ONTARIO’S NEW
SEXUAL EDUCATION
FROM VULVAS TO BUTT-SEX

For the first time since the Spice Girls reigned supreme, Ontario’s students through grades one to eight will have a new Health and Physical Education curriculum. On 23 February the new curriculum was released. It details learning correct terms for body parts in grade one, different sexual orientations and gender identities in grade three, masturbation in grade six, and oral sex, anal sex, and sexting in grade seven. Education Minister Liz Sandals has stated multiple times that this curriculum will remain unchanged. Much like 2010, when the McGuinty government eventually withdrew plans to update the curriculum with regard to an upcoming election, the new curriculum is not without detractors.

Are children ready to learn about rape and consenting to sex at the age of six or seven? Probably not, perhaps definitely not. But that’s not what this curriculum will teach. It lays a foundation of understanding that everyone has agency and that their body is their own. This isn’t grounded in sexuality; it is grounded in what it means to be an autonomous, self-determining person. And to the detractors worried about “graphic homosexual content,” different sexual orientations and gender identities are two of several “invisible differences” that are to be discussed with third grade students. Under the laws of Ontario, we must treat everyone with respect. To ignore the existence of the LGBTQ community would be discriminatory and counter to the law.

There are parents who are concerned that this curriculum is being forced on their children, that they have no say in how their children are being educated. Are they prepared to have a conversation with their children about consent? They should be. Should our government be the arbiter of our children’s education? Probably not.

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E-RIN GARBETT » STAFF WRITER

obra: Erin Garbett » staff writer

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Finding My WAYHOME™

My attempt to wade through, and make sense of, Toronto’s first camping festival’s lineup

On 10 February 2015, the GTA’s worst kept secret was finally released into the public domain. The town of Barrie, or as hipsters call it, Oro-Medonte, will be hosting the area’s first camping music festival. Sam Smith, Kendrick Lamar, and Alt-J were billed as the headliners that will drive crowds to WayHome over the weekend of 24 July. Hozier, St. Vincent, Run the Jewels, and Alvvays join a host of other indie, hip-hop, EDM, and alternative artists for what is sure to be one of the area’s biggest events of the summer.

Now that I’ve had a couple weeks to digest the lineup, and reassess my bank account, it seems worthwhile to at least consider a trip to WayHome. With over forty bands confirmed, and another forty reportedly yet to be announced, I would think there will be more than enough going on to at least keep me busy for a weekend. The lineup at first glance looked like a mix of the over-poppy and the under-alternative but the more I go over it, the more I’m finding myself like. I suppose it’s best to start at the top, and work my way down.

When I first heard Sam Smith’s “Stay with Me” it was on a radio show that was contrasting a clip of the song with Tom Petty’s “Don’t Back Down.” Apparently, Tom Petty was listening to the same show (or at least he heard Smith’s song), because he contacted Smith and is now collecting royalty checks off the hit. Fortunately for Sam, sharing the glory on who actually wrote the song hasn’t stopped the hit’s meteoric rise to fame. Shot to the top primarily by the screams of teenage girls, Smith certainly does have the talent and fan base to justify his spot at the top of WayHome. With a solid hit in “Latch” and some passable hits with “Restart” and “I’m not the Only One,” it’s hard to stay tuned in. There’s still certainly enough to look forward to in a Kendrick Lamar concert, and I’ve known “A.D.H.D.” since it came out a few years ago, so seeing that song performed live would be pretty cool. It seems like the potential for this show is pretty decent overall.

The last headliners are certainly the ones that intrigue me the most. Though Alt-J is about twice as poppy and only half as alternative as I’m sure they’d like us to believe, they’re still one of the most interesting bands on today’s pop charts. After a successful debut with An AwesomeWave, the band cemented their reputation with 2014’s This Is All Yours. The album, which features hits “Hunger of the Pine,” “Every Other Freckle,” and catchy single “Left Hand Free,” is a refreshing blend of alternative and electronic music. Though by no means an upbeat style of music, Alt-J have crafted their niche within the industry without the need for loud, pulsing beats backing every track. A talented band with a unique musical style, I can certainly see the value in checking their sound out for myself.

Going down the list, WayHome seems at its strongest in its second tier of acts. Modest Mouse are established veterans, and Hozier, though only really known for their hit “Take Me to Church,” are a refined enough act to keep crowds entertained. Bassnectar is a passable choice for the lead EDM act, though having a DJ who made his name in dubstep leading the charge seems slightly out of touch to me. Working through the rest of the second tier, the Decemberists, Passion Pit, St. Vincent, Girl Talk, Vance Joy, Future Islands, and the Sheepdogs are all definitely interesting and talented enough to be worth a watch. Packed with bands with solid reputations and fan bases, the meat of WayHome’s lineup is very impressive. Though it doesn’t boast any acts I’m particularly passionate about, a trip to WayHome could be the best way to find a new favourite.

Working through the rest of the lineup, the occasional name stands out. Walk the Moon, Cold War Kids, and the Royal Alberta Advantage have been recommended to me several times. Odesza and Kaytranada are sure to put on huge shows, and Canadian favourites Hey Rosetta!, Sloan, and new industry darlings Alvvays are sure to put on great sets for what will be a major CanCon crowd. I have to say I’m disappointed that I’m not seeing more local acts playing the festival, but there are quite a few names I don’t recognize, so perhaps there’s some I have yet to discover. Also, with more names to be announced, I think it’s fair to hold out hope that Canadian musicians will end up being the driving force at WayHome’s first camping music festival.
The Conservative’s Oppressive Bull’s-eye on People Associated with Social Differences

Bill C-51 and Bill C-279 as Obstacles for the Progression of Social Justice in Canada

SIMMY SAHDRA » CONTRIBUTOR

The law can be used as a tool to empower people associated with social differences—which pertain to the social construction and intersectionality of gender, sexuality, race, ability, class, and caste in society—but it can also be used to further oppress people associated with social differences. The actions of the current federal government demonstrated through Bill C-51 and Bill C-279 represent the use of the law to further marginalize and oppress people associated with social differences. Though the values of the Conservative government have always been transparent, some especially clear signals have recently been communicated through the ways in which deeply problematic bills have been amended and are progressing.

The progression of Bill C-51, the anti-terrorism bill, is immensely troubling; many of its social justice implications have been discussed in the media. The recent open letter addressed to all members of Parliament, signed by more than one hundred Canadian professors of law and related disciplines, clearly displays their profound concerns with regard to Bill C-51 and urges for it to be amended or killed. However, the Senate Committee’s amendments to Bill C-279, the federal transgender rights bill, have not figured as prominently in media coverage. These amendments limit the bill’s effectiveness. Many transgender activist groups and other human rights organizations, including Amnesty International, are a part of the Trans Equality in Canada Coalition and have stated that there is no way they could support the amended Bill C-279. Thus, the recent progression of law under the Conservative government seems to be targeting people associated with social differences, and illustrates alarmingly problematic issues for the furtherance of social justice in Canada.

Bill C-51, the Conservatives’ proposed anti-terrorism legislation, is overly broad in scope and creates legal justification for potential social injustices. For example, the vast scope of the legislation includes many civil disobedience activities, such as protests and strikes. These provisions present large obstacles for activists and people associated with social differences, especially with regard to the “interference with critical infrastructure” and the legislation’s expansion of CSIS powers. This extremely broad legislation poses many privacy concerns and expands the scope of covert state activity while also threatening democracy and activists in Canada. The “interference with critical infrastructure” aspect of the legislation is particularly troubling. For instance, pipelines could be constructed under the auspices of “critical infrastructure,” and the legislation could be used to justify labelling those who protest such pipelines as terrorists. Furthermore, looking to social justice movements like Idle No More, the passing of Bill C-51 means that Aboriginal people in Canada could be characterized as terrorists, which is profoundly problematic. Questions could also be raised in reference to the legislation’s affect on other Aboriginal issues, such as the current situation regarding the Ring of Fire in Ontario. Bill C-51 could very well strengthen the Crown’s claim that the Ring of Fire ought to be characterized as “critical infrastructure.” There are many other examples which could be potentially disastrous and tremendously problematic for people associated with social differences.

On the other hand, the less publicized amendments to Bill C-279 are just as damaging to social justice in Canada. The Senate has passed an amendment to the transgender rights bill which would effectively bar transgender people from public washrooms. The legislation is being amended to exclude transgender people from entering federal “sex specific” services and facilities such as crisis counselling centres, abuse shelters, correctional facilities, changing rooms, and washrooms. This amendment does not come as much of a surprise, as Conservative Senator Donald Plett has been fervently opposed to Bill C-279 since its inception. Plett has constructed transphobic arguments, stating that the amendment is necessary to protect vulnerable women who could be traumatized by being in the presence of a biological male in personal spaces. Additionally, throughout the bill’s debate, Plett has been against allowing transgender people to use bathrooms that parallel their gender identity. Advocates for Canadian Transgender Rights legislation rightly label such activity on the part of the Conservative government as transphobic. This federal transgender rights bill been dragged through Parliament for more than three years. Advocacy groups, such as Gender Mosaic, wish to support the bill because of its importance to the trans community. However, given the current amendments, they have decided it is not possible to support it and have stated their intention to fight for its removal. Discrimination of people associated with

“These provisions present large obstacles for activists…”

Photo credit: hellemaworld.blogspot.com

THUMBS UP

Misao Okawa celebrates 117th birthday.
Law Students and the Looming Strike
Which Side Are You On?

