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of Justice

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42nd ANNUAL CONFERENCE

Participation at this conference is approved under Section 41 (1) of the Judges Act according to Resolution # 29 of the CJC and is accredited in provinces where CLE requirements for lawyers are mandatory.

THE CHARTER CHALLENGE CONUNDRUM: THE CLASH OF RIGHTS AND VALUES AND THE CANADIAN CULTURAL MOSAIC Cultural and Religious Diversity in the Administration of Justice

October 2-4, 2017, Hyatt Regency Hotel, Montreal – Soprano Ballroom, 4th Floor

HONORARY CHAIR:

The Hon. Nicole Duval Hesler, Chief Justice of Quebec



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REGISTRATION FORM

CULTURAL AND RELIGIOUS DIVERSITY IN THE ADMINISTRATION OF JUSTICE

October 2-4, 2017, Hyatt Regency Hotel, Montreal

*Please use the secure online membership form:
<https://ciaj-icaj.ca/en/events/2017-annual-conference/> or complete this form*

Surname:

First Name:

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Organization:

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.....

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I am fluent in: English French English & French
(Simultaneous translation is provided throughout the conference)

REGISTRATION FEE – (EARLY BIRD RATE ENDED AUGUST 2, 2017)
(Breakfasts, coffee breaks, luncheon, and conference material included)

- CIAJ members **\$895** ~~\$795~~ non members **\$995** ~~\$895~~
- Young lawyers (5 yrs or less) members **\$625** ~~\$525~~ non members **\$700** ~~\$600~~
- Students **\$75** (enrolled full-time at Canadian universities)

I WILL ATTEND THE NETWORKING COCKTAILS (5 TO 6:30 PM):

Monday, Oct. 2 Yes No – Tuesday, Oct. 3 Yes No

I will be accompanied by guest(s) Yes No

Name of guest(s).....

.....

Do you, or your guest(s), have any dietary restrictions? Yes No

Which?

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About CIAJ

The Canadian Institute for the Administration of Justice (CIAJ) promotes excellence and leadership in the administration of justice through knowledge, learning and the exchange of ideas. The CIAJ offers education and research programs and provides a forum for everyone interested in the administration of justice.

Are you a Member?

– SPECIAL PROMOTION – 2017 Membership is included in your registration fee for the 2017 Annual Conference in Montreal!

Membership Categories and Fees

Individual (Included with registration fee) \$150

Individual members active in their profession are entitled to access all the documentation available on CIAJ's website (conference and seminar papers, and video-recordings). This membership fee is recoverable by federally-appointed judges under S. 27(1) of the Judges Act. Provincial and territorial judges, other judicial officers and board and tribunal members may be entitled to reimbursement through judicial or other professional allowances.

Retired Person (Included with registration fee) \$75

Members retired from their profession have the same benefits as individual members.

Student (Included with registration fee) \$10

Members enrolled as full-time students have the same benefits as individual members.

I would like information about Institutional Membership

Donation

To support our mission, you may also choose to become a CIAJ contributor. You will be issued a tax receipt for a charitable donation (Registration number: 10686 1529 RR 0001).

Amount of donation: \$ _____

ACCOMMODATION: A block of rooms has been reserved at the Hyatt Regency Montreal Hotel (1255 Jeanne-Mance). Reservations at 1-800-361-8234 (standard room: \$219). Participants are required to make their own hotel reservations before September 9, 2017 to take advantage of this preferred rate.

CANCELLATION FEE: Only registrations cancelled by email at least 7 days prior to the event are reimbursed, except for 10% of the amount which is withheld to cover administrative fees. At any time, a participant may be replaced by another person without charge.

TO REGISTER:

Please complete and return this form with your payment:

By mail:

Canadian Institute for the Administration of Justice
 PO Box 6128, Station "Centre Ville"
 3101 Chemin de la Tour, Room A-3421
 Montreal, Quebec, H3C 3J7

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OVERVIEW

What is the effect of the *Charter of Rights and Freedoms* on the resolution of issues of culture and religion? Are the courts getting the mix right? Is the law falling behind or is it leading?

It is commonplace to speak of Canada as a multi-cultural or multi-ethnic society and these characteristics must figure in any consideration of diversity in the administration of justice. Diversity is an encompassing term that allows for multiple forms of social groupings but also multiple themes that cross between and among social groupings. Diversity is thus an appropriate term with which to examine the manner in which public institutions serve the interests of inclusiveness and equality in the administration of justice.

An important dimension of this conference is the examination of the manner in which public institutions have and should evolve to advance values of inclusiveness and equality, including an assessment of their shortcomings. Another broad dimension focuses on substantive issues (language, religion, race, culture, etc.) concerning complementarity and contradiction between values of diversity and equality.

