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CRUEL, UNUSUAL, AND INEFFECTIVE

You know you might be in trouble as a correctional system when one of the most notorious prisons in the US has begun to implement more progressive policies than yours. Rikers Island, the massive corrections complex that reeks of urine and desperation (known to any Law and Order aficionado), has been mandated by the New York corrections board to abolish segregation (otherwise referred to as solitary confinement) for inmates under twenty-one years of age. Meanwhile in Canada, we are ramping up our use of the controversial correctional tool as crime rates drop.

To be sure, some inmates need to be in solitary confinement for their own safety and that of others. Correctional officer and inmate safety is, and should be, a top priority. When crime rates seem to be on the decline and the over-incarceration of racialized and Aboriginal people has reached pandemic proportions, however (move to beginning of sentence for clarity?), we must re-evaluate our use of inmate segregation.

Segregation has a particularly deleterious effect on vulnerable inmates such as those living with mental illness. In a recently published article in the Globe and Mail, one inmate described how she suppresses her emotions so that the corrections officers are deprived of “taking satisfaction in her struggles.” When she has reached out for help out of desperation, she says she was not believed because the guards are not accustomed to seeing her as a human being with emotions and needs.

Ashley Smith committed suicide in her cell after

ESTHER MENDELSON > STAFF WRITER

> While solitary confinement is on the rise in Canadian prisons, the question becomes whether it violates prisoners’ Charter rights. Photo credit: Huffingtonpost.ca

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» see SOLITARY CONFINEMENT, page 10
Great Expectations
Managing the aspirational gap between what is and what you expect

Any of us go through our lives setting what we like to label “goals” and “objectives” for ourselves. And for the most part this seems to be a healthy and productive thing to do. Though sometimes these aspirations morph into expectations, very high ones at that, and it is when this happens that we set ourselves up for potential struggles. Often we see this as simply the result of a desire for self-improvement and the risk of disappointment is merely a cost to be paid. Maybe it happens as a result of confidence in what our future holds, or as a result of buying into the narratives that society presents us. It’s hard not to hold certain expectations based on our experiences and what we come to believe that false dichotomies such as “right” and “wrong” exist.

With the recent release of last semester’s grades combined with the flurry of calls for applications for intensive programs, international exchanges, and the Ottawa round of OCIs, this time of the year quite easily lends itself to the act of reflection. It is a fitting time to reassess our life goals and make adjustments where necessary. It can be an appropriate moment to take inventory of these expectations and assess whether they continue to stand up within the reality in which we exist. While some might be rejoicing in the discovery of their success, others are likely recovering from a wake up call that harshly brought them back down to reality. For the most part, it is to those individuals whom I speak because I also stood in this position a year ago, and even though I had not ‘failed’ in any objective sense of the word, relative to the expectations I had for myself, it felt as though I had.

I’ve recently come to reflect on how our expectations can motivate us to improve ourselves, but also how they can equally leave us feeling disappointed when we don’t live up to what we imagined. The problem, as I see it, is that, for some of us, when we face weakness, when we stumble, when we ‘fail’ in our own eyes, we easily slip into a hyper-critical state where we no longer hold ourselves to the rational image of mere mortals. We suddenly expect ourselves to possess all the strengths and qualities of a superhuman being, and when the reality doesn’t match with that image, we shame ourselves for this perceived failure, entering into a vicious cycle that only serves to make matters worse. Much in the same vein as perfectionism, failure to turn our high expectations into reality has the very real risk of bringing stress, disappointment, or unhappiness into our lives.

Moreover, these expectations can, at times, be counter-productively high. They can stand as a barrier that holds us back from taking a different path; from gaining experiences that arise from simply remaining open to new opportunities that lie outside what we would have imagined for ourselves. The ‘failure’ is not an option’ mentality accompanying many top performers can potentially have the effect of binding these students to a very strict script they have created for themselves out of a fear of treading into the unknown and making a mistake. Sometimes we find ourselves so entrenched in the vision of a future that may or may not exist that we refuse to acknowledge or take advantage of paths that might lead us astray from what we perceive to be our destined outcome. I can understand the appeal of finding comfort within a world of uncertainty through this type of thinking. Admittedly, it is far easier to persist through adversity when we visualize the fruits of our labour waiting for us at the end. However, one of the many valuable lessons I learned from art school was that embracing, rather than fearing, the unexpected is a trait among those who find themselves further ahead in the pack. I would argue that an ability to spot and adapt to the surprises that come our way is a greater determinant of our success and happiness than the sheer “sweat of the brow.”

Compounding the problem is the inherent nature of law school. When we stop and think about how we attribute meaning to the success we achieve in our lives, it becomes clear that we assess the value of our achievements relative to our expectations and the expectations of others around us. In essence, while we complain about being graded on the curve, for many of us, we have already engaged in a comparison process that subjectively measures our performance against our peers prior to walking through those front doors. Law school seems to have the uncanny ability to self-select its students based on these characteristics. It is in that light that I often tell myself that I am somewhat of an outlier; though I don’t say this with absolutism. Admittedly, there have been times when I fall into the very mindset of which I have been describing. However, for the most part, and I’m sure anyone who knows me can attest, my response to the pressures arising from the expectations that constantly surround us is, paradoxically, to hold low expectations. I don’t
Less than a week after it came into effect, Canada’s new copyright notice-and-notice system, which requires Internet service providers to forward warning notices issued to customers by rights holders, was already marked with controversy. Described as a “loophole in the new law,” the government’s failure to implement statutory regulations addressing the content of these notices has allowed the system to be subject to abuse.

First revealed on his blog on January 8, Michael Geist identified the U.S.-based anti-piracy firm Rightscorp as the first to use the new system as a way of forcing Canadian ISPs to participate in a practice that is pejoratively known as “copyright trolling.” Acting on behalf of TMX Group Rights Management, Rightscorp required ISPs to forward notices issued to their customers warning them of potential liabilities for alleged copyright infringement. The first part of the controversy lies in the fact that these notices falsely state Canadian law—describing U.S. penalties of up to $150,000 per infringement rather than citing Canada’s $5,000 statutory limit on liability—and fail to inform the customer that these are merely allegations that have not yet been proven in court.

