

International economic law scholar to join Queen's faculty *(see page 38)*

**Reflections on
Black History
Month**
(see page 50)

Faculty insights

Biden administration *(see page 25)*

U.S. Capitol riot *(see page 32)*

GameStop frenzy *(see page 36)*

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ON THE COVER

The school's newest faculty hire, Tobi Moody, shown at Spring Convocation 2017 in Grant Hall, where he received his PhD in Law degree after being hooded by then-Dean Bill Flanagan. (Photo by Greg Black)

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CONTENTS

COVER STORY

38 International economic law scholar to join Queen's faculty

Tobi Moody, PhD'16, who has overseen the establishment of the World Intellectual Property Organization's first Sub-Saharan African External Office in Nigeria, returns this fall as a Queen's National Scholar.



FEATURES

2 Researchers examine COVID's impact on family justice

A team that includes Professor Nick Bala, Law'77, Claire Houston, Law'07, and LLM student Kate Deveau is studying how the pandemic is placing great stress on families and reducing their access to justice, yet also resulting in helpful innovations in the justice system.



25 Queen's Law Insights



Faculty members share their legal expertise by commenting on popular media topics. So far this year, they've commented on the Biden administration, the U.S. Capitol riots, and the GameStop frenzy.

50 Reflections on Black History Month



A racism teacher's lessons, a student leader's perspective, and a lawyer's sentencing appeal all address a better future.

DEPARTMENTS

2 SCHOOL NEWS

40 QUEEN'S LAW
CLINICS NEWS

56 ALUMNI NEWS

64 STUDENT NEWS

70 ALUMNI EVENTS

Researchers examine COVID's impact on family justice

School closures, loss of employment, and health concerns resulting from the pandemic have placed greater stress on families – and on the family justice system. “Since the first provincial lockdown, we’ve seen an increase in the number of parents separating,” says Professor Nick Bala. “Now, we’re seeing more family violence, child abuse, and neglect. We’re trying to understand those stresses and how they’re playing out in the justice system. That’s one set of issues we’re studying.”

Bala is talking about a recently funded, interdisciplinary research project he is working on with three others: his long-time research partner, Rachel Birnbaum, a social work professor at Western; his former student, Claire Houston, Law’07, a law professor at Western; and his LLM student, Kate Deveau.

A second set of issues relate to access to justice. “The courts, legal aid offices, and family law offices were physically closed starting in March; then in July the courts slowly began to re-open, but almost all services are now provided online,” Bala explains. “For low-income people without access to lawyers, adequate cell-phone plans, good internet service,



LLM candidate Kate Deveau is collecting data for the project and writing her thesis on the topic.

Zoom, and so on, (or people who may not be able to speak from home in private), remote services are inaccessible.”

One question to which the researchers are seeking answers, he says, is: “How are clinics trying to respond to help those who may lack access to technology as well as access to the justice system?”

On the other hand, for people with sufficient resources in certain kinds of cases, a shift to an electronic format has increased the justice system’s efficiency and effectiveness. This leads to a third set of issues being examined. Bala points out a few improvements: “By moving away from paper-based files to having electronic filing at courts, lawyers can productively be in their offices and join a Zoom meeting rather than spending hours waiting outside a courtroom for a judge. Clients don’t have to travel to see lawyers for some matters. In addition, for some cases where there may be too much conflict between the parties, being in separate places is important.”

However, he notes, for certain kinds of family hearings, in-person meetings are better to assess credibility or to foster more effective negotiations. One challenge is determining how to assess which kinds of cases should be in each category. “We’re trying to see which changes in the justice system should carry on and be expanded and in which cases we should be going back to the kind of regime that we had before.”

To fund this project, the research team has received a total of \$45,000 from the Law Foundation of Ontario and the Association of Family and Conciliation Courts’ Ontario Chapter. Part of these grants help fund a fellowship to support Deveau’s LLM studies. Before choosing her thesis topic last September, she had also been paying particular attention to family law decisions made during the lockdown period and was thinking about how they could have a substantial impact on the practice area in the future. “I was struck by the sensible and poetic judicial decisions urging parties to rise above their conflict in these stressful times,” she says.

The decisions also reminded her why she was drawn to the subject area. “All those in the family law field share a common purpose: to try to assist



A research team that includes three Queen’s Law community members is studying how the pandemic is placing great stress on families and reducing access to family law justice, but also seen the emergence of helpful innovations in the justice system.

families, particularly children, going through a separation to find a peaceful way forward,” she says. “I feel fortunate to be involved in such a topical, cutting-edge project and to also have the opportunity to work with family law researchers I have long admired.”

As part of Deveau’s data collection, she is coding all 500-plus family law decisions released during the 2020 lockdown period from March 17 to July 6. In addition to the issues that Bala noted are being studied, Deveau says, “The data will allow us to explore questions like these: How did judges triage cases when the province went into lockdown? How did the pandemic impact children, rates of self-representation, high-conflict matters, and domestic violence? How did parties, family law professionals, and judges experience this new way of practice? And, more optimistically, how can the innovations adopted during the pandemic be modified for continued use moving forward?”

One product of the research project will be the publication of an article about Ontario’s experience in a special issue of the *Family Court Review*, a leading international family law journal that will compare studies and outcomes in different jurisdictions. While the research team’s study focuses on Ontario, it will also be relevant to other Canadian jurisdictions and is the only submission from Canada. The researchers are reviewing and

statistically analyzing case law and surveying professionals (judges, lawyers, mediators) and parents to get a sense of their understanding and experiences of the effect of the pandemic on families and on the family justice system.

“There’s a wide recognition internationally, especially in Canada and in Ontario, that changes have been needed in the family justice system,” says Bala. “It was very much paper-based. COVID-19 has pushed us in some ways from the 19th to the 21st century, and that’s a huge change that is occurring in a very difficult and short period of time. Our systems have to adjust to that.”

— LISA GRAHAM



Watch Professor Nick Bala, Law’77, a co-investigator of “COVID-19 Pandemic and Family Justice in Ontario,” talk about the research project.

Historic constitutional theorist's work helps with understanding today's governance issues

Generations of lawyers and judges in Canada and other common law jurisdictions around the world have been influenced by Albert Venn Dicey. A British Whig jurist and a leading mid-19th to early 20th century constitutional scholar, he is most known for his seminal work on parliamentary sovereignty and the rule of law. On February 5, [Dean Mark Walters](#) presented “The Common Law Constitutional Tradition: Is A.V. Dicey Relevant (in Canada) Anymore?”

Dean Walters, author of *A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind* (Cambridge University Press, 2020), shares his further insights on how Dicey's theories continue to shed light on contemporary governance issues in this Q&A.

Why is it important today to study the evolution of constitutional theory in general, and the work of A.V. Dicey in particular?

Looking at the history of ideas is important, I think, because it increases the depth and richness of discussions about important topics. It helps to know that we don't have to reinvent the wheel with each new problem. As for Dicey, his work in constitutional law helps us today not because it answers all of the questions we have about constitutionalism, but because he struggled to answer questions analogous to those we confront, and we can learn from both his failures and his successes.

How do these studies affect politics and law?

Revisiting a canonical text, like Dicey's book, *Law of the Constitution*, can have an impact on both politics and law. In the case of Dicey, he explored in depth the difference between constitutional law and constitutional convention. Understanding this relationship is central

to understanding problems of governance in Canada today where it is still the case that a hereditary monarch, as represented by a Governor General and Lieutenant Governors, holds the key legal powers of state but, by convention, must almost always obey the commands of elected ministers.

Please give a recent example that illustrates sovereignty and the legislative and executive powers in Canada. What would Dicey say about this and why is his theory on this situation important today?

A few years ago, the Supreme Court of Canada ruled that the “duty to consult” Indigenous peoples before decisions are made affecting lands or resources that they have claimed as part of their traditional territories is not triggered when the government of the day decides to introduce a bill into Parliament that would, if enacted, affect Indigenous claims. Citing the principle of “parliamentary sovereignty,” a notion Dicey made famous, a majority of the justices concluded that the legislative process must

be free of such duties. So, the courts will impose a duty to consult Indigenous peoples when the executive makes decisions, but not when the legislature makes decisions (though, it should be noted, failure to consult before legislation is enacted might be relevant to the constitutionality of the legislation later).

If we could transport Dicey to our day, and bring him up to speed, I think he'd probably agree with this conclusion – though he would remind us that, technically speaking, Canadian legislatures can't have legislative “sovereignty” because they are constrained by a written constitution in terms of what they can do.

In your talk, you mentioned that since 9/11 the theory that a country's leader must have the ultimate authority to exercise sovereign power to set ordinary law aside has been resurfacing in American legal literature. Please elaborate on the view that the U.S. President can be above the law and just make a decree the election was invalid, so it doesn't count. What would Dicey say about this and why is his theory still important?

It has been noted by American constitutional scholars that in the years following 9/11 there has been a marked increase in interest in theories of law and sovereignty that assert that the chief executive of a state – the leader of the nation – must have the sovereign power to make the “exception” – to exempt people deemed enemies from the benefit of the rule of law, in particular the theories of the controversial Nazi jurist Carl Schmitt. In recent months, we have even heard claims that the U.S. President could simply declare martial law and prevent a transition of power to a new President. All of these ideas would have been heretical for Dicey. He thought that the common law (or English) constitutional tradition denied the executive such supreme sovereign powers, and he also thought that the American constitution built upon that common law tradition. Happily, a view consistent with Dicey's position – that the President is under the law – has prevailed in the United States.

Why did you decide to write a book on about Albert Venn Dicey and his work?

I approached my study of Dicey's work in constitutional law from a biographical perspective, mainly because I was fascinated by Dicey's personal struggle to



Dean Mark Walters, author of *A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind* (Cambridge University Press, 2020), shares his insights on how the theories of the leading mid-19th to early 20th century constitutional scholar continue to shed light on contemporary governance issues.

define his own role as a legal thinker and a legal writer. He also overcame a considerable physical disability, and he succeeded at a high level of scholarly and professional achievement despite being socially awkward and having, as his friends noted, some “oddities” in terms of his personality and behaviours. I have found this part of Dicey's story fascinating, and perhaps others will too.

Dean Mark Walters is recognized as one of Canada's leading scholars in public and constitutional law, legal history, and legal theory. He has researched and published extensively in these areas, with a special emphasis on the rights of Indigenous peoples, institutional structures, and the history of legal ideas. He held the distinguished F.R. Scott Chair in Public and Constitutional Law at McGill's Faculty of Law for three years until his appointment as Dean of Law at Queen's in July 2019.

[Watch Dean Walters' lecture “The Common Law Constitutional Tradition: Is A.V. Dicey Relevant \(in Canada\) Anymore?”](#)

Robinson's new book solves criminal justice puzzles

If a soldier fails to obey lawful orders or to disobey unlawful orders, it's a crime. Does that mean the soldier must always be perfectly legally correct in strained circumstances? Is there some allowance for error? If so, how much?

That's one type of problem [Professor Darryl Robinson](#) explores in his new book, *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law*.

"International criminal law (ICL), which deals with mass atrocities, was created hastily over the past two decades," he says. "While it was an achievement to create this body of law so quickly, some aspects might not be well thought through or might not be fair."

In his book, published by Cambridge University Press in December, Robinson argues that criminal law theory (which looks at underlying moral principles) can help reform ICL. "Criminal law theory has helpful concepts and debates that can clarify the law and make sure it respects fundamental principles," he explains.

"But the conversation can go in both directions – ICL might enrich criminal law theory!" he continues. "ICL encounters difficult, new, and special situations that raise new puzzles for mainstream criminal law theory to think about. Quite often, thinking about a new puzzle leads to new insights."

In addition to the soldier's response to orders, Robinson's book sheds light on other types of puzzles, including these scenarios.

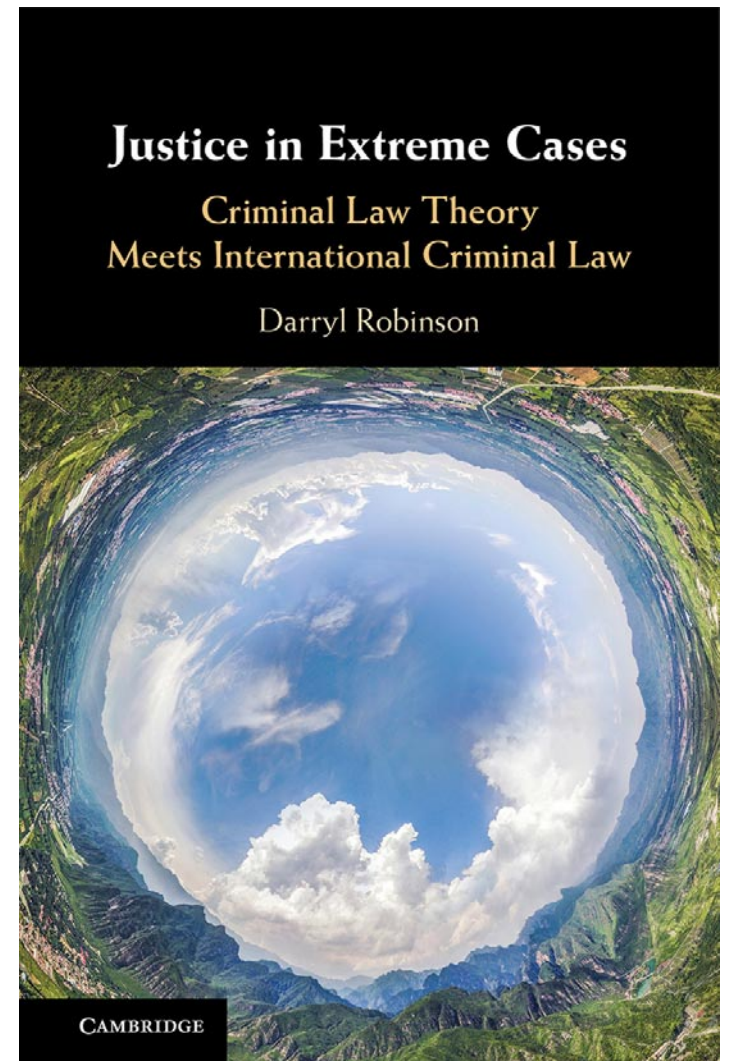
- While three people who rob a bank in Canada can be held jointly criminally responsible, what happens if 1,000 or more people are involved in a mass atrocity? Is each person equally responsible for everything, or do we have to figure out with more care what exactly they're responsible for?
- In the military, a commander has a duty to supervise troops and prevent them from committing crimes. When can the commander's failure to do this lead to shared responsibility for the resulting crimes?

Robinson refers to "extreme cases" in ICL not only in the sense of the scale of atrocity, but also scientifically. "Studying extreme situations, such as mass coordinated crimes, breakdown in rule of law, or states issuing criminal orders, can help us discover new things," he explains. "Thinking about justice in these special situations can inform our ideas about justice."

As for principles of justice, Robinson says, "Normally writers take either a 'black letter' doctrinal approach, which draws from precedents and authorities, or a philosophical approach, which draws some master moral theory."

What his new book does is take a middle path. "I talk about principles implicit in the practice and which are supported by multiple moral theories," he explains. "Ultimately, justice is a human idea, refined through a human conversation."

Robinson's manuscript was the subject of a roundtable event in Philadelphia, hosted by Temple University in Philadelphia last February. Leading North American scholars in the field gathered to discuss the ideas, with a published symposium to follow early this year.



Watch Professor Darryl Robinson talk about *Justice in Extreme Cases*, his new book covering difficult, new, and special situations encountered by international criminal law that raise novel puzzles for mainstream criminal law theory.

Grey explores what is (and is not) morally acceptable in governing migration

It's not uncommon to hear about a migrant who commits a crime but, despite having spent most of his or her life in Canada, faces deportation to a country where he or she has barely, if ever, lived in. An example is the recent high-profile case of Abdoul Abdi, a Somali man who came to Canada at age six and spent much of his childhood in group and foster homes, gradually developing an extensive criminal record. After judicial intervention, Abdi's deportation was not carried out. "Many people will think that was right, morally speaking," says **Professor Colin Grey**. "But I am interested in how we (and the government, in this case) come to that conclusion and how the law takes this moral reasoning into account."

That's the thrust of Grey's new research project "Humanitarianism and the Justification of Deportation for Criminality," which received a SSHRC Insight Development Grant.

"Exploring these kinds of issues is important for thinking about what is morally acceptable or unacceptable in how we govern migration," he explains. "And thinking about what is morally acceptable and unacceptable in our governance of migration is vital because – pandemic-related restrictions aside – global migration pressures are just going to keep rising in the coming decades."

His study is about how officials morally justify their decisions to deport non-citizens. Specifically, it looks at cases where officials must consider if there are "humanitarian" and "compassionate" grounds not to deport a non-citizen for having committed a crime. "For a long time, I've found it fascinating that Canada's immigration law has, since 1967, included

humanitarian and compassionate exemptions from deportation," he says. "These exemptions inscribe a certain kind of morality into the law, requiring officials to engage in moral reasoning rather than simply applying the rules. We want to look more closely at how officials apply this humanitarian exemption power."

Grey has long been concerned with the moral constraints on Canada's immigration laws, as well as with where the authority of immigration law is supposed to come from. Having argued that the authority of immigration law must come from what the philosopher John Rawls calls the "natural duty of justice," his claim has been that there is a duty to obey reasonably just immigration laws. "I now think that justice cannot be the only type of moral consideration coming into play when it comes to immigration law's authority," he says. "I think humanity must play a role as well. This project is an extension of that line of thought."

For this project Grey is collaborating with his colleague and fellow immigration law expert, Professor Sharry Aiken, as well as with Alyssa LeBlond, a first-year PhD in Sociology student. Supporting their work as research assistants are Michael Cui, Law'21, and Justin Saunders, Law'22.

"We are going to read hundreds deportation decisions in a way that differs from how you read them for more traditional legal research," Grey explains. "Without asking about the legal frameworks or consistency with precedent, we will try to clarify how officials weigh things like personal responsibility, remorse, and so on against hardship.

"Justice cannot be the only type of moral consideration coming into play when it comes to immigration law's authority. I think humanity must play a role as well."



Immigration law expert Professor Colin Grey has received a SSHRC research grant to study "Humanitarianism and the Justification of Deportation for Criminality." Thinking about what is morally acceptable and unacceptable in our governance of migration is vital, he says, because global migration pressures are just going to keep rising in the coming decades.

The goal is eventually to develop a sociological theory of officials' moral reasoning. We are then going to compare it to the case law and philosophical writings about immigration. We want to see how these three ways of looking at the justification of deportation compare to one another."

In the short- and medium-terms, Grey aims to produce not only scholarly publications from this research, but also to write reports to share with the government and immigration lawyers about how

deportation decisions are made. His longer-term goals are even more ambitious. "I am hoping this project will serve as a template for doing research on other areas of immigration law, eventually developing an account of how immigration officials constitute the authority of immigration law and using that to nourish philosophical and legal debates in this area.

"But," he adds, "one thing at a time."

Reinvigorating small business as Canada emerges from COVID-19

“Small businesses are the lifeblood of dynamic capitalist economies. Canada is no exception.” These observations come from **Professor Robert Yalden**, who, in a new article evaluating provisions that the *Quebec Business Corporations Act* put in place 10 years ago to assist small business, offers concrete suggestions for eliminating measures that too often serve as impediments to the incorporation of small businesses. As Canada begins to see a way out of the pandemic, Yalden stresses the need to adopt new measures to support small business, noting that “since they employ around two-thirds of Canadian workers, ensuring the breadth and depth of the economy’s pool of small businesses, together with constant regeneration, is critical to long-term national prosperity.”

Yalden’s article emphasizes the importance of providing small businesses with as simple a path as possible to incorporation. “A simplified path to incorporation enhances entrepreneurs’ access to capital and encourages them to keep creating businesses,” he explains. “Incorporation allows business owners to separate and protect their individual assets from the company’s assets and ensures founders can better manage risk. But notwithstanding recent initiatives in Québec, several aspects of incorporation across this country remain overly burdensome for small business owners.”

Following on the recent publication of “Québec’s Sole Shareholder Regime and the Rise of Simplified Corporations: Innovation, Implementation and the Challenges Ahead” in *10ième anniversaire de la Loi*



Robert Yalden, the Stephen Sigurdson Professor in Corporate Law and Finance at Queen’s, has published “Québec’s Sole Shareholder Regime and the Rise of Simplified Corporations: Innovation, Implementation and the Challenges Ahead.”

sur les sociétés par actions du Québec: rétrospective, perspective et prospective (Wilson & Lafleur), Yalden shares his insights on how effective Quebec’s simplified corporate regime has proven, how it compares to what is in place in some countries, and how it can be improved in ways that would assist small businesses.

Why did Quebec focus on small business when overhauling its corporate law 10 years ago?

Quebec understood the fundamental importance of small business. The *Quebec Business Corporations Act* (QBCA) created a new regime for companies that have only one shareholder, typically the company’s founder. Today, its sole shareholder regime remains highly innovative, whether viewed from a purely Canadian perspective or seen through the lens of international developments.

The QBCA’s unique provisions allow a single shareholder, once a corporation has been incorporated, to take steps to dispense with having to establish a board of directors; adopt by-laws; appoint an auditor; hold shareholders meetings; and keep records of meetings of boards of directors or shareholders. The reduction in the administrative burden that being able to side-step these requirements entails is meaningful. Many a small business would benefit from getting out from under corporate law rules that are redundant when dealing with sole shareholder corporations.

How effective has Quebec’s sole shareholder regime been since it was established in 2011?

