given leather bound folders with silver clasps and told to wave them about emphatically as we walk towards the front of the courtroom, where we are to take our seats. Mike and Harvey will then enter and mutter things to one another and then to a judge, and then to some other characters on the show whose relationships to one another I only vaguely understand. Our role is to ensure a permanent stream of lawyerly-type behavior goes on in the background. We are not told what this type of behavior entails.

My partner and I have been positioned on the bench right behind Harvey and Mike, a prospect which excites the both of us greatly since it means we will be in the camera’s sight. The money for extra work isn’t bad but it’s the great and secret dream of every extra, I learn, to have the camera pay attention to them. My partner regales me with a tale of once upon a time, when the camera pointed to his face and stayed there for two whole seconds as he exited a high rise complex. He has lived the extra dream.

But, my partner tells me, you cannot force the camera to recognize you. If you seek the camera out, the directors will yell at you. They will not call you back on set. You will get a reputation in the extra circuit as a camera hog and your lucrative career will be over. My partner and I have been given a fortuitous opportunity here, and we can’t mess this up. We cannot, under any circumstances, be caught giggling, daydreaming, squirming, making origami, or other such things a lawyer would clearly never do.

After our close call re: the near-giggling, my partner and I agree to speak no actual words, only mouth movements directly on to legal authority, in such a way that you know a man with ten folders whirlwind gesticulating around is a man you want to take your business to. The fact that this correlation also means octopuses would make good lawyers is a fruitless train of thought. In the eyes of the public, the best lawyers are not the ones who can apply sage legal analysis, but rather the ones with delicious smelling hair and strong slamming-fist-on-table game. The essential ingredients of success in the legal profession include: wild gesticulating, mouthing nonsense, and strutting to and fro past a fake set of courtroom doors. I am clearly born to do this.

I begin to feel much more confident about the looming prospect of law school. I don’t have an eidetic memory or perfectly coiffed hair, but if I can project legal authority enough to convince 3 million viewers that I am an upscale lawyer, simply by sketching Mike Ross’ face with an octopus’ body on a yellow legal pad while nodding thoughtfully as my fake legal partner whispers rhubarb in my ear, how hard can law school be? ☻
**Gone Girl (2014) 3/4**

Mystifying, well-planned, precisely curdled, and tantalizingly mercurial, *Gone Girl* is a stealthy comedy and an absorbing melodrama; a break-all-the-windows plot-twister that retains every jolt from Gillian Flynn’s blockbuster novel, and a work of chilly wit and bleak metaphor that toys with the viewer like a female fatale with her prey. The perfect date-night movie for couples who dream of destroying one another.

On the day of his fifth wedding anniversary, Nick Dunne returns home to find that his wife, Amy, is missing. Her disappearance creates a media frenzy, and his awkward behaviour and lies surrounding the marriage implicate him for her apparent murder. As evidence mounts against him, Nick becomes the prime suspect, and Amy’s diary entries reveal the disintegration of a once-happy relationship.

With her serenely cool beauty, Rosamund Pike is a revelation, and deserves to graduate to the A-list with her multi-faceted turn as the privileged, manipulative, calculating Amy, a quintessentially icy Hitchcockian blonde who serves as the unattainable centre of a constantly shifting narrative. Underutilized after years of standout supporting work, the actress demonstrates versatility with compelling eyes that can instantly switch from innocent to detached.

David Fincher, that dark lord of cinema, wakens an unease that trembles throughout this domestic horror film, and its sinister, lurid escape to a place you probably would never visit. Whole-gasp cinephiles whose technical prowess can make the medium fearsome and an inability to stop swearing, fight ADHD and is aggressively unstable, with boundary issues and an inability to stop swearing, fighting, and touching women. After Steve is discharged from exquisitely-made trash to eminently watchable suburban noir, to be enjoyed in sickness and in health.

**Mommy (2014) 3.5/4**

Uproariously emotional and painfully personal, *Mommy* is a heart-swelling, heartbreaking, breathtaking piece of cinema: a mature, funny, and tragic mother’s tale featuring real heart-on-sleeve performances that are almost operatic in scale; a story of rare poignancy and insight told with a delightfully nasal Québecois timbre. A film of startling warmth, sizzling sentiment, and suffocating power.

Diane “Die” Després – feisty, sexy, dressing like a teenager in her 40s – is a widow making ends meet with cleaning jobs. Her 15-year-old son, Steve, has ADHD and is aggressively unstable, with boundary issues and an inability to stop swearing, fighting, and touching women. After Steve is discharged from a care facility due to charges of arson, a chaotic and horribly hilarious nightmare ensues: Diane must care for Steve at home. The two befriend a next-door neighbour named Kyla, a lonely schoolteacher who looks after Steve at home. The two befriend a next-door neighbour named Kyla, a lonely schoolteacher who looks after Steve at home.

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After Intervenus Interruptus in Chevron Case
The Canadian Bar Association Needs to Make Some Changes

ERIN GARbett › STAFF WRITER

On October 16, 2014, the Canadian Bar Association (CBA) dropped its application to intervene in Chevron v. Ayacucho, an upcoming Supreme Court case, just before the October 17 filing deadline. Chevron is appealing an Ontario Court of Appeal decision allowing a group of Ecuadorian villagers to seek damages from Chevron’s Canadian assets. In 2011, an Ecuadorian court awarded nineteen billion dollars to the villagers for environmental contamination committed by Texaco which Chevron purchased in 2001. This past November, the ruling was upheld by Ecuador’s highest court, but the amount was reduced to $9.51 billion. The Ontario Superior Court judge denied the villagers’ attempt to seek damages in Canada, saying that the Ecuadorian ruling has no practical effect in Canada; the Ontario Court of Appeal overturned this decision.

