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**THE LIMITS  
OF LAW**

**PROGRAM**

Graduate Law  
Conference 2018  
McGill University



# THE LIMITS OF LAW

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Conference 2018  
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## McGill Annual Graduate Law Conference Dean Maxwell and Isle Cohen Seminar on International Law

Thursday, May 3<sup>rd</sup>, 2018 & Friday, May 4<sup>th</sup>, 2018

New Chancellor Day Hall, Third Floor, Faculty of Law, McGill University, 3644 Peel St, Montreal, QC H3A 1W9

The Graduate Law Students Association (GLSA) of McGill University's Faculty of Law is pleased to present the 11<sup>th</sup> Annual Graduate Law Conference and the Dean Maxwell and Isle Cohen Seminar on International Law. The aim of these events is to offer an academic forum for graduate students, scholars and members of the legal profession, government and industry to exchange ideas and share approaches that bridge the gap between law and other disciplines.

Coming from all over the world, participants will gather in McGill University's uniquely rich intellectual environment to discuss the theme of 'Hard Cases: The Limits of Law.' The expression 'Hard Cases' is used here in a broad sense, to refer to all issues that reveal the limits of law, such as controversial legal questions, questions for which the law does not provide a clear answer or simply deeply complex questions to which no single solution exists. These limits are sites of legal transformation and innovation, thus offering fertile ground for participants to engage in enlightening discussions.

Discussions will take two forms: roundtables and one-on-one 'dialogues on social justice.' In both cases, the focus will be on the conversation rather than individual presentations. Accordingly, presentations will be kept short and moderators will take an active role in stimulating the exchange. Members of the audience are highly encouraged to take part.

In addition to these discussions, the conference will include keynote speeches from Professor Víctor Muñiz-Fraticelli (McGill University, Faculty of Law), Mrs. JoAnne Sulzenko (Dean Maxwell and Isle Cohen Seminar on International Law) and Professor Joanne St. Lewis (University of Ottawa, Common Law Section).

The organizing committee welcomes all participants and offers its best wishes for a successful event.

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The McGill Annual Graduate Law Conference is proudly held in collaboration with the Dean Maxwell and Isle Cohen Doctoral Seminar Series in International Law & the McGill Faculty of Law Graduate Studies Office.

Also sponsored by :

McGill Graduate Law Students Association • Prof. Evan Fox-Decent • Dean Robert Leckey • Prof. Victor Muñiz-Fraticelli • Prof. Geneviève Saumier • Prof. Daniel M. Weinstock • Prof. Andrea Bjorklund • Prof. Nandini Ramanujam • Prof. François Crépeau • Prof. Fabien Gélinas • Prof. Frédéric Mégret • Prof. René Provost • Prof. Lionel Smith

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## DAY 1: THURSDAY, MAY 3<sup>RD</sup>, 2018

### 7:00 JOG AND TAI CHI - *OPTIONAL*

On the Mont Royal. Participants will meet in front of the Law Faculty. They will have access to showers afterwards.

### 8:30 REGISTRATION AND BREAKFAST

New Chancellor Day Hall, Third Floor

### 9:00 INTRODUCTION

ROOM 312

#### **Organizing Committee**

Housekeeping

#### **Prof. Victor Muniz-Fraticelli (McGill University)**

Introductory Speech

### 9:30 SESSION 1: LEGAL THEORY

#### Limits of Adjudication; New Theories in a Changing Field

ROOM 312

#### **Prof. Víctor Muñoz-Fraticelli (McGill University)**

Moderator

#### **Cristobal Caviedes (Queen's University)**

*A Brief History of Voting Rules in Western Civilization*

#### **Dominika Wiesner (University of British Columbia)**

*Constitutional Pluralism – A Litmus Test for Legal Positivism?*

#### **Karine Millaire (University of Ottawa)**

*L'argumentation judiciaire des valeurs et les limites des droits fondamentaux : L'exemple de l'affaire Carter c Canada en perspective comparée*

#### **Sandrine Brachotte (Sciences Po Law School)**

*Private International Law to Deal with 'Unsolvable' Cases? The example of Jivraj. v. Hashwani (UK, 2011)*