Not as effective as one might have hoped it would be. Some of that is due to the way the regime was designed, but my article stresses that this also about insufficient effort being put into making small business aware that the option exists to streamline matters. As things stand, not only has the regime got little traction in Quebec, but neither the federal government nor any other province in Canada has adopted similar measures. While the Yukon amended its corporate law in 2015 to allow for corporations without directors, it did not do away with the other features that Quebec’s regime enables founders to dispense with.

What kind of success have other countries had by simplifying incorporation?

Over 10 other member countries of the Organization

of American States (OAS, of which Canada is also a member) have adopted legislation allowing for the creation of corporations that do not require boards of directors. Especially notable is Colombia, which inspired a wave of significant reform in Latin America over the last decade with hundreds of thousands of companies being incorporated as simplified corporations. The spin-off effects have been significant: the regularization of thousands of businesses that would otherwise have remained informal; increased employment and social security contributions and benefits; and enhanced tax revenue for governments.

Not only is Canada now trailing other OAS countries, but it is also behind those that have either already provided for corporations without directors (e.g., the U.S.) or are actively studying the matter (e.g., the EU).

The OAS countries’ models have met with exponentially greater acceptance than Quebec’s sole shareholder regime, which had been adopted by only 685 corporations in the first five years of its existence. This is quite startling since Quebec’s model actually has a number of features that are more attractive than those seen in some of these Latin American countries.

Why have few small businesses embraced Quebec’s sole shareholder regime even though it remains highly innovative and beneficial?

While Quebec’s regime offers advantages that some of the OAS regimes do not, Quebec’s approach could be made much more user-friendly – and that would make a difference. For example, it could give a founder setting up a company the option at the time of incorporation to dispense with a board of directors and other formalities, rather than requiring the founder to deal with the burden of drafting legal documents and making filings after the fact – as is currently required.

More significant, however, is the lack of visibility that the sole shareholder regime currently has in Quebec and the rest of Canada. In contrast with the substantial effort that the OAS and countries like Colombia have put into ensuring that the option to use a simplified model not only exists but is also well known and actively encouraged, Quebec has done very little to publicize the availability of its sole shareholder regime. I argue that a strategy that relies on word of mouth is no strategy. What is required is a developed and sustained government led communications strategy that will alert small businesses to the advantages that the sole shareholder regime has to offer and encourage them to consider going down this path.

What are your recommendations for Canada based on your research?



Following the recent publication of his critical analysis of Quebec’s sole shareholder regime, Professor Robert Yalden advocates for Canada to reduce the complexities of incorporating small businesses.

The introduction of a distinctive and highly innovative sole shareholder regime into the QBCA a decade ago marked an important step forward in advancing the potential inherent in simplified corporations. But for this potential to be fully realized, more needs to be done. Canada would do well to follow more closely the international movement to assist micro- and small business through the introduction of simplified corporations.

Quebec has advanced our appreciation for ways in which to integrate concepts central to these corporations into the province’s corporate law. The challenge going forward is three-fold: to encourage other jurisdictions in Canada to follow Quebec’s lead; to reflect on ways in which Quebec’s sole shareholder corporation regime can be improved; and to develop government led communications strategies that will ensure that businesses are made aware of the advantages that a well-crafted sole shareholder regime has to offer.

We have a tough road ahead of us as we seek to reinvigorate small business after the harm that the pandemic has inflicted. Obviously, ongoing economic support will have to be on the agenda. But my new article also points out some relatively straightforward, concrete steps to take that would eliminate those burdensome procedures that really make no sense to ask founder-run businesses to comply with.

Robert Yalden, the Stephen Sigurdson Professor in Corporate Law and Finance at Queen’s, will be presenting his research this spring at a conference hosted by University of Montreal professor Stéphane Rousseau, editor of *10ième anniversaire de la Loi sur les sociétés par actions du Québec*.

BLG forms innovative partnership with Queen's

Borden Ladner Gervais LLP has teamed up with Queen's Law, Smith School of Business, and the [Conflict Analytics Lab](#) at Queen's University to develop a tool to help the firm leverage artificial intelligence and drive strategic decision-making through data.

Since the fall of 2019, three students in the Smith Master of Management in Artificial Intelligence program – Nayef Abou Tayoun, Mamta Gupta, and Hu Jiachi – have been working on a project to create a visualized “playbook” for BLG which would inform decisions like BLG’s pricing strategies.

“When we were looking for an academic partner with expertise in analytics and artificial intelligence, Queen's was the obvious choice,” says John Murphy, National Managing Partner and CEO. “Having a platform that helps us gain new insights into our billable hours, pro bono work, and other data across our national operations will help us enhance the client experience.”

“This partnership brings together solid academic training by Queen's Law, analytics training by faculty experts from Smith School of Business, and the unparalleled access to the most relevant and recent subject matter related to analytics in legal practice

from BLG,” adds Yuri Levin, Executive Director, Analytics and AI; and Director, Scotiabank Centre for Customer Analytics at Smith.

As the initial playbook project nears its conclusion, BLG and Queen's are looking to extend the partnership. One of the projects on the roadmap for the next year includes the creation of new conflict resolution products for BLG’s clients.

Working alongside the Conflict Analytics Lab at Queen's and harnessing the knowledge of Queen's Law and Smith students, these tools would help BLG’s clients resolve issues with customers at an early stage, helping BLG’s clients to speed up the resolution process, preserve their customers without damaging the relationship, and avoid lengthy and expensive court proceedings.

“Our lab’s focus is on applying data science to conflict resolution, and we’re thrilled to be bringing our expertise to this exciting new intersection of law and technology,” says Professor Samuel Dahan, Director of the Conflict Analytics Lab. “If we can help BLG’s clients prevent disputes or resolve them more efficiently, this could help businesses acquire and retain customers while reducing the burden on the legal system.”



Working with the Conflict Analytics Lab and harnessing the knowledge of Queen's Law and Smith students, BLG will have new conflict resolution products for its clients.

Queen's Law Journal increases open access to legal scholarship

One of Canada’s leading general law reviews is now even more accessible to legal researchers and professionals. The *Queen's Law Journal*, produced by a student editorial board under the direction of faculty advisors, formed a partnership last fall and launched a new website to host digital content.

“The articles we publish often include important and timely research and provide innovative insights on legal topics,” says *QLJ* co-Editor-in-Chief Michelle de Haas, Law’21. “We believe it is important to expand the reach of the *QLJ* to further legal discussion on these articles.”

Transitioning from mailing print copies of the *QLJ* towards an online-only model has been in the works for several years. With considerable research in hand from previous student editors on impact of the transition and what it ought to look like, this year’s board was ready to make the move at a critical time. “Recent events and closures due to COVID-19 have resulted in access to libraries being diminished and in some cases impossible, making hard copies often difficult to obtain and forcing researchers to rely on online sources,” explains *QLJ* co-Editor-in-Chief Cosimo Morin, Law’21.

Entering into an agreement with the Canadian Legal Information Institute (CanLII), a non-profit organization, the *QLJ* is helping to make Canadian law accessible for free on the web. The two most recent issues of the semi-annual publication will continue to remain exclusive to *QLJ* subscribers, which include many of Canada’s prominent research databases and libraries. All previous volumes are available on [CanLII](#) and recent volumes are on the new [QLJ website](#).

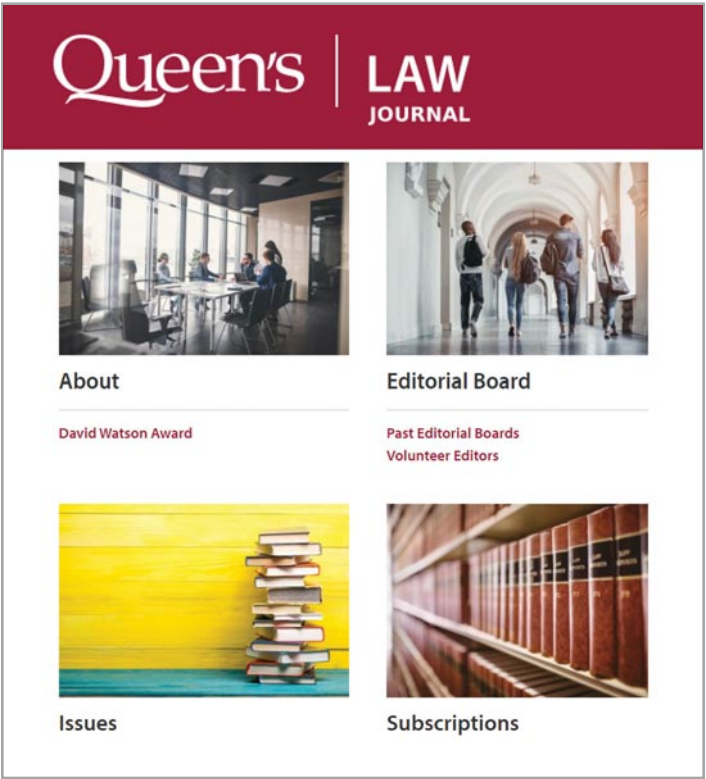
The decision to stop printing the journal after the Spring 2021 issue hinged on several factors. “Most notably is the greater accessibility of online copies of the *QLJ* and the prominence that online research plays in the present-day legal arena,” says de Haas.

“Transitioning to an online-only model will also save a significant amount of resources that we will be able to devote towards further enhancing the quality of our editorial processes,” adds Morin.

“I wish to thank the student editors of the *QLJ* for undertaking this transition responsibly,” says Professor Grégoire Webber, one of the *QLJ*’s faculty advisors. “The current Editors-in-Chief and their board share this important decision with their predecessors, who undertook all due diligence before making a recommendation.”

The second issue of 2021 with very timely articles will be published in May. “It’s a special COVID-19 related issue with insightful commentary on the pandemic from legal scholars,” says de Haas.

There is yet one more way readers can keep up to date on the *Queen's Law Journal*. “We have also created a [LinkedIn page](#) in tandem with our new website,” says Morin. “We are very much looking forward to having a stronger online presence and being more accessible to legal researchers.”



One of Canada’s leading general law reviews, the *QLJ* has partnered with CanLII and launched a new website to host free digital content on Canadian law for legal researchers and professionals.

Debating the future of labour law and education in Canada

What big changes are over the horizon for labour law?

Students, lawyers, and academics considered this question at “The National Labour Law Casebook: 50 years in, and 50 years from now” webinar on December 4.

The Zoom event was hosted by Queen’s Centre for Law in the Contemporary Workplace (CLCW) and the Labour Law Casebook Group, which publishes *Labour and Employment Law: Cases, Materials and Commentary*.

“We celebrated the 50th anniversary of the casebook that has introduced labour law to generations of Canadian lawyers, from coast to coast to coast,” says Professor Kevin Banks, CLCW Director.

To mark the occasion, casebook co-founder Professor Harry Arthurs predicted what a new generation of students will see when they open the 2070 edition.

An inter-generational panel of labour law teachers responded to Professor Arthurs, and then the Zoom floor opened for questions, comments, and debate from all members of the labour law community.



Experts celebrate, reminisce, examine, and debate the future of labour law and education in Canada in a webinar hosted by Queen’s Centre for Law in the Contemporary Workplace.

Webinar examines *Uber v. Heller’s* impact on employment law and commercial arbitration

“*Uber v. Heller* is probably the first in a long line of cases that gig economy workers are going to bring to the courts,” says Professor Kevin Banks, Director of the **Centre for Law in the Contemporary Workplace** (CLCW) at Queen’s. “This case raises some complicated issues both for labour law and for international commercial arbitration...and there’s a lot of controversy.”

To explore those issues, the CLCW and the **Canadian Journal of Commercial Arbitration** (CJCA) convened panels of experts in a webinar. The Zoom event, “*Uber v. Heller* – Can Unconscionability Principles Answer When Not to Enforce Arbitration Agreements?” was held on January 22.

In a landmark decision regarding the class action lawsuit last June, the Supreme Court of Canada (SCC) ruled that Uber could not enforce the arbitration clause in the agreement that its drivers had to accept in a phone app in order to work as an Uber driver. The clause required that any case involving a driver’s dispute with Uber be heard by an international arbitrator in the Netherlands and that the driver pay a \$15,000 fee to start the process.

“The Supreme Court said it was an unconscionable agreement and that the drivers did not have to go to the Netherlands to arbitrate their claims this way,” explains Banks. “The main issues in the case are still to be decided. Are the drivers actually employees and does Uber owe them anything? Whether gig workers are employees is an issue that’s being litigated all around the world. Who ‘employees’ are is a central issue to labour law as it defines the law’s scope and who gets protected by it, and that’s often key to many disputes.”

Another outstanding issue is where the line is drawn in deciding which cases go to arbitration. Associate Dean Josh Karton, CJCA’s Managing Editor,



In a CLCW webinar on the Supreme Court of Canada case involving Uber and its drivers, legal experts discuss whether unconscionability principles can answer when not to enforce arbitration agreements.

describes that issue: “While the ultimate impact of *Uber v. Heller* remains uncertain, it may have fundamentally shifted the relationship between Canadian courts and arbitral tribunals, directing courts to intervene proactively in private disputes in order to police the fairness of agreed arbitration procedures.

“The SCC decision’s clearest implications are for one-sided contracts like those in employment and consumer relationships; however, it could also reshape commercial arbitration proceedings, especially those between economically unequal parties,” he adds. “At minimum, it is making contract drafters across Canada think twice about how fair and accessible the arbitration procedures they call for really are.”

In the workshop, leading Canadian and American legal scholars and practitioners discussed whether employment law claims should be subject to mandatory arbitration and the implications of the case for commercial arbitration. Following panels on each topic, the speakers shared their ideas on whether it makes sense to be dealing with employment issues in commercial arbitration.

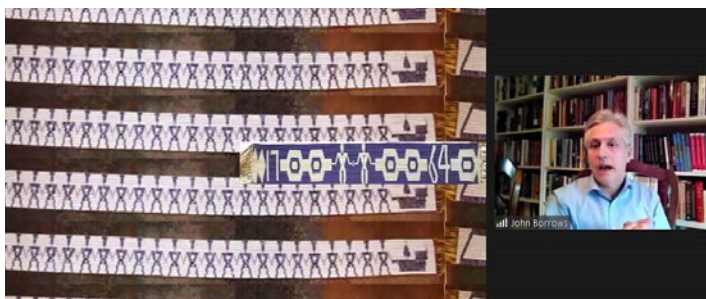
Indigenous leaders converge to advance reconciliation and shared prosperity

Students from Queen's Law and the Smith School of Business host a full-day conference focused on building relationships between Indigenous and non-Indigenous people in corporate Canada and in law.

On March 6, over 80 participants took part in the Queen's Conference on Indigenous Reconciliation (QCIR), a virtual symposium, where Indigenous leaders shared perspectives on how to promote pathways to economic reconciliation and achieve greater inclusivity across all sectors and industries in Canada. Queen's students, faculty, staff, and other attendees from across Canada learned about the existing barriers to realizing economic reconciliation, as well as the role that students, as future lawyers and business leaders, must play in helping to overcome these challenges.

Keynote speaker John Borrows, Canada Research Chair in Indigenous Law at the University of Victoria Law School, explored how Indigenous ethical and legal traditions can benefit the broader Canadian legal system, and lead to a revitalization of common law that can promote economic reconciliation and drive long-term sustainable opportunities.

"Live with love, truth, honesty, courage, wisdom, and humility. Those are the pathways that our ancestors historically chose to try to sustain ourselves, and these are the pathways that are going to lead us to a healthier and wealthier future that is more holistic," said Borrows, who is Anishinaabe/Ojibway from the Chippewas of Nawash unceded First Nation.



John Borrows, Canada Research Chair in Indigenous Law at the University of Victoria, delivers the keynote address, explaining how Indigenous ethical and legal traditions can lead to a revitalization of common law that can promote economic reconciliation and drive long-term sustainable opportunities.

Recognizing that Indigenous wealth should be part of Canada's response to the Truth and Reconciliation Commission's call for the corporate sector to implement the United Nations Declaration on the Rights of Indigenous People, he said, "For millennia, Indigenous communities have managed collective wealth with a strong sense of stewardship and consideration for future generations." He explained that wealth is not solely about a capital exchange, and the selling of goods and services. It involves a broader appreciation and obligation to land, water, plants, insects, fish, birds, and animals, as well as community members as both "generators of wealth and beneficiaries of wealth." These foundational ethics have informed Indigenous laws for generations and have been defined and guided by the natural world.

Providing important insights for the next generation of legal practitioners in Canada, Borrows explained how legal literacy in Indigenous tradition draws guidance from life and sustainability within the natural world. Similar to how the Canadian constitutional tradition has incorporated broad, aspirational concepts such as peace, order, good government, life, liberty, security, freedom, equality, association, the Anishinaabe have broad aspirational concepts in its constitutionalism through love and the ancestral teachings. This legal tradition, informed by ecology and sustenance, binds humans and the environment to promote a rich diversity of natural life.

"We have common law in Canada, the civil law in Canada, but we also have Indigenous law in Canada," Borrows said, "and that should form the standards of judgment, the principles, the criteria, the guideposts, the measures for taking action to see that we have a trans-systemic way of engaging with one another and recognize there are different sources of law, that can be put into our duties to maintain the integrity of the law."

To illustrate his point that it is a lawyer's duty to think about Indigenous law as promoting the interests of the state, Borrows referred to a Supreme Court of Canada decision that cited Dean Mark Walters (who gave introductory remarks at the conference). In that citation, Walters said, "When

you're dealing with Aboriginal peoples and Aboriginal rights, a morally and politically defensible conception of these rights will incorporate both legal perspectives." Borrows then concluded for lawyers that maintaining their duty to the state and their ethical duty is to reconcile Indigenous laws alongside federal and provincial law.

Following the keynote address, participants attended a series of expert panels and breakout workshops.

David Sharpe, Law'95, Bridging Finance Inc. CEO, Queen's Law Dean's Council Chair, and Queen's trustee led a workshop on First Nations negotiations, the subject of a course he teaches at his alma mater. Engaging with his audience using a fact scenario from a real Supreme Court of Canada case he discussed how agreements should deliver benefits to both the third-party stakeholders and the First Nation, which in turn provides greater business certainty, long-term economic viability and supports viable partnerships.

In another interactive workshop, participants learned from business leaders the importance of capacity building and how to gain practical skills and knowledge relating to truth and reconciliation.



David Sharpe, Law'85, CEO of Bridging Finance Inc., leads an interactive workshop on how to negotiate effectively with First Nations, benefiting all parties, which in turn, provides greater business certainty, long-term economic viability, and supports viable partnerships.

The final session of the day featured a dynamic panel of speakers who provided their views on the legal profession, the role of Indigenous law and legal reconciliation. Hugo Choquette, Law'05, LLM'10, PhD'17, Academic Director of the Certificate in Law



Discussing views of the legal profession and the role of Indigenous law and legal reconciliation are: (top row) moderator Hugo Choquette, Law'05, LLM'10, PhD'17; and panelists Sara Mainville, Law'04; Tamara Napoleon; (bottom row) Kelly Campagnola; and John Rowinski, Law'00.

program, moderated the session that included two alumni: Sara Mainville, Law'04, and John Rowinski, Law'00.

"I am tremendously respectful to the Indigenous right to self-determination," said Mainville, a partner with Olthuis Kleer Townshend LLP, a firm that focuses on sovereignty and justice for Indigenous peoples. "I am never critical of deals that the community has made for themselves," she added, pointing to the Ontario energy industry as an example of where there are mechanisms and tools in the regulatory regime, administered by the Ontario Energy Board, to promote and incorporate Indigenous partnerships.

"Economic reconciliation is about infusing Indigenous economies into the western version as well. That often gets lost," said Rowinski, CEO at Noozhoo Nokiiyan Limited Partnership, the economic development arm of Mississaugas of Scugog Island First Nation. "Making money is the easy part but building the economy in a self-sufficient way is important."

In a second panel, Indigenous business leaders spoke about opportunities and barriers to economic reconciliation, the importance of social enterprise and social finance in reconciliation, and the role of Indigenous economies.

Following the formal agenda, participants had the opportunity to visit separate virtual rooms to network with speakers, and moderators.

The Queen's Conference on Indigenous Reconciliation was inspired by Andrée Cazabon's documentary *Reconciliation on Bay Street*.

Job-searching and relationship-building in a virtual world

“The level of service that our Career Development Office (CDO) staff have been able to provide during the pandemic has been amazing!” exclaims Shane Rozen-Delman, Law’22, who began planning for the summer job recruitment process early in the fall term. “They transitioned seamlessly to working remotely in mid-March, maintaining programming, resources, and one-on-one sessions that focus on our personal career development and success.”

“CDO staff genuinely care about students and this really shows through their work and their initiatives,” adds Dakota Bundy, Law’22, who worked with the staff remotely last summer and is now a student committee member. “As one example, they worked so hard to ensure students were aware of pandemic-related changes, to update resources to reflect the current situation, and did everything they could to help students feel more comfortable. I’m incredibly proud of how they continue to prioritize students during these uncertain and trying times.”

Students do indeed benefit from the CDO’s programming, resources, and individualized approach. The articling placement rate, which held steady at 95 per cent from 2017 to 2019, increased to 96.5 per cent in 2020. CDO Director Julie Banting says several factors account for this high rate. “It’s a testament to having a strong recruit for summer jobs, working with students during articling recruitment, and providing intensive support to the remainder of students seeking articles as they entered third-year in September. Our 3Link program connects the latter students with alumni who are seasoned lawyers practising in students’ areas of interest.”

Last year Rozen-Delman began his career journey with the CDO by self-reflecting on his strengths and weaknesses, as well as identifying and understanding his goals. He participated in resume workshops and

one-on-one interview preparation sessions. When only two months into his second year, he had already attended virtual firm tours and clerkship information sessions, has been speaking regularly with Julie Banting and Mike Molas (Career Counsellor) about best practices to succeed in the recruitment process for next summer’s jobs and getting help with his resume, cover letters, and informational interview preparation.