The system was justified as an attempt to educate the public about copyright infringement and raise awareness about its deleterious effect on the Canadian economy, yet Rightscorp’s actions demonstrate just how poorly the system operates to achieve that purpose.

As an aside, it is interesting to note that Rightscorp is no stranger to controversy. While self-proclaimed as the leading provider of “monetization services for artists and holders of copyrighted Intellectual Property,” many describe the company’s practices as nothing more than copyright trolling. In March 2014, the California-based company announced that it was seeking to expand its services into Canada and retained Gowling Lafleur Henderson LLP as its legal counsel. Looking back on the course of events, it’s arguable that Rightscorp was simply positioning itself in anticipation of the new system coming into effect.

Unlike cases involving a Norwich order where, as a result of the decision in TekSavvy, demand letters are subject to defined safeguards, the letters issued in the notice-and-notice system receive no oversight ensuring that customers are not intimidated into making payments without the benefit of understanding their legal rights and obligations. In essence, for companies who operate under a model involving the issuing of demand letters and the threatening of litigation, the notice-and-notice system provides the ability to do an end-run around the user protections created in TekSavvy.

To appreciate the second aspect of this controversy, it is important to understand the events that led up to the system coming into effect at the beginning of this year. The notice-and-notice system was one of several reforms to Canadian copyright law contained within the Copyright Modernization Act, also known as Bill C-11. While the majority of these changes took effect in 2012 with its passing, the notice-and-notice provisions were deliberately held back in order for the government to engage in a consultation process regarding the possibility of issuing statutory regulations.

Nearly a full year later, through Industry Canada and Canadian Heritage, Industry Minister James Moore launched a consultation process where submissions were made by several parties recommending that statutory regulations be issued that, among other things, prescribed the contents of the notice forms, and relieved ISPs of liability for failing to forward notices where they were shown to be intentionally misleading or threatening.

As the law is currently written, notices are only required to include: the claimant’s name and address; identification of the material alleged to be infringed; the claimant’s interests or rights in that material; the location data for the electronic location relating to the alleged infringement; the infringement that is claimed; and the date and time when the alleged infringement occurred. Although there are no restrictions that preclude a rights holder from including additional information, there are no penalties for making false or misleading statements in these notices. Further, an ISP is not given any discretion with respect to these notices and faces liabilities of between $5,000 and $10,000 for failing to forward a notice that has
Diversity Key in Legal Resources

Let’s celebrate the diversity of Canadian families on this Family Day

NABILA KHAN & SABREENA DELHON »
CANADIAN FORUM ON CIVIL JUSTICE

In 2013, British Columbia’s Premier Christy Clark established the province’s Family Day holiday with a throne speech that celebrated the diversity of Canadian families, “large and small; same sex; culturally diverse; foster families and adopted children; new Canadians coming to a new world; a single mother caring for her young daughter; a son caring for his aging father.” As we approach Family Day it is important to reflect on the reality that with diverse families comes the need for informed supports that appreciate and reflect that diversity.

For individuals dealing with problems relating to separation, child custody, shared property or domestic violence, there are organizations that they can turn to for social and psychological support. In addition, these organizations also offer support for the derivative legal aspects of those problems. These organizations understand that familial issues are part of everyday life and that these issues often have a legal aspect that isn’t always readily apparent to most Canadians.

Community Legal Education Ontario (CLEO) is working to help Ontarians recognize and respond to the legal dimensions of family-based problems with their resource rich website, Your Legal Rights (www.yourlegalrights.on.ca). The site coordinates practical and easy-to-find legal information produced by hundreds of organizations across Canada. In addition to family law matters, the website features information on potentially related topics including criminal law, education law, employment law, housing law and human rights. Your Legal Rights also features news, events announcements and details about upcoming public education webinars in Ontario.

Ontario’s Ministry of the Attorney General (MAG) (www.attorneygeneral.jus.gov.on.ca) also provides free and accessible legal information. MAG’s clear language resources focus on family justice services such as family arbitration, and processes for separation and divorce. There is also up-to-date information about how to access support from Family Law Information Centres and organizations such as the Canadian Paediatric Society.

Legal Aid Ontario (www.legalaid.on.ca) provides details about numerous specialized legal clinics. These clinics provide legal information, counseling and legal representation to low-income individuals in need of particular services. These clinics also work to reflect the diversity of Ontario’s families by providing services such as multilingual interpretation.

The creation of a more accessible family law system is a work in progress, but on this Family Day let’s reflect on the great strides that have been made in our province and across the country to reflect the diversity of our families.

THUMBS UP

The 2015 Osgoode Ski Trip.

The 2015 Dean For A Day Contest

TRADE PLACES WITH THE DEAN AND RULE OSGOODE FOR A DAY!

Dean Lorne Sossin is offering one lucky student the opportunity to set forth his or her vision of the future of Osgoode Hall Law School and an entire day to make it a reality.

Continuing a tradition that was originally established by former Dean Harry Arthurs, the winning student will assume direction of the Law School for one day. He or she will be able to:

• Occupy the Dean’s office
• Chair meetings of the Law School’s senior administration
• Enjoy a free lunch with a guest
• Star in a Dean for a Day video that will be posted to Osgoode’s YouTube channel
• See Maroon 5 on Monday, March 16 at the Air Canada Centre with a friend

Meanwhile, Dean Sossin will go back to school, attending the student’s classes for that day, armed with numerous multi-coloured highlighters, sticky notes and his trusty iPad for taking copious notes.

