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Obiter Dicta

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Monday, September 28, 2015

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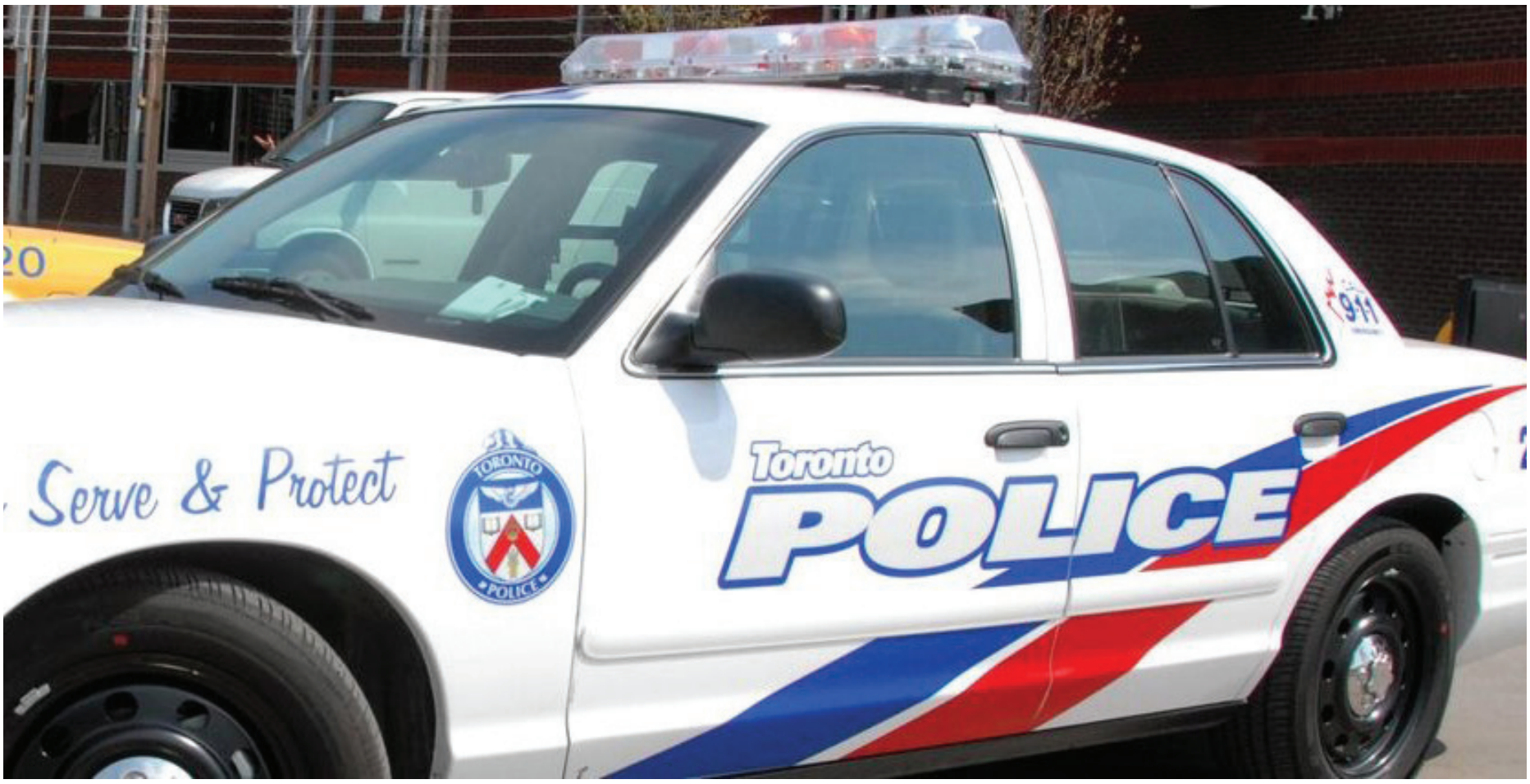


Photo credit: Durham Radio News

SIMMY SAHDRA › NEWS EDITOR

THE POLICE HAVE high expectations placed upon them, as they are ideally a group of protectors, defenders, and enforcement of the law. While the majority of police may still meet these high expectations, a Toronto Star investigation recently uncovered some "hidden truths" in how the minority of police officers who do act badly are being disciplined and reprimanded for their poor behaviour inside and outside their role as police officers.

Overall, some overarching themes exposed through the investigation included police officers being treated too lightly for serious misconduct, and a lack of transparency. Many people would surely be shocked to find that some officers they may be approaching for help have in the past been involved in the following activities:

A York Region rookie hits his wife with an open hand so hard he ruptures her eardrum.

A Toronto police constable cheats on his sergeant exam on three separate occasions by having his girlfriend, who was also a police officer, radio him the answers.

An OPP constable drives a homeless Aboriginal man several kilometres out of town, and leaves him to walk back at dusk along a busy highway in near-freezing temperatures.

The above officers are still part of the police force, and when you think of the possible scenarios that could ensue—such as a victim of domestic abuse approaching an officer for help, when he himself abuses his wife—these are terribly problematic situations.

» see **TORONTO POLICE**, page **18**

In this Issue . . .

Climate Change Litigation in Canada

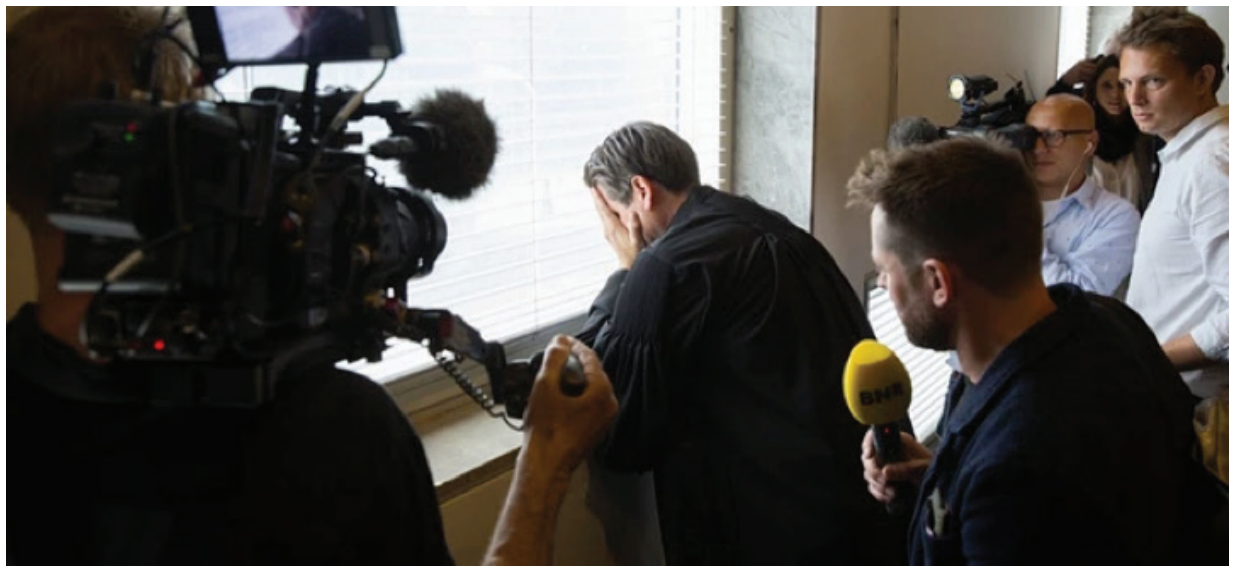
Probable or not, possible or not, the mere possibility is something powerful

In the worlds of environmentalism, environmental law, and particularly climate change advocacy, Roger Cox is currently quite the celebrity. This past June, he won a suit brought by environmental NGO Urgenda and 886 Dutch citizens against the Dutch government. To oversimplify, the plaintiffs successfully argued the Dutch government breached a duty to the Dutch population by not setting stricter gashouse gas emission targets. On September 15th, Cox gave a public talk, discussing his motivations, current climate change evidence, and the plaintiffs' legal strategy. A panel discussion followed Cox's talk, including current Osgoode Hall Dean and justiciability expert Lorne Sossin, former Justice of the Ontario Court of Appeal Hon. Stephen Goudge, leading Canadian environmental lawyer David Estrin, and tort law expert Lewis Klar.

Originally, I intended to summarize the Urgenda case, the opinions of the panellists and finally the majority opinion on climate change litigation in Canada. However, there are enough legal pieces out there that it's unlikely that another one—written by a second year law student no less—will add anything meaningful. To anyone looking for something to that effect, I suggest articles written by Diane Saxe of Saxe Law (and new Environmental Commissioner of Ontario), Andrew Gage of West Coast Environmental Law or Stephen Leahy of DeSmog Canada. They have had years to develop their expertise while I have three weeks of environmental law under my belt.

In short, I've abandoned my original plans for this article. Not because they aren't important, but because I left the talk with something substantially more critical that I need to discuss. I left that talk with hope. Real, can feel it in my heart and my bones hope, something I haven't associated with climate change in years.

From Peter Kent's announcement that Canada was officially withdrawing from the Kyoto Protocol in December 2011 to the conclusion of the September 15th event, I looked upon any discussion of climate change with the jaded, thousand yard stare of a soldier after a failed operation. Studying environmental science left me feeling like a tinfoil hat wearing conspiracy theorist, looking at society pondering how everyone else can know so little about our dire situation. Sometimes, I also felt like Morpheus, the gatekeeper to the "truth" about our reality, only with much more mixed feelings about which pill Neo should take. Whenever I read an article, viewed a TED Talk or watched a documentary about climate change, I would absorb the new calamitous predictions with a dispassionate disposition, accepting the severity of the situation, but lacking the drive to act.



Lawyer Roger Cox taking a moment after Dutch courts order government to increase greenhouse gas emission reduction targets. Photo credit: The Guardian

There was once hope in Canada, I think. At the very least, my teenage memories are laced with it. Sure, the One Tonne Challenge was an abject failure that preached to the converted and could never have met its own goals. But it was something that achieved a high level of awareness in the Canadian public, meaning that climate change itself was once on all of our collective radar. I remember learning about the 2002 Kyoto Protocol ratification, how Canada's previous government developing a plan that—while looked down upon by the OECD and Canada's Commissioner of the Environment—signalled that Canada was at least trying to meet its emission reduction targets. Was there a significant lack of enforceable regulation and too heavy a reliance on voluntary measures? Yes. But, as was the case with the One Tonne Challenge, we were heading in the right direction.

Of course, the change of government following the election in January 2006 changed all that. The newly elected Conservative government made it clear they were not going to attempt to meet Canada's Kyoto targets. From there, cuts were made to federal contributions to climate change programs including wind power and home efficiency promotion, Canada actively blocked progress on new climate change agreements, and (as mentioned earlier) Canada became the first country to exit the Kyoto Protocol. While the latest IPCC report states that there is a 95% certainty that a correlation exists between the rising average global temperature and rising atmospheric CO2 levels, our federal government set a new, much weaker emission target than Canada's commitments under Kyoto. During all this, I bemoaned the loss of the image of Canada I once had while developing an exceptionally negative attitude. And while I've had such a miniscule amount of exposure to environmental law, so far it hadn't lessened my near-unshakeable cynicism.

But as was the case before 2006, there are signs we're heading in the right direction again. In tort law, the recent Federal Court of Appeal decision *Paradis Honey Ltd. v Canada*, 2015 FCA 89 includes fairly radical *obiter* suggesting revamping public authority liability. In *Carhoun & Sons Enterprises Ltd. v*

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Obiter Dicta

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"Law: the only game where the best players get to sit on the bench." ANONYMOUS

Submissions for the October 13 issue are due at 5pm on October 3, and should be submitted to: **obiterdicta@osgoode.yorku.ca**

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A Community in Canada for Refugees

Learning from the Interim Federal Health Program

JERICO ESPINAS› CONTRIBUTOR

Canada is currently witnessing a revitalized interest in the plight of refugees, starting in early September when the tragic photos of the Kurdi family's attempt to escape Syria were widely published in the news and shared on social media. Since then, a large number of different non-government organizations, activist groups, and public intellectuals have criticized Canada's current refugee policies, claiming that more can, and should, be done to ensure that we provide adequate support for refugees. Many of these groups have made policy suggestions to both increase the number of refugees we have agreed take in and to speed up the refugee application process.

Many Canadians have expressed eager support for these changes to Canada's refugee policies. However, there is little discussion on the issues that refugees face once they actually arrive in Canada and are properly admitted as refugees. While living conditions here are almost certainly better than those in their country of origin, refugees still face a number of different systemic challenges that should also be examined and criticized.

One of these challenges involves access to Canada's healthcare system. Given the journey refugees undergo in order to escape their country of origin, many require healthcare services soon after their arrival in Canada. However, many of them have no financial resources to pay for the care themselves given the cost of travel and their socioeconomic background.

Fortunately, the Interim Federal Health Program (IFHP) provides low-income refugees and refugee claimants with certificates that entitle them to federally-funded health insurance coverage. Through this program, these at-risk populations can access a large range of basic healthcare services, such as urgent or essential healthcare, preventative care, some dental and vision care, and essential prescription medications. This federal insurance is expansive, and is similar in scope to the provincially-funded healthcare benefits that are provided to low-income, social assistance Canadians.

Despite the IFHP's clear benefits, it is currently facing strong challenges from the federal government. In 2012, the IFHP received budget cuts that severely limited the kinds of refugees who can apply for a certificate, excluding those who were not technically admissible to Canada based on their country of origin, those who failed to file their refugee claims on time, or those who made an unsuccessful refugee claim. Additionally, the majority of the IFHP's revised coverage focused on urgent or essential services, excluding preventative care like screening tests and annual check-ups.

These cuts were immediately felt by the refugee and refugee claimant populations, prompting strong responses from healthcare professionals and social activist groups. Three groups, Canadian Doctors for Refugee Care, the Canadian Association of Refugee Lawyers, and Justice for Children and Youth, sought legal action to reverse those cuts, claiming they were unconstitutional.

On July 2014, in *Canadian Doctors for Refugee Care v Canada (Attorney General)*, the federal government's cuts to the IFHP in 2012 were declared invalid because they violated sections 12 and 15 of the *Canadian Charter of Rights and Freedoms*. For the section 12 ruling, the judge held that the cuts constituted cruel and unusual treatment, in particular because they imposed health and life-endangering treatment on children. For the section 15 ruling, the judge held that it was discriminatory to withhold and limit core health care coverage for individuals based on their country of origin.

