

Trudeau Project Proposal

Building communities of engagement on end of life law, policy, and practice

My project starts with the assumption that we are all committed to building a Canada that cares deeply and effectively for the dying. A Canada that doesn't accept people dying in pain. A Canada that doesn't accept people trapped in bodies that only support lives that, for them, no longer have meaning. A Canada that says "we can, and must, do better."

So, assuming we all share that commitment, how do we get there? More specifically, how would I, as a Trudeau Fellow, hope to contribute to us getting there?

There are four main areas of end of life law, policy, and practice that require the most urgent attention: palliative care; advance directives; unilateral withholding and withdrawal of potentially life-sustaining treatment; and assisted death. Until we resolve the problems in these areas, Canadians will continue to suffer at the end of life. There are also four activities that must be undertaken to resolve these problems: building shared understanding; gathering data; advancing law and policy reform; and enhancing education. I believe that a central reason why we have failed to make sufficient progress in relation to these areas of concern and activities is that experts are operating in silos and groups are locked into corrosively oppositional dynamics. We need the resources (human and financial) and deliberate intention to bring people together. Through the Trudeau Fellowship, I propose to build communities of engagement around these activities through specific projects on the areas of particular concern. These communities will produce concrete results with respect to their particular issues but they will also build relationships and practices of engagement that will last beyond the Fellowship and be available for future initiatives. They will serve as a model for effective strategy for resolving difficult public policy issues. I believe that through this project, by bringing together multidisciplinary and multisectoral teams with the object of concrete advancement of law, policy, and practice, we will be able to make a tangible difference in this complex, historically contentious, and seemingly intractable area which is in its every fibre about human rights and dignity.

Palliative care (shared understanding, law and policy reform)

We have much to be proud of in terms of palliative care in Canada. We have some tremendous providers, programs, services, and units. We are witnessing improvements in access and quality that are impressive. However, the inexcusable bottom line is that a significant, intolerable, number of people who could benefit from palliative care services have no access to them. Far too many people are suffering unnecessarily as they die. We need more funding for palliative care services, more palliative care education of health care professionals, and structural

changes in our health care system (e.g., permitting and facilitating the provision of services beyond the boundaries of a terminal diagnosis and the walls of hospitals).

Historically, there has been a gulf between the palliative care community and many of those who support decriminalization of assisted death. But bridges can be built. More advocates of decriminalization are seeing the need to work towards increased funding for palliative care and better palliative care education in medical and nursing schools. More palliative care providers are taking the position that palliative care and assisted death are complementary rather than mutually exclusive. As someone who has long argued for both decriminalization and palliative care services and education, I will host a meeting to bring together leaders in these historically-divided communities to build shared understanding – to express concerns and exchange information and ideas, particularly for future collaborations.

In addition, there is one specific palliative intervention that is trapped in legal uncertainty and clinical irregularity – terminal sedation, which is deep and continuous sedation combined with the withholding or cessation of artificial hydration and nutrition. Each element (sedation and withholding or withdrawing of hydration and nutrition) is independently legal. The question is whether they remain legal when combined. That is, if I am imminently dying (i.e., in the next few days), then to stop hydration and nutrition won't shorten my life or cause my death. Terminal sedation in that context seems uncontroversial. But imagine a situation in which I am diagnosed with ALS (a lethal degenerative neurological disorder). I live with it for some while but, perhaps six months before dying, I ask to be deeply sedated, thereby creating the need for artificial hydration and nutrition. I then refuse all artificial hydration and nutrition. The cause of my death would be the lack of hydration and nutrition. Is this allowed? There is, perhaps surprisingly, no law directly on point. Indeed, the most that Justice Smith could say on this in *Carter v. Canada* was "So far as I am aware, palliative or terminal sedation has not been the subject of judicial consideration in Canada. It seems, however, to be a practice that may fall within the principles already described with regard to informed consent and potentially life-shortening symptom relief." Unfortunately, that "it seems" that something "may" fall within established principles leaves health care providers in the shadow of potential liability and leaves patients without the foundation for a demand for access. Both the practice and policies around terminal sedation are uneven. A patient may or may not receive it – because of a lack of clinical competence or because of a difference of opinion between the patient and his or her doctor or health care institution about the legality or morality of the practice. The confusion regarding this practice results in unnecessary suffering.

I will bring together a small team of academics and practitioners from law, ethics, palliative care, and critical care for an intensive law and policy reform workshop. Each will have prepared a background report based on their disciplinary expertise (e.g., a thorough review and analysis of the ethics, law, and existing guidelines with respect to this practice and data with respect to its actual practice). Together, they

will develop arguments for law reform to ensure that the law on the issue is consistent with the *Charter* and the fundamental values of Canadian society and that the law, reflecting the bounds of ethics, permits clinical interventions that best minimize suffering. From there, clinical practice guidelines can be developed to ensure that practice follows the law and education programs can be developed to ensure that the guidelines are followed.

Advance directives (education)

Advance directives (also known as “living wills” or “durable powers of attorney for health care”) are now legally binding across Canada. We can, through advance directives, ensure that our wishes about end of life care are followed even when we can no longer speak for ourselves. The problem with respect to advance directives is not the law but rather the implementation. Far too few people have completed legally valid and clinically useful advance directives. So even though there is a way for people to get their wishes followed, there often isn’t a will.

Public education is an important tool for responding to the problem of insufficient uptake, legality, and clinical utility. However, others are better situated than I am to develop public education modules on advance directives. And, indeed, a number of useful resources have been developed recently and should be promoted. There remains, however, a real need for education on advance directives for health care professionals and lawyers. I will bring together a team of legal academics, clinicians, and members of the public to develop educational modules for health care professionals and legal professionals. It is important for health care professionals to better understand the legal status of advance directives so that they can offer more informed assistance when patients consult them on completing directives and, as well, so that they can better understand what they are legally obliged to do (or refrain from doing) when presented with a patient’s advance directive. The team will produce an online module for medical students and residents that can be included in a suite of online Health Law modules I am already co-producing with a colleague at [Institute X]. As the people often asked to assist individuals with their advance directives, it is also important for lawyers to better understand the health context within which advance directives operate. To that end, the team will prepare and share a set of materials that will be made available to faculty at law schools across Canada interested in teaching about advance directives in courses such as Health Law or Wills and Estates and faculty interested in establishing an Advance Directive Clinic to be offered in the community.

Withholding and withdrawal of potentially life-sustaining treatment (law and policy reform)

Fortunately, we have left in the past the practice of keeping people alive against their express wishes. If I am ventilator-dependent and paralyzed in bed, my request to remove the ventilator must be respected. But what if I have sustained a traumatic brain injury and my family want treatment continued while the health care team

have decided that treatment would be “futile”? Or what if I have advanced cancer and want all interventions for a long enough window to see whether some traditional medicines might work but the doctors want to put a Do Not Resuscitate Order on my chart? In Ontario, thanks to the Supreme Court of Canada decision in *Cuthbertson v. Rasouli*, the answers to these cases are somewhat clear. But the rest of us are mired in a controversial and corrosive state of confusion. We need provincial legislatures to step up and clarify the law and establish tribunals for the resolution of conflicts.

I will bring together a team of individuals from (at a minimum) law, ethics, medicine, nursing, and health administration for another intensive law and policy reform workshop. The team will be challenged to draft a proposal addressed to provincial/territorial governments for a statutory regime and institutional structure with the expertise and authority needed to resolve otherwise intractable conflicts with respect to withholding and withdrawal of treatment in a fair and efficient manner. This team will also draft template institutional policies with respect to resolving conflicts about withholding and withdrawal of potentially life-sustaining treatment to either complement the legislative initiatives if successful or to fill the gap if unsuccessful.