CONTEST RULES:

• All Osgoode students are free to enter.
• Contestants are required to submit a written essay (maximum 500 words) – or a short video – on the following topic: “If you were Dean of Osgoode, what new ideas would you pursue to build on Osgoode’s 125-year legacy in diversity, inclusivity, and accessibility?”
• Essays or videos must be submitted to Virginia Corner in IKB 1016-B or by e-mail to vcorner@osgoode.yorku.ca no later than 11:59 p.m. EST on Tuesday, February 24.
• All submissions will be reviewed by Associate Dean Trevor Farrow and Assistant Dean, Students Mya Rimon who will select the winning entry. The name of the winner will be announced on Friday, February 27 and the winning essay will be published in Obiter Dicta.
• The winner will serve as Dean for a Day on Thursday, March 5.

Win a pair of tickets to see MAROON 5
Air Canada Centre, Monday, March 16

Follow #ozdean4aday for updates
Textbook prices are too damn high! (or are they?) Despite student perception, an analysis shows that students are not paying more for textbooks than students a decade ago

HENRY LIMHENG > 2L STUDENT CAUCUS REPRESENTATIVE

As school returns for the Winter semester, there are the familiar sights of students trying to procure textbooks. It is not uncommon to see posts on Facebook of students both looking to sell or buy used books. Students also have the option of purchasing new textbooks and coursepacks from the MDC, now operated by the York University Bookstore. While relative to tuition, the cost of textbooks is a small expense; but in a world of $23,599 tuition, every additional cost is of concern for students.

The cost of educational textbooks generally has nearly doubled over the past decade, out-pacing other goods such as automobiles or food, according to data out of the United States. A number of factors contribute to the high and increasing cost of textbooks: one reason is that professors choosing textbooks are often not aware of the price since they are usually provided a free copy; and additionally, in Canada, foreign-published textbooks are subject to a 10-15% import tariff because of provisions in the Copyright Act.

However does this trend of skyrocketing prices hold for law school textbooks? The answer: not really. Looking at a popular law school casebook, Cases and Materials on Contracts, 5th edition (Waddams, et al: suggested retail price $112, retails at MDC for $113.25), the casebook saw only a 24% increase in price ($22) since the year 2000. This increase is less than the inflationary increase over the same period of roughly 30%. This means that students purchasing the casebook in 2015 are actually paying less in real monetary value for the book than fifteen years ago.

Speaking with retired Osgoode Professor Paul Emond, co-founder and President of Emond Montgomery Publishing (EMP), the publisher of the Cases and Materials on Contract series of casebooks, he does not see the “price-gouging” going on that is often associated with the textbook market. Addressing the increase in price for the various editions of the Contracts casebook, Emond explained: “[EMP] has taken on added costs in introducing new features such as e-book access and, new to the 5th edition, links to CanLii of the full text of decisions”, features that Emond notes are not available from their competitors.

The Canadian legal textbook market is dominated by three main publishers: EMP, LexisNexis, and Carswell. LexisNexis publishes a contracts casebook, whose 8th edition retails for $145. Carswell also publishes a competing contracts casebook, whose 9th edition retails for $139.

The explanation for why law textbook prices have remained relatively low compared to other subject areas is unclear; perhaps the tight competition between publishers, and that most legal textbooks used in Canadian law schools are domestically published, are partial explanations. In addition, publisher tactics often maligned by students, such as yearly revisions of editions and CDs with “extra” content, do not appear to be readily used for legal textbooks.

In addition to the tight margins, textbook publishers also have to deal with increasingly price-conscious students who already engage in a robust used-book market. Furthermore, initiatives such as “book rentals”, where students pay a cheaper price to rent a textbook for a term and then return it at the end of the semester, with the book then rented to another student, have gained in popularity. Though this has yet to gain traction among law students at Osgoode.

EMP has explored additional methods of providing cheaper textbook for students. The publisher has started offering some of its materials at cheaper rates for e-book only versions, and even cheaper rates for an e-book version that is only accessible for a 1-year licence. The Cases and Materials on Contracts textbook for instance is available for $95 for an indefinite e-book, and $73 for a 1-year e-book. “[EMP] is very conscious of the student experience”, said Emond, “we’re a small, Toronto-based publisher that tries to provide a quality product at a reasonable price.”

The rising cost of law school is of ever increasing concern for students. While it may be illegitimate to speak of “rising” costs in relation to textbooks, concerns over the price of books generally, which often hovers around $100 for most textbooks, for what many students see as mostly reproductions of freely accessible information, remains a sore spot. Perhaps the only solace is that the proliferation of e-book versions has made bringing your “books” to class, a lot less heavy.

The Price of Cases and Materials on Contracts Over the Years

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* Historical data for the 1st edition was unavailable.
** Hardcopy comes with e-book access.

The new Google Chrome update.

THUMBS DOWN
Winterlicious is Coming
Subtitle goes here

MARIE PARK › ARTS & CULTURE EDITOR

HAVING NO PRIOR experience with Winterlicious, it is fitting to that “I know nothing.” Not only that, but I am hardly a foodie, nor do I have a big stomach for anything. People who really know me note my lack of appetite, actually, and at home I’m known to be a serial picky-eater. But these bad habits (of which I’m sure you, the readership, likely have to one extent or another) need to change, and I’m thinking that picking up the foodie lifestyle might help with just that.

Winterlicious is here, a fact that is hard to miss. It’s all over the web and in print features, and rightly so, as it is one of the best loved and most anticipated culinary events our city has to offer. I foreshadowed its coming earlier in the Obiter’s first issue of the new year, and this time I hope to provide some helpful guidance to you (and myself) on how to make the most of the two weeks of good food and good fun.

As a refresher for those not in the know: Winterlicious is a city-wide event where some of the best restaurants offer lunch and/or dinner prix fixe three-course menus. This is a great way to explore the amazing food landscape of Toronto’s many fine dining and specialty eateries without breaking the bank. The City of Toronto website has a page set up for this event, through which you can search for restaurants, browse menus, and make reservations online. Visit the website at Toronto.ca/Winterlicious.