JASON EDWARDS › CONTRIBUTOR

Negotiations between York administration and the university’s education workers union, Local 3903 of the Canadian Union of Public Employees, have not yet resulted in a new collective agreement. A strike may begin as soon as March 3rd. If that happens, it will have a serious impact on all York students, including us at Osgoode.

CUPE 3903 represents over 3700 education workers at York, including teaching assistants, research assistants, graduate assistants, and contract faculty. They perform about sixty percent of the academic work and are dispersed throughout the university. Course Directors—who take on teaching assignments like Legal Process seminars—and many other graduate students at Osgoode are members of the union.

If we are to believe the administration, they are the ones looking out for students. In their updates, we have seen statements such as the following: “The interests of our students and their success are paramount, and the University’s overarching objective in these collective agreement negotiations…”

Rather than take the administration’s words at face value, a better way to approach the situation is to ask: who represents the students’ best interests?

What are the union’s proposals? The education workers are seeking reasonable wage increases; they have offered to keep wages at the current rate, relative to tuition. The primary aim of the union is to achieve greater job security and more manageable workloads for the educators. Higher standards for education workers mean higher quality education for students.

Consider the situation of a contract professor. Often, they will have weighty course loads, teaching up to four courses a semester. Despite that burden, their contracts will not carry over to the next semester. That means that they face job insecurity semester-by-semester. Imagine having to worry about whether or not your employer will require your services every four months. On top of that, consider marking four courses’ worth of exams while simultaneously looking for another job and a place to live! This situation is not conducive to a decent quality of life for contract faculty, or a high quality of education for students.

While the university relies on the labour of education workers, it holds them in extreme job insecurity. More than half of the contract faculty at York have been scraping by on low-wage, short-term contracts for five or more years. Thirty per cent of the contract faculty have been working at York on course-by-course contracts for more than ten years! It is not a small, isolated issue.

This precariousness is not only unfair to the education workers, it is unfair to students. When our educators face poor working conditions, we receive a weaker education.

“It is not the job of contract faculty to subsidize our education…”

Those who fear that better working conditions will mean higher tuition should consider the broader picture. Tuition fees are the product of political will, not education worker pay. It is not the job of contract faculty to subsidize our education—that is the job of the government. Asking these educators to suffer job insecurity and poor compensation because of a lack of political will to fund education is wrongheaded. If the provincial government fails to take ownership, generate adequate revenue, and prioritize education, the response of students cannot be to condone punishing education workers.

What’s more, the portion of the budget that goes to education is negligible. Contract faculty, who teach more than forty per cent of undergraduate courses, only attract 3.7 per cent of the university’s budget. Many of these educators are not here for the money; they are here because they enjoy teaching. We should not be demanding that education workers shoulder a burden that is more rightly the responsibility of the public at large. If the public thinks that having an educated populace is valuable, it needs to be willing to pay the necessary costs.

The union’s contract expired in August of last year. Their members voted overwhelmingly—about four out of five—in favour of a strike. In the circumstances, students should unflinchingly support these workers. They deserve a fair contract, including manageable workloads, job security, and fair wages. As the quality and accessibility of education in Ontario and across the country declines, it is education workers like those in CUPE 3903 who provide a counterbalance, pushing in a direction that supports the interests of the students they teach.

EDITORIAL NOTE: Jason’s piece was originally published on the Obiter website prior to the CUPE 3903 vote that was held on Monday, 2 March.
Picket Lines and Fault Lines
Reflections on the Impending Strike at York University

PARMBIR SINGH GILL > STAFF WRITER

Y ORK UNIVERSITY AND CUPE 3903 are moving closer and closer to both a deal and an impasse. The pursuit of one entails the advance of its opposite. From this paradox emerges the absolute uncertainty of the whole situation, a source of great anxiety and, for some, great exhilaration too.

On Monday, 2 March, members of the union will vote on the administration’s final offer, by all accounts the most compelling it has made to date. Although the exact terms have not been disclosed at the time of writing, three major points will likely remain contentious:

- Job security for contract faculty, many of whom regularly receive offers of employment as little as two weeks before the start of classes
- Bursary assistance for international graduate students, whose average tuition fees went up by 50% (approximately $6,000) in 2014
- Across-the-board wage increases, which the administration is seeking to fix at 1% per year, well below the rate of inflation

If a majority of the TAs, GAs, and contract faculty who comprise CUPE 3903 reject the administration’s final offer at their general membership meeting on Monday evening, the union will proceed with strike action the following morning. Picket lines will form, classes, tutorials, and labs will be suspended, and 51,000 York undergrads, including a pinch of Osgoode students, will be forced to reckon with the collective assertion of that essential yet devalued precondition of their education – labour.

Or, to put it in the union’s terms, “the university works because we do.”

So why stop working then? That is the question most undergrads will be wrestling with come Tuesday. How it gets answered will not only affect the way students make sense of the strike, but will also influence the positions they take with regard to it, thereby shaping the strike’s outcome.

Indeed, contrary to recent government conduct, strikes are not prohibited in any province or territory in Canada, certainly not when they are fully contemplated as part of a months-long collective bargaining process like the one now coming to a close at York.

According to scholars Judy Fudge and Eric Tucker, strikes are more than just permissible: they constitute “a social practice that is deeply embedded in Canadian society.” Long before 1872, the year “it became clear that striking itself was not illegal” in Canada, workers frequently withdrew their labour power in disputes with all sorts of different employers. They continued to do so thereafter in the form of economic sanctions as well as expressions of political protest – practices, in other words, of freedom.

Over the course of the early twentieth century, things began to change. Proliferating workplace legislation deliberately limited the possibility of spontaneous strikes while simultaneously conferring upon workers a set of more narrowly-defined rights of work stoppage. The decisive moment came after World War II, when the expansive “freedom to strike” was finally supplanted by a more restrictive, legally-mediated “right to strike,” consecrated in the so-called Wagner Act model of collective bargaining.

Notwithstanding the weight of these shifts, the history traced by Fudge and Tucker attests to the endurance of the practice of work refusal itself. Striking, in one form or another, was the constant in an otherwise variable and tumultuous period of social, economic, and political transformations. Such persistence is of course no cause for celebration. Rather, the ongoing role of the strike in labour disputes reflects both the fundamental condition of inequality under which work was and is performed in Canadian society, and the central means workers have of tipping back the scales in their favour. Here is how an unlikely commentator described the dynamic half a century ago:

In the present state of society, in fact, it is the possibility of the strike which enables workers to negotiate with their employers on terms of approximate equality... If the right to strike is suppressed, or seriously limited, the trade union movement becomes nothing more than one institution among many in the service of capitalism: a convenient organization for disciplining the workers, occupying their leisure time, and ensuring their profitability for business.

“...education workers at York possess a legal right to strike.”

So wrote Pierre Trudeau, then an aspiring journalist covering the pitched Asbestos Strike of 1949.

And so, it seems, the Supreme Court of Canada just concurred. Writing for the majority in Saskatchewan Federation of Labour v Saskatchewan, 2015 SCC 4, Abella J echoed Trudeau’s line of reasoning:

In their dissent, my colleagues suggest that s.2(d) [of the Charter] should not protect strike activity as part of a right to a meaningful process of collective bargaining because “true workplace justice looks at the interests of all implicated parties,” including employers. In essentially attributing equivalence between the power of employees and their employers...
Access to Justice and the Internet
CLEO’s Fiona MacCool on Accessible Information

NABILA KHAN  CANADIAN FORUM ON CIVIL JUSTICE

In November 2014, the Canadian Forum on Civil Justice launched a new series on the A2J blog titled “Access to Justice Advocates.” The series is a response to recent reports that have underscored the importance of innovation and imagination in the pursuit of access to justice. At CFCJ, we understand that such efforts come down to people—to the diverse advocates working in different and important ways across the access to justice landscape.

The CFCJ had the exciting opportunity to visit these advocates where they work in order to learn more about their unique perspectives on the issue. Our most recent interviewee, Fiona MacCool of Community Legal Education Network (CLEO), is a Project Manager of Your Legal Rights—an online resource produced by CLEO to provide free legal information for people in Ontario.