After announcing their intention to intervene on September 29, the CBA felt an immediate backlash. An online petition was initiated and a protest organized by University of Toronto, Osgoode, and McGill law students was held on October 9. The national aboriginal law, environmental, energy, and resources law, and civil litigation sections, as well as several other legal organizations, firms, and professionals wrote letters criticizing the CBA’s decision. An open letter signed by 113 lawyers was published in the Globe and Mail on October 10, pressuring the CBA to intervene in the case. Several members resigned from the CBA, while many others terminated their membership. After the legislation and legal reform committee refused to sanction the factum (a necessary step before submission), the CBA decided not to proceed. Before continuing, it is important to clarify that I do not wish to comment on the merits of the appeal sought by Chevron or whether the villagers ought to be able to seek damages in Canada. For the purposes of this article, I only seek to outline my concerns about the actions of the CBA.

Regarding conflict of interest, the CBA asserts their character “is based equally on [their] expertise” and that they aim to find a “balance of views” both within an interest section and amongst different sections. When deciding to intervene in the Chevron case, the CBA went against the advice of the legislation and law reform committee, the civil litigation section, and the National Sections Council Executive. Beyond this, no effort was made to seek the opinion of the aboriginal law section, the environmental, energy and resources law section, or the constitutional and human rights sections. Immediately before making their decision, the National Board met, but no opportunity was given to members to raise their concerns. Also deeply unsettling is the fact that Blakes, Cassel and Graydon LLP, a firm that works with Chevron, was hired to write the factum to be submitted.

The CBA states that their reputation is “based in no small part on [their] objectivity and independence,” of which I can find none here. The CBA willfully ignored interest sections that are key to the Chevron case and went against the advice sought from other sections. Furthermore, they forewent any semblance of neutrality by hiring a firm with ties to Chevron to write their factum. This staggering lack of objectivity casts serious doubt on the CBA’s ability (and even their desire) to remain impartial.

Moving on to their regulations on intervening, the CBA leaves the door open for an event like this to occur again. The CBA has been accused of being inconsistent with their reasons for intervening, and no clear consensus within its membership. If this doesn’t exist, they shouldn’t intervene, simple as that. Not only do they need make an effort to adhere to the principles they have in place, they need to improve and expand these principles to ensure this does not happen again.
Jane and Finch
Dispelling Postal Code Preconceptions

KATHERINE SPENSIERI › CONTRIBUTOR

Osgoode Hall Law School is coincidentally located in one of Canada’s most “notorious” and “crime-ridden” locales. For many, the phrase “Jane and Finch” conjures notions of extreme poverty, drug abuse, gang violence, crime, and racialized identities, if not conceptions of even greater heinousness. It is a dangerous place, to be entered with caution and consideration, and only if complete avoidance is not viable. More problematic than the stigmatization of this demography as a whole is the unfounded and blanket attribution of related character and personality traits to its citizens. The people who live there are bad; they are criminals, they are dangerous. Without entering into an overly complex account of the causes of these misconceptions, they can be broadly deduced to arise from the following categories which work in tandem to amplify the result: political and economic strategy, criminological reporting and methodology, access to justice, and media propaganda.

Following the line of argumentation that asserts that “bad” people commit crimes (which is not the contention of this author), reality dictates that offences are committed everywhere, and thus, there must necessarily be “bad” people residing in all neighborhoods. As logical as this appears in black and white, it is easily taken for granted, if not completely discarded, when confronted with the powerful and persuasive tools used to convey the opposite. Dismantling the dominant rhetoric and flawed reasoning demonstrated in presentations connecting demography with frequency and type of crime is the focus here. For example, statistics can indicate the frequency of crime reporting per demographic area. When a correlation is found between frequency of reporting and location, presented with an adrenaline-pumping audio track and broadcasted for public consumption as breaking news in the aftermath of a violent crime in a so-called “ghetto,” it is often assumed, in absence of being told a concrete conviction rate, that criminals reside and abound in that neighbourhood. The stereotype is born. Moral panic and local hysteria often follow, perpetuating the vilification and ostracizing of geographies and their inhabitants, all while guising an intricate politic of social regulation.

However, such a conclusion fails to take into account, among other pertinent considerations, the type of crime being reported. Assuming that drug, gang, and violent offences are most prevalent in this neighborhood, in what spatiality, for example, do white-collar or corporate crimes occur? Where do these classes of offenders reside? Is the perpetrator of a financial crime less culpable or morally blameworthy than one of a drug or violent offence? This is relevant as Jane and Finch, equipped with many affordable and government-assisted accommodation options, attracts immigrant and low-income populations. Conversely, it is probable that most individuals who commit white-collar crimes are employed in a professional capacity, are of mid to high socioeconomic status, and reside in a correspondingly upper-class neighbourhood. Therefore, upon deconstruction, one can assert that serious crime happens everywhere and “bad” people live in both high and low income areas.

A secondary claim that seeks to posit the legitimacy of the erroneous perception that Jane and Finch is dangerous as it is filled with “bad” criminals is the notion that the frequency of offences being committed there is greater than that of other locations. Acknowledging that although this premise may be supported by crime statistics, this is not, in and of itself, determinative of validity. Beyond the scope of this piece, but nonetheless worth mentioning, is the impact that racial profiling and the knowledge of social factors that affect propensity to engage in criminal activity have on the actions of law enforcement. Furthermore, drug, gang, and violent crimes often occur in public places, whereas the majority of white-collar or financial offences commonly take place in privately owned businesses and residences which are less conducive to overt police detection. These pragmatic considerations in turn affect the statistical recording and evaluation of crime frequency.