Annie Chu, Osgoode grad and gastronomic guru, recently wrote a post for her blog – Chu on This – about the best way to make the best of the best. She gives us five really important, yet simple, points to consider:

- Make reservations in advance;
- Being on the Winterlicious list doesn’t mean it’s good;
- Being good doesn’t mean it’s worth going for Winterlicious;
- Pay attention to the vegetarian options; and
- Don’t forget the dessert!

The best options are often booked out, especially for the best times like Friday evenings, so make sure to call ahead for seats. Participating restaurants have been accepting reservations since mid-January, so the time to call is now!

Also, Annie notes that just because a restaurant is participating in Winterlicious does not mean it will be good. The popularity and success of the event has grown so much over the years that now, there are more than two hundred restaurants across Toronto (and beyond the core) with Winterlicious offerings - do your research before you reserve, lest you be disappointed. Likewise, the popularity of Winterlicious sometimes makes a good restaurant too busy to be enjoyable, or renders the prix fixe menu to be sub-par compared to its already amazing regular offerings.

Be sure to read Annie’s post for more, including an amazing cheat-sheet to help you decide on your gustatory experience. Also, follow her blog for in-depth restaurant reviews, at ChuOnThis.ca!

Moving on now, I would love to be able to make a reliable, credible list of the best places to go this year, but I’m hardly qualified for such a task!

Thankfully though the internet is full of restaurant reviews, and many “best bets for Winterlicious” pieces and the sort – so I encourage you to get surfing and scope out your own picks accordingly. However, I can provide some other helpful things to keep in mind.

Firstly, never forget that too much of a good thing is never good! Don’t try to handle more reservations than you can healthily manage. Dining out should remain a special treat, and just because Winterlicious lasts only two weeks doesn’t mean that these restaurants are going anywhere after that. Also, make it more than a food experience. The pleasures of a good meal go/extend beyond what’s on the plate, and have to do with whom you enjoy that experience. Make Winterlicious a chance to get closer with your family, your buddies, or a significant other.

Another thing is etiquette – providing value priced but high quality, three-course meals is not an easy business operation for most establishments, and as good gentefolks we should all respect that. Just because the food was cheap doesn’t mean you should tip less, and just because the place is busier than usual (as it often is for Winterlicious) doesn’t mean you should sit grumpy for your entire meal. Also, with such volumes of customers and orders, be kind in general – if your order is not to the tee, be civil about it – the kitchen is likely hellishly hot and busy.

Lastly, my final tip is to be thankful for the food. We live in a world of plenty, where sometimes we have too much to eat that we get ungratefully selective about our food. Winterlicious is a celebration of the culinary diversity of Toronto. It reminds us that every meal is special, and to savour every bite of life.

“Winterlicious is a celebration of the culinary diversity of Toronto.”

THUMBS DOWN

No Oscar nomination for “The Lego Movie.”

Photo credit: notable.ca

Photo credit: notable.ca
A Trio of Film Reviews, Currently in Theatres

Laughter, Tears—and Bottles of Vodka

KENDALL GRANT > STAFF WRITER

Leviathan (2014) 4/4

Unflinchingly tense, staggeringly well-made, thought-provoking, and brimming with emotion, *Leviathan* is a Chekhov-style family tragedy; a subtle, extremely barbed satire exposing criminality in contemporary Russia; a film possessed of both classic sweep and sharp modern relevance. Filled with a desolate beauty, it’s a stupendous piece of work, a tale for vertiginous times, a grave and enormous epic that’s impossible to ignore.

Not to be confused with the acclaimed 2012 whaling documentary, although likewise dealing with submerged monsters, *Leviathan* gathers like cautionary thunder about the dangers of fighting city hall corruption. Loosely inspired by the Book of Job and set against the Barents Sea, the grim Russian narrative recounts Kolya (Aleksei Serebryakov), a man striving to protect his home from a behemoth: the belligerent town mayor, Mer (Roman Madyanov), who swills vodka like water and swagger like a despot. Confronted with the imminent threat of demolition, Kolya recruits a slick Moscow lawyer, Dmitri (Vladimir Vdovichenkov), to help, but his arrival brings further misfortune.

Directed by Andrei Zvyagintsev (*The Return, Elena*) with cynicism, religious fervour, and an unflinching ambition, the incendiary and bone-rattling *Leviathan* is a trenchant and tough-minded tragedy, a black social comedy, and a thinly-veiled political parable drenched in bitter irony. Zvyagintsev credits Thomas Hobbes’ 1651 tome of the same name for inspiring its outlook on governmental control; its rolling scope, astonishing cinematography, andcommanding performances make for a giant of a film, like *A Serious Man* meets *House of Sand and Fog* meets *Revanche*.

"... *Leviathan* presents modern Russia as a country rotten to its core…"

Stunningly shot and wrenchingly acted, especially by Madyanov, this is searing filmmaking executed on a grand scale. Mikhail Krichman’s cinematography captures the sublime grandeur of the landscapes. Zvyagintsev combines allegory, brutal melodrama, black humour, and striking compositions, each frame dense with meaning. Yet amidst the immaculate craftsmanship, he never loses sight of the humans, who are allowed to display improvisatory behaviour that deepens the majesty of the rigorously orchestrated tableaux. Indeed, the performances are knock-out, and the script drum-tight, a Best Screenplay winner at Cannes.

Mammoth and muscular, haunting and heartbreaking, frustrating and painfully funny, *Leviathan* has a feeling of expansiveness; its power and its horrors sneak up on you. It’s a dense, multilayered picture, one firmly rooted in a specific landscape, a dramatic coastal spot dotted with the carcasses of decrepit fishing boats, as well as the magnificent skeleton of one long-dead whale. Absolutely gripping and emotionally devastating, *Leviathan* is visceral, rebellious fare, a modern classic weaving together rich characters, thriller elements, witty satire, and political bite. It’s indisputably one of the great films of the year.