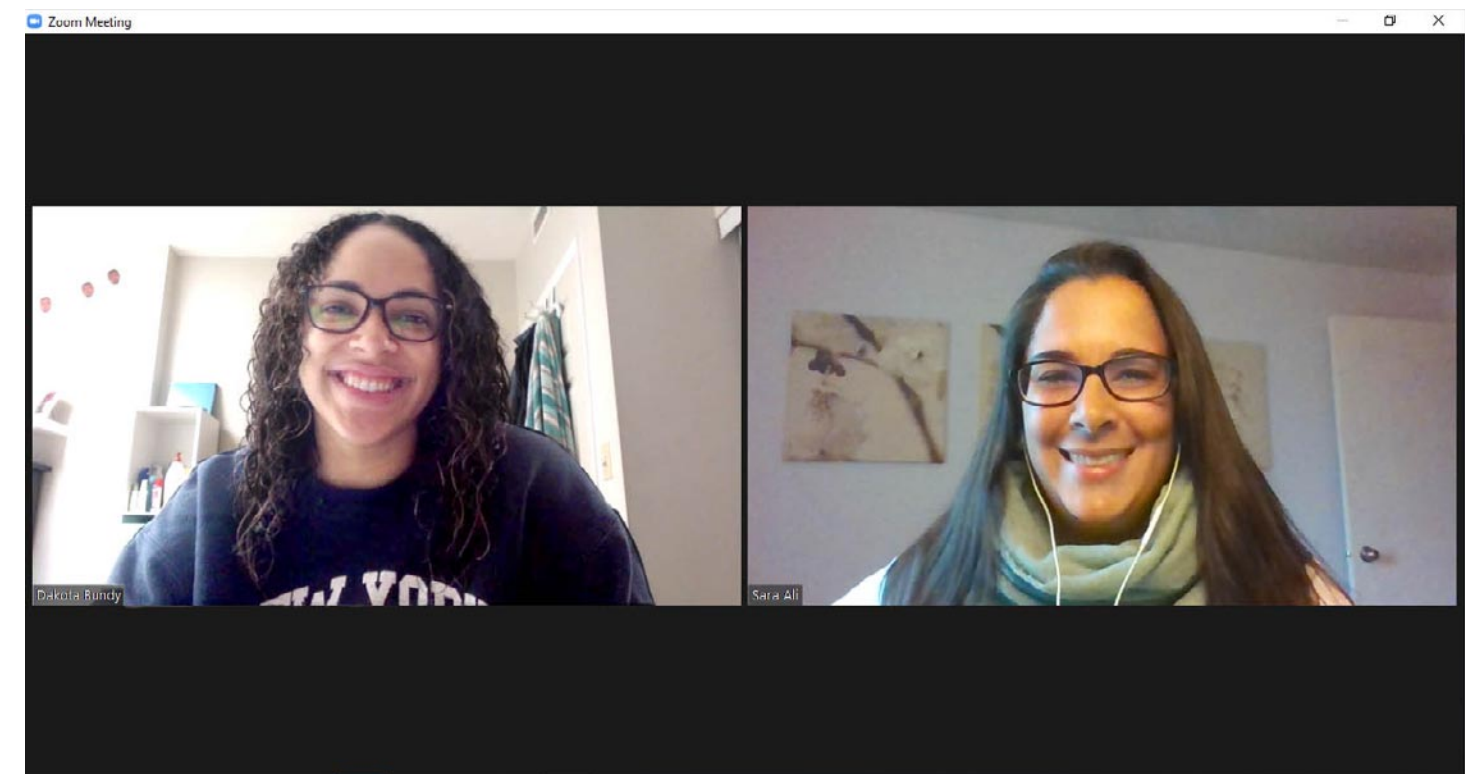
“Mike and Julie are always prompt and follow through with what they say they will do,” says Rozen-Delman. “They provide advice that is tailored to our situation and needs. The incredibly strong support system that they and Sara Ali (Career Development Coordinator) provide is extremely important.”

This academic year, the CDO has been holding all student counselling sessions, programs, and events remotely, facilitating career exploration and relationship-building opportunities.

This year’s offering of Osler BizBasics, a four-part series organized and hosted by Osler, Hoskin & Harcourt LLP to provide first-year students with foundational insight for the successful practice of business law, kicked off on October

23. “Demystifying Business Law” and then networking with over 100 student attendees were Osler partner Pat Welsh, Law’10, associates Melanie Simon, Law’16, Alex Hodgson, Law’19, and Tiye Traore, Law’19, and articling student Tearney Johnston-Jones, Law’20.

Another inspiring event, Law as a Launchpad returned on November 16. Featured on a panel of seasoned alumni who leveraged their law degrees into successful careers in the business world were Ruth Chun, Law’06, CEO, Chun Law Professional Corporation; Jim Kofman, Law’82 (Com’78), Chair, Cormark Securities Inc.; Paul Rivett, Law’96



Dakota Bundy, Law’22, meets via Zoom with Career Development Coordinator Sara Ali to discuss plans for a legacy project panel focusing on diversity and inclusion.

(MIR’93), co-owner, Nordstar Capital, and Chair, Torstar; and Jayne Stoyles, Law’96, Executive Director, Amnesty International Canada.

The CDO is also hosting special new events via Zoom. Dakota Bundy – who along with four other CDO student committee members reviews resumes, cover letters, and helps facilitate events – organized a legacy project panel on diversity and inclusion.

“This topic has always been important to me, given that I’m a Black woman and my identity plays a part in pretty much all of my interactions and experiences, but it’s especially important for me because I think this is an area where the school has room to improve,” she explains.

The legacy project featured a panel of diverse alumni who answered questions about their

identities, their experiences in the legal field, how to overcome challenges, and where they see opportunities for the future. Bundy teamed up with three student clubs – First Generation Network-Queen’s Chapter, Queen’s OutLaw, and the Indigenous Law Students’ Alliance – to select panelists, including Maggie Carmichael, Law’18, and Caitlin Woodford, Law’19, associates with Blakes in Toronto, and Leah Thompson, Law’17, Legal Counsel with the Department of Justice Canada. The event took place on November 23.

“Our students are completing a degree that has a lot of value and a lot of opportunity,” says Banting. She and her CDO team are committed to helping students make the most of those opportunities to meet their own individual career goals.

How to leverage a law degree

A JD degree can open the door to many different careers. Students learned about various paths to careers in business and the public interest from a panel of alumni who are seasoned professionals at the top of their game.

Sharing their career trajectories and advice with students via Zoom for “Law as a Launchpad” on November 16 were:

- Ruth Chun, Law’06, CEO, Chun Law Professional Corporation;
- Jim Kofman, Law’82 (Com’78), Vice Chairman, Cormark Securities Inc.;
- Paul Rivett, Law’96 (MIR’93), co-owner, Nordstar Capital, and Chair, Torstar; and
- Jayne Stoyles, Law’96, Executive Director, Amnesty International Canada

“Don’t forget who you were before law school, the types of hobbies that you had, and the types of relationships that you valued,” advised Chun, who realized early on that she wanted to be problem-solver as a business lawyer. A former General Counsel and Corporate Secretary for Newstrike Brands Ltd. / Up Cannabis Inc. and senior legal counsel at HEXO Corp., she is now a virtual GC for both cannabis and non-cannabis firms.

“One of COVID’s blessings is people return to some of the hobbies that they didn’t have time for when commuting,” she added. “Your value comes from who you are, not from having a law degree or being a lawyer. Nothing is fatal – not that C you got in a course or not getting that dream job. The way you react to those things and take them as opportunities to learn and be positive can yield so many returns.”

Stoyles, who was the first Executive Director of the Canadian Centre for International Justice and was the founder and CEO of the Philippe Kirsch Institute (a social enterprise that supports the defence of the human rights of people in vulnerable

situations), encouraged students to think beyond the career they want to how they want to do it. “Show up with your heart as much as your head,” she said. “Having integrity and being compassionate and kind are so essential. It often means being the one to stand up to really make tough decisions and call out things that are happening. You can do all those things while you’re looking for the humanity in other people and remembering that we don’t know peoples’ pasts and struggles. Our best way forward is always with kindness.”

Jim Kofman, whose career includes starting the mergers and acquisition group for UBS Securities and then serving as the organization’s Vice Chair, agrees with Stoyles about the value of integrity. “There are lots of times in your career when the easy path isn’t always the one you feel is right,” he said. “Over the years, I’ve always said you can never get in trouble in the long-term by doing the right thing.”

He added three other pieces of advice: “Always treat people the way you would like to be treated. Have fun in your career. Bring passion to what you do, and people will sense that you’re not just doing it to earn the dollars but that you actually care.”

“Don’t give up on yourself,” advised Rivett, who previously served as President of Fairfax Financial Holdings Ltd. and as Vice President and Chief Operating Officer of Hamblin Watsa Investment Counsel Ltd. “If you have a dream follow it. If you think there’s something that’s going to make you happy, pursue it.

“Meet as many people as possible,” he added. “Everybody has something you can learn from them. When you find somebody who really resonates with you as a mentor, imitate what they do to learn and build on.”

“Law as a Launchpad” was co-organized by the Queen’s Law Career Development Office and Alumni Relations team.



“Law as a Launchpad” panelists (top row) Ruth Chun, Law’06, and Jayne Stoyles, Law’96, and (middle row) Jim Kofman, Law’82, and Paul Rivett, Law’96, talk about their career paths and share their advice with students and (bottom row) moderator Mike Molas and Dean Mark Walters via Zoom.

Researching law remotely *and* seamlessly

From hosting a virtual orientation and preparing e-reserves to giving online research consultations and contracting new e-resources, the Lederman Law Library has continued rising to COVID challenges.

“The Law Library staff have been incredibly helpful with my research during the pandemic,” says Michael (Ruofan) Cui, Law’21. “My work has been going smoothly this year, and that’s due in no small part to the help I’ve received from librarians and library resources.”

That’s certainly the goal. “We want our services to be as convenient as possible for students,” says Amy Kaufman, Law’04, Head of the Law Library. “They are navigating a complex learning environment already and don’t need any extra complications right now.”

In place of the usual in-person tour, this year’s first-year JD students got their library introduction virtually. After completing an interactive online module, they showed what they learned by squaring off in a trivia game. “Our goal was to ensure students knew what supports the library could offer during this unconventional first year, while also giving them a chance to collaborate and engage with each other in teams as they rushed to complete the quiz,” says Erica Friesen, Law’s Research and Instruction Librarian and Online Learning Specialist Librarian. “The final results were so close that we needed to use a tiebreaking final *Jeopardy!* question to determine the winner.”

Students can get hard copy books and journals through curbside pickup and, from wherever they are, can access more than 1,000 new e-books in various areas of law. In addition to existing e-resources, they can now sign in to Lexis Advance Quicklaw Plus, which among other things includes e-versions of some core Canadian legal textbooks, as well as the essential *Halsbury’s Laws of England*.

That’s not all, says Cui, who’s been helping with research on a major immigration project and is a co-senior editor of the *Canadian Labour and Employment Law Journal*. “I have also received guidance from library staff to access sources such as U.K. case law and digital loose-leaf through subscription services

that are available to us. Librarians have replied to all of my inquiries and requests in a timely manner and I have always felt they are doing their best to accommodate my requests.”

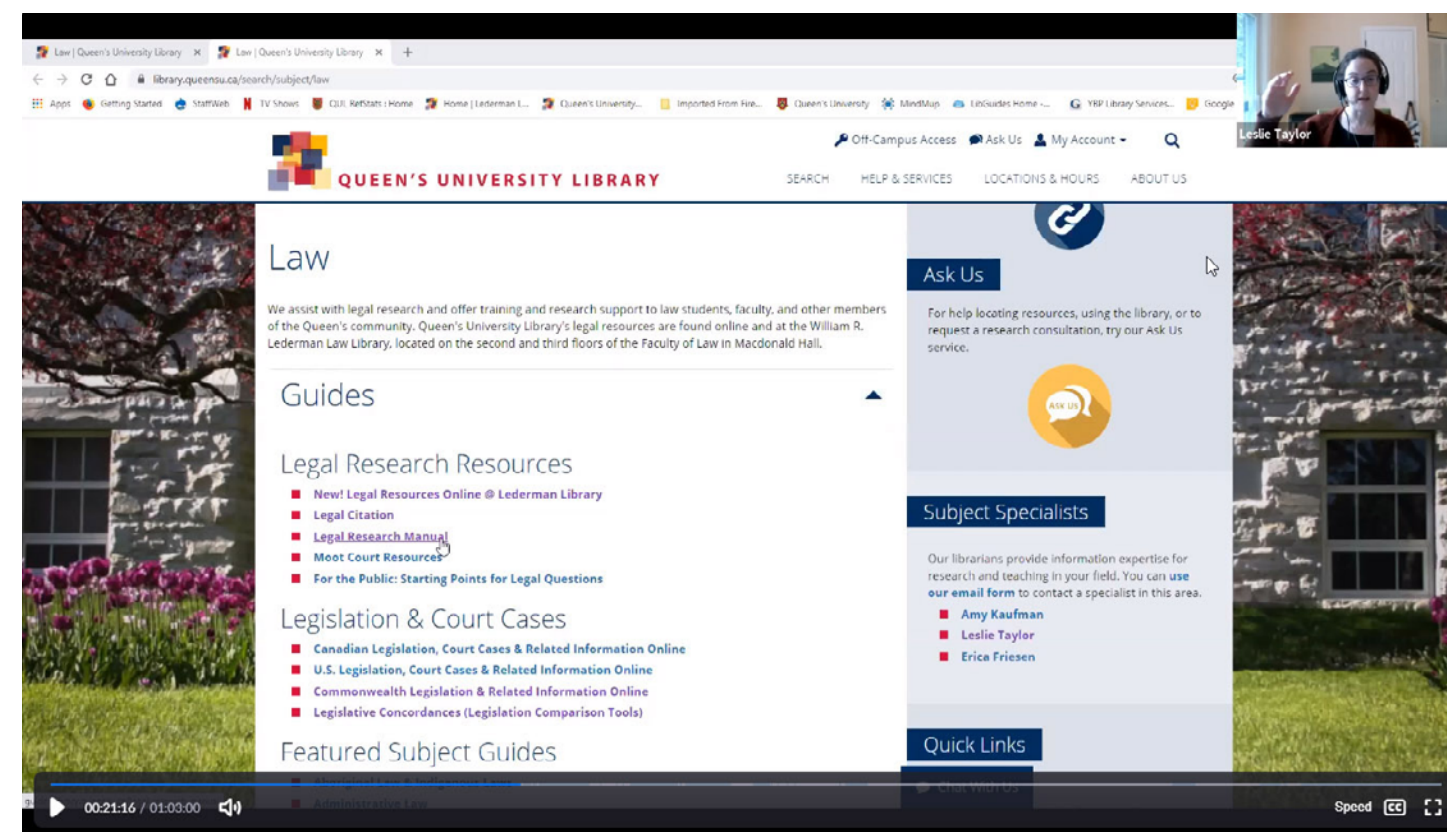
Online research instruction and reference consultations take place over Zoom and Microsoft Teams, with Chat and email also used for consultations – whatever way is most convenient for students. These methods have shown some advantages. “We can share our computer screens over Zoom, for example, which makes it really easy to walk someone through using a library database or other online research tool,” says Leslie Taylor, Research & Instruction Librarian. “And, if we are offering a research instruction session to a class or other group, we can record the session for people to watch and review later.”

Kaufman adds, “We quickly explored and now use many different tools to assist students in their research and learning – whether it’s emailing step-by-step screenshots on how to access a particular resource, using Snagit to make a quick short video showing how to perform a particular legal research task, giving live online instruction to individuals or classes, creating interactive modules in Articulate Rise, and videos in Camtasia.”

Missing in-person interaction, she notes, “I am always particularly happy to have an online research consultation to actually meet the students live.”

To prominently display e-books and e-resources, staff continuously update library research guides, which provide curated lists of current, authoritative sources on nearly every major legal topic. “By highlighting electronic resources, we are helping students and faculty who are working and studying remotely to easily identify research starting points that they can readily access,” says Taylor.

Working with faculty, library staff also help prepare research materials for students. For Professor Nick Bala’s first-year Contracts class, they tailored an online guide to help students research and write a memo assignment on a wrongful dismissal case. While some relevant materials on the subject and on



Leslie Taylor, Research & Instruction Librarian with the Lederman Law Library presents a legal research instruction session for new law graduate students in October.

legal research and writing were already available electronically, others are held on reserve. “Knowing the library was physically inaccessible, I spoke with reference staff and they very helpfully developed a web page just for my students,” explains Bala. “That page hosts all the relevant materials, including scans they made of the print reserve materials. Library staff have been incredibly helpful to students through their consultations and to faculty as we shift to more remote teaching and learning.”

To make that happen, Kaufman says, “There has been a real team effort across the entire Queen’s University Library System. Many staff have really put in the time to review existing resources, find and evaluate new possibilities, prioritize new e-resources, negotiate contracts, enable access, troubleshoot when there are technical problems, promote them through our Libguides, webpages, and newsletters,

and instruct students and classes on how to use them effectively.”

That work hasn’t gone unnoticed. “Aside from just helping me procure sources that I requested, the librarians have pointed me in the direction of alternative sources for the material that I required,” says Cui, citing an example. “When I ran into an issue accessing an English Court of Appeal decision on the Incorporated Council for Law Reporting (ICLR), Amy Kaufman not only coordinated to resolve our issues with ICLR, but also located the same decision on QuickLaw. I felt she went above and beyond in running the search on QuickLaw (which I had not considered), and I truly appreciated her help.

“Overall,” he continues, “I’ve been very satisfied with the service the library and librarians have provided me.”

— LISA GRAHAM

Criminal law legend closes chapter on teaching career

Professor Don Stuart taught his last class for Queen's Law on December 2, 2020. Over the past 45 years with the school, he gained the reputation as being Canada's leading criminal law scholar with his work cited in dozens of Supreme Court of Canada decisions. "But Don has been much more than a scholar – he has been a brilliant teacher," says Dean Mark Walters, Law'89, noting Stuart's numerous teaching awards from students.

"I have always admired Don's tireless dedication to the wellbeing of his students," Walters adds. "He has made a significant difference to the lives of countless students over the years. Thank you so much, Don, for your commitment to teaching. We are forever in your debt."

Read more about Professor Stuart's storied [career](#).



See what his former students and a colleague had to say when he retired in [2018](#).

Imseis presentation to UN Security Council

"Our humanity is just as much on the line in Yemen as that of the civilians caught in the war's unforgiving grip. Justice is a prerequisite for peace. The time to act is now." This is what Queen's Law Professor Ardi Imseis, a member of the UN Group of Eminent International and Regional Experts on Yemen, will be saying to the UN Security Council today as the Group presents its third report, "Yemen: A Pandemic of Impunity in a Tortured Land."

The Group's address to the Security Council, the UN's political organ primarily responsible for the maintenance of international peace and security, is aimed at helping it integrate the human rights dimension of the conflict in Yemen more fully into its agenda.

Among the Group's recommended options that Professor Imseis will present are that the Security Council refer the situation in Yemen to the International Criminal Court without delay; expand its list of persons subject to sanctions; and that each of its member states and other states investigate war crimes over which they have jurisdiction and, where appropriate, prosecute such crimes domestically.

"Effective foreign policies can be pursued in ways that do not require us to postpone, overlook or set



aside justice for larger, ostensibly 'pragmatic' purposes at home or abroad, including peacemaking, or geopolitical or economic interest," he says. "Lives are at stake. Countless millions of men, women and children are relying upon us to take our responsibilities seriously, to act with purpose and conviction, and to do so because it is the fundamentally right and decent thing to do."

[Read more at the Security Council website.](#)

Queen's Law Insights

Faculty members share their legal expertise by commenting on popular media topics. So far this year, they've commented on the Biden administration, the U.S. Capitol riots, and the GameStop frenzy.

First up in this 13-page feature:

How will the Biden administration affect the world?



As the Biden inauguration was dominating international news, six Queen's Law experts stated their predictions for how the new government will have an impact on Canada and across the globe. In this six-part series, faculty experts share their insights on climate policy, immigration and refugee law, trade policy, tax reform, foreign policy, and criminal justice. ▶

Cherie Metcalf

Driving fight for climate change creates challenges for Canada

JANUARY 19, 2021. The incoming Biden administration has signaled a U-turn in U.S. climate policy with implications for Canada and the world.

Under President Donald Trump, the U.S. withdrew from the international *Paris Agreement* to limit global warming to 1.5 degrees. This agreement, that the U.S. helped engineer, is a vital step to avoiding catastrophic effects from climate change. As one of the world's largest economies and emitters of greenhouse gases (GHGs), the U.S. can help drive its success.

Instead, under Trump the U.S. pursued short-term gains by promoting its own coal, oil, and gas industries. The U.S. actively weakened its emissions standards, pushed forward with the Keystone pipeline, and removed climate change impacts as a factor under its *National Environmental Policy Act* (NEPA) assessment regime, among numerous other actions. In the dying days of the administration, Trump rushed to auction off leases opening up the pristine Arctic National Wildlife Reserve to oil and gas development.

In sharp contrast, incoming President Joe Biden has promised to rejoin the *Paris Agreement*, convene an international climate summit in his first 100 days, block the Keystone pipeline project, and most ambitiously commit the U.S. to Net Zero emissions by 2050. Biden's plans for this energy shift include promoting the U.S. economy and creating new jobs. To advance that goal, "carbon border adjustments" are planned for imports from countries with weaker regulations.

The U.S. is Canada's largest trading partner and our economies are tightly connected, so shifts in U.S. climate policy have significant impacts for Canada. Biden's ambitious goals will put serious pressure on Canada.