Voluntary euthanasia and assisted suicide (data gathering, shared understanding)

Voluntary euthanasia and assisted suicide are clearly illegal in Canada. Both are prohibited under the *Criminal Code*. And yet this is all about to change. Within the past twelve months, the Supreme Court of Canada struck down the *Criminal Code* prohibitions on assisted death, a bill to decriminalize assisted death was introduced in the Federal Parliament, and legislation to permit medical aid in dying was passed by the Quebec National Assembly.

Quite simply, it is impossible to predict precisely what work will need to be done over the term of the Trudeau Fellowship in this domain. Obviously, the next steps will vary dramatically depending on what steps various key players decide to take in response to the Supreme Court of Canada decision. In particular, what federal, provincial, and territorial governments will do (if anything). However, there is no doubt that two things are needed: data on end of life decision-making; and engagement with the public and policy-makers. First, we have, in Canada, no reliable data on the incidence or prevalence of the various kinds of end of life decision-making. For example, how many people die as a result of terminal sedation? Voluntary stopping of eating and drinking? Life-ending acts without the explicit request of the patient? Assisted suicide? Voluntary euthanasia? It is essential for sound public policy, that we have that data. I will bring together a team of empirical researchers from Canada, the Netherlands, Belgium, Australia, and New Zealand to design an empirical study that will enable us to gather the data we need in Canada to track these practices over time and across jurisdictions (the Fellowship will enable the protocol and grant applications to be written – the study itself would

be funded through other sources). The lead end of life decision-making researchers in these countries have already agreed to be a part of this team. Second, we have a deficit of understanding of the issues amongst politicians and the public. To contribute to shared understanding, I will build upon my previous work in these two arenas. I will expand my website by establishing sister sites in the countries from which the members of the teams outlined above come [website address], speak in the community (from high school classrooms to church basements), and speak through the traditional media and social media. I will also organize a series of sessions with federal, provincial, and territorial parliamentarians across Canada modeled on the Bacon and Eggheads series run by the Partnership Group for Science and Engineering (www.pagse.org/en/breakfasts.htm).

Bringing it all together

In sum, as a Trudeau Fellow, I will engage in a deliberate process of building community engagement across disciplines, sectors, and countries focusing on the above four areas of end of life decision-making. Many of our past failures in advancing respect for human rights in the domain of end of life care are a result of silos of expertise and deep divides across moral positions. I will therefore build teams (with overlapping membership as appropriate) to participate in the four activities: facilitating shared understanding; gathering data; advancing law and policy reform; and enhancing education. This approach will advance our understanding and capacity to address the most pressing issues in end of life law, policy, and practice today and in the end contribute to us getting to a Canada that doesn't accept people dying in pain. A Canada that doesn't accept people trapped in bodies that only support lives that, for them, are no longer worth living. A Canada that cares deeply and effectively for the dying.

TRUDEAU PROJECT

Arab Canadian Youth: Pursuing Responsible Citizenship to Counter Disempowerment and Disengagement

PROJECT SUMMARY

This project seeks to better understand and mitigate the disempowerment and disengagement experienced by Arab Canadian youth. There is a particular kind of youth alienation often heightened by integration challenges in the context of transnationalism, securitization, and perceptions of radicalization. Regardless of their faith, Arab Canadian youth find greater challenges fully integrating into Canadian societies, where they are often disproportionately affected by law and discourses in media and the public sphere (See Hennebry and Momani, 2013). For the context of this project, it is not assumed that all Arabs are Muslims, nor that the Arab community is homogeneous. However, most Canadian Arabs are Muslim, and some of the same issues affecting this religious minority group in Canada will be applicable for this study. Nevertheless, the diversity among the Arab Canadian diaspora is recognized. In its efforts to understand the experiences of Arab youth and their susceptibility to social exclusion at a time when their region of ethnic origin is too often in the news headlines, the project will engage novel methods of data collection, community engagement, and youth dialogue across this youth community.

Youth are the future fabric of a resilient Canadian multicultural, pluralist, and open democratic society. The overall goal of the project is to understand and explore levels of social inclusion, belonging, political expression, and involvement among youth from Arab-origin countries across Canadian communities, within the context of globalization, hyper-connectivity, proliferation of diverse media sources, and growing transnationalism. Understanding how Arab youth perceive and pursue the rights and obligations of Canadian citizenship will provide a useful lens into this underexplored community at a time when Canadians of Arab origin are increasingly in the media limelight and under public scrutiny.

This project's core objective is to better understand and document the experiences, narratives, and practices of Arab Canadian youth with respect to diaspora engagement in transnationalism, political debates and conflicts in and about countries of origin, and sense of belonging and social integration in Canada. This will be achieved through workshops, focus groups, interviews, and surveys. The project will also investigate the sense of cohesion and division among Arab Canadian communities, with a particular emphasis on their transnational ties to Arab countries of origin and their potential (in)direct engagement with intraregional or civil conflict(s).

PROJECT DESCRIPTION

Canadian policymakers have long relied on multiculturalism policy and democratic pluralism as a means of promoting the integration of Canadians of diverse backgrounds and identities with conflicting political views. Yet concerns in the Arab community over ethnic segregation, "parallel lives," racial discrimination, social cohesion, oppositional views over Canadian foreign policy, and political exclusion and isolation continue to emerge in scholarly and public debates (Hennebry and Momani, 2013).

While maintaining transnational ties through international communication and travel can at times help ethnic communities to integrate into multicultural societies (Hennebry, 2013), the overall conditions of modernity and life in Western democracies—individualization and value relativism—can also prompt a

difficult search for identity, meaning, and community for a number of individuals. Radicalization can occur as individuals seek to reconstruct a lost identity in a perceived hostile and confusing world (Dalgaard-Nielsen, 2010). It is indeed this very identity as transnational citizens tied to countries undergoing political transformations that make these youth in particular subject to a radicalized media through a state-led security lens (Hennebry and Momani, 2013). Further, in the context of growing securitization policies and discourses, perceptions of radicalization can heighten fear and stigmatization directed at Arab Canadian youth, which can potentially lead to increased conflict(s) across communities, social exclusion, and vulnerability to hate crimes and speech.

With high connectivity and access to the internet--now the norm among many Canadian urban youth--the prospect of turning to the internet for information about politics and religion is relatively high. Facilitated by modern information communication technology, internationally dispersed populations from the same country of origin are able to communicate regularly, to find new avenues for economic activities, or to articulate common political interests (Cohen 1995; Vertovec 2009). With contemporary migration processes, ethnic communities can establish themselves in transnational spaces that cut across national boundaries, connecting with communities in both the country of settlement and the country of origin (and often with other members of the same ethnic or religious group or from the same country of origin who live elsewhere). Migrants and their offspring are in many cases not exclusively shaped by confrontation or negotiation with their country of settlement but are also informed by developments that affect or have emerged in the country of origin and the ethnic diaspora (Clifford 1994; Cohen 1995). Arab Canadian youth, for example, played an active role in participating in the Arab Spring, be it online or through direct political support for revolutionary movements that swept their countries of origin in 2011-2013 [bibliographic reference of Fellowship candidate's forthcoming publication]; moreover, many Syrian Canadians are in a state of great anxiety and sadness as they watch their country of origin in complete turmoil. In short, the politics and social issues in countries of origin have a direct and often significant impact on immigrant youth in Canada.

