Accessing Justice:

interdisciplinary perspectives on access, justice, law & order

May 9 – 11, 2018

University of Winnipeg

Hosted by: the Centre for Interdisciplinary Justice Studies

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Centre for Interdisciplinary Justice Studies

Wednesday, May 9th 2018
Eckhardt Gramatté Hall 3rd floor Centennial
Registration, Opening Remarks,
Featured Speaker, & Reception

6:00-6:30 Registration
6:30-7:30 Welcome to Territory & Opening Remarks
Elder Calvin Pompana (Introduction: Kevin Walby)
Dr. Annette Trimbee, *President & Vice-Chancellor, U of Winnipeg*
Dr. Jaqueline McLeod-Rogers, *Associate Dean of Arts, U of Winnipeg*
Dr. Steven Kohm, *Chair: Department of Criminal Justice, U of Winnipeg*

7:30-8:15 FEATURED SPEAKER

Introduction: S. Kohm (UWinnipeg)

Patricia Barkaskas: "Indigenous People and Canada's Injustice System"

University of British Columbia, Instructor & Academic Director, Indigenous Community Legal Clinic, Peter A. Allard School of Law

Legal education has a critical role to play in creating understanding about Canada's access to justice crisis. Essential to this understanding is the acknowledgment of the ongoing impact of Canada's colonial legal system on Indigenous peoples. It is crucial to admit that Canada does not have a justice system when it comes to dealing with Indigenous peoples and communities; rather, we have an injustice system. In response to the Truth and Reconciliation Commission of Canada's Calls to Action, law schools have begun to address the colonial violence of Canadian law and what this has meant and continues to mean for Indigenous peoples and communities in accessing justice. Law professors must contemplate which academic and practical approaches will intervene in violent normative legal education and challenge the colonial hegemony underpinning the Canadian legal system. How do legal educators make our classrooms spaces where we can engage with the work of decolonization?

8:15-9:30 Welcome Reception
Complementary wine, cheese, and appetizers served.

Thursday, May 10, 2018

8:00-8:30 Coffee and Snacks
Eckhardt Gramatté Hall 3rd floor Centennial

8:30-9:30 CONCURRENT SESSIONS

Panel 1.1 ACCESSING LEGAL PROFESSIONS
2M70 - 2nd Floor, Manitoba Hall
Chair: Colleen Suche (Manitoba Court of Queen's Bench)

Kory Smith (Carleton):
Effective Access to Justice Requires Access to Lawyers

Effective access to justice requires access to lawyers. Research consistently shows that many lower to middle income Canadians are experiencing an access to justice crisis. They make too little to hire private counsel, and too much to qualify for Legal Aid. The Rowbotham application process was created to act as a "safety net" for Canadians denied Legal Aid. To obtain a Rowbotham order, an accused must apply for and have been denied legal aid. This requirement has resulted in longer periods during which the accused is required to act without counsel, wasted use of expensive defence counsel resources, increased and unnecessary resort to the adversarial court system, and the potential for unreasonable delay. In an attempt to increase efficiency and fairness in the court-order process, the Ministry of the Attorney General (MAG) launched the Rowbotham Application Pilot Project. Because the Pilot Project is in its infancy, no research has examined how effective it has been at reducing waste and expediting Rowbotham applications. To fill this void, the author used access to information requests and one-on-one interviews with legal professionals to draw more concrete conclusions regarding the efficacy of the Pilot Project, and, more broadly, to explore how the Rowbotham application process can be improved.

Graham Sharp (USaskatchewan):
The Right of Access to Justice Under the Rule of Law: Guaranteeing an Effective Remedy

The Canadian Charter of Rights and Freedoms recognizes that Canada is founded upon the principle of the rule of law. Here, "rule" is not synonymous with "law," but rather with "govern." Therefore, how can the law rule effectively without a vehicle for its implementation? The law rules when rights are exercised. This is the task of our justice system. For the law to rule it must be able to provide a remedy for every occasion in which a right is violated. This begs the question however, as to whether a right to access justice is fundamental to the rule of law. This paper considers political and legal philosophy, the common law, and the utterances of past Chief Justices in order to determine just what level of access to justice is necessary to ensure the effective rule of law.

Jennifer Olenewa (UWaterloo):
Accessing Government Funded Support: An Exploration of Victims Services Workers as Intermediaries

In 2015, the Canadian government enumerated information, protection, participation, and restitution rights of people affected by crime in the Victims Bill of Rights. This Bill acknowledges that the harms caused by victimization are a public concern and that victims have the right to government funded assistance. Victim Services are provincially funded agencies mandated to provide services to victims in the communities where they live. While the aim is to provide an equitable and accessible social safety net there are significant access barriers. This paper forms part of a larger mixed-methods study that explores how workers at Victim Service agencies act as intermediaries between victims and their enumerated rights. Intermediaries, according to Sally Engle Merry, are actors that translate and enable access to rights. In this context, Victim Service workers assist eligible victims to apply for financial compensation from the government and provide referrals to community support programs. Despite the importance of intermediaries in assisting victims to access resources, the role remains largely unexamined. Through an analysis of in-depth interviews with eight Victim Service workers in Southern Ontario, this paper explores how participants understand their role in assisting victims, which provides insights into barriers for accessing support services. Not only does the definition of victim often fail to capture the scope of victimized populations, the agency also remains a well-kept secret within the community studied here. Further, interviews reveal how services place greater responsibility onto victims to engage support even as they provide them with assistance.

Panel 1.2 THE DIFFICULTIES OF DECOLONIZATION: what are the implications of partial decolonization for identity and migration in postcolonial Canada, D.R. Congo and Nigeria?
2C13 - 2nd Floor Centennial Hall
Chair: Rebecca L. Sandefur (Illinois Urbana-Champaign)

Emma Alexander (UWinnipeg):
Investigating the identities of children adopted in postcolonial DR Congo: ethics, migration and identity

In Canada, the Sixties Scoop saw a generation of indigenous children taken from their families, adopted transracially resulting in a loss of their cultural identity, loss contact with their birth families, loss of access to medical histories, and in many cases, the loss of their actual identities. Nearly fifty years later,in central Africa, the war-torn but resource rich nation of the DR Congo saw a massive increase in international adoption. The activities of American adoption agencies in conjunction with unscrupulous local lawyers resulted in hundreds of children being placed in orphanages, siblings separated, false documents being prepared and courts being duped, bribed or just turning a blind eye in adoption cases. Unlike Canada, where adoption registries now exist, international adoptees find it extremely difficult to trace their origins. Once the extent of the issues with fraudulent documentation began to emerge in

recent Congolese adoptions, some adoptive parents began to hire investigators to find birth families. However, this process also became mired in doubt, as investigators found that some of same actors who had arranged for false documents now demanded payment for information, or sought out adoptive parents themselves on social media, or posed as investigators. In very few cases was there any real consideration of the 'best interests' of the children. This paper addresses why issues addressed now in Canada are left unaddressed in transnational contexts. Why are international mechanisms so weak, and how do we account for the discrepancies we see in standards of accountability?

Chukwuemeka Nduabuike (Jamia Millia Islamia, India): Belonging or not belonging: Indigenous customary law and claims of identity in Eastern Nigeria

On December 28th, 2017 a man was buried in the eastern Nigerian Imo state. His funeral had been delayed for five years while he lay in the morgue. Why? The man's family, faced with mounting bills from morgue fees, lawyer's bills and the cost of the funeral itself, gathered from near and far to pay their respects and eat. Among their number were community elders who had recently swayed a local court with testimony that the deceased had an additional, unacknowledged son, older than the rest of his children. The court had relied on customary notions of order, in accordance with custom and tradition, favouring the testimony of elders and refusing to accept the technology of a DNA test which would have settled the matter in question with far greater certainty. What was at stake? Property? Position? Identity? The deceased, while owning his own house in his ancestral village had no great wealth. His acknowledged sons and daughters were not expecting an inheritance. The petitioner moved the court demanding that his identity as oldest son be confirmed, and flowing from that, not just rights to property, but to identity. He wished to be acknowledged as the eldest son of a man of influence and standing in the community, even in his sixties, he still craved the public acknowledgment of confirmation of this identity. What does this case tell us about how accessing justice in postcolonial Nigeria, about identity and belonging in a postcolonial state?