Biden's policy supports Canada's new more aggressive approach to GHG reduction. The dramatic increases planned for the national carbon price under the *Greenhouse Gas Pollution Pricing Act* are the kind of action required, if the new Biden administration is able to advance its plans. While the constitutionality of that Act is being decided by the Supreme Court, ultimately some way for Canada to align with the U.S. will be needed. The U.S. retreat



from oil-and-gas-friendly policy will definitely disadvantage regions like Alberta, where the industry is a key economic driver. Biden's proposed climate policies make it more likely Canada will meet our *Paris Agreement* targets, but with consequences.

At a global level, U.S. re-commitment to the *Paris Agreement* is a good thing. However, the dramatic shifts in policy have harmed U.S. credibility and left other nations to take the lead. The Biden administration will have to demonstrate its renewed resolve. Days ago, NASA found 2020 tied for the earth's hottest year on record... with 2016. Welcome back to the global climate change fight, President Biden!

Professor Cherie Metcalf specializes in law and economics, international environmental and resource law, public law, and constitutional law. She is the recipient of an Insight Grant from the Social Sciences and Humanities Research Council of Canada for her project on "Institutions for Effective Climate Change Action" and a grant from the Canadian Foundation for Legal Research for her project on "Climate Change and Canada's Constitution."

Sharry Aiken

Improving the rights and interests of migrants and refugees, but maybe not asylum-seekers

JANUARY 20, 2021. Shortly after assuming office, President Donald Trump issued a number of executive orders that have had a devastating impact on migrants and refugees in the U.S. Many of those orders were policy directives that can be undone relatively easily.

One directive is the rollback on overseas refugee resettlement, an area in which the U.S. had been the leading country, every year identifying and resettling thousands of refugees abroad into the U.S. with government support. Trump slashed that program in multiple ways. Incoming President Biden has the opportunity to re-position the U.S. as a significant player in refugee resettlement within his first year. Biden is on record stating that the ceiling on refugee admissions will rise to 125,000 from the low of 15,000 set by the Trump administration for the 2021 fiscal year. We can expect renewed support for America's involvement in refugee resettlement simply through the political commitment and presumably an allocation requisite funding at the congressional level.

It's expected that the practice of separating families at the border will come to an abrupt halt. At least 5,400 migrant families have been forcibly separated in

the past three years and many of these families have yet to be reunited. American border officials have long had the power to detain people arriving at the border and to identify them for various legal procedures depending on whether they're asylum-seekers or otherwise undocumented. Border officials also have the authority to put people behind bars, but we had never seen families being torn apart to this extent under previous administrations. Nothing inscribed in law endorses this practice, yet Trump mandated a policy of massive family separation, resulting in children being lost to their primary caregivers and trauma that is likely irreparable. This can also stop overnight, and Biden is on record saying he will ensure it does.

We can also expect Biden will reinstate the program which allowed "dreamers" who were brought to the U.S. illegally as children, to remain in the country. In many cases, these children came to the U.S. when they were very young and have lived in the U.S. all their lives without status. The Dreamer's program ensured access to legal status and stability. Restoration of this program will be a step in the right direction.

What's going to be much harder to deal with are the changes to U.S. asylum procedures made at a legislative level. The American asylum system has been under siege for decades and has been plagued with problems and significant deficits. While the system was well below international standards before Trump assumed office, his administration accelerated and intensified these deficits through legislative and policy changes. Despite Biden's aspirations, historically we've seen that regressive legal changes to deep-seated problems are rarely undone by successor regimes, so we're not likely to see significant improvements in America's asylum system.

Professor Sharry Aiken specializes in immigration and refugee law and has appeared before the Supreme Court of Canada in a number of precedent-setting immigration cases. She is also the Academic Director of Queen's new Graduate Diploma in Immigration and Citizenship Law, Co-Editor-in-Chief of the *Global Justice Journal*, the former Editor-in-Chief of *Refuge*, and a past president of the Canadian Council for Refugees.



Nicolas Lamp

Predictability to increase, but change in substance is questionable

JANUARY 21, 2021. On trade policy, there is no question that there will be a change in style; to what extent there will also be a change in substance is a much more complicated question. In one respect, a change in style definitely has substantive benefits: U.S. trade policy will become more predictable. Canadian trade officials will no longer have to fear that they will wake up to the news that Canada's largest trading partner is imposing tariffs on Canadian products on national security grounds, as the Trump administration did with Canadian steel and aluminum.

One reason to be skeptical that much will change for Canadian traders is that they have actually fared pretty well under the Trump administration. Canadian officials successfully lobbied to have the steel and aluminum tariffs removed, even as they remained in place on other U.S. allies. And the revised NAFTA agreement – known as the CUSMA in Canada and the USMCA in the United States – has provided certainty to U.S.-Canadian trade and may have even brought new benefits for Canadian workers: some credit the recent wave of announcements of new



“U.S. trade policy will become more predictable. Canadian trade officials will no longer have to fear that they will wake up to the news that Canada's largest trading partner is imposing tariffs on Canadian products...”

Nicolas Lamp

Discussing the future of global trade under a Biden administration.

Queen's | LAW

investments in auto manufacturing in Ontario to the agreement's revised rules.

Another reason to be skeptical that a Biden administration will fundamentally change the course of U.S. trade policy is that many of the Trump administration's policies enjoy broad bipartisan support. In December, Canada became the target of the first-ever suit under the CUSMA, when the Trump administration challenged the way Canada allocates quotas for dairy products from the U.S.; there is little reason to think that a Biden administration will abandon that legal challenge. And while a Biden administration will be more sympathetic to the World Trade Organization, skepticism of the organization's dispute settlement system has deep bipartisan roots in the U.S. Canada's preference would be to achieve a quick reform to resurrect the system, which the Trump administration has sabotaged, but that is far from guaranteed.

In two other areas there is more prospect for change: the Biden administration will take a more multilateral approach to addressing China, which would provide Canada with much-needed backup in its own disputes with the Asian giant, but also draw Canada even more deeply into the broader confrontation between the two superpowers. And tackling the climate crisis looks likely to be front-and-centre for the Biden administration in all policy areas, including trade relations. If Biden's announcement that he will cancel the permit for the Keystone XL pipeline on his first day in office is any indication, this means that Canada will have to step up its game in transitioning to a low-carbon economy as well.

*Professor Nicolas Lamp specializes in international trade law and policy. He is the Academic Director of Queen's International Law Programs at the Bader International Study Centre, Director of the Annual Queen's Institute on Trade Policy, and previously worked as a Dispute Settlement Lawyer at the World Trade Organization's Appellate Body Secretariat. His co-authored book (with Anthea Roberts), *Winners and Losers: Narratives about Economic Globalization* (Harvard University Press), is forthcoming in October.*

Art Cockfield

Canada's corporate competitiveness to be restored


JANUARY 22, 2021. Under the support of then-President Donald Trump, the United States engaged in significant corporate tax reform in 2017 through the *Tax Cuts and Job Act* (TCJA). For instance, federal corporate tax rates were reduced from 35 per cent to 21 per cent and the top individual tax rate was reduced from 39.6 per cent to 37 per cent.

The U.S. reforms made the U.S. corporate tax system relatively more attractive than the Canadian system. In fact, the reforms wiped out Canada's "tax advantage" that had been touted by Canadian governments since the Chretien administration. Lower Canadian corporate income taxes – more technically, marginal effective tax rates – compared to U.S. taxes served to attract foreign direct investment to Canada, increasing employment and providing other benefits.

Canada's prospects seem sunnier under the Biden presidency. Biden has promised to increase the U.S. federal corporate income tax rate to 28 per cent and reinstate the corporate alternative minimum tax that was repealed by the TCJA. Biden intends to restore the 39.6 per cent individual income tax rate for individuals with taxable income above USD\$400,000. Biden also hopes to reduce the favorable tax treatment for long-term capital gains and qualified dividends above USD\$1 million.

Assuming Biden follows through on his tax promises, Canada's corporate income tax system will be more in line with the U.S. system and this could help to restore Canada's tax competitiveness vis-a-vis the U.S. The proposed U.S. individual income tax reforms would also bring the United States closer to the system within Canada.

In short, Biden's promised moderate tax increases on individuals and corporations would restore the U.S. to a tax position that is more aligned with the current Canadian approach. This outcome could also ensure that tax does not overly distort investment decision-making between the two countries.



“Assuming Biden follows through on his tax promises, Canada's corporate income tax system will be more in line with the U.S. system and this could help to restore Canada's tax competitiveness vis-a-vis the U.S.”

Art Cockfield

Discussing the future of tax policies under the Biden administration.

Queen's | LAW

Professor Arthur Cockfield specializes in tax law and has received several research fellowships and grants. For his current major project, "Invisible Underworld: Inhibiting Global Financial Crime," he and collaborator Christian Leuprecht of Queen's and RMC political studies received an Insight Grant from the Social Science and Humanities Research Council.

Ardi Imseis

Enhancing international peace and security, but with notable remaining concerns

JANUARY 23, 2021. The election of Donald Trump signaled the end of what some have called the “American Century,” from Woodrow Wilson’s Fourteen Points and the establishment of the League of Nations through the emergence of the UN system of collective security. In the past four years, the Trump administration has unleashed an unprecedented attack on the international rule of law and the post-WWII multilateral order that, ironically, was in large part fashioned by the U.S. itself. It is therefore unsurprising that Joe Biden’s election has been met with hope that it will reverse Trump’s more destructive and isolationist policies borne of an unadulterated disdain for international law and institutions, adherents of which predate him and remain in the Washington beltway.

In addition to a re-joining of the Paris climate agreement and a repeal of the U.S. “Muslim travel ban,” among the more immediate changes we can expect under Biden will be a more constructive engagement with some international and regional organizations, including the World Health Organization, the World Trade Organization, the European Union, and the North Atlantic Treaty Organization. In this vein, two areas on which we can expect positive change, albeit without knowing whether a complete return to the pre-January 2017 status quo will be on offer, are a more constructive U.S. policy toward Iran’s development of nuclear energy, including a reversal of the U.S. withdrawal from the Joint Comprehensive Plan of Action, and a re-institution of vital humanitarian funding for the UN Relief and Works Agency.

Although there are suggestions that the Biden administration will work to curtail the U.S.’s role as the leading arms supplier to the Saudi-led coalition in Yemen – the site of the world’s worst humanitarian crisis – the jury is still out on whether this will actually come to pass. Still less hopeful will be any change to the present U.S. rejection of the legitimacy of the International Criminal Court and the UN Human Rights Council. This will be



exacerbated by continued American double standards in the application of international law in its foreign policy as evidenced by its rightful rejection of Russia’s illegal claims of sovereignty over occupied Crimea, on the one hand, with the U.S.’s illegal recognition of similar claims by Morocco in occupied Western Sahara and Israel in occupied Palestine, on the other.

All this to say, while some welcome positive change will be occasioned by the ascendancy of the Biden administration, much will need to be done in order to fully repudiate Trump’s legacy and reverse course on the waning role of the U.S. as the erstwhile sponsor of the post-WWII international legal order.”

Professor Ardi Imseis specializes in public international law. He is a member of the United Nations Group of Eminent International and Regional Experts on Yemen and a former United Nations official with both the United Nations Relief and Works Agency for Palestine Refugees and the United Nations High Commissioner for Refugees.

Darryl Robinson

Turning international justice right side up

JANUARY 23, 2021. In 2020, then-President Donald Trump adopted an executive order that, in normal times, would have generated sustained international condemnation and pressure until it was repealed.

The executive order authorized personal sanctions against lawyers at the International Criminal Court (ICC) and others who support the ICC. Such sanctions have previously only been applied against terrorist organizations or regimes that commit mass crimes.

The sanctions were imposed because the ICC is looking at credible allegations of torture by CIA officials in sites in Afghanistan. Afghanistan is an ICC member and thus falls within the Court’s territorial jurisdiction. Thus, these officials are doing their jobs, investigating war crimes within their legal jurisdiction.

So far, the U.S. has imposed sanctions on Chief Prosecutor Fatou Bensouda (Gambia) and Phakiso Mochochoko (Lesotho), the director of the situation analysis division, as well as their families. The

sanctions freeze their assets and ban them from the U.S. The asset freeze has complicated their ability to travel on missions, since most transactions are in U.S. dollars.

The sanctions attracted international condemnation from ICC member states, who argued that they “treat human rights investigators like terrorists” and that “sanctions are a tool to be used against those responsible for the most serious crimes, not against those seeking justice.”

The U.S. has long been a big supporter of “justice for others;” it led the way in creating international tribunals for crimes by others. The ICC is based on firmly established principles of jurisdiction that the U.S. itself helped create. But the idea of foreigners even-handedly applying those same principles to Americans is, for many in the U.S., self-evidently outrageous.

These sanctions punish prosecutors and judges for appropriately applying rules. This upside-down approach is very much in line with the Trump era: lies are truth, treason is patriotism, impartiality is corruption, fair is rigged. And now, seeking justice is criminal.

Under the Biden Administration, this order will surely be rescinded. But this does not mean that things will be rosy. The double standard in American thought runs across party lines. The ICC and the U.S. remain on a collision course, because there are credible allegations of serious crimes within the Court’s jurisdiction, and the U.S. has shown limited appetite to seriously investigate its officials. We can however hope for a more civil opposition and more moderate hypocrisy, and possibly even a U.S. reckoning with its legacy of torture and other crimes.

Professor Darryl Robinson specializes in international criminal law. As the first adviser to the Chief Prosecutor of the International Criminal Court, he helped shape its first policies and strategies from 2004 to 2006. His new book, Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law, was published by Cambridge University Press in December 2020.



Crime of aggression expert on Trump loyalists storming U.S. Capitol

JANUARY 8, 2021. As the eyes of the world were fixed on the violent mob of Trump supporters overtaking the U.S. Capitol building on January 6, **Professor Noah Weisbord** was analyzing the situation through his keen criminal law lens. Weisbord, who wrote the acclaimed book, *The Crime of Aggression: the Quest for Justice in an Age of Drones, Cyberattacks, Insurgents and Autocrats* (Princeton University Press, 2019), focuses his research on the role of criminal law in managing, reflecting or exacerbating intergroup conflict.

Set out below, Professor Weisbord presents his examination of the day's events and the areas he finds important for assessing the future of American politics.

Two days ago, hundreds of Trump supporters stormed the U.S. Capitol following a rally where President Donald Trump repeated false claims of widespread voter fraud. The mob overran security forces and breached the Senate Chamber. Lawmakers taking cover behind chairs were given gas masks and evacuated, temporarily disrupting the certification of the election results.



Professor Noah Weisbord presents his examination of the January 6 events and the areas he finds important for assessing the future of American politics.

The meaning Americans place on Wednesday's events will determine what the future holds. Were these events the last convulsions of Trumpism or is this just the end of the beginning? Is the pendulum of history swinging predictably from right to left, gently moderated by Joe Biden's victory? Perhaps we are experiencing a paradigmatic shift in politics due to our unprecedented, siloed social media environment. Is Trump the inoculation against the more virulent, unknown, autocrat waiting in the wings?

Once law enforcement finally cleared the Senate floor, when the Senators resumed certifying the vote, a number of Senators reached for historical analogies to situate the day's events. New Jersey Senator Cory Booker compared the day's events to the War of 1812, where forces attacking the Capitol were waving the flags of the king, while the recently cleared invaders were waving Trump flags. Colorado Senator Michael Bennet likened the day's events to the fall of the Roman Republic, with armed gangs marauding through the streets. Many of these speeches were defiant and grandiose, prompting Canadian journalist Tabatha Southey to tweet, "**Is there literally nothing that can stop America from self-congratulating for a few minutes?**"

Politicians and pundits also sought meaning by looking abroad. According to former President George W. Bush, "This is how election results are disputed in a Banana Republic." A number of pundits invoked the German putsches of the 1920s, including Hitler's Beer Hall Putsch, where right-wing gangs repeatedly attempted to overthrow the democratically elected Weimar government. Indeed, there were confederate flags in the Capitol building and one Trump supporter had worn a t-shirt with "Camp Auschwitz" printed on it. "Remember this day forever," President Trump tweeted, perhaps invoking historical refusals by far-right ideologues, including Hitler and Confederate proponents of the Lost Cause, to admit defeat, even after being conquered



Washington, D.C., January 06: Hundreds of Trump supporters raid the U.S. Capitol building moments after attending a rally at which the outgoing president repeated false claims of widespread voter fraud in the November elections.

and disarmed. Twitter blocked the President's account for 12 hours and warned that they may suspend him permanently.

In sectarian societies like the U.S., the future is uncertain, the past is hotly contested, and there is no shared present for those marinated in alternative facts. To understand what may happen next, I will be looking at culture first, and politics as a subset. Reactions to the events of January 6 revealed some of the cultural Lego blocks that are likely to constitute the future of U.S. politics. These historical and foreign analogies will be assembled and mobilized in ways that are both familiar and new.

The United States is not Weimar Germany, the collapsing Roman Republic, illiberal Venezuela, or authoritarian Turkey. Yet these are the moments and places that are on the minds of decision-makers and influencers, and the patterns they see will guide their choices.

Perhaps most disturbingly, sectarian violence, however clownish, was re-introduced into U.S. national politics to great effect. There is no telling what role sectarian violence is destined to play. In a heavily armed, fearful, deeply divided community, this is the Lego block I am most closely tracking. ►

Democratic theory scholar on Trump supporters over-running U.S. Capitol

JANUARY 8, 2021. The United States Capitol building is known as “the most recognized symbol of democratic government in the world.” But that wasn’t the case on January 6, when hundreds of pro-Trump supporters rioted the building as Congress began to certify the November 3 election results that would officially validate Joe Biden as the next U.S. president.

Professor Ashwini Vasanthakumar, Queen’s National Scholar in Legal and Political Philosophy, shares her critical examination of protests, democracy, and shared deliberative norms, set out below.

Yesterday’s events raise a number of questions of constitutional and criminal law. They also raise more profound questions about democracy and the state of democratic institutions and culture in America and farther afield.

Protest and Democracy

Protests are sometimes seen as a failure or disruption of democratic deliberation, but they play a crucial and ameliorative role in democratic dialogue. In addition to being a constitutionally protected individual right, protest is an important mode of political communication and expression, especially for those individuals and issues that get side-lined



Professor Ashwini Vasanthakumar, Queen’s National Scholar in Legal and Political Philosophy, shares her critical examination of protests, democracy, and shared deliberative norms regarding the events of January 6.

or marginalized in ordinary political processes. Our democracies are better because of protest.

In assessing when protests are playing this role, both the methods that protestors use and the ends they seek matter. Many of the civil disobedients we admire are those who sought to realize democratic values and correct problems in the democratic process.

Referring to the Trump supporters storming the legislative house as “protestors” is therefore inaccurate and misleading. By their own admission, their aims were to usurp the democratic process and to deny the authority of the government. Many of these supporters openly referred to a “revolution.”

Trump supporters’ sense of grievance, much advertised and mulled over, is belied by the very gentle policing they received. It is inconceivable that Black protestors behaving in this way would have reached the Capitol building, breached it, and then been “ushered” out. We know that unarmed and peaceful Black Lives Matter protestors were met with police violence, not police selfies. We know that women who protested the confirmation hearings of now-Justice Brett Kavanaugh were arrested. Black protestors are chastised for expressing anger, incivility, any damage to property; White pro-Trump protestors were indulged with sympathetic support from the President even as they vandalized the Capitol building.

There is a deeper problem with how right-wing violence, typically carried out by White men, is seen as “blowing off steam” or the result of mental illness; Black and Brown men and women, on the other hand, are regarded as inherently dangerous, with police violence against them rarely punished. For long, Trump supporters and their apologists have blamed others for not taking them seriously, but on January 6, it was precisely not being taken seriously that kept them alive.

Democracy and Shared Deliberative Space/Norms

There are many ways in which these events signal serious challenges to democratic institutions and



Members of the Proud Boys, one group among the hundreds of Trump supporters who violently stormed the U.S. Capitol in Washington on January 6, stand before police officers.

norms, and impart some lessons as we look to a Biden administration. These are not restricted to the United States. Right wing extremists have been storming parliaments around the world – Germany, Netherlands, Hungary – in recent years and faced relatively little pushback.

One lesson is a lesson against complacency. We should be vigilant when mainstream politicians are willing to court the far-right instead of dismissing them as silly or crazy. Irrespective of their personal views, this will be a constituency these politicians become beholden to. In Canada, I think there is the complacency of thinking we’re nothing like the U.S. Indigenous and Black people in Canada would disagree.

The founder of the Proud Boys is, after all, Canadian.

Another lesson is about the importance of ongoing deliberation and dialogue, including dialogue that is fraught and uncivil. We often worry about polarization, and how to reason, respect and deliberate together as citizens when we have such divergent values and commitments. This has long been cast as a problem of diversity. But I think the emerging problem will be the spread of conspiracist thinking, such as QAnon, on the internet and social media. The absence of a shared sense of reality, of common epistemic standards, and some minimal level of trust erodes the possibilities of deliberation and dialogue in a way that goes beyond polarization. ►

Securities regulation expert on GameStop stock surge

FEBRUARY 2, 2021. As the frenzy over small-time, videogame retailer GameStop continues, [Associate Dean Gail Henderson](#) explains what it's all about and shares her insight on how it could adversely affect the capital markets, and more.

I think GameStop provided everyone with a much-needed diversion and a feel-good, narrative about Main Street beating Wall Street at its own game. It also pushed short-selling and hedge funds into the popular imagination in a way we haven't seen before.