A further point can be drawn from the example of an individual residing in upper-class Yorkville who commits the offence of possessing narcotics for the purpose of trafficking. Suppose that this results in one arrest, whereas the same quantity of narcotics, if distributed by this person, would result in multiple possession offences which are less conducive to overt police detection. The practical effects of this are magnified discrimination, fear, and hatred. It is my hope that through this effort to myth-bust some of the most blatant misconceptions of Jane and Finch and its citizens, instead of absent-mindedly internalizing media and popular representations, readers will be led to embark on a critical evaluation of the messages they choose to elevate to their personally-held beliefs. For those of us who have the fortunate opportunity of residing near or in this vibrant community, I urge you to proudly declare your postal code!

Questioning the correlation between crime and geography: sensationalized?
Something Olde, Something New…
Has the Copyright Act become outdated in a new digital era?

Once upon a time, it was commonplace for consumers to pop into their local shops and browse through collections of used records, CD’s, movies, books, or whatever other media were available for purchase. Students would resell their used textbooks to get back a portion of the initial price paid for them, and Nirvana fans could pick up a used copy of In Utero without feeling like a sell-out for paying the full twenty-some odd dollars for it. All the while, original copyright holders would benefit from the exposure their works gained by increased access to consumers and the public. In this respect, secondary markets provide economic benefits to both owners and users, furthering public policies toward ensuring public access to creative works, as well as respecting the property rights that are associated with these tangible works. In their traditional form, in so far as they facilitate the distribution of tangible goods for resale, secondary markets operate to fulfill the underlying principle of intellectual property law: balancing the competing interests between content creators, users, and the public domain.

It might seem like a foregone conclusion to the younger generation today that this same model ought to be applied within today’s digital environment. History has shown that copyright law has continually adapted, either judicially or through legislation, to changes in technology from the printing press, to radio and broadcast, to photocopiers. Why should the internet and digitization prove to be any different? Rather than lending a friend their dog-eared and highlighted copy of last year’s biology textbook, current users might simply transfer the e-book to a friend’s iPad or Kindle instead. However, given the current state of copyright law, these users might be shocked to find that while lending the physical textbook is permissible, transferring a digital version of that same textbook would leave them liable for copyright infringement.

Traditional understandings of owning a physical copy of a creative work generally include such rights as unlimited use and the ability to transfer or dispose of the copy without the copyright owner’s authorization. These rights are shaped, in part, by the conventional understandings that society holds about the ownership of physical property. It has been said that copyright law does not so much expressly build in such incidents of copy ownership, as it accepts and assumes such incidents as given. In other words, the rights associated with tangible objects have been defined by laws relating to personal property, with copyright law merely imposing a limited set of restrictions. However, the bundle of rights associated with digital copies is currently not synonymous with those attributed to physical copies. Where owners of tangible objects hold rights that stem from a clear separation of the physical property from the intellectual property, owners of digital works appear to have very little rights at all in the absence of such a separation. Justifications for this distinction should be based on policy considerations and not left merely as the result of a changing technology. The fact that a copy takes on a digital form should not, by itself, prevent it from being viewed as personal property in the same way as a tangible object.

Users have developed a set of expectations regarding digital works.

Users have developed a set of expectations regarding digital works so as to be able to derive new uses from a creative work, manipulate, and share those works as unlimited use and the ability to transfer or dispose of the copy without the copyright owner’s authorization. Where the beliefs held by users about the rights they have in relation to digital works are in conflict with the established legislative framework, this should lead to a re-evaluation of the allocation of those user rights. To the extent that copyright law departs from the common understanding of digital copy ownership, the enforcement costs will potentially be quite high. Looking to the prevailing attitude among younger generations of users shows an absence of social norms that deter end-user infringements with respect to digital copies. In order to avoid a pervasive disrespect for the law, Canada’s copyright policies ought to better reflect the conventional understanding that users hold about owning digital works. Where copyright respects this understanding, it has the potential to facilitate the development of a standard default bundle of rights associated with digital copies and lower enforcement costs.

At the current moment, any attempts to bring the realities of a digital environment in line with copyright law’s objectives are hampered by two general obstacles: those relating to the current state of technology and those relating to the current state of the law. Although, it could be said that the legal obstacles are merely a consequence of current technological limitations and therefore any efforts to find solutions that address the current state of technology would likely resolve the legal challenges as a result. In other words, the problems in realizing a workable framework that provides users the right to dispose of digital works are a matter “of statutory interpretation mixed with a technical question of how a digital transfer is actually accomplished.” With rapid development in the state of technology, it is likely only a matter of time before this issue will reach a point where it must be addressed. In fact, both Apple and Amazon have already applied for patent protection on content management systems that would facilitate the resale of digital works. In addition, ReDigi was also recently granted patent protection for a similar management system that includes a method for “atomic transactions” – a cloud-based system that is able to perform instantaneous transfers without making a copy of the file. These developments seem to indicate a recognition of the commercial viability of creating a secondary marketplace for digital works and suggest possible attempts to monopolize that market—or possibly, to stymie its creation.
The Obiter goes abroad
No. 3 – David To in Tokyo

By now, we all can relate to the fact that that one semester flies by in no time. Maybe the first weeks feel slower, but as routine kicks in, it’s already time to hustle for finals. But that perceived passage of time can change so very drastically when one is taken out of that habitual comfort zone; three months is a long, long time to pass when alone in a new world. Time alone in a foreign place affords this kind of learning, as it gives one the opportunity to dedicate long hours to the sole purpose of understanding one’s own self, as well as the many unique adventures of being a newcomer to a strange land.

David To, my good friend now articling with the Ontario Ministry of Finance, echoes these thoughts in his reflections about his own time as an exchange student at Waseda University. Along with a highlighting the Japan experience, he shares with us his thoughts about the life lessons that are bound to come along the way.