Bashir Khan (Winnipeg): Serious Issues Faced by Refugee Claimants in Canada: A refugee lawyer's perspective

My paper addresses some important problems facing refugees as they deal with the system in Canada. I intend to address issues of application, process and determination. Recently, the time permitted to make a refugee claim in Canada has been considerably shortened and this has had deleterious effect on the capacity of refugees to prove their claims. Documents to support their claims must be gathered very rapidly, and any omission from either the form or the supporting documentation is often used as justification for not finding a refugee claimant credible. While claims must be made expeditiously, the process of hearing that claim is frequently delayed. I have witnessed many crucial misunderstandings occur at hearings. While the background of Citizenship judges is now more diverse and reflective of the population, members of the Immigration and Refugee Board are not as diverse, and it is clear that their backgrounds and experience influence the adjudication process. However, this is rarely explored because the refugee determination process is far less subject to public scrutiny. Finally, I will explore the difficult issue of claimant credibility. Refugees face difficulties understanding the process they must undergo, and being understood within that process. In addition,

they face the conscious and unconscious bias of the members of the Immigration and Refugee Board, for whom their accounts are incredible and for whom they must be squeezed into cultural categories and forms of accounting that do not accord with their world view or experience of persecution.

9:45-10:30 FEATURED SPEAKER

Eckhardt Gramatté Hall 3rd floor Centennial

Introduction: M. Weinrath (UWinnipeg)

Colleen Suche "How Did Access to Justice become a thing in Canada"

Manitoba Court of Queen's Bench

Justice Suche will reflect on the Access to Justice movement in Canada. This presentation reflects on the work of the United Nations and access to justice, specifically a number of UN reports on access to justice and connects their claims and findings to further reflections on the state of access to justice work being undertaken in Winnipeg, Manitoba. Justice Suche brings experience as Chair of the Canadian Superior Courts Judges Association Access to Justice Committee and as President of the Board of Directors of the Legal Help Centre of Winnipeg. The Legal Help Centre is a community based project offering lower income persons help in accessing legal rights through referrals, legal assistance, and support. It is a partnership among Winnipeg's legal field and three universities (including UWinnipeg), where students in law, social work, conflict resolution, criminal justice, and human rights work with volunteer lawyers to help others.

10:45-11:45 CONCURRENT SESSIONS

Panel 2.1 ACCESSING LEGAL SERVICES
2M70 - 2nd Floor, Manitoba Hall
Chair: Janet Mosher (Osgood)

Anna J. Lund (UAlberta):
Access to Justice and the Question of Venue
This presentation will examine the legal principles and processes that guide venue selection for proceedings in Alberta Courts. The focus is on legal proceedings that may result in the defendant losing his or her residence, i.e., foreclosures, evictions, and writ enforcement proceedings against realproperty. These proceedings are similar in two important ways: (1) when a plaintiff succeeds, the result is a serious disruption to the defendant's life, and (2) many defendants in these matters are self-represented and often of limited means. Access to justice is advanced for self-represented defendants of limited means when hearings are held near to them, or the Court facilitates the defendant's remote participation through electronic means. In proceedings potentially affecting a defendant's home, the substantive law on venue has evolved to recognize that promoting access to justice should be a significant consideration. Despite this desirable development in the substantive law, the procedures by which defendants can assert their rights remains impenetrable to many self-represented litigants. This presentation will offer suggestions for reform that engage with bigger themes in the access to justice literature, including the promise and perils of technological innovation, and the particular challenges facing self-represented litigants engaged in court proceedings.

Amy Hétu (L'Atelier de justice participative S.E.N.C & USherbrooke)
Breaking Paradigms: A new and alternative way to offer legal services and legal information by millennials
There's currently a major shift taking place in the judicial system throughout our country. More and more litigants decide to represent themselves due to lack of financial means, trust in the current system or because of a previous negative experiences. On the other hand, we have new lawyers being sworn in, unable to find jobs, having to let their dream of becoming a lawyer on the back burner and find employment in other fields. As a young lawyer, I've been able to make several observations and note certain problems with our current legal system. As the market is shifting, we need, as a profession, take a step back and offer new services not only to accommodate a growing need for affordable legal assistance but that are catered to clients current needs. I, with my associate, put together a legal start-up we named L'Atelier de justice participative where we offer legal services to people who have chosen to self-represent. This talk will mainly focus on what we've learned thus far throughout our legal alternative practice, the issues surrounding our current judicial system, such as limited access proper legal services in rural areas, and what the new generation of lawyers can do to help bridge the gap and help transform our current system for the better.

Graham Sharp (USaskatchewan):
Increasing Access to Justice with Unbundled Legal Services and Ensuring Competent Service under Limited Scope Retainers: Know Your Limit, Stay Within It.

As judicial proceedings grow in complexity, delays lengthen, and costs rise, the access to justice crisis worsens. Self-representation is more commonplace, but these litigants can burden the justice system further, which is not for the benefit of improved access overall. Many in the legal market who cannot afford full representation still seek the aid of legal professionals. Such demand can be met using the limited scope retainer, colloquially referred to as "unbundled" legal services. Here, legal representation gets broken down into discrete tasks designed to provide timely and vital legal services according to the needs of the particular client, who can choose the types and quantities of services he or she will pay for and receive. Some have misgivings about unbundled legal services but lawyer codes of conduct provide for their implementation and many practitioners already employ the limited scope retainer with success and without additional ethical concerns.

Panel 2.2 ACCESS TO JUSTICE IN LIMINAL TIMES & SPACES
2C13 - 2nd Floor Centennial Hall
Chair: Patricia Barkaskas (UBC)

Megan Capp (Royal Roads):
A Conceptual Framework for Measuring Access to Justice in Post-Colonial Settings

2015 saw the adoption of the 2030 Agenda for Sustainable Development, and, in particular, Sustainable Development Goal 16 (SDG 16) which seeks the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective accountable institutions at all levels. A broad debate exists on how to measure progress towards SDG 16 and its associated targets relating to access to justice. Due to the characteristics of post-conflict settings, these environments are specifically limited in their capacity to gather the data necessary to measure progress towards the SDGs. My research synthesizes literature, information gathered from interviews conducted with subject matter experts in San Jose, Costa Rica, and existing measurement tools, to propose a conceptual framework for measuring access to justice which accounts for the many ways justice is achieved in post-conflict environments. This conceptual framework is presented in the form of a table of components and dimensions and is intended to support practitioners in the field. Access to justice as a concept is explored through the literature and interviews with subject matter experts. Challenges with measuring access to justice in general, and in post-conflict states, are explored. These factors are addressed in the conceptual framework, providing a tool which is feasible and specifically relevant to the post-conflict environment.

Emily Gerbrandt (UAlberta) and Bryan Hogeveen (UAlberta): Access to Indigenous peoples daily lives: The colonial-patriarchal performances of criminal accusation within new contact zones.

Indigenous people in general, and Indigenous women and girls in particular, are over-represented as victims of violence in Canada. The recent trials of Gerald Stanley and Raymond Cormier serve as poignant reminders that the murder of Indigenous peoples in Canada continues to occur with little legal recourse. At the same time, Indigenous people are too often denied protection from harm and due process. In this paper, we problematize the processes by which the Canadian criminal justice state legitimates the arrest of – and intervention into – Indigenous peoples' daily activities. We maintain that accusation, as a performative speech act buoyed by colonial mentalities of rule and subjection, serves as the pivotal entryway into state structures of erasure and censure. Contemporary efforts to fashion 'revitalization zones' (i.e. Edmonton's Ice District, and business improvement area (BIA) programs like the BIZ programs in Winnipeg) have been made possible through intensified policing and removal of Indigenous peoples from consumer spaces. We consider how these practices are predicated on accusation that is haunted by spectres of Canada's colonial-patriarchal past.

Panel 2.3 SURVEILLANCE, POLICING AND POWER
2C15 - 2nd Floor Centennial Hall
Chair: Katharina Maier (UToronto)

Fahad Ahmad (Carleton) and Jeffrey Monaghan (Carleton): Radicalization, Criminalization and Access to Justice

A growing sub-discipline of academic and policy research developing theories of "radicalization" has produced knowledge practices that represent radicalization as a special type of crime or deviance. Understood as an identifiable process that leads towards political violence, radicalization has risen to prominence in the policy agenda of western states. The result is a dominant 'hard' criminal justice response that includes excessive policing, surveillance, detention, and incarceration. Even efforts that claim to be community focused, in fact, become new avenues of surveillance and control. Radicalization has become an "ideological conductor"(Hall at al. 1978) through which the ideas and behaviours ofcertain minority groups - mainly racialized Muslims - are deemed to be a risk to society. Viewing the community through the risk lens dramatically curtails their access to justice-related programming from legal rights to education, social assistance, and community-based programming. In this paper, we explore how radicalization has become a highly politicized object of knowledge that emerges from theorizing radicalization a particular, exceptional type of crime. Through selective application of criminological and pathologizing theories, we outline how radicalization theory has had widespread policy implications that dramatically limit access to broader issues of justice. Finally, through a reading of criminological theories that point to structural or interactive dynamics of violence and crime, we explore possibilities of disengaging radicalization from state-centric and security-dominated interventions and instead underline a need for enhancing social justice responses to issues of racism, alienation, unemployment, poverty, and the ongoing "war on terror."