Short-selling is a way to make money by betting against a stock. Short-sellers borrow the stock from another investor or a broker, sell it at the current, high price, and then buy it back once the price drops, and pocket the difference. Short-selling is high risk, because the potential losses are infinite if the stock price doesn't fall but continues to rise – as it did last week with GameStop – and the short sellers are forced to buy it while the price is still high.



Hedge funds have a broad investment mandate to “beat the market,” that is, to generate a return above the market as a whole, using a range of techniques, including short-selling. To invest in a hedge fund, you need a lot of money, like in the six or seven figure range, that you're willing to lock in for a specified period of time. The hedge fund manager collects management fees for managing the fund, but also invests their own money.

Publicly-listed companies have long expressed concerns about what are referred to as “activist” short-sellers: hedge funds that take a short position on a company's stock, and then start sharing negative information, possibly on social media, which of course may negatively affect the stock price and help the short-seller win their bet.

The regulatory concern with activist short-sellers is that while the public companies are subject to strict disclosure obligations, and can be liable if they make misleading statements, activist short-sellers are not. Just in December, the Canadian Securities regulators announced [a consultation on this issue](#).

No-fee trading platforms like RobinHood and WealthSimple facilitate more frequent trading, and along with social media, helped make the GameStop revenge on the short-sellers possible. But at some point, these stock prices will have to come back down to earth, and investors who borrowed to get in on the action could end up in a deep hole. Another concern is that some investors will continue to chase the high of the big returns from last week, but just get in deeper and deeper.

But there are bigger concerns here as well. Securities regulators in Canada have a mandate “to foster fair and efficient capital markets” and confidence in those markets. Things like WallStreetBets are responding to the perception that the capital markets are like a casino, where the house, (in this case the house includes institutional investors like the hedge funds targeted by the GameStop short-squeeze), always wins. On the other hand, the more



the capital markets start to resemble a high-stakes poker game, the more this will undermine confidence in the fairness and efficiency of markets, and in turn harm the ability of the capital markets to serve their actual purpose, which is to finance the real economy, the companies making things like vaccines, ventilators, and masks.

Professor Gail Henderson, Associate Dean of Faculty Relations, researches and teaches in the areas of corporate law, corporate governance, corporate social responsibility, securities regulation, and the regulation of financial institutions.



International economic law scholar to join Queen's faculty

Since receiving his doctorate, Oluwatobiloba (Tobi) Moody, PhD'16, has advised Canada's federal and provincial governments on key intellectual property policy initiatives, and has overseen the establishment of the World Intellectual Property Organization's first Sub-Saharan African External Office in Nigeria. This fall, he will return to his alma mater as the Queen's National Scholar in International Economic Law.

"My scholarship experience as a doctoral student at Queen's Law was phenomenal," says Moody. "An opportunity to contribute to the training of a next generation of lawyers at Queen's Law, while still conducting important research in the area of international economic law, was a special attraction underlying my application."

Moody, who holds an LLB from the University of Ibadan in Nigeria and an LLM from the University of the Western Cape in Cape Town, South Africa, received a \$150,000 Vanier Canada Graduate Scholarship for his doctoral studies at Queen's. He wrote his thesis on "WIPO and the Reinforcement of the Nagoya Protocol."



Tobi Moody at Spring Convocation 2017 in Grant Hall, where his PhD in Law degree is conferred, is hooded by then-Dean Bill Flanagan.

Specializing in international intellectual property law, he has a particular focus on the protection of "traditional knowledge" held by Indigenous and other societies. His work intersects with other areas of international economic law, in particular international trade law and international human rights law.

Moody's most recent publications include a chapter on "Trade-Related Aspects of Traditional Knowledge Protection" in the volume *Indigenous Peoples and International Trade: Building an Equitable and Inclusive International Trade and Investment Agreement* (Cambridge University Press, 2020, eds. Risa Schwartz and John Borrows); and a featured article, "Climate Action and Sustainability: Indigenous Peoples are Part of the Solution," in the *WIPO Magazine* (January 2020).

As a post-doctoral fellow with the Centre for International Governance Innovation (CIGI) in Waterloo from 2017-2019, he collaborated with Canadian and multilateral institutions and researchers to shape CIGI's work in traditional knowledge governance.

Next, he returned to the WIPO – the organization with which he had served as a staff member from 2012 to 2014 and then as a consultant since 2016 – to establish the WIPO Nigeria Office (the organization's external office in that country), as well as take on the role of its Counsellor/Acting Head, interfacing with key IP institutions and stakeholders to promote awareness, training, and capacity-building in the field of IP and across WIPO's global services in Nigeria.

He will soon be bringing his wealth of experience to students at Queen's Law, where he chose to complete his PhD for three main reasons. "First, I was attracted by the reputation and prestige of the university and the law school. This extended to the strength of the faculty members, who are leading experts in their fields," he says. "Second, I loved the small and intimate nature of the graduate program, which I considered important for a deeper connection



Tobi Moody, PhD'16, shown in his graduation cap and gown with family members after receiving his doctoral degree, is returning to Queen's Law as the Queen's National Scholar in International Economic Law.

with the faculty, and greater personalized support for my research. Third, I was drawn by the prospect of living in the historic and beautiful city of Kingston."

When he begins his academic appointment, Tobi Moody will be enjoying all that again as he contributes to the school's research footprint and shares his specialized knowledge with students.

Dean Mark Walters says that he is "absolutely delighted" that Tobi will join the faculty. "Tobi will add intellectual depth and experience to an international law group at Queen's, which is probably the strongest in the country. He will also bring an infectious enthusiasm for teaching and learning. We are very fortunate."

Prison Law Clinic wins constitutional challenge

"Every year many people across Canada were being caught up by a provision that kept them in prison for no purpose at all," says Paul Quick, a staff lawyer with the [Queen's Prison Law Clinic](#) (QPLC).

"These prisoners weren't being punished or held accountable for anything, they were just being ignored by a system that did not value their liberty rights enough to look at their file and see they were already entitled to release."

Quick, with help from QPLC students, took action to change that situation. They presented a test case to the Ontario Superior Court of Justice in Kingston

challenging the constitutional validity of Section 163(3) of the Corrections and Conditional Release Regulations under Section 7 of the Charter, which protects an individual's rights to life, liberty, and security of the person.

"Generally, prisoners are entitled to be released once they have served two-thirds of their sentence," Quick explains. "They are still under sentence but serve the last third of it in the community under release conditions."

This "statutory release" for an individual may be suspended by the Correctional Service of Canada if

the person breaches a release condition (such as travelling outside boundaries set by the parole officer without prior approval), or if a parole officer decides the person's risk is no longer manageable in the community.

"When statutory release is suspended, the individual is arrested and brought back to prison," says Quick. "The Service then has 30 days to either cancel the suspension themselves or refer the matter to the Parole Board for review."

At this review, known as a "post-suspension hearing," the Parole Board can either cancel the suspension (release the individual) or revoke the release (keep the individual in prison until his or her new statutory release date, which is two-thirds of the time left on the sentence after the individual returned to prison).

The QPLC challenged the provision that gave the Parole Board of Canada 90 days to make this "post suspension decision" in all cases.

"Our case dealt with the common situation of prisoners who were being suspended near the end of their sentence and whose new statutory release date fell within the 90-day period for the Board's decision," explains Quick. "After this date, these individuals would always be entitled to automatic release as soon as the Board made any decision. The problem was that the Board did not have to make a decision for 90 days, so these prisoners were sitting in prison for no reason other than the Board's convenience."

In the end, the Court agreed with the QPLC that the impact of the 90-day timeframe on these prisoners was arbitrary and grossly disproportionate and amounted to a serious violation of their liberty rights under the Charter.

"This is an important victory for prisoners throughout the federal system," says QPLC Director,

Kathy Ferreira, Law'01. "The provision struck down in this case had been on the books for decades, and caused great frustration to prisoners and their lawyers across Canada. Thanks to this decision, prisoners will be released as soon as they are entitled to be, and this will provide certainty and stability as they reintegrate back into their workplaces, families, and communities."

Developing and winning this constitutional test case is a major achievement not only for the QPLC, but also for the students involved. Ryan Mullins, Law'20, worked on research at an early stage of planning the case. This academic year, Alexa Banister-Thompson, Law'21, conducted legal research, and helped prepare the factum and other materials for the court hearing.

"Being part of this successful case was extremely rewarding for two reasons," she says. "First, protecting the rights of our clients is very important to me. Oftentimes people think of prisons as 'out of sight, out of mind' but these are real people and their past mistakes do not strip them of their constitutionally protected rights. Second, it was great to see my research utilized in both the written and oral submissions."

"Working with both Kathy and Paul at the Prison Law Clinic has been the most valuable learning opportunity throughout my time in law school," adds Banister-Thompson. "Not only are they dedicated to teaching and supporting their students, but they resolutely advocate for one of the most marginalized populations in Canada. I will be forever grateful for the wisdom and experience I gained from the clinic."

The QPLC brought the case on behalf of the John Howard Society of Canada as a public-interest litigant. The decision on *John Howard Society of Canada v. Her Majesty the Queen* (2021 ONSC 380) is available on the [Canadian Legal Information Institute \(CanLII\) website](#).



In an important victory by the Queen's Prison Law Clinic for prisoners throughout the federal system, prisoners will be released as soon as they are entitled to be, and this will provide certainty and stability as they reintegrate back into their workplaces, families, and communities."

Elder Law Clinic celebrates a decade of experiential education

When the [Queen's Elder Law Clinic](#) opened for business in the fall of 2010, it offered five students a rare opportunity. Working with the clinic, the first of its kind at a Canadian law school, they not only gained practical experience in a burgeoning area of law, but also addressed a gap in legal services for seniors unable to afford a lawyer or unaware of their legal rights.

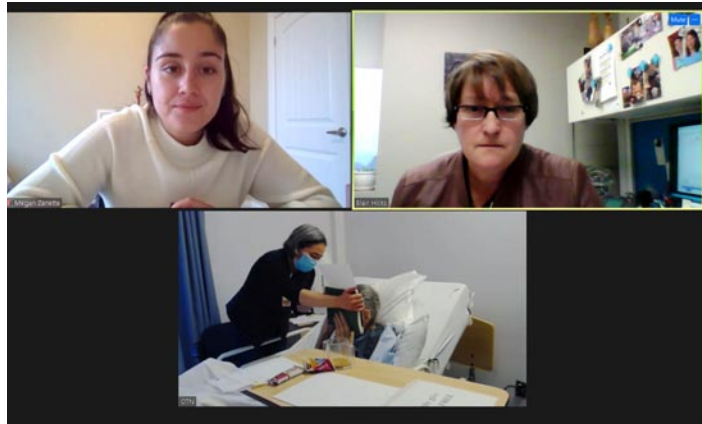
As Professor David Freedman, the clinic's founding director, said at the launch, "Many older adults simply don't have the financial means to retain lawyers in respect of matters like making a power of attorney or knowing what to do when they are having difficulties in a long-term care facility."

Since then, the demand for such pro bono services from low-income seniors in the Kingston area has risen dramatically, especially over the past five years. As a result, the number of students getting hands-on learning with elderly clients and the number of community organizations the clinic has partnered with have also seen big increases.

To respond to the demand for services and experiential learning, Blair Hicks, QELC Director since 2017, was appointed to the clinic one year earlier in a new part-time Review Counsel position. "QELC operations have exploded since 2016 when the course ran with eight student caseworkers and a modest client waitlist," she recalls. "It now boasts 16 students serving the community each academic year, as many as three summer caseworkers, a roster of student mentors, and an often, daunting client waitlist."

One of the greatest rewards from working with the QELC remains helping vulnerable senior citizens. "Our clients are beyond grateful for our free service, and also just for the simple act of connecting," says Hicks. Providing that much-needed assistance, in turn helps students hone their practice skills.

As a student caseworker, Robert Maratta, Law'15, drafted wills and powers of attorney documents for clients and gave several presentations to seniors on wills and access to health rights. "The QELC gave me my first experience as a lawyer assisting real clients," he



Queen's Elder Law Clinic student caseworker Megan Zanette, Law'22, and Director Blair Hicks participate via Microsoft Teams in a meeting with an elderly client in palliative care for the remote execution of a document amid the pandemic.

says. "We often worked with those in the community who were less privileged or disabled. I learned that empathy and compassion for my clients was just as important as understanding the complexities of their legal matters."

Now a corporate solicitor with Cunningham Swan Carty Little & Bonham LLP in Kingston, he reflects, "Being able to give-back to my community using the skills I was building as a student was very rewarding. It is still the part I love most about being a legal professional."

When John Siferd, Law'19, was a QELC caseworker, he advised on estate administration issues and prepared wills and powers of attorney. "The QELC's clients are some of the sweetest people around," he recalls. "It was a genuine pleasure helping them navigate estate administration issues and prepare their testamentary documents. I relished in the opportunity to engage with them directly during interviews and phone calls and hear their stories."

"I regularly assisted clients with varying physical and mental abilities ranging from poor eyesight and mobility problems to intellectual disabilities," he adds. "I learned to adapt to my client's personal circumstances in order to serve them in a way that suited their unique needs. In this way, the clinic

helped ingrain an attitude of empathy that informs my practice today."

Siferd, who summered and articulated at the Office of the Public Guardian and Trustee, is now an associate in the Estates, Trusts and Charities Practice Group at WeirFoulds LLP in Toronto. "The QELC provided me with a solid base in client and file management," he says. "It especially instilled in me the importance of keeping careful and thorough notes of client meetings and interactions."

Over the past few years, the program itself has also expanded to include more services such as basic applications for certificates of appointment (probate), and more public legal education and community outreach.

The clinic's first community partners, the Northumberland Community Legal Clinic in Cobourg, the Kingston Community Legal Clinic, and the Queen's Prison Law Clinic, were formed in 2016 under the directorship of Christian Hurley, now

Director of Admissions and Education with the Law Society of Newfoundland and Labrador. The latter partnership – that expanded QELC services to federal penitentiaries to assist the growing number of incarcerated seniors and the aging prison population – is an example of the synergy that developed when all five Queen's Law Clinics co-located to downtown Kingston in early 2015.

Local partners also include Kingston General Hospital, Providence Care, Kaymar Rehabilitation Inc., and long-term care facilities. "They routinely express their great appreciation for the unique service the QELC can provide for their patients (especially that students will, in a non-COVID year, see a client in their care facility)," says Hicks.

The pandemic has generated even more opportunities for new outreach and public legal education connections, particularly to provide basic but essential information on the importance of wills ►



Fall 2018: A Kingston-area senior receives free legal advice from Queen's Elder Law Clinic student caseworkers in the downtown Queen's Law Clinics office.

and powers of attorney, and on the clinic's services. Melanie Fishbein and Sara Franklin-White, both Law'22, gave an online presentation to Kaymar's social workers and personal support workers. Through new partnerships, Allysa Ciancio and Erin MacLellan, both Law'22, presented virtually to a geriatrics class on dementia for the Queen's School of Nursing, and Milan Singh-Cheema, Law'21, and Austin Pammett, Law'22, recorded a video podcast for the St. Lawrence College Student Association.

"Our clients generously provide consistently positive feedback directly to their student caseworkers for their personal service during the drafting process and also when their documents are finalized and the client's affairs are in better order," says Hicks. "For many seniors, accessing legal services is an intimidating process at the best of



Fall 2010: Professor David Freedman (middle), Director of the new Elder Law Clinic, with two of five student members: Nicole Walton, Law'12, and Katrina Keenan-Pelletier, Law'11

times. QELC students provide a professional, attentive, and welcoming setting for their clients to address their planning needs."

In response to COVID-19, the Ontario government implemented a regulation allowing the remote execution of wills and powers of attorney. That enabled the QELC to assist clients, including a number in palliative care, effectively. "One recent client described the QELC's service as 'the miracle he'd been searching for,' at a time of particular need," says Hicks. "Student caseworkers have experienced first-hand the obstacles facing more vulnerable members of the community, and the immediate impact of their work during pandemic restrictions."

One of those students is Megan Zanette, Law'22. "Allowing clients to execute their documents from the comfort of their homes using videoconference platforms has provided extra peace of mind to them," she explains. "During the pandemic, this has eliminated a lot of stress and fear, as normally clients would have to come to the clinic to sign documents."

Zanette and her fellow caseworkers each carry about 10 files at a time, providing great variety in their work. "Practically, I am learning how to draft legal documents and better understand the law," she says. "I am also learning how to better communicate professionally and empathetically with clients, and provide catered legal services based on their unique situations – skills that will be foundational in my legal career and cannot be fully learned within a classroom. Beyond this, I am learning how valuable our work as lawyers can be in one's life, and how fortunate I am to be in the position where I can help others and serve my community."

After its first 10 years and amid a global pandemic, the Queen's Elder Law Clinic is still going strong in its dual mission to provide students with practical experience and address a gap in legal services for seniors.

"Often, clients come to us anxious about the uncertainty of their futures, and without the QELC, would not be able to access the help they need and deserve," says Zanette. "As student caseworkers, we take pride in treating our clients with full respect and in helping them feel more comfortable and settled by planning for the future. This truly makes a difference in their lives and presents a really wonderful role to fulfill as a student."

From clinic student to lawyer and teacher

"It is important that all members of the community feel included in society and are not left in the shadows." That's the motto of Justin Turner, Law'18, who returned to the Queen's Law Clinics as Review Counsel last summer to supervise Queen's Legal Aid (QLA) students serving people with low incomes. "One of the things that I enjoy most is giving a voice to people who otherwise might not be heard because of financial or other societal barriers."

Turner was a QLA caseworker himself during his second year of law school, and then articulated with the Queen's Prison Law Clinic in 2018-19. "Returning to Queen's Legal Aid as a review counsel was a natural fit," he says. "I really enjoyed my time at Queen's Law and becoming a member of the Kingston community."

Now he's supervising students on a variety of cases, including criminal charges, provincial offences, landlord and tenant matters, and income security files. He also teaches part of the Clinical Litigation Practice course that covers such practical legal skills as managing a case file and preparing for a hearing. His particular focus is on income security files, an area he also teaches in the course.

QLA's work in income security involves assisting individuals who have been denied disability benefits under the Ontario Disability Support Program Act. A successful appeal at the Social Benefits Tribunal can have a significant impact on a person's financial stability. Student caseworkers must identify and gather supporting medical and other documentary evidence, may draft submissions in support of their case, and often appear before the Tribunal representing clients. "It's a great opportunity for students to develop their written and oral advocacy skills," he says.

Turner also brings his in-person clinic experience to students who are now providing free legal services and advice remotely to low-income residents of Kingston, Napanee and surrounding areas, and to Queen's University students. "In my view, the biggest challenge working during the COVID-19 pandemic is the length of time it takes to get some aspects of a file completed," he says. "During normal times, students and clients were able to meet at the clinic."

"As a result of restrictions in place," he continues, "students must conduct all meetings remotely, it takes longer to get documents from clients, and



Justin Turner, Law'18, a former Queen's Legal Aid student caseworker, is now Review Counsel with the poverty law clinic, where he "enjoys the satisfaction that students get when they see that the work that they are doing can really have a positive and profound impact on their clients."

there has been an increased reliance on electronic communication. This can be challenging for all involved, and more so for clients as they may have limited access to various technological platforms. In order to address these issues, we have the students do their best to work with clients to determine what works best for them, and then plan ahead accordingly."

At the end of the day, providing the best service to vulnerable clients – in normal times and in this time of social distancing – is what matters. Turner, who has done that as a student and now as a lawyer and teacher, says, "I really enjoy the satisfaction that students get when they see that the work that they are doing can really have a positive and profound impact on their clients."

Watch for a story next week on Jane Mundy, Law'18, Justin Turner's classmate and a new Review Counsel with both Queen's Legal Aid and the Queen's Family Law Clinic.

— LISA GRAHAM

New clinic lawyer helps break barriers to justice

“Helping clients who cannot otherwise afford legal assistance is an extremely rewarding part of my job,” says Jane Mundy, Law’18, who returned to the Queen’s Law Clinics this summer as Review Counsel for both Queen’s Legal Aid (QLA) and the Queen’s Family Law Clinic (QFLC). “Equally rewarding is working with student caseworkers and seeing them develop and grow confident in their skills as future lawyers.”

During her law school days, Mundy was a student caseworker with QLA and the Queen’s Prison Law Clinic. After graduation, she articulated with QLA and the Queen’s Business Law Clinic. “Participating in the clinics was the most rewarding part of my law school experience,” she says. “I benefitted immensely from the mentorship of my review counsel as a student and I am grateful for the opportunity to continue that mentorship tradition.”

Now in the role of supervising students, Mundy says she’s excited to be back at Queen’s Law because of its commitment to improving and expanding the clinical programs that provide valuable services to the community.

“The cost of legal services is a significant barrier to access to justice for many Canadians of moderate income and is prohibitive for those with low income,” she explains. “Other barriers to accessing legal services, including mental health challenges, addictions, disability, race and gender identity, disproportionately affect people with low income.

“I am privileged to have the opportunity to help people facing these barriers in my hometown,” continues Kingston native Mundy. “I look forward to helping them access justice through our services to achieve fair results.”

With QLA, she plays a lead role in serving residents of not only Kingston, but also of Napanee

and surrounding areas, as well as Queen’s University students. From criminal court to Small Claims Court, and from hearings before the Social Benefits, Social Security and Human Rights Tribunals to the Criminal Injuries Compensation and Landlord and Tenant Boards, the clinic provides clients with advice and representation in a wide range of matters.

As review counsel, in closely supervising student caseworkers, she reviews the work they do on their files. “Students take the lead in developing a legal strategy to resolve a client’s legal problem and a plan for moving forward with that strategy,” she explains. “I meet with students regularly to discuss their files and I review the correspondence they write and documents they prepare.”

Caseworkers enrolled in the Clinical Litigation Practice course for credit have weekly classes, which she – along with QLA Director Blair Crew and her fellow Review Counsel Justin Turner, Law’18 – helps develop and teach.