Funded by the Law Foundation of Ontario, Your Legal Rights provides practical, easy-to-find legal information produced by approximately three hundred organizations across the province. The website also provides answers to common questions regarding everyday legal problems, an interactive map of key legal and social services in Ontario, and public legal education webinars.

“We are trying to get this information to people in a variety of ways: where they live or based on whatever organizations they trust and work with,” says MacCool, “and it is also a way for us to highlight the amazing work being done by hundreds and hundreds of organizations in Ontario who do public legal education but might not be able to promote it or market it.”

During her interview with CFCJ, MacCool also discussed her history working with non-profit organizations just as the Internet was beginning to emerge. These organizations quickly began to recognize the Internet as a tool for getting information out into the world and into the hands of people who need it in a tradition of transparency and justice.

“The main thing that pulled all [these organizations] together was collaboration,” explains MacCool, “So [these were] not just information websites but places where people can share information and get information from people; let them tell their story and help build the capacity for organizations to work efficiently and collaboratively.”

MacCool’s work with the Your Legal Rights Project demonstrates the power of the Internet in providing greater access to justice. The website has become the hub for legal information for everybody in Ontario, not just service providers. The traffic to the website has doubled since its launch in 2011, and there has been an explosion of interest in it in social media. The people of Ontario are seeking more knowledge regarding their legal rights, and CLEO demonstrates that the Internet has become one of the most important tools for responding to this demand.

MacCool was previously the Project Manager of CLEONet—a precursor to Your Legal Rights. For over ten years, she has worked as an IT project manager, software trainer, and web content developer. MacCool is passionate about helping non-profit organizations take advantage of the cost-efficient and time-saving power of the Internet to support community partnerships, share resources, and make a difference.

To watch the full interview with Fiona, check out the A2J Blog this April at www.cfcj-fcjc.org/a2jblog. Would you like to make a submission to the A2J Blog? Do you know an Access to Justice Advocate? Let us know at communications@cfcj-fcjc.org

Your Legal Rights website: www.yourlegalrights.on.ca

Green Tip of the Week
Sustainability at Home

LIAINE LANGSTAFF  OSGOODE SUSTAINABILITY COMMITTEE

Whether at Passy or at home, here are some easy sustainability tips:

• Electronics continue to drain electricity when they’re plugged in even when they are off. Save power by turning off your power bars or unplugging electronics that aren’t in use.

• Don’t flush floss down the toilet. It gathers in water treatment plants, tangles in the filtration systems, and causes hundreds of thousands of dollars of damage each year for the city.

• Light right! Use compact fluorescent light bulbs. They produce the same amount of light, use one-third of the electricity, and last up to ten times as long.

• Remember to turn off your faucet. Letting your faucet run for five minutes uses about as much energy as a sixty-watt light bulb consumes in fourteen hours.

See the World Wildlife Fund for more green ideas! www.worldwildlife.org/pages/green-tips
Missing, Murdered, and Forgotten
Canada’s Aboriginal Women

ESTHER MENDELSON > STAFF WRITER

A domestic violence issue: that is how Aboriginal Affairs Minister Bernard Valcourt characterized the crisis of missing and murdered Aboriginal women. Implicit in this characterization is that this is an Aboriginal problem of which Canadians and the Canadian government can wash their hands. The very premise is fallacious, and the consequences could not be more dangerous.

Unlike non-Aboriginal women, Aboriginal women are just as likely to be assaulted or sexually assaulted by a stranger as by an acquaintance, partner, or family member. They are three times more likely than non-Aboriginal women to be sexually assaulted, and almost three times as likely to experience some form of violence.

Aboriginal women represent four percent of the overall Canadian population, yet they account for sixteen percent of the murder victims in Canada each year. With 1,811 Aboriginal women missing or murdered already, at what point will we be prepared to act?

It is shameful that the government has not reacted more swiftly and decisively, despite the urging of dozens of NGOs and stakeholder groups. Indeed, even the roundtable held on February 28 resulted in little more than hand-wringing.

The government has a constitutionally-enshrined fiduciary duty towards Aboriginal people, and the case law suggests that this duty can extend beyond land claims. Moreover, while fiduciary duties normally arise only where action has been taken, other cases suggest that, generally, a duty and its correlative obligations can arise from the decision not to act. Therefore, in neglecting to act, the government, it can be argued, is in breach of its fiduciary duty.

Yet another suggestion that the government must act comes from tort law. While true government policy will usually be exempt from judicial scrutiny, the operation of a policy does not enjoy the same protection. It may be politically costly and difficult to acknowledge the wrongs as well as make concrete commitments, but it is morally wrong not to do so.

By denying its own complicity and leaving the matter solely in the hands of band councils who scarcely have the resources to deal with the problem, the federal government is making a statement about the value it attaches to the lives of Aboriginal women. To be clear, Aboriginal communities must have a voice in the matter and should be deferred to, but the government and its agents must also be at the table—and we should not have to drag them there.

Interestingly, the government’s very reason for rejecting the need for an inquiry evinces its urgency. The government cites the dozens of studies already conducted and claims that now is the time for action, not for further inquiries. However, with little action and nearly all the recommendations from the earlier studies left unimplemented, that excuse rings hollow.

Among the recommendations not implemented is better transportation along a stretch of road in British Columbia referred to as the Highway of Tears, where many Aboriginal women have been taken. The highway remains a constant reminder of the system’s failure to address this pressing issue.

Aboriginal communities know all too well why their women are murdered or go missing. They do not need an inquiry; we do. The rest of Canadian society has yet to understand the roots of the problem and what can be done to solve it. The solution will necessitate political and societal will, and yes, money. It will also require us all to ask some very uncomfortable questions.

Aboriginal women are born at risk. The abject poverty which runs rampant in many Aboriginal communities and is neglected by the federal government allows these cases to float under the radar. Poverty, a dearth of adequate resources and services, discrimination, and the ongoing legacy of colonialism all collude to deprive Aboriginal women of their security.

Aboriginal women make easy prey for predators like Robert Pickton, whose name sends a chill up my spine as I write it. These women are often escaping abuse or are forced by circumstance into “high risk” lifestyles in order to survive. One should not, however, jump to the conclusion that all or even most of these women were sex workers or addicted to alcohol or drugs. Helen Betty Osborne was studying to be a teacher; she was sexually assaulted and murdered by four white men, only one of whom was brought to justice sixteen years after the fact.

More importantly, their “lifestyles” are irrelevant. These women were human beings, and nothing can justify—legally or morally—what was done to them. Their assailants tried to rob them of their humanity, and every day without resolute action is another day of complicity.

As future lawyers, we must examine the role the justice system has played in perpetuating the problem, and the role it can play in its solution. Stereotypes of Aboriginal women are alive and well in our jurisprudence; Justice Michael Bourassa characterized sexual assault against Aboriginal women as different from cases involving white women because Aboriginal women were supposedly more likely to be “drunk or passed out,” and the perpetrator could not be blamed for “help[ing] himself” to a “pair of hips.” Relying on prejudicial notions of Aboriginal women (and women in general) is not only distasteful; it is an error of law and the wilful misleading of the court. Even those cases that do go to trial often end in acquittals or with sentences that are far below par.

Sometimes, the complicity in the justice system is more direct and extreme; the late former judge David Ramsay sexually assaulted and brutalized several young Aboriginal sexual assault complainants after presiding over their cases. Recently, an RCMP officer arrested an Aboriginal woman whom he later “took home to pursue a personal relationship.” There have been cases of police officers sexually assaulting Aboriginal women and more often than not, police do not believe Aboriginal complainants. Police must be a part of the solution, but we must acknowledge that they have been a part of the problem.

Each of these women loved and was loved. The next time you find yourself on the second floor of the law building, take a moment to visit the Faceless Dolls project and learn a few of the names of the missing and murdered Aboriginal women, lest they be forgotten.

“I t is shameful that the government has not reacted more swiftly and decisively…”
Commodified Flesh? No. Commodified People
The Social Injustices of Clinical Drug Trials in the Global South

SIMMY SAHDRA - CONTRIBUTOR

Capitalism: A word that describes a society where an alarming number of things can be bought and sold. Land, air, resources, people’s thoughts and ideas—all are liable for exploitation and depletion in service of an expanding market. The human body has also become a site of market expansion and profit generation. Countries such as China and India are known for their large and striking “resource pool” of labour which commodifies and dehumanizes people. India has become an especially attractive site for large pharmaceutical companies to carry out drug trials at a low economic and high social cost, resulting in death, uninformed consent, and disablement for trial participants.

Clinical drug trials are targeting participants who are associated with social differences—the intersection of race, caste, class, gender, sexuality, and ability constructions—which render them vulnerable to exploitation. In India, the media has focused on people of lower castes and classes who are targeted by doctors and major pharmaceutical companies. However, few scholars have delved deeper into the issue of how to understand how people associated with social differences are being targeted to participate in drug trials in India. Such groups are more inclined to accept greater risks at a lower price because of their associations with social differences and lower hierarchal positions in society.