Since taking some Japanese language courses years ago, David’s curiosity for the country’s culture and language grew, culminating in his choice to apply to go to Tokyo on exchange. “I wanted to go on exchange to get a chance to travel and see the world,” he says. His decision to go was compounded by the fact that it would be difficult in the future to find several consecutive months to travel. Plus, Tokyo was an opportune place to further his interest in learning the language and culture through immersive living in the city. And of course: “I had worked hard through university… I justified it as a well-deserved trip.” Well-deserved, indeed.

“The most anticipated part of my trip was the food,” he says. “In particular, I really wanted to taste the sushi there. The fish tasted much fresher, and the rice was prepared well— even at the most inexpen sive restaurants.” A memorable experience was at the famous Tsukiji fish market in Tokyo, where the tuna he bought and sampled was extremely fresh, despite being unexpectedly rough in texture.

Many of the neighbourhoods in Tokyo have their own specialty menu items, and the Waseda University area is also known for something unique. “The area around the university is well-known for a dish called abura-soba. It is essentially ramen noodles without the soup, but instead is served hot with oil, and then you mix chilli and vinegar into it,” he details. “It was my first meal in Japan, at which time I didn’t fully appreciate it. But after one of my classmates would rave about abura-soba every class, I came to like it so much that I decided to have it for the final meal before departing Japan.”

Another must-go place he mentions is Nara, a city east of Osaka, with some of the most beautiful sights in Japan. “Nara is famous for its park where deer roam free, as deer are revered there. Even if you take a thirty minute hike up the mountain overlooking the city, there are still deer.” Vendors sell senbei, or rice crackers, to feed the deer, too. David warns though, “once you start feeding the deer, the deer will act like your best friend and follow you around!”

In sum, reflecting on the value of the experience, David affirms that spending time away on exchange is invaluable in many ways. “Without reservation, I would recommend that every student go on exchange sometime in their life. Not only do you learn a lot about a foreign culture, but you come to learn a lot about your own country, culture, and self. Only through comparison did I realize what I value, and what could be done better.”

Also, though not exactly directly relevant to his articling position, David feels that his classes defi nitely helped broaden the way he thinks about the laws in Canada. “Many of the classes made comparisons with laws in the U.S., France, and Germany— and then I realized that Canadian law actually isn’t that different from the laws from around the world.”

“Waseda University is among the top three universities in Japan. They put in a lot of effort to make international students welcome,” he says, but adds that not being able to speak fluent Japanese was difficult, as most locals do not speak any English. “At times, figuring things out can be very frustrating, but people are very much willing to help in whatever way they can. In short, deciding to go on exchange to Japan should not be taken lightly, but if you take up the challenge, it can be an experience of a lifetime.”

In parting, David shares a specific memory that has had a lasting impact. It was on a group trip with his residence building to Namii, a town in Iwate Prefecture. The town was particularly hard hit by the tsunami in 2011, and still being in a state of disrepair, the residents who lost their homes continued to live in temporary housing units. “I learned from many of them that life is still difficult, with many having to move to larger cities to find work, leaving behind elderly parents, who were dearly attached to their hometown. During the trip, we delivered cyclamen flowers to the residents, played with the children, and hosted a gathering for the community,” he recalls. “This experience opened my eyes to the reality of parts of Japan outside the bustling big cities, and outside of the exchange student lifestyle. Perhaps most touching was when I asked Naoki, a ten-year-old boy whose family relocated after their home was destroyed, what he wanted to do in the future: “to make everyone happy.”

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A thing or person’s “saving grace” is its redeeming quality, that feature which compensates for its flaws and imperfections. As I set off for my brunch adventure this week, I hoped and prayed that Saving Grace would be my saving grace from the lackluster brunch experiences I have relayed to you thus far. In addition to the promise that its name imparted, I had heard rave reviews about this brunch establishment and my expectations were high. Alas, another brunch has resulted in shattered hopes and dreams. There was nothing particularly bad about Saving Grace, but I was left wondering what all the fuss is about. Here’s why.

Brunch Hours

Saving Grace opens at 9:00 on weekdays and 10:00 on weekends; the restaurant claims to close at 2:45 every day, which seems oddly specific.

Wait Time/Service

Saving Grace is a tiny restaurant that only seats thirty people. It does not take reservations, and on weekends it has a reputation for its long wait. Apparently, a line forms outside the door well before it opens, and it is so busy that the food takes upwards of an hour to arrive once you have ordered. Despite the fact that I wanted to give a true picture of the Saving Grace experience, I was not willing to put myself through that particular kind of hell. Instead, my brunch companion (BC) and I went at 10:30 on a Monday morning. At that time, the restaurant was about half-full, though it had filled up by the time we left.

We got a table immediately and the service, on the whole, was decent (though the server did take other tables’ orders before ours, despite the fact that we had arrived first). We only waited about five minutes for coffee and another ten to fifteen minutes for our food to arrive, so my expectations in this department were surpassed.

Atmosphere

The atmosphere at Saving Grace is pretty relaxed, and it has very simple décor (a kind of a shabby yet modern feel). The large front windows make the space feel bigger and very bright, regardless of the fact that it was rainy outside while we were there. However, the seating is not very comfortable, and the tables are a bit cramped together: my chair was jostled a number of times when the servers would attend to the table next to us. The restaurant also got its delivery of fruit while we were there, and I nearly had a box of papayas fall on my head (the delivery man caught it just in time). Considering this near-death experience, I felt I had to dock a point for the restaurant’s atmosphere.