Brendan Roziere (Robson Hall) Kevin Walby (UWinnipeg): Accessing Records on Police Militarization and SWAT Teams in Canada

Despite extensive analysis of police militarization across the United States (US), the issue in Canada has been overlooked. Drawing from data on deployments disclosed under freedom of information (FOI), findings reveal that use of special weapons and tactics (SWAT) teams have escalated in many major Canadian cities. Public police now deploy SWAT teams for routine law enforcement activities such as warrant work, traffic enforcement, community policing, as well as responding to mental health crises and domestic disturbances. In this paper, we focus specifically on some of the ways that researchers can collect data on SWAT teams and police militarization in Canada. We then reflect on some of the challenges of accessing and analyzing these data. We also examine some FOI disclosures revealing how police communications division personnel react to (1) FOI requests and (2) the news media that FOI-based publications sometimes result in. This paper concludes with reflections on the implications for public

policing and avenues for future research on police militarization and police violence in Canada.

Amelia Curran (Carleton):
Slipping the Line: Gang Territories as Invisible Spaces

Based on a study of gang territories as urban spaces, this paper challenges the limited spatial models we use to understand gang geographies. The colloquialism Slipping the line is used to explore an alternative spatial model of gang spaces. Generally defined as crossing out of one's own home territory, Slipping the line can be used to illustrate the spatial complexity of both boundaries and access to home territory. While it can refer to crossing regional boundaries into rival gang territory, interviews with police and residents show that Slipping the line also describes gang-affiliated youth being seen, or caught, by police while walking down main streets in their own neighbourhoods. In these situations, youth cross from home territory—a space of invisibility, a space forged of short cuts, hidden paths, and a variety of exits and entryways—into gang territory as it is made through police practices of surveillance that produce gang space as visible, locatable, and knowable. Rather than a regional breach, Slipping the line is to emerge from an invisible gang space of movement and trajectory into a space of formal dimensions and coordinates: it is to cross the boundary from the unseen to the seen.

11:45-12:30 : LUNCH - sponsored by CIJS
Eckhardt Gramatté Hall 3rd floor Centennial

12:30-1:15 FEATURED SPEAKER

Eckhardt Gramatté Hall 3rd floor Centennial

Introduction: K. Walby (UWinnipeg)

Liat Ben-Moshe: "Abolition via Litigation: Between Accessing Rights and Carceral Expansion"

Disability Studies, University of Toledo

Beginning in the 1970s, a host of landmark legal cases began to engage with the rights of prisoners and mental patients. In so doing, they added to a growing critique of imprisonment and institutionalization. By drawing on the work of disability rights activists who fought for deinstitutionalization and the framework of prison abolition, my aim in this presentation is to inquire whether legal reform is a useful tool for decarceration and closure of carceral spaces. I will ask whether litigation improved the lives of those incarcerated and discuss the intended and unintended effects of utilizing the legal arena as a tool of liberation. I will also point to the limits and drawbacks of employing this strategy in the long road toward justice.

1:30-2:30 CONCURRENT SESSIONS

Panel 3.1 ADJUDICATING JUSTICE IN CRIMINAL, CIVIL AND DISCIPLINARY PROCEEDINGS
2M70 - 2nd Floor, Manitoba Hall
Chair: Graham Sharp (USaskatchewan)

Derek Spencer (UWinnipeg):
Accessing Justice through Math: Solving Goldilocks Dilemma of Multiple Murder Sentencing

The Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act has led to longer sentences for murderers, but also raised concerns about harsh, unfit sentences. Such sentences have been avoided in some cases by plea bargaining. In one-third of cases to date offenders charged with multiple first degree murders pled guilty after the Crown reduced at least one charge to second degree murder. The logic behind such pleas is simple. In cases of one first and one second degree murder, a sentencing judge has a range of options available. For cases of two first degree murders, the options appear much more limited, with the only two apparent options being 25 or 50 years. Like

Goldilocks dilemma, the first sentence may be too soft, but the second sentence too hard. My presentation relies on principles of statutory interpretation to argue that when sentencing an offender for two or more counts of first degree murder, the global sentence does not need to be in increments of 25 years, but rather, can be any number between 25 and 50 years. My presentation will explore how this interpretation meets the principles of statutory interpretation by allowing for internal consistency in the statute, avoiding absurd results and relying on Charter values, ultimately allows the judge to find the sentence that is just right. This interpretation promotes access to justice for both victims and offenders of serious crime, ensuring each victim is accounted for at sentencing while avoiding harsh, unfit sentences.

Andreas Tomaszewski (Mount Royal) Ryan Keogh (Mount Royal) and Claire Inglis (Mount Royal):
White Collar Crime in the Legal Profession: Disciplined Misconduct among Lawyers in British Columbia

Justice systems play a central role in contemporary democratic societies, as do members of the professions who work in it. After all, their conduct significantly impacts on people's access to justice. Most members of the public need help when dealing with criminal or civil matters, so they can successfully maneuver through a complex legal system. Most often, lawyers represent clients in these matters, and it is thus paramount that they conduct themselves professionally as the public and state puts a lot of trust in them. But what happens when lawyers engage in professional misconduct? Are responses to lawyer misconduct effective in controlling or even reducing it? Surprisingly, there is little empirical research on these questions in Canada. As with so many other professions, the legal profession in Canada is self-regulated by provincial / territorial law societies, which includes the responsibility to investigate allegations of misconduct filed against its members and to discipline those who had allegations against them substantiated. We discuss this topic in the context of white collar crime in the professions, which is receiving growing attention. This paper is based on an analysis of several years of discipline proceedings conducted by the Law Society of British Columbia. We examined the various types of misconduct BC lawyers were found to have engaged in and the associated types of disciplinary action, with a particular focus on disciplined lawyers' gender and legal experience. We also discuss policy implications and suggestions for further research

Gerard Kennedy (Osgoode):
Rule 2.1 of Ontario's Rules of Civil Procedure: Turning Vexatious Litigants into an Access to Justice Success

This article analyzes the first three years of use of Rule 2.1 of Ontario's Rules of Civil Procedure, which was enacted effective July 1, 2014, allowing a court to summarily dismiss an action that is "on its face" frivolous, vexatious, or abusive, without a hearing, and potentially on its own initiative. The author recounts the history and rationale for the Rule, comparing it to alternative ways to potentially address frivolous, vexatious, and abusive actions. He then analyzes all 190 reported decisions where the Rule has been employed. He describes how the rule has been applied in practice, both to provide guidance for future lawyers and

judges considering using the rule, as well to provide the background for an analysis of the Rule's success. The Rule indeed appears to have achieved its purpose of resolving actions fairly and promptly and with minimal financial costs. There are some potential downsides to the Rule's existence and/or how it has been used. However, they are relatively minor compared to the Rule's benefits and/or could relatively easily be fixed through refinement of the case law. Indeed, the Rule's use has in many cases been the model of fairness to disadvantaged parties.

Panel 3.2 METHODS OF ACCESSING INFORMATION
2C13 - 2nd Floor Centennial Hall
Chair: Michael Weinrath (UWinnipeg)

Kevin Walby (UWinnipeg) and Alex Luscombe (UToronto): Four Approaches to Analyzing Freedom Of Information Disclosures

Qualitative researchers across the social sciences are now using freedom of information (FOI) requests to produce empirical material. Yet the issue of data analysis in relation to FOI disclosures has yet to be explored. We conceive of the use of FOI requests in the social sciences as a way of accessing data that governments most often do not want disclosed, and of rethinking the repertoires of empirical social science. However, engaging with literature on qualitative research design and data analysis, we suggest that attention to analysis is crucial since no data speaks for itself. We argue that content analysis, discourse analysis, metaphor analysis, and social network analysis can be used together or on their own by researchers attempting to write up the results of FOI requests. In conclusion, we reflect on what our arguments mean for literature on FOI use in the social sciences, and for literatures on these four approaches to qualitative data analysis..

Sandrine Prom Tep (UQAM), Florence Millerand (UQAM), Alexandra Bahary (UQAM), Pierre Noreau (UMontreal), Anne-Marie Santorineos (SOQUIJ Quebec Legal Information Society): Legal Information in Digital Form: The Challenge of Accessing Computerized Court Records

In principle, everyone in Quebec has access to court record history relating both to oneself and others. In practice, this public information remains inaccessible or unknown to citizens, and is chiefly consulted by legal professionals. This project involves evaluating the access provided to this registry. Our approach is at the crossroads of studies on cyberjustice, person-system communication and the sociology of CIT usage. We present the methodological challenges involved by observing citizens accessing this information at the courthouse. The means of access comprises two parallel systems: a free but somewhat arcane query system, and a more user-friendly system available for a fee. Our research addresses the problem, reported by multiple cyberjustice researchers, that many people in need of the benefits promised by legal technology are deprived of them due to access difficulties deriving from lack of practical knowhow. The preliminary results of the

first phase of the study are presented, shedding light on the problem of access to legal information, which can no longer be thought of by and for insiders only.