Transnational Arab Canadians have long been subject to heightened suspicion and selection, criminalization, and stigmatization due to their transnational practices and identities (Hennebry and Momani, 2013). Such narratives can be particularly detrimental to integration and sense of belonging among youth, potentially heightening youth vulnerability to radicalization, and can have lasting consequences for social cohesion. In order to foster productive strategies for change, research, policy, and community building, we must recognize the inherent transnationalism among the Arab Canadian youth of today and see it *not as a threat, but an asset*.

Shifting the thinking in this way can enable a greater understanding of transnational practices, a more nuanced understanding of what practices might put youth at risk of potential radicalization, and increased attention to how better to counter these practices using similar communication technologies. There are various tools and strategies known to mitigate the risks for youth as they seek to maintain their unique transnational identity while developing a sense of social cohesion within the Canadian communities they participate in. The tools include:

- promoting “counter-heroes” within the community who can serve as role models of success;
- redirecting passion for issues into productive activities such as building capacity to report abuse, discrimination, and hate crimes; learning how to effectively lobby government; contacting MPs, etc.;
- creating inspirational counter-narratives; and
- strengthening capacities to identify safe sources of online information.

An example of using these tools as countering efforts involves categorizing and understanding the online recruitment efforts of groups or individuals through information communication technology (e.g., through social media, mobile applications, etc.) who may espouse violent or radical views and then using these very technologies and modes of communication to reach youth with counter-messaging and alternative sources of information. Such an effort may assist in gaining better insights into the recruitment practices aimed at young Arab Canadians that lead to “home-grown extremists,” who could pose a threat within Canada as Canadian involvement in the international coalition to fight ISIS grows (Public Safety, 2013), but it would also provide an important first step in developing the counter-messaging strategy needed to ameliorate this risk. Additionally, concerns over the flow of “foreign fighters” from Western countries, including Canada, to Syria and Iraq to join rebel organizations and ISIS to fight violent governments in Damascus and Baghdad, and to other places of civil conflict, is an example of how radical ideologies in the absence of counter-narratives can result in the recruitment of young people. This research will uncover the extent of exposure or susceptibility to such recruitment strategies among Arab Canadian youth; informed by the perspectives and insights of Arab youth themselves, the project will propose and create opportunities for counter-narratives, tools for interpreting messaging, and strategies for fostering “counter-heroes” among youth in Arab communities across Canada.

This project seeks to discover and document the experiences of young Arab Canadians, and it will do this through the development of diaspora dialogues, focus groups, and workshops aimed at attracting Arab Canadian youth and providing them with a forum in which to explore and take positive action with regard to their particular challenges within Canadian society. In short, this project will provide an *alternative method for dialogue* with and among members of the Arab Canadian community, enabling them to voice and address their political and social concerns in a manner that promotes youth engagement and fosters public discourse.

While the transformative events known as the ‘Arab Spring’ have produced significant change and political opportunity in the Arab world, they have also raised new concerns about feelings of disenfranchisement and greater critique of Canadian foreign policy as we re-embrace an authoritarian regime in Egypt, stand back as Syria and Libya disintegrates, and engage in a militarized war against ISIS. The “Bosnian effect,” where Muslim youth may feel that Western countries are ignoring the plight of fellow Muslims, can lead to youth alienation. This is a growing risk in the Arab Canadian community. Among other things, the proposed project aims to dissect current perceptions among Arab Canadian youth about conflict(s) within Arab Canadian communities, which often react to home country and regional politics. A better understanding of these transformative regional politics and their impact on the practices of Arab Canadian youth is essential in order to fill this knowledge gap with evidence-based policy and practices, and to foster improved social inclusion and political engagement. Without aligning policies to these realities, we risk intergenerational and intercultural conflicts, heightened fear and securitization, and fractionalized ethno-cultural communities—conditions which create a recipe for youth disenfranchisement and susceptibility to “self-radicalization” or exploitation. Perhaps most tragically, such conditions also result in a failure to realize youth potential and foster strong multiculturalism. This project, hence, will lay the groundwork for the development of better means and tools to integrate, empower, and involve Arab Canadian youth in a pluralist democratic society.

The project has relevance across a wide range of public policies that pertain to empowering youth in marginalized communities, providing safe spaces for youth to express political and social frustrations,

and redirecting political energies into a positive means of engaging in a democratic pluralist society. More specifically, it will involve examining the following 6 **issues of concern**:

- I. ***Interconnections and tensions within first and second generations*** (parental relations and conflicts). Do we see a different impact of Canadian securitized policies and discourses on Canadian-born youth than immigrants or refugees? Do political tensions, either abroad or within Canada, heighten or defuse with generations of Arab Canadian communities?
- II. ***Interrelations and levels of cohesion or divisions within the various Arab communities*** (e.g., among and within Syrian, Egyptian, Tunisian, Lebanese etc. communities). Given existing tensions and polarization of Syrian and Egyptian communities, for example, are these conflicts imported into Canada? Will potential radicalization of Syrian and Egyptian opposition groups abroad pose a risk to Arab Canadian youth?
- III. ***Connections between Arab Canadian diaspora with home regions, countries, and communities*** with respect to personal, political, and social realms (e.g., family ties, participation in political and social movements). Are youth engaged in these debates and conflicts, and if so, to what extent? How are Arab Canadian youth channeling their political energies to produce change abroad? Are these political engagements of positive activities, or is there a concern that connections could lead to exporting “foreign fighters”?
- IV. ***Connections and relations with Canadian society***. Are Arab Canadian youth susceptible to the ‘Bosnian effect’? Do narratives of radical groups abroad resonate among Arab Canadian youth, and if so, how?
- V. ***Policy and government strategies’ impacts on Arab Canadian youth***. How might Canadian foreign policy actions exacerbate the potential ‘Bosnian effect’ sentiments within the Arab Canadian community? How, for example, is Canadian military involvement in the coalition against ISIS perceived by Arab Canadian youth? How is the evaluation of foreign policy related to the perceived public perceptions of Canadian Arab youth?
- VI. ***Information communication technology connectivity, social media, and politics of Arab origin countries on Arab Canadian youth***. What are the kinds of information that Arab Canadian youth are exposed to? How do Arab Canadian youth decipher safe messaging? To what extent are Arab Canadian youth engaging in Middle East and North Africa politics, for example by sending money, reading news from the region, producing political material, etc.? Can these tools be redirected to creating counter-heroes (or mentoring), counter-narratives, and safe-messaging?

PROJECT TIMELINE AND METHODS

Year 1

Policy evaluation and analysis, with an eye to understanding the impact and perception of a range of relevant policy domains by Arab Canadian youth, including foreign policy (particularly with the Arab states), immigration and citizenship, public safety, border security, etc., in the context of the realities of growing violence in and beyond the Middle East. This will be conducted through a detailed literature review and by carrying out a SWOT Analysis of relevant policy developments (such as recent changes to the visa system, the refugee system, and the proposed biometric information of photo and fingerprints

for travelers from certain countries). The ultimate goal of this analysis is to foster improved evidence-based responses to enhance Arab youth civic engagement.