Taking aim against the corrupt, corrosive regime of Vladimir Putin, *Leviathan* presents modern Russia as a country rotten to its core – corrupt, hypocritical, and godless. As sobering as a week-long hangover, it’s a symbolically sophisticated portrait of a state that puts bureaucracy before community, about an unforgiving pyramid structure that helplessly crushes the little guy, with God, or at least the Orthodox Church, perched on top.

After offering a number of potentially heroic narratives, Zvyagintsev takes pleasure in undercutting each of their claims to supremacy. He is the calm surveyor of a fallen world, and *Leviathan* never writes out of control. But Zvyagintsev’s pessimism is leavened by both his compassion and glancing comedy, as well as his sense of cold beauty of setting and bold, curious themes, which leave a lasting wonder.

Like so many Russian works of art, this is bleak, unflinching ambition, the incendiary and bone-rattling masterpiece that as often as comedy fails us, takes pleasure in undercutting each of their claims to supremacy. **Top Five (2014) 2.5/4**

Savvy, scathing, and scurrilously funny, *Top Five* is a pyrotechnic pinwheel of a personal comedy, reverberating with savagely prowling wit and sabre-sharp one-liners. It’s a crude, clumsy, culturally tone-deaf reminder that as often as comedy fails us, the court challenge to the Beer Store monopoly.

The court challenge to the Beer Store monopoly.
Jurisfoodence: In Search of Toronto’s Best Brunch

Food Adventure #9: Smith

KATE HENLEY & KAROLINA WISNIEWSKI › STAFF WRITER & EDITOR-IN-CHIEF

Smith
(553 Church St.)

KATE: After hearing Karolina rave about the huevos rancheros at Smith for the past few months, we decided it was time to check it out. Located in the Village inside what looks like an old townhouse, it would be hard to miss if you weren’t looking for it (I almost did).

KAROLINA: It’s true, I hyped up Smith significantly. This wasn’t just because the food is awesome, but also because it holds a special place my heart. Smith was where my friends and I met for the obligatory Dean’s Formal morning-after brunch. Many of them have graduated, so nostalgia was tugging at my heartstrings – I miss having them around Osgoode. But more importantly, we had a blast trying (very much in vain) to piece together our fragmented memories of the night before, something I haven’t had so much trouble doing since my time as an undergrad. Smith was also where the former editorial board of the Obiter gathered for our first meeting, so it holds a special place in Obiter’s history, too.

Brunch Hours
Smith serves brunch 9am-4pm on Saturday and Sunday.

Wait Time/Service
KATE: Smith takes reservations, which is always amazing – except when they don’t seat you at your reserved time because your whole party hasn’t arrived yet. I’m sorry, but doesn’t that defeat the purpose of a reservation? Personally, I would love to sit and have a coffee while I wait and, assuming that you aren’t going to seat someone at the table that I reserved, why can’t I sit down? This was made worse by the fact that there is no foyer in Smith, and we were required to pile up the stairs.

KAROLINA: It does seem like a silly, yet pervasive policy. Though it did grind my gears, I have to sing Smith’s praises for taking reservations at all, which trumps the no-seating-till-you’re-all-here policy, in my opinion. It’s such a rare thing for popular brunch spots to do reservations. I get it – reservations are a matter of customer convenience and run counter to the interests of a restaurant. Consequently, if the demand is high enough and people will flock to a resto regardless, economics dictate that many won’t bother with niceties like reservations. But I like that Smith is classier than that.

KATE: Honestly, if I had the opportunity to have a coffee before arriving I probably would have been alright with the short wait. Regardless, once we were seated, our server was great. Our food and drinks came in a timely fashion and she was super friendly. Absolutely no complaints here.

KAROLINA: Agreed, she was attentive and helpful, but more importantly, sassy and ridiculous in the best way.

Atmosphere
KATE: This place is really cute: like the Drake, they had funky light fixtures, as well as comfortable booths. I also really liked the wooden tables and the unique place settings – everyone got a different plate and a mishmash of cutlery. Because the first floor (where we were seated) is relatively small, it was pretty loud, but this might actually be a positive because you don’t feel like people are listening in on your conversation.

KAROLINA: It’s true, this place has a lot of energy. It feels authentic, like you’re sitting in a London pub.

Aquafina and David’s Tea
Smith serves brunch 9am-4pm on Saturday and Sunday.

KATE: We ordered coffee, orange juice, and a mimosas. I got a Caesar, and it was perfect. As a Caesar purist, I’m really not down with the current trend to reimagine and embellish Caesars with everything from Doritos seasoning...
The glory past of the Toronto Blue Jays
A look into the team’s ascension to greatness and its heydays

PART ONE: ESTABLISHING AN IDENTITY AND A WINNING CULTURE

KENNETH CHEAK KWAN LAM • STAFF WRITER

As a die-hard supporter of the Toronto Blue Jays, who has followed the ball club for nearly three decades, I believe they have come a long way since playing their first ever regular season game at Exhibition Stadium on April 7, 1977 when the field was covered with snow. While the franchise is still a long way from matching the New York Yankees’ twenty-seven World Championships, Toronto achieved some impressive feats in its thirty-seven years of existence: five American League East division titles (1985, 1989, 1991, 1992, 1993); two American League Pennants (1992 and 1993); as well as two World Series Titles (1992 and 1993). By comparison, our expansion cousin, the Seattle Mariners, only won one Wild Card Berth (2000) as well as three American League West division titles (1995, 1997, and 2001).

Success eluded the Blue Jays initially as the team came out of the gate with a string of losing seasons from 1977 to 1982. However, the six consecutive sub .500 seasons (including the first three seasons in which the club lost over a hundred games) did not dampen the fans’ faith in the team since Torontonians understood that then-GM Pat Gillick was building an expansion franchise from the ground up and that we needed to be patient as the twenty-five-roster were comprised of draft picks and superfluous players whom other clubs had cut loose. By all accounts, Gillick worked with what he had and the Toronto Blue Jays in the late-1970s to early 1980s were AAA teams from a pure talent perspective.