While we were there, quiet trumpet music playing in the background; though pleasant, it was not enough to alleviate the feeling that we were eavesdropping on our neighbours (and them on us) because our tables were so close. Additionally, there is an upper level of the restaurant where there are a few seats that look out over the lower tables and in my paranoid mind, I felt like I was being watched while I ate.

Coffee

Though I was completely fine this week, my BC was extremely hung-over after spending the previous day going on winery tours in the Niagara region; as such, he was not capable of conversation before coffee arrived. Lucky for us, it was strong and was brought to us (and refilled) fairly quickly.

LLBO licensed

No alcohol here, friends. How both Aunties and Uncles and Saving Grace can be considered the best brunch places in Toronto when they don’t give a person the option to get day-drunk or stay drunk is beyond me (but maybe that says more about me than the Toronto brunch scene).

The Food

I am going to take this moment to point out what law school has done to me (and probably many of you): my eyesight is deteriorating at an obscenely rapid pace. All those hours reading and staring at the computer, and my eyes went from a +1.25 prescription to a +4 in a year and a half (and they’ve since gotten worse). This was highlighted by my visit to Saving Grace, where the rotating portion of the menu is displayed on a blackboard in the middle of the restaurant. I could not read it. Rather than having these items announced to me, I chose to go with something on the individual menu I was given: French toast served with caramelized bananas and maple syrup, and a side of bacon. My...
can be brought to the forefront. It’s a welcome idea for the Senate, whose uses are generally convoluted, confusing, and unknown to the public.

When I asked about how the process for the new website works, Senator Cowan explained that all questions submitted are reviewed by the Liberal caucus office, which selects appropriate questions to bring to the floor. Those questions are then sent to a senator who is well positioned, both in terms of experience and personal interest, to read the question. Though the Senator seemed unclear on the exact vetting process for the questions, he stated confidently that questions submitted by the public would make their way into the upper chamber.

In the lead-up to my interview with the Senator, I submitted my own question through the website. Senator Cowan’s confidence proved justified, and my question was brought to the floor in late September. After the question was read, I received an email linking me to the audio recording of my question being asked. It was actually quite neat to hear Senator Jane Cordy ask my question, and defend my position admirably during the ensuing debate. Though nothing tangible came of the experience, it still struck me as a step in the right direction and an indication that this program is indeed being followed through from start to finish, at least for now.

In my interview with Senator Cowan, I also took the time to ask him how senators feel about the public perception of the Senate. His response was, fortunately, informed and insightful. Senator Cowan felt that the problem was twofold: “A mix of a lack of understanding from the public, and a lack of effectiveness from the Senate itself.” He defended the upper chamber based on its presence in every common law nation, and its important role in reviewing legislation. I left Senator Cowan aptly described how the Senate “doesn’t do a good enough job explaining itself,” while senators are overly concerned with party-affiliation and consistently failing to perform unbiased legislative reviews. He seemed, overall, well aware of the many problems the Senate faces, and put forth an admirable effort listing the problems and trying to defend the upper house.

Unfortunately, nothing in the “Your Question Period” program, or any of the other Liberal caucus initiatives, will solve the problems Senator Cowan described. The programs are a step towards fostering a better public perception, but they will not bring accountability to the Senate, institute procedural reform, or clarify the upper house’s role. Though it was nice to hear the Senator speak so articulately about the issues, I was left wondering whether he really felt they could be addressed at all.

Having seen my question asked, answered, and cast aside, I couldn’t help but wonder if this program will backfire on the senators who designed it, as Canadians get a first-hand look at the inability of the Senate to do more than raise important issues among themselves. It could be the case that, when Canadians hear their questions responded to by limited Senate action, they will feel further alienated. However, the problem of inaction is not inherent to the Liberal caucus’s initiatives, but rather to the Senate itself.

Overall, I have to think my concerns are misplaced and that the “Your Question Period” website will be accepted and appreciated. The program offers an opportunity to see inside the Senate and have your voice heard, if only for a moment. It is a chance to connect with senators on a personal level and engage with the political process first-hand. Further, submitting a question gives one the chance to think about and articulate the issues which matter to them, and to see those issues reviewed by the government.

These benefits do not negate the problems the Senate faces, but they are significant nonetheless. Having made use of the website and spoken to Senator Cowan, I feel the “Your Question Period” initiative is a progressive development, one which addresses the divide between the public and the upper house. My hope is that this effort will inspire more ideas and programs which will further narrow the gap between the people and their government and, ideally, improve the Senate overall.

Salary caps
» CONTINUED FROM PAGE 8

Mansour at Manchester City) used cash infusions to sustain teams that were facing losses. The ultimate penalty is disqualification from European competitions such as the Champions league and the Europa League, and other possible penalties include fines and withholding of prize money. In 2009, when the new legislation was announced, UEFA president Michel Platini noted that 50% of clubs are losing money - the staggering total debt in the English Premier League, according to Deloitte for the year 2008-09, stood at $5.63 billion (CAD).

While criticisms of the new system exists, in that clubs which generate the largest profits can then spend the most on transfers. Other criticisms focus on the questionable sponsorship deals which have resulted in inquiries, such as PSG’s deal with Qatari Investment Group, as the team is owned by Qatar Sports Investments. Such acts might be seen as a way to “game the system” and get around the regulations via an infusion by the owner.

It remains to be seen whether the FFPs will result in a system that is fair and just, and whether the lessons from the North American cap system will be implemented. Teams have freedom to spend money, and buy expensive players, but the risk of being banned from UEFA competitions looms over them. There has already been a shift to balance the books, and to substitute or higher salaries to make room for players with lower salaries or to allow for room on the budget to attract a world-class star. Teams like Anzhi Mahachkala, who bought up expensive players like Eto'o, have been forced to sell as they weren't bringing in enough revenue to balance the expenses. There is also more incentive for teams to demand exorbitant transfer fees for their players, and other teams try to ensure secrecy by hiding the transfer fees or salaries of their players. The result is that players like Wayne Rooney of Manchester United, one of the world’s biggest sports brands, earn nearly $44,000 CAD per week before tax, Lionel Messi earns $510,000 CAD per week after taxes, and a $136 million (CAD) was paid as a transfer fee for Real Madrid star Christiano Ronaldo!