Primary data gathering through a mixed methods approach including workshops, surveys¹, interviews, and focus groups with Arab youth and community representatives, including students and non-student youth.² Using local student groups to facilitate these data collection methods, a survey will be administered in 4 Canadian cities where there are large Arab youth populations, including: **Toronto, Montreal, Vancouver, and Edmonton** (Year 2 [see below] will include mid-sized cities with high Arab populations). Further attention will be paid to representativeness across countries of origin, using quota sampling, a non-random sampling technique which will enable us to obtain sample strata which reflect the proportions of the largest countries of origin in our sample. Specific attention will be paid to ensure that the sample includes participants from the top countries of origin reflecting the proportion of the Arab population in Canada (e.g., Lebanon 18.4%; Morocco, 12.9%, Algeria, 11.6%; Egypt, 11.4%; Iraq, 11.3%, Saudi Arabia, 5.1%; Somalia, 5.1%, Syria, 5%, etc.).³

The data will be collected through a three-day workshop in each city:

Day one: Conduct a survey covering the breadth of the 6 issues of concern outlined above. A quota sampling design will be employed in order to ensure representativeness across the Arab Canadian youth population. It is aimed that 150 survey responses will be collected per city. Recruitment for in-depth semi-structured interviews will also be done during the workshop.

Days two and three: Conduct in-depth semi-structured interviews on these two areas with quota sample of young men and women, variety of source countries, and immigrant classes: (1) youth disenfranchisement, and (2) transnational engagement. Ten interviews will be conducted at each city.

Day three: Hold focus group sessions covering two particular issues: (1) interrelations between different groups within the Arab Canadian youth, and (2) potential youth disenfranchisement involving root causes and manifestations, mechanisms and practices (including online), solutions and recommendations (from youth, about youth, to youth, to community and to government). Two focus group sessions will be held at each major city.

Dissemination and knowledge mobilization: A project website aimed at academic and policy groups linked to [Research Centre X], where [the Fellowship Candidate] is a research associate, and hosted at

¹ Names will not appear in any thesis or report resulting from this study; however, anonymous quotations may be used. Data collected during this study will be retained for seven years in a locked office. Only researchers associated with this project will have access.

² Where needed, the PI is able to communicate in English, French, and Arabic to provide full language coverage of those surveyed, interviewed, and contacted for the project.

³ Using Statistics Canada's National Household Survey (NHS) data from 2011, we collected estimates of the number of residents born in Arab countries for all 148 census metropolitan areas (CMAs) in the country - these include 82% of Canada's population. The total Arab-Canadian population is defined as residents living in a given CMA who were born in a country that is a member of the Arab League. Arab-Canadian population proportions were estimated using the total Arab-Canadian population divided by the total CMA population as recorded in the 2011 NHS, including non-citizens. Once aggregated, we were able to also estimate the top CMAs in absolute and relative terms for Arab-Canadian populations, as well as the top countries of origin for foreign-born Arab-Canadians. A noticeable gap in this methodology is that the NHS does not incorporate second generation Arab-Canadians, though we hypothesize that the CMAs with the largest incidences of Arab-Canadians will be highly correlated with the largest second generation populations.

the [School of International Affairs Y] will be created to collect all aspects and materials included with the project. The projected outputs will include academic publications, policy briefs, and project website development. Moreover, an online network will be cultivated and promoted via social media (e.g., Twitter, Facebook, Instagram, etc.). A public-facing online web portal will make available community-building materials such as videos, web resources, fact sheets, handouts, posters, and other resources. This public outreach effort is aimed connecting Arab Canadian youth and their communities with resources and information aimed at strengthening community, fostering social inclusion, and empowering youth in communities.

Year 2

Continued primary data gathering through workshops, surveys⁴, interviews, and focus groups with Arab youth and community representatives, including students and non-student youth.⁵ The same three-day workshop described above will be replicated in **Ottawa, Windsor, and London** ON, three cities with large Arab populations.

Continued dissemination and knowledge mobilization: An article will be developed for the Trudeau Foundation papers to reflect and analyze the survey findings of the project. Moreover, the project website will be updated with survey results, op-eds, and videos. Other social media outreach will also be developed.

Year 3

Policy conference to engage decision-makers will take place toward the goal of creating a stakeholder network of scholars, government, intergovernmental, and community representatives. Internationally recognized scholars working on the engagement of Arab communities throughout the Western world will be invited to attend (pending additional external funding) or teleconference into a policy conference. Using comparative examples and research from countries like the United States, Germany, France, and the United Kingdom, all of which also have large Arab youth populations and have varied experiences with social inclusion, will be a useful feedback into the larger research project and publication outcomes. Experts from outside of Canada can also better inform Canadian policy on potential challenges and opportunities with implemented policies.

This policy workshop would benefit from the work, input, and engagement of Trudeau Fellows, Scholars and Mentors in the Responsible Citizenship community. Through the exchange of the Trudeau community's own research, ideas and insights in the policy conference, research findings of this project will be greatly enhanced and enriched. Many notable Trudeau community members would be invited to attend the policy conference as panelists, participants, chairs, or discussants. Potential collaboration and possible engagement could be envisioned, for example, with Trudeau Fellows such as **Constance Backhouse** and **Isabella Bakker**, who could enlighten the project on how Arab communities' experiences compare with women's and racialized communities' own historical struggles with attaining legal justice in Canada and in the world. **John Borrows'**, **Clare Bradford's**, and **Jason Edward Lewis'** work on indigenous communities and their experiences of marginalization and media (mis)representations is also relevant and could better inform Arab communities in their efforts to create alternate public narratives.

⁴ Names will not appear in report resulting from this study; however, anonymous quotations may be used. Data collected during this study will be retained for seven years in a locked office. Only researchers associated with this project will have access.

⁵ Where needed the PI is able to communicate in English, French, and Arabic to provide full language coverage of those surveyed, interviewed, and contacted for the project.

François Crépeau's, **Catherin Dauvergne's**, and **Will Kymlicka's** work on immigrant rights, border laws, and the securitization of immigration policy also directly pertains to this study of Arab Canadian communities, and their views on the implications for our multicultural society would be most welcome. Finally, **Simon Harel's** and **Danielle Juteau's** work on ethnic diversity in urban communities and interethnic relations could also greatly inform this project's concern with Arab communities in urban centres. Tapping into the wealth of knowledge and experience of Trudeau community members would provide an intellectual and contextual benefit to this project. Moreover, the frank and candid conversations that the Trudeau community continue to have amongst themselves in numerous Trudeau community forums would greatly enrich this project. Funds allocated to the policy conference will not cover the entire costs of this proposed policy conference, and so additional funds to host the policy conference will be raised from [the School of International Affairs Y], [Research Centre X at University B], and [University Z].

Future Plans

The Trudeau Fellowship would provide the funding needed to carry out the primary data collection across the country. This would set the stage for a longer-term initiative that would take these findings and translate them into a broader public outreach initiative. In short, the Trudeau funding would be used to seed projects aimed at achieving the larger goal of the project: to facilitate positive change and more engaged Canadian citizenship among Arab Canadian youth and their communities. In the final year of the project, a SSHRC Connection Grant application will be submitted to take the research findings beyond the academic realm and into the broader stakeholder community. SSHRC support will be sought to:

- 1) Host a **Public Outreach Workshop** to share information and findings of the Trudeau project with a larger public and policy audience that includes groups such as [examples of groups] as well as other think tanks and social welfare groups, business leaders, secondary school educators, university administrators, and the interested media.
- 2) **Build Capacity** by designing tools and materials, including community training resources, manuals, and fact sheets, aimed at countering Arab youth marginalization and disenfranchisement in an effort to mitigate putting youth at risk of adopting radical ideologies that can lead to violence.
- 3) **Promote Ownership and Civic Engagement** through diaspora dialogues, mentoring, and web portal design. These community engagement efforts will attempt to provide a positive public space for members of the Arab Canadian diaspora by enabling them to share and discuss new ideas, visions, and goals for their specific communities.

EXPECTED RESULTS AND DELIVERABLES

Through its research component and early-stage knowledge transfer activities involving academics, policymakers, and community members, this project will serve as a catalyst for building sustained partnerships and maintaining a better understanding of groups and individuals within Canada seeking to utilize the transnational identity of Canadian Arab youth in a way that can enrich Canadian multiculturalism and diversity.