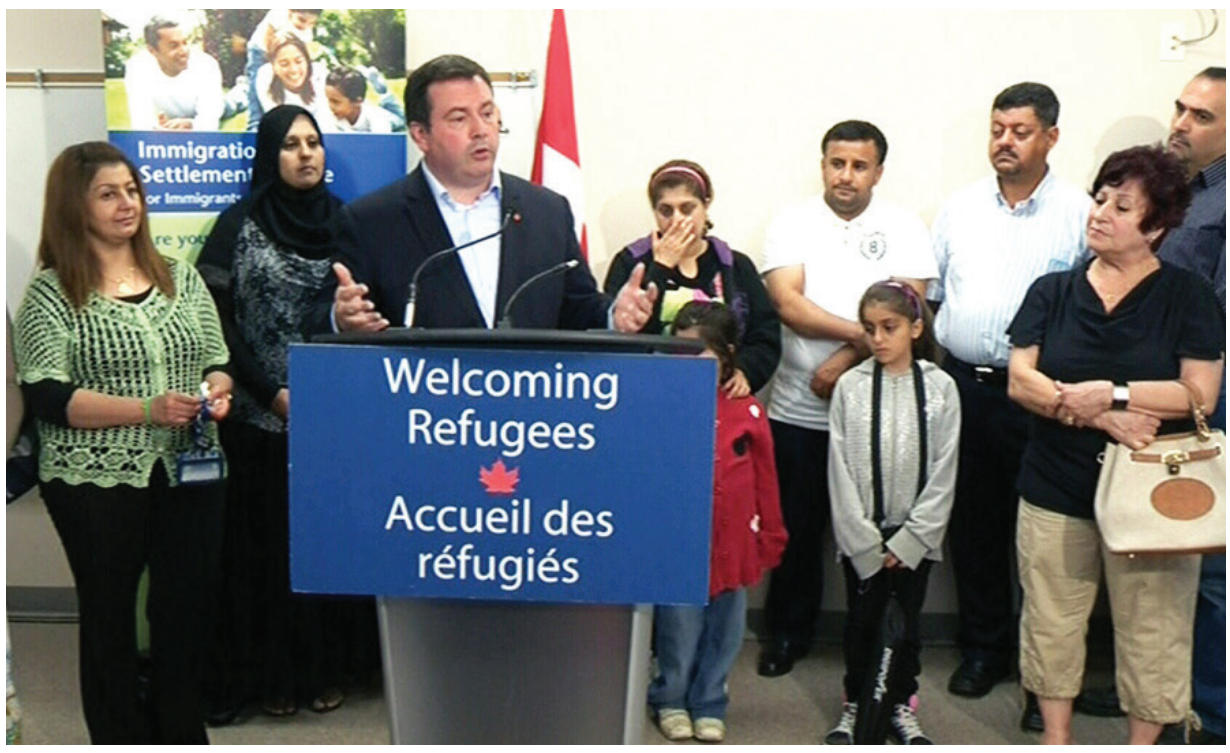
As of late 2014, the cuts were successfully reversed, returning IFHP health coverage back to a number of marginalized populations. The federal government has since expressed interest in appealing the decision, especially given the judge's particularly novel section 12 ruling.

The 2012 cuts to the IFHP should serve as an important lesson when considering the plight of refugees once they get into Canada. First, there are often formal institutional barriers that make it difficult for refugees to obtain essential services. Certainly, organizations that are concerned with the government's treatment of refugees still worry about unequal access to jobs, shelters, and legal resources.

"...refugees still face a number of systemic challenges..."

However, equally important are the social barriers that prevent refugees from being treated fairly and as deserving of respect by the broader Canadian public. Many Canadians hold prejudiced and discriminatory views about refugees, believing that these refugees are false claimants who simply want to take advantage of Canada's healthcare system. Some treat refugees as temporary aliens, deserving our pity but not our citizenship. Still others simply ignore refugees altogether, preventing them from integrating meaningfully with Canadian society and leaving their issues unaddressed. Our social perception of refugees deeply affects our relationship with them, and are often the underlying source of larger issues. Informal beliefs, after all, can serve to justify the creation of formal institutional barriers, such as the cuts to the IFHP in 2012.

As future lawyers, it is easy to devote our attention to reform at the institutional level, where laws, regulations, and social policies affect entire populations. However, it is also important to care for individuals at the social level in order to effectively tackle issues of perception, treatment, and respect. The former guarantees that refugees have a place in Canada, but the latter ensures that they have a community. ◆



Nearly one in two Canadians do not agree with how the federal Conservatives have handled the refugee crisis. Photo credit: Newstalk1010

From Niqabs to Tom Brady

A look at this month's most pointless appeals

NADIA ABOUFARISS › OPINIONS EDITOR

▸ Photo credit: CBC, Patrick Doyle/CP

In less than twenty-four hours, appeals were announced in two cases that made massive headlines both in Canada and the US. After the Federal Court of Appeal held that the ban against wearing niqabs during citizenship ceremonies is unlawful, the Minister of Citizenship and Immigration announced on 18 September 2015 that they would appeal this decision to the Supreme Court of Canada (SCC). The day before, Roger Goodell, Commissioner of the National Football League (NFL), made a formal declaration of his intent to appeal the *Brady v NFL* decision made earlier this month. Personally, I find both appeals ludicrous. If the SCC decides to hear the niqab case, it will more than likely add another notch to the very long list of losses for the conservative government in Ottawa. Goodell, on the other hand, has bullied his way to the point where not only his league, but also other leagues may suffer as a result.

Let's take a look at these two appeal requests and see if there's any chance of victory.

The Minister of Citizenship and Immigration v Zunera Ishaq

So far the government has spent almost $300,000 on this case. After paying what feels like that much to go to law school, that number scarily does not seem like a lot. However, spending any money on useless appeals and encouraging distracting issues during a federal election just annoys me on principle. Zunera Ishaq has removed her niqab for all security purposes, for her driver's license, and for her actual citizenship test, but apparently that isn't enough.

The problem with the government's case is that it isn't based on any sort of law. It isn't a question of security or identity, since in Ishaq's situation these things have already been established. The case is based on feelings: the government finds the niqab "offensive" and feels it isn't appropriate to wear at an oath ceremony. The Federal Court of Appeal dismissed the government's case without discussing the *Charter of Rights and Freedom*, instead stating that the ban on niqabs violates the *Citizenship Act (R.S.C., 1985*, c. C-29), which states that religious freedom should be allowed to be expressed during citizenship ceremonies. In what feels like a jab aimed at the government, the judges ended their ruling by saying that they didn't want to go into the *Charter* argument so as to expedite Ishaq's citizenship process and give her a chance to vote in the federal election on 19 October.

I've read some critics of Ishaq complaining that she is making a political argument rather than a religious one, since niqabs aren't mandatory in the Islamic faith. First of all, it's very funny telling someone what his or her faith means to them. I'm pretty sure that's not going to fly at the SCC. Besides, if she is standing up for her rights as a political issue, I am even more on her side, because overt islamophobia has no place anywhere, especially in politics. I might have my own feelings about niqabs and religion in general, but guess what? I am not Ishaq, and neither is Stephen Harper; if she has not violated any rules of the citizenship process and chooses to wear a niqab in public, that is absolutely her right.

"...overt islamophobia has no place anywhere, especially in politics."

Chances of winning the appeal: 1 in 20. A Supreme Court that loves expanding *Charter* freedoms vs. a federal government on a shaky case that smacks of racism (and sexism)? 1 in 20 is generous.

Brady v NFL

There's certainly no better use of judicial resources than deciding a squabble between a couple of millionaires fighting over balls. In case you weren't paying attention to what has commonly been called "Deflategate," Goodell suspended star quarterback of the New England Patriots, Tom Brady, for his alleged part in a conspiracy to deflate the air in game footballs. Brady was suspended for four games, a lengthy suspension for a league that plays sixteen regular season games. Brady and the NFLPA appealed the suspension, which was then sent to an arbitration that was presided over by the very man who issued the suspension in the first place, Roger Goodell. Not surprisingly, Goodell upheld the suspension.

Some of my favourite moments in law this summer were the many, many times District Court Judge Richard Berman urged Brady and Goodell to reach a settlement because he did not want to have to decide on the facts of this case. Judge Berman brought up the fact that ruling on this case will likely lead to years of appeals. He tried to urge the NFL to settle by warning them on numerous occasions that they didn't have a strong case, since they could not provide any direct evidence to link Brady to the ball tampering. But stubbornness prevailed despite the many settlement hearings, forcing Judge Berman to rule in favour of Brady and throw out the four-game suspension due to a lack of fairness and due process by the NFL.

Sports and entertainment lawyer Michael McCann has suggested that pushing this appeal to a higher level of court could have serious consequences for the NFL (and the other major sports leagues who have their head offices in New York City) by creating a binding precedent that could potentially make it more difficult for leagues to enforce arbitration punishments. McCann also researched Judge Berman's record, and found that only 8% of his decisions have been reversed. In another strike against the NFL, there is also the very real possibility that Brady will retire before the appeal process comes to an end, which would lead to the courts simply throwing out the case after years of litigation.

Chances of winning the appeal: 1 in 10. Judge Berman's record plus the completely buffoonery of this appeal makes it more than likely that Brady will continue his winning ways. ◆

THUMBS DOWN

White Students Union posters on York, U of T, and Ryerson campuses.

The Gates are Open

Supreme Court rules Ecuadorean plaintiffs allowed to pursue enforcement of judgment against Chevron

JAMES YAP › CONTRIBUTOR

In *Yaiguaje v. Chevron Corporation*, the plaintiffs, representing about 30,000 Ecuadorean villagers, seek damages from the defendant for injuries resulting from environmental pollution. They originally filed their claim in New York federal court in 1993, believing Ecuadorian courts to be ill-equipped to conduct a fair trial in such a matter. The defendants, however, sought a *forum non conveniens* dismissal, arguing that the Ecuadorian court system was fair and just. This jurisdictional dispute stalled the case for almost a decade, until the Second Circuit Court of Appeals finally granted the defendants a *forum non conveniens* stay in 2002.

The plaintiffs filed suit in Ecuador the following year, and after another protracted legal battle obtained a judgment against the defendants, which has since been upheld by Ecuador's Court of Cassation. The judgment from the Ecuadorian court is worth US$9.51 billion.

Subsequently, the defendant, who before the judgment had proclaimed the fairness and integrity of the Ecuadorian courts, declared that the judgment in Ecuador had been obtained by fraud, and that it would refuse to pay it. This has spawned a cascading series of subsidiary litigation battles around the world – the dispute has spread to a whole host of other tribunals including the Permanent Court of Arbitration in The Hague, as well as domestic courts in the United States, Brazil, and Canada. In Canada, the plaintiffs brought proceedings against Chevron and its Canadian subsidiary, Chevron Canada, seeking to enforce the Ecuadorian judgment in Ontario.

The question at the Supreme Court was whether the Ontario court had jurisdiction over the defendants in the Ontario proceedings. Chevron, the parent, argued that in order to hear enforcement proceedings in a Canadian court, the conventional test for jurisdiction – whether there exists a real and substantial connection linking the Canadian forum to the dispute – applies, and there was no such connection here because Chevron had no business operations or directly held assets in Canada. Chevron Canada, for its part, argued that the Ontario court had no jurisdiction over it with respect to the subject matter of the proceeding because it was not a party to the original judgment.

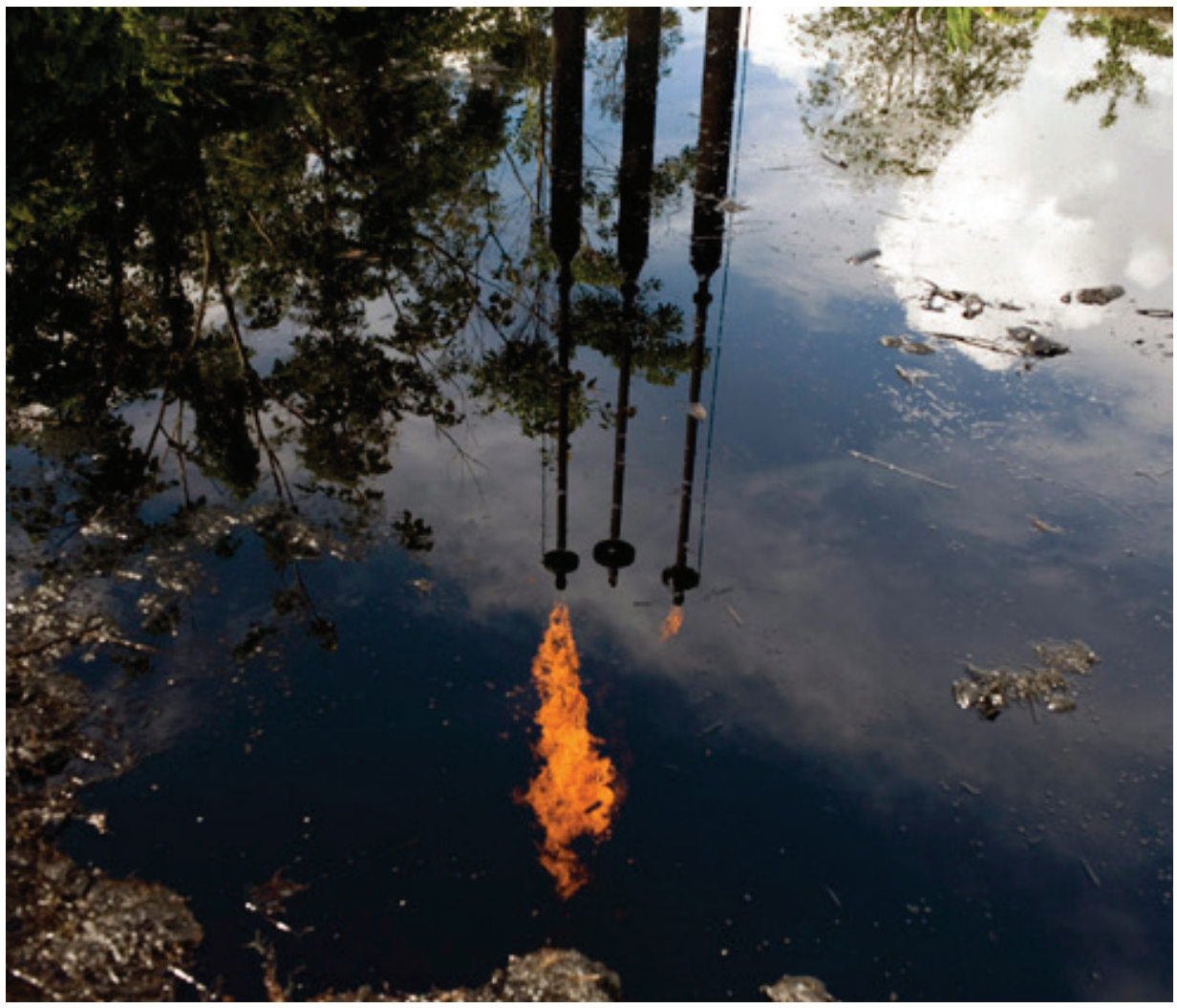
Gascon J., writing for a unanimous Court, rejected both arguments. With respect to Chevron, he held that no real and substantial connection is needed to establish jurisdiction in proceedings to enforce a judgment against the judgment debtor. He noted that, "In today's globalized world and electronic age, to require that a judgment creditor wait until the foreign debtor is present or has assets in the province before a court can find that it has jurisdiction in recognition and enforcement proceedings would be to turn a blind eye to current economic reality."

With respect to Chevron Canada, he held that its business operations in Ontario were sufficient to establish jurisdiction under traditional grounds of presence-based jurisdiction.

The enforcement proceedings against Chevron and Chevron Canada will now go ahead, with the defendants anticipated to argue that the Ecuadorian decision should not be enforced under the fraud exception to the recognition of foreign judgments, as described in cases like *Beals v. Saldanha*.

The scope of this decision is narrow and the factual circumstances unique. However, this decision supplies another piece in the puzzle of holding western multinational corporations accountable for involvement in human rights violations in developing countries. It confirms that the assets of a multinational enterprise anywhere in the world, whether held directly or indirectly, could be made available to satisfy a judgment against that multinational enterprise. On the heels of the decision in *HudBay*, it also signals to lower courts – as well as to multinational corporations in Canada – that Canadian courts may now be prepared to be receptive to such disputes. ◆

James Yap graduated from Osgoode Hall in 2010. He currently works at Siskinds LLP



A pool of oil in Lago Agrio, Ecuador. Photo credit: The New York Times

Women and Feminists

ESTHER MEDELSOHN › STAFFWRITER

On 5 September 2015, news broke of threats directed against "women and feminists" at the University of Toronto. It was right before the weekend, and on the weekends, I do my studying at UofT.

My thought process was as follows: *should I risk my personal safety when I can simply study elsewhere? My poor mother! If I go to Robarts, there are lots of good hiding places and several exits, so I have a better chance of making it out should something happen. I might be able to convince an attacker that I am not a feminist.*

Then the law student in me picked apart the wording: *women and feminists. So even if one is not a feminist, she is still being threatened. Is there any merit in a disjunctive interpretation? If feminism is supposedly anti-male, why the need to include both women and feminists? Would not the one suffice? What about women who aren't feminists and feminists who aren't women? Never mind all that; it's the weekend, and if there was going to be an attack, it would almost certainly happen on a weekday to maximize the impact.*

So I packed my books and some snacks, and headed to a place for which I have a deep—some would say quirky—affinity. It was easy for me to pen a defiant tweet once I got there. But make no mistake, for a solid moment I was scared.