Major pharmaceutical companies such as Theravance Inc., Wyeth Research (now part of Pfizer), Sanofi-Synthelabo (now Sanofi-Aventis), AstraZeneca, Schering, and GlaxoSmithKline choose to outsource their drug trials to countries of the Global South, like India, because of decreased costs and increased opportunities to exploit citizens of those countries. Pharmaceutical companies recognize their power over Indian people associated with social differences, but also, and more importantly, the power of their foreign direct investments over the Indian government. This power imbalance serves the interests of corporations, where profit reigns supreme. As a result, few, if any, social repercussions are addressed.

However, corporations are only part of the problem; many medical professionals are given substantial monetary incentives to recruit their own patients into trials. Subsequently, this process creates a large conflict of interest threatening the well-being of patients, who commonly enter drug trials with uninformed consent. As previously alluded to, the government is also a major contributor to the persistence of this social injustice. The Indian government has not been inclined to impose and enforce stricter regulations or limitations on pharmaceutical companies because of the economic benefits associated with creating an attractive environment for foreign direct investments. Like doctors and pharmaceutical companies, governments are not immune to capitalist influences, which privilege profit over social cost.

Knife attack on US ambassador Mark Lippert praised by North Korean state media.

Thumbs Down

The literature and media involving the drug trials in India has been limited to describing negative repercussions of the targeting certain of class/caste constructs and the shocking results of death. For example, the BBC produced a documentary outlining the immense consent issues plaguing these trials. In the reporting, it was found that doctors were lowering the bar for consent to drug trials to merely fingerprints. People were dying with no idea of their involvement in drug trials, as consent was commonly communicated in a language they did not understand. While these facts are important to consider, a wider scope of information must be reported and analyzed. The possible intersection of other social differences such as ability, gender, and sexuality are not being addressed in reports such as the BBC documentary. Furthermore, reporting deaths is an effective method of grasping public awareness, but the issue of disability should figure much more prominently than it has. The disability of a primary breadwinner as a result of drug trial participation, for example, has a different, yet just as profound impact on a family and deserves the same level of awareness. This aspect of the social injustice of drug trials needs to be reported by more media outlets.

The capitalist approach taken to drug trials serves to reproduce social differences and oppression of Indian people. Finally, the social injustices of drug trials are not only restricted to India and the Global South. Corporations and doctors have also targeted people in the Global North. This global social injustice reflects a capitalist mentality which treats people not as people, but as commodified flesh.
OPINION

HEATHER PRINGLE > LAYOUT EDITOR

Traditionally, trademark owners have primarily relied upon exclusive distribution agreements between manufacturers and distributors to control the flow of their goods within the market. However, the territorial restrictions in these agreements are subject to privity of contract and, therefore, suffer from the third party beneficiary rule. As a result, while trademark owners have control of their goods within these established distribution networks, they cannot enforce the terms of these agreements on third party resellers who legally acquire goods in an alternative territorial market. Furthermore, when drafting these agreements, trademark owners must be wary of issues relating to anti-competition law. For example, provisions within Canada’s Competition Act prohibit vertical restraints through practices such as resale price maintenance, predatory pricing, refusals to deal, exclusive dealing, tied selling, and general market restrictions.

Failing to find adequate protection, trademark owners have sought alternative remedies that lie outside the boundaries of trademark law. Some of these sources include: language legislation, packaging and labeling laws, specific product regulations, or through contractual rights. However, one interesting strategy that trademark owners have recently employed involves recourse to the Copyright Act. Subsection 27(2) of the Act outlines what is known as secondary infringement by stating that it is infringement to import into Canada a copy of a work as secondary infringement by stating that it is infringement to import into Canada a copy of a work that the owner of the copyright would have known would infringe copyright if it had been made in Canada by the person who made it. In other words, it is an infringement to sell "fruit of the poisonous tree." Although the majority of commercial goods do not qualify for copyright protection per se, these rights can be claimed for incidental features such as logos, labels, or packaging. Trademark owners have attempted to argue that importation constitutes secondary infringement of the protected artwork contained within their product’s dressing; see Kraft Canada Inc. v. Euro Excellence Inc.

The success of this strategy is dependent upon several factors. First, because of the doctrine of exhaustion, codified in s. 3(1)(j) of the Copyright Act, simply reselling a legally acquired good is not considered infringement; upon doing so, the seller exhausts the copyright owner’s ability to assert their rights in those goods. In other words, the goods are free to be resold in the market without need of the copyright owner’s consent. Rather instead, in order to find secondary infringement from importing products into Canada for resale, there must have been a primary infringement of copyright by the manufacturer or producer of those goods. If primary infringement is required for a finding of secondary infringement, then it follows that the trademark owner must either be the owner or possess an interest in the Canadian copyright such that they may enforce it against all third parties. This is of importance because consent precludes a finding of infringement. As David Vaver writes, “the claimant who does not plead and prove his lack of consent, which is an integral element of infringement and should have his case dismissed as a result.” This was one point of primary concern in Euro Excellence where the Court’s decision suggests that where trademark owners are not the owner of the Canadian rights to an artwork, the solution is to simply restructure agreements to transfer copyright as an assignment, rather than an exclusive license.

As an aside, the distinction Rothstein J. makes in Euro Excellence between the interest granted in an assignment versus that in an exclusive license is arguably based upon a fundamental misunderstanding of section 2.7 of the Copyright Act. The Act reads that an exclusive license is an authorization to do any act that is subject to copyright to the exclusion of all others including the copyright owner. Rothstein J. misreads the words of the Act so as to construe an exclusive license as dealing with matters of agency rather than consent. This is largely due to poor drafting within the Act itself, which is evidenced from the inconsistent language introduced by the 2012 Copyright Modernization Act. This can be supported by looking at section 27 where it defines infringement as any act taken “without the consent of the owner of the copyright” and again in section 38(6)(c) where it states that statutory damages will not be awarded where the copy in question was made with consent. The original language of the Act suggests that an integral element of infringement is a lack of consent, which is a concept distinct from authorization.

The term was likely introduced into the language of section 2.7 where it was intended to hold the same meaning as ‘consent.’ Given the reason for obtaining the means of exclusive control when drafting exclusive licenses, clearly a licensee must be able to enforce the acquired rights, even as against the owner-licensor, otherwise, the licensor would have the ability to compete directly with the licensee, thereby rendering the agreement meaningless. Rothstein J.’s interpretation of the text, whereby the plain and ordinary meaning of ‘authorization’ is given effect, is in conflict with Parliament’s clear intention to confer a right of enforcement to the licensee against the owner-licensor.

Second, trademark owners must be mindful of their how their behaviour might be viewed with respect to anti-competition law. When making determinations of anti-competitive behaviour, careful consideration must be taken to the nature of
Jurisfoodence: In Search of Toronto’s Best Brunch
Food Adventure #10: Brit

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

The Bristol (1087 Queen St. West)

KATE: It feels like forever since I’ve had brunch on the Obiter! As our various commitments to our master’s theses and Mock Trial kept us from doing a Jurisfoodence review in the last issue, I felt that it was necessary to go somewhere that I knew to be excellent, so I suggested (for the first time) somewhere I had actually been before: The Bristol. I am absolutely obsessed with this place, as you will soon find out.

KAROLINA: By now, Kate knows the way to my heart: British sentimentality and $5 cocktails before noon. The moment these virtues of The Bristol were explained to me, I was explained.

Brunch Hours

The Bristol is open for brunch from 10:00 a.m.-4 p.m. on Saturday and Sunday (though, oddly enough, they will not serve alcohol before 11:00 a.m.).

Wait Time/Service

KATE: Every other time that I had been here, it was pretty packed so I suggested we go at 10:30 a.m. on a Saturday morning; perhaps due to its West Queen West location (it’s a block away from the Drake), it was nearly empty when we arrived (though it did fill up by the time we left at 12:00-12:30 p.m.).

KAROLINA: Our server was fantastic. Maybe it’s because we’ve generally visited well-established brunch hot spots, but I’ve always found the service to vacillate somewhere between cordial apathy and affected snobbery. Previous servers may not have been incompetent, but our server at The Bristol was genuinely friendly and down to earth in addition to doing an excellent job.

I vaguely wondered during our brunch whether our server’s charming yet unexpected habit of adopting English turns of phrase, despite the fact that she was undoubtedly Canadian, was at the behest of The Bristol’s management. I hope not. Kate assured me, however, that she often calls people “love” as well, so maybe my suspicion was unwarranted.

Atmosphere

KATE: I love the atmosphere here; some of the British paraphernalia is a bit much, but in general it is super cozy and there are football games (European football, obvs) playing on the various screens non-stop. If you are someone that doesn’t like TVs in restaurants (a camp I am usually a part of), then you might not enjoy this, but if you’re looking for somewhere to watch some English Premier League as you nurse a hangover, this is the place for you.