#### Political Failures and Opportunities; Law as a Safety Valve?

ROOM 316

#### **Prof. Evan Fox-Decent (McGill University)**

Moderator

#### **Imogen Galilee (University of Cambridge)**

*Legal Controls on Politicians Who Lie – A Theoretical Framework*

#### **David Vitale (London School of Economics)**

*Political Trust as the Basis for a Social Rights Enforcement Framework*

#### **Stéphanie Pepin (McGill University)**

*The Schmidt case : On the Governmental Duty to Report Charter Inconsistencies to the Parliament*

#### **Shany Winder (Fordham University)**

*Policy-making Powers of the U.S. Executive Branch*

### 11:30 LUNCH AND POSTER CONTEST

New Chancellor Day Hall, Third Floor

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## DAY 1: THURSDAY, MAY 3<sup>RD</sup>, 2018

### 13:00 SESSION 2: DEAN MAXWELL AND ISLE COHEN SEMINAR ON INTERNATIONAL LAW – PART 1

#### Hard Cases of Social Responsibility in International Law

ROOM 312

**Prof. Geneviève Saumier (McGill University)**

Moderator

**Caleb Wheeler (Middlesex University London)**

*Investigating and Prosecuting Chiquita Brands International's Employees for Human Rights Violations Committed in Colombia*

**Otabek Ismailov (University of Ottawa)**

*The Limits of Treaty Interpretation in Investor-State Arbitration: Analysis of Hard Cases Against the Republic of Argentina*

**Jagteshwar Sohi (York University)**

*Aranyer Adhikar (The Right to the Forest): A Story of Niyamgiri Dispute*

#### Sovereignty, Rights and Injustices; Remaking Indigenous Law

ROOM 316

**Prof. Mark D. Walters (McGill University)**

Moderator

**Dr. Karen Sloan (McGill University)**

*Metis in British Columbia: A Nation too Complex to have Legal Rights?*

**Camille Labadie (Université du Québec à Montréal)**

*Injustices historiques et dommages culturels: réparer l'irréparable*

**Bradley Por (McGill University)**

*The Oka Crisis and The Royal Commission on Aboriginal Peoples: Rethinking Resistance in the Making of Law*

### 14:45 COFFEE BREAK

New Chancellor Day Hall, Third Floor

### 15:00 SESSION 3: DIALOGUES ON SOCIAL JUSTICE – PART 1

#### Policing Speech

ROOM 312

**Prof. Hoi Kong (McGill University)**

Moderator

**Jelena Gligorijević (University of Cambridge)**

*Policing speech: using persuasion and autonomy to identify actionable harm in expression*

**Kang PyengHwa (Université de Montréal)**

*Group Defamation and Harm to Identity: A Relational Perspective*

### 16:15 Police Sexual Assaults and Sensational Crimes

**Prof. Joanne St. Lewis (University of Ottawa)**

Moderator

**Sandrine Ampleman-Tremblay (University of Toronto)**

*Prosecuting and Sentencing Police Sexual Assaults in Canada*

**Michelle Coleman (Middlesex University London)**

*Sensational Crimes, The Presumption of Innocence, and Public Statements of Guilt*

### 17:30 COCKTAIL

Thomson House, 3650 McTavish Street (across the street from the Law Faculty)

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## DAY 2: FRIDAY, MAY 4<sup>th</sup>, 2018

### 7:00 JOG AND TAI CHI - *OPTIONAL*

On the Mont Royal. Participants will meet in front of the Law Faculty. They will have access to showers afterwards.

### 8:30 BREAKFAST

New Chancellor Day Hall, Third Floor

### 9:00 INTRODUCTION

ROOM 312

**Organizing Committee**  
Housekeeping

**JoAnne Cohen Sulzenko**  
Greetings in remembrance of Maxwell and Isle Cohen

### 9:30 SESSION 4: DEAN MAXWELL AND ISLE COHEN SEMINAR ON INTERNATIONAL LAW – PART 2

#### Global Socio-Economic Law in an Era of Austerity

ROOM 312

**Prof. Nandini Ramanujam (McGill University)**  
Moderator

**Kari Ragnarsson (Harvard University)**  
*"Who wins when the law is uncertain?": Law and Neoliberalism in post-2008 austerity cases*