The first sign in which Toronto was coming into its own as a contender was the 1985 season when the Blue Jays finished with eighty-nine wins, by far the most victories the team had ever gotten. In many ways, we saw emerging signs that the team was on the brink of being competitive even in the preceding season because even though the club finished the 1982 season with a 78-84 record, Toronto made significant improvement in all facets of its game and the seventy-eight victories were eleven more than its previous franchise record of sixty-seven established in the 1980 season. From 1983 to 1993, the Blue Jays had eleven consecutive winning seasons, eclipsing the ninety-win plateau on five separate occasions (1985, 1987, 1991, 1992, and 1993).

In 1985, the team won its first ever American League Pennant after fending off the New York Yankees in a tight late-season pennant race en route to establishing a franchise record ninety-nine wins which still stands today. The Blue Jays also plucked Henke from the Texas Rangers as a free agent compensation pick. On another note, the franchise was extremely fortunate when it was able to convert Stieb into a pitcher (since he was initially drafted as an Outfielder). All in all, while Gillick was certainly very crafty with his master plan when it came to building the team, luck was also on his side. In other words, while you have to be good, you also have to be lucky to be good!

The historic 1985 season marked a turning point in the history of the club as it was the beginning of Toronto’s glory days. To understand why the Blue Jays were much more than just a one-hit wonder, be sure to tune in to Part 2 of my article. ♦
Solitary confinement

continued from COVER

one hundred days in solitary confinement as the guards stood by and watched. She was 19 years old. Her death (by self-induced asphyxiation) was deemed a homicide by a Coroner’s Inquest in 2013. She died eleven years after the publication of a report by former Supreme Court Justice Louise Arbour on the Kingston Penitentiary’s women’s prison. The report recommended that inmates not be kept in solitary confinement for over thirty days and no more than twice a year.

The UN committee tasked with examining this issue echoes the findings of the Arbour report. The Optional Protocol to the Convention Against Torture, which Canada is being urged to sign, outlines the negative impact segregation has on inmates. The Canadian Medical Association seems to concur, calling segregation “cruel and unusual.” For those unswayed by the human facet of this issue, there are also practical reasons for opposing the undiscerning use of segregation. It seems that solitary confinement, when used improperly, causes more problems than it solves. It makes it more difficult for inmates to readjust to the general prison population and to life after prison. Some experts link segregation and recidivism. Moreover, inmates in segregation are often prevented from participating in rehabilitative programs (which are already rare and underfunded as it is). Although this can be justified in certain circumstances, these programs are all society has to rely on when inmates are released. Every step should be taken to ensure inmates, even those in segregation, receive the treatment, counselling, and help they need to re-acclimate to the world on the outside.

For those interested in criminal law, these issues are ever pressing. With over 90 per cent of cases ending in either a guilty plea or conviction, and coupled with the rise in mandatory minimums, the prison system and life therein must be critically examined.

Currently, little is known about the decision-making procedure, if any exists, for determining who will be put in segregation, for how long, and under what type of conditions. Even if limits were to be placed on the use of segregation, there should be more transparency and oversight, and perhaps even avenues for appeal or accommodation where needed and justified.

The British Columbia Civil Liberties Association and John Howard Society have launched a challenge to Canada’s use of segregation, and the application to leave will be filed as this issue goes to print. The BCCLA previously (and successfully) sued the Government of Canada on behalf of Bobby Lee Worm, a young Aboriginal woman who was held in solitary for over three and a half years.

The current challenge, which argues that segregation violates sections 7, 9, 10, 12, and 15 of the Charter, is an example of civil society actors using the law to effect change where there is little, if any, political will. The case will likely find its way to the Supreme Court and the BCCLA will need to make particularly compelling arguments, given the current composition of the Court. The current government has made some laudable reforms to the Criminal Code (parts of the cyber bullying amendments, for example), but their sometimes misdirected or poorly implemented tough on crime approach is also at the heart of this problem.

While society certainly has an interest in preventing, denouncing, and deterring criminal behaviour, the real question is how we aim to do this. There has been a shift away from the punitive approach, with many scholars and judges favouring the rehabilitative model. Segregation runs counter to this approach and only serves to fuel criminality. Limits on its use and greater transparency are urgently required.

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Above: Josh Paterson of the BCCLA speaking at a news conference in Vancouver. Photo credit: The Toronto Star.

Below: A disproportionate number of inmates kept in isolation struggle with mental health conditions. Photo credit: straight.com
been issued to one of its customers. This is of significance because, previously, in order to send a demand letter to an alleged infringer, rights holders would be required to obtain a Norwich Order to obtain the identity of that individual from the ISP. However, there is no longer a need for rights holders to know these identities since ISPs are obliged to comply with the new law. In light of these considerations, the potential for the system to be abused by copyright trolls becomes readily apparent. In fact, it would seem that the rules create a perverse incentive for copyright trolls to abuse the system in this way.

Despite a lengthy consultation process, in the end, none of these recommendations were implemented and, instead, Moore chose to bring the law into effect in its current form with no further regulations. As Geist pointed out during the consultation process, the language used in the request for submissions strongly implied that there was little interest in departing from the form initially proposed. However, it is not evident that this was always the attitude. Through documents obtained under the Access to Information Act, Geist reveals that an earlier draft of the letter stated, “It is important that the system be balanced and functional for both copyright owners and Internet intermediaries.” This was subsequently rewritten to read, “It is our goal that a system be in place that is both balanced and functional; but, most importantly, it must endeavor to deter infringement. It is not clear at this time that regulation beyond the legislation will help better achieve this.” Without further information, one can only speculate on what prompted a change in focus from balancing the interests of all parties to simply protecting the economic interests of the rights-holder.