Several classes were cancelled that week, in the end the determination was made that women were safer at home than on campus. Campus police have been criticized for not doing more to protect women on campus and for not releasing more details sooner. This is only part of the problem, and cancelling classes is not a viable solution.

When women's safety and security are threatened, the answer seems to always be for women to stay home, to not provoke an attack, to behave, to be silent. Being twice as good as the men so as to avoid accusations of quotas, dropping classes where the professors make misogynistic remarks, and rape whistles to ward off assaults: these are the tools which we are allowed to have.

Of course it would be more costly and complicated to address the underlying causes of these types of threats. Even when attempts are made, the backlash borders on hysteria (see the response to the new sex-ed curriculum).

"...cancelling classes is not a viable solution."

It does not matter whether or not the threats were made with the intention to deliver on them. The fact that they were made at all is quite enough. Interrogate your reasoning every time you dismiss concerns raised about women's safety—on or off campus.

There is a reason that these threats were directed at women in academia. It is the same reason that Marc Lépine went on a shooting rampage, murdering fourteen women at Montreal's École Polytechnique in 1989.

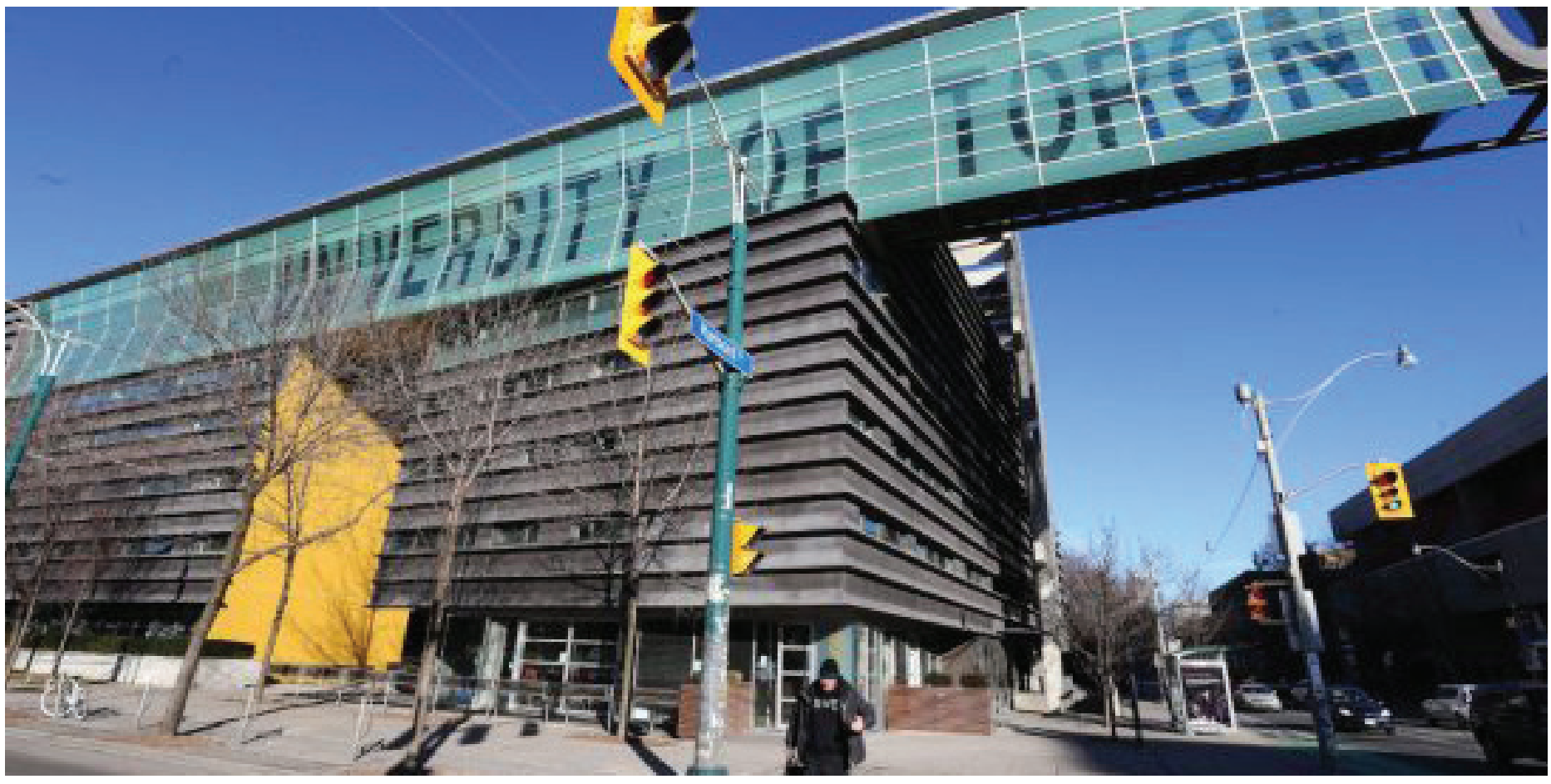
Educated women are a threat. When women learn history, they learn how women have been subjugated for centuries. When they learn political science, they learn how women have been excluded from the political sphere and how their concerns have been relegated to the sidelines of political discourse. When they learn medicine, they learn that much of the knowledge about women's reproductive health was acquired through experiments performed without patients' consent.

Women who have not had the opportunity or who have chosen not to pursue studies have valuable insights as well, and it is not my intention to diminish the importance of those insights. In fact, someone very close to me did not have the opportunity to finish high school, let alone pursue legal studies, and she can easily tell you of the oppression she has suffered for, *inter alia*, being a woman. She may not wrap it in theories or link it to a particular wave of feminism, but she can articulate it just fine.

While it is not the only valid path, pursuing academic studies is a sacred and noble act. It is therefore deeply depressing that women do not feel, and indeed, have no reason to feel safe on campus.

I am trained in self-defence, I am deceptively strong, I generally consider myself capable of fending off an attacker, and yet, I do not feel entirely safe.

I penned this piece at Gerstein Library—another favourite UofT haunt—but it is the weekend, so I guess I will be fine. ◆

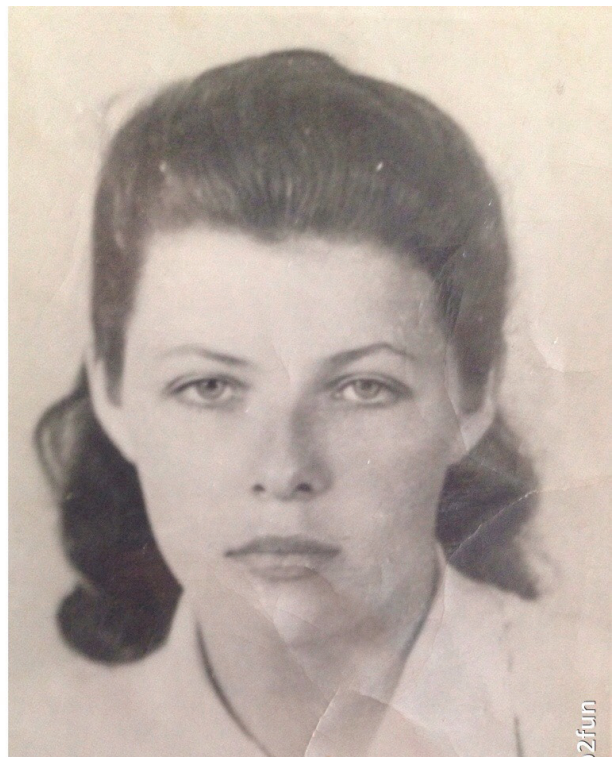


▸ Photo credit: Toronto Star

The Syrian Refugee Crisis

A story of Ukrainian refugees seventy years later

ANDRI SHCHUDLO › CONTRIBUTOR



AT THE END of the summer, just before returning to classes at Osgoode Hall, I made my annual summer trip to my hometown of Winnipeg. While there, I visited my Ukrainian Baba, and came across the following two photos. On the left is a photo of my Dido in a refugee camp in 1944, alongside other Ukrainian refugees. On the right is my Baba in 1945 in Hanover—this was the identification photo she had to submit in her refugee application to come to Canada.

My grandparents were among the millions of Eastern and Central European refugees that fled ahead of the advancing Red Army, desperately trying to reach the America, British and Canadian armies before Stalin cut Europe in half and threw a 45 year Iron Curtain over the East. As anti-Communist, Ukrainian nationalists, my grandparents would almost certainly have been killed if they had been unable to escape the Soviet Union's reoccupation of the Ukraine. They fled from city to city in a cattle car, so crammed with suffering humanity that it was impossible to sit down during the journey. Eventually they reached the Western Allies, from where they applied and were accepted as refugees to Canada. They eventually settled in one of Canada's great Ukrainian communities in Winnipeg's North End. They were not the wealthy, hyper-skilled immigrants privileged by our current policies--my grandfather became a bricklayer and my grandmother was a night cleaner in corporate offices.

If you are reading this you have likely noticed my incessant and insufferable hectoring on the Syrian refugee crisis, posting articles and raging inelegantly against those defending Canada's current immigration and refugee policies. My annoying insistence on highlighting the plight of the Syrian refugees stems from the personal resonance I feel on this issue. Quite simply, if Canada in 1945 had had the restrictive quotas and burdensome bureaucratic requirements of today, my grandparents would never have made it here. They would have been killed, or tortured by the NKVD, or exiled to Siberia. My Dad would likely never have been born, and I of course would never have come into existence.

The story of Ukrainian refugees in WWII parallels that of the Syrian refugees today in so many ways. Like the Syrian refugees, my grandparents were destitute, and they would never have been attractive to a country like Canada on a purely economic metric. Like the Syrian refugees, they practiced a different religion (Eastern Orthodox) and came from a country with no history of liberal democracy and civil liberties, which in the opinion of the nativists and xenophobes, would have made them impossible to integrate into the fabric of Canadian society. Of course, they are now among the over 3 million Ukrainians and their descendants in Canada, who have been integral to the building of the affluent, peaceful country we now live in. In retrospect it seems beyond absurd to have thought they couldn't integrate. It is equally absurd to think that Muslim immigrants from the Middle East would be any less likely to do so today.

The most remarkable thing about my family's story is, in fact, how it is the eminently ordinary Canadian story. Unless you are First Nations, many of you could trace a similar story. Most recently Croats and Bosnians and Somalis and Tamils, and before that Ukrainians, Poles, Jews, Mennonites, Hungarians, Germans. Baltic peoples, Italians, Greeks, Koreans, Vietnamese, Chinese, Cambodians, Laotians, Africans, South Americans, Mexicans, Afro-Caribbean. Even before them, it was starving Irish and persecuted Scots, runaway slaves escaping the South to freedom via the underground railway, and British loyalists fleeing retribution at the hands of revolutionary Americans—so many different peoples fleeing from war, persecution, famine or at the very least material circumstances so dire they propelled them to uproot their families and their entire lives and risk an often hazardous journey to the frozen, sparsely populated and totally alien country of Canada. In every one of these refugee waves, the xenophobes and nativists said Canada should shut the door, that we could not afford to take them in, that these culturally dissimilar people would not integrate, etc. In every single case, the xenophobes and nativists were completely wrong.

This is why I find the immigration and refugee policies of our current government so unfathomable. As you may have seen, Canada has refused to accept more than a token number of Syrian refugees. In the 4 years since the Syrian civil war broke out, Canada has taken in 2,400 Syrian refugees—2,400 out of more than 4 million. On top of this, our government has dramatically reoriented our immigration and refugee policies, jettisoning that humanitarian ethos that had formerly played such a large part in how we designed such policies. Our current government has dramatically reduced the number of successful refugee applicants. The only recourse for unsuccessful applicants is an appeal, a legal right the Conservatives attempted to strip away before the Canadian courts intervened, declaring such a policy patently unconstitutional. In order to save an utterly insignificant couple of million dollars, they stripped health coverage from refugee claimants, before the courts again intervened, declaring such policies "cruel and unusual". This government apparently even contemplated dramatically reducing the number of eligible refugees that would be accepted with health problems, including most disturbingly, refugees who had been tortured. As the Canadian Immigration and Refugee Bar has noted, never before have Canadian policies on refugees been so mean and so incompetent.

In defence of these policies, I've heard a lot of dubious arguments trotted out. First, I've heard how economically unfeasible it is to accept more than a token few refugees. This line of argument fundamentally misunderstands how an immigrant society like Canada became prosperous in the first place. Going forward, this country's greatest economic challenge is demographic—we have an aging population, with fewer and fewer working-age adults capable of supporting the pensions and universal health care of retirees. And of course, the argument that accepting refugees would bankrupt our country is utterly belied

» see **REFUGEE**, page **19**

THUMBS UP

Toronto will not make a bid for the 2024 Olympics.

What It Really Comes Down To
Children's rights in Ghana

CRISTINA CANDEA › CONTRIBUTOR

▸ Child working in woodshop Wood Village, Kumasi. Photo credit: Cristina Candea

It is no secret that the ideals law strives to achieve and what occurs in reality are often vastly different. International law, and by extension the thrust for universal human rights, is an idealistic legal structure that is often critiqued for providing little more than a platform for political discourse. Whether this is the case or not, providing a voice for the most vulnerable members in society is valuable in itself. This summer I was an ILP legal fellow at Defence for Children International (DCI) in Kumasi, Ghana. Beyond providing a fulfilling understanding of the human rights movement, my experience of the country and of the NGO I worked for during my three months abroad illuminated several ideas about the fight for universal children's rights. I left Toronto skeptical but excited: how could a European-based NGO such as DCI make a difference for children in a country like Ghana, where the culture is entirely different? My answer came in stages.

Socio-Economic Conditions in Ghana

When I arrived in Ghana I immediately became aware of the huge wave of social criticism directed towards the government currently in power. The nation is greatly mistrustful of their political leaders and publically scrutinizes them for corruption, misleading promises, and a bleak economic situation. During my time in Ghana, I witnessed peaceful public demonstrations against the government for shutting off the electricity, every single week. These reoccurring protests and the amount of political discourse publically broadcast were new to me; I come from a largely complacent populace where political conversations take place mainly in philosophical discussions and university classrooms. Walking around in a city like Kumasi does not make you feel unsafe. Rather, what you sense is *economic survival*: everyone is just trying to live another day, make ends meet, and hopefully put some food on the table. Besides being an extraordinarily warm and friendly people, Ghanaians are exceptionally resourceful, finding ways to make money out of small businesses at the side of the road.

"The nation is greatly mistrustful of their political leaders..."

Children in Ghana

Unfortunately, due to the economic situation in the country, most children are working side jobs after school to support their families, without protective guidelines in place to ensure their wellbeing. While Ghana has ratified the UN *Convention on the Rights of the Child* (1989) and even has their own *Children's Act* (1998), the economic situation prevents children from having what we in the West would consider "normal childhoods." It is here that the gap between international human rights legislation and reality is most evident, as government agencies struggle to keep track of abused children and offer them protection. Part of my work with DCI was to walk around in the city and ask children why they were in the markets selling water in baskets, for instance, as opposed to being in school. On a specific visit we went to the Wood Village in Kumasi, where we identified some children whose caretakers promised they would enroll them in school starting in September, and whom the organization would later monitor to ensure this actually occurred. The main reason caretakers usually gave us for not enrolling their children in school was—not surprisingly—insufficient resources. The economic situation in Ghana makes it very difficult for an NGO like DCI to truly make an impact in most children's lives. This means that DCI ends up being helpful only to the most vulnerable children, the ones that need immediate help in order to escape an abusive situation or whose basic human needs are not being met.

