A Cautionary Celebration: Nuclear Weapons and ICAN’s Nobel Peace Prize

“We live in a world where the risk of nuclear weapons being used is greater than it has been for a long time.” Berit Reiss-Andersen, the leader of the Norwegian Nobel Committee, made this statement to justify giving the International Campaign to Abolish Nuclear Weapons (ICAN) the Nobel Peace Prize in early October. ICAN officially launched in Vienna in 2007 after its start in Australia, organizing a coalition of grass-roots NGOs in over 100 countries to stop the threat of nuclear weapons.

Notably, ICAN recently helped lobby for the Treaty on the Prohibition of Nuclear Weapons, which was passed in July. Also known as the Nuclear Weapon Ban Treaty, it comprehensively prohibits nuclear weapons with an aim towards eliminating them in the future. While the Treaty gained widespread support from African and Latin American countries, no nuclear-armed nation (including United States, Russia, and China) supported the ban. Other nations, such as Japan, Australia and several NATO countries, were hesitant because they believe the presence of nuclear weapons enhances security.

ICAN’s Nobel Prize not only rewards the group for their important work in creating the Treaty, but also flags the growing issue of nuclear weapons on the international stage. The Nobel committee explicitly stated that they were not sending a political message to a specific country. However, their comments on the modernization of nuclear arsenals, and the procurement of nuclear weapons by more countries, certainly reference dangerous tensions between countries. For instance, the Trump administration’s decertification of the Iran deal, the heated exchange between the US and North Korea, and the growing conflict between India and Pakistan.

In mid-October, the Trump administration officially decertified the Iran nuclear deal, which was meant to lift economic sanctions on Iran in return for limitations to the country’s nuclear program. Trump consistently criticized the deal during the election and while in office. Decertification does not automatically bring back the sanctions, but it does allow the US Congress to...
If you had been even remotely tuned in for the past few weeks, by now, you must be sick of seeing a certain name in the news.

We have seen and heard numerous allegations of improper conduct from numerous women against this one powerful man, a man whose name was synonymous with Hollywood power, prestige, and success. This same name, which once provoked fear and silence in victims and bystanders, continues to reverberate through social media.

I refuse to name him here, because it has come to overshadow the real villains in this story: patriarchy and inequality – words that have come to lose their meaning even though their consequences cause real harm.

As the story unfolded in the news, igniting a plethora of allegations, confessions, opinions, comments, any meaning created from the injustice revealed is thwarted and subsumed by the public outrage it has triggered. As if the vilification of this one man and his actions is not even criminally charged for his sexual misconducts against women for thirty years.

This cautionary tale shouldn’t be about this one man, this one name. As we all know: this is not the first time a man with a name did unspeakable, and yet surprisingly unsurprising things; nor will this be the last.

This is about the fact that a man with a name, protected by an industry built up by other men with other names, is not even criminally charged for his sexual misconducts against women for thirty years.

This is about the fact that despite so many women speaking up against an entire culture of sexual harassment, the conversation is still about evidence, the burden of proof, and the presumption of innocence.

As a law student, it is particularly saddening to witness the moments when justice fails to prevail. As law students, we are taught to be patient, to have faith in the “incremental changes” that ought to eventually lead to the Big Changes. That, at the end of the day, truth, and with it justice, shall prevail. It is excruciating to no longer feel shock or anger by the irony and hypocrisy of the so-called justice system. We are all limited by our own lack of imagination. In a reality where pragmatism always wins, what is the alternative?

While I can accept that the world is not a fair place, I can no longer tolerate it as an excuse for everything that is wrong with our justice system, our world. The anger you feel about the injustice perpetuated by this one man and his actions – it is the same anger that now divides our society and fuels extremism.

What we do with our anger matters. Anger can be exhausting. When we are exhausted, it becomes easier to hate, and harder to guard against our own prejudices and flaws. The question now is, how do we harness our anger, and to what ends? 

As one defender of this infamous man has commented, this scandal has become a witch-hunt.

The world loves a good villain. Surely, I can understand it. It helps us feel less implicated in a system that created this tragedy by focusing our anger onto one particularly deserved individual. It is comforting to believe that the world is still black against white, villains against heroes, and sexual predators against victims.

But there is something dangerous in this ritual of vilification, something irresponsible about crucifying a mere symptom of a systemic disease much more sinister, that should caution any consumer from effortlessly pointing the proverbial finger.

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The Kurdistan Quagmire: Consequences of Kurdish Independence

The reality of a future Kurdsi (Kurdish separation from Iraq) seemed all but certain when, on September 25, residents of the semi-autonomous Kurdish region of northern Iraq voted overwhelmingly in favour of independence from Iraq. More than 92% answered ‘yes’ to the question: Do you want the Kurdistan Region and the Kurdistan areas outside the region's administration to become an independent state? The referendum, although non-binding, stoked fears of regional instability and caused anxiety both within Iraq and among neighbouring countries. These states feared that the referendum would serve as a catalyst for their own restive Kurdish populations’ separatist demands. Iraq’s Prime Minister, Haider al-Abadi, denounced the referendum as unconstitutional and refused to recognize its results. He also vowed to take follow-up steps “to protect the unity of the country and the interests of every citizen living in a unified Iraq.”