Albert V. Dicey, the noted British constitutional theorist, propounded a conception of the rule of law in terms of «the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts ». The *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms* endorses this conception of the rule of law. Section 15 of the Charter provides that “Every individual is equal before and under the law...». If the same law applies equally to every individual, what is the argument then concerning the importance of taking into account religious and cultural diversity in the legal system? Is it a question of acknowledging the different perceptions that these cultural or religious groups have regarding the law and the administration of justice in general, or rather that the Canadian legal system must adapt and change its substantive norms to reflect these different perceptions?

These issues play out in every aspect of the administration of justice: for the police, for civil and criminal courts and tribunals. This conference is thus relevant to all actors in the administration of justice.

PLANNING COMMITTEE

CO-CHAIRS:

The Honourable Georgina R. Jackson, Court of Appeal for Saskatchewan, CIAJ President
Mr. Patrick A. Molinari, Ad. E., FRSC, Lavery, Montreal, CIAJ Vice-President

Professor Natasha Bakht
Faculty of Law - Common Law Section
University of Ottawa

The Honourable Danielle Côté
Associate Chief Judge - Criminal and Penal Division
Court of Québec

Dean Jean-François Gaudreault-Desbiens
Faculty of Law, Université de Montréal

The Honourable Sheilah Martin
Court of Appeal for Alberta

The Honourable Shaun Nakatsuru
Ontario Superior Court of Justice

The Honourable James O'Reilly
Federal Court of Canada

Professor Marilyn Poitras
College of Law, University of Saskatchewan

Professor Martine Valois
Faculty of Law, Université de Montréal

Ms. Rime El Rhoul
Student, Faculty of Law, Université de Montréal

CULTURAL AND RELIGIOUS DIVERSITY IN THE ADMINISTRATION OF JUSTICE

MONDAY, OCTOBER 2

11:30 am – 1:00 pm **REGISTRATION**

1:00 – 1:15 pm **WELCOME REMARKS AND INTRODUCTION**

Honourary Chair
Co-Chairs

- The Hon. Nicole Duval Hesler, Chief Justice of Quebec
- The Hon. Georgina Jackson, Court of Appeal for Saskatchewan and President of CIAJ
- Mr. Patrick A. Molinari, Ad. E., FRSC, Lavery, Montréal, CIAJ Vice-President

1:15 – 2:45 pm **DEFINING CULTURAL AND RELIGIOUS DIVERSITY IN THE ADMINISTRATION OF JUSTICE: [Are there Different Perspectives?](#)**

What is Canadian culture and how does it intersect with the administration of justice? How is this question perceived by those whose lives have been directly intertwined with the justice system? In this panel we will hear from litigants whose names are forever associated with two Supreme Court of Canada decisions: *Multani v. Commission scolaire Marguerite-Bourgeoys* [2006] 1 SCR 256 and *R. v. S. (R.D.)* [1997] 3 SCR 484. We will also hear from other communities who regularly rely on the justice system to give effect to the promises of the *Charter of Rights and Freedoms*.

Chair
Speakers

- The Hon. Nicole Duval Hesler, Chief Justice of Quebec
- Mr. Rodney D. Small, Halifax
- Mr. Gurbaj Singh Multani, Montréal
- Ms. Sheema Khan, Patent Agent, Shapiro Cohen LLP
- Mr. Jack Jedwab, President, Association for Canadian Studies
- Ms. Viviane Michel, President, and Ms. Véronique Picard, Justice and Public Security Coordinator, Quebec Native Women Association

2:45 – 3:00 pm **BREAK**

3:00 – 4:30 pm **WHAT DOES RELIGIOUS FREEDOM MEAN IN THE CANADIAN CONTEXT?**

This panel explores the contours of religious freedom in the context of the administration of justice. Drawing on existing legal frameworks and significant cases, the panel will discuss claims and conflicts involving persons and communities of faith. How is religious freedom understood and protected? How are belief and practice connected? What is the scope of the fundamental freedom of religion and conscience articulated in the Canadian Charter? What is the content of an obligation by individual actors not to discriminate on the basis of religion, as provided for in the human rights context? Are there lessons to be learned from encounters between law and religion for broader issues related to diversity and identity in the administration of justice?