**Vladimir Bogoeski (Hertie School of Governance)**  
*The Challenge of Judicial Resolution of Socio-Economic Conflicts in a Diverse Union: the European Court of Justice Facing the "Globalisation Trilemma"*

**Cody Rei-Anderson (University of British Columbia)**  
*Making Copyright Live Up to Its Promises: Economic Incentives, Expressive Opportunities and Equitable Distribution*

**Ivan Ozai (McGill University)**  
*Global Tax Governance and the International Tax Challenges for Developing Countries: A Normative Principle for Tax Cooperation*

#### Hard Cases in International Liability

ROOM 316

**Prof. Frédéric Mégret (McGill University)**  
Moderator

**Brian Cox (University of Cambridge)**  
*Between accidents and War Crimes: The Hard Case of Achieving Acceptable Accountability in Armed Conflict*

**Yi Chao (McGill University)**  
*Establishing and Enforcing the Liability of Refugee-Generating Entities: Addressing the Normative Lacuna in the Intersection between International Refugee Law and the Law of International Responsibility*

**Alfonso Calcáneo Sánchez (Juarez Autonomous University of Tabasco)**  
*Child Piracy Under International Law*

### 11:30 LUNCH AND POSTER CONTEST

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## DAY 2: FRIDAY, MAY 4<sup>th</sup>, 2018

### 13:00 SESSION 5: DEAN MAXWELL AND ISLE COHEN SEMINAR ON INTERNATIONAL LAW – PART 3

#### Hard Cases of Environmental International Obligations

ROOM 312

**Prof. Sébastien Jodoin (McGill University)**  
Moderator

#### **Adebayo Majekolagbe (Dalhousie University)**

*Game of Tones: A TWAIL-Analysis of the Evolution of the United Nations Framework Convention on Climate Change Technology Transfer Regime*

#### **Eduardo Alvarez Armas (Queen Mary University London)**

*The European Approach to “hard cases” on international environmental obligations: The Accommodation of Environmental Obligations by the European Court of Justice*

#### **Catherine Higham (University of British Columbia)**

*Human Rights and Climate Torts: Corporate Responsibility in the Climate Change Context*

#### **Michael Addaney (Wuhan University)**

*Business and Climate Change Adaptation in Africa: A New Frontier for Adaptation and Resilience*

#### Space Debris and the State/Private Responsibility Nexus

ROOM 316

**Prof. Yaw Nyampong (McGill University)**  
Moderator

#### **Yolanda Kalogirou (McGill University)**

*Active Debris Removal and “Consent” Under International Law*

#### **Upasana Dasgupta (McGill University)**

*Should States continue to be responsible for private space activities?*

#### **Kiran Nair (McGill University)**

*Small Satellites amount to Large Debris; Regulating the Surge in Small Satellites for a Sustainable Space Environment*

### 15:00 COFFEE BREAK

New Chancellor Day Hall, Third Floor

### 15:15 SESSION 6: DIALOGUES ON SOCIAL JUSTICE – PART 2

#### Adjudicating Sexual Violence Cases

ROOM 312

**Prof. Joanne St.Lewis (University of Ottawa)**  
Moderator

#### **Michaël Lessard (McGill University)**

*Why couldn't you just keep your knees together? L'obligation déontologique des juges face aux victimes d'agression sexuelle*

#### **Severyna Magill (Jindal Global Law School)**

*Unlocking the Potential of Human Rights: The Limitations of Domestic Courts in Adjudicating Crimes Against Women*



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**16:30 Hard Cases in Regulating Clinical Care**

ROOM 312

**TBD**

Moderator

**Alexandra Sweeney Beaudry (Université de Sherbrooke)**

*Le droit à l'avortement et l'aide médicale à mourir : les limites du droit étatique pour encadrer les soins cliniques controversés*

**Frank Catalano (Queen's University)**

*Medical Assistance in Dying Seen Through the Lens of S. 15(1) of the Charter*

**17:30 CONCLUSION**

ROOM 312

**Prof. Joanne St. Lewis (University of Ottawa)**

Closing Remarks

**19:00 DINNER - OPTIONAL**

Restaurant Rumi, 5198 Rue Hutchison, Outremont