Indeed, on October 16, the Iraqi army, with the help of the Shia-dominated Popular Mobilization Forces, captured the disputed region of Kirkuk and its oil fields from Peshmerga forces, which had themselves seized the area from ISIS in June 2014. This was a huge blow to the Kurdish Regional Government (KRG), not only because Kirkuk is the spiritual capital of Iraqi Kurdistan but also because the region accounts for nearly 40 percent of Iraq’s total oil production. By seizing Kirkuk, Baghdad made clear its message to the KRG: any push for secession will come at a great cost. For now, the balance of power is in Baghdad’s favour.

The clash between Baghdad and Erbil—formerly “allies” in the fight against ISIS—has put the Trump Administration in an awkward position. Washington has thus far remained neutral. On the one hand, the Kurds have enjoyed U.S. support as far back as the imposition of the northern no-fly zone in 1991, which provided them a safe haven from Saddam’s aerial bombardment following the Kurdish uprising. The CIA even armed the Peshmergas in 2014 in its fight against ISIS despite protests from Baghdad and Ankara. But the U.S. also relies on the Iraqi army to do most of the heavy lifting when it comes to fighting ISIS, and it also wants to ensure that the Shia-led central government will not drift too far into Tehran’s orbit. Thus, official U.S. policy is geared toward the support of a unified Iraq, albeit one that recognizes the Kurds’ special position within Iraq’s federalism.

Despite all the tensions it has caused, the referendum has not answered the proverbial Kurdish question that has lingered since turn of the last century, which boils down to what the final status of a Kurdish political settlement should look like—autonomy, independence, or national unity.

The referendum was more symbolic than substantive. It does not bind Erbil to any future course of action. It was also not unprecedented. In 2005, the KRG held a similar referendum resulting in an even more resounding ‘yes’ vote in favour of independence, but this did little to change the status quo. The recent referendum merely gives the KRG a mandate to negotiate secession from Baghdad if it so chooses; nothing more. In fact, as KRG President Masoud Barzani recognized, any realistic path to independence would take at least two years to achieve, including settling land and oil sharing disputes. Such a path will remain laden with political obstacles, military hurdles, and economic disincentives.

In the current political climate, that independence is a bad idea for several reasons.

The Impact of Kurdish Independence on Iraq’s Stability

Firstly, Kurdish secession would jeopardize the internal stability and territorial integrity of an already-precarious Iraq. The country is in the process of forming a viable national identity in the aftermath of the 2003 invasion and the ISIS takeover of Mosul in 2014. Kurdish independence would break away more than 1/3rd of Iraq’s habitable territory—a demoralizing setback for a nascent democracy, albeit one that continues to flirt with authoritarianism.

Essentially, secession sends the wrong message to other disaffected groups in Iraq at a time when sectarian and ethnic tensions remain major fault lines in Iraqi politics. The message to these groups is that that they, too, should partition a piece of Iraq for themselves rather than achieve their goals within Iraq’s federalist structure—a structure that was painstakingly negotiated by Iraq’s various political factions and ratified in the 2005 Iraqi constitution. In fact, it was not long ago that the governors of the predominantly Sunni provinces of al-Anbar and Nineveh were narrowly dissuaded from making good on their promise to declare regional autonomy modeled on the Iraqi Kurdish framework. (A third Sunni-majority province, Salah al-Din, actually declared regional autonomy in 2011, but a provincial referendum was blocked by former PM Nouri al-Maliki on the basis that the declaration was a sectarian bid to turn the province into a Ba’athist refuge.)

Admittedly, a Kurdish citizen would hardly blink at the prospect that the newly-independent Kurdistan would exacerbate internal tension in Iraq. Many Kurds do not consider themselves Iraqi and many Kurdish nationalists point to the gradual disintegration of Iraq since the 2003 U.S. invasion as a factor for independence. However, any observer that takes the future of Iraq seriously should consider the dire consequences of Kurdish independence on Iraq’s political future. An independent Kurdish state at this critical juncture would risk the fragmentation of Iraq into mini-states or, worse, balkanization.

Kurdish Independence and the Destabilization of Regional Security

Secondly, an independent Kurdish state on Iraq’s northern frontier, often referred to as Southern Kurdistan by Kurdish nationalists, would have a destabilizing effect on the region. Such a landlocked state would be encircled by foes—namely Iraq to the south, Iran to the east, Turkey to the north, and Syria to the west—none of whom have any interest in seeing their own territorial integrity threatened by the prospect of a Greater Kurdistan. Since Baghdad would almost certainly refuse to accede to an independent Kurdistan, hostilities would almost certainly erupt between the two states. And with both the Iraqi and Syrian governments achieving battlefield victories against ISIS, both states would likely turn their attention to combating—or at least containing—the Kurds.