Chair
Speakers

- Prof. Shauna Van Praagh, McGill University
- Prof. Louis-Philippe Lampron, Université Laval
- Prof. Benjamin L. Berger, Osgoode Hall Law School
- Ms. Tamara Thermitus, President, Commission des droits de la personne et des droits de la jeunesse

4:30 – 5:15 pm **PRESENTATION OF THE CHARLES D. GONTHIER RESEARCH FELLOWSHIP BY DR. MARIETTE MORIN GONTHIER**

- Recipient: Prof. Vrinda Narain, Associate Professor and Associate Dean, Academic, McGill University Faculty of Law. Research project: "Difference and Inclusion: Reframing Multiculturalism and Reasonable Accommodation"

5:15 pm **NETWORKING COCKTAIL** (cash bar)
Cardinal Jazz Quartet: Christian Cardinal (guitar), Richard Gourdeau (saxophone), Jean-Sébastien Clément (double-bass), Michel Massicotte (drums)

CULTURAL AND RELIGIOUS DIVERSITY IN THE ADMINISTRATION OF JUSTICE

TUESDAY, OCTOBER 3

8:00 – 8:45 am **CONTINENTAL BREAKFAST**

8:45 – 10:00 am **THE EFFECT OF CONSTITUTIONAL DOCUMENTS ON ADDRESSING**
(Plenary Session) **ISSUES OF INTERNAL CONFLICT REGARDING CULTURE AND RELIGION**

This session will explore the limits of formal legal instruments to resolve diversity issues facing the administration of justice. To what extent can charter jurisprudence assist the administration of justice in assessing principles, law and best practices relating to diversity? What can be learned from the impact of the *European Convention on Human Rights* in EU member countries with national human rights constitutional or statutory legislation?

Chair

▪ The Hon. Yves-Marie Morissette, Court of Appeal of Québec

Speakers

▪ Dean Jean-François Gaudreault-Desbiens, Université de Montréal

▪ Prof. Marie-Claire Foblets, Director of Law & Anthropology, Max Planck Institute for Social Anthropology, Saale

10:00 – 10:15 am **BREAK**

10:15 am – Noon **INTERSECTION OF GENDER ISSUES AND CULTURE AND RELIGIOUS**
DIVERSITY: [Do we Need an Evolution of the Law on Equality Rights?](#)

Until 40 years ago, Canada had very little equality jurisprudence and little legal expression as to what constituted discrimination. In 2017, has the Charter moved Canada to be more diverse, fair and equitable? What does a decision-maker do when gender, culture and religion intersect and possibly collide? The primary focus of this panel will be to consider the previous issues from the perspective of gender on the basis of the premise that gender issues are integrally linked to issues of religious diversity.

Chair

▪ The Hon. Guylène Beaugé, Superior Court of Québec

Speakers

▪ Prof. Pascale Fournier, University of Ottawa

▪ Dean Robert Leckey, McGill University Faculty of Law

▪ The Hon. Sheilah Martin, Court of Appeal for Alberta

Noon – 1:00 pm **LUNCH**

1:00 – 2:45 pm **REMODELING CANADIAN LEGAL TRADITIONS**

One of the strengths of Canadian legal traditions is their ability to adapt to changing circumstances. In societies that embrace all of their cultures, can Canadian legal traditions adapt indigenous conception of duty, loyalty, and good faith? Are expanded laws one solution to meet the need for inclusion in a diverse society?

Chair

▪ The Hon. Colleen Suche, Court of Queen's Bench of Manitoba

Speakers

▪ Prof. Aimée Craft, University of Ottawa

▪ Assistant Prof. Jeffery Hewitt, University of Windsor

2:45 – 3:00 pm **BREAK**

CULTURAL AND RELIGIOUS DIVERSITY IN THE ADMINISTRATION OF JUSTICE

3:00 – 4:45 pm **WHOSE DIVERSITY IS IT ANYWAY?**

One could conclude from reading the newspaper reports that we have widely divergent views on what diversity means. Is this so? This panel will explore that question in the context of such questions as: What are “Canadian values?” How diverse are we? How much have we changed since the Confederation? Since 1982? What do we mean by diversity? How do we make sense of the various ways in which diversity is discussed? This panel will look at these questions from the disciplines of psychology, sociology and law.