The expected deliverables include:

- I. **Database preparation**, involving primary data gathering through a mixed methods approach that includes surveys, semi-structured interviews, and focus groups with Arab Canadian youth and community representatives. Primary data will be shared on a public and academic-hosted website to spur further research.
 - II. **Academic and media publications**, including one academic book manuscript and at least two peer-reviewed articles in international and national academic journals, a magazine-length article aimed at publication in Walrus or Macleans, and op-ed articles in major Canadian newspapers.
 - III. **Policy-relevant publications and briefs**, to be published by relevant think tanks and institutes, which will also be suitable for dissemination to government departments. Such publications will also include fact sheets about groups of Arab Canadian youth; demographic summaries of source countries, immigration issues, languages spoken, religion, etc.; short statements on current political issues, conflicts, and key challenges; links to resources; recommendations aimed at federal policies and for law and border enforcement agencies, where tools like decision trees can be developed to assist in identification of the potential problems, improving intercultural understanding and communication, sensitization, awareness of hot button or hot issues (which will be updated online), and recommendations for decisions, and resources, etc.
 - IV. **Online web portal** aimed at connecting youth and the broader Arab communities with resources and information aimed at strengthening community, fostering social inclusion, and empowering youth.
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PROJECT BUDGET

	Year 1	Year 2	Year 3	Year 4	Subtotal	Total
Professional Development						\$42,007
Masters RA	\$18,003	\$12,002	\$12,002	\$0	\$42,007	
Travel & Subsistence						\$18,000
Research Travel	\$6,000	\$6,000	\$0	\$0	\$12,000	
Conference Travel	\$0	\$0	\$3,000	\$3,000	\$6,000	
Computers, Electronic Communication, and Supplies						\$1,000
[Survey Software A]	\$1,000				\$1,000	
Knowledge Dissemination						\$69,000
3-day workshops	\$21,000	\$28,000	\$0	\$0	\$49,000	
Policy workshop	\$0	\$0	\$10,000	\$0	\$10,000	
Website	\$1,000	\$500	\$500	\$500	\$2,500	
Manuscript preparation	\$0	\$0	\$3,000	\$4,500	\$7,500	
University Administration (15%)						\$19,501
\$50,000 award						\$50,000
\$25,000 TF participation allowance						\$25,000
Total						<u>\$224,508</u>

Budget Details

Professional Development:

1 MA-level RA will be hired (from [University Z]) during the first three years of the project (3 terms in Year 1, when the workload will be greatest, and 2 terms in each of Years 2 and 3). The graduate student will help design and test the survey questionnaire, collate survey results, and assist in primary and secondary research. The student will also help with coordinating logistics of workshops in the 7 Canadian cities. The RA will be paid in accordance with [University Z] salary rates and guidelines.

Travel & Subsistence:

Research travel funds will be used for attendance at community workshops in Years 1 and 2. Conference travel will enable dissemination of results during Years 3 and 4.

Computers, Electronic Communication, and Supplies:

[Survey Software A] (to be used in conjunction with workshops) will be purchased in Year 1 to assist in managing and analyzing survey data.

Knowledge Dissemination:

Trudeau funds will be used to cover the costs (venue, food, etc.) associated with the 3-day workshops to take place in the first two years of the project. Three workshops will be hosted in Year 1, and four in Year 2, at a cost of \$7,000 each. Local in-kind funding and sponsorship will be sought to meet budget shortfall. \$10,000 will also be directed to a Bellagio-style policy workshop, to be held in Year 3. Finally, website design/launch (\$1,000) and annual update and maintenance (\$500) costs are included in the budget, as well as costs associated with producing research articles and manuscripts, such as line editing and index preparation.

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Trudeau Fellowship Project

Engaging Insurgent Justice: The Administration of Justice by Non-State Armed Groups in Wartime

A. Introduction

In Syria, dozens of women and men are held in unofficial ‘prisons’ run by some of the armed groups fighting ISIS. The detainees are accused of a variety of offenses, including war crimes, and wait to be tried by one of the several, competing courts established by different groups. Some courts are presided by former judges and others by clerics or military leaders. They apply anything from a “Unified Arab Criminal Code” prepared by the Arab League, to the judge’s own personal interpretation of the Sharia. Trials are quick, and punishment is often death. In a similar fashion, in the rebel-held part of Ukraine in early November, two men were accused of sexual assault and tried by the ‘First People’s Court’ established by insurgents. On the basis of a public vote in the town hall, one man was condemned to death by firing squad, the other to serve on the front line to “redeem his honour in combat”. This mirrors the practice of insurgents in other wars in Sri Lanka, El Salvador, Nepal, Sierra Leone, Colombia, Rwanda, Sudan, Kosovo, and many other places where irregular tribunals were created.

What should an insurgent group do when it captures someone who has committed serious crimes, and even war crimes or crimes against humanity? This Trudeau Project seeks to move the discussion beyond the headlines to ask the hard question of whether there are any conditions under which it might be legitimate for a non-state armed group to apply justice through the creation of insurgent courts. The project will compile and analyse the practice of non-state courts in various wars, and map out the legal and political implications of an attempt to infuse justice and fairness in these proceedings. Ultimately, the project seeks to foster public and intellectual dialogue that can sustain policy innovation concerning insurgent justice.

B. Background

This Trudeau Project sits at the confluence of three branches of my prior research, which come together here in a novel way.

One of my earlier studies investigated the structural ties between international humanitarian law (which governs armed conflict) and human rights (which sets out the principles of due process). That study expounded the separate normative frameworks of these two areas of international law, the distinct role that reciprocity plays in them and the way that factual characterisation manages to overcome the vague nature of legal standards. This work culminated in the publication of a monograph titled [*Book Title*], at [Publisher A].

The second branch of my research, related to my mandate as founding director of [University Centre B], sought to apply to international human rights law the teachings of legal pluralism developed in the context of domestic law. These investigations targeted not only the “horizontal” diversity of the standards that regulate state activity, reflected in the literature on the fragmentation of international

law, but also a “vertical” diversity that expands the field of legal agents that are considered to take part in the production of international legal standards. One outcome of this study was a volume that I co-edited, published by [Publisher C] in [year of publication], called [*Volume Title*].

The third branch of my research that touches on the proposed project is the most recent: the interdisciplinary team of [“Project D”]. I am the senior researcher on this team which is composed of legal scholars and anthropologists exploring how the concept of culture is transformed when it is invoked in the formal application of law. The situation I am particularly interested in relates to the application of international criminal law to insurgent groups during the civil war in [Country E]. In [year X], I published an initial article related to this research [article’s full bibliographic reference]. In [year Y], I chaired an interdisciplinary conference and wrote another article [“Article Title”] which will be included in a volume I am editing that will be the culmination of this project [*Volume Title*].

In its interrogation of the links between humanitarian law and human rights, its expansion of the development sites for international law and its openness to the cultural diversification of applicable law, the proposed project sets the challenge of reconciling these highly diverse views in a single, cohesive approach that could inform an effective policy for improving insurgent justice.