Copyright
» CONTINUED FROM PAGE 14

Further compounding the issue is the fact that without any concrete guidance from Parliament, current sales of digital works are primarily governed through the use of Digital Rights Management (“DRM”) solutions. There is a shift that is currently taking place whereby consumers are increasingly trading ownership of the content they purchase for perpetual access to its use through reliance on licensing agreements. It would appear that within the digital environment, contract law is increasingly supplanting copyright law at the potential expense of users’ rights. The terms of these end-user license agreements (“EULA”) are often characterized by a significant imbalance between user and owner interests.

While Canada does offer consumer protection legislation across all provinces, as well as additional protection found within the common law, unfortunately, these controls over unfair agreements are often inadequate and fail to provide a comprehensive framework that fully protects consumers. Further, as traditional forms of creative works are replaced by their digital counterparts, and as sale-controlling EULAs increase, we face the possibility that, in time, a majority of our culture’s knowledge and creative expression will be centralized and locked within a realm that is controlled by copyright owners. Without addressing the unique challenges that characterize the dissemination and consumption of digital works, it could be said that the Copyright Act, in its current form, is failing to achieve the policy objectives it purports to advance.

Real life
» CONTINUED FROM PAGE 7

outspoken criticism of anti-Israel bias in the media further the perception that coverage can be shaped by political or economic imperatives coming down, even implicitly, from the top of the organization.

That a chill effect on media coverage exists due to the influence of advertisers and the political views of media moguls should, I think, be taken as a given. Indeed, the argument in most cases is not whether such an effect exists, but the degree to which it does. We should consume media understanding the limitations of any given outlet. One of the best ways to mitigate the potentially harmful effects of this reality, however, is to limit the monopolization of media sources. Greater diversity of ownership limits the impact that any one set of influences on coverage can have.

The acquisition of Sun Media will be reviewed by the Competition Bureau in the coming months. The experience of Bill Simmons is a stark reminder of why we should be very concerned about their findings.
Indigenous

**CONTINUED FROM PAGE 5**

other schools can watch the discussion. Osgoode will also do this during our panel on Indigenous traditions within the law.

**Metis Rights and Treaty Law**

Jean Teillet and Larry Chartrand provided an update on Metis rights and treaty law since *R v Hirtsekorn*. Larry Chartrand from the University of Ottawa described the newly instituted Metis Treaty Research Group at the University of Ottawa. The research group will look at Metis treaties in Canada, including Scrip, Treaty Adhesions, and the Manitoba Act, among others. Metis rights and treaty is a developing area of Aboriginal law. (Scott Franks)

**Indigenous Rights and International Law**

Brenda Gunn, an Assistant Professor at University of Manitoba’s Robson Hall Law School, and a contributor to the analysis and drafting of the UN Expert Mechanism on the Right of Indigenous Peoples, clarified that international reports and treaties are not enough to spur Canada into action. She inspired those in attendance and reminded us that we as lawyers and as representatives of Indigenous communities need to use these reports and treaties as first steps, and as the support for our own grassroots call to action; we cannot sit back with these useful documents and have faith that Canada will implement them on its own. If history has showed us, it won’t. (Sabrina Molinari)

**First Nations Child Welfare**

The First Nations Child Welfare panel provided updates on the ongoing case, *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)*, 2014 CHRT 2. The First Nations Child and Family Caring Society filed their claim that the inequitable funding of child welfare services on First Nations reserves constitutes discrimination on the basis of race and national or ethnic origin. After many tactical delays by the government, closing arguments on the merit of the case will be given on October 20-24. On October 20th, there will be a live webcast through fnacaringsociety.com. Similar human rights complaints have been brought in the areas of special education, policing, health, and water. For more information, these cases are: *Mississaugas of New Credit First Nation v Canada*, 2013 CHRT 3, Mushkegowuk Council v Attorney General of Canada Ruling, 2013 CHRT 3, and a recent statement of claim filed by the *Tsuu T’ina, Ermineskin, Sucker Creek and Blood First Nations*. (Laura Mayer)

**Missing and Murdered Indigenous Women**

Jodi Stonehouse described the protocols of Bundles and Bundle Keepers for missing and murdered Indigenous women. It was acknowledged this coming summer (July/August 2015), Jodi and a few other traditional bundle keepers will run the Highways of Tears in BC, laying medicine down at all locations where women have been found. The workshop provided the opportunity for participants to share their thoughts, feelings, and reflections about violence against Indigenous women. The stories shared in the circle were heavy and intensely personal, and the workshop space itself was very solemn. (Sabrina Molinari, Terrance Luscombe)

**Access to Justice**

Fallon Melander of Legal Aid Ontario (LAO), Denise Lightning of Lightning Law, and Sherri Turner, a Gladue report writer, shared their experiences of working within the legal aid system. The workshop highlighted the increasing prevalence of access to justice problems for Aboriginal peoples. The workshop drew attention to a disturbing trend, where trial courts’ and Crown Attorneys’ dismiss or ignore aboriginal rights and Gladue principles on Aboriginal offender sentencing. Fallon Melander discussed recent changes to LAO, particularly their Aboriginal Justice Strategy and the institution of Aboriginal Law Panel certification for lawyers looking to represent aboriginal offenders on a Legal Aid certificate. Last, it was stressed that it is important to get well-written Gladue Reports from local elders and experts that can speak to the particular circumstances of the community and the offender. (Laura Mayer)