Kurdish independence would also rile up the PYD in Syria, which would undoubtedly draw the ire of Damascus and, more importantly, Ankara who sees the PYD as a manifestation of the PKK (the latter having waged a 30-year insurgency against the Turkish state). Turkey continues to crack down on Kurdish militants within northern Iraq and has carried out airstrikes on Kurdish forces in Syria. It views Kurdish separation as a more serious internal and regional issue than the threat posed by ISIS and its Salafi brand of transnational jihad. It fears that Kurdish independence could set off internal unrest among its own Kurdish population, who make up 20 percent of Turkey’s 80-million inhabitants. Iran seems to be even more hostile to Kurdish independence, largely for similar reasons.

The history of secession movements also shows that secession tends to exacerbate rather than resolve internal tensions and creates a far more likelihood of interstate war between the newly-independent state and its predecessor. This can be seen in the examples of
the former Yugoslavia and South Sudan. What’s worse, Kurdistan is all alone, notwithstanding political support from a relatively distant Israel. A declaration of independence would drive the Kurds deeper into isolation in a region that has not been kind to Kurdish nationalism, turning the old Kurdish aphorism into a tragic realism: the Kurds have no friends but the mountains.

The Political and Economic (In)Viability of Kurdish Independence

Thirdly, there are grave doubts over whether an independent Iraq Kurdistan is even economically and politically viable. The region’s economy has struggled in recent years as private capital has exited quicker than it’s poured in. This is due in large part to the rise of ISIS, budgetary disputes with Baghdad, and a drop in the global price of oil—not to mention endemic corruption and mismanagement by KRG officials.

This overreliance on oil revenues has also made it hard to diversify the economy. Oil sales make up 80–90 percent of the KRG’s revenues, which are then largely spent on the salaries of government employees. The economy remains almost completely dominated by the public sector. With public coffers drying up and the KRG drowning in more than $30 billion in debt, there is great pressure on the government to find new sources of revenue. Against this backdrop, the timing of the referendum was hardly a coincidence. Barzani strategized that an overwhelming, and predictable, ‘yes’ vote would help shore up domestic support ahead of the upcoming parliamentary and presidential Iraqi Kurdistan elections, whilst simultaneously deterring attention away from the battered economy.

The Kurds in northern Iraq are also politically fractured. The two main ruling parties—the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK)—are divided along tribal and ideological grounds. (A third party, the Gorran Movement, branched off from the PUK in 2009 and has even surpassed it in terms of seats in parliament, but it has no members in the cabinet). In fact, so divided are the political parties that the KDP has hurled accusations of treason at the PUK for allegedly failing to resist the Iraqi advance into Kirkuk on October 14. Ironically, it was Barzani who, in August 1996, appealed to Saddam Hussein to send Iraqi troops to assist the KDP’s effort to retake Erbil from the PUK. This was the brutal culmination of the KDP-PUK civil war that engulfed northern Iraq in the 1990s.

Currently, the Iraqi Kurdistan Parliament is at a standstill, unable to pass any new laws. It has only convened once since 2015, solely to approve the independence referendum. Its inactivity followed the extension of Masoud Barzani’s presidential term—which was set to officially end on June 30, 2015—which prompted violent protests and political deadlock. The Peshmerga, which is often lauded as a superb fighting force, is itself divided; only a fifth of the force is non-politicized. The loyalties of the remaining 120,000 or so Peshmerga fighters are divided between the Erbil-based KDP and the Sulaimaniya-based PUK.

For now, the referendum is less about the Kurds’ readiness for statehood and more about Barzani’s bid to outmanoeuvre his political rivals by playing the nationalist card. The referendum was also about exerting pressure on Baghdad to recognize Kurdish land claims and reappropriation subsidies that the KRG desperately needs. None of this is to say that the Kurds in northern Iraq do not have a right of self-determination. But, Barzani played the wrong hand at a time when the KRG needs to get its political house in order before fanning the flames of nationalism.

Barzani misjudged his strategy: Kirkuk, the beating heart of Kurdish nationalism, has been reclaimed by Iraq’s central government; Kurdish politics has turned into a mirror image of Iraq’s fragmented polity; and the Kurds in the north have become more isolated than at any time since the post-Saddam order. Only time will tell whether the referendum will pay a political dividend.

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reimpose sanctions after a vote. If the Trump administration successfully sanctions Iran, there may be little incentive for Iran to keep its end of the deal.

The decertification falls in the shadow of the heated exchange between Trump and North Korea over the summer. On July 4th, North Korea successfully launched an intercontinental ballistic missile powerful enough to reach mainland US, and has continued to test its nuclear weapons despite criticism from the international community. On August 5th, the UN Security Council adopted harsh economic sanctions against North Korea in response to its missile tests, which effectively blocked coal, iron, and other commodities from being exported. To worsen relations, Trump stated that “any more threats to the United States” will prompt “fire and fury like the world has never seen.”