Chair

Speakers

- The Honourable Lois R. Hoegg, Court of Appeal for Newfoundland and Labrador
- Ms. Rachida Azdouz, Université de Montréal
- Ms. Fareen Jamal, Ismaili community CAB Conciliation and Arbitration Board, Toronto
- Mr. Alexander Pless, General Counsel, Quebec Regional Office of the Department of Justice Ottawa, Montreal

4:45 – 5:00 pm **PRESENTATION OF CIAJ JUSTICE MEDAL BY THE HON. PATRICK HEALY FROM THE COURT OF APPEAL OF QUEBEC**

5:00 pm **NETWORKING COCKTAIL** (cash bar) Classical music: Karine Bouchard (cello) and Amanda Gibea (violin)

WEDNESDAY, OCTOBER 4

8:00 – 8:45 am **CONTINENTAL BREAKFAST**

8:45 – 10:15 am **THE INTERSECTION OF POLICING, THE CRIMINAL JUSTICE SYSTEM AND CULTURAL DIVERSITY: [Racial Profiling](#)**

According to the Ontario Human Rights Commission “racial profiling” is any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment. Racial profiling must be contrasted with criminal profiling. Racial profiling is based on stereotypical assumptions because of one’s race, colour, ethnicity, etc. Criminal profiling, on the other hand, relies on actual behaviour or on information about suspected activity by someone who meets the description of a specific individual. This panel will explore these definitions and the implications of racial profiling for the administration of justice.

Chair

Speakers

- The Hon. Shaun Nakatsuru, Ontario Superior Court of Justice
- Chief of Police Clive Weighill, Saskatoon
- Ms. Sandy Hudson, Black Lives Matter, Toronto
- Ms. Margaret Parsons, Executive Director, African Canadian Legal Clinic, Toronto

10:15 – 10:30 am **BREAK**

10:30 – Noon **THE INTERSECTION OF POLICING, THE CRIMINAL JUSTICE SYSTEM AND CULTURAL DIVERSITY: [How to Ensure a Representative Jury](#)**

With reference to existing Supreme Court of Canada and appellate jurisprudence (see, eg. *R. v. Kokopenace* 2015 SCC 28), this session will consider the existing methods and best practices for ensuring a representative jury. It will also look at managing a trial where issues of culture and religion are at the forefront. Panelists will address the question of how to properly take account of diversity in managing a jury trial and charging the jury. Is there more that could be done to ensure the impartiality of the jury?

CULTURAL AND RELIGIOUS DIVERSITY IN THE ADMINISTRATION OF JUSTICE

- Chair*
- Speakers*
- Mr. Pierre Poupart, Ad. E. Poupart, Dadour, Touma et Associés
 - The Hon. Michael Tulloch, Ontario Court of Appeal
 - The Hon. Carol J. Ross, Supreme Court of British Columbia

Noon – 1:00 pm **LUNCH**

1:00 – 3:00 pm **HOW HAS THE LAW RESPONDED:** [Self-instruction, Impartiality, Evidence and Credibility](#)

How do trial judges, juries and tribunals assess credibility in a diverse society: can we expect or should we expect accommodations? How should one instruct oneself as a decision-maker when dealing with issues of difference pertaining to culture and religion? Is there social science that we need to know about regarding the process of decision-making as it relates to cultural and religious difference? Can we count on the present rules of evidence to take appropriate account of the changing nature of Canadian society? Some of the topics that will be considered include: the burden of proof, documentary evidence, the use of social context evidence and the role of demeanour assessing credibility and treating witnesses, the ethics of decision-making and the limits to judicial notice. The panel will also consider whether the issues in *R. v. S. (R.D.)*, [1997] 3 SCR 484 would be viewed the same way today as they were 20 years ago?

- Chair*
- Speakers*
- The Hon. Michael MacDonald, Chief Justice of Nova Scotia
 - Prof. Natasha Bakht, University of Ottawa
 - The Hon. Donald F. McLeod, Ontario Court of Justice
 - Prof. Solange Lefebvre, Institut d'études religieuses, Université de Montréal

3:00 – 3:15 pm **CLOSING REMARKS (Co-Chairs)**

FREE STUDENT PROGRAM – OPEN TO THE PUBLIC

4:30 – 6:30 pm **CULTURAL AND RELIGIOUS DIVERSITY:** [Flexibility in the Administration of Justice](#)

What is the relationship between culture and the justice community? How can cultural groups be made aware of legal requirements in their host societies? How far should the legal system go to adjust to this cultural diversity? How can justice workers be better trained to adapt to socio-cultural realities? The participants in this panel will address these questions as well as questions related to intersectionality, a notion used by sociologists to measure the impact of multiple discrimination, and the administration of justice.

- Chair*
- Speakers*
- Mr. Frédéric Bérard, Doctor of Law, political scientist and post-doctoral fellow in philosophy, Montréal
 - Mr. Fo Niemi, Executive Director, Center for Research-Action on Race Relations
 - The Hon. Eva Petras, Associate Chief Justice, Superior Court of Québec
 - Ms. Mélanie Raymond, Commissioner, Immigration Appeal Division, Immigration and Refugee Board of Canada
 - Ms. Rime El Rhoul, CIAJ student's representative, Université de Montréal

6:30 pm **NETWORKING COCKTAIL**