What all of this shows is that Moore stood in a position to implement the necessary reforms to the notice-and-notice system that would have prevented rights-holders from using ISPs as instruments for copyright trolling. As it currently stands, the government is left looking a fool for allowing such a situation to develop after not only having fair warning from ISPs and other stakeholders, but it was also revealed that Industry Canada had prepared a memo outlining these very issues as early as July 2012. The fact that Moore now faces the very predicament he was advised of speaks either to the Minister’s arrogance or stupendous ignorance in these matters. That aside, the real question is how the Minister intends to resolve this controversy. Reflective of true Canadian politics, Moore publicly announced the government’s disapproval of misleading practices such as those seen by Rightcorp, but this amounts to little more than casting a dirty look in the company’s direction. A proper response should do more than just identify bad behaviour; it should seek to prevent it from occurring at all. It has been suggested that the most obvious solution would be to do what should have been done in the first place—implement the very regulations that were so quickly and easily dismissed by Moore back in June 2014. In the meantime, while ISPs have no authority to make substantive corrections to the content of these misleading notices, they are taking the initiative to include additional information that advises customers of their legal rights. Though not a perfect response to the problem, it will have to suffice until Moore decides to take a more meaningful stance on the issue. Clearly he has been sent the proverbial memo, he merely needs to pull his head from the sand and actually read it.
Film reviews

Top Five tells the story of New York City comedian-turned-film star Andre Allen (Chris Rock, Madagascar), who tries to make it as a serious actor when his reality TV star fiancée (Gabrielle Union, Sin City, Unstoppable) forces him to confront the career— and the past— that he’s left behind.

Screened in the Special Presentations section at TIFF, Top Five is the nearest we’ve come to hearing writer-director-star Chris Rock’s authentic comic voice on film. It’s a career highlight for its creator, as good as Rock’s best standup work. Top Five bridges the gap between his on-screen and stage personas, and Rock is killer: enormously appealing, balancing his patented abrasiveness with a real tenderness, proving that his comic groove is stronger than ever.

Dawson also makes the most of her lay therapist love interest character, transcending caricature and achieving a charming, intriguing mix of vulnerability and poise. Most filmmakers bungle the opportunity to capitalize on Dawson’s talents, other than filling up the screen with her goddess-like beauty.

In Rock’s hands, she’s stubborn and endearing and a force to be reckoned with.

Raucous, raunchy, and relentlessly filthy, Top Five is also semi-autobiographical and buoyantly self-sustaining. Like an airdrop of candy over the city, it mixes the sweet with the salty, the naughty with the remarkably kind. Genial, energetic, and sharp-eyed, it feels freshly minted because the man who made it has such a lively mind and fearless style.

It’s one of the comedy standouts of 2014.

Top Five strikes one like a revenant from Hollywood’s golden age, when entertainment’s highest function was not to bully or educate or discourage or overwhelm, but to entertain. The best surprises are a hotel room reversal with Cedric the Entertainer, a sexual act of revenge involving a tampon and a liberal dousing of hot sauce, and a behind-bars, croaking rendition of Charlie Chaplin’s anthem “Smile” from a notorious gangsta rapper with a long history of arrests.

It’s disorganized, undisciplined storytelling saddled by a conventional plot and contrived settings—the celebrity cameos, including the “jokester tri-fecta” of Adam Sandler, Whoopi Goldberg, and Jerry Seinfeld, yield as many laughs as a five-car pileup and it doesn’t go deep with its smirks and scowls, but the very screenplay is loaded with topicality as it pokes fun at subjects ranging from Tyler Perry to Angry Birds. Skillfully dancing the line between harsh and hopeful, Rock delivers his medicine with a spoonful of honey.

Top Five finds Rock in elevated form. Ragged around the edges and haphazardly hilarious, it’s like dropping in on a party full of funny people, and leaving before the evening fades. Sometimes things change for the better. For better or worse, Top Five is the Chris Rock movie we’ve been waiting for.

Two Days, One Night (2014) 3/4

Nourishing, plain-spoken, and impossibly resonant, Two Days, One Night is a pared-down, socialist epic in miniature; a triumphant drama about workplace injustice, bullyboy tactics, and rallying self-worth that saddens as it informs. Scruffy, scrappy, and socially aware, it’s a working-class tale that’s as straightforward as a fired bullet with an exit wound the size of a grapefruit.

After a medical leave during which she was treated for depression, Sandra (Marion Cotillard, Midnight in Paris, Contagion, Rust and Bone) has returned to work to discover that the company has offered her co-workers a choice: if she is laid off, they will receive the €1,000 bonuses they have long been promised; if they give them up, she can keep her job. A vote has already been held among the 16 members of Sandra’s work team, but her boss agrees to a second ballot, giving Sandra a weekend—two days, one night—to persuade a majority of her colleagues to make a painful sacrifice on her behalf.

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Two Days, One Night is a gravitational showcase for one of Cotillard’s finest performances. Desperate, downtrodden, grasping at each shred of hope, Cotillard oozes sadness from the seams, looking drained and drained, leached of allure by the unkind pallor of the lighting. Her shoulders slumped, her gait heavy, her eyes weary, Cotillard—who won an Oscar playing Edith Piaf in 2007’s La Cantatrice Chauve—can be our best hope for resuscitation.

Top Five tells the story of New York City comedian-turned-film star Andre Allen (Chris Rock, Madagascar), who tries to make it as a serious actor when his reality TV star fiancée (Gabrielle Union, Sin City, Unstoppable) forces him to confront the career— and the past— that he’s left behind.
Vie en Rose – is a luminous pill-popping heroine. With her quiet air of embarrassment tinged with pride, Cotillard moves past naturalism into something hard to describe and impossible to doubt.