Although the threat of nuclear weapons seems to be coming predominantly from the US and the Trump administration, other countries are also accountable for growing tensions. India and Pakistan are still present, with nuclear arms experts estimating India’s nuclear arsenal to number 110-120 warheads and Pakistan’s to be around 120-130. Of particular concern to some security experts are the potential misuse of these weapons by non-state actors. India and Pakistan have the third and fourth highest rates of terrorist attacks in 2016, with 927 and 734 reported attacks respectively. The fear is that independent groups may gain access to these weapons, especially when they are being moved.

The threat of nuclear weapons has generated criticism from the human rights community for years, with deep roots in the Cold War. The clearest violation in the event of actual conflict would be the right to life, which obliges states to respect, protect, and fulfill its enjoyment.

However, others include human rights violations to humane treatment, to a healthy environment, and to the highest attainable standard of health to justify bans.

Although some may criticize this form of activism as soft, claiming that pragmatic pressures like national security and economic sanctions are the main levers of change, human rights have historically played a role in informing these debates. Indeed, the idea of “humanitarian disarmament,” which builds on international humanitarian and human rights laws in order to protect civilians from suffering during conflicts, is also long-standing within the international community. Similar to ICAN, the International Campaign to Ban Landmines also won the Nobel Prize two decades ago with a similar international coalition to stop the suffering of innocent civilians by these weapons.

Although ICAN and the Treaty should be praised for their effort in moving the conversation forward, their work is definitely far from over. It seems clear that countries armed with nuclear weapons will continue to ignore the international community’s condemnation of these stockpiles and programs. Only time will tell, however, whether our collective efforts using human rights, pragmatism, and diplomacy will do any good.

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Facebook: https://www.facebook.com/claihr osgoode/
The Court’s Recognitions of an Exceptional Individual

At Old City Hall, just a few days ago, RJ’s name filled up the afternoon docket. Over a period of 10 years, RJ had accumulated thousands of dollars in fines for provincial offences. With the assistance of his representative from the Fair Change Legal Clinic, RJ was appealing to the court for a more compassionate sentence than had already been imposed. Although the fines came from different pieces of legislation including the Safe Streets Act, Liquor License Act, Trespass to Property Act, and TTC bylaws, a common theme united them all—all of these convictions were the result of RJ’s homelessness.

The legal arguments for RJ’s appeal were not overly sophisticated. RJ relied on a provision of the Provincial Offences Act which allows the court to reduce or remove a fine when “exceptional circumstances exist” such that “[imposing] the minimum fine would be unduly oppressive or otherwise not in the interests of justice.” Thus, in order for his appeal to succeed RJ had to persuade the court that his circumstances were exceptional. Finding and highlighting the facts that would demonstrate RJ’s circumstances were exceptional was the easy part. The challenging part was living the facts in the first place, and this was a task that RJ had to undertake on his own.

From a very young age RJ suffered with severe social anxiety which ultimately lead to undiagnosed depression. Due to persistent bullying and degrading social situations, simply leaving the house became a source of distress for him. Due to persistent bullying and degrading social situations, simply leaving the house became a source of distress for him. With previous circumstances which were exceptional. Finding and highlighting the facts that would demonstrate RJ’s circumstances were exceptional was the easy part. The challenging part was living the facts in the first place, and this was a task that RJ had to undertake on his own.

At the age of 14, RJ’s anxiety, depression, and addiction substantially worsened. Peers would pick on him for his physical appearance, perceived sexual orientation, and inability to socialize. It was at that time that he first came into contact with the criminal justice system and was forced to move to a behavior modification school. The change only lessened his desire to attend school, to go to work, and fulfill family obligations, all while his addiction intensified.

At the age of 17, and after spending extended periods of time kicked out of or seeking relief from his family home, RJ moved into an apartment with individuals in similar circumstances. The environment was toxic and drugs and alcohol were in constant circulation. After two years, RJ moved to Toronto in a similar environment for a few short months. But with previous means of making an income proving impractical due to a criminal conviction, RJ began living on the street almost instantly. And the street is where he would stay for the next twelve years.

RJ began working with Fair Change in the fall of 2016. But the labors that would be required to persuade the court began much earlier. Not long after receiving his final conviction in 2013, RJ entered the Ossington Men’s Withdrawal center where he has retained and sustained sobriety. Shortly after, RJ began staying at the Native Men’s Residence where he was able to secure stable housing and participate in a number of rehabilitation programs. One program that RJ became aware of while at the Native Men’s Residence was the transitional year program offered at the University of Toronto. The program acts to bridge the educational gap that some have between high school and university. As a result, students in the program have the opportunity to enroll in a few first-year university courses. RJ did so, and performed exceptionally well. He received course awards, scholarships, and multiple As. The result was an offer of admission at the University of Toronto.