**Northern Issues and Residential Schools**

Magnolia Unk’o’o Unka-Wool discussed difficulties related to residential school settlements in the north. Although residential school settlements can include compensation for future care and healing, individuals must be able to show a care plan that includes counseling. Unfortunately, because there are no addictions treatment centres in the Northwest Territories, individuals cannot receive compensation for future care – even if they intend to heal by participating in activities on the land. (Scott Franks)

**Reclaiming Indigenous Place Names**

Jude Daniels focused on traditional territories across Canada, and the names these locations used to hold. Jenna Bloomfield, and visiting professor Christine Cruz from New Mexico, provided a lot of information during this workshop. During this workshop, members discussed the importance of acknowledging our traditional territories by their original names and how, by doing so, communities may further prove continuous connection to the land. (Sabrina Molinari)

**Jurisfoodence**

**CONTINUED FROM PAGE 16**

BC went with a traditional breakfast choice: over-easy eggs, rye toast, bacon, greens and a fried potato. Though his bacon and eggs were average, my BC thought that the toast didn’t have enough butter, and the side potato was overcooked, dry, and bland. He did not eat his greens, but I had a few bites; despite the fact that I still think that a breakfast salad is a strange concept, I thought it was pretty good.

My French toast was, I suppose, the saving grace of the atmosphere: 3/5

food: 3/5

OVERALL:

**FINAL SCORE**

SERVICE: 3/5

ATMOSPHERE: 3/5

FOOD: 3/5

Cost

As a nice surprise, Saving Grace was cheaper than I thought it would be: coffee, French toast, and a side of bacon cost $15.25 plus tax.

**Editorial**

**CONTINUED FROM PAGE 2**

Seeing your printed summary for the first time: “I… know all this?” No, you don’t. None of us do. We just got really good at guessing.

Interacting with people outside of law school: It’s a lose-lose situation. You know how annoying you sound, talking about how promissory estoppel is so cool. You also know how bitter you are about how non-law people have real lives. Like, lives full of homemade scones and yoga and chevron-patterned pillows they made themselves.

Now that I’ve terrified you all within an inch of your lives, turn the page to peruse the fabulous issue we’ve put together for your enjoyment. While I take personal offence to the fact that no one submitted an article detailing the legal problems of Real Housewife Teresa Giudice (never was there a more perfect marriage of law and entertainment), the articles we have rounded up are as awesome as that time you found a full-sized Snickers bar in your Halloween haul. Enjoy!

**OBITER DICTA**

2. The First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada) (Jean Teillet and Larry Chartrand provided an update on Metis rights and treaty law since *R v Hirtsekorn*. Larry Chartrand from the University of Ottawa described the newly instituted Metis Treaty Research Group at the University of Ottawa. The research group will look at Metis treaties in Canada, including Scrip, Treaty Adhesions, and the Manitoba Act, among others. Metis rights and treaty is a developing area of Aboriginal law. (Scott Franks)
Moments of great tenderness flare up continually in Dolan’s study of a mother with a boundless fountain of tough love and an inextinguishably toxic affection for one of her child. The trailer-trash humour is superbly transgressive. We ask for filmmakers to take us to difficult places, and while you may have to brace yourself for Mommy, it is a rewarding experience.

In a year when we had upsetting disappointments from Atom Egoyan and Denys Arcand, previously high-flying Canadian directors, and a massively flawed effort from past master David Cronenborn, it’s a treat to see that the most daring and audacious film comes from Dolan, who is on a path to creating one of the more remarkable film careers in this country’s history. Mommy should be a lock for a Best Foreign Language Film nomination, and it may bring Canada its first Oscar since The Barbarian Invasions in 2004.

Mommy has its flaws: the unnecessarily overwritten prologue expounds an imagined near-future in 2015, a “fictional Canada” where a new law allows a parent to consign any troubled child to an institution, and somewhat leadenly introduces the gun in the first act that must go off in the third. It’s indelibly overlong, losing momentum toward the end when it starts to feel like Dolan can’t bear to leave his characters.

But it’s a pleasure to see acting and directing blasting away on all cylinders. Mommy manages to fill every frame with the stuff of life, suffusing every scene with the wonderful horror of being, vividly capturing a range of exhilarating emotions from elation to despair. Two sequences – an impromptu kitchen dance and a shattering montage that evokes elation to despair. Two sequences – an impromptu kitchen dance and a shattering montage that evokes, and moves like a jazz number, rendering every turn, reveal, and twist of perspective a stupendous showstopper. It just keeps charging forward, imploring you to stay plugged in, keeping you off-balance and adrift. The film’s aversion toward hitting expected beats lends it a rare, welcome edge of danger. Imagine a cross between a David Mamet play and a violent UFC bout, restaged in a music conservatoire.

Writer-director Damien Chazelle, with this expansion of his Sundance-winning short, constructs a fearsome duet between his lead characters. Winner of both Sundance’s Grand Jury Prize and the Audience Award, Whiplash is an unapologetic, accomplished work of kinetic cinema, delivering a sharp and gripping rhythm and an energy you’re unlikely to see very often. As the film builds to a cathartic crescendo à la Black Swan, Chazelle never misses a beat, and turns out to be a natural-born filmmaker with impressive chops. He’s a true discovery, and now a directorial force to be reckoned with.

Whiplash has a deafening message: you can’t be a world-class musician, or you can be a well-adjusted member of society, but you can’t be both. In presenting an epic battle of wills between two fanatical artists, one doing everything in his power to painfully make a master out of the other, Whiplash depicts an unusually unromantic approach to music education. It’s about the wages of all-out sacrifice and commitment – the very antithesis of “let’s put-on-a-show” stuff – and a stunning exploration of the price of creativity and the springboards of inspiration.