C. Project Statement

The issue of insurgent justice is fast becoming one of the most sensitive in various environments where the collapse of the state means that non-state justice becomes the norm rather than the exception. The legitimacy of entire rebellious efforts often seems to hinge on how they will respect human rights, especially when it comes to their perceived “enemies”. This is vividly illustrated by the challenges posed for the Canadian Government in joining the struggle against ISIS in Syria. Confronted with credible reports that ISIS fighters have committed widespread war crimes, how should Canada and the international community react if armed groups, in the name of ‘justice’, establish their own courts to prosecute ISIS fighters? What are the standards that should apply to non-state forms of trials? I propose to establish a multidisciplinary working group to document and analyse this practice and make policy recommendations to engage insurgent groups so that they commit to respecting basic standards in the administration of “rebel justice”. Insurgent groups are typically represented as wholly permeated by illegality, from the very resort to armed force to the involuntary recruitment of fighters to the means and methods of warfare used; they are taken to be truly *outlaws*, and often encompassed under a very broad understanding of “terrorism”. International law broadly has refrained from declaring as illegal the use of force by or against the state in a national setting, limiting itself to extending to insurgents the same criminal sanctions for breaches of the laws of war as are applicable to governmental armed forces, and posing few limitations on a state’s ability to criminalise insurgency under domestic law.

Despite the political characterisation of insurgent groups as outlaws and international law’s disengagement from issues touching on the internal legality of such groups, the reality on the ground is that non-state armed groups are normative actors, that both seek to be bound by norms and produce them. This is particularly evident in non-state armed groups’ wide spectrum of attitudes towards the laws of war. Past experience has shown that it is not impossible to engage with insurgent groups with a view to bring their behaviour in line with applicable international legal standards. A particularly interesting experience has been carried out over the last several years by the Swiss NGO Geneva Call, which has approached insurgent groups in different conflicts to persuade them to adhere to the ban on anti-personnel landmine entrenched in the Ottawa Convention. While insurgents cannot ratify the

Ottawa Convention, Geneva Call succeeded in getting three dozen groups to sign a 'deed of commitment' to respect a similar ban, along with monitoring measures. With respect to accountability, non-state armed groups can share many attributes with governmental armed forces at the organisational, institutional and functional levels, while markedly differing in other respects.

The international community should exert a pull towards greater compliance by insurgent groups with international law, including international criminal law and human rights. As such, attempts by rebel groups to hold individuals accountable for war crimes and crimes against humanity should be recognised and supported if they align with applicable international norms. Inevitably, non-state groups imprint the values and aspirations of their own community in administering insurgent justice. The resulting ethno-cultural pluralism poses a challenge for which the unique Canadian experience of managing diversity within a common social project can prove extremely useful.

D. Objectives

- **Explore the reality of insurgent justice**, to offer an understanding of the motives that lead armed groups to establish their own tribunals and to provide an accurate picture of the extent and characteristics of this practice. Using documentary analysis and semi-directed interviews of individuals that have been involved in insurgent courts, the study will collect data that will be analysed in light of legal requirements and political realities in the countries concerned at on the global stage.
- **Foster public and intellectual dialogue** on the issue of insurgent justice, via a working group bringing together actors representing a diversity of constituencies concerned with this under-studied practice of armed groups during armed conflicts. Participants will hail from academia, civil society organisations, national governments, and international organisations.
- **Devise policy recommendations** that can provide guidance to Canada and other governments as to the appropriate and lawful stance to adopt when confronted with judicial institutions created by non-state armed groups. This will take the form of principles or guidelines adopted by the working group described above. A communication strategy will be developed to ensure broad dissemination of recommendations well beyond academia to all classes of actors on the global stage.

E. Project Summary

There are three aspects to the research that this project must cover in order to provide a coherent, cogent and effective solution to the issue of the administration of justice by insurgent armed groups. The first aspect is a legal analysis of the international law framework that applies to this practice. The second aspect is a survey of the experiences of non-state armed groups in establishing and operating courts. Finally, the third aspect is a normative study of the potential for engagement with insurgent groups, largely based on the experience of Geneva Call and the International Committee of the Red Cross.

Legal Analysis. There is both an asymmetry and a paradox in the structure of international humanitarian law applicable to non-international armed conflicts. The asymmetry refers to the fact that state and non-state parties to the conflicts are by and large bound by the same rules on the conduct of hostilities and on the protection of civilians and other non-combatants. This equality of obligations is translated by the balanced application of international criminal responsibility for war crimes, applied equally to government and insurgent combatants. Despite this, the status of insurgent and government forces under humanitarian law is entirely different, because rebels do not enjoy what is called ‘combatant immunity’, that is the principle that a soldier cannot be held accountable for participating in an armed conflict in which he or she behaves in a manner consistent with humanitarian law. There is in humanitarian law no concept of ‘lawful combatant’ that can be applied to rebels. As a result, no immunity attaches to participation by insurgents in a civil war, even if they behave in a manner that respects international legal standards in every way.

The paradox of international humanitarian law applicable to internal armed conflicts is that it seems to demand on the one hand what it fails to authorise on the other. Thus under Common Article 3 of the 1949 Geneva Conventions, the single provision of these Conventions applicable to internal wars, “each party to the conflict” is required to respect a number of minimal humanitarian imperatives. Yet, in the part of the provision which deals with enforcement measures presumably required to implement these obligations, the Conventions limit judicial activity to “regularly constituted courts affording all the judicial guarantees which are recognized as indispensable by civilized peoples”. The expression “regularly constituted courts” is widely understood to cover only courts established according to the laws in force in the country, to the exclusion of any ‘court’ set up by insurgent groups. It is thus as if non-state groups are required to respect the laws but that their efforts in ensuring such respect are not ratified as such and they are deprived of what would ordinarily be a key means of enforcing the law.

The same paradox is partly retained in the 1977 Protocol II to the Geneva Conventions, which further develops international humanitarian law applicable to internal conflicts: on the one hand, in order for this Protocol to be applicable, the insurgent must demonstrate the ability to implement its provisions (Art. 1); on the other, the Protocol fails to recognise any legality to an insurgent that actually does implement its provisions vis-à-vis its own members. There is a concrete and pressing need to carefully analyse the standards of international criminal law, human rights, and humanitarian law. This task involves the complex interrelations among these strands of international law which still operate largely in isolation one from the others. Critically, in order for this legal analysis to be meaningful, it must be rooted in an accurate understanding of the practice of armed groups in setting up their own courts.

Survey of Insurgent Practice. One of the key challenges facing anyone attempting to grasp a better understanding of insurgent courts and develop approaches to bring this practice closer to international

legal standards is the fact that very little is known about it. This reflects in a general sense the nature of insurgency as seeking to escape detection in every respect. There is no trace of any attempt to survey this practice as a transnational legal phenomenon.

What are the features of insurgent justice that would inform an understanding of the practice and permit a sharper legal analysis and more effective recommendation for action? A first significant aspect is to better understand the motivations of non-state armed groups in setting up their own tribunals. There is little doubt that internal discipline is a key objective, going towards developing greater operational effectiveness as a fighting unit. Being perceived as committed to justice by the population on whose support they depend may often be a significant factor as well. Broader domestic and international legitimacy may be gained by the formalisation of mechanisms to sanction violations of minimum standards of humanity. Such motives, if they were confirmed in a survey, appear not inconsistent with respect for international law.

A second important feature of insurgent justice is the type of structures created by insurgents to administer 'justice'. The available fragments of information suggest a wide spectrum of practices as regards the formality of the institution, its membership, its relation to military commanders, etc. It would be significant to determine the extent to which any notion of judicial independence is alien to the conception of these courts as revealed in insurgent narrative. Whether these tribunals operate in a reciprocal fashion is likewise revealing, that is whether the same procedures and norms are applied to a captured enemy and to the group's own fighters.