The crux of RJ’s legal argument was that, after fighting his way off the street, imposing the fines for his past convictions would almost certainly have an ill effect. RJ had already addressed the central cause of these convictions: his homelessness. In fact, given RJ’s still precarious financial state, imposing a fine could encourage re-offending by increasing his chances of becoming homeless once more.

In his appeal hearing, the submissions made on RJ’s behalf touched on all of these points. The court learned about RJ’s remarkable journey from extreme poverty and homelessness to an Honours student at the University of Toronto, from hopelessness and despair to hope and possibility. What was clear to every person in Courtroom that afternoon who heard RJ’s story, including the judge, was that RJ was an exceptional individual who had overcome exceptional circumstances. The result was a suspended sentence on all convictions and a reduction of RJ’s fines from nearly $5,000 to zero. It was a great day for RJ and for Fair Change.

RJ’s inspirational story is one of individual success that should certainly be celebrated. And RJ’s story is undeniably unique. But the criminalization of poverty in Ontario is not. Tickets issues under the Safe Streets Act and similarly oppressive pieces of legislation are on the rise. In addition to being a story about individual triumph, RJ’s story also tells us that in order to have the court come to a common-sense consensus one needs to single-handedly address their struggles with homelessness, alcohol abuse and mental illness while finding a representative that is willing to work with them for a year on a pro-bono basis.

So, rather than expecting individuals to meet this unrealistic standard, why don’t we just stop ticketing people experiencing homelessness in the first place?
One of the best things I ever did as a lawyer took about twenty minutes. It was a simple procedure, requiring very little intelligence or bravery. Yet, it resounded halfway across the world, and meant everything to a family that had faced unimaginable adversity. It was a human thing to do for other humans.

When you go to law school, you discover that not only are you expected to learn reams of information, but also how you are supposed to process that information. Your brain is reorganized. You become an analyst, a sifter of facts, a processing machine of sorts. What is relevant? What is connected? What is proof? Truth, oddly enough, isn’t significant yet evidence is. A document or an oral statement. It’s all about judging reliability. As if the truth was a wisp on the wind, and somehow it must be captured by observation of everything it passed and everything it may or may not have affected.

I practiced for over 25 years on behalf of vulnerable people. I cannot speak to law as a business, as I was never a public servant and do not come from a business family. It was always significant to me that law was a tool to help others in a pragmatic way. Hence my signing up for CLASP in October of my first year, my summer jobs at CLASP and Parkdale, and doing the Parkdale poverty law intensive. But, what it took me decades to realize was that law school often does us a horrid disservice in its manner of instruction. It puts that analysis into our hearts as well as our brains.

Think about the last time one of your friends tried to tell you their woes. You immediately thought about how to fix it, didn’t you? You parsed what they were saying for facts, you thought about what the other side of the argument could be, you reflectively checked their problems against statutes and regulations, maybe even case law. It probably took you at least ten minutes to fathom that all they wanted to do was have a good cleansing bitch session. Maybe a shoulder to cry on. You dissociated from their emotional needs and automatically tried to beat the issue to death with your intellect. It doesn’t make you an ogre. I believe we, survivors of this trade, maintain (well most of us) emotional depth. Even creativity. But, law school, and being a lawyer, tends to bleach out the adjectives in favour of reason. Your affidavit is taken much more seriously if its language is bald and calm and matter of fact. Unlike our American friends, grand gestures and the spewing of florid descriptions are frowned upon, distrusted, and suspected. You are not mechanical, but it helps to follow a recognizable pattern. It assists your client that you are the rational presenter of their story. With exhibits attached.

My proposal is this: do not let go of your soul. Play music. Craft things. Make art. Keep an hour a day for something ridiculous. Say yes. Start with a hug and not a cross-examination. Don’t let this job take away that which makes you a person. You will, in the end, be a better lawyer for it.

The thing I did? Simply making notarized copies of some birth certificates. It meant a war-torn family was reunited in Canada. It took less time than a coffee run. It was, strictly speaking, not allowed by my employer. I could have referred the person elsewhere, where they could have paid someone to do it.

But I didn’t. I was human. Don’t ever forget that you are, too.
In its 4th year, close to 900 licensees will have joined the Profession through Ryerson’s LPP.

Within one year of their Call to the Bar, 75% of our alumni are working in law and law-related opportunities.
Because All Our Clients Are Innocent:
A Reflection of the 25th Annual Animal Law Conference

One of the very first things law students learn in law school is that there is a huge issue of accessibility in the legal system for many groups. One group that most law schools fail to recognize is non-human animals. Even broader, legal systems across the world fail to give non-human animals the recognition and justice they deserve as creatures capable of thought and emotion. To learn more about this gap in law, on October 12th, seven members of Osgoode’s Student Animal Legal Defence Fund (SALDF) were a part of 400 people around the world who travelled to Portland, Oregon to attend the 25th Annual Animal Law Conference, hosted by Lewis & Clark Law School and the Animal Legal Defence Fund. There, we learned about the current state of animal law, growing trends, and continuing obstacles as animal law becomes a growing field in the legal community.