In my experience, government agencies in Ghana are particularly inefficient at dealing with human rights crises. During my time at DCI, I came upon a case where a young girl was in immediate need of protection and housing. Unfortunately, her case was delayed as we were told by the local children's welfare agency to call again in a few days because no one was available to investigate the case and help her at the moment. If not for two of the teachers at her school who offered her a place to live, this young girl would have had to sleep on the streets, exposed to a variety of dangers. From a practical perspective DCI are not prepared to do much more than connect children in need with resources that could potentially aid them, whether Legal Aid, welfare agencies, employment opportunities, police, or hospitals.

The Bottom Line

What can an NGO like DCI do then, to improve the lives of children in Ghana? When it comes to achieving universal children's rights, it comes down to money and distribution of power. One of these factors is more easily achieved than the other in the fight for children's rights: the distribution of power. We live in a world where *money* indisputably means *power*; however, one thing that can move money and shift power is *mainstream culture*. What DCI is most focused on is raising awareness of children's rights and the propagation of concepts related to children's rights such as gender, empowerment, violence, prevention of pregnancy guidelines, and so on. For instance, at one conference I attended, a representative of the Gender Ministry led discussions centered on the definition and prevention of *gendered violence* against female children and women. This was a workshop centered on shifting cultural assumptions about femininity and masculinity towards a more accepting and inclusive value system. A common criticism of the type of work DCI does, regarding the shift in mainstream thought, is that it justifies Western nations encroaching on traditional cultures to replace them with our own Eurocentric philosophy and that this is harmful to the people of Ghana. In my experience, however, the majority of Ghanaians were grateful to learn about how to become more "Western," and children ultimately still benefit from having a voice, as opposed to never having their rights championed.

Is international children's rights law anything more than a naming-blaming-claiming system full of ideals that have little to do with reality? Ultimately, when the focus is on redistributing power by shifting the mainstream culture to accept children's rights as a precept that society is unwilling to compromise on, the effort is always worth pursuing. ◆

This article was published as part of the Osgoode chapter of Canadian Lawyers for International Human Rights (CLAIHR) media series, which aims to promote an awareness of international human rights issues. To get involved, visit CLAIHR at http://claihr-osgoode.weebly.com/

The Definitive Ranking of the Deans of Osgoode

From Arthurs to Wright, where will your favourite Osgoode dean rank?

HENRY LIMHENG › STAFF WRITER

Look to your left, look to your right…": the classic go-to of any law dean's welcome address to the incoming students. Historically the saying would end, "one of you won't be here by the end of the year," an attempt to underline the cutthroat, competitive nature of law school. That said, deans have adapted and varied the line over the years. While giving the welcome speech is an important part of a dean's functions, they do much more than that.

"Deans aren't like Presidents of the United States, they're administrators. They don't have that much impact on the school," remarked an Osgoode administrative staff member to me while doing research for this piece. Respectfully, deans are more than just administrators: they are the spiritual leader of the school, the public face of the faculty, the introducer of events, and responsible for shepherding a generation of legal minds.

Motivated by Dean Sossin's reappointment as dean for a second term, it is worth looking back at Osgoode's past deans and reflecting on their tenures. Often respected intellectuals and leaders in their area of expertise, comparing Osgoode's deans to one another seems like an impossible task. But just as the bell curve must be applied to dubiously rank students relative to one another, these decanal rankings are no different.

Methodology

Only full-time deans of Osgoode were considered for this list, including the deans of the school when it was located in downtown Toronto. Meaning that the principals of the law school that existed pre-1923, or any interim or acting deans, were not included. Deans were judged on the dual and equally weighted criteria of legacy to Osgoode and personal awesomeness.

HONOURABLE MENTION: Lorne Sossin
NICKNAME: The Soss-boss
TERM: 2010–present
"Look to your left, look to your right, you'll be best friends forever!"

It would be unfair to rank the current dean while his term is still ongoing, so he's being placed in the honourable mention category. A wizard of administrative law, the affable and well-liked Dean Sossin has worked hard to foster the image of Osgoode as a friendly place. Some of his accomplishments so far have been to expand the school's international connections, the appointment of a wellness and health coordinator, and the creation of the artist-in-residence program.

That said, Dean Sossin also faces a number of challenges: high tuition and corresponding debt levels, and the availability of articling positions, to name a few. With a full term ahead of him, Dean Sossin has lots of time to cement his place in Osgoode dean history, perhaps taking a few lessons from his predecessors.

12: Stanley Beck
NICKNAME: Dean Who?
TERM: 1977–1982
"Look to you left, look to your right, one of you might remember who I am."

Someone has to be at the bottom of the curve, and unfortunately for Dean Beck, he falls into that role. Not because of any personal failing or terrible performance, but despite extensive research, I could not find the remotest hint of Dean Beck doing anything at Osgoode.

In any event, Dean Beck is an expert in corporate governance and securities law, and post-deanship would serve as the Chair of the Ontario Securities Commission. He still practices in commercial and labour mediation.

11: James MacPherson
NICKNAME: The Controversy Magnet
TERM: 1988–1993
"Look to your left, look to your right, one of you is going to give me a huge headache."

Dean MacPherson's term was plagued with controversy. Osgoode was making the news but for all the wrong reasons. During his tenure, a human rights complaint was filed alleging sex discrimination in the passing over of Professor Mary Jane Mossman for the role of dean. He also had to defend Osgoode's admissions policies when the *Obiter Dicta* published an inflammatory anonymous letter claiming Osgoode had too many black students.

Things weren't all bad for Dean MacPherson. Osgoode celebrated its 100-year anniversary under his tenure and all the controversy pushed Osgoode to institutionally develop more critical-thinking scholarship. MacPherson would leave Osgoode to join the judiciary and currently sits as a Justice on the Ontario Court of Appeal.

10: Cecil Augustus Wright
NICKNAME: Caesar
TERM: 1948–1949
"Look to your left, look to your right, you're probably going to be here longer than me."

Wright only served a short term as Dean of Osgoode before he and other prominent faculty members (one of them being, as he was then, Professor Bora Laskin) resigned in a huff in response to plans from the Law Society to maintain the apprenticeship model of law school rather than commit to full time legal education. Dean Wright would leave to start the law school at the University of Toronto, beginning the historic rivalry between Osgoode and U of T.

Dean Wright earned the nickname "Caesar" for being an intimidating professor, known for his harsh use of the Socratic Method. He was also a fierce legal education reformer, and hoped to change Osgoode from what was then a part-time program into a full-time program. Wright would get the last laugh as eventually the Law Society capitulated and law school became the fulltime endeavour that we know today.

9. Peter Hogg
NICKNAME: The Constitution Whisperer
TERM: 1998–2003
"Look to your left, look to your right, none of you will be more famous than me."

Perhaps some will take issue with the relatively low placement of Dean Hogg, the leading expert on the Canadian Constitution. His appointment as dean certainly brought prestige to Osgoode and helped cement Osgoode's reputation as a leader in Constitutional law. He also was able to bring in a not insignificant amount of business investment to the school and oversaw an overhaul of the school's curriculum. That said, his decanal accomplishments seem underwhelming compared to his greater academic and legal contributions, with his deanship of Osgoode merely a footnote to his quite spectacular legal career.

8. Allan Leal
NICKNAME: The Downtowner
TERM: 1958–1966
"Look to your left, look to your right, you will be last to do so in downtown Toronto."

Dean Leal was the last dean of the law school while it remained in its downtown campus, though he shouldn't be blamed for the move north. Leal was a staunch believer that the law school should have remained downtown—in order to maintain its connection to the Courts and the legal community—and would end up resigning his position after the Law Society made its decision.

He faced a number of challenges as dean, including a rapidly changing legal profession and dealing with one of the many "articling crises" that seem to never go away. Dean Leal did much to restore the intellectual reputation of the law school: the Osgoode Law Journal was founded under his tenure. Leal would go on to have a distinguished career as legal reformer and civil servant.

7. John Falconbridge
NICKNAME: The First Dean
TERM: 1923–48
"Look to your left, look to your right, one of you won't be here by the end of the year."

Serving twenty-five years, Dean Falconbridge was the first and longest serving dean of Osgoode Hall Law School (previously, heads of the law school were called principals). His tenure was dedicated to creating the first real law school in Ontario with full-time professors and mandatory courses. And if that wasn't itself a difficult enough of a task, Falconbridge was dean during the Great Depression and World War II; his steady hand was valued for steering the law school through a tumultuous period in world history.

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Of Mice and Pen

MICHAEL MOTALA › CONTRIBUTOR

Photo credit: Neuacademic.com

For at least as long as *The Paper Chase* has been an element of our popular imagination, it seems there have been two dominant features of the first year law school curriculum: the case book and the Socratic method. Does this signature pedagogical approach really teach first years to "think like a lawyer?" Or is it an ineffective and antiquated form of teaching? Might it even be, as critics suggest, an "infantilizing [...] tactic for promoting hostility and competition among students" that is "self-serving, and destructive of positive ideological values?"

Little did I realize the first semester of contracts, criminal law, and torts was at once the debut of the methodology as well as its pedagogical zenith. As soon as I had adjusted to the pace of question-and-answer based on hypothetical or case, by second semester, it seemed to diminish in discursive quality. Partly to blame are the students—exhausted by overwhelming readings and assignments, falling behind in the library, and distracted by Facebook and the daily news while in class. There are also the "gunners" who dominate the question-and-answer, evidently prepared, drowning out the rest, and certain to elicit *schadenfreude* among their peers when they inevitably blunder. Everyone knows the quiet ones do the best on exams anyway.

Equally, the professors are to blame. Some have the charisma needed to capture and sustain a class's attention and stimulate discussion, however ill-prepared or overworked its participants. Others retreat to a lecture-style dictation of slides or prepared remarks with no such bravado. Yet the popular discourse tends to eclipse the contribution of the teacher, foisting blame on the hazards of new technology for a lackluster classroom experience.

Professors across the country are banning laptops in the classroom because of the supposed pedagogical benefits. But is the pen indeed mightier than the keyboard? Apparently so, according to a 2014 study in the journal of *Psychological Science.* It finds the transcription of verbatim notes while typing entails a failure to process information, leading to poor retention. In recent weeks, *The Globe and Mail* and CBC Radio's Anna Maria Tremonti gave life to the debate, and the thrust of this research, in a series of interviews with teachers and expert commentators. The jury is out, according to the liberal outlets, as far as many educators are concerned. But the narrative is awfully one-sided.

Two Osgoode policies stand out in this context. First are the blanket policies banning technology—laptops and mobile phones—from lectures. Second is the reticence of many instructors to release recordings to the class-at-large, preferring to provision access only to students with accommodations. When confronted with questions over the preference, many professors cite "pedagogical reasons" or being "old school." Does this thinly reasoned justification hold up to scientific scrutiny? Is it in the students' interests, or does it amount to the paternalistic infantilization of free-thinking, self-governing adults?

"...used effectively, computers have been shown to increase performance."

A 2011 study from the University of Michigan suggested a nuanced result after a series of surveys. It reported a mixed result in grade performance when students use laptops in the classroom. On the positive side, it found that students who were engaged with questions and interactive material on their laptops performed slightly better than average in assessments. However, on the negative side, it reported that the laptops could serve as a distraction to other students. The study notes that the better performing users were enrolled in courses and faculties that significantly integrated technology into the learning environment. The authors also encourage professors to designate a laptop free zone to limit distraction, while exploring means of further engaging their students to keep pace with technological development.

More recent experiment-based study reached other conclusions. A 2012 study in the *Journal of Computers & Education* consisted of two experiments. In both, a group of test subjects were presented with material in a lecture format, and then asked to write a multiple-choice quiz to assess retention. In the first experiment, all test subjects were given a computer, and half were forced to multi-task while transcribing notes. Predictably, those multi-tasking scored over 10% lower on the test. In the second experiment, half of the subjects were given computers and others were forced to handwrite. On the multiple-choice test, the results indicated students surrounded by laptops performed 17% lower, highlighting the impact of distractions on the in-class environment.

A surprisingly nuanced picture emerges from the findings surveyed here. Students and teachers can take for granted that technology is a distraction for students using shorthand. Yet used effectively, computers have been shown to increase performance. The question is whether the kind of learning environment needed to effectively teach law is conducive to this sort of digital engagement. Also, is there one policy choice or another more conducive the diversity of student learning styles in relation to their medium of information consumption?

Policy changes that impact the student experience should be subject to discussion rather than justification by one authority. Particularly when there is nuanced evidence on effectiveness, and many variables at play, students should have say over their preferred technologies. While many of our professors have difficulty consistently recording their lectures, or limit availability to students with accommodations, leading universities around the world are adopting new forms of digital engagement to enhance the in-and-out of classroom experience. Indeed, sometimes the pen is mightier than the keyboard. But not the microphone. ◆

THUMBS DOWN

Toronto Police body-cam program will not require continuous, constant filming.

Public vs Private

The ethics of regulating robot sex

SHANNON CORREGAN › CONTRIBUTOR

The summer of 2015 has been a monumental season for robots. Just this July, a robotics company called Softbank released a humanoid robot that it claims is able to sense users' emotions. Even more impressive, scientists at the Rensselaer Polytechnic Institute in New York developed a robot that broke new ground in demonstrating self-awareness. The robot's artificial intelligence was able to pass a self-awareness test that previously only humans had been able to beat. While the broader ramifications of this achievement have yet to be ascertained, researchers claim that at the very least, this was a "mathematically verifiable awareness of self" by non-human intelligence.

With a new era of artificial intelligence and robotic responsiveness just around the corner, robot ethicists at de Montfort University in Leicester, England are attempting to draw attention to some of its potential dangers – particularly when it comes to robots that are being sold for sex use.

Humanoid sex toys are nothing new in our society, but a company called True Companions is currently producing what it advertises as the "world's first sex robot." The Roxxxy Doll is a female humanoid robot, customizable for race, hairstyle, and (bizarrely) toenail polish colour, which are to be used either to have a conversation with or to "interact physically" with. This is bad news, according to Kathleen Richardson, robot ethicist. Richardson is campaigning to attempt to dissuade scientists "to withhold code, hardware and ideas from robotics companies that are developing sex robots."

The issue of robot sex brings up two key issues, one of policy and one of regulation. Richardson is concerned with the first.

Robot ethicists are worried that this new technology does not represent a brave new world so much as a place where toxic ideas about sex, gender and race that are already present in our society will be imported, reinforced, and reproduced. While advocates for the sex robots argue that this is a purely personal matter, Richardson demands that we pay much closer attention to how sex robots – who are at this stage, at least, still mere sexual objects – might promote the objectification of women and children in our society.

The Campaign Against Sex Robots' manifesto highlights the fact that robot-human relationships represent an unequal power dynamic. This sentence might have been ludicrous two decades ago, but nowadays the point is salient. One of the key selling points of the Roxxxy Doll is her realism. The Roxxxy Doll is as close to a woman as you can get without actually interacting with a woman. Richardson and her colleagues point out that this reinforces the idea that the needs of the user (who is also the purchaser) are paramount over the (non-existent) needs or wishes of the robot. This is not problematic in and of itself, as long as we're only talking about objects, but this relationship adheres to the model of prostitute-john dynamics, without the added complication of the sex worker's agency or subjectivity.

Richardson asserts that this will lead to a normalization of one-sided power dynamics that will not only reduce human empathy broadly, but specifically promote women's objectification and violence against women and children. Their argument is reminiscent of the ways in which the consumption of pornography that portrays violent or sexist sexual encounters has been linked to increased objectification of women.

Furthermore, lurking under the gender-neutral surface of this conversation is the reality that "human/robot" is typically a stand-in for "male human and (often) female-coded robot." Despite the fact that True Companions is currently working on Roxxxy Doll's male counterpart, Rocky Doll, the question of human/robot sex often circulates around men's sexual preferences and access to sexual gratification, not women's.