A third feature of insurgent justice that would significantly inform an analysis is the extent to which rebel courts invoke formal standards of international human rights and humanitarian law. In the available information, there are common mentions of insurgents adopting their own laws. The extent to which these laws appear linked to or compatible with universal standards would significantly affect the likelihood that non-state groups would be willing to commit in a formal fashion to respect international law in their administration of justice. Finally, a survey could identify obstacles or limits to fairness in insurgent justice, from the lack of individuals trained in the law to the absence of a stable geographic basis for the activities of insurgent courts.

Policy Recommendations for Normative Engagement. The challenge presented by this project is not only to critically analyse the practice of insurgent justice on the basis of a more informed understanding of what is happening on the ground, but also to attempt to translate this analysis into policy recommendations which can be implemented to bring rebel courts closer to what is mandated by international legal standards. What objectives are realistic in this extraordinarily difficult environment, and what are the means best suited to pursue them? The work of two organisations provides an enormously valuable body of experience in this respect: the International Committee of the Red Cross (ICRC) and Geneva Call.

The ICRC is one of the oldest international non-governmental organization active in the field of the protection of fundamental rights. Today, the ICRC devotes most of its energy and resources to providing humanitarian assistance in civil wars, including the dissemination of international humanitarian law. Several decades of experience in talking to non-state armed groups gives the ICRC unparalleled ability to understand how to translate the abstract principles of humanitarian law into concrete guidelines that can be understood and accepted by rebel fighters, often illiterate and nearly always operating in difficult circumstances. The ICRC has produced or commissioned studies to better understand what makes rebels

comply with humanitarian law, identifying the limits of what can be achieved by legal norms in the context of internal conflicts. On the other hand, the ICRC has never analysed the practice of non-state groups setting up their own tribunal to administer law.

Geneva Call/*Appel de Genève* is a much younger organization that emerged in the wake of the Ottawa process to ban anti-personnel landmines. That process, spearheaded by the Canadian Government, led to the adoption of the Ottawa Convention whereby states commit to abandon the production and use of anti-personnel landmines. Non-state armed groups, although they do use these mines as well, cannot ratify this treaty reserved to states. As a result, Geneva Call was created to establish a parallel mechanism to induce non-state groups to sign a 'Deed of Commitment' which replicates the core undertakings of the Ottawa Convention. Since 2000, Geneva Call has succeeded in convincing over three dozen armed groups in Africa and Asia to sign this Deed and abandon the use of anti-personnel landmines. The organization lately has expanded its scope and added efforts to generate commitments not to recruit and use child soldiers and to afford special protection for women in armed conflicts.

The project aims to take the very significant experiences of the ICRC and Geneva Call as a point of departure to devise policy recommendations to infuse insurgent justice with greater respect for international legal standards of fairness. A key contribution of the project is to bring to bear a critical legal pluralist approach to the way in which we understand how international law can generate compliance in a context that seems so averse to any type of legal regulation. According to this approach, the force of law stems not from a pedigree linking rules to a source viewed as legitimating, but rather from the normative status given by the commitment of the very agents whose behavior we seek to regulate. Viewed in this way, the key to generating compliance by non-state armed groups with international law is to allow them to have ownership of these norms. Such ownership is unlikely to be achieved by what civil law would label a contract of adhesion, whereby international law is accepted lock stock and barrel. More ambitious attempts such as infusing justice in the operation of rebel courts, will require a process allowing non-state groups to translate international norms into their own vernacular and, in the process, transform them. The outcome is a pluralized international humanitarian order in which there is no absolute consistency of legal standards in every place and for every actor. The promised benefit to reap is a legal order that reaches into confines that the current understanding of international law cannot influence significantly. In concrete terms, this translates into a policy recommendation that the approach advocated by humanitarian entrepreneurs like the ICRC and Geneva Call ought to be abandoned or significantly modified in favour of an engagement with non-state groups that supports their legal agency in the shaping of a humanitarian regime that is reconcilable with both their own identity and international law.

F. Methodology

The project methodology combines documentary and doctrinal research, the use of networks of people working in human rights and post-conflict justice, and meetings with an international multidisciplinary working group.

Some aspects of these three project components call for an **analysis of existing literature** in the fields of international humanitarian law and human rights, from legal theory, with special focus on legal pluralism, to international relations, military studies and especially insurgency and counter-insurgency (COIN) strategies, and legal anthropology. Undergraduate, graduate and post-graduate research assistants in law, political science and anthropology will prepare reports on the application of international humanitarian law to non-state armed groups, on the logic and practice of insurgent military strategies, on state justice administration practices during armed conflict, on the role of international legal standards in the approach taken by the International Committee of the Red Cross and Geneva Call. As I did with my interdisciplinary research team on [“Project D”], combining legal and anthropological viewpoints on the way law constructs culture, I intend to bring together these assistants from different programs in a seminar that will allow for direct discussion, in order to further their reflections and train them in interdisciplinarity.

One of the major challenges of this project is making the connection between insurgent practices on the ground and the legal and theoretical analysis of the contributions of international law. To this end, I propose to use **networks** of people working in organizations that are involved in the protection of victims of war and post-conflict reconstruction, including [list of organizations]. The objective is to identify people in the target countries who will agree to take part in semi-directed interviews on the practices of insurgent courts. The results of these interviews will be collated and analysed by research assistants at [University G].

Finally, the cornerstone of the project will be the creation of a **working group** that will meet under the auspices of the Trudeau Foundation in [city H], to discuss the empirical and theoretical research results and formulate recommendations on the approach most likely to produce concrete results in the way insurgents administer justice. The immediate objective will be to sketch out guidelines for normative engagement with non-state armed groups on justice during armed conflict. This working group will bring together some of the people involved in the data collection, including at least one representative of the ICRC and Geneva Call, as well as experts in international law, humanitarian assistance, and international relations. I also hope to include legal experts from the [Office of the senior legal officer of the armed forces of country Z], with whom I have already collaborated, whose experience is directly relevant due to their deployment in [country F].

G. Integration in the Trudeau Foundation community

The Trudeau community offers a wealth of thinkers with expertise related to the themes of the project and whom I would like to invite to participate.

The proposed project generally reflects three of the four Trudeau Foundation themes. Primarily, the project is directly linked to the theme of **human rights and dignity**, in that it aims, on one hand, to protect the fundamental rights of people subjected to insurgent justice, and, on the other, to reconsider insurgent justice as a platform for articulating the values and aspirations of communities caught up in

armed conflict. In a less direct but nevertheless compelling connection, the project asks whether a person can be both an insurgent and a **responsible citizen**. Ethnocultural diversity is closely linked to the idea of multicultural communities, political spaces in which practices of legality – such as the insurgent courts studied here – develop. There is a similar tension in Canadian multiculturalism, where we try to reconcile the relative independence of communities with adherence to certain values that transcend distinctiveness. This touches on the third Trudeau Foundation theme, **Canada in the world**, underlining the country's wealth of experience and expertise on the issue of insurgent justice. In addition to its involvement in managing differences through a multicultural approach, Canada has played a central role in the development of norms and institutions of international justice in recent decades. Its ongoing participation in peacekeeping operations, the leadership role it played in creating the International Criminal Court, and its involvement in regional and national efforts, such as the Special Court for Sierra Leone, have given Canada an unparalleled pool of expertise on matters related to international justice. Finally, Canada abounds with non-governmental organisations involved in international humanitarian support which have developed collaborative approaches with governments and communities that can serve as models for supporting community emancipation in countries affected by war.