The event kicked off with a student conference, where a panel of seven professionals practicing in animal law spoke about the range of opportunities in animal law including private practice, working at an NGO, and animal law education. The Mother of Animal Law, Joyce Tischler, spoke to students about the bright future of animal law and reinforced students as the drivers of the future of animal rights. Afterward, members from various SALDF chapters across the United States discussed their strategies for spreading the animals rights message through law.

In the evening, the formal conference commenced with a reception and keynote presentation by Pamela Frasch and Joyce Tischler. Their presentation reviewed the past 25 years of animal law and praised the animal legal community for the growth of the movement. They made specific reference to the 1st Animal Law Conference, held in 1992, a small gathering of animal advocates who profited from the photos taken by the ape.

The first panel of the conference addressed factory farming and how to use the law as a tool to stop the serial torture and slaughter of animals. Because there are few laws that apply to animal rights in factory farming, the panel addressed how other laws can be used in a creative way to support captive animals. The three major tools of the law mentioned were enactive legislation through voting and political pressure, passing regulations (of course, not as effective as legislation), and litigation—where civil actions can be used to fight captivity, and animal rights groups can intervene in major cases. Also discussed in this panel was the misuse of the term ‘organic’ and other misleading packaging on animal products. In these cases, misleading advertising laws can be used to discipline marketers and reveal the truth about how animals are treated on farms.

The next panel addressed non-human animals and victimhood. Here, the audience was first sobered by the memory of slaves and women historically being treated as legal property and their inability to be legal victims of crimes. Presently, animals do not possess legal personhood, but can be viewed as victims of crimes if police and prosecutors are educated in animal law. Prosecutor Allie Phillips focused on the importance of recognizing animals individually in cases of hoarding, and the recognition of companion animals as victims and tools of abuse in cases of domestic violence.

After a delicious vegan lunch, the conference resumed with a panel addressing the sexist and racial issues which persist in the animal rights movement. The audience was reminded that despite the claim to compassion for all creatures, biases and harassment (whether intentional or not) are still an issue within the animal rights community and in animal rights organizations.

The last panel of the day spoke about retired entertainment animals and the use of animal sanctuaries as a place of rescue and recovery. Ed Stuart, co-founder of the Performing Animal Welfare Society, highlighted the panel with his tales of working in the entertainment industry as an animal trainer alongside the late Pat Derby and his transition to opening three sanctuaries for abused or abandoned entertainment animals, including elephants, tigers, and bears.

The keynote presentation of the evening came from author Jonathan Balcombe. Materials presented from his book, What A Fish Knows, shed light on the scientific discoveries about the capabilities of fish to think, feel, and build relationships. He spoke about studies in which fish could recognize human faces, recognize humans as predators or non-predators in sparring communities, strategically hunt with other fish for food, and enjoy the pleasures of being pet/ massaged.

The next morning brought an exercise of ethics and issues that arise when animal rights organizations have conflicting interests (i.e. when one organization champions for better living conditions in factory farms, while another fights for the total eradication of factory farms). The following panel presented emerging animal rights movements in France and Zimbabwe and their challenges.

The last panel of the conference presented materials on actions against animal abusers and the issue of defendants moving evidence to hide their crimes (e.g. relocating abused animals to other facilities). Personhood was raised again in a recent case in Argentina that recognized the legal personhood and rights of Cecilia, a captive chimpanzee (see Mendoza et al v. Argentina). In addition, Nauto the selfie taking monkey, still holds the right to a civil action in copyright against the photographer who profited from the photos taken by the ape.

The Conference also highlighted the opportunities for students who wish to get involved in animal rights beyond their local SALDF chapter. Lewis & Clark Law School offers an LL.M. program in Animal Law Studies, which also offers full scholarships (tuition and board) for three international attorneys each year to study in Portland, as well as other financial aid. Harvard Law School also offers an Animal Law and Policy program, with possibilities of receiving a scholarship or a low-income protection plan.


For more information on upcoming animal law events, visit: http://aldf.org/resources/animal-law-events-opportunities/events/

For more information on student clerkships, internships & fellowships, visit: http://aldf.org/resources/animal-law-events-opportunities/clerkships-internships-fellowships/

Osgoode’s SALDF gives great appreciation to the Animal Legal Defence Fund and Osgoode’s Dean’s Office for partially funding our adventure and indulging us in our passion for animal rights law. From attendees Samantha Skinner, Claudia Daniela Vazquez Juarez, Sarah Levy, Amrita Pal, Alyssa Warias, Luther Kadima, and Matthew Browne, we sincerely appreciate the opportunity and look forward to the 26th Annual Animal Law Conference!
Family Factoids: Common Law Spouses

Author: Kenneth Hildebrand on behalf of the Osgoode Hall Family Law Association

Are you interested in learning about family law matters without having to take a whole course on it? Want to avoid reading lengthy cases and just get to the basics of a concept? Are you not married, living with someone, and want to know if they are considered your spouse for legal purposes? I present to you a Family Law Factoid as it pertains to your love life. While it may not be the most romantic information, it is probably still important for you to know the legal implications of your amorous affairs as a (future) legal professional.