Electrifying and resoundingly thunderous, Whiplash is a perverse, inverse, modern Amadeus. The film’s closing sequence is some of the greatest drumming you’ve ever seen; by the credits, Chazelle has demolished the clichés of the musical-prodigy genre, and Andrew and Fletcher have worked out the theory that pressure turns coal into a diamond. It gets a few things wrong, but it aims at, and achieves, an authenticity more exalted and more primal than mere verisimilitude. Sifting through so many compelling layers, you may not even notice the flaws.

Whiplash is virtually guaranteed to send you out of the theater on an adrenaline high, and will undoubtedly be the best jazz movie you see all year. It will also be one of the best movies, period.

For more reviews, visit Absurdity & Serenity at absurdities.wordpress.com.

Whiplash (2014) ¾ ¾/4

Harrowing, propulsive, and euphoric, Whiplash is a spellbinding drama about the toxic fallout from rampant ambition and cutthroat perfectionism; a make-or-break movie aimed at those who have ever wanted to be excellent at anything; and a cynical, intense, blood-curdling portrait of geniuses as sociopaths. It’s a cymbal-clashing achievement.

Andrew Neyman (Miles Teller), a promising 19-year-old student at Shaffer – an upscale Manhattan conservatory – has high aspirations: to catch the attention of Terence Fletcher (J. K. Simmons), its legendarily menacing jazz chair, and to become a hall-of-fame drummer no matter the cost, even if it means flaming out and dying young. Fletcher is demonically demanding of his young performers – he berates, rebukes, denounces, humilates – while his ensemble absorbs the abuse, determined to impress their impossible-to-please leader.

Whiplash features a pair of performances that eclipse everything around them. Just like the music that drives the film, Teller and Simmons are in perfect rhythm. One must appreciate the sight of two totally dialed-in performers simmering until they boil over. Teller, wonderfully natural in last year’s The Spectacular Now, shows a feral intensity that’s exciting to witness. Deep down, Andrew knows a harsh and cold nature underpins transcendence, and ecstasy is found within agony.

Relying on emotional brutality rather than pedagogical instruction, Fletcher is despotic, spouting vulgar epithets, hammering home the notions that “if it’s not flawless, it’s worthless” and “there are no two words in the English language more harmful than ‘good job’.” (Morally, that’s disgraceful; socially, that’s explosive; artistically, that’s sensible.)

Few actors could pull off Fletcher’s blend of eviscerating wit and manipulative charm as believably as Simmons does. Simmons delivers every insult with such punctuating tenacity, the audience can feel every seething syllable; his venom-spewing is as hypnotic as Full Metal Jacket’s drill instructor Hartman.

The narrative rarely breaks tempo and breathes and moves like a jazz number, rendering every turn, reveal, and twist of perspective a stupendous showstopper. It just keeps charging forward, imploring you to stay plugged in, keeping you off-balance and adrift. The film’s aversion toward hitting expected beats lends it a rare, welcome edge of danger. Imagine a cross between a David Mamet play and a violent UFC bout, restaged in a music conservatoire.

Writer-director Damien Chazelle, with this expansion of his Sundance-winning short, constructs a fearsome duet between his lead characters. Winner of both Sundance’s Grand Jury Prize and the Audience Award, Whiplash is an unapologetic, accomplished work of kinetic cinema, delivering a sharp and gripping rhythm and an energy you’re unlikely to see very often. As the film builds to a cathartic crescendo à la Black Swan, Chazelle never misses a beat, and turns out to be a natural-born filmmaker with impressive chops. He’s a true discovery, and now a directorial force to be reckoned with.

Whiplash has a deafening message: you can’t be a world-class musician, or you can be a well-adjusted member of society, but you can’t be both. In
REYALPITSOPLAGFOWARDS
WENOISNEPSUSNGIIPRINTPE
PERIODDEFENSEMENGLOVESMTM
EYASLOVERTIMECGNIWOBLE
OFFSIDEROCSGSTOKTOAEAEEO
JIGHSRESTULNHCNNTHKISCU
AEHEEELREDOISNETIOCCCNRT
RTRFHATJENTHOADOHAQUIEO
ERESPFEAFOKGKENRZCCPFFFFH
NRSCEAFKCIUIRGGAWETFNNL
AAHBTYOCISHONCOEROXKOEEO
POMIERESREIERGAIIKOBLOTAL
TSOSCTTGMSSNLLSNBEOISPECT
GLNAETANEAATITEYGIIDNPIHS
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EBMEIEHBGRPKOSUMLKKGGZGE
ROPPPOWERPLAYTUEPTKNEEING
ARENA
ASSIST
BLUE LINE
BOARDING
BOARDS
BODY CHECK
BREAKAWAY
CENTER
CHARGING
CONTACT
CREASE
DEFENSEMEN
DEKE
EJECTION
ELBOWING
ENFORCER
FACE MASK
FACE-OFF
FOREWARD
FOUL
GAME
GLOVES
GOALPOST
GOALTENDER
HAT TRICK
HELMET
HOLDING
HOOKING
ICE RINK
ICING
JERSEY
KNEEING
LEAGUE
LINE CHANGE
LINESMAN
MISCONDUCT
NHL
OFFENSE
OFFICIALS
OFFSIDE
OVERTIME
PASS
PENALTIES
PENALTY BOX
PERIOD
PLAYER
POINT
POKE CHECK
POWER PLAY
PUCK
RED LINE
REFEREE
ROUGHING
SAVE
SCORE
SKATES
SLAPSHOT
SLASHING
SLOT
SPEARING
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WINGS
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