Trudeau Foundation Project Proposal

“Making a Place for Indigenous Environmental Knowledge and Environmental Values in Land Use Planning and Decision-making”

Introduction and Project Outline

The fields of ethnobotany (the study of human-plant relationships) and ethnoecology (the study of humans’ relationships with their local environments) focus on environmental knowledge systems. They include not only practical factual knowledge (e.g., what plants can be used for food, where they are found and how they are prepared), but also people’s attitudes, worldviews and values as they pertain to plants and environments, as well as ways of communicating and transmitting this knowledge. My research in these areas, mostly with First Nations in [Province A], has spanned over four decades, and has been undertaken in close collaboration with Indigenous botanical and cultural experts as well as with linguists, archaeologists and other academic colleagues.

My proposed project under a Trudeau Fellowship is to coordinate and participate in a progressive and focused discussion amongst multiple informed groups on the roles of ethnobotany and ethnoecology in policy, planning and decision-making in the legal and governance arenas around Indigenous Peoples’ land rights and title. I would like to plan and facilitate a 2-3 day symposium for interested Indigenous leaders and knowledge holders, legal scholars, ethnobotanists and ethnoecologists, and students, and to make the results of these deliberations widely available to different audiences, including policy-makers and decision-makers, and the general public.

This proposed project is timely. In [date], a unanimous (8-0) landmark decision came from the Supreme Court of Canada confirming Aboriginal title of [First Nation B] to over 1,700 square kilometres of their traditional territory [*Court Case C*]. [First Nation B] is “one of hundreds of indigenous groups in [Province A] with unresolved land claims” (p. 5). The traditional territories of most First Nations of the province remain in dispute, for now under the control of the Crown or in private hands. Decisions on the use of, and developments on, these lands and associated waters have routinely been undertaken with minimal consultation with the Indigenous peoples whose ancestors have, in many cases, occupied and used their territories and resources for centuries, even millennia. Consultation, when it has occurred, has usually been focused on economic or resource development, with negotiations, when they are undertaken, centering around removing obstacles and financial compensation. Yet, as the pressure for natural resource development steadily increases, First Nations are reluctant to trade their ongoing and future access to lands and resources for money until the questions surrounding their unceded territories are fully and finally negotiated. Due to the economic interests of national and international partners, these questions are ever more political, and how they are ultimately handled will reflect on our national identity.

The Supreme Court decision changed the “playing field” in its consideration of how evidence of long-term occupancy beyond the existence and dating of archaeological sites could be understood, what constitutes an Indigenous people’s traditional territory and

how it can be defined and determined. Not only did the Chief Justice confirm the [Province A] Court of Appeal decision of 2012 [*Court Case E*], based on an earlier decision [*Court Case F*], but they confirmed [First Nation B's] Aboriginal title over a much broader area of their traditional territory than the previous findings had determined. Grand Chief [Name of Grand Chief], president of the Union of [Province A] Indian Chiefs, observed regarding the decision, "This without question will establish a solid platform for genuine reconciliation to take place in [Province A]."

In its decision, Canada's Supreme Court agreed that the [members of First Nation B] can claim land title even if they physically occupy some areas of their territory only some of the time. The Court suggested three criteria to determine land titles: *Occupation*; *Continuity of habitation on the land*; and *Exclusivity in area*. Ethnobotanical and ethnoecological research can help to inform all of these. Although plants and plant use were mentioned only in passing in this Supreme Court decision, the Court upheld, and strengthened, the earlier 2007 and 2012 decisions that were based on considerable evidence of use and occupancy of the [members of First Nation B] of their territory regarding plants, including incorporating a body of plant-based linguistic, ethnographic, ecological, historical, and archaeological knowledge. The potential for applying ethnobotanical and ethnoecological evidence in land claims and disputes over resource development and use rights extends to helping to define people's traditional territories, providing evidence of continuity in occupation, and determining an important element in past, present and future health, well-being and cultural identity of Indigenous communities.

As an ethnobotanist and ethnoecologist who testified in the original case, I was impressed by the recent Supreme Court's decision, and see it as reflecting a new paradigm in recognition of Indigenous land rights and title. It followed from another recent [First Nation B] land use decision by a Review Panel and the federal Ministry of the Environment (October 2013), rejecting a proposal from [Mining Company G] to develop [Mine H] in a key area of [First Nation B] territory, a case in which I also provided testimony.

My legal colleagues also recognized the shift reflected in these decisions and the significance of ethnobotanical and ethnoecological evidence in the deliberations. My participation, and feedback from colleagues, raises the question about how ethnobotanical and ethnoecological research might be further used to resolve such difficult legal questions.

Ethnobotany and Ethnoecology applied to Land Use Decisions

The succession of legal decisions since the 1970s on Aboriginal rights and title deserves a great deal of attention by scholars and practitioners, with careful consideration of the perspectives of Indigenous law specialists, leaders, academics and traditional knowledge holders. The proposed symposium, to discuss the new directions for land and resource planning and decision-making in [Province A] and beyond, would be hosted at [University J]. We would examine the trends and potential for recognizing land-use and occupancy as more than provision of economic opportunities, but rather as reflections of

people's traditional ecological knowledge, and their fundamental and longstanding connections to homelands. Over the first year as a Trudeau fellow, I will work to plan and organize this symposium, in consultation with potential participants: Indigenous leaders and knowledge holders, legal experts, including a number of Trudeau scholars, and land use experts from other countries with similar questions regarding Indigenous peoples and colonial history (e.g., New Zealand and Australia, United States, Sweden).

Some of the specific topics to be discussed are: What are the implications for existing provincial legislation such as the *Heritage Conservation Act*, and the *Forest Act*, as well as mining and environmental legislation, and for existing federal legislation such as the *Fisheries Act*? What are the inferences for existing Treaties, such as the Douglas Treaties of Vancouver Island, and the ongoing BC Treaty Commission negotiation process? How will these decisions change the role of Indigenous peoples as users and managers of their traditional territories? Why is the burden of proof of long-term use and occupancy only on First Nations? Are not other Canadians obliged to understand this complex history of occupation, resource management systems and cultural landscapes? And finally, how can ethnobotany and ethnoecology play an effective role in supporting these new directions?

How these questions are addressed has far-reaching implications for many areas of concern to Canadian society, including: environmental and social justice; treaty negotiations; health and well-being of Indigenous Peoples and of Canadians generally; biocultural diversity and sustainability; and the recognition of Cultural Ecosystem Services, as defined in the UNEP Millennium Ecosystem Assessment. The questions are fundamental to all of the Trudeau Foundation themes. The entire issue of land-based rights and cultural rights of Indigenous Peoples in Canada is embedded within the theme of *Human Rights and Dignity*, directly relating to social justice, and respect for people's spiritual traditions, health and well-being, food security and food sovereignty. *Responsible Citizenship*, the second theme, is likewise directly applicable. Those wishing to exclude Indigenous Peoples from their territories for the purposes of economic gain are challenged to consult meaningfully and openly with the original owners of these lands and resources. The theme also pertains to the responsibilities assumed by Indigenous Peoples to uphold in their cultural traditions and "...to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources" (as per Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples). This United Nations Declaration, to which Canada is signatory, places this topic directly within the *Canada in the World* theme. It focuses on many of the same social justice issues that surround the topic of this proposal. The *People and their Natural Environment* theme is, similarly, all-encompassing for this proposal, since the fields of ethnobotany and ethnoecology are central to people's relationships to their environments, as are Aboriginal land rights and title.

I anticipate that the symposium would bring together some of the key Trudeau Foundation's community mentors, fellows and scholars with knowledge and interests in these questions [note that the names of proposed participants in the original proposal have been removed for confidentiality reasons in this online version]. Ensuring the

participation of graduate students in these areas would also be given priority, particularly one of my doctoral students, whose proposed research is well aligned with