

Access to Justice in Contemporary Canada

On February 6th I attended *the IDEALaw 2016 Conference at the Schulich Law School, Dalhousie University, Halifax*. This biennial student-run event hosted by the Social Activist Law Student Association brings together activist and legal communities. The theme this year was “Access to Justice in Contemporary Canada.” We were welcomed by Jennifer Hand, Law Students’ Society President, and Dan Nicholson, Dalhousie Student Union President, both of whom thanked the Mi’kmaw peoples for letting them host the conference on their land.

The first panel addressed Socio-economic Barriers to Justice and two of the panelists were: Kasari Govender (Executive Director, West Coast LEAF & Adjunct Prof. of Law, Peter A. Allard School of Law, UBC) and Kaitlyn Mitchell (Staff Lawyer & National Program Director, Ecojustice, BC). *They spoke to:*

- the inability to afford legal counsel and the need to broaden legal aid availability
- access to justice is far more than a problem with the traditional justice paradigm
- substantive access to justice would be more concerned with substantive outcomes
- *rights-based legal system needed - should cover any matter where your human dignity is at stake*
- implementation gap: ideas don’t always get implemented due to lack of political and financial commitment
- need to look at a **more holistic approach to advocacy**; building relationships in the name of social justice; understand your client’s issues re race, etc.; do a **cultural impact statement** - understand who it is you are representing
- Restorative Justice process – used as an approach when it does less harm
- phrase “visible minorities” mentioned by one panelist as not being acceptable anymore (referenced by the UN in 2006 in the Elimination of Racism)

The second panel addressed “Miscarriages of Justice, Wrongful Convictions, and Beyond” and was one of the best attended sessions. Panelists included: The Hon. Justice David P.S. Farrar (Justice, N.S. Court of Appeal), Sean MacDonald (Sean T. MacDonald Law Office & Director, Assoc. in Defence of the Wrongly Convicted, Toronto), and El Jones (Instructor, Dept. of Sociology, St. Mary’s University, Halifax)

Themes from this riveting panel discussion were:

- **currently many innocent people in prison** due to police misconduct; tunnel vision; no critical assessment; no forensic evidence to support case; eye witness identification which in many cases which have been later overturned by DNA evidence; innocent people induced to make guilty pleas; jailhouse informants are a problem and dangerous evidence to rely on
- overrepresentation in the justice system of those with mental disabilities
- **wrongful convictions seen in Canada seen with regularity**
- most over-represented in criminal justice system: lower socio-economic persons who lack resources to access legal system
- the first step into criminal justice system is most important as minor infractions often lead to convictions – then 3 or 4 convictions – they find themselves with a record – because they haven’t had meaningful access to real legal advice, so they may feel they have to plead guilty to get a lesser plea even when they are innocent – so they become more and more vulnerable - the further you walk down this road the more vulnerable you get
- **hundreds of people in federal penitentiaries who are innocent** – dealing with life threatening conditions in prison – difficult to find people outside to help – lack of access to phone and no support most of the time.
- **ineffective assistance of counsel is the most common cause of appeal** and there have been Royal Commissions into wrongful convictions, for example:

- 1) Donald Marshall case – police only sought out ‘evidence’ to convict Donald who they determined was guilty; witnesses coerced to lie; failure of crown prosecutor and Donald’s own lawyer in their duties; Donald was coerced to say he had tried to rob the victim, which was not the case. After he was acquitted, he was still perceived to have been involved in a robbery which was not the case.

The third panel dealt with **Non-Human Animal Justice** and panelists included: Lesli Bisgould, Staff Barrister, Legal Aid Ontario & Adjunct Professor, Faculty of Law, U. of Toronto, The Hon. Justice Catherine A. Fraser, Chief Justice of Alberta Court of Appeal & Chief Justice of the Northwest Territories & Chief Justice of the Nunavut Court of Appeal, Edmonton, and Camille Labchuk, Executive Director of Animal Justice Canada & Animal Rights Lawyer.

Some of the ideas put forth in this session:

- there still is a lot of opposition to the idea of non-human animal justice
- very few lawyers involved in this field; Camille currently taking a course at Harvard on this topic with 50 people in the course so interest is growing
- the sad case of Lucy the Elephant in the Edmonton Zoo [The CBC (Aug. 4, 2011) The Appeal Court ruling Thursday means that Lucy, the only elephant in Edmonton’s Valley Zoo, will have to stay there, barring a further appeal.But Chief Justice Catherine Fraser differed in a 42-page dissent, writing that the “case should go to trial on the important points of law that potentially impact on both the protection of animals in this province and the public interest in the city’s compliance with the law. The appellants, for the public and on behalf of Lucy, are entitled to their day in court..... Chief Justice Catherine Fraser”]
- there is a bill upcoming in the Senate which would prohibit cosmetic animal testing
- a question to the panelists referred to the rights of First Nations’ peoples and the Seal Hunt, for example: Camille stated that no animal rights lawyers she is aware of are trying to restrict the rights of the First Nations’ peoples in the north to participate in their traditional trapping and seal hunt as opposed to the seal hunt which is being carried out in Newfoundland

The 4th Panel addressed **Cyber justice: The internet as a Tool for Access to Justice** and ideas discussed were:

- for students today the internet is the number one tool re where to find the law, how to articulate the law - also accessible to lay people; transformative
- internet largely unregulated
- bullying part is quite scary - concerns for women and those who are already marginalized; there are laws already existing to address issues that arise which need to be used
- is there a right balance between someone’s right to speak freely and other people’s responses
- internet inherently international – different norms in different countries – some things unlawful in many places
- people are looking for legal information; a role in providing legal education; assist in access to info through the internet; how to design legal information to make it accessible; design tools so as to not just churn out text
- one panelist said “social media has forced mainstream media to do their job” - people being impacted are now being talked to – media now asking how they can better do their job – people want the facts, not just someone’s opinions, mainstream media has become an amplification of the voices online – if your voice is there, they will find you – they can google you, etc.
- re emotional abuse – cyber bullying – at the moment people cannot recover damages in a civil case for emotional distress if no physical harm was sustained - this situation may have to be revisited
- crime rate is going down in the ages of people who use the internet the most

- (or maybe they are just committing crimes online that people don't recognize – cynical view)
- is the internet creating a new kind of privilege - limited access re geographic location, cost, knowledge of how to use; internet doesn't create privilege, it just reflects it; has opened access to those with physical disabilities, etc., but still large inequities exist
 - protections needed especially around children – have to understand that putting stupid things on the internet never go away – education around this needed

The above is just a very brief summation of the main ideas/thoughts discussed and is by no means complete. The topics were extremely timely and the panelists, foremost in their fields, came from all across Canada. Micaela Sheppard, a Schulich Law School student whom I met that day has called me for an interview; she is working with the Canadian Barristers Association as a student researcher on their Access to Justice project. I am already looking forward to the 2018 Conference and I have to say that I really envy the women in law school today.

Karen Monnon Dempsey, NCWC President