Agnieszka Doll (Athabasca) and Kevin Walby (UWinnipeg):
Using Institutional Ethnography in Socio-Legal Studies, Criminology and Criminal Justice Studies

Institutional ethnography is a method of inquiry created by Canadian feminist sociologist Dorothy E. Smith that examines how sequences of texts coordinate actions, consciousness, and forms of organization. In this paper, we explain how to use institutional ethnography (IE), and why scholars in socio-legal studies, criminology, and criminal justice studies should use IE in their research. We focus on IE's analysis of texts, text activation, and intertextual hierarchy as well as Smith's understanding of mapping as a methodological technique. To demonstrate these powerful features of and explain how Smith's approach to mapping differs from other approaches in the social sciences we draw on our institutional ethnographies of access to legal system and to surveillance information. We argue that IE's terms and techniques should be of specific interest to socio-legal and criminological / criminal justice scholars for IE's tools can help access and examine the textual work undertaken in criminal justice and legal organizations, which in turn may create the problematics and bifurcations for people governed and ruled by these organizational processes. In the discussion, we anticipate criticisms of IE as a method of inquiry.

Panel 3.3 ACCESSING JUSTICE FOR WHOM?
2C15 - 2nd Floor Centennial Hall
Chair: Diana Young (Carleton)

Kelly Gorkoff (UWinnipeg):
Public Inquiries and Access to Justice: Possibilities or Placation?

This paper is an exploratory analysis of the relationship between public inquiries and access to justice. Public inquiries play an increasingly popular role in questioning injustices associated with often high profile, problematic events or 'failures' of the system. Public inquiries usually take place because there is an event or situation where the government must disregard existing policy and act in the public interest. Although this broad scope, flexibility, and independence are encouraging ways to avoid and question the confines of the system, these very processes may unintentionally allow for interference and a lack of focus creating recommendations that are unenforceable. Elliott and McGuinness (2002) question the efficacy of public inquiries by questioning their process, underlying aims, and impartiality. In particular, they are concerned with the ability of systems to learn from, and then alter, existing norms and practices. They suggest successes of inquiries depend on the scale and scope set at the beginning of an inquiry, the micro or macro focus of the details of the event, the inquisitorial versus accusational tenor of the inquiry and the legal requirement to act on recommendations. This paper develops a model for assessing inquiries access to justice. I will discuss a tentative analytical model and submit it to two Canadian investigative inquiries: Manitoba's Lavoie Inquiry or Schulman Report (1995-

1997); and Manitoba's Taman Inquiry (2007-2008). The model will examine the parameters, type of witnesses called, recommendations made and follow up to assess pathways to justice and an answer to the question of panacea or placation.

Anita Grace (Carleton):
Impacts on women charged with domestic violence

Since 2001, police in Ontario are obligated to lay charges when responding to incidents of domestic violence if there is evidence of injury. They are also instructed to complete a thorough investigation in order to identify the primary or dominant aggressor. These obligations were intended to protect victims, the majority of whom are female since women represent close to 80 percent of victims of police-reported intimate partner violence in Canada (Burczycka and Conroy 2017, 47–48). However, mandatory charge policies have actually resulted in women increasingly being arrested and charged, initially through dual-charging and more recently through sole-charging (Allspach, Pollack, and Green 2005; Hirschel and Buzawa 2002; Swan and Snow 2006). Interviews with women in Ottawa who have been charged in domestic violence related incidents revealed that all were sole charged, even those who described sustained and extreme experiences of violence and abuse. Although charges were eventually dropped for roughly half of these women, being charged with domestic violence profoundly impacted their lives, including their employment, immigration status, and child custody. Additionally, when police fail to recognize the dominant aggressor and allow themselves to be used as tools of on-going violence and abuse against women, women become even further removed from access to justice and protection.

Leon Laidlaw (Carleton):
Trans rights for Some: Interrogating the Intersections

With the recent passing of Bill C-16, transgender Canadians are now protected against discrimination in federal legislation, thus symbolizing their recognition and legitimation under the law. Yet, because history and context are important in understanding the experiences of an identity group, we must reflect upon the trans community's lengthy history of activism and resistance. Doing so, we see how the trans liberation movement was derived originally from racialized and economically disadvantaged transfeminine people, who organized around issues such as the criminalization of their identities, sex work, and police oppression. Yet, it is only in recent years that transgender issues have entered mainstream debate. As a marked departure from the history of trans activism, trans rights have been presented in contemporary, mainstream discourse and the law in relation to the use of preferred pronouns and access to washrooms. As a result, the image of a universalized (white middle-class) trans subject has been constructed. With recognition that discrimination is often multi-faceted and thus cannot be attributed to a single axis of identity, we consider the limits of the law and who Bill C-16 fails to protect.

2:45 – 3:30 FEATURED SPEAKER

Eckhardt Gramatté Hall 3rd floor Centennial

Introduction: K. Maier (UWinnipeg)

Janet Mosher: "Women with Precarious Immigration Status: Navigating a Complicated and Hostile Terrain to Access Justice."

York University, Osgoode Hall Law School

With no right to remain—and in some instances no entitlement to work or to receive social benefits—women with precarious immigration status experience exploitation and abuse, including by intimate partners who hold out promises of family class sponsorship as a tactic to maintain their domination and control. In these circumstances both remaining in and leaving the relationship are fraught for women. Continuing to pin hope on intimate partners as a route to permanent status exposes women to the multiple harms that are the consequence of domestic violence. Yet leaving may well trigger a cascade of legal proceedings in multiple forums in which outcomes are anything but certain. A review of case law over the past decade in family, child welfare, and immigration law reveals that when women with precarious status leave (or resist) these abusive relationships, their (former) partners seek to regain control by turning to law. In a number of cases, men contacted Canadian Border Services to disclose their partner's whereabouts, to withdraw a sponsorship, or to allege a marriage of convenience, all with the aim of triggering the removal process. Men also contacted child welfare authorities with allegations of abuse and neglect and/or police purporting to be victims of domestic violence, and initiated legal proceedings seeking sole custody of the children of the relationship. In the cases reviewed, women were caught up in a bewildering morass of legal proceedings as they simultaneously pursued alternative routes to permanent status, resisted removal, and attempted to secure custody of their children. The unfolding of their quest for justice as they were pushed, pulled, and tossed between legal forums and where the boundaries so commonly assumed between areas of substantive law and legal process were crossed, blurred, and confounded raise a multiplicity of access to justice concerns.

3:45-4:45 CONCURRENT SESSIONS

Panel 4.1 ACCESS, JUSTICE AND LEGAL CHANGE
2M70 - 2nd Floor, Manitoba Hall
Chair: Josh Paterson (BCCLA)

Diana Young (Carleton):
Medical Assistance in Dying: Rights Discourse and Biopower after Carter.

This paper considers the aftermath of the Supreme Court of Canada's 2015 decision in R. v. Carter in light of some theoretical issues concerning the relationship between the concept individual rights and biopower. The Carter decision held that the Criminal Code provisions prohibiting assisted suicide violated s. 7 of the Charter of Rights and Freedoms. Parliament followed suit by amending the Code to permit Medical Assistance in Dying (MAID) under certain circumstances. Provincial governments and professional associations have accordingly enacted various regulations and guidelines to govern how requests for MAID are to be carried out. Such modes of governance manage the risks that legalized MAID poses, not only to ill or disabled persons, but also to the medical professionals who might be exposed to liability for providing assistance in dying. In The Risks of Security Foucault points out that a right to health will always engage questions of how resources are distributed and the prevailing state of medical technology – suggesting that a traditional conception of rights might be difficult to reconcile with health care norms. Controversies concerning MAID in Canada (some of which have resulted in disciplinary proceedings and new Charter challenges) demonstrate the complexities of rights discourses and how they are implemented within non-juridical sites of power.