Common Law Spouses

In Ontario, you are a “spouse” once you marry. If you’re married to your partner, you are not a common law spouse; you are a married spouse and are subject to more legal obligations to your spouse upon the breakdown of your relationship. However, you may be considered a spouse at common law if you and your partner have:

- Cohabited continuously together for three years; or
- Cohabited in a relationship of some permanence and you are parents of a child together.

The language here stresses living together as a qualifying factor in determining common law spouses. Casual and serious daters living independently are not typically included here – you can’t really “swipe right” into common law status (that is, unless your Tinder/ Bumble relationship turns into a three-year love affair where the both of you live together throughout that time. Or, if you two crazy kids decided to have a child in that fling.) It also seems as though being afraid of commitment will help you avoid legal liability.

It should also be noted that people separate from their married spouses and start a new relationship with a new partner without getting a divorce first. However, even if one or both partners is still legally married to a third party, this does not impact common law rights in Ontario. The majority of the time, if one of the two above qualifications are satisfied, you may just be a common law spouse for legal purposes.

One exception, however, regards medical decisions made on your behalf. If you become unable to make your own health care decisions, and you do not have a power of attorney for personal care, a spouse is able to make these decisions for you pursuant to the Health Care Consent Act. Under this act, your common law partner is considered a spouse if you are in a conjugal relationship and have either (a) cohabited for at least one year; (b) a child together; or (c) entered into a cohabitation agreement together. This one-year time frame is different from the time frame provided in the Family Law Act, which requires at least three years of cohabitation.

You should know that spouses within a marriage and spouses determined by common law are treated differently from the time frame provided in the Family Law Act, a common law partner in Ontario has no legal right to seek an equalization of the net family property (a division of assets). Each person keeps what is in his or her name, and joint property is shared equally. Therefore, a good rule of thumb is not to pay for anything if your name isn’t on it. Keep in mind that this includes the matrimonial home: if your name is not on the title, you could get evicted if things go south between you and your partner. This also applies to wills and estates. In a common law relationship, you have no property rights regarding your partner’s estate. If your partner dies without a will, you are treated as a stranger.

There are also options if you’ve been making significant contributions to your partner’s property. You can make a claim for unjust enrichment or a claim for a constructive trust. But that gets really complicated and you’ll need strong lawyering skills to pull that off. This is what I mean about keeping your “eyes wide open” at the beginning of your relationship: avoid unnecessary and complicated litigation. Foresight is sexy in the legal world and in love. You can quote me on that.

Spousal Support

In Ontario, spousal support is only payable to a “spouse.” A spouse can include a common law partner within the Family Law Act; living together with someone who is in a common law relationship, you have no legal obligations regarding spousal support as if they were married.

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What Happens at the Breakdown of a Common Law Spouse Relationship?

If you’ve become a common law spouse, or know someone who is in a common law relationship, you should know what could legally happen if the relationship breaks down. These legal obligations stem from the Family Law Act. As you read these, remember that it isn’t about being a pessimist: you just want to make sure you are entering this relationship with eyes wide open to future liabilities. That is smart lawyering. Be a smart lawyer.

Property

This is the biggest distinction between married spouses and common law spouses. While married spouses share property equalization under the Family Law Act, a common law partner in Ontario has no legal right to seek an equalization of the net family property (a division of assets). Each person keeps what is in his or her name, and joint property is shared equally. Therefore, a good rule of thumb is not to pay for anything if your name isn’t on it. Keep in mind that this includes the matrimonial home: if your name is not on the title, you could get evicted if things go south between you and your partner. This also applies to wills and estates. In a common law relationship, you have no property rights regarding your partner’s estate. If your partner dies without a will, you are treated as a stranger.

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Child Support & Child Custody

This one is pretty simple. Your rights and obligations regarding child custody and child support are the same in Ontario regardless of whether you are a married or common law spouse. Kids are important and the courts will do everything they can to put their interests at the forefront of their decisions. They are our future, after all.
Is it "locker room talk" if it happens in the bar after the game? I’m seriously asking, because sometimes, the conversation gets more candid in the allegedly public setting of the local watering hole. You know, the place you go to after your beer league hockey game, where conversations are frequently interrupted by shouts of “come on Andersen, that was a clean shot from the point! How did you miss that, even if you were screened, and it was deflected at least once on the way in!” Okay, maybe you’re not a Leafs fan, or a hockey player, or someone who shouts at what they see on TV. Fair enough.