Working with QFLC Director Karla McGrath, LLM’13, Mundy supervises student caseworkers assisting low-income, self-representing Family Court litigants. Students complete documents for clients, help them navigate the Family Court process, and refer them to other family justice resources. “Students meet regularly with Karla to discuss and develop a plan of action for their files, including what documents they need to prepare,” says Mundy. “I review those documents before they are provided to self-representing clients or filed with the Family Court.”

In addition, she and McGrath develop and teach weekly classes in the QFLC credit course.

Mundy’s return in the middle of a pandemic has been especially helpful. To her, the greatest challenge clinic staff and students are facing amid

COVID-19 is working around clients’ limited access to technology that is now essential for them to participate in the justice system. “Remote systems such as online filing and video court require the use of technology such as a phone or a computer,” she explains. “The device alone is not enough, one also needs a phone plan, minutes, or internet access to meaningfully use this technology. For many of our clients, one or more of these pieces is missing making participation unaffordable or impossible.”

What further complicates the situation, she says, is that the Queen’s Law Clinics office in downtown Kingston is closed to the public. “We must find ways for clients to provide us with documents that they used to provide in person,” she says. “Students are not able to facilitate access to technology by having clients come to our offices and many other free public services in the area that might have helped connect clients to technology are closed or offering limited services.”

Students are helping clients by relaying communications between clients and courts, tribunals, and/or third parties. “Student caseworkers have been able to appear on behalf of clients in remote court appearances and have come up with creative ways for clients to provide documents to us or for us to offer such essential services as commissioning of legal documents to clients remotely,” she says.

“We will continue to hone our responses to new remote systems being developed now,” Mundy adds. “We anticipate many will continue to be used post-pandemic.”



Jane Mundy, Law’18, a former student caseworker with Queen’s Legal Aid and the Queen’s Prison Law Clinic, is now Review Counsel with two clinics, where she supervises students helping low-income people “access justice to achieve fair results.”

Clinic articling student gets exceptional practical experience

"I find it very rewarding to serve prisoners, such a vulnerable and often misunderstood group of individuals." Those are the words of John Luscombe, Law'20, who is articling with the Queen's Prison Law Clinic (QPLC). "It is evident that the work we do is so important given that our clients often have nowhere else to turn. They always seem very grateful for the help."

With clients in Kingston-area penitentiaries and in the 130km-away Warkworth Institution, his work spans across a wide range of matters relating to prison and parole. That work includes representing clients at Disciplinary Court when they are given an institutional charge, assisting prisoners at their Parole Board hearings, drafting written grievances, and bringing forth human rights complaints.

Working with the QPLC, the first clinic of its kind in a Canadian law school, provides Luscombe with exceptional opportunities. "When I go into Disciplinary Court at the institutions, I am the one who's in there arguing my client's case and making submissions to the court," explains Luscombe. "When I'm assisting a client at a parole hearing, I'm not observing another lawyer give submissions. Instead, I'm the one who is giving submissions to the board. These are experiences and a level of involvement rarely available to a student completing their articles."

As a student, Luscombe also got a lot of hands-on experience working with the Queen's Business Law Clinic. "I really enjoyed the chance, as a student, to be able to do work that had a real-world impact," he says. "During my time there, I was able to develop so many skills: meeting with and interviewing clients, managing my own caseload, properly docketing and billing for my time, and learning all of the organizational procedures that go into taking a file from open to close. These skills are applicable across all areas of law."

The best part of his QPLC experience, he says, was "being able to help local entrepreneurs at a time when their businesses were just beginning, and they really needed the help and support."

That experiential learning as a student attracted him to the articling position with the QPLC. "Being a student with the clinics, I was really able to see the importance of pro bono legal work and the positive impact that we are able to have on the community," he says.

One big thing that's different from his law student



John Luscombe, Law'20, is articling with the Queen's Prison Law Clinic, where he is making a positive impact providing legal services to prisoners.

days is serving clients remotely during a global pandemic. "At the Prison Law Clinic, we are in the unique position where our clients don't have phone numbers or email addresses that we can reach them at," he explains. "Prior to the pandemic, we relied very heavily on scheduling in-person visits. When the pandemic hit, the institutions were closed for visits entirely. The clinic had to really adapt and rely more heavily on written correspondence and urging clients to phone us on a regular basis. The whole system for answering the phones and transferring the phone line to one another was overhauled. Parole hearings also moved to being over the phone, which was another change that the QPLC was forced to swiftly adapt to."

While visits resumed at the institutions in late September, appointment times are still very limited, and QPLC students and staff continue to work with clients the best they can remotely. "I think that everyone understands these are uncharted waters," says Luscombe, "but I've been really impressed with how well the Prison Law Clinic has been able to quickly adapt and continue to provide top-notch legal services to our clients."

Clinic Briefs

Queen's Business Law Clinic

In addition to providing excellent legal services to clients, the QBLC has been educating the public. Student caseworkers, invited to workshops by community partners KEYS Job Centre and Kingston Economic Development Corporation, discussed legal issues facing start-up businesses in Canada. Since the fall, the 24 caseworkers have been working diligently on 150+ client files. The QBLC is also working on projects with the Queen's Venture Law Club, the Queen's IP Law Club, and the Queen's Tax Law Club to further bridge access to legal information problems facing small business owners in Kingston and surrounding areas.

Queen's Elder Law Clinic

QELC student caseworkers carefully prioritized their work to assist the most vulnerable clients first, including those in long-term care and hospital. Due to the remote meeting and signing process, almost all client work has moved forward, even during the provincial-wide lockdown. Student caseworkers are taking pride in teaching less tech-savvy clients how to work on such remote platforms as Skype, Teams, Zoom, and Duo. The pandemic has generated opportunities for new outreach and public legal education connections, particularly to provide basic but essential information on the importance of wills and powers of attorney.

Queen's Family Law Clinic

While still managing client files, student caseworkers at the QFLC are also busy delivering legal education to Kingston and the surrounding community. During the winter semester, each student partners with a local group or agency to whom they can deliver legal information about family law and family justice services available to people with low income. In addition to disseminating much-needed information, these students also serve as ambassadors to the QFLC and to all of the Queen's Law Clinics while learning about their justice partners and the importance of networking.

The Queen's Law Clinics gratefully acknowledge the support of Legal Aid Ontario, the Law Foundation of Ontario, Pro Bono Students Canada, the Class of Law'81, the United Way of KFL&A, and alumni and industry sponsors.



GREG BLACK

Queen's Prison Law Clinic

In the fall, QPLC's Law 418 was close to pre-COVID "business as usual." Students attended prisons for meetings and Disciplinary Court but also answered phones to maintain contact and limit visits. Mid-December the institutions served by the clinic closed. In January, some Disciplinary Court hearings started being held remotely and the QPLC's assistance to clients continues over the phone. The clinic is hoping to end the term on a high note with some in-person attendance potential in late March. QPLC's Law 419 is entirely remote and continues to advance the systemic interests of clients.

Queen's Legal Aid

While QLA students work on legal matters primarily for low-income residents of Kingston and the surrounding area, the clinic also provides services of unique interest to Queen's students. In the 2020 fall term, all of the students participating in QLA's Clinical Litigation Practice course received training on how to conduct appeals before the University Student Appeal Board (USAB) from Professors Nick Bala and David Freedman, who chair that board. The USAB serves as the final court of appeal for decisions on academic and disciplinary matters at Queen's University.

Using the history of anti-Black racism to shape a more just future

High-profile U.S. cases of police brutality against Black people last year sparked protests around the world, exposing the degree of racial injustice that still exists even in “officially” diverse countries, Canada included. Social media put racism under an unrelenting spotlight. Political and legal institutions began to take action. Will all that be enough to eventually end anti-Black racism in Canada? Not according to Dhaman Kissoon, Law’89, a Toronto lawyer who has been teaching Racism and Canadian Legal Culture at Queen’s Law for 30 years.

“Suddenly, after George Floyd’s murder on our TVs and our phones, all these institutions were coming on board and doing things,” Kissoon says in his blunt way. “Where were they before? These issues may not have been as publicized as they are now, but they existed.”

Many past anti-Black racism protests by different groups have been single-issue driven, he explains; “their impacts were fleeting and then they disappeared. There was no real concerted effort before. I don’t think that will be the case with Black Lives Matter; it has grown stronger over its four years.”

In his course, Kissoon covers the use of law in particular moments of Canadian social history characterized by racism, including anti-Black racism. He starts with slavery in Canada, going back to the early 1600s and showing how laws were used to establish ownership of other human beings. “It is my argument that laws forbidding property ownership historically made Black people second-class citizens,” he explains. “Very, very few have ever been able to catch up to par because they have never been treated as full, first-class citizens; part of the reason clearly goes back to the days of slavery.”

Another of Kissoon’s topics is the destruction of Africville, a Black community (originally American-expelled Loyalists) outside of Halifax. “Africville existed, even thrived, from about 1800 to the 1970s, when people with titled ownership of desirable oceanside land next to the Bedford Basin were either forcefully removed or cajoled to move from the land,” he says. “The reason offered to these people was that

it was in their best interest; when they moved to the Halifax city area, life would be better for them.” Watching a CBC documentary on Africville, he recalls hearing an elderly woman who had been forced out say, “We were never as happy as when we were living in Africville. Our young people never got into as much trouble as when we moved to Halifax.” Kissoon calls it “a complete misunderstanding and/or an ignorance of these people’s culture.”

Then his course syllabus jumps ahead to the present, including issues of racism in employment, health care, and the criminal justice system, especially in policing. During the pandemic, he points out, Canadian studies prove that poor people and visible minorities are getting the worst care and suffering the highest rates of COVID-19. Why does such injury and negligence persist? “Because,” says Kissoon, “there is no proper education about the issues we are dealing with. Year after year in my class, students say, ‘I didn’t know that slavery once existed in Canada’ or ‘I never heard about Africville.’ That’s what Black History Month aims to fix. Those are significant moments in Canadian history, but students are not learning about them until they are in second or third year of law school.”

He sees three main reasons why these racism issues are not properly addressed: a misunderstanding of the issues; thinking that the issues aren’t important enough; and a degree of impotence in dealing with them. “Canadians tend to respond after the fact,” he says, “so it’s good that Black Lives Matter has elevated many issues to the forefront. In general, Canada isn’t proactive; when there’s an incident, we rally as good guys and gals and say, ‘OK, this is what we’re going to do about that.’ The problem is, this is what we should have been doing the whole time. We are playing catch-up with racism, and by the time we are supposedly caught up, there’s another incident or issue to be addressed, so then we’re lagging behind again.”

When the Black Lives Matter movement first came to Canada in 2016, its members and their non-Black supporters were mistakenly viewed as a bunch of young, loud-mouthed kids trying to go viral.



Dhaman Kissoon, Law’89, founder of criminal and immigration law firm Kissoon & Associates in Toronto and 30-year teacher of Racism and Canadian Legal Culture at Queen’s Law, talks about how media and social media are bringing racism issues to the forefront like never before and how Black Lives Matter may be strong enough to keep them there.

“Unfortunately, their message – that Canada’s Black people in many walks of life are being treated as second-class citizens, and that has to change – may have been missed simply because at that time they lacked the means or sophistication to present it in a manner that engaged the people with the power.” That is no longer true.

“The millions shocked by George Floyd’s cruel death last year realized that such evils must not continue,” he adds. “Yet they do. Week after week in the U.S. and Canada, we see videos of young Black men being violently attacked by police. Thankfully, we are also seeing more judges prepared to call out police officers and other decision-makers regarding issues of racism.” Though he can see committees currently at work on racism in juries and sentencing, in hospitals, in penal institutions, school boards, etc., Kissoon says it will remain far too little “until many more people come to grips with the seriousness of the problems we’re dealing with.”

While his course’s main topics have remained basically the same over the years, issues of the day

often come to the forefront for discussion. Kissoon credits the media and social media for playing a major role in creating this greater awareness.

“Historically, people were able to ‘get away with murder,’” he says, “but more and more we are seeing cases like George Floyd’s come to light because someone recorded the cruelty and posted it for the world to see. More importantly, it was posted for the decision-makers to see, and that is what forced them to act.”

What else does Kissoon, who has won four Law Students’ Society awards for teaching excellence, find is needed to end anti-Black racism in Canadian legal culture? “The most disappointing issue, in my view, is the lack of awareness of the deep historical roots of racism in Canada,” he replies. “Schools should be encouraged, nay, forced, to teach this history. To paraphrase the adage, if we do not recognize historical errors, we are bound to repeat them. In this regard, Canada’s is one of the educational systems that is woefully lacking.”

— LISA GRAHAM

Addressing systemic racism and increasing Black representation in the legal profession, a student's perspective

Nas Mumin, Law'21, is one of the school's latest Black student leaders. He is President of the Black Law Student's Association-Queen's Chapter and one of three Black students serving on the [Anti-Racism Working Group](#). From his particular vantage point, he talks about his chapter's initiatives, the importance of the working group at a critical time, his ideas on how to increase Black representation in law schools and in the legal profession, and why prospective students should choose Queen's Law.



Nas Mumin, Law'21, President of the Black Law Student's Association-Queen's Chapter and a student member of the school's Anti-Racism Working Group, shares his views.

What attracted you to Queen's Law?

What attracted me to Queen's Law was its reputation as a top law school, its International Law Programs at the Bader International Study Centre (the "Castle"), and its tuition costs compared to other law schools in Ontario. Moreover, I heard about the strong Queen's alumni network and I wanted to go to a university where I knew no one who had attended previously to force myself to meet new people.

What has BLSA-Queen's done so far this year and what are your plans for the rest of the term?

I got involved in the Queen's University chapter of the Black Law Students' Association in my first year. Since then, the group has grown from approximately three members to nine members and counting this year. Most of the efforts of BLSA-Queen's this year have been centered around the Anti-Racism Working Group and increasing membership amongst our Black identified 1L and 2L law students.

This semester, we are planning a student-led panel for prospective Black law students on why they should choose Queen's Law. Moreover, for Black History Month, we are doing a series of posts on our Instagram account about why Black history and law are important to BLSA members and we will highlight prominent historical Black lawyers in the Canadian legal profession. For more information, please follow us on Instagram @blsaqueenslaw.

What are you doing in your role on the Anti-Racism Working Group?

My role is to bring a Black student's perspective to the working group in terms of how to address issues of systemic racism within the confines of legal education at Queen's University. One way I helped bring that perspective was addressing the issue of low enrolment numbers of Black law students at

Queen's University. As the only Black law student within my graduating class, I knew it was pertinent to address this issue.

The working group advocated for the introduction of a separate application stream for prospective Black law students. It was approved in the fall semester and will be implemented in the 2021-2022 application cycle. Moreover, the members and I also believed it was important for Queen's Law to provide more legal education on anti-Black racism within the school's law courses. For instance, the working group was recently able to help successfully implement extending the Racism and Canadian Legal Culture course to a full term.

What would you say is the importance of this working group amid this period of social friction and change?

The working group I believe is the first time Queen's Law has gathered members from diverse stakeholders (faculty, staff, students, administration) of the law program, to come together and formulate partnerships with external organizations, and bring recommendations to help address anti-Black systemic racism issues in legal education. This is an important first step because it shows the law school is taking this issue seriously and is a priority. I do want to mention that it is not the first time that students and members of the Queen's Law community brought some of these systemic issues to light. Hence, although the working group has the potential to be a catalyst and help spearhead addressing longstanding systemic racism issues in legal education, the successful implementation of our recommendations at the end of this academic year can only occur with support from the law school administration. I am optimistic that the working group's findings will have this support.

How do you think Black representation can be increased in law school and in the legal profession?

In the fall semester of 2020, I wrote an essay in (adjunct Professor) Dhaman Kissoon's course on Racism and Canadian Legal Education. There, I provided a few key recommendations on how to increase Black representation in law school and the legal profession. First, to determine the scope of the issue, more race-based data is needed to be collected to accurately illustrate the extent of anti-Black systemic racism in the legal profession. All relevant stakeholders, from law schools to provincial and territorial law societies, must commit to this.

Second, there should be a better method to ensure all law firms implement objective recruitment and selection criteria for new hires. At the judiciary level, provincial and federal governments must commit to appointing BIPOC members of the judiciary who are representative of the Canadian population. Last, at the law school level, affirmative action and support programs must be implemented to increase Black enrolment in law schools. Some examples include having a separate stream for Black applicants and offering a bursary based on financial need to Black Law students (the "Cecil Allan Fraser Bursary"). I am proud of Queen's Law for approving these recommendations this past academic year.

What would you tell a Black prospective student who is considering applying to Queen's Law?

The only way to increase Black law student representation at Queen's is to take the first step and apply. At Queen's, there is a community for Black law students, and it is growing. Moreover, the support of the alumni network at the law school is something that cannot be understated. At the end of the day, Queen's Law will open your door to a diverse array of legal fields. To learn more about the Black law student experience at Queen's, I encourage you to attend the BLSA-Queen's student panel on "Why Queen's Law?" on March 10 from 5:00 pm to 6:30 pm.

Queen's instructor appears in appeal on systemic racism in sentencing Black offenders

Annamaria Enenajor, who teaches Queen's Law students about bias and criminal justice system outcomes, argued her subject material before the Ontario Court of Appeal on February 11. She represents the non-profit charitable organization Urban Alliance on Race Relations (UARR), one of eight organizations and coalitions granted special status to act as interveners on the appeal for *R. v. Morris*. The issue, for which the court reserved judgment, is how much weight judges should give to systemic racism when sentencing Black offenders.

Kevin Morris – who had been convicted of possessing an unauthorized firearm, possessing a prohibited firearm with ammunition, and carrying a concealed weapon – was sentenced to one year in 2018 though the Crown prosecutor requested four to four and a half years.

In this Q&A, Annamaria Enenajor, a partner with Ruby Shiller Enenajor DiGiuseppe in Toronto, shares her insights on this important case that may result in a principle for courts to consider systemic disadvantages Black offenders face when sentencing as is done with Indigenous offenders following the Gladue principle.

What is the Crown arguing in the *R. v. Morris* appeal?

The Crown believes that the judge was wrong in handing down such a low sentence for the offence and decided to appeal it, arguing that the sentencing judge's approach overemphasized systemic and background factors, resulting in a disproportionately low sentence given the seriousness of the gun offence.

What is the position of the Urban Alliance on Race Relations on the case?

The position of the Urban Alliance is that the approach taken by the sentencing judge was correct. He appropriately took into consideration the systemic and background factors that impacted the accused Kevin Morris and weighed them carefully in determining the correct sentence.

What are your main arguments?

The UARR has three submissions in this case. First, in sentencing cases, factors such as flight from the police are often considered aggravating on sentence. The Urban Alliance argues that a proper approach to assessing a fact such as flight from the police requires a consideration of systemic and background factors. Second, systemic and background factors are relevant to the operation of general deterrence. It is often assumed that the higher the sentence, the greater the deterrence to the community. However, social science evidence demonstrates that the increase in custodial sentences actually produce crimes rather than deter them, meaning that increases in custodial sentences actually work against the principle of general deterrence. Finally, we submitted that systemic and background factors are relevant to the principle of denunciation for non-Indigenous offenders.

How does your work on this case tie in with your *Bias in the Criminal Justice System Outcomes* course?

My work in this case is intimately tied to the subject matter of my course. One of the modules we examined is sentencing. We examine the over-representation of both Indigenous and Black offenders in our criminal justice system and the gradual increase of incarceration rates over the last two decades. The questions posed by this appeal are in direct response to that phenomenon. In the course, we explore the way that our criminal justice system acknowledges, ignores, confronts, and responds to this reality through the evolution of law and the implementation of substantive rules. I think we are witnessing an evolution happening currently on this question as courts have become far more literate in their understanding of the operation of systemic racism than the last time this question came before the Ontario Court of Appeal. But we haven't come far enough. We talk about that evolution in class.



Annamaria Enenajor, teacher of *Bias and Criminal Justice System Outcomes*, may have become a part of history on February 11 as she argued her subject material before the Ontario Court of Appeal for a case that may, when the court makes a decision, result in a principle for courts to consider systemic disadvantages Black offenders face when sentencing.

We also discuss the role of passionate, zealous, and fearless advocacy in pushing the courts towards progress. I encouraged my students to watch the submissions on this appeal because, based on the counsel who were appearing, I had no doubt that they would witness some incredible oral advocacy.

What do you want your students – and all people – to take away from this appeal?

This is not the first time that the issue that is currently before the court was litigated. Over 15 years ago the Ontario Court of Appeal considered the question of whether to take into account systemic and background factors such as systemic

racism in the sentencing of offenders. They chose not to do so for various reasons. The question is now before the courts again, but this time we're bringing the cavalry, so to speak.

What I want people to take away from this appeal is that just because you fail once doesn't mean you should stop trying. I have great faith that this time we will get through to the court. Our courts and our laws are always evolving. Never give up fighting the good fight just because you have failed once.

For the latest information on this important appeal, check out Annamaria Enenajor's posts on [Twitter](#).

Federal government's top lawyer, a Law'84 grad, saluted for professionalism and civility

As Chief General Counsel with the Department of Justice, Rob Frater, Law'84, is involved in much of the major litigation that's conducted on behalf of the Government of Canada. This has put him front-and-centre representing Ottawa in many high-profile cases that have made headlines in recent years. Currently, Frater is serving as Ottawa's lead counsel in the Meng Wanzhou extradition proceedings now underway in Vancouver.

He's done all this work demonstrating an exemplary knowledge of the law, integrity, fairness, and civility. Those are the criteria the judging panel



Rob Frater, Law'84, Chief General Counsel with the Department of Justice Canada (shown in 2015 with his Queen's Law Cromwell Award), is the 2020 winner of The Advocates' Society's Catzman Award for Professionalism and Civility.

seek when considering the nominees for the Catzman Award for Professionalism and Civility.