Aleksandra Manzhura (UWinnipeg):
Physician Assisted Death in Canada: Mentally Ill Patients & the Reasonably Foreseeable Death Clause

The 2015 Supreme Court of Canada decision in Carter significantly changed the future of Canadian discourse on physician assisted death. Following Carter, the government has enacted rigid legislation to govern the practice of assisted suicide, including a clause requiring a patient's natural death to be reasonably foreseeable, without a specific prognosis as to the length of time remaining. This clause has caused speculation about whether patients with grievous yet non-terminal illnesses including mentally ill patients would qualify. My presentation argues that patients with mental illnesses should be afforded the right which was already established in Carter and be eligible to access physician assisted death. This is argued with the help of Hasan's evolving societal values theory, that inclusion of mentally ill patients would be a natural evolvement of the law which can also be observed through international jurisprudence. The 'reasonably foreseeable death' clause is argued to be unconstitutional as it infringes on section 7 Charter rights of life, liberty, and security in a manner which is not in accordance with the Principles of Fundamental Justice. My article traces this

argument looking at the Carter and Rodriguez decisions, medical literature, and a case study of a woman in the Netherlands.

Ryan Ziegler (Robson Hall UManitoba):
Stanley, Cormier and the Erasure of Wrongful Convictions – Presumptive Guilt as Justice

Much of the public opinion and activism on the recent Gerald Stanley and Raymond Cormier acquittals has demonstrated an apparent indifference to the live possibility of wrongful convictions in both cases. Each case implicated several predisposing circumstances and immediate causes traditionally associated with wrongful convictions. However, much of the analysis on these cases to date implicitly assumes guilt, and, at times, tacitly advocates for a system of presumptive guilt. Further, the same analyses ignore certain rules of evidence, and facts led at the trials in what appears to be a form of motivated reasoning, reflective of the tunnel vision normally related to wrongful convictions. Finally, several media statements have sent a confused and confusing message about the potential role of Indigenous law(s) in the Canadian criminal justice system. Ultimately, the primary concern in the counter-narratives seems to be securing convictions, despite the evidence, in pursuit of a noble cause.

Panel 4.2 CRIME, HARM AND JUSTICE IN URBAN AND INNER CITY CONTEXTS
2C13 - 2nd Floor Centennial Hall
Chair: Michelle Bertrand (UWinnipeg)

Celso Sakuraba (Windsor):
There's no such thing as a bicycle accident

The word "accident" is used to refer to collisions involving bicycles on urban roads. Those collisions, however, result from a series of political and individual decisions. Decisions on city infrastructure as well as individual decisions regarding behaviour and modes of transportation on a daily basis define the number of road deaths and injuries that will happen in a city. This research analyzes how laws and road policies generate bicycle collisions by neglecting cycling and naturalizing road deaths. It does so under the perspective of cycling law. Known as the "law of wheelmen" in the late nineteenth century, cycling law has been revived by Christopher Waters and others as a legal area related to prioritizing active transportation and reconsidering the hierarchy of our roads. After the advent of the automobile, the law of wheelmen was neglected and road laws and policies became centred on motorized vehicles. Although in the early years of motor traffic court decisions would relate road deaths and injuries to the danger of motorized vehicles, the naturalization of the latter resulted in the naturalization of the deaths and injuries. Even though bicycles were a common mode of transportation long before the advent of the automobile, car-centred laws and policies have constructed cyclists as a nuisance on the roads, causing the death and injuries of cyclists to be deemed simply as accidents. This paper will conclude that law needs to perceive the death and injuries of cyclists as intentionally produced in order to create solutions to achieve road peace

Braeden Broschuk (UWinnipeg) and Michael Weinrath (UWinnipeg): Use of Diversion in an Urban Setting

Federal and provincial governments have lauded greater access to restorative approaches to justice. To achieve this, greater use must be made of diversionary practices to keep offenders out of the formal criminal justice system. In a Prairie city, a restorative justice initiative was started relying on police and later Crown prosecutors to refer accused to alternate programming. Based in a police precinct where this program was piloted, this study assesses a three month period of individuals charged against individuals against police and Crown criteria for diversion. Findings suggest that more effort could be made in diverting individual from the formal system. We conclude with policy recommendations and directions for future research.

Panel 4.3 POLICING, SOCIAL MEDIA, AND JUSTICE
2C15 - 2nd Floor Centennial Hall
Chair: Rick Ruddell (Regina)

Rick Rudell (Regina) and Nicholas A. Jones (Regina): The police and social media: Changing the way the public access information

The use of social media has changed the way that government organizations communicate with the public, and police services have been at the forefront of these initiatives. Not only did the police use of social media diffuse quickly throughout North America but using web-based applications such as Facebook and Twitter have enabled the police to communicate directly with the public; effectively bypassing the media. This study examines the changing use of social media in four biennial surveys carried out in Regina between 2011 and 2017. Respondents of all ages in these surveys report an increasing use of these applications, and those changes were evident in random samples of community residents and convenience samples of university students. While the use of social media has changed the way the public receives information from the police, we contend that the use of social media has generally been a one-way method of communication (from the police to the public) and the promise of a two-way communication has not been fully realized by these methods. Implications for further research, policy, and practice are examined considering these changes.

Derek M.D. Silva (Western): Committing Sociology in an Age of Fake News: Mass Media, Twitter and the Struggle for Knowledge in the Public Sphere

Science recently has come under increasing attack by government leaders in many Western countries. In what some analysts have called the "war on science", it is important for sociologists to reflect on how we produce claims to truth and identify new strategies for connecting our propositions with analytic techniques adept at withstanding attacks from the outside. In this chapter, I present a series of responses to the political system's ostensible aversion to empirical claims of the social sciences by explicating a theoretical perspective capable of producing reliable and valid knowledge, as well as illuminating strategies for advancing

empirical nuance and methodological precision. With analyses of modern mass media as a backdrop, I propose a return to the foundational work of Michel Foucault on the (re)configuration of processes of knowledge production and governmentality to explore ways in which sociologists may deduce new claims from an increasingly diverse and complex public sphere. I argue that sociologists have novel tools at their disposal to enable the production of systematic knowledge and to combat growing trepidation to "truth" claims currently proliferating governmental and media discourse.

5:00 pm-10:00 pm
EVENING SOCIAL EVENT: UNIVERSITY CLUB
4TH FLOOR WESLEY HALL

5:00-7:00 Complementary wine, appetizers and snacks
7:00-7:30 Official launch of *The Annual Review of Interdisciplinary Justice Studies*, Volume 7, Representing Justice
7:30-10:00 Cash bar and Karaoke…. Prizes and fun!

Friday, May 11, 2018

8:30-9:00 Coffee and Snacks
Eckhardt Gramatté Hall 3rd floor Centennial

9:00-9:45 FEATURED SPEAKER:

Eckhardt Gramatté Hall 3rd floor Centennial
Introduction: D. Spencer (UWinnipeg)

Sabreena Delhon: "Reflections on Engagement and the Action Group on Access to Justice"
The Action Group on Access to Justice, Law Society of Ontario

In 2015, the Law Society of Upper Canada established The Action Group on Access to Justice (TAG) to facilitate better coordination and collaboration in the development of justice system improvements. Over the past three years, TAG has worked with diverse stakeholders on a wide range of initiatives aimed at advancing culture change, addressing issues of social inequality and galvanizing access to justice as a social movement. This presentation reflects on TAG's model both conceptually and empirically with highlights from the past three years along with findings from a recent developmental evaluation. The discussion will focus on TAG's next chapter as an innovative approach to improving access to justice in Ontario.

10:00-11:00 CONCURRENT SESSIONS

Roundtable 5.1 TWO MODELS OF COMMUNITY ADVOCACY: REALITIES, OPPORTUNITIES, AND CHALLENGES

2M70 - 2nd Floor, Manitoba Hall

Chair: Sabreena Delhon (Law Society of Ontario)

DISCUSSANTS:
Allsion Fenske (Public Interest Law Centre, Winnipeg)
Teresa Johnson (Public Interest Law Centre, Winnipeg)
Neil Cohen (Executive Director, Community Unemployment Help Centre, Winnipeg)

The justice system can be costly, complex, and slow. Many people do not know about or understand their legal rights and obligations. For various reasons, many people also do not trust the system nor do they have faith they will get justice. Who do we look to in addressing these gaps in access to justice? We propose to explore ways that "community advocacy" can be used to provide assistance to vulnerable individuals, while disrupting some of the traditional notions of advocacy as a service provided exclusively by lawyers. We will discuss two models of community-based advocacy – the Advocacy Unit within Legal Aid Manitoba and the Community Unemployed Help Centre. We will provide an on-the-ground view of some of the realities, opportunities and challenges with these two models. We intend to situate this discussion within broader conversations around innovative legal service regulation and delivery.

About the Organizations:
The Public Interest Law Centre (PILC) is an office of Legal Aid Manitoba. The statutory mandate of PILC includes the representation of groups and low-income individuals on matters of broad public interest. This includes work relating to human rights, environmental law, consumers and Indigenous people. PILC is also home to Legal Aid Manitoba's Advocacy Unit where administrative law advocates assist individuals with residential tenancies and government benefits matters.
The Community Unemployed Help Centre (CUHC) is a community-based nonprofit agency providing information, assistance, advice, and representation to individuals dealing with the federal government's Employment Insurance program and Manitoba's Employment and Income Assistance program. The Centre also participates in public education and systemic advocacy. All the Centre's services are provided free of charge.