Douglas Hines, the CEO of True Companions, is in a double-bind as he attempts to defend his product from multiple criticisms. Hines claims his robot isn't intended only for sex: it can be a companion as well, and can carry on conversations. Certainly the website describes the doll as though it were human, using female pronouns. But in a recent interview with the BBC, Hines insisted, "We are not supplanting the wife or trying to replace a girlfriend." The question of what role this object is supposed to fill is still open to interpretation – as is the question of what it means to rely on an object for emotional and sexual support.

More important, however, is the question of whether this is a purely private decision or a matter of public interest. And as developers pursue ways of making their sex robots more realistic, in an age of AI and robots that can sense human emotion, we are also not so far away from the question of whether or not robots can, for example, consent.

All of these questions are issues of social policy, but regulations on new technology often come about because of more practical concerns, such as personal safety or copyright, as we are seeing with regards to aerial drones. A proposed ban on sharing artificial intelligence technology with sex robot manufacturers for reasons of the broad public good would likely only have traction if the industry voluntarily adopts it.

The next question is, will regulation of sex robots come from laws governing technology, or laws governing consent? ◆

THUMBS UP

The nicab decision.

Roxxxy, the sex robot. Photo credit: NBC.com

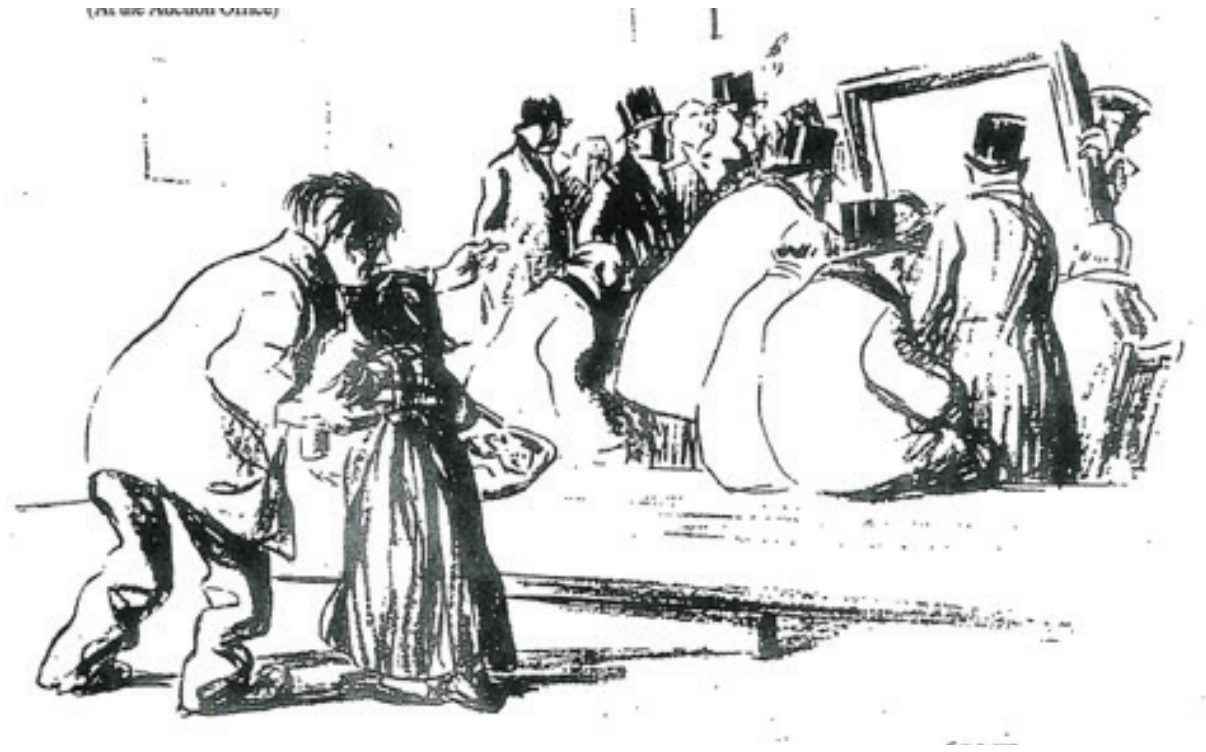
Resolving the Starving Artist Cliché
Part One: The Artist Resale Right

KATHLEEN KILLIN › ARTS & CULTURE EDITOR

Over the next year, I have decided to pen a series of articles on a topic that remains very near and dear to me—artist rights and advocacy for visual artists. During my time at Sotheby's Institute of Art in London a few years ago, I authored *Resolving the Starving Artist Cliché* —a guide on implementing international schemes into Canada to assist access to justice for artists and poverty alleviation. According to a 2001 study "Artists in Canada" by Hill Strategies, artists earned nearly half of the average Canadian labour force. Thus, it is critical for various schemes to be implemented in order to assist artists economically and socially. The first of said initiatives I will explore is *Droit de Suite* or the Artist Resale Right (ARR).

Originating in France, ARR gives artists and their estates the opportunity to have a residual income on works of art when resold. As defined by Renée Pfister in *Understanding International Art Markets and Management*, "*droit de suite* constitutes the right of visual artists to a percentage share of the earnings from the resale of their works of art on the art market." Of note, *droit de suite* can only be on sales on the secondary market between buyer and seller or intermediary, and are excluded from the first transaction, private sales, and works bought and sold within three years. Some believe the scheme was brought into legislation following the resale of Jean-François Millet's work after his death for FF 1,000,000, whose works sold for FF 1,200 during his lifetime while his family lived in abject poverty. Others believe it to be the result of the collapse of the French Salon and therefore lack of state funding.

Following *droit de suite* being codified in France, the Berne Convention 1948 wrote Article 14*bis*, allowing Member States to observe *droit de suite*. Over fifty years later, the European Commission created Directive 2001/84EC that outlines *droit de suite* within Europe and applies only to works created by artists who are nationals of the European economic area. The Directive recommends 4% of the sale price to be given back to the artist (for sales under 50,000 euros), with royalty not exceeding 12,500 euros and instigates a harmonization within Europe. Member States were given until 1 January 2006 to impose a royalty right into their legislation, thus to ensure artists being able to benefit from resale right on a reciprocal basis throughout the European Union. Notably, the United Kingdom (UK) mandated *droit de suite* under the UK Resale Right Regulations 2006.



Published on the front page of a Parisian newspaper in 1920, this drawing by Jean-Louis Forain shows the young child of Jean-François Millet outside the auction house begging while her father's work sold for high prices. Courtesy of Artists Space, a Manhattan based group at www.artistsspace.org.

Although many arts business professionals were concerned about the resale right harming business and driving auctions to be held in Geneva or New York (where no resale right exists), the UK art market has continued to excel with buyers reacting positively to giving a percentage back to the artist. As maintained by Joanna Cave, chief executive of the UK's Design and Copyright Society, *droit de suite* not only rewards artists financially, but also "serves to remind art market professionals, buyers and sellers, who created the art in the first place."

ARR also functions in other areas of the world. Australia implemented the Resale Royalty Right for Visual Artists 2009 in which 5% of sale price for artworks over $1000 AUD would be given a resale royalty. It has totalled to more than $970,000 AUD and has aided over 490 artists, with 60% being from Aboriginal communities. Throughout the world, *droit de suite* usually lasts for the same length of time as copyright, with the collecting agency being most commonly a copyright collecting agency. In the United States (US), California was the only state where *droit de suite* applied under the *California Resale Royalty Act* (1977). However, in May 2012, the scheme was struck down as being "unconstitutional" due to it infringing upon commerce clauses within the US Constitution.

Currently in Canada, there is no legislation implementing ARR. However, movements have been made to change legislation and include Artist Resale Right into the Canadian *Copyright Act* through amending the Act with Bill C-32. The primary organizations spearheading the project are Canadian Artists

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A Concert Review: The Tallest Man on Earth

Live at Massey Hall, 4 September 2015

JUSTIN PHILPOTT › STAFF WRITER

The Tallest Man on Earth is the moniker of Swedish folk-singer Kristian Matsson. Contrary to what his stage name suggests, Matsson is no bigger than your average horse jockey. His voice, however, is larger than life and is an integral part of his music. It bolts out the speaker like a horse from the turnstile at the start of a race. Matsson is touring this summer in support of his new Tallest Man on Earth album, *Dark Bird is Home*, which was released back in May on the Dead Oceans label. Since his debut album, *Shallow Grave*, released in 2008, Matsson has developed a loyal and growing fan base; a fan base which was put to the test with the release of *Dark Bird is Home*, the first Tallest Man on Earth album to feature a full band. It marks a significant change in style from his previous three albums, which consisted primarily of Matsson's booming voice perfectly entwined with his acoustic guitar. No other frills seemed necessary. From the looks of things at Massey Hall on Friday night, I would say most of his fans have come to terms with his musical evolution. Although I am sure, if given the choice, most would rather it be just him and his acoustic guitar.

Matsson and his band hit the stage at Massey Hall full of energy, with him immediately jumping into the crowd and proceed to give the lucky fans in rows A to C high fives. The band opened with a brilliant version of the dream-like "Field of our Homes", the opening track on *Dark Bird is Home*. As expected, the early part of the set featured a collection of songs from the new album. With a number of talented musicians behind him, I was wondering if and how Matsson would use them when he switched to playing songs from his earlier albums. Just then nightmares of a Bob Dylan concert I went to flooded my brain where Dylan had turned his classic songs into unrecognizable fragments of their former glory. Instead of nightmares, Matsson put the crowd in a state of ecstasy with full band renditions of "King of Spain," "1904," and "The Wild Hunt." Matsson and his band also treated the sellout crowd to a cover of Blaze Foley's "If I Could Only Fly."

"...Matsson put the crowd in a state of ecstasy..."

Around half way through the set the band went backstage for a break, leaving Matsson alone on stage with his guitar. This is what I really wanted to see. After only a couple strums the whole crowd knew the heartbreaker "Love is All" was up next. Matsson would go on to play solo versions of "Criminals," "The Gardener," and my favourite song of the night, "Thousand Ways." For the first twenty to thirty seconds of "Thousand Ways," Matsson used only his right thumb to pluck his guitar strings; his left hand was at his side. With his guitar's distinct tuning and intricate fingerpicking pattern, it sounded as if there were three hands on the guitar instead of one. My friend and I both looked at each other in amazement and agreed that what was happening on stage wasn't fair. Matsson is like no one else on earth when it comes to the use of alternate guitar tunings along with distinctive strumming or fingerpicking patterns. After almost every song, Matsson's stagehand would bring him out a new guitar specifically tuned for the song he was about to play. I lost count of how many different guitars he used. To show us he could do it all, Matsson hopped on the piano for "Little Nowhere Towns," for the entirety of which Massey Hall was silent in awe.

With the crowd going nuts, Matsson and his band returned quickly for an encore and regaled us with a cheery version of "The Dreamer" in which he sings "sometimes the blues just a passing bird / why can't that always be?" For the last song of the evening, the band gathered together behind Matsson and added harmonies to the already beautiful "Like the Wheel," putting an exclamation mark on what was a fantastic concert.

Matsson is a showman; with a guitar around his neck he gives you the impression that he could cure cancer. This confidence disappears as soon as the music stops. When addressing the crowd he is incredibly awkward and surprisingly inarticulate. It's a struggle for him to find the right words. The howling applause he received after one of his songs prompted him to say that "coyotes sound the same everywhere in the world." Matsson was dressed in a white t-shirt and the tightest pair of white jeans I have ever seen. A clever fan let Matsson know that

» see **CONCERT REVIEW**, page **21**

Jurisfoodence at Home

A plea and a recipe

BENJAMIN HOGNESTAD › STAFF WRITER

I couldn't possibly overstate the benefits of home cooking. It's way less expensive, often healthier, and produces little to no garbage in comparison to eating out. It can (and *should*) be tastier, and more interesting as well. It's pretty much better in every way. But of course, everybody knows these things...

And yet, it seems like people are cooking fewer and fewer of their meals these days. With a heavy workload, we justify eating out because it feels like our time is better spent either working or properly relaxing. It's so easy to fall into the habit of hitting up Starbucks or Timmy's for breakfast, or grabbing some takeout for lunch or dinner. I have no statistics, but I'd wager a good number of us end up consuming one meal per day that we didn't make ourselves. I'm no saint. I too have fallen into the takeout trap for longer periods than I'd care to admit. Grocery shopping, preparing meals, and doing dishes all take up valuable time.

But I'm here bearing a message of hope. For there is a magical duo of kitchen implements—a prodigious pair of instruments so powerful—that will let you eat like a king/queen on a peasant's budget and still have time for Game of Thrones. This incredible combination is none other than the humble slow cooker and the common freezer. Many of us possess both already. If not, old slow cookers are easily procured from a local thrift store. I have to admit that I also have the advantage of an apartment sized deep-freeze. I bought it on craigslist last year when I found the tiny little one on top of my apartment fridge was filling up. It was probably the best purchase I made all year. The guy dropped it off right at my door for $160. It's a small investment in the name of cheap, delicious and earth-friendly eating.

The list of things that a person can freeze successfully for later consumption is substantial. Bigger than most people think, I'd wager... But for the time being I'll just focus on one meal in particular: curry and rice. Both are easy to make in large quantities, and both freeze excellently. (To be honest, I've only ever frozen brown rice, but I can say that it stands up very well). I tend to freeze stuff in old yogurt and sour cream containers. Then both the rice and curry get defrosted in the microwave and dinner is ready with practically no work.

Here is a lovely recipe I stumbled upon a little while ago while looking for Indian recipes. It's called Rajmah. It's a north Indian dish of spiced red kidney beans. It's, quite simply, mind-blowing. This is a slight adaptation of a recipe that found the recipe on food.com. The blurb that goes with it totally captured my interest...

"This recipe is by Anupy Singla, whose cookbook, *The Indian Slow Cooker*, is a publishing sensation. She says slow cookers are particularly suitable for Indian cooking, reminiscent of clay cookers that would have been used for village cooking. This recipe is a traditional and classic North Indian dish that you would find in every home, but not in restaurants. Comfort food for Punjabis, this is the dish her family requests the most."

Slow Cooker Punjabi Rajmah: Spiced Kidney Beans

3 cups dried red kidney beans, sorted and washed
1 medium onion, roughly chopped
2 medium tomatoes, diced
2 inches piece ginger, peeled and minced
3 garlic cloves, chopped
1 Jalapeno chili, mostly seeded, chopped
3 whole cloves
1 cinnamon stick, 2 to 4 inches
1 tablespoon whole cumin seed
1 tablespoon red chili powder
2 tablespoons kosher salt
1 teaspoon ground turmeric
1 teaspoon garam masala
Water to cover

To serve:

Chopped cilantro

Hot cooked rice (I tend to make brown rice, but basmati would be even better. I won't bother with a recipe here, I just use the one on the side of the bag. As I mentioned before, I like to make a huge pot of rice and freeze the rice as well).

For the beans:

First, soak the beans in plenty of water overnight in a pot. When you're about to assemble the dish, boil the beans in the water for ten minutes. Dried beans, especially kidney beans apparently, contain a toxin that requires soaking and boiling to destroy. The original author of the recipe says that the slow cooker does the trick, but the FDA says that slow cookers don't get hot enough, and recommends boiling them to be safe.

After you've boiled the beans, strain them, and put all the ingredients (except the cilantro and rice) into a five to six quart slow cooker, and add water. I can't be too specific because the original recipe is a bit vague... just put in enough water to mostly cover the beans. Cook on high for eleven hours, until the beans break down and the texture becomes somewhat creamy.

If you can find them, remove the cloves and the cinnamon stick. Remove about one cup of the beans and process in blender or food processor, then return. Most of the beans should remain whole. (If you don't have a blender, you could probably just mash them up well to get the same effect.)