And those are precisely the attributes for which Frater, the 2020 winner of the Catzman Award from The Advocates' Society, is known and that have served him well in his long, distinguished career at the federal Department of Justice.

"The Government of Canada is a huge place. When you're involved in sensitive litigation, there'll always be a wide range of opinions from a wide variety of sources about how cases should be handled," he says. "Getting to a position involves extensive consultation, and it's very important to listen to others' views. Resolving disagreements requires respectful dialogue."

As Chief General Counsel, a position he has held for five years, Frater provides advice to senior decision makers in Ottawa on a range of litigation and policy matters. He also conducts appeals to the Supreme Court of Canada and other appeal courts.

During his student days, arguing such cases wasn't a role that Frater ever envisioned for himself, much less one that he aspired to. The Richmond Hill native came to Queen's Law in the autumn of 1981 intent on a career in international law. That all changed when at the end of first year, he landed a summer job at the Crown Attorney's office in Newmarket. The next summer, he did legal research for Professor Ron Price. Those experiences steered him toward working in the field of criminal law. Frater joined the Department of Justice in 1986 and never looked back. Next year will mark his 35th year with the federal government.

His many career accomplishments and sterling reputation aside, Frater confides that he had no real

expectations of winning the Catzman Award, which usually goes to a lawyer in private practice. "My colleagues put forward my name and I was honoured just to be nominated," he says. "That and the fact Marvin Catzman was such a distinguished jurist made it very special for me win this award."

The Ottawa resident was honoured in a virtual ceremony that was part of the September 22 opening of the Opening of the Courts of Ontario. Like so many other Canadians during the COVID-19 pandemic, Frater has been working from home lately, and so he didn't travel to Toronto for the event.

"My dining room table is now my desk. I think I've become familiar with every video platform going," he says with a laugh. "There's no end of meetings to attend, and, if anything, my workload only seems to have increased during the pandemic."

Despite this, he finds himself musing about his possible retirement in 2021 and about finally having time for things on his "to-do" list. For one, he hopes to visit Queen's Law and deliver the 2020 McCarthy Tetrault LLP Lecture in Legal Ethics and Professional Responsibility. He was scheduled to do so in March; however, the event was postponed because of the pandemic.

Frater is still deciding what to talk about in his lecture, but one topic he might expound upon is the wisdom of law students and young lawyers following in his footsteps by practising in the public service.

"Generally speaking, you'll get more opportunities to actually argue cases – not just motions – earlier in your career than you would in the private sector, particularly in big firms. If you want to litigate, there is no substitute for getting frequent opportunities to be on your feet," says Frater.

— KEN CUTHBERTSON

The Queen's Law winners of the Catzman Award

The Catzman Award was created in 2008 by the family of the late Ontario Court of Appeal Judge Marvin A. Catzman, together with The Advocates' Society and the Chief Justice of Ontario's Advisory Committee on Professionalism.

Robert Frater is the fifth Queen's Law grad to receive the Catzman Award in the 11 years it has been awarded.

Other alumni to have done so include:

Bryan A. Carroll, Law'71 (a co-winner in 2011);

Connie Reeve, Law'82 (2012);

Donald Bayne, Law'69 (2016); and

Gregory Richards, Law'79 (2019).

Law'07 grad a 'Rising Star' in advancing Indigenous rights and interests

"I have always been driven to effect change for Indigenous Nations, communities and peoples," says Jaimie Lickers, Law'07. In a career that already includes successfully representing Indigenous people in Canada in a host of landmark decisions, she has excelled as a changemaker. For her work, Lexpert magazine has named her one of its 2020 "Rising Stars: Leading Lawyers Under 40."

"For over a decade, I was able to advance Indigenous rights in Canada through the legal system; by negotiating change in that system and by litigating rights issues in the Courts," she says.

Lickers became Gowling WLG's first-ever Aboriginal woman partner and led the firm's national Indigenous Law Group. As a litigator with the firm, she took on, and won, important cases affecting the legal status and lives of Indigenous people. Two of them saw her appear before the Supreme Court of Canada: *Daniels vs. Canada*, representing the Assembly of First Nations on whether Métis and non-status Indians are "Indians" under the Constitution; and *Chippewas of the Thames First Nation v. Enbridge Pipelines*, representing the Chiefs of Ontario on the adequacy of consultation relating to a pipeline development. Three other cases, *Foster and Howse*, *Wells*, and *Abbott* took her to the Federal Court, where she fought for the rights of non-status Indians who applied for membership in the new Qalipu Mi'kmaq Band. At Gowling WLG, she also structured and drafted trusts for over 25 First Nations with assets totalling \$1 billion, expanding their wealth, economic development, and autonomy.

Building on that work, in October she joined CIBC as VP of Indigenous Markets. "Now I can advance Indigenous economic interests by leading a team of Indigenous trust and lending experts at the Bank," she says. "Together, we are working to advance economic reconciliation in Canada."

Guiding her throughout all that work are introductory remarks presented to her class when they arrived at Queen's Law in September 2004. "I will never forget sitting in the auditorium in the Law Building on my first day of law school," Lickers recalls. "During our welcoming address, Dean Alison Harvison Young delivered an important message: the legal community is small and our reputations in that



First Nations champion Jaimie Lickers, Law'07, is among Lexpert's Rising Stars, receiving an award that honours Canadian lawyers under the age of 40 who are at the top of the legal profession.

community just started. Of course, it goes without saying that I received a world class education at Queen's, but that message from the Dean has guided my career."

It's also advice Lickers, who became a member of the Dean's Council last year, now passes on to law students and new lawyers. "The most important asset you will hold throughout your career is your reputation; and your reputation among your colleagues is as important as the reputation you cultivate with your clients," she says. "The level of integrity with which you act will define you and your career."

— LISA GRAHAM

Law'10 grad contributes to Canada's Bill C-22

Nathaniel Erskine-Smith, Law'10 (Artsci'07), has long advocated for decriminalizing the possession of drugs. One major reason is to combat the crisis the country is facing, having seen more than 17,000 Canadians die of opioid overdoses since 2016. As a Liberal MP, he proposed two private member's bills: one on decriminalization and another to encourage the use of diversion methods in drug possession charges. The diversion methods in his second bill are now part of the federal government's Bill C-22 to repeal mandatory minimum sentences, tabled on February 18.

"I introduced my bill, C-236, to push the government to take stronger action to treat drug use as a health issue, and never expected to see it become government legislation so quickly," says Erskine-Smith, who has served as MP for the Toronto riding of Beaches-East York since 2015. "While Bill C-22 renders C-236 moot procedurally, it means that the substance of my legislative effort will unquestionably become law and it marks a significant step forward for evidence-based justice and drug policy reform."

Earlier this month, Erskine-Smith spoke about his two bills on a podcast with Maitland Shaheen, Law'22, producer and host of Queen's Law's Pro Bono Radio.

"I'm always happy to participate in any initiative at Queen's Law," he says. "But it's especially nice to see Queen's Law students engaged in and focused on substantive discussions around sensible drug policy and reforming our outdated and harmful laws."

Erskine-Smith, the 2016 winner of his alma mater's Dan Soberman Outstanding Young Alumni Award, has some advice for law students and junior members of the legal profession who are interested in careers in politics. "There are many different paths to politics, but my best advice is to get involved in public interest advocacy and election campaigns for practical experience, and to remember that you succeed when you are part of a community," he says. "For me, that certainly meant my lifelong connections in Beaches-East York, but I also wouldn't have succeeded in the nomination process without

our Queen's community, and friends who were critical early donors and volunteers.

"And it may not seem obvious, but my studies in political/legal philosophy and jurisprudence are a big part of the way I think of my role as an MP and how I conduct myself in that role."

Listen to the podcast, "Decriminalizing Drug Possession with MP Nathaniel Erskine-Smith," on Pro Bono Radio.

Read what MP Erskine-Smith told Queen's Law Reports about the legalization of cannabis before and after it became law in Canada.



Liberal MP Nathaniel Erskine-Smith, Law'10, spoke on a Queen's Law Pro Bono Radio podcast about his two private member's bills, one of which now forms a critical component of Canada's bill to repeal mandatory minimum sentences.

Helping legal professionals and law students improve their mental health

“A student’s journey through law school, articling, and the bar admission course is very stressful, and then the new lawyer enters the very stressful legal profession. Everyone needs to work on their mental health, particularly lawyers.” These are the words of Anne-Marie Hourigan, Law’84, Vice-Chair of the Board of Directors of the Mental Health Commission of Canada (MHCC). With mental health more crucial than ever amid COVID-19, among her roles is to increase awareness of the issue and to connect the MHCC with people who could benefit from its numerous programs and resources.

Leading MHCC’s initiatives is Ed Mantler, VP of Programs & Priorities, who has evidence on why it’s important for legal professionals and law students to do things that will improve their mental health. “Certain professionals – lawyers, physicians, and first responders – have a much higher likelihood of being among the half-million people across the country off work every week because of a mental health problem or illness,” he says. “Part of the reason is due to the very nature of their work; it’s very trauma-centric. Lawyers are hearing and talking about trauma or protecting clients from trauma every day. There’s a direct link between exposure to trauma – whether it’s your own or someone else’s – and mental health consequences down the road.”

People in those professions, he adds, “tend to be the most reticent to say, ‘I’m having difficulty and I need to reach out for help.’ They lose the opportunity for early intervention, when simply talking to someone or doing some cognitive behavioral exercises might resolve the issue. Instead, it’s pushed under the carpet and allowed to progress to where it becomes more problematic.”

Using an analogy of cutting a finger at work, Mantler explains: “I wouldn’t hesitate to go to the first aid kit and put a band-aid on it right away. If it became infected, I wouldn’t hide it and remain silent until my arm was gangrenous and had to be removed. But when I’m having a psychological problem and am worried what people will think of me, if they’ll ever trust me again, and if it will cost me my job, I’m keeping that problem hidden until I won’t be able to cope and may be off work for a long time.

“The frightening statistic,” he continues, “is about three-quarters of adults who have a mental health diagnosis will say that they’ve been having those symptoms since their late teens or early 20s. Many people suffer in silence for 30 years before seeking their first help for depression, which by then is ingrained.”

“Everyone needs to work on their mental health, lawyers in particular,” adds Hourigan. “They’re not exempt from the statistics. We’ve all heard that one in five Canadians has a mental health condition or problem. At the Commission, we say it’s ‘five in five’ because when one person has a mental health problem or condition, the other four people around that person are affected, whether they’re colleagues, employers, family members, friends, and/or coaches.”

COVID-19 magnifies mental health issues

Daily life was stressful enough for many people, then along came the global pandemic almost a year ago. The MHCC has a measure of COVID’s effect on mental health from its work with partner organizations. The percentage of people in Canada reporting their mental health and well-being as being very good, strong, or excellent fell from almost 70 per cent in 2019 to about 40 per cent late in fall 2020.

“Lawyers work in a highly pressurized environment, often in a very adversarial situation, and are three times more likely than other professionals to suffer from depression,” says Hourigan. “During COVID when people are working from home, doing a trial or a tribunal hearing from their living room on their laptop, and then having to deal with their kids and make dinner, there is no time to decompress and get rid of the stress.”

Mantler points to the growing number of lawyers in leadership roles becoming champions in sharing stories about their own experiences with mental health issues. “That inspires others to open up and reach out for help as well,” he says. “If there’s a silver lining to COVID, it’s that mental health and mental health problems are part of the everyday conversation



Anne-Marie Hourigan, Law’84, Vice-Chair of the Mental Health Commission of Canada’s Board of Directors – along with Ed Mantler, MHCC’s VP of Programs & Priorities – discuss the importance of being proactive in seeking help and how to do it.

like never before. Suddenly it’s okay to talk about your anxiety and your depression because we’re all facing these same stressors, and everyone can relate to why you feel anxious or depressed. This is a golden age of being able to come out and seek help and there are a variety of virtual options available.”

Resources for individuals and organizations

One of the MHCC’s primary offerings is [The Working Mind](#) (TWM), an evidence-based training program that an organization’s employees can use to help themselves. “It’s about monitoring my own mental health using a continuum to see how I’m reacting to the stresses of my workday and the factors within my workplace,” explains Mantler. “It allows me to monitor when my reaction is going beyond the normal or is sustaining itself in a way that’s no longer healthy, and then gives me some

very simple but effective self-help tools to be able to help drive myself back to a state of wellness or gives me the information that I need to seek more professional help when that’s necessary.” An organization’s supervisors and managers can also use TWM to know what to do if they have employees who need support, accommodation, or help with their mental health problems or issues.

Typically, an organization like a law society or a firm organizes in-person classes, which are now delivered via Zoom. While the science behind TWM is consistent across all types of workplaces, Mantler says they do tailor the stories, imagery, examples, and case studies used to the profession. There is a registration fee for each person participating and it includes many resources on psychological health and safety in workplaces.

Among the organizations working with the MHCC to tailor programs for employees are a Bay Street law firm and a provincial Solicitor General’s office. ►

The foundation of evidence that formed TWM has recently been tailored to post-secondary education students in a new program, [The Inquiring Mind](#). Last fall, the [National Standard on the Mental Health and Wellness of Post-Secondary Students](#) was released.

In another resource, Health Canada’s [Wellness Together Canada](#) app, anyone can do a self-check by answering a few questions confidentially in a diagnostic screening tool. Links to appropriate services or information are then provided on the user’s phone.

Moving towards a healthier future

“Mental health is health period and everyone across all realms and all professions has an obligation to take care of it,” states Hourigan. “Given my experience, having worked in the criminal justice system for 30 years, there is a great need to work on our own mental health as legal professionals and also to ensure the mental health of our colleagues in the courthouses, in the law firms, and in the law schools.”

There are advancements in terms of reducing stigma and seeking help for mental health problems or conditions in Canada. “Bell Let’s Talk is a big proponent of getting rid of the stigma and having everyone join the conversation on mental health awareness, but at the same time, in the legal and certain other professions, it’s closed shop,” explains Hourigan. “The good news is that there’s movement. Firms and legal bodies are working on mental wellness for their employees and their partners. The other good sign is we’re seeing a generational shift. Younger lawyers and law students have mental health on their radar screen, so when they’re applying for articling jobs, they’ll look at the mental wellness program of firms. I see hope on the horizon: help is there, the need is there, and it’s just a matter of having everyone join the conversation.

“Now is a time for education and awareness,” she continues. “We’re trying our best through the MHCC’s resource hub and programs to serve Canadians and say, ‘we’ve got the resources, come join us and become more aware of your mental health and the mental health of your colleagues.’”

– LISA GRAHAM

Watch for upcoming stories on these alumni:



Ted Johnson, Law’76, appointed an Officer of the Order of Canada for his determining role in one of the country’s largest financial groups and for his sound governance in the field of education



Pam Hrick, Law’13, newly appointed Executive Director and General Counsel of the Women’s Legal Education and Action Fund



Peter Griffin, Law’77, recipient of a 2021 Law Society Medal, one of the Law Society of Ontario’s highest honours



@queensulaw



PhD student appointed to Order of Canada for advancing access to justice

Michele Leering, PhD in Law candidate, has received one of the country's highest civilian honours. Governor General Julie Payette has appointed her a **Member of the Order of Canada** "for her dedication to helping underprivileged and marginalized populations gain access to legal services and the justice system."

Leering, who is also a part-time lawyer and Executive Director of the Community Advocacy & Legal Centre in Belleville, Ont., calls it "an honour" to even be nominated for this award because of those her work is helping. "The award recognizes the value of the community-based justice work being carried out by the staff of Ontario's community legal clinics and our efforts to ensure equal access to justice, human rights, legal literacy, and the 'legal health' of people living on a low income," she says.

Finding ways to increase access to justice for vulnerable communities, which she believes "is integrally related to legal professionalism," is Leering's long-time professional passion and focus. That's exactly what she's exploring in her doctoral thesis. She is documenting the imperatives for legal education reform, with a particular focus on the contribution of reflective practice as a professional learning theory that can benefit legal educators, law students, and legal practitioners.

Her research compares approaches in Canadian and Australian law schools in traditional law and experiential learning courses. Since beginning her PhD studies in 2015, she has presented at approximately 40 conferences and workshops in Canada, Australia, the U.S. and the U.K., and has published three articles on reflective practice in law, as well as an in-depth online article on the importance of the scholarship of teaching and learning in law.

"Thrilled" to learn of Leering's well-deserved recognition is Professor Erik Knutsen, one of her thesis co-supervisors. "Michele has worked tirelessly to connect society's less-advantaged with the law – and has done so literally around the world," he says. "At Queen's Law, her groundbreaking cross-jurisdictional research about legal education digs at the core of how we teach the law and will go a long way to help us better understand how people teach and learn the law."

"Thanks to Michele's work, future and current lawyers will have a deeper sense as to the importance



Michele Leering, PhD in Law candidate, has been inducted into the Order of Canada for her dedication to helping underprivileged and marginalized populations gain access to legal services and the justice system.

of access to the justice system," Knutsen continues. "Her spark and passion for helping the vulnerable gain empowerment through the law is inimitable and I couldn't be more proud to know her."

Professor Sharry Aiken, Leering's second thesis co-supervisor and a former clinic lawyer herself, agrees. "Michele's path-breaking contributions to access to justice and law reform have been exemplars," says Aiken. "Her clarity of vision, passion and driving commitment were apparent from the moment we first met. It has been an honour and privilege to support Michele's doctoral project, to learn from her and with her."

"I am just so pleased to celebrate Michele's appointment to the Order of Canada," Aiken adds. "It is hugely deserved recognition for a truly remarkable lawyer, scholar, educator and extraordinary human being!"

Read more about Michele Leering's research and work experience on our [news web page](#).

Learn more about our [Queen's Law Clinics](#) that offer local residents free legal services while providing students with a unique hands-on clinical experience in business law, family law, elder law, poverty law, and prison law.

Students get active to combat COVID blues

From walking to working out, students have been taking opportunities to improve both their physical and emotional well-being this year while following COVID safety measures.

"Our Faculty truly cares about our mental health and our overall Queen's Law experience outside of the classroom," says Sara Baxter, Law'22, Law Students' Society (LSS) VP Finance and co-organizer of student social activities. "With fewer opportunities to meet and connect with peers outside of the classroom, it is incredibly important for students to build less formal relationships."

In a joint LSS/Faculty initiative, students were surveyed on the types of activities they would like to participate in for opportunities to take a break from studying and enjoy the company of their classmates. Then Baxter – along with Gillian Ready, Law'87, Director of International Law Programs, and LSS executive members Arina Polyachek and Joanna Strozak, both Law'22 – organized events with local businesses and posted sign-ups.

Students have bowled at Cloverleaf Lanes, walked (with some dogs) on a lakefront trail excursion, practised yoga at the downtown Studio 330 (10 in-person and others online), participated in a CrossFit class at Queen Street Fitness, and attended a Halloween Movie Night and a showing of the RBG movie about the late U.S. Supreme Court Justice Ruth Bader Ginsberg at the downtown Screening Room.

Sydney Bowles, Law'23, who arrived on campus to begin her law studies in September, found the best part of the activities to be "interacting with others in the Queen's Law community in a more casual setting, and not the classroom (or Zoom!). I lead an active lifestyle and chose yoga and CrossFit to move my body, relieve some stress, and meet others with similar lifestyles and interests. Throughout this pandemic, we've learnt that there's something about face-to-face interaction that is so important for mental health."

Alexa Banister-Thompson, Law'21, missing seeing her peers at school, took part in the excursion and CrossFit class. "For the walk, I wanted to get outside, catch up with friends, and see the dogs," she says. "I liked the CrossFit class because staying active is a huge part of my life and I miss going to a gym – home workouts don't really do the trick. It's great that the LSS and Faculty organize these types of events."

Activities involving a fee were subsidized by the school and/or the LSS, but students were asked to contribute a small amount for some events.

"COVID has been hard on everyone, so it's been great to get out and see both unfamiliar and familiar faces," says Banister-Thompson. "Queen's Law prides itself on the community of students, faculty, and alumni. These activities are one way to keep the community alive and help each other out when we're feeling the COVID blues."



Students connected in-person during a lakefront trail excursion, one of several planned social activities organized to improve their well-being amid the pandemic.

Student club advocates for women in the legal profession

Female equity partners are under-represented. Women lawyers are less likely to receive promotions but are more likely to be interrupted in the workplace. A gender pay gap still exists. These and other issues women continue to face in the legal profession are the focus of Queen's Women and the Law (QWL).

"Students should get involved with QWL not only to be a part of a welcoming space in law school, but also to advocate on behalf of women in the law," says Maitland Shaheen, Law'22, QWL Co-President. "In a field that's in many ways male-dominated and traditional, we all benefit when women, people of colour, and the LGBTQIA+ community – who have all been excluded from the law – are provided spaces to safely voice their concerns. Only then can we make significant, lasting change in the legal field."

The long-running student club, which started in 1981, is offering some new programs and activities in this challenging COVID world. "For many first-year students, exams are very difficult," says Blaire Smockum, Law'22, QWL Co-President. Given that this year's class is doing everything at a distance and may not have the same support network that we had in 1L last year (because we were able to make new connections in person and hang out with our friends), we thought it might be really helpful to set up first-years with upper-years to help with the law school transition process. We're very excited to have launched a peer mentorship program for upper-year students to provide guidance, advice, and support to first-year students throughout the year. With over 60 Queen's Law students involved this year, we feel very fortunate to have offered these support networks to students and we're eager to expand the program next year."