KAROLINA: My love of the UK knows no bounds, but the Union Jacks strung up around the walls tried my patience slightly. The Bristol did “British pub” about as well as any Canadian restaurant can, which is probably not saying much. Despite the fact that the theme may have been laid on a bit thick, it had a very pleasant interior, with lovely wallpapered walls, a quaint fireplace, and comfy armchairs.

Coffee

KATE: The coffee is pretty good—it comes in huge mugs and it’s bottomless. Zero complaints.

KAROLINA: Perhaps inspired by the portrait of Queen Elizabeth II staring down at me, I ordered an Earl Grey tea. I wish it had been loose leaf or at least Twinings. It was fine, though. The real show-stopping beverage was what followed...

LLBO licensed

KATE: Not only is The Bristol licensed, but it has $5 brunch cocktails. In addition to Caesars and regular mimosas, you can get grapefruit and lager mimosas (I’ve gotten the latter on past occasions, and they are actually pretty delicious). Though it isn’t on the menu, you can also ask for a grapefruit and champagne mimosa; it is delicious and perhaps even life changing (see: Karolina).

KAROLINA: I will never drink a regular orange juice mimosa ever again. How gauche! The mimosas at The Bristol were undoubtedly the best part of brunch. They had the perfect ratio of juice to champagne, and were garnished with a lime wedge, which was a cute touch. And at $5 each, there’s really no reason not to order one.

The Food

KATE: I had the Brighton Toast, which the restaurant describes as “crispy French toast with vanilla infused puffed rice crisp batter.” In addition to ‘real’ maple syrup, it comes with blueberries, strawberries, and whipped cream. The two pieces of toast...
A Trio of Film Reviews, Currently in Theatres
Surviving Adolescence: The Glorious Mechanics of Defiance

KENDALL GRANT • STAFF WRITER

Girlhood (2014) 3/4

Bold, brawling, beautifully observed, and acted with wonderful conviction, *Girlhood* is a blast of oxygen to the coming-of-age genre; an energetic, hugely uplifting, and captivatingly textured film that’s both a lament for sweetness lost and a celebration of wisdom and identity gained, often at the very same moment.

Fed up with an abusive family situation, dead-end school prospects, and the “boys’ law” in the neighbourhood, Marieme starts a new life after meeting a group of three free-spirited girls. She changes her name and style, drops out of school, and begins stealing to be accepted into the gang. When her home becomes unbearable, Marieme seeks solace in an older man who promises her money and protection. Realizing the lifestyle will never result in the freedom and independence she desires, she finally decides to take matters into her own hands.

Buoyed by a captivating central performance from stunning newcomer Karidja Touré, *Girlhood* contains a few standout scenes of daring camaraderie and carefree elation. Led by the swaggering alpha Lady (Assa Sylla), the foursome pools their pillered resources together for a one-night hotel stay; an occasion for pizza partying, bubble baths, bong hits, and, most rapturously, a lip-synched/sing-along occasion for pizza partying, bubble baths, bong hits, and, most rapturously, a lip-synched/sing-along performance to Rihanna’s “Diamonds.” Bathed in blue light, intoxicated by temporary freedom, the film’s intensity of female friendship, with a visceral blow returns to the familiar stations of class, race, and gender is a rare and perceptive illustration of the intricacies of social inequality. While the malignant power that comes from having a scary home life never dissipates, *Girlhood* doesn’t feel like a misery-mongering expression of high-minded, condescending concern. It presents the characters’ grim reality without surrendering its hope.

In many ways, *Girlhood* is, quite aptly, the feminist answer to *Boyhood*—whereas *Boyhood* has the familiar path leading into a milky haze. It captures the emotional minefield of adolescence and the intensity of female friendship, with a visceral blow to wherever those memories lay dormant. Marieme’s new friends are almost a necessary influence—she needs to step sideways before she can step forward.

“It captures the emotional minefield of adolescence and the intensity of female friendship…”

Surviving Adolescence: The Glorious Mechanics of Defiance

Illustrating the ways an indifferent society boxes in the people who grow up in project-style boxes, *Girlhood* throws the global now, yet remains keyed to the minutiae of the teenage lives portrayed therein. Raw, intense, and precisely directed—especially in a bravura opening football sequence that inverts expectations—*Girlhood* veers between being a celebration of defensively violent sisterhood, and a chronicle of the vicious cycle of poverty, yanking us into the life of its protagonist.

Near the end, Sciamma cuts to a close-up of Marieme climbing carpeted stairs to a swank, all-white party. She’s shed her usual hoodie and jeans, and donned black heels, a flaming red cocktail dress, and an ice-blond wig. She’s never looked more womanly, and she’s never been more trapped. *Girlhood* has all the punchy life force and quiet determination of its sixteen-year-old heroine.

A Girl Walks Home Alone at Night (2014) 3/4

Precocious, faux-primitive, and bracingly post-punk, *A Girl Walks Home Alone at Night* is a glorious pastiche of styles; a haunting love story between two misfits; a joyful mash-up of genre, archetype, and iconography; and a refreshing take on one of the oldest legends in existence. Sly, slick, sly, and fearlessly subversive, it’s a wholly original work without a single unique thought or idea.

In the Iranian ghost-town Bad City—a place that reeks of death and isolation—the townspeople are unaware they are being stalked by a lonesome vampire. When young Arash loses his car to a drug kingpin as a result of his father’s uncontrolled gambling debts, he finds an unexpected niqab-wearing ally who harbours a dark secret.

*A Girl Walks Home Alone* at Night grabs you by the throat with its moody style, pulsating soundtrack, and offbeat editing. The wildly inventive combination is intoxicating: absurd, eerie, languid, possessed by the calm of an inevitable beauty. As seductive as its title—a declarative sentence that encompasses many mysteries—*A Girl Walks Home Alone at Night* mimics the rhythms of silent films with a dreamlike pull into a dreamspace all its own.

Shot in Bakersfield, CA, which passes for the nocturnal reaches of Iran, writer-director Ana Lily Amirpour reveals herself to be a sensualist and iconography; and a refreshing take on one of the oldest legends in existence. Sly, slick, sly, and fearlessly subversive, it’s a wholly original work without a single unique thought or idea.

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**To Kill a Mockingbird**

**Lessons on Life Still Applicable Today**

**JUSTIN PHILPOTT › STAFF WRITER**

**To Kill a Mockingbird** (1962) is one of those movies I had myself watching to the very end no matter where I pick it up. There could be only a half-hour left, and I would still feel compelled to sit down and finish it. This may be the true test of a classic. The film is based on Harper Lee’s 1961 Pulitzer Prize-winning novel. The story takes place in 1932 in a small Alabaman town hit hard by the depression. Gregory Peck plays Atticus Finch—a character that every lawyer and law student is undoubtedly familiar with. Atticus is a widowed lawyer raising two very curious children. Lee’s own father was the inspiration behind Atticus Finch. While on set for filming, Lee told Gregory Peck that he even had a little pot belly just like her father. Peck jokingly replied that it was just good acting.

The story is told through the eyes of Atticus’ two children, six-year-old Scout and her older brother, Jem. The children lead a carefree life, playing around with their friend Dill. It was interesting to learn that Lee based the character of Dill on her friend Truman Capote. The three children are innocent and ignorant of the depths of human cruelty residing in the “tired old town.” Essentially, we witness very adult events through the children’s eyes.

The drama begins when Atticus agrees to represent Tom Robinson—a black man accused of raping Mayella Ewell, a white woman. “This is a most unenviable task, even for a seasoned lawyer, in a town overwrought with bigotry.” However, Atticus believes in the equality of the law, stating that “our courts are the great levelers, and in our courts, all men are created equal.”

Atticus is a warrior. He defends Tom Robinson exquisitely in spite of the town’s disapproval of him representing a “coloured man.” In court, when he asks Mr. Robinson to catch a glass with his left hand, it is revealed that his entire left arm is disabled from a previous injury. How could Mr. Robinson have caused the injuries to Mayella Ewell if they were caused by someone who is left handed? It has to be obvious to every one that Tom Robinson is innocent, doesn’t it? The end of Atticus’ concluding statement is etched into my memory: “Now I am confident that you gentlemen will review, without passion, the evidence that you have heard, come to a decision, and restore this man to his family. In the name of God, do your duty. In the name of God, believe... Tom Robinson.”

The all-white male jury, nevertheless, finds Tom Robinson guilty. Although he technically loses, it is vitally important to understand why Atticus really wins. He has enlightened his children as to what is moral, what is right, and what is good. He demonstrates to them that real courage is standing up for what you believe in, regardless of the odds. His children can practice this throughout the rest of their lives. There is a noteworthy scene towards the end where Mr. Ewell spits in the face of Atticus as he is walking back to his car. Jem is in the car nervously watching. Atticus could easily slug Mr. Ewell. Instead, he takes out a handkerchief, wipes his face, and walks on by. If only we could all show such restraint.