Stir in cilantro and serve over rice.

Original recipe: http://fd.cm/1NI3Dn ◆

▸ Red kidney beans, only eleven hours separates these beauties from their delicious destiny. Photo credit: Nnobseed.com

THUMBS DOWN

Professors who refuse to record their lectures.

Jurisfoodence: An Adventure into the Toronto Food Scene

Food Adventure #3: Earls Kitchen and Bar

ANTHONY CHOI › STAFF WRITER

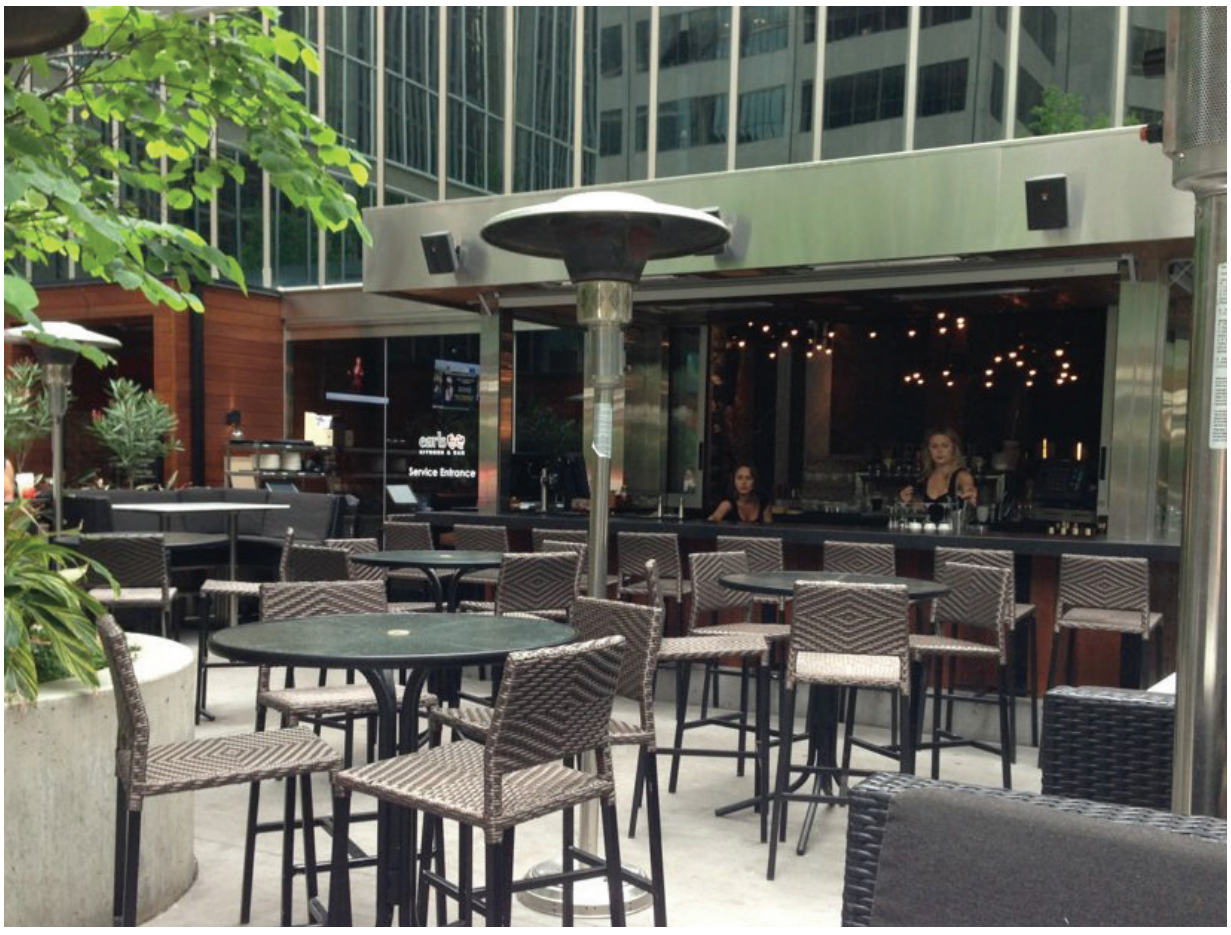
NAME: Earls Kitchen and Bar
LOCATION: 150 King Street West
CATEGORY: Restaurant, bar
ATMOSPHERE: Upscale, trendy
ADDITIONAL INFO: Has heated outdoor patio.
WEBSITE: https://earls.ca/locations/king-street

Today, on another episode of Jurisfoodence, we will be reviewing Earls Kitchen and Bar, a well-known restaurant chain that has dozens of locations all over North America. Earls opened its first Toronto site in 2012. With its prime location right across from the Toronto Stock Exchange and its supposedly stunning outdoor patio, Earls instantly became a major hit with many who work in the Financial District. Indeed, it has even been described by friends as one of the nicer spots in the city, featuring private wooden cabanas and heat lamps in a courtyard enclosed by a gorgeous vinery amidst the towering glass towers of the downtown core, and at the same time secluded from the rest of the city. On the day my guest and I arrived, however, it was pouring rain outside and we regretfully were not able to take advantage of this urban oasis of a patio. Nonetheless, the interior atmosphere and ambience more than made up for this lost opportunity.

Described on their website as a place where "casual meets elegance," Earls definitely lived up to this mantra. In the lounge area where we sat ourselves, polished dining tables made of a deep and richly coloured wood were counterbalanced with cold marble countertops and stone walls, while rows upon rows of exposed light bulbs hung from the ceiling. Having visited on a Saturday night, the crowd was not the same as if one had arrived after work on a weekday; it was a lot more casual than expected, with only a handful of individuals wearing business attire. We were also the youngest individuals in the room by far (both in our early 20s), while most of the patrons appeared to be in their 30s and 40s.

As both a bar and a restaurant, Earls offers a selection of dishes that draws upon many cuisines from around the world. This includes starters that range from Chicken & Wontons to Italia Pizza, and mains such as Bibimbap and Cajun Chicken. The restaurant also offers your typical selection of North American foods. Burger lovers, for example, have a number of burgers to choose from, and also notably included Vincent Vega's favourite – the Royale with Cheese. And for meat lovers, you can have your appetite satiated with the option of steaks or BBQ Back Ribs. Prices range from $7.25 to $17.50 for starters and salads, while the mains go anywhere from $14.00 for a Kung Pao Noodle Bowl to $35.75 for BBQ Ribs & Cajun Chicken. As a fervent meat lover, I ordered the BBQ Half Ribs, while my guest ordered the Chicken, Brie, and Fig Sandwich. We agreed that the food was of good quality, though nothing mind-blowing (though to be fair, one would have to make a tremendous effort to ruin BBQ ribs; I have yet to encounter a

» see **JURISFOODENCE**, page **22**



ABOVE: Photo credit: Patios.blog.to.com **BELOW**: Photo credit: yelp.ca

THUMBS UP

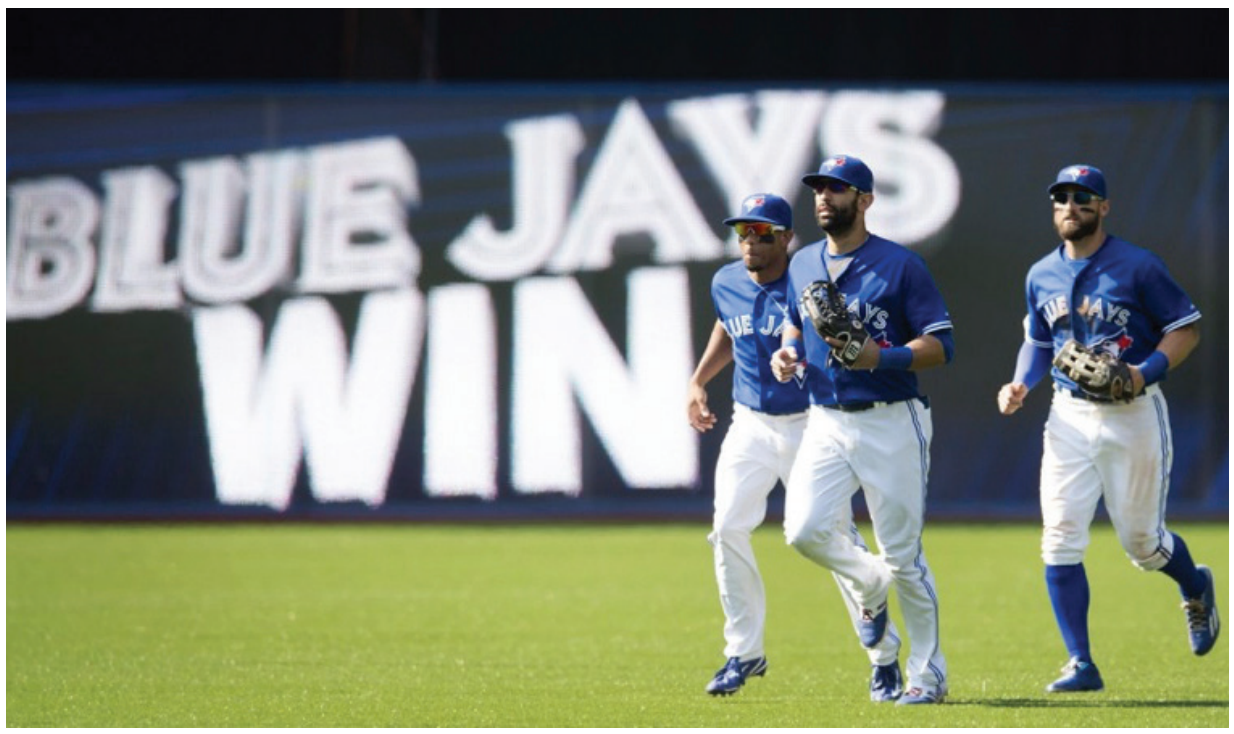
Osgoode making recordings available to all students.

Which Edition of the Toronto Blue Jays is Better?

A comparison of the 2015 Team with its 1992 predecessor

PART TWO: EXAMINING THE OUTFIELD

KENNETH CHEAK KWAN LAM ›
SPORTS EDITOR



▸ The 2015 Toronto Blue Jays Outfield: (From Left to Right) Left Fielder Ben Revere, Right Fielder José Bautista, and Centre Fielder Kevin Pillar. Photo credit: citynews.ca

Earlier in part one, I compared the make-up of the 2015 Toronto Blue Jays infield with its 1992 counterpart and concluded that the former is stronger than the latter. Here in Part Two, I will look into the two teams' outfield composition.

LEFT FIELD: Ben Revere (2015) versus Candy Maldonado (1992)

ANALYSIS: Both Revere and Maldonado are solid players but have different strengths; Revere hits for a higher average and possesses higher speed while Maldonado hits for more power. However, I am inclined to give the edge to Revere. Even though Revere has only played forty-three games for Toronto as of 18 September 2015, he has been the undisputed starting left fielder and a significant upgrade for the Blue Jays since 31 July 2015. Prior to his arrival at the trading deadline, the position of left field had been a "rotating door" as Toronto used four different players—Chris Colabello started thirty-three games, the now-departed Danny Valencia started twenty-seven games, Ezequiel Carrera started nineteen games, and Kevin Pillar started thirteen games before becoming the full-time centre fielder—to man the position. As a Blue Jay, Revere has put up impressive offensive numbers (.313BA, 1HR, 13RBIs, 5SB) in limited at bats (166), provided stellar defense, and has been a strong table setter as the leadoff hitter—replacing the speed element that was lost in the departure of José Reyes. While Candy Maldonado—who interestingly, much like Revere, was also a mid-season acquisition by GM Pat Gillick in 1991 designed to stabilize the volatile left field position—had an all-around strong season in 1992 offensively (.272BA, 20HRs, 66RBIs in 137 games) and had a decent glove, Revere has clearly been more of an impact player for Toronto. Of note, Revere's impressive showing with the Blue Jays is by no means a fluke as he is a lifetime .294 hitter (in 632 games) who has already hit over .300 twice (.305 in 2013 and .306 in 2014) and stolen more 40 bases twice (40SB in 2012 and 49SBs in 2014) while leading the National League in hits (184) in 2014.

"...Revere has put up impressive offensive numbers..."

VERDICT: Revere over Maldonado by a step

CENTRE FIELD: Kevin Pillar (2015) versus Devon White (1992)

ANALYSIS: Initially penciled in to be Toronto's fourth outfielder—behind projected starting centre fielder Dalton Pompey, projected starting left fielder Michael Saunders, and starting right fielder José Bautista—Pillar rose to the occasion and quickly moved up in Toronto's outfield depth chart. He first became the Blue Jays' starting left fielder after Saunders tore his meniscus in a freak accident in which the latter stepped on a sprinkler while shagging fly balls on 25 February 2015. Pillar then took over the starting centre fielder position from Pompey after the latter struggled offensively (batting .193 through 23 games) and defensively before being sent down to the minors (optioned back to Triple-A Buffalo) for further development on 2 May 2015. Since assuming the starting centre fielder, Pillar has provided Toronto with highlight-reel-defense while contributing offensively as solid bat (.261BA, 10HRs, 47RBIs, 19SBs in 145 games so far) despite being slotted to hit in the bottom of the Blue Jays' high-octane line-up. Still, I give the edge to White here, as he is equally brilliant and steady with the glove—he won five consecutive gold glove awards from 1991–1995 at the centre field position as a member of Toronto—while giving the team better offensive output with the exception of batting average (.248BA, 17HRs, 60RBIs, 37SBs in 153 games).

VERDICT: White over Pillar by a step

RIGHT FIELD: José Bautista (2015) versus Joe Carter (1992)

ANALYSIS: Tough call here. On one hand, Bautista, a six-time All Star from 2010–2015, has been the face and leader of Toronto since establishing a franchise record fifty-four home runs in the 2010 season. On the other hand, Carter, a five-time All Star (1991–1994 and 1996), has been an iconic figure since hitting his famous 1993 World Series clinching three-run homer. However, while both Bautista and Carter are proven sluggers who can consistently hit home runs and drive in runs, we are comparing the 2015 version of Bautista (.251BA, 35HRs, 102RBIs in 140 games so far) with the 1992 version of Carter (.264BA, 34HRs, 119RBIS in 158 games). If we project Bautista's 2015 numbers to a full season, MLB predicts (using the Player Empirical Comparison and Optimization Test Algorithm) that his final line would be .253BA, 39HRs, 113RBIs in 155 games. All in all, the differences between Bautista and Carter are so negligible so I hereby declare a tie.

THUMBS DOWN

Tulo's shoulder injury.

» see **BLUE JAYS**, page **23**

The Aptly-Titled "Football Preview"
19 September 2015

KAREEM WEBSTER › STAFF WRITER

What are the ingredients for an unenviable offseason?

Well, start off with a "teaspoon" of a workplace investigation, followed by a report that implicates you in scandalous behaviour. Then, the Commissioner of the (National Football League) NFL drops a "pinch" of sanctions on the Patriots, with Tom Brady emerging scathed as the only suspended player on the team. How about a "scoop" of Ben Affleck's nanny photographed wearing Brady's Superbowl rings? Finally, we "sprinkle"some rumours about Brady having an extra-marital affair.

Bake for a few months and presto: a recipe for disaster.

Then, Brady does what Thomas Brady does and wins. With an all-star legal team, and a really weak amount of evidence from the league, the judge presiding over the case cleared Brady of all wrongdoing. This all happened about a week before the NFL regular season was set to start.

"Guys with chips on their shoulder tend to do well."

There is no such thing as bad publicity, right? The Patriots-Steelers game to kick off the NFL season drew record-setting ratings.

In the 2014 offseason, the headlines were the stance of the NFL on domestic violence. This season, the offseason was all about Brady, Bill Belichick, and the Patriots for good and bad reasons.

Here is your NFL preview, albeit a couple of weeks into the season.