Enriched by signature qualities – the nonjudgmental gaze, the ultra-naturalistic style – that have always distinguished writer-directors Jean-Pierre and Luc Dardenne’s fine body of work, Two Days, One Night balances the trademark Dardenne’s social conscience with a conceit that plays out almost like a ticking-clock thriller, yet maintains an organic sensibility. If it just misses the utter anguish of L’enfant, Two Days, One Night is up there with Rosetta or The Son in its cast-iron purpose, taking us into the ecosystem of need.

Two Days, One Night delivers its message with clear-eyed compassion, rooted in a staggering sense of solidarity, a consciousness of community that lies at the heart of the Dardenne’s creative philosophy. Its directors once again find a richness of human experience that dwarfs most films made on an epic canvas. In a series of conversations, they offer up a microcosm of an entire population contingent, each vignette a universe all to itself. A Darwinian dissection of corporate politics and a soaring hymn to service and connection, Two Days, One Night makes us complicit in the moral crossroads, demands an opinion, and then upends that same opinion a few minutes later.

Bristling with peril and alive to every flicker of human decency, Two Days, One Night is tough, thoughtful, and truthful, a rare film of unforced simplicity that will stick with you for a long time. Paced like a joke, but playing like a prayer, it’s so purely humane that it makes most attempts at audience uplift look crass and calculated by comparison.

As hugely admirable and superbly composed as we have come to expect from the Dardenne’s, Two Days, One Night is nothing provocative and nothing new in their canon, and the premise feels more manufactured for allegorical reasons than their previous features. There are unnecessary melodramatic hiccups in the second half that disturb the deceptively taut, honed narrative, perhaps the most sculpted screenplay of the Dardennes’ careers.

But the perfectly judged conclusion accomplishes a similar feat to 2013’s Cotillard-starring Cannes contender The Immigrant: the Dardenne embrace a somersault as their dismount, closing off a broken woman’s journey back to herself. It reinforces a battered, hard-won sense of optimism and an unlikely vision of hope while side-stepping a happy ending that would have rung entirely false. Instead, Two Days, One Night retains the ambiguity of an ethical thought experiment, the interpretive open-endedness of a parable, and the limpid clarity of a folk ballad.

The chasm of the wealth gap and the slow destruction of the middle class should matter to all citizens, the principle of “less is more” to all filmmakers. If Two Days, One Night is the most effective vehicle in months to bring home both lessons simultaneously, so be it. What’s even more certain, with every one of Cotillard’s performances, is that we’re looking at a legendary actress emerging before our eyes.

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Great expectations

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mean to advocate complete abandonment of setting goals and working hard towards achieving them, but rather, what I mean to say is that it is possible to attain success without an attitude of expecting to obtain it. Perhaps, for some, the intense pressure of feeling the flame beneath their feet gives them the motivation to reach their peak performance. But for others, having the pressure of meeting a predetermined outcome hanging over their every move is nothing more than an impediment on their freedom to move forward with confidence.

I don’t believe that one approach is any better than the other. Whether you choose to set high expectations or low, I think the decision on which perspective to take depends on what you desire more: self-improvement or self-contentment. These are each worthy virtues to hold and the pursuit of either one shouldn’t be perceived to be a weakness in one’s character. Should you wish to seek improvement and encourage change in yourself and your surroundings, high expectations are crucial. But this also requires accepting the risk of feeling disappointed. However, if you feel satisfied with your position in life, lowering your expectations helps to insulate against the negative consequences that failure can bring about. It’s all about managing your expectations; the gap between what is and what could be, what you have and what you expect.

The Food

Taylor Swift’s recent trademarking spree, including “Nice to meet you. Where you been?”

Jurisfoodence

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to nori. This just obscures the delicious simplicity of the drink. So I was thrilled to find that Smith offered a classic Caesar, and one that was done very well.

The Food

Kate: I got the omelette of the day, comprised of mushrooms, herbs and goat cheese; it came with hash browns and fruit, and I got a side of toast. The omelette was good (though nothing to write home about) and the hash browns were better than most I’ve had on my brunch adventures in Toronto. Weirly, what stood out most was how perfectly toasted my bread was – something you don’t appreciate it until you get it.

Karolina: Disclaimer: I was so pumped for the huevos, I would have probably loved them even if they tasted like cardboard. With that caveat out of the way, I really don’t think they did. They were great. The eggs came poached, the tortillas warmed, the guacamole fresh, the beans flavourful, and the cheese sinfully gooey. This is probably the time at which to disclose that I detest runny yolks, so I was happy that they came hardened. However, if underdone eggs are your thing, you might want to remind the server. But the flavours managed to retain their distinctness (unlike this dish’s counterpart at School), while complementing each other well. The standout for me, though, were the tortillas. They’re
made from corn (celiacs rejoice!) and added such great flavour and texture; they really tied the whole thing together. In sum, though I’m sure the Smith HR pales in comparison to the genuine Mexican article, I’d venture to say these are some of the best ones you’ll find in the city.

Cost

Kate’s meal: Omelette + side of toast + mimosa (- coffee) + tip = $33.01

Karolina’s meal: Huevos rancheros + Caesar + tea + tip = $35.75

Final thoughts

Kate: I liked it and I would probably go again, though it is a bit out of the way for me. Like Karolina, I would say that it is among the top brunch spots I’ve been to in Toronto; nothing has come close to Big Crow yet though.

Karolina: For me, Smith ranks high on the Toronto brunch scale. Big Crow has become our de facto gold standard, and while Smith might not have blown me out of the water in quite the same way, I was more satisfied with it than I have been with recent Jurisfoodence jaunts. It nailed atmosphere and service in a way that School tried to and Drake simply couldn’t because of its overexposure. And the food was better than either of those. It feels both impossibly hip and comfortably familiar all at the same time. It’s a beautiful place with gorgeous food, so go.

The collateral damage from a triumphant gastronomical battle where everyone left a champion.
The Davies summer experience?

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