The film’s most moving moment is when Atticus is leaving the courtroom after the trial has concluded. He is unaware that in the balcony above, his children and the town’s African American citizens are all standing out of respect when he passes. The Reverend tells Scout, “Stand up, your father’s passing.” It is pretty clear that Jem is at an age where he is beginning to understand the significance of the events that are unfolding around the town. His reaction to his father shooting the stray dog is one of bewilderment. It is as if he did not believe his father could do anything but read and work. On the other hand, Scout is too young to truly understand what is happening. This makes her curiosity as undaunted as possible, and her questions all the more blunt.

A large part of the story deals with the children’s obsession with their ‘deranged’ neighbor, Boo Radley. The children tell imaginative stories as to why Boo is locked in his house. As it turns out, Boo is one of the story’s mockingbirds—an innocent person emotionally damaged by his cruel father (“Mockingbirds don’t do one thing but make music for us to enjoy...but sing their hearts out for us. That’s why it’s a sin to kill a mockingbird”). Boo saves the children from the violent attack of Mr. Ewell. When Boo is first revealed hiding behind Jem’s bedroom door, there is a long pause, possibly caused by surprise. Scout dispels all tension in an instant when she says “Hey, Boo!” with a giant smile on her face.

Sometimes you can tell right from the opening credits whether or not a film is going to be good. To Kill a Mockingbird opens fittingly with a child—likely Scout—playing with a box of knickknacks. There is minimal music, and all we really hear is the child humming. Just as a rolling marble strikes another marble, the music swells and grabs a hold of you. You know you are in for an incredible ride.

It was announced recently that eighty-eight-year-old Harper Lee is going to publish her second novel, *Go Set a Watchman*. The novel was completed in the mid-1950s, before *To Kill a Mockingbird*, but lost for over a half century. It supposedly features Scout as an adult. Lee claims the book is a “pretty decent effort.” *Go Set a Watchman* hits the bookshelves July 14.

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**THUMBS DOWN**

**Average price of Toronto detached home surpasses $1 million.**

**Photo credit: Universal Pictures/Getty Images**

“...real courage is standing up for what you believe in, regardless of the odds.”

**ATTAR CULTURE**
The glory past of the Toronto Blue Jays
A Look into the Team’s Ascension to Greatness and Its Heydays

PART THREE: MAJOR SURGERY ON THE ROSTER FOR THE PERENNIAL WINNER

AFTER THE 86-76 Toronto Blue Jays finished the 1990 season in second place (two games behind the division winning Boston Red Sox), GM Pat Gillick pulled off arguably the most significant trade in the history of the franchise. It would soon pay huge dividends to the team. On 5 December 1990, while at the Baseball Winter Meetings in Chicago, Gillick traded Tony Fernández and Fred McGriff, two of the club’s cornerstones, to the San Diego Padres for second baseman Roberto Alomar and right fielder Joe Carter.

While the trade came as a shock for many Toronto fans, the deal was sensible. From a roster construction point of view, it appeared as though the Blue Jays were good enough to be a regular play-off contender but not talented enough to win it all. Therefore, in order to take the club to the next level, Gillick had to make the difficult decision of cutting ties to a number of the remaining big-time contributors that had been leading the team since the mid-1980s so that he could change the culture of the franchise. From an asset management perspective, there were rumours that Fernández had threatened to retire repeatedly, so it made sense to trade him and net players in return. From a line-up perspective, as solid as both McGriff and John Olerud were as players, especially after the latter came into his own, there was nevertheless a redundancy in retaining both of them since they both batted left and played first base. Also, seeing that both McGriff and Olerud were still young at the time, it made little sense to shift one of them to the designated hitter spot, which is a position that is more suitable for strong hitters who are in the latter stages of their careers, as they do not have to worry about defensive responsibilities. By swapping McGriff for Carter, who was a right-handed power bat, there was more balance to the line-up, not to mention that Carter could bring home run power and a strong throwing arm back to the right field position that had been missing since the departure of Jesse Barfield. Another reason why “the trade” made sense was because the promising Olerud, who was a terrific contact hitter and strong defender at first base, could simply replace McGriff as our full-time regular first baseman. Finally, second baseman Manuel “Manny” Lee could shift over to play shortstop in place of Fernández given that Lee was a natural Shortstop.

The Fernández and McGriff for Alomar and Carter trade set the nucleus for the club’s championship runs in the early 1990s. Of course, other moves were made to make the road to the World Series a reality, including certain major trades and free agent signings. Prior to the 1991 season, Gillick traded for gold-glove center fielder Devon “Devo” White on 4 December 1990 who came from the California Angels to Toronto along with Willie Fraser and Marcus Moore in exchange for Junior Felix, Luis Sojo, and a player to be named later. The acquisition of White was significant because he provided the kind of speed and defence that had been absent since Mookie Wilson (who replaced Lloyd Moseby as the regular center fielder from 1989-1991) left the Blue Jays. The mid-season pickup of Candy Maldonado from the Milwaukee Brewers on 14 August 1991 for Bob Wishnevski and a player to be named later (William Suero) stabilized the left field position and in the process created an everyday outfield of Maldonado, White, and Carter that Toronto fans had not seen since the days of Bell, Moseby, and Barfield.

After the 91-71 Blue Jays were eliminated by the highly experienced and savvy Minnesota Twins in the 1991 American League Championship, Gillick was determined to do whatever was necessary to bring a World Series Championship to Toronto. The players in the Blue Jays’ clubhouse were equally confident as they genuinely felt that the team was only one or two missing pieces away from winning it all. Several of them actually commented that for the 1992 season, the minimum acceptable level for the team would be a World Series appearance.

Even though long-time ace Dave Stieb’s effective days came to an end in the 1991 season, the club received a shot in the arm when Juan Guzman, Todd Stottlemyre, and David Wells all entrenched themselves in the starting rotation, which more than offset the loss of Stieb. Gillick was not about to take any chances though as he felt that he needed to acquire a top dog to lead the starting rotation and increase the offensive output at the designated hitter position since the once steady Rance Mulliniks was near the end of his career. The Toronto GM therefore dipped into the unrestricted free agency pool by signing money pitcher Jack Morris (the pitcher with the most wins in the 1980s) on 18 December 1991 to serve as staff ace and slugger Dave Winfield to be the Blue Jays’ full-time Designated Hitter on 19 December 1991.

Why were the signings of Morris and Winfield such game changers? Also, what are reasons behind Toronto’s transformation from being the least-preferred destination in the late-1970s/early-1980s to the most-desired landing site during the early-1990s for top unrestricted free agents? To find out, be sure to tune in to Part 4 of my article.

KENNETH CHEAK KWAN LAM › STAFF WRITER

SECOND SHOTS
Reexamining Baseball’s Steroid Era

MICHAEL SILVER STAFF WRITER

In the summer of 2013, a New York Times investigation revealed that Alex Rodriguez had been obtaining steroids from a man in Miami for several years. This eventually resulted in Rodriguez being suspended for the entire 2014 season, the longest steroids suspension ever passed down in baseball. As Rodriguez prepares to return to the New York Yankees this season, I continue to be fascinated by the league’s reaction to the steroids scandals of the last 10 years.

A number of the best players in the history of MLB have been linked to steroids including Rodriguez, Barry Bonds, and Roger Clemens. These men have transitioned from being historically great players who were destined to be remembered as sports heroes to complete pariahs. Clemens has been convicted of perjury for indicating to Congress that he had never used steroids, and Bonds has been involved in a number of civil suits.

This group of players are vilified for being cheaters, and succeeding at the highest level of baseball by cheating. It is difficult to imagine that they would have succeeded to quite the level that they did without steroids. However, it is also absurd to suggest that the entirety of their successes were a result of their steroid use. It is widely accepted that even before any of these players started using steroids they were already amongst the best players of their era. They spent their careers competing against many other players who were also cheating and were still able to achieve incredible levels of success.

A number of players who today are widely detested as cheaters, were, in the late 1990s, credited for saving baseball with their exciting offensive productions. Sammy Sosa and Mark McGuire broke records, and returned baseball to the national consciousness after labor disruptions earlier in the decade caused fan interest to dwindle.

There is a long history in baseball of doing anything possible to gain a competitive advantage. Many players in the 1970s dosed themselves with what were called greenies to enhance performance during games. Greenies were legal at the time in the sport, and players felt that greenies boosted their focus and energy reserves. Yet, greenies are presently classified as amphetamines and banned from the game. In fact, one of the most prominent users of greenies was the great Hank Aaron, who today is remembered fondly and who by some is considered to be the true record holder of most home runs hit in baseball. Though many suggest that Barry Bonds should have an asterisk next to his name in the record books for his use of performance enhancing drugs, very few encourage the same treatment of Hank Aaron.