The most competitive divisions:

American Football Conference (AFC) East

I know that this has been the Patriots' stomping ground this century, but this past offseason, every other team in the division improved substantially while it is debatable whether the Pats upgraded at all.

The Bills got substantially better on offense with Shady McCoy, Charles Clay, and Percy Harvin. Oh, yeah, they also hired Rex Ryan!

The Dolphins have a more experienced Ryan Tannehill at the helm, with an improved receiving corps, and the beast himself, Ndamukong Suh, to shore up the defense.

Take a look at the Jets, who lost one of the more colourful coaches in the league and got another defensive-minded individual who did a fantastic job in Arizona — Todd Bowles. The return of Darrelle Revis and Antonio Cromartie is scary. Throw in rookie Leonard Williams with veteran star Brandon Marshall and you have a team who has actually improved offensively and defensively.

National Football Conference (NFC) West

Who doesn't love a good, hardnosed, bloody, rough gridiron battle that resembles the old WWF "Hell in a Cell" match-up? That is the NFC West. Seattle versus St. Louis, San Fran versus St. Louis, San Fran versus Seattle, or Arizona versus St. Louis? Take your pick.

With familiarity over the years and strong defenses, the Seahawks and Rams are two potential playoff teams with a lot to prove. Remember, the Seahawks have been to the past two Superbowls and were left with a sour taste in their mouths after last year's infamous play-call on the one-yard line. Needless to say, they will want to remind the world that the Twelfth Man plays smash-mouth 'ball. The Rams are in their fourth year under Jeff Fisher, who will be looking to keep his job by bringing this team to the playoffs for the first time in eleven seasons. Boasting the best defensive line in the NFL, St. Louis has upgraded its backfield, offensive line, and secondary, making this roster quite intriguing.

Carson Palmer returns from his knee injury on a team with one of the best head coaches in the league. Kaepernick is looking to lead a squad that looks tremendously different (and depleted) from last year's version. It will be a long shot for San Fran to make the playoffs with a new coaching staff, backfield, and thinner defense. Look for this division to be tight, with the potential for two (yes, I said "two") wildcard teams from the NFC West.

Predictions

AFC DIVISION WINNERS: Indianapolis, New England, Pittsburgh, and San Diego

AFC WILD CARDS: Denverand New York Jets

NFC DIVISION WINNERS: Seattle, Green Bay, Atlanta, and Dallas

NFC WILD CARDS: Arizona and St. Louis

Award Picks

OFFENSIVE ROOKIE OF THE YEAR: Melvin Gordon, San Diego
I think Gordon has the best opportunity to shine (other than Jameis Winston and Marcus Mariota) on the offensive side of the ball. San Diego is a run-first offense under Mike McCoy and they have a dynamic third-down back in Danny Woodhead. Mariota looked very good early on so far, however. It will be a close finish.

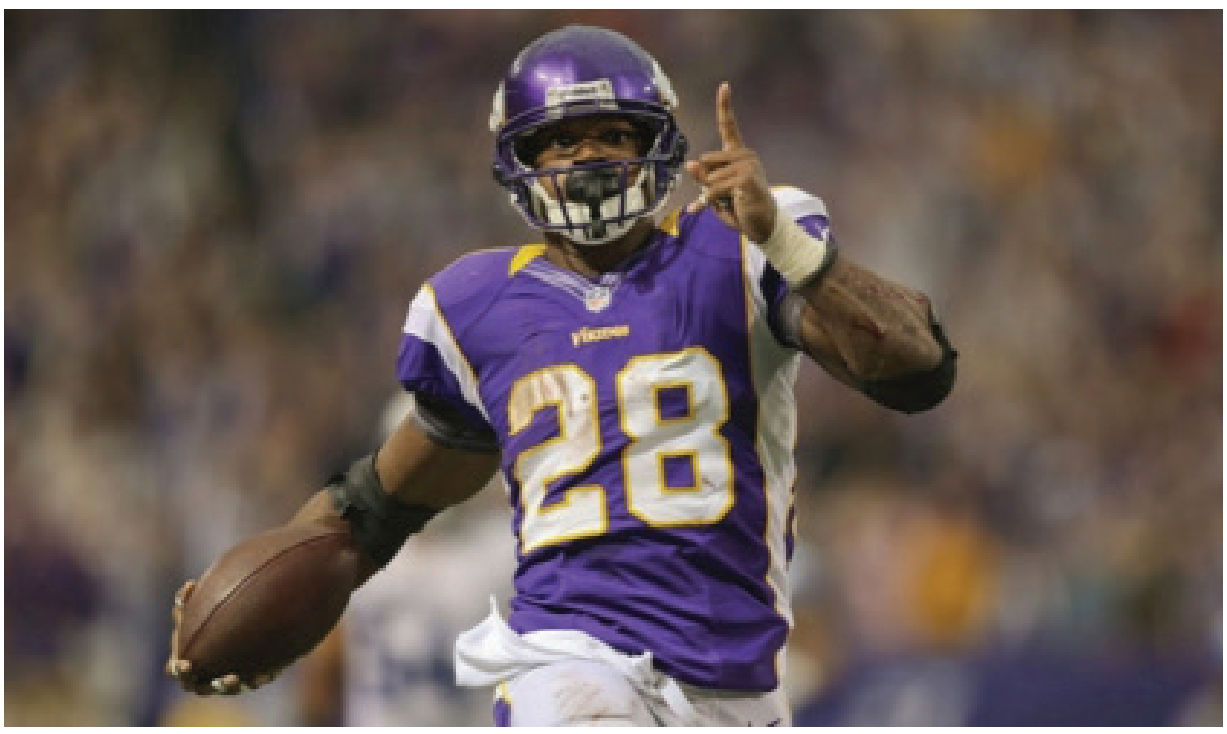
DEFENSIVE ROOKIE OF THE YEAR: Randy Gregory
Guys with chips on their shoulder tend to do well. Here is a monster who should have been drafted much higher than he was, but fell to a team in need of pass rushing.

DEFENSIVE PLAYER OF THE YEAR: J.J. Watt
He is one of the scariest human beings on this planet. Sack machine. Best defensive player in the league, hands down.

COACH OF THE YEAR: Dan Quinn
Atlanta was so bad last year. In comes defensive-minded Quinn, who was Seattle's defensive coordinator last season. In a weak division, the Falcons have a chance to have one of the league's best offenses and a defense that is much improved.

MOST VALUABLE PLAYER: Aaron Rodgers
If Rodgers can stay healthy, he is the clear-cut best quarterback in the NFL. Period. He is the total package: a pocket-passing, scrambling, bullet-throwing, and discount-double-check-celebrating savant.

» see **FOOTBALL PREVIEW**, page **23**



Guys like Adrian Peterson are longing to return to the field. Photo credit: www.smartfantasy.com

Toronto police

» continued from **COVER**

The Star investigation found roughly one in five of 350 officers disciplined in the last five years were disciplined because he or she was guilty of assaulting his or her spouse, drunk driving, possessing drugs, or theft. The investigation also found nearly 50 officers were disciplined more than once, some just months after being penalized for past misconduct.

It is particularly contradictory that someone with a police record would almost never be hired as a cop, but the same treatment does not apply to people within the police force. Many police officers convicted of criminal offences are allowed to keep working; the Star investigation found that only seven police officers were forced out of their jobs.

Vince Hawkes, an OPP Commissioner, has stated he believes police chiefs do not have the tools to correctly punish police officers, as the current law doesn't give them enough power to terminate police officers for serious misconduct. Therefore, there seem to be institutional barriers that continue to produce a bubble of protection for police officers who have been convicted of offences.

Additionally, when hearing officers do administer harsher punishments, including dismissal, officers commonly complain to the Ontario Civilian Police Commission, the appeal body, who frequently soften their sentence. The process is also criticized as suspended officers are still paid throughout the disciplinary process, where the province shells out millions of dollars a year to suspended officers, some who have been receiving pay cheques since 2008.

Furthermore, the investigation found most police discipline cases are not reported beyond station walls, as in many decisions the judges state that media coverage of the officer's misconduct would undermine public trust in the police. Additionally, the Star encountered many issues when seeking copies of the disciplinary records from the GTA services and the OPP, where many services took months to supply the records. The Peel Regional Police have still not provided the Star with their full decisions, whereas all other services did.

The lack of transparency promoted throughout these decisions is unsettling to say the least. Reflecting on the Missing and Murdered Indigenous Women's (MMIW) issue, many cases involve the police acting in a manner that does not support Indigenous families. When combined with the general lack of trust between the police and Indigenous people – the police promoting a lack of transparency will only cause further damage to the trust between police and Indigenous people, as well as all other Canadians.

The irony is the current police actions are doing the very opposite of maintaining public trust. I think the general public would understand that in such a large police force there are going to be 'bad apples,' and would be much more comforted to know those people are being identified and dealt with effectively by the police to promote a safer and more competent police force. Or at the very least these people are being held to the same standard as every other Ontarian.

The Star will continue to report their findings, but some examples of cases uncovered are:

Const. Ted Oderkirk: After racking up a bar bill of more than $700 at a Bolton Boston Pizza with OPP colleagues in 2009, Const. Oderkirk and two fellow officers drove back to their detachment, where he drunkenly swiped his access card to get into the gun vault. As a prank, he deployed a tear-gas canister into the room where his colleagues were sleeping. It caused $52,000 damage. The group used an OPP camera to film Oderkirk shirtless and wearing a gas mask. A supervisor later tried to delete the video in an apparent attempt to cover up the incident.

Officer's defence: Oderkirk's lawyer told the hearing the officer was extremely intoxicated and is ashamed of the embarrassment he caused the force.

In court: Oderkirk pleaded guilty to mischief over $5,000. He was granted an absolute discharge.

In the tribunal: In 2011, Oderkirk got a three-month demotion to a lower pay grade and was docked 160 hours pay.

Const. Shaun McCahery: The Toronto cop wrote 63 tickets in 2011 for made-up minor infractions, naming two homeless men with mental health problems who were known in his police division. Several of the tickets went ahead in court and the men were convicted in absentia. The officer had previously been told to improve his "performance measurables," which were below standard.

Police "are entrusted to only place before the court those who we believe, on reasonable grounds, have committed an offence. That process is never to be used . . . for an officer to represent himself as hard working," said the presiding officer, who called the behaviour "abhorrent."

Officer's defence: McCahery's lawyer told the hearing the officer wasn't thinking straight because he was suffering from a painful medical condition and the illness of a loved one.

Const. Christopher Merritt: The member of Toronto's domestic violence unit sent a "sexually offensive photograph" to female colleagues on two separate occasions, once in 2009 and once in 2010. Both women said they were shocked by the images and told Merritt not to contact them again.

"These planned and deliberate acts of serious misconduct exhibited not only exceedingly poor judgment but were the antithesis of the values and principles of the service," the hearing officer said in disciplining Merritt.

Officer's defence: Merritt's lawyer told the hearing the officer pleaded guilty, which not only saved the complainants from testifying but also showed remorse for his misconduct.

In the tribunal: Merritt was docked 14 days pay in 2012. ◆

Source:

http://www.thestar.com/news/canada/2015/09/19/hundreds-of-officers-in-the-greater-toronto-area-disciplined-for-serious-misconduct-in-past-five-years.html

Editorial

» continued from **PAGE 2**

Canada (Attorney General), 2015 BCCA 163, the British Columbia Court of Appeal concluded that while policy decisions are outside the realm of civil liability, "incompetently" implementing policy decisions are not be immune. In the wake of the Urgenda ruling, a similar climate change litigation case is being mounted in Belgium. At the September 15th event, the majority of the panellists agreed that climate change litigation was at least a possibility in Canada. Hon. Stephen discussed a *Charter* claim while David Estrin discussed public nuisance. Dean Lorne Sossin went so far as to say that "climate litigation is inevitable."

Outside the law there are also signs of change. The Pope's most recent encyclical contains a strong call to profoundly reform the global economic system. Following the publication of her book *This Changes Everything: Capitalism vs the Climate* last year, Naomi Klein recently released to *The Leap Manifesto*, a declaration calling for Canada to abstain from fossil fuel use by 2050. *The Leap Manifesto* has since garnered considerable support from many Canadian celebrities, politicians, academics, activists and Indigenous and other community leaders. David Boyd's *The Optimistic Environmentalist* was published this past summer to very positive reviews, and support is continuing to grow around Linda McQuaig since her "a lot of the oil sands oil may have to stay in the ground" comment last month.

We're quick to criticize baby steps, myself included. Relative to all other actions being taken, they can appear pointless. But if they are in the right direction, baby steps will always be better than doing nothing or going the other way. And maybe there is more to baby steps. In Cormac Cullinan's *Wild Law*, the author describes a flock of birds "wheeling in the sky" as a way of visualizing the tipping point of a social movement. There is no leader in the flock, directing which way they should fly. Instead, an increasing number will signal their desire to change direction momentarily varying course until a critical mass is reached and the entire flock turns as one.

Maybe climate change litigation will happen in Canada, maybe not. If climate change litigation does happen in Canada, maybe it will be successful, maybe not. I don't know. For now, the changes and events I've seen recently, Roger Cox's talk, and the following panel discussion have all left me feeling hopeful about the Earth's future climate. Perhaps we're not merely taking meaningless baby steps; we're coaxing the Canadian people until the flock changes direction completely. ◆

Sources:

English translation of Urgenda case ruling: http://bit.ly/1JjIhqj

Roger Cox's talk and panel discussion Sept. 15: http://bit.ly/1QRWyk3

Dianne Saxe article on Urgenda ruling: http://bit.ly/1iHH4E4

The Leap Manifesto: http://bit.ly/1J9tJJv

Refugee

» continued from **PAGE 7**

by the successive waves of immigration responsible for erecting the Canadian welfare state. The arguments in defence of our miserly treatment of refugees are economically misguided, morally indefensible and certainly unsupported by any empirical assessment of the history of migration to Canada.

I've also heard that it is essentially pointless to take in refugees without addressing the source of the problem, which in this simplistic rendering of the immensely complicated Syrian civil war, boils down entirely to ISIS. Whatever your position on the military coalition against ISIS, it is incredibly naive to suggest that somehow Canada is going to alter the refugee dynamic in the Middle East by dropping a few bombs in Syria. Canada could play an immeasurably larger humanitarian role by opening our doors, like Germany and Sweden and others have done.

Finally, I've also heard a great deal about why this shouldn't be a partisan issue. I agree. In fact, until this present government, it historically never was a partisan issue. The short lived conservative government of Joe Clark accepted 70,000 Southeast Asian 'boat people' in 79-80. There was a bipartisan consensus that extended from every Canadian government from Diefenbaker's conservatives, to the Pearsonian-Trudeauvian brand of internationalist social liberalism, to the neoliberal governments of Brian Mulroney and Jean Chretien. It is only Stephen Harper that decided to build a political brand on a mean-spirited lack of compassion to refugees.

The plight of the Syrian refugees, their hunger, their desperation, their unimaginable suffering, was not that long ago our hunger, our desperation, our suffering. So many of us Canadians were once refugees, or economic migrants. Slamming the door on them now is to, in a very literal sense, forget who we are. ◆

THUMBS UP

Artists in Residence: Cindy Blažević& Julie Lassonde (2014 – 2015), Kami Chisholm & Nadine Valcin (2015 – 2016)

Deans

» continued from **PAGE 9**

6. Patrick Monahan
NICKNAME: Hardhat Pat
TERM: 2003–2009
"Look to your left, look to your right, don't mind the construction."

Monahan oversaw a seemingly never-ending series of renovations at Osgoode. While annoying the student body at the time, the renovations have paid off and transformed the drab and dreary building into one with windows and natural lighting. While a huge accomplishment, Dean Monahan loses points for also overseeing the doubling of tuition form $8,000 to $16,000 over his tenure. He currently acts as the Deputy Attorney General for Ontario.