QWL is also expanding into wellness. Before the exam period, the club hosted a yoga class and a mindfulness session via Zoom. "We're looking to give people the time to dedicate to self-care and to check in on their mental health," says Smockum. QWL is also planning to host a similar session prior to the April exam period.

Regular events such as hosting guest speakers and career panels are also being planned and the popular "Law is feminism because..." campaign is returned on March 8. "It's a national campaign with a number of schools participating to draw attention to issue of gender discrimination both in the legal field and in the application of the law," explains Shaheen. "Students and professors are asked to complete the sentence 'Law needs feminism because...' and their answers are displayed above their portraits. We're really excited to continue that campaign and keep that conversation going."

This winter's campaign was virtual and turned into a philanthropic initiative that saw people respond and donate a few dollars for a charity. Last year about 100 people participated. "One thing that really struck me was that it wasn't just female students who came out," says Smockum. "We also had a great turnout from profs and male students."

QWL and its events are open to all students, not just those who identify as females. "Women's issues affect everyone, and it takes everyone to fully address them in order to be successful in the fight for equality," explains Smockum. "We want to reach out to as many students as possible and educate them on these issues. At the end of the day, if only half the population (i.e. women) work to combat these issues, we're not going to succeed. It requires that everyone recognize the issues and demonstrate a commitment to combating them."

Smockum herself joined QWL for that very reason, having witnessed a situation while working in a law firm before entering law school. One day, a female lawyer she was working for invited her to attend a mediation, which would have been an amazing opportunity. "But my boss was the only female in the room of seven lawyers and it was difficult for her to get a word in because the men were constantly talking over her," Smockum recalls. "Then, all of a sudden, the men began to attack each other. It was clear to me that this was no longer relating to the matter at hand; it was more that these guys didn't like each other and decided to take the opportunity

to attack one another. The entire time, the female lawyer remained calm, poised, and quiet. I kept imagining situation reversed with women acting this way, but women don't get to act that way because they'd be called 'emotional' or 'catty.' There seemed to be different expectations and assumptions regarding female lawyers, and as a result, they have to work much harder to receive the same level of respect as their male counterparts and to prove that they should be taken seriously. I became passionate about advocating for women in the legal field and the opportunity to get involved in QWL was very appealing because it would allow me to engage in discussions with my peers about issues that women face in the law."

On QWL's 15-member executive team are two Equity Co-Chairs: Dakota Bundy, Law'22, and Sarah Mohiuddin, Law'23.

"As members of equity seeking groups, we are both very familiar with the additional challenges that certain groups of women face in their everyday lives and in the legal field," says Bundy. "One of our goals is to ensure that all QWL initiatives are inclusive and welcoming to the entire Queen's Law community, especially women of colour and women who are part of the LGBTQIA+ community."

"We can all contribute to this important work by making a genuine effort to educate ourselves and confront our biases as they present themselves," explains Mohiuddin. "Part of this process is recognizing that we're all learning and embracing the discomfort that comes with addressing the systemic inequities that persist in our institutions and everyday lives. To support the work of groups like QWL, students should try to come out to events and engage with our programming!"

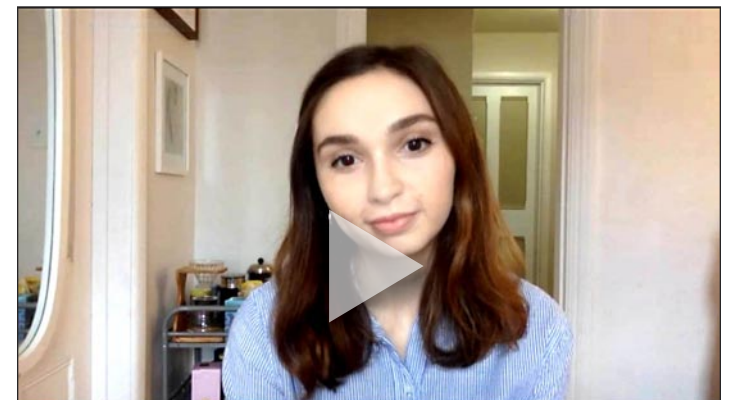
"It's a really great place to learn about the intersections of gender and the law," adds Shaheen. "We encourage everyone to get involved in as many ways as you can."

Check out how on the [Queen's Women and the Law Facebook page!](#)

— LISA GRAHAM



Blair Smockum, Law'22, co-President of Queen's Women and the Law, speaks about issues women face in the legal profession.



Maitland Shaheen, Law'22, co-President of Queen's Women and the Law, speaks about why students should join the club.



QWL Equity Co-Chairs Dakota Bundy, Law'22, and Sarah Mohiuddin, Law'23. ►

Two ‘all-stars’ score top points in sports and law school

Law’22 students Nick Morrow and John Varriano have been named Varsity Academic All-Stars by Queen’s University. They both earned high academic standing while playing on varsity teams in 2019-20.

Morrow, an aspiring litigation lawyer, competes in the men’s triathlon. Varriano, who is interested in environmental, employment, and intellectual property law, plays on the men’s rugby team. The two All-Stars share how they manage to excel in both intense physical training and studying in a rigorous program, and more.

“Whether it was running track in undergrad or triathlon in law school, I have never seen athletics as something to balance with school,” says Morrow. “Instead, I see athletics as an escape and a great stress reliever. When studying long hours or when the exam period becomes stressful, as a break,

training becomes a staple that helps me re-focus rather than getting in the way. Training involves hard work, committing yourself, and understanding what works for you to achieve your best results. This translates well to academics. To me, they are complimentary.”

For Varriano, it has always been about setting priorities. “Balancing rugby and school means that I have to accept some sacrifices in other areas of my life, but it’s always been worth it because of how much I love the sport and team,” he explains. “I have also been fortunate to have coaches who understand how demanding being a student can be; they have always stressed that school comes first and if we ever need to talk, they always have an open door. That being said, there are always points where I get a bit overwhelmed and it can lead to some late nights, but I think that’s something most students have

dealt with at some point and you just have to put your head down and get your work done.”

To compete at the varsity level requires many hours of training and practice before competing, but COVID has limited or shut down athletic facilities this academic year. However, that hasn’t stopped Law’s two All-Stars who have found ways to keep in shape.

During a regular rugby season in the fall term, each week Varriano would spend about nine hours practising and three hours working out, followed by a post-game-day swim with his teammates in Queen’s Athletics and Recreation Centre (ARC). Even during the off-season winter term, he would have three practices and workouts a week and a tournament every month.

“I am fortunate to have a small workout space nestled in the corner of my basement at home that I share with my family,” he says about his new routine. “I definitely miss working out with the team in an ARC gym, but I’ve been able to make do. The varsity athletic staff did a really great job of adapting workout routines to our individual circumstances, so I felt very supported throughout the year. I also took up cycling and do a lot of walking to keep my cardio up.”

With three sports to juggle in the year-round sport of triathlon, Morrow can train in swimming, biking, running, and cross-training sessions seven to nine times a week. “Luckily, the sport of triathlon can be performed with very few barriers to training,” he says. “Over the summer months, it was quite easy to lace up a pair of shoes or put on a wet suit and jump in the lake. Now that it has gotten colder and facilities remain closed, I have picked up my outdoor running, and cross train in my room with some old mid-2000’s p90X and Insanity workout videos I had saved away on my computer.”

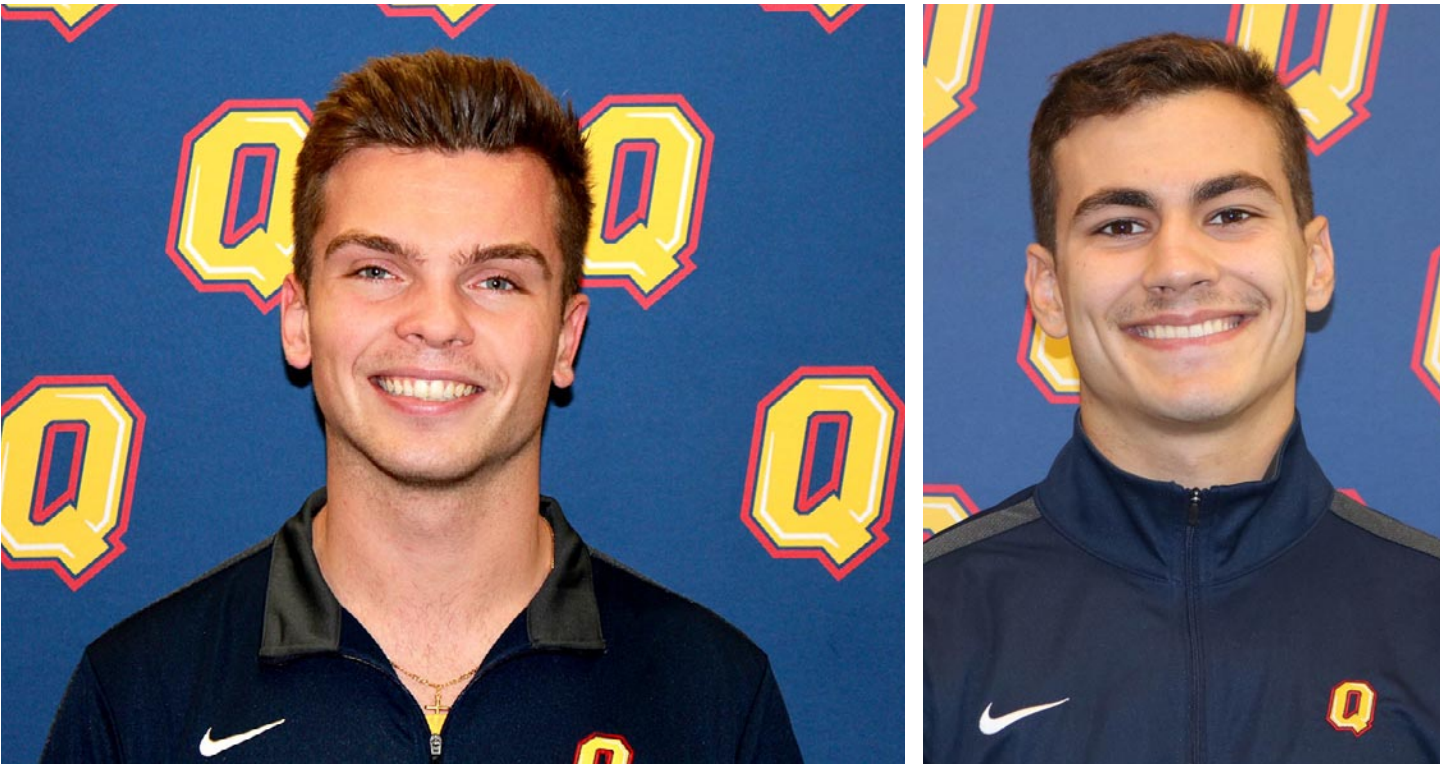
Everyone is looking forward to when Nick Morrow and John Varriano can get back to representing Queen’s in their sports. Go Gaels go!

How should the government tax social media influencers?

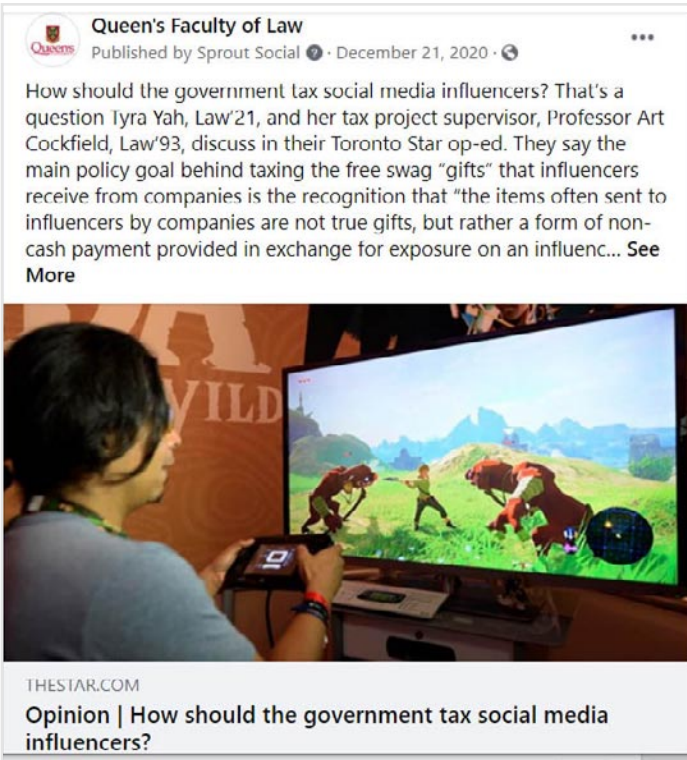
That’s a question Tyra Yah, Law’21, and her tax project supervisor, Professor Art Cockfield, Law’93, discuss in their Toronto Star op-ed. They say the main policy goal behind taxing the free swag “gifts” that influencers receive from companies is the recognition that “the items often sent to influencers by companies are not true gifts, but rather a form of non-cash payment provided in exchange for exposure on an influencer’s platform.”

Tyra is writing a paper on the topic for Professor Cockfield in an Individual Supervised Project. Congratulations to Tyra for having her first op-ed accepted by two top Canadian newspapers!

Read Tyra’s and Art’s op-ed [in the Toronto Star](#).



Nick Morrow and John Varriano, both Law’22, are among Queen’s Varsity Academic All-Stars for earning high academic standing while playing on varsity teams in 2019-20.



Virtual Homecoming 2020

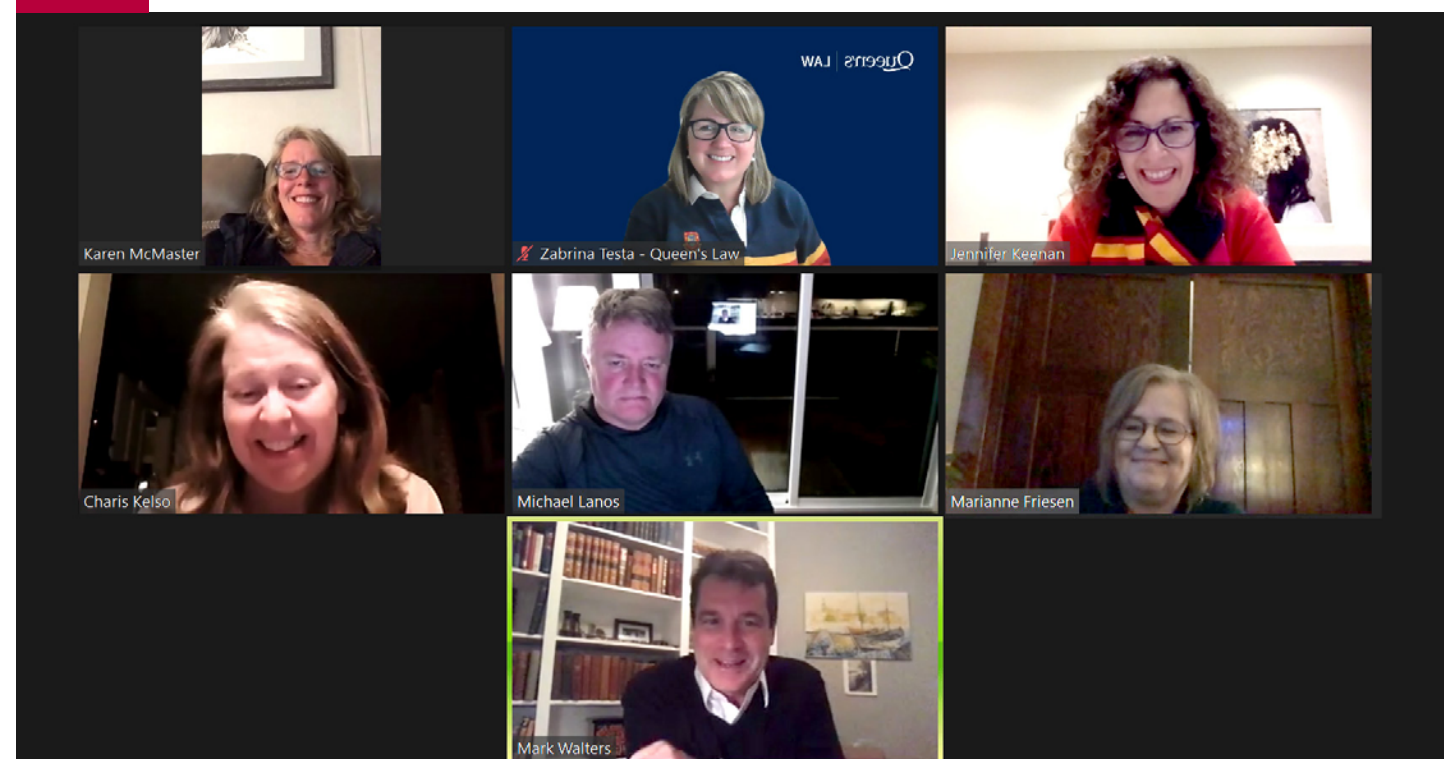
Law'75



Law'80



Law'90

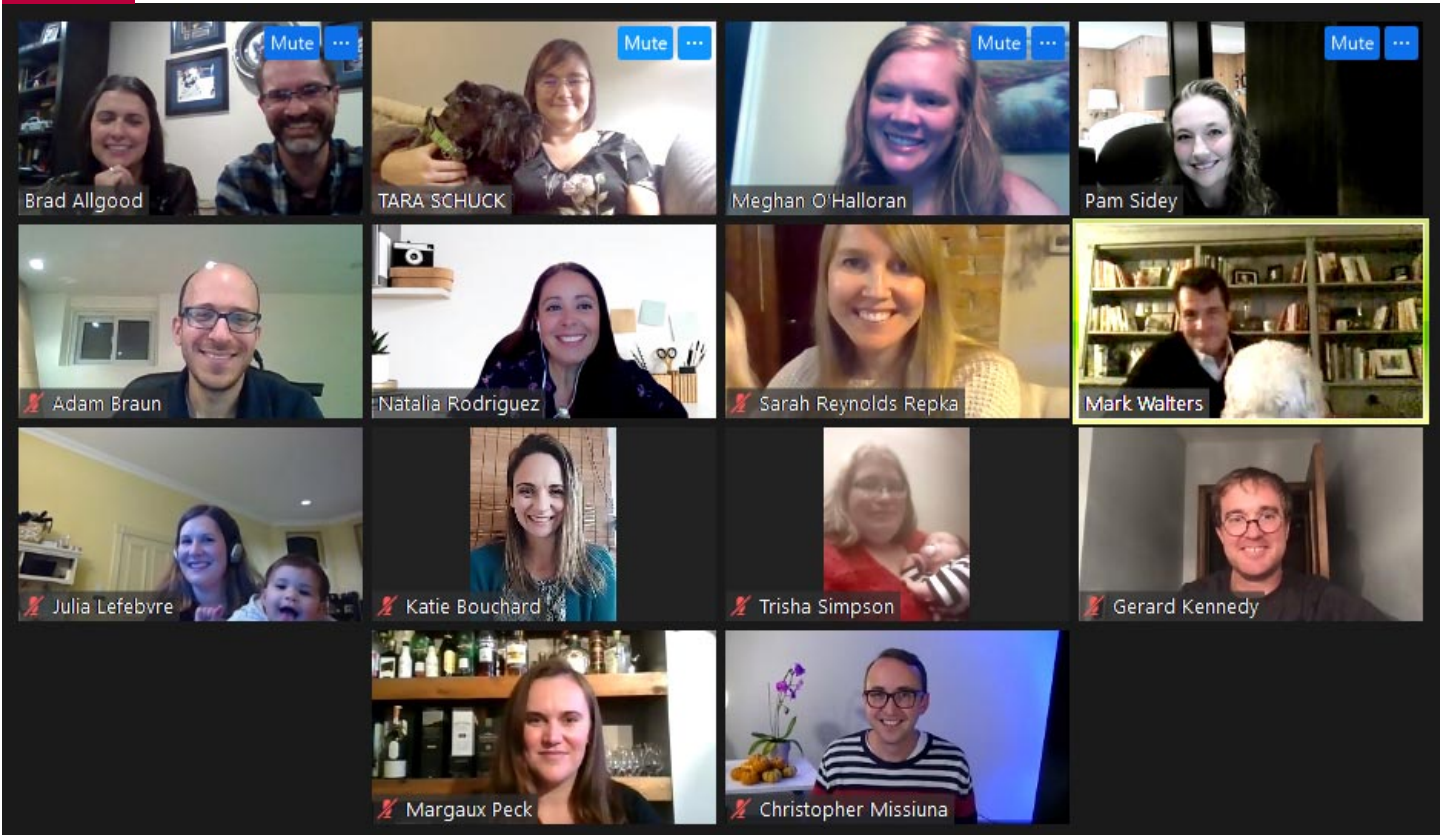


Law'95



Alberta Alumni Virtual Holiday Reception

Law'10



Cheers to Queen's Law Albertans! Alumni from across the province zoomed in for a virtual holiday reception on Dec. 3 with Dean Mark Walters, Law'89, Professors Sabine Tsuruda and Jacob Weinrib, and two Calgary natives who are Alberta Scholarship winners: Carly Williams, Law'21, and Lanette Klettke, Law'23. Following a cocktail workshop with

Sugar Water Events, grads enjoyed some LOL public law jokes and learned what it's like to teach and study in a COVID world. How do QL community members continue to build important relationships even during this challenging time? As Carly said, "There is something intangible about the Queen's Law culture."





SAVE THE DATE
THURSDAY, MAY 20
5:00 – 6:30pm

Celebrate Queen's Law – virtually

Join Dean Mark Walters, Law'89, and your fellow grads
at this event for Queen's Law alumni from
across Canada and around the world.

Among the highlights, we'll be celebrating our
2020 and 2021 alumni award winners.

Watch your email for further information
and to register.

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