Just as amphetamines were allowed in the 1970s, in the 1990s steroids were not outlawed in baseball. In both situations, players were taking substances permitted within the rules of the sport to give themselves a competitive advantage. It is strange that today, one group of players is judged so much more harshly than the other.

It is stranger that pitchers from the 1960s and 1970s such as Gaylord Perry, who famously, dangerously, and illegally used to throw spitballs, are remembered fondly today. Stranger still, many players who played during baseball’s so called steroids era, and were found to have used steroids, are much less vilified than the group of great players discussed above. Using the 2014 Blue Jays as an example, both Marcus Stroman and Melky Cabrera have tested positive for steroids in their careers, and both are still regarded favorably by most fans.

Baseball has also had a much stronger reaction to steroids than the other major professional sports. The NFL does not announce the reason a player is being suspended beyond indicating that they have been caught using a banned substance. This allows players to claim that they tested positive for something innocuous such as Adderall or an additive from their cough syrup. Fans simply do not seem to care. The lack of positive drug tests in the NFL and NBA are conspicuous. It is extremely rare to hear reports of players from either league testing positive for steroids. It is possible that the players are simply not cheating, yet many have suggested that there are instead deficiencies in the respective testing programs of the other leagues. In the NBA, players are given advance warning of when to expect a drug test, and know that they will only be tested a limited number of times per year. Players can easily plan their steroid use to avoid any risk of detection in the seriously lacking testing systems. Again, fans seem to largely be indifferent.

Why then is the negative reaction to steroids so much stronger in baseball than in other sports?

Part of the explanation may be that fans of baseball are more concerned than fans of other sports about the records and the history of the game. They see the records as sacred, and now that they feel that a cheater may have broken them, these same fans view the records as tainted.

This explanation is incomplete. A significant additional reason for the vilification of these players is that they are simply not very likable. They are brash and have demonstrated on several occasions to be liars. The writers who shape public opinion never liked Rodriguez, Bonds, or Clemens, so when the opportunity arose, these same writers vilified them.

The entire reason that players like Bonds and Sosa have been vilified is ultimately difficult to discern. Regardless, many baseball fans are beginning to realize the absurdity of demonizing professional athletes who do anything in their power to win, just as they had always been trained to do. Unfortunately, this realization is too late for Bonds, Clemens, Sosa, McGuire and the rest. Rodriguez is the last of this group still playing professionally, but is also unlikely to be forgiven because he so resolutely refuses to fit the mold expected of him. Instead he’ll just play out the rest of his 300 million dollar contract as the villain.

Photo credit: katchop.com

“Baseball has also had a much stronger reaction to steroids…”
taught about sex, or that they are being completely removed from their children’s sexual education. These are legitimate (but misplaced) concerns, and although children aren’t in anywhere in my near future, I understand their worries. On one hand, I firmly believe society is incredibly misguided in its treatment of sexuality and that things would be a lot better if we lived in a sex-positive society. However, no matter how much I disagree with what they decide to teach, it’s still a parent’s right to influence their children’s values based on their own values, culture, and religious beliefs.

Their objections are nonetheless misguided. The new Health and Physical Education curriculum is in no way being “forced” into the minds of students. Parents are permitted to remove their children from any or all parts of the sexual education curriculum (as has been the case for quite some time). Secondly, this is a curriculum that was created by a democratically elected government in consultation with four thousand chairs of parent councils. These chairs of parent councils were also democratically elected and represent schools from across the province. So to say that no one except Kathleen Wynne and the orgy-loving liberals had a say in the new curriculum is completely inaccurate.

Finally, it is the role of the school system to educate, not encourage. Teaching students what bananas are is not the same as encouraging them to eat bananas; teaching students that a penis is a penis, a vagina is a vagina, and how to roll a condom on a banana is not the same as encouraging them to have sex. The same can be said of the inclusion of education on anal and oral sex. The curriculum includes guidelines on how to engage in sexual activities safely. It is an acknowledgement that some students will want to engage in these activities. The curriculum clearly indicates that students should seek advice from trusted adults such as parents, their doctor, or religious leaders. The beliefs and values that a child learns from their community will inevitably be a part of their decision-making process when the time comes for them to consider sexual activity. The new curriculum, like all other curriculums, provides facts and nothing more.

The new curriculum is a severely needed update to what was previously in place. That said, I still have concerns. The education around sexting appears to revolve around teaching students to not do it and that it’s a dangerous activity which could lead to serious consequences. There is a focus on bullying and harassment which includes discussions on sexting and why it’s inappropriate to share pictures you have been sent or to coerce someone into sending pictures. But there doesn’t appear to be any inclusion of why a student may choose to sext, and the idea of consent in online sexual activity is severely lacking. Students need to be completely informed in order to have sufficient decision-making tools for all aspects of their sexual lives, including online communications. There also is no mention of asexuality or polyamory, but maybe I’m expecting too much too soon.

A central aspect of sexuality which I think is almost entirely lacking in the new curriculum is that engaging in sexual activities might actually be fun. Does it go beyond teaching students solely about abstinence, date rape, STIs, and unwanted pregnancy? Yes, and that’s awesome. But sex isn’t just something that might result in pregnancy or disease. It can be body-centered and solely for the purpose of making your body feel good, or person-centered and for the purpose of connecting with another person (or other persons). It can be a way of showing love, a way to relieve stress, or a way to try something new. As long as no one is suffering harm and it’s consensual, (legal) sex can be whatever you want it to be.

I understand the concern that telling students that sex is something that people engage in for fun may have the effect of encouraging students to have sex themselves. But I see it as a way of ensuring that students are completely informed when thinking about having sex and understanding if they’re ready or not. Instructing a student that sex can be something that is done for pleasure is not the same thing as saying that it’s something they ought to do. It’s telling them that when they’re ready, they aren’t acting inappropriately if they do want to engage in sexual activities purely for pleasure. That people have sex for fun is a fact, same as the fact that some people choose to wait until marriage or until they are in a committed relationship to have sex and others don’t. If a person is ready to have sex but not a child, that’s ok; if they aren’t married or in a committed relationship but are still ready and want to have sex, that’s ok too.

I do not have children, maybe I never will. We’ll see. But I might someday, and I want my children and all other children to have an education that fosters sex-positivity, body-acceptance, consent and respect for others. We all deserve to live in a society that is full of respect and acceptance. The new Health and Physical Education curriculum isn’t perfect but it is a leap in the right direction which the province’s children desperately needed. ◆
force for what will be one of the country’s biggest festivals of the summer.

Having looked at the WayHome list a few times now, and with my thoughts all out on paper (errr…word document), I have to say this festival looks pretty good overall. I’m certainly not blown away; the lack of Canadian acts, established veteran musicians, and musical diversity are all noticeable disappointments. However, with solid headliners, impressive depth, and a number of intriguing and unique acts to see, WayHome has definitely done enough to merit a visit. It seems it’s time to get my ticket, think about whether I actually want to camp an hour from my house, and start looking forward to summer!

**THUMBS DOWN**

People who think the dress is black and blue.

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**Bill C-51**

social differences is being reproduced through the law; transgender people are being targeted and discriminated against in an overt manner.

Law is currently being utilized by the Conservative government to further oppress people associated with social differences, as illustrated by Bill C-51 and Bill C-279. Social justice seems to be at risk in Canada, and those who will suffer most from this are people associated with social differences; the bull’s-eye is on them.

**Picket lines**

and employers, this reasoning, with respect, turns labour relations on its head, and ignores the fundamental power imbalance which the entire history of modern labour legislation has been scrupulously devoted to rectifying.... [Although strike activity itself does not guarantee that a labour dispute will be resolved in any particular manner, or that it will be resolved at all....what it does permit is the employees’ ability to engage in negotiations with an employer on a more equal footing.

Recognizing the right to strike as an “indispensable component” of the Charter-protected right to collective bargaining, Abella J proceeded to grant “constitutional benediction” to its exercise. Admittedly, Saskatchewan Federation of Labour is only a month-old decision, and so still in the early stages of jurisprudential gestation. But it is difficult to read Abella J’s judgment, amplified as it is by the zealous, fitful dissent of Rothstein and Wagner JJ, without believing that something consequential has just come to pass.

And not a moment too soon, either.

To understand the impending strike at York across a longer historical arc, capped by uncharacteristically sage judicial commentary, is thus to better appreciate the function and meaning of CUPE 3903’s collective refusal to work.

As students of law, prospective officers of the court, and ongoing beneficiaries of union members’ labour, there is ample onus on us to support this strike in principle, as the exercise of a right vested by the law we swear to uphold.

Fortunately, CUPE 3903 members won’t be holding their breath—no one in the pursuit of freedom has ever had that luxury.