Roundtable 5.2 ACCESS, JUSTICE AND WAHKOHTOWIN: PRESENTING A DIGITAL JUSTICE MAP
2C13 - 2nd Floor Centennial Hall
Chair: Derek Spencer (UWinnipeg)

DISCUSSANTS:
Sarah Buhler (USaskatchewan College of Law)
Nancy Van Styvendale (Native Studies, UAlberta)
Pricilla Settee (USaskatchewan Dept of Indigenous Studies & Women & Gender Studies)

We have been involved with an innovative community-based education project called Wahkohtowin (kinship in Cree). The project brings together law students, English students and Indigenous Studies students from the University of Saskatchewan with members of STR8 UP (an organization that assists individuals who are leaving gangs) and high school students from Oskayak High School (Saskatoon's only Indigenous high school). We meet weekly over the course of a semester to discuss law, justice, and injustice, with an emphasis on policing, incarceration, colonialism, and resistance. In our most recent iteration of the class, the group worked together to create an interactive, interdisciplinary, visual digital story map that explores and unsettles ideas about access, justice, and law in Saskatoon. Our story map challenges us to see that institutions of justice (courts, police stations, prisons), have no hold on justice but in fact are too often sites of risk and harm. It shows how street corners and whole neighbourhoods have been rendered less accessible to some members of the community through processes of gentrification, racialized policing, and various laws and policies. The map ultimately locates justice in community efforts to imagine and build a better world, and invites us to visualize the city as Indigenous space.

In our session, we will introduce the digital map (see it here: https://www.arcgis.com/apps/MapTour/index.html?appid=b83485f7347e4edc991fca28fb52cc05#) and discuss, from our respective perspectives as a law professor and two Indigenous Studies professors, the ways that the map unsettles and inscribes notions of access and justice.

Panel 5.3 CRIMINALS, CRIMEFIGHTERS AND SUPERHEROES: ACCESSING JUSTICE IN POPULAR CULTURE
2C15 - 2nd Floor Centennial Hall
Chair: Diana Young (Carleton)

Christina Fawcett (UWinnipeg) and Steven Kohm (UWinnipeg): Batman: Arkham Asylum – Vigilante Justice at the Intersection of Madness and Crime

Batman: Arkham Asylum inherits the tradition of Batman as detective and crime-fighting vigilante, and the game opens with Batman returning Joker to Arkham Asylum; Joker immediately springs a trap, locking Batman in with the patients, the criminally-insane supervillains and relocated prisoners from Blackgate Penitentiary. The setting of Arkham Asylum situates the criminals and prisoners in a medicalized framework, as doctors, researchers and guards work together to contain the threat. This elision of criminality and mental illness goes further with Blackgate prisoners incarcerated in the asylum. Arkham Asylum thus reflects the popular and criminological ascendancy of the psychopathic criminal, whose offending results from a twisted psyche and who cannot be cured, only incapacitated or worse. The game offers space for a counter-visual, challenging the representation of the incarceratory action as justice. An 'Action-Adventure' game, Batman: Arkham Asylum does not allow for conversation or compassion, as the player-as-Batman must assault prisoners to complete goals or save doctors and guards. The story requires participation, as the narrative cannot move forward without 'subduing' the 'threats.' As popular criminology, the game locates the causes of crime in the abnormal psychology of offenders while locating justice in a flawed system of indefinite incarceration and vigilante responders

Kristi A. Brownfield (Northern State University) and Courtney A. Waid-Lindberg (Northern State University): Television's Representation of Autism Spectrum Disorder

The portrayal of savant crime fighters is a literary tradition that dates back to Edgar Allen Poe's C. Auguste Dupin in "The Murders in the Rue Morgue," widely regarded as the world's first detective story. Dupin, and his more famous literary counterpart Sherlock Holmes, set the stage for the characteristics of fictional detectives: hyper intelligent, meticulous, obsessive about solving crimes, unusual body language, and struggling with the broader social sphere. These are also traits that are, today, highly associated with autism spectrum disorder (ASD). This paper looks at the presentation of the modern-day television crime fighters, particularly ones that have been confirmed or "adopted" as on the spectrum to better understand the media portrayal. We look specifically at the following television shows: Bones (2005-2017), Criminal Minds (2005-present), Numb3rs (2005-2010), and Scorpion (2014-present). Within these shows, we analyze how the characters are presented and narratively coded as either positive or negative both within and outside the context of the canon. Further, we look at the idealization and idolization of the "savant" within the context of the television shows.

Kurne Williams (UWinnipeg):
Crime, Race and Stereotypical Representations in Grand Theft Auto V

Video games have become one of the most favored leisure activities worldwide. According to the ESA, 155 million Americans play video games and almost 53% of the adult population play video games. If video games are such a large part of the media diet then it is important to theorize and examine the content and potential impact of these games. My study addresses stereotypical representations in violent video games, specifically the Grand Theft Auto: V game, arguing that the racial and criminal stereotypes used in the game may lead to the reinforcement of those negative stereotypes while simultaneously creating spaces for resistance and rejection of those stereotypes. My study also examines potential social effects that may result from these representations.

11:15 - 12:00 FEATURED SPEAKER

Eckhardt Gramatté Hall 3rd floor Centennial

Introduction: M. Bertrand (UWinnipeg)

Rebecca L. Sandefur "Civil Justice at the Crossroads"

University of Illinois Urbana- Champaign, Department of Sociology and College of Law

A growing research evidence base provides opportunities to radically rethink how we "do" access to justice. This research reveals that the assistance people actually need and want is often quite different from what lawyers and courts believe people need. Consequently, the public's needs are often poorly served by what traditional legal actors offer. Efforts to expand the public's access to justice have come to a crossroads and those of us who participate in these efforts face a choice. To go on as we are will cement the justice gap, ensuring that people's legal needs will far outstrip the capacity to serve them at the same time that lawyers wishing to serve their local communities struggle to make a living. But we don't have to go on as we are, nor do we have to choose a path forward blindly. There is great opportunity here, but it requires developing new strategies for designing services, new strategies for reaching out to potential clients, and new ways of thinking about what access to justice means.

12:00-12:45 : LUNCH - sponsored by CIJS

Eckhardt Gramatté Hall 3rd floor Centennial

12:45-1:30 FEATURED SPEAKER

Eckhardt Gramatté Hall 3rd floor Centennial

Introduction: K. Gorkoff (UWinnipeg)

Josh Paterson "Access to Justice for Migrants and Refugees in relation to the Immigration Refugee System

Executive Director, British Columbia Civil Liberties Association

This presentation will focus on the weaknesses in access to justice for migrants and refugees in relation to the immigration and refugee system and for these people and others like permanent residents, visitors and Canadians at the border. Legal aid for immigration and refugee issues is plainly inadequate across the country and the money has very publicly run out in several provinces in recent years, before being replenished at almost the last moment. There is inadequate access to justice in the context of the actions of the Canada Border Services Agency, which is the only major police force in Canada with no independent oversight or review mechanism. Immigration detainees are held in many instances in deplorable conditions with inadequate access to counsel and subject to a system of detention review that a court recently described as worthy of Kafka and "a closed circle of self-referential and circuitous logic from which there is no escape." The federal Parliament is currently in the process of enacting a bill to confer significantly increased powers on U.S. border officials on Canadian soil, who will generally not be subject to review or liability in Canada for negligence or abuse in the exercise of those powers. People in the refugee and immigration system are uniquely vulnerable to abuse of power and unfairness by the government, and people who experience significant problems at the border are often those who are racialized. Canada must engage in a major overhaul to access to justice in the context of borders and migration.

1:45-3:00 CONCURRENT SESSIONS

Panel 6.1 LEGAL PERSPECTIVES ON JUSTICE AND ACCESS: DELAY, DENIAL, IDENTITY AND DUE PROCESS

2M70 - 2nd Floor, Manitoba Hall

Chair: Richard Jochelson (UManitoba: Robson Hall)

Melanie Labossiere (Robson Hall):
Guys and Dolls: The Constitutionality of Punishing Perversion

On January 30, 2013, Canada Border Services Agency officers intercepted a package containing an unassembled child sex doll shipped to Canada from Japan. On March 12, 2013, police officers with the Royal Newfoundland Constabulary (RNC) performed a controlled delivery of the package to Kenneth Harrison's home. Harrison accepted the package and was subsequently arrested and charged with one count of possessing child pornography and mailing obscene material under the Criminal Code. Rapid technological development coupled with massive social change has resulted in a need for the courts to reassess, and often redefine, many aspects of obscenity and indecency law. Child pornography offences, more specifically the possession of child pornography is not unique in this aspect. These changes necessarily impact offences based on the production, distribution and possession of specific materials. The Newfoundland child sex doll case provides an opportunity to shape the court's approach to future cases involving these complex moral issues, strengthen the rights afforded by the Charter and create clarity in the law for the public.