5. John McCamus
NICKNAME: Johnny Mac
TERM: 1982–1987
"Look to your left, look to your right, one of those individuals is likely a woman."

Dean McCamus, the king of contracts and restitution, was dean during a time of great social and legal change. Dean of the law school in the *Charter*-era, for the first time, the entering class was over 50% female and computers were introduced into the school. But his ranking is truly reflective of McCamus' permanency: since 1971 the former dean has taught nearly 45 years of students at Osgoode. During his decades of teaching, McCamus also found the time to contribute to many legal reform initiatives and currently is Chair of Legal Aid Ontario.

4. Marilyn Pilkington
NICKNAME: The Fiscal Maven
TERM: 1993–1998
"Look to your left, look to your right, if you find any change please bring it up to the front"

Dean Pilkington has the distinction of being the first female dean of a law school in Ontario. A well-liked professor of constitutional law and evidence, the Aboriginal Law Intensive, the Osgoode Business Clinic, and the Innocence Project would start during her tenure. This is all the more remarkable given that the school was facing massive funding cuts that were hardly noticed given Pilkington's financial savvy. Her big contribution is the creation of the Osgoode Professional Development Program, which continues to be a huge money-maker for the school. She would remain with the faculty until retiring in 2013.

3. Gerald Le Dain
NICKNAME: The Unlikely Hero
TERM: 1966–1972
"Look to your left, look to your right, this is York University."

The choice of Le Dain as dean was an inspired choice given he had to unite a divided faculty and student body still unsure how to feel about the move from downtown to York University. Important Osgoode institutions such as CLASP and Parkdale would open under his tenure. While dean, he was tasked with leading the *Commission on the Non-Medical Use of Drugs*, which would ultimately recommend the decriminalization of marijuana possession, causing Le Dain to become a popular figure on University campuses across Canada. Of course, Le Dain probably rose the highest of any dean in Osgoode history, as he would later be appointed to the Supreme Court of Canada.

2. Harry Arthurs
NICKNAME: The Iconoclast
TERM: 1972–1977
"Look to your left, look to your left again."

A leading expert on labour law, Dean Arthurs was never shy to speak his mind and always had something to say. Arthurs represented the quintessential dean to represent the York-era of Osgoode's history, contributing to its reputation for social justice. The first female full-time faculty members were hired under Arthurs: Professor Arbour and Professor Mossman. The first-of-their-kind joint degree programs—the JD/MBA and JD/MES—were established, and so was the Intensive Program in Criminal Law.

But the defining moment of Arthurs' deanship might be his defending the right for the law school to remain being called Osgoode Hall. The Law Society not unreasonably felt that having two Osgoode Halls might be confusing, and was not quite sure this new "Osgoode Hall" up at York was doing the brand any favours. The rest is, of course, history, and to this day people are perennially confused as to where Osgoode Hall Law School is located. Arthurs would later serve as President of York University.

1. Dean Smalley-Baker
NICKNAME: The Nicknamer
TERM: 1944–1958
"Look to your left, look to your right, now let's party!"

The controversial top spot goes to a controversial figure. By all accounts, Dean Smalley-Baker was a horrible professor; while he was born in Canada, he was trained in England and knew nothing of Canadian law. He was also an alcoholic and eventually required others take over his classes as he was physically unable to continue.

However, Dean Smalley-Baker was the right dean for when the school needed him most. Reeling from the sudden departure of Dean Wright, school spirits were flagging. The dean worked hard to revive morale and pushed for the creation of sport teams, clubs, and fraternities for Osgoode students. He revived the Legal and Literary society, and was known for making jovial speeches. He also would take to giving nicknames to the graduating class, a tradition unfortunately abandoned by his successors (hint, hint Dean Sossin): "Pioneer Guards," "Third Legion," "York Volunteers," and "Eighth Dragoons" are a few examples of his handiwork. For keeping the school together at its lowest point, Dean Smalley-Baker rises to the top of the decanal class. ◆

Osgoode has a legacy of fairly remarkable persons occupying the position of dean. More than just administrators, the deans are an important part of Osgoode's history. Did your favourite dean rank where you thought they would? Let the *Obiter Dicta* know your rankings at obiterdicta@osgoode.yorku.ca or www.obiter-dicta.com

Artist resale

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Representation Le Front des Artistes Canadiens (CARFAC) and Regroupement des artistes en arts visuels du Québec (RAAV). In 2010, CARFAC published *Recommendations for Artist Resale Right in Canada*. Briefly, the report mentions Canada's place as a signatory to the Berne Convention and alludes to the importance of ARR for particular communities including aboriginal and senior artists. In 2012, CARFAC attempted to pass a private members bill rather than amending the *Copyright Act*, as they previously hoped to do. Additionally, CARFAC proposes that the ARR be at a flat 5% rate for all paintings sold above $1000 (CAN) with CARFAC acting as the collecting agency.

In my view, the implementation of artist resale right would benefit Canadian artists on a global scale as well as international artists within Canada. Acclaimed Canadian artists such as Jeff Wall are achieving high prices at auction internationally in countries where artist resale right is a running scheme. In adopting artist resale right, a dialogue can be opened between Canada and artist resale right countries through this reciprocal ARR scheme. However, many art business professionals, including David Silcox of Sotheby's Canada and Stephen Ranger of Waddingtons, are concerned that ARR will hinder their revenue and dissuade buyers to purchase from the secondary market. In a 2012 interview, Ranger noted: "I think that they [CARFAC] are not fully aware of the economics of the art business and the fragility of the contemporary art business, especially where it relates to the secondary market." Ranger believes that more dialogue is required between CARFAC and art businesses to ensure that the scheme is implemented correctly because "they haven't found a really good way that makes me confident that it will be implemented well. There is still so much grey area."

Since 2012, CARFAC and individuals including myself, have encouraged art businesses in Canada to return to the conversation of artist resale right and the important impact it would have on Canadian artists. Some have welcomed the scheme, such as Cube Gallery in Ottawa who have been paying royalties for almost ten years and Ritchies Auctioneers who adopted an ARR policy in May 2013. This is a miniscule step to achieving the successes of Europe or Australia, but it is one in the right direction. What is needed for success is awareness to be raised regarding the urgency of implementing *droit de suite* and to support organizations such as CARFAC and RAAV in their work to assist artists within our great country. Visit *www.carfac.ca* to find more information on the status of artist resale right in Canada. ◆

Concert review

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because Labour Day had yet to pass, he was cleared to wear white.

Massey Hall, with its U-shaped balconies that overhang and wrap around the stage, lends a feeling of intimacy perfectly tailored to songs which demand your attention. As a lyricist, Matsson's best songs often detail his wonderment in nature and portray him as someone who is constantly getting lost in his own dreams. His lyrics have become more personal and ambitious with each release; however, they have also become more opaque, making it hard to pinpoint what exactly he is driving at. On "Little Nowhere Towns," Matsson sings "...And I'm racing through my pockets now cause I'm starting to believe / Selling emptiness to strangers a little bit warmer than my dreams." It can be difficult at times to relate to the mysticism of his lyrics, but once you get past this, you are hooked.

I firmly believe that The Tallest Man on Earth's 2010 release, *The Wild Hunt*, should be considered amongst the best albums of the last decade. If you haven't heard any Tallest Man on Earth songs, this is probably where you want to start. The way in which he sings on *The Wild Hunt* conveys a gravity to what he is saying and it compels you to listen. This hurried rawness has gradually turned into a more relaxed and deliberate style. One thing is for sure, Matsson's music will continue to change. It may alienate some fans, but innovating seems to be part of his DNA. The majority of the instrumentation on *Dark Bird is Home* is performed by Matsson, even the beautiful clarinet melody on "Timothy." The guy is a supreme talent and, although I doubt he craves added attention, he most undeniably deserves it. ◆

THUMBS DOWN

Downsview station being roughly the same temperature as the surface of the sun.

The Tallest Man on Earth performing "Thousand Ways" in Massey Hall.

Blue Jays

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VERDICT: Bautista ties Carter

DESIGNATED HITTER: Edwin Encarnación (2015) versus Dave Winfield (1992)

ANALYSIS: Another tough call here. Encarnación, a two-time All Star in 2013 and 2014, has been one of the elite power hitters in the game since his breakout season back in 2010 (.280BA, 42HRs, 110RBIs in 151 games). In every season from 2010-2015, he has hit thirty-three or more home runs and drove in ninety-eight or more runs. His 2015 campaign is equally stellar (.275BA, 33HRs, 100RBIs in 132 games so far). Winfield, by comparison, is a twelve-time All Star (1977–1988), and a Hall-of-Famer, having amassed 3,110H, 465HRs and 1833RBIs in his twenty-two year career. Yet, even though Winfield appears to have had the more productive career, we are strictly comparing the 2015 version of Encarnación (projected by MLB to be .272BA, 36HRs, 110RBIs in 148 games) and the 1992 version of Winfield (.290BA, 26HRs, 108RBIs in 156 games). Therefore, whereas Winfield hits for a slightly higher average and Encarnación drives in a few more runs, Encarnación appears to win tiebreaker on the strength of hitting ten more home runs.

VERDICT: Encarnación over Winfield by the slightest margin.

Photo credit: The Toronto Star

FINAL WORDS: We are virtually at a deadlock. By all account, the outfield talent of the 2015 Toronto Blue Jays is so evenly matched with its 1992 counterpart and vice versa (especially if we were to exclude the Designated Hitter position) that there is no clear winner here.

So, what about the Starting Rotation? Be sure to tune in to Part Three! ◆

Jurisfoodence

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restaurant that serves a horrible plate of ribs).

The establishment also has a healthy selection of drinks to choose from. In particular, the wine list is extensive and there are a decent number of local and imported beers. The cocktail menu, however, while respectable, does not have many classics, and contains a rather large proportion of obscure or restaurant-invented concoctions (what is a "silly wabbit"?). This is not to say that obscure or newly created drinks are inherently worse, but it would be nice to have some familiar drinks to be able to choose from on nights where you just want to enjoy an old personal favourite (such as the Manhattan for yours truly). Luckily, Earls had one of my fall back choices in the form of the Old Fashioned, which I promptly ordered, while my companion had a pint of the Rhino Signature Lager. Prices were typical of a downtown location, with the Old Fashioned and lager costing $12.00 and $7.25, respectively.

By the time we finished our meals, the place had become quite packed and loud (though not to the point where we had to shout at one another to be understood), as patrons slowly accumulated over the course of the night. Ultimately, Earls is a potential place to go whenever one wants to have drinks after work, or have a night out at an upscale, but not stuffy, restaurant/bar. ◆

THUMBS UP

Upcoming start of NHL Regular Season.

FINAL SCORE

Football preview

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Losing Jordy Nelson for the year was huge, but I'm pretty sure that I could suit up Green Bay and put up decent numbers with Rodgers under centre.

NFC CHAMPIONS: Seattle
Bitter taste in their mouths. Acquired Jimmy Graham. If Kam Chancellor returns, look out world.

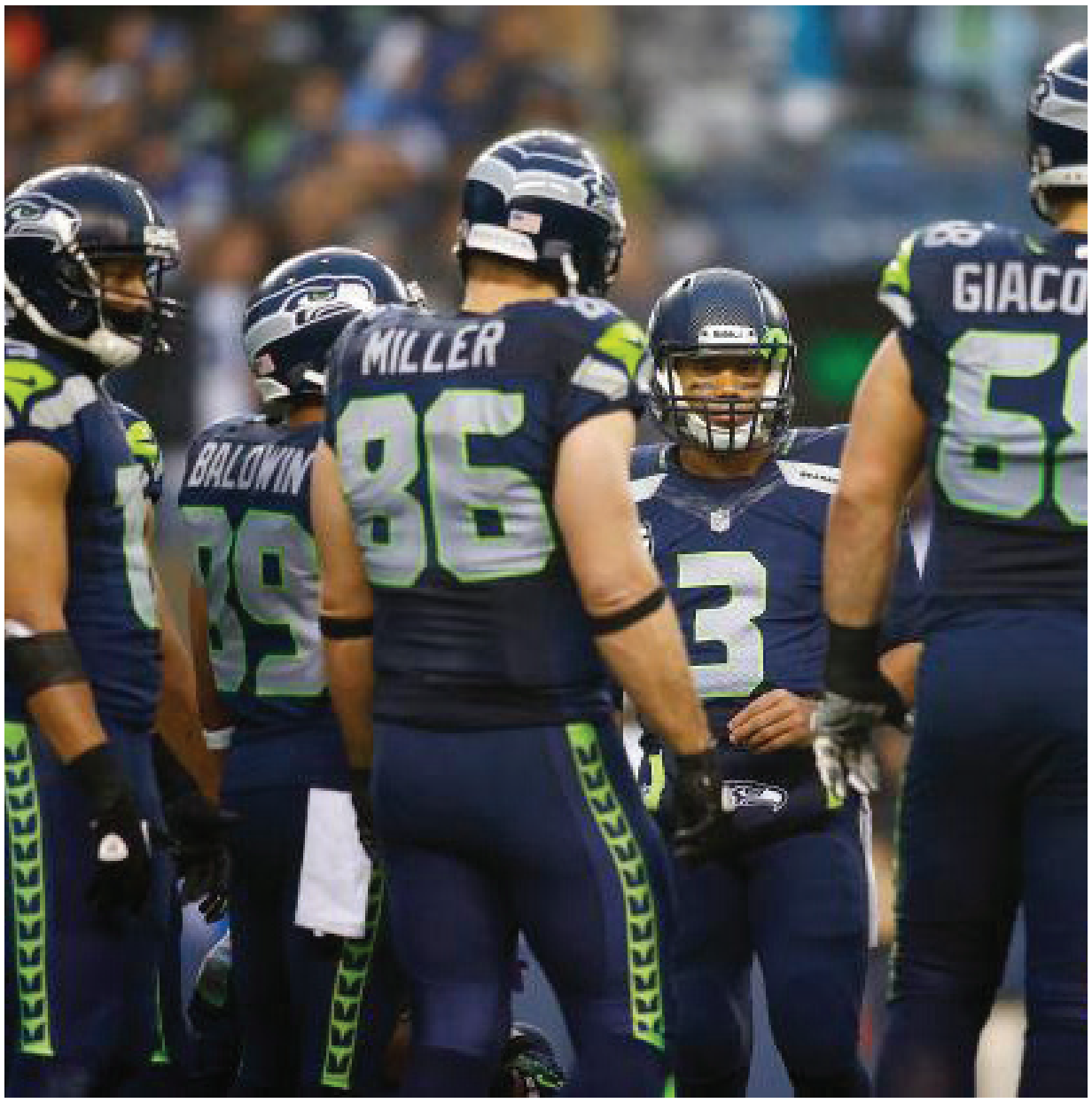
AFC CHAMPIONS: Pittsburgh
Potent offense. Defense may not be the turnstile that it was for the past couple of years. Big Ben is hungry and I think they dethrone the Patriots as AFC Champions.

SUPERBOWL CHAMPIONS: Seattle
2015. Worst. Loss. Ever. When you lose like that, you want to hit everyone right in the mouth.

Expect the Browns to be really, really bad. Anticipate that the Raiders, Jags, Redskins, Bears, Lions, and Saints will follow suit. This season should be particularly interesting, especially to see how the Patriots react to the rest of the league. Teams clearly aren't fond of them as several sources confirmed suspicions that New England is perceived as a bunch of unscrupulousand unethical people. Of course, injuries can change a team's forecast instantly.

Maybe you agree with my opinions. Maybe you don't. That's what makes football so much fun: the unpredictability and level of parity after each offseason. It also doesn't hurt when the preceding offseason was filled with so much news that was so salacious, you can't help but keep your eyes peeled.

Sit back and enjoy this season. If not, you can always wait for another juicy story about the NFL to make its way to a television, computer, or cell phone near you. It's bound to happen. ◆



▸ Photo credit: Bleacher Report