I’m asking because I had an awkward moment after a recent hockey game, when I heard some of the guys in my league criticizing the notion that there are more than two genders. I politely tried to explain that gender and sex are different things, and was curtly dismissed. My leftist instincts made me want to angrily shame someone else’s gender identity, that’s your problem. My testosterone one made me want to question the gender identity of one of the guys, because I saw him flinch when he tried to charge the net with a Maurice Richard glare, only to back off immediately when he saw me respond in kind. Obviously, neither response would have done any good for anyone.

Instead of reacting with self-righteous fury, I listened. This isn’t the first time I’ve found myself in a discussion on social issues in a locker room similar setting. I play hockey with a lot of older (and predominantly white, straight, cisgendered) men, and you can only talk about the Jays/Leafs/Argos/Raptors for so long. The conversations are nothing you’d see in Plato’s dialogues, but they’re enlightening nonetheless. They’re also not nearly as perverse as some current political leaders would have you believe, because we’re adult men, and not posturing fourteen-year-olds. At the very least, it’s a good way to get the opinion of “the man on the Clapham omnibus.”

That said, it was somewhat surprising to hear some of the guys at my table snickering about things like the opinion of “the man on the Clapham omnibus.” That’s not two genders, to the idea that gender studies is a thing. Admittedly, as a cisgendered heterosexual whose main response to so-called ‘men’s rights activists’ and their ilk essentially boils down to “grow a pair, you sniveling cretins,” I don’t have a dog in the gender identity fight. Getting too invested in the subject beyond a basic respect for one’s right to freedom of thought (and by extension, identity) would be disingenuous. Still, hearing a group of educated, intelligent, mostly-decent people ridiculing something so important to many people was weird.

One thing that stood out in the conversation was a sincere lack of malice or hostility. There’s an aphorism known as Hanlon’s Razor, which states that one should never attribute to malice what can adequately be explained by stupidity or ignorance. Part of what threw me off about the conversation is the fact that most of the players in that beer league are educated professionals, and there’s little room to shrug off their comments with any notion that “they don’t know better.” But there was no malice, and if you’ve never identified with anything other than your birth gender, how could you know what it’s like to be transgendered or intersex? How can you be expected to know better when you truly can’t know better? They weren’t hateful in any way, shape or form; they were just struggling to wrap their heads around some terminology. There was no hatred, and considering how many people I’ve seen express the desire to assault trans people for incredibly stupid reasons, I certainly wasn’t about to get enraged over “I don’t think there are more than two genders.”

Another thing that stood out was the generation gap between myself and the other players. That particular league is for players over the age of forty-five, and I’m only allowed to play because older goalies are in short supply. The things they were saying, while not sincerely malevolent, would have been extremely difficult to defend if uttered by anyone younger than thirty. Hell, jokes about transgendered people are still common today, and while such jokes aren’t well-received any more, the fact that some people still think “that woman used to have a penis” is funny is... well, not funny. But for a long time, it was an easy joke, and people don’t stop finding something funny just because you chew them out for laughing. If anything, that just makes them laugh harder.

There’s an important lesson about tact buried in the debate about gender issues and the generation gap. The fact of the matter is that no one stops being a bigot simply because someone calls them a bigot. Sure, telling someone off feels rewarding, but if they walk away with nothing new aside from the opinion that the person who told them off is a jerk, who benefits? People who are sincerely trying to understand an issue and struggling with the details don’t deserve to be scorned. If someone sincerely tries to do something, fails, and gets ridiculed for their failure, do you really think they’re going to try again?

The point is that without sympathy, there is no progress. You can be sympathetic to the person who looks at their reflection and thinks “this isn’t me.” You can be sympathetic to the guy who sincerely holds no hatred towards a trans person, but hears how much gender reassignment surgery costs, and doesn’t think it should come out of his paycheque. Personally, I think the former person deserves much more sympathy, but do the somewhat misguided financial concerns of the man on the Clapham omnibus make him a bigot? People are complicated, and while people in our profession regularly see the worst that humanity has to offer, we should be willing to give others a modicum of credit.

As for gender issues in the locker room, I should iterate that the conservative guy who organizes a summer pick-up group I play with has kicked people out for being transphobic or homophobic. Most people don’t want to be angry or hateful, and if someone says something that seems difficult to reconcile with your personal values, at least give them a second to explain themselves. The guys trying to wrap their heads around gender identity issues are lawyers and engineers. These are not stupid people by any stretch, and even when they’re wrong (and who isn’t, from time to time), verbally tearing them a new one won’t correct them. It’ll just make them wrong, and you a person who prioritizes personal indignation over progress.

Change takes time, and people don’t change their minds because you angrily insist they do so. There’s a vast gulf between the person who thinks trans people should be assaulted and the person who screws up personal pronouns. Sincere malevolence is actually quite rare. Or at least I hope it is.
The Davies summer experience?

Ask our Osgoode students.

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Class of 2017

Ankita Gupta
Class of 2019

Russell Hall
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