Ana Tourtchaninova (Robson Hall):
Of Charters and Tsars: A comparative overview of the history of Prostitution laws in Canada and the Russian Federation

Approaches to legislating prostitution have long been varied across countries, with differing levels of success. Before conclusions can be drawn on how best to handle this complex issue, an in-depth analysis of past strategies for addressing it is needed. This paper aims to do a historical overview and in-depth analysis of prostitution law in both Canada and Russia from the nineteenth century to the present. Topics explored in the analysis of Canadian law include early attempts at regulation through the "Contagious Diseases Act" as well as "An Act Respecting Vagrants", prostitution and the two World Wars, and recent landmark Charter challenges of prostitution laws, such as R v Bedford. Attention will then be turned to the newest piece of legislation on the subject: the "Protection of Families and Exploited Persons Act". Topics explored on the Russian side of the analysis include the structure of prostitution regulation in Tsarist Russia, including the different levels of legal protection offered to registered prostitutes, the interplay between Communist ideals and prostitution laws, and the effect of the Perestroika (fall of the Soviet Union) on prostitution in the Russian Federation. From this, the paper will attempt draw conclusions about which methodologies have been most and least effective in handling prostitution on a legal level over the histories of the two countries and will attempt to make recommendations on how to

approach the issue moving forward. Consideration will be paid to the idea of prohibition versus regulation, any why one is preferable over the other.

Kasia Kieloch (Robson Hall):
Canadian Court Delay in a Post-Jordan Era: Analysis of Jurisprudence and Public Policy Recommendations

Due to the recent Jordan decision by the Supreme Court of Canada, court delay has become one of the Canadian justice system's largest problems in decades. Canadian governments are struggling to manage and reduce court delay to avoid more stays in proceedings, especially since there have been a number of high profile cases of serious charges for offences such as murder and sexual assault being stayed. Canadian case law on the right to a trial within a reasonable time has developed significantly over the past 31 years, and it appears that Jordan was an inevitable and necessary decision. The alarm that Jordan has caused by allowing mass stays in proceedings has led many stakeholders across the country to suggest recommendations to improve various aspects of the justice system to address court delay. A strategy that includes a victim and accused-focused approach with an implementation plan that is collaborative and cost-sensitive is required to address the sources of the problem and achieve best results.

Panel 6.2 ACCESSING INFORMATION AND ACCESSING JUSTICE IN COLONIAL CONTEXTS
2C13 - 2nd Floor Centennial Hall
Chair: Alex Luscombe (UToronto)

Greg Bak (UManitoba):
Just Access? Exploring the Ethics of Research using Indigenous Archives

Chapter Nine of Tri-Council Policy Statement: Ethical Research (TCPS2 2014) endorses and seeks to enforce the First Nations Information Governance Centre's OCAP Principles, which require Indigenous ownership, control, access and possession of Indigenous information. Nonetheless, Chapter Two of the policy, identifying Research Exempt from REB Review excludes from ethics review research on records in public archives, regardless of whether the records contain Indigenous information. Archives routinely administer access restrictions imposed or requested by records creators and donors, and in light of access, privacy and recordkeeping legislation. Indigenous authorities suggest this is not sufficient, arguing that OCAP Principles, the United Nations Declaration of the Rights of Indigenous Peoples and various Indigenous-authored research, data and archiving protocols should similarly be respected. Archives have not often considered how such protocols might restrict records presently considered open or in the public domain. Archivists, like other information professionals, have generally accepted that information wants to be free, and have viewed the movement of records into the public domain as an objective good. My paper will explore whether archives should strive for maximal access for all as an unvarnished good; or access that is variable, allowing Indigenous peoples, and other communities, to set terms of access that meet their specific social, cultural and communal needs. I will provide

a detailed exploration of the archival exemption in TCPS2 and contrast it with requirements for Indigenous control over information resources in OCAP, UNDRIP and other protocols, and in the larger literature.

Adriane Porcin (Robson Hall): Confidentiality & Self Determination

In 2006, the Indian Residential School Settlement Agreement created the well-publicized Truth and Reconciliation Commission, as well as the lesser known Independent Assessment Process (IAP). The IAP is an ad-hoc adjudication system built to compensate individuals for sexual abuse, serious physical abuse, and other wrongful acts suffered was they were students in residential schools. As a part of that process, claimants were required to submit information about their residential school experience, including details of the abuse and its impact on their life. Each claim was then assessed by a trained adjudicator. Claimants, witnesses, and alleged perpetrators all were able to testify at a confidential hearing. After the hearing, the adjudicator could award compensation if appropriate. In 2014, the Chief Adjudicator of the IAP applied to the court for directions: what should be done with all the evidence amassed during the IAP? In Canada (Attorney General) v. Fontaine (2017 SCC 47) the Supreme Court confirmed that all records should be destroyed after a 15 year period. This decision is problematic on multiple levels. While intended, on its face, to protect the privacy of residential school victims, it also erases evidence of large scale abuse in a state sanctioned system. It does so by using contract law, conflating preservation and access to the archives, in a decision which in effect not only erases individual stories, but also prevents the aggregation of data, at a time where Indigenous data sovereignty is more needed than eve

Anthea Plummer (UNew Brunswick): Consultations with Indigenous Communities and why community owned processes of engagement are better for supporting decolonization and social justice

The Crown's legal Duty to Consult with Aboriginal people is an important step in recognizing rights and title, however, to decolonize, Indigenous communities must have power in project selection, processes and decision-making. In the context of this paper, resource development projects are explored as examples of the spectrum ranging between a short or non-existent meaningful consultation, to a highly collaborative and community-owned process of engagement. Consultation alone does not create a process of decolonization, nor does it provide real decision-making power, unless uniformly applied across the provinces and with meaningful consultation processes that carry with them legal weight, giving communities the right to veto projects they disapprove and obliging both the government and private industry to work with Aboriginal people. The proposed Federal Bill C-262, that would uphold the United Nations Declaration on the Rights of Indigenous Peoples, seems to be an opportunity for Indigenous people to have veto on projects they reject, however, in 2017, the Supreme Court of Canada made two judgments, Clyde River (Hamlet) v Petroleum Geo-Services Inc. and Chippewas of the Thames First Nation v Enbridge Pipelines Inc., that both deny veto power to Indigenous people who want to halt Crown land projects and

also enable regulatory bodies to brush over consultation requirements during environmental assessments. Even with a passing of Bill C-262, how it is applied and how it unfolds in practice, carries many unknowns. This paper will examine a number of resources development projects across Canada and compare consultation only-processes with community-owned processes of engagement, to consider the potential for a decolonization approach to resource development across Canada.

Panel 6.3 COMMUNITY ACCESS TO RESTORATIVE JUSTICE
2C15 - 2nd Floor Centennial Hall
Moderator: Neil Funk-Unrau (UWinnipeg)

The Restorative Justice Association of Manitoba (RJAM) is a grassroots initiative working to capitalize on the passage of the provincial Restorative Justice Act of 2015. It is a coalition of community members and community serving organizations within Winnipeg and across Manitoba. RJAM's mission is to advocate for equal opportunity and increased access for all Manitobans to restorative justice through collaborative action. Restorative justice, with its emphasis on the meaningful inclusion of both victim and accused, should be the key component to any system that purports to be one of fair access. It also allows for the provision of necessary context of the conflict for the community at large while building on cultural strengths and diversity.
Moderator of the panel is Dr. Neil Funk-Unrau, from Menno Simons College at University of Winnipeg. Panelists will consist of four or five representatives from a cross-section of programs and agencies from urban and rural Manitoba. They will discuss their work and what challenges need to be overcome in order to achieve RJAM's vision of a Manitoba where restorative justice is the primary means to achieve an equitable and effective resolution to conflict in our communities, courts and corrections.