**EDITORIAL NOTE:** Parmibr’s piece was originally published on the Obiter website prior to the CUPE 3903 vote that was held on Monday, 2 March.

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intellectual property rights because it is only natural that these rights will have the effect of limiting competition as that is the very purpose they seek to achieve. However, it is in the degree of that limitation that the Competition Act addresses itself. A distinction is made between acts that lessen or limit competition and acts that unduly limit competition, which fall under the scope of section 32 of the Act whereas the former do not. Though claims for copyright infringement may not directly contravene the provisions of the Act, where an intention to limit or prevent competition can be shown, this could be used by the defendant to support a defence of unclean hands or allegations of copyright misuse; see Volkswagen Canada Inc. v Access International Automotive Ltd. and Havana House Cigar & Tobacco Merchants Ltd. v Worldwide Tobacco Distribution Inc. The implication from this is that even where a remedy would otherwise be barred by a failure to meet statutory requirements, it would not necessarily bar the defendant from raising an equitable defence.

Finally, the practice of using copyright law to fill the gap where trademark law ends raises concerns over whether Parliament intended for intellectual property rights to overlap in this manner. The argument made against overlapping rights is that the consequences of this practice lead to “double dipping,” where owners enjoy an additional layer of protection that potentially results in the rights holder being overcompensated. In addition, this practice shows how the law can easily be manipulated to stifle competition as copyright moves away from its core function of protecting cultural products into the realm of ordinary industry and commerce. Copyright law is meant to protect culture and less about protecting businesses from competition. Commentators have argued that using copyright to prohibit importation of non-copyrightable goods is simply not in accordance with the underlying purpose of the Copyright Act. Although many of these considerations received the courts’ attention in Euro Excellence, they have yet to inspire a conclusive decision on the issue. The Court’s ruling is problematic because it fails to properly address these issues due to the majority’s explicit refusal to engage in a policy analysis.

The question still remains as to whether the rights under the Copyright Act should be read down to protect only the legitimate economic interests of the copyright holder rather than those that are merely incidental to other forms of intellectual property protection. This particular aspect of intellectual property law has been left unsettled with no bright line offering guidance to litigating parties in the future and seems to be an issue that the courts have left to be addressed by Parliament alone on another day.

Grey market

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were huge and delicious, leaving me more than satisfied. I really don’t have anything to say about this except that it was fantastic...

**KAROLINA:** I had the Glastonbury Herbivore, a sort of vegetarian eggs benedict: it consisted of a poached egg and Portobello mushroom on a scone, covered in a Béarnaise sauce which contained spinach and red pepper. I didn’t much like the red pepper, as it overwhelmed the rest of the flavours in the dish. And though I do love scones, the crumbly pastry didn’t make for easy eating. It came with homefries and a grilled tomato, which was such an endearing nod to Old Blighty (though I obviously didn’t eat it, because ew). All in all, it was a very average meal.

**Cost**

**KATE’S MEAL:** Brighton Toast ($12) + Mimosa ($5) = $17 + tax and tip

**KAROLINA’S MEAL:** The Glastonbury Herbivore ($13) + Mimosa ($5) = $18 + tax and tip

**Final thoughts**

**KATE:** Everyone (especially soccer fans) should go here immediately, get the Brighton Toast, and indulge in a cheap cocktail. You won’t be disappointed.

**KAROLINA:** Go for the cute, if cheesy, British theme and the cheap, delicious cocktails. I’d return for those two reasons, but probably not for the food. However it is significantly less expensive than many other restaurants we’ve visited, which is a definite plus. ♦

**FINAL SCORE**

**SERVICE:** 4.5/5

**ATMOSPHERE:** 4/5

**FOOD:** 3.5/5

**OVERALL:**
Amirpour’s unmistakable compositions also borrow from outside: wide, evocative vistas are intercut with murky city streets where shadowy figures follow one another. Employing chiaroscuro to create an unearthen aesthetic, Amirpour boasts an incredible eye for arrangements, and a wonderful gift for choreography. A Girl Walks Home Alone at Night is close to the noir sensibility of Let the Right One In, and contains the most enthralling bedroom decor since Emma Watson’s record-dappled walls in The Perks of Being a Wallflower.

With sparse dialogue, spooky atmosphere, and a sensationally eclectic score, much of the narrative is conveyed by images alone. Lyle Vincent’s unrelentingly gorgeous high-contrast monochrome cinematography gets us almost all the way there; his black-and-white visuals and stark landscapes almost frostbitten in their cold clarity. Amirpour is more concerned with creating memorable tableaux, which her characters often drift around like kelp in deep water.

Cryptic and solemnly fatalistic, A Girl Walks Home Alone at Night is a beguiling and unpredictable funny look at personal desire; about the will more concerned with creating memorable tableaux, which her characters often drift around like kelp in deep water. Cryptic and solemnly fatalistic, A Girl Walks Home Alone at Night is a beguiling and unpredictable funny look at personal desire; about the will more concerned with creating memorable tableaux, which her characters often drift around like kelp in deep water.

A Girl Walks Home Alone at Night is the kind of promising first feature that can’t help but imply that its creator will do better next time, it’s also an essential reminder that artists working from an old playbook can still delight and surprise.

Timbuktu (2014) 3/4

Elegantly artful, gracefully assembled, and ultimately disquieting, Timbuktu is a bitter cry from the heart; a quiet work of savage truth; and a timely film with a powerful message. Patient, restrained, and heartbreaking, it’s a breathing, bleeding reaction to a genuine human rights crisis; a response, a supplement, and a protest to the horrors that flash by on the news.

Along a river on the outer fringes of Timbuktu—a small city on the southern edge of the Sahara that was once an important centre for trade and scholarship under the medieval empire—live Kidane (Ibrahim Ahmed) and his wife, Satima (Toulou Kiki), along with their twelve-year-old daughter, Toya, and Issan, an orphaned boy they have adopted. With one foot in the past and one in the present, Kidane and his family sleep in a traditional open-door tent, but one of their cows is named GPS.

Issan’s boyish inattentiveness and Kidane’s angry feud with a fisherman lead to bloodshed; an angry saleswoman in the marketplace tries to shame her oppressors; a group of boys play soccer on a dirt field with an imaginary ball. It’s remorselessly grim—music, laughter, cigarettes, and sports are forbidden; people are terrorized, flogged, stoned, and shot at point blank range—yet gracefully assembled and appropriately confrontational.

The best political art forges a human connection, and never feels didactic or driven by overweening ideology. In Timbuktu, every scene and shift in tone or mood is designed to cut through the stereotypes that divide the world. When we observe a nomadic Tuareg tribesman’s domestic life as filled with familial strife and comedy, or bored young Al-Qaeda affiliates more interested in debating their favourite European soccer teams than in enforcing Sharia law, we no longer perceive their situation as alien.

These characters are wonderfully nuanced: warm and jealous and petty and fearful. Kidane’s pleas to see his daughter’s face before death may move you to tears. Abdelkerim, the doleful head of the local militia, is just as recognisable, and far from a Koran-muttering lunatic—he’s a mid-level, mid-career, semi-corrupt army officer who’s looking out for No. 1; someone who conceals his chain-smoking from his superiors, and gloats about his designs on the “enemy.”

In providing audiences a chance to bear witness to unspeakable suffering as well as dazzling defiance, Timbuktu reminds us that ideology is deaf and blind, and the militant threat is nowhere near as great to Westerners as to the people of Mali, Syria, Yemen, or Iraq. That Timbuktu also makes the crucial, heretical, point that Islamic militants are human beings more likely to be driven by greed or lust or power than by zealotry, just reinforces its necessity.

Writer-director Abderrahmane Sissako (Waiting for Happiness, Bamako) actually shot the film on the dunes of neighbouring Mauritania, where he was born. His style is deliberately composed and poetic; almost devout or monastic as he depicts visceral trauma without hysterics, expresses outrage with religious oppression, and offering moments of humour and startling beauty. The film’s methods are boldly unorthodox, and its eccentricities plunge its audience from unwavering vulnerability to nihilistic absurdity.

In rare cases, indignation and tragedy can be rendered with clarity yet subtlety, setting hysteria aside for deeper, more richly shaded tones. Timbuktu is such a case. Sissako’s vision is so offhandedly seductive, it takes a while before you realize what threat is gathering, and from where. Rather than shock, Sissako envelops us in a heavy sadness as happiness is besieged, then destroyed, by the same species who had created it.

Timbuktu is a meticulous, maddeningly truthful, morally devastating film about ordinary Malian people trying to live under harassment by swaggering jihadists toting Kalashnikov rifles, sinking into an abyss as unrelenting as the sand surrounding them. How to describe what it’s like for a Muslim community under the rule of violent insurgents? It’s repressive, humiliating, treacherous, and tragic, just like for the rest of us. Timbuktu is an act of resistance and revenge that throbs with humanity, and asserts the power of secularism.

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