3:15-4:30 CONCURRENT SESSIONS

Panel 7.1 LEGAL PERSPECTIVES ON JUSTICE AND ACCESS: LIMINAL JUSTICE – YOUTH, MENTAL HEALTH, AND ROADSIDE

2M70 - 2nd Floor, Manitoba Hall

Chair: Bruce Curran (Incoming Associate Dean, Robson Hall)

Lydia Etich (Robson Hall):
Young Offenders facing Adult Sentences in Canada

This paper will examine youth justice legislation in Canada, with respects to young offenders facing adult sentences. R v D.B., [2008] 2 SCR 3, 2008 SCC 25, recognizes a presumption of diminished moral culpability for youth as a long-standing legal principle. Currently, with indictable offences, where an adult would be liable to imprisonment for more than two years, a young offender can be given an adult sentence if the court concludes that a youth sentence under the Youth Criminal Justice Act would not be a sufficient length to hold the young person accountable for his or her offending behaviour and if the presumption of diminished moral culpability is rebutted. This paper will argue that the principle of diminished moral culpability is not rebuttable; brain research supports that youth lack the ability to make adult-like decisions and sociological theories support that youth have a heightened vulnerability. Moreover, youth sentences are more sufficient than adult sentences in holding young offender accountable for their actions, as well as, the rehabilitation and reintegration of young offenders into society. This paper does not argue that young offenders should not be legally and morally accountable for their criminal behaviour, only that their accountability is not to the extent of adult offenders. Young offender, including those who commit violent offences, should never be subjected to an adult sentence.

Kelly Kennedy (Robson Hall):
Interdisciplinary Criminal Advocacy Teams and Innovative Mental Health Strategies

This paper explores the concept of an Interdisciplinary Criminal Advocacy Team (ICAT). ICAT is an innovative one stop shop interdisciplinary criminal advocacy team that can provide case management and long-term interventions to assist vulnerable individuals in conflict with the law so they do not advance to subsequent stages within the criminal justice system. A Correctional Service of Canada (CSC) report highlights that 27.6% of the incarcerated population display mental health needs and that these rates have doubled between 1997 and 2008. Mental illness is far more prevalent in the remand population where the number of mental health alerts has increased by 44.1% in the last decade. Research indicates that as complex mental health cases advance through the criminal justice system, it increases social and economic costs. Governments and policymakers could be transferring economic expenditures to the frontend to reduce costs to taxpayers. This would also allow for treatment and interventions at earlier stages.

The Interdisciplinary Criminal Advocacy Team offers an innovative solution that takes an alternative holistic approach to treating complex needs through thoughtful interventions at different intercept points within the criminal justice system. Professionals who have specialized training that can properly manage these cases and can provide long-term interventions to assist vulnerable individuals in conflict with the law so they do not advance to subsequent stages within the criminal justice system.

Stephen Sisson (Robson Hall):
R v. Thomsen Thirty Years Later: Revisiting the Right to Counsel During Approved Screening Device Demands

This paper examines the 1988 Supreme Court decision of R. v. Thomsen in which the Court held that the infringement on the right to counsel for a roadside breath test demand was justified under section 1 of the Charter. The case law prior to Thomsen is reviewed as well as a variety of related decisions that came afterward. Several positives and negatives of having a right to counsel prior to having to submit to an approved screening device are also debated. Furthermore, potential ideas of what a right to counsel that is implemented on the roadside would look like are discussed. Finally, the question that is answered is whether section 1 of the Chartercan continue to justify an infringement of the right to counsel prior to approved screening device demands in a society that has seen many changes in the past thirty years. This article concludes that while it can continue to be justified, there are legislative changes that could be implemented regarding approved screening device refusals that would better serve to protect citizens and balance the disadvantage that they face during roadside detention.

Ben Johnson (Robson Hall):
Updating Exclusion of Evidence Analysis in Canadian Criminal Cases

In 2009, in the landmark decision of R v Grant the Supreme Court of Canada (SCC) reformulated the framework for the constitutional exclusion of evidence under section 24(2) of the Canadian Charter of Rights and Freedoms, resulting from breaches of Charter-protected rights. In the wake of Grant, two particular studies were conducted that analyzed exclusion rates and other variables which will have significant impact on this paper. The first was Mike Madden's study of the first 100 reported cases fifteen months after Grant, which found a Canada-wide exclusion rate of approximately 70 per cent. The second study, conducted by Richard Jochelson, Debao Huang, and Melanie J. Murchison, analyzed Grant cases up until August 1, 2014, and found a Canada-wide exclusion rate of approximately 66 per cent. This paper picks up where Jochelson et al. left off, on August 2, 2014, and undertakes an analysis of Grant cases up until August 1, 2017. Our preliminary findings suggest that exclusion rates across Canada have gone up over the past three years.

Panel 7.2 ACCESSING JUSTICE IN PENAL CONTEXTS
2C13 - 2nd Floor Centennial Hall
Chair: Jeffrey Monaghan (Carleton)

Claire Guenat (UMontreal) & Jean Bérard (École Normale Supérieure Paris-Saclay):
Identifying, classifying and watching suicidal prisoners: The dilemma of suicide prevention in prison

In Canada, deaths and suicides have long been ignored by correctional authorities. However, over the past decades, suicide prevention has become an issue and a major area for prison practices reform. This paper aims to understand this change of policy and its meaning regarding the evolution of prison. Drawing on a socio-historical approach, it starts by focusing on the process by which suicide in prison became a social problem. It then outlines the registers of actions drafted by the Correctional Services of Canada and the way they struggle with the limits of a penal and disciplinary institution. Based on a documentary analysis of official, scientific, media and activist sources, our study shows that what changed in the late 1970sis not suicide in prison itself, but the way in which this phenomenon is part of a broader framework. Indeed, after being an object of moral and penal reprobation, suicide became a public health issue. This lead to the development of tools to identify, classify and watch people at risk of suicide, including prisoners. Actions regarding the prevention of suicide therefore reactivate the traditional techniques of detention's regulation used to monitor, prevent escapes and maintain order. As a consequence, suffering prisoners encounter a new form of injustice : when in society, suicide prevention aims to give people the desire to live, in prison, it prevents them from having the means to commit suicide, settling an important dilemma between freedom and restriction.

Katharina Maier (UToronto):
It's just a pit-stop – Halfway houses and the spatial-temporal dynamics of prisoner re-entry

To date, prisoner reentry has been treated as a generic process,—that is, people "reenter," without much specification regarding the time and/or place when they reenter "what." Drawing on in-depth interviews with halfway house residents in a north-western Canadian city, this paper seeks to unpack the concept of prisoner reentry by exploring its spatial-temporal dimensions, and the ways in which former prisoners imagine and organize their "reentry process" in, as I will argue, quite strategic ways. I conceptualize prisoner reentry as a temporally fragmented, sometimes piecemeal process that may occur not only across time (as previous scholars have suggested), but also across different locales, i.e., neighbourhoods, towns, cities, and/or provinces. I do this by analyzing reentry through the lens of 'mobility', arguing that prison release produces different types of mobility. Particular attention is paid here to the ways penal power (especially in the halfway house context) works to im/mobilize previously incarcerated populations. I conclude this paper by highlighting the importance,—for both academics and practitioners—, to pay closer attention to ex-prisoners' conceptions of their future, including when and where they imagine that they will enact different aspects of their reentry.

Tanya E. Trussler (Mount Royal) and David Cardoso (RCMP): Access to Services for Habitual Non-violent Offenders in Rural Alberta

When repeat criminal non-violent offenders are released from prison and/or are placed on probation, they often require access to many types of services. However, when returning to a rural area many of these services are often absent, mistimed, or geographically limited. Rural areas propose unique challenges to criminal offenders, those who police them, and the communities in which they live. Drawing upon experiences with policing and services in Cochrane, AB, and surrounding area, we first identified and examined the services provided, and then determined issues and gaps with those services that might make it more difficult for an individual to avoid high risk activities and possible re-offending. Findings indicate that services, and funding for services, are incomplete, and that individuals needing certain services are often required to wait long periods of time or travel long distances for them. In addition, we outline possibilities for programming and policing habitual offenders in rural areas and identify the need for policies which recognize the unique characteristics of rural communities.

Michael Weinrath (UWinnipeg): Accessing Justice by Earning Early Release from Prison: An Alberta Case Study

Provincial prisoners being limited access to early release programs represents a denial of access to justice, if one considers that federal inmates have statutory access to parole application. Nationally since the 1990's less offenders have been released from provincial jails, including declines in provincial parole in Ontario and Quebec, and the abolishment of the provincial parole board in British Columbia. After putting out 700-800 prisoners a day out on temporary absence in the early 1990's, Alberta now allows early release for just a handful of inmates. This study examines the relative risk of releasing provincial prisoners prior to sentence expiry for short periods of 5 to 45 days, using a sample of 996 inmates from 2014 and examining survival rates of recontact with correctional services. Results indicate greater use of pre-release would not incur significant risk to the public, particularly for minimum security prisoners. Findings support increased use of early release programs for provincial prisoners.

EVENING SOCIAL EVENT:
5:00 drinks and post-conference conversation
6:00 DINNER (Sponsored by CIJS)
SORRENTOS RESTURANT 529 ELLICE AVENUE

8:30 onward…… drinks and conversation
Kings Head Pub - 120 King Street
Cash bar

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Thank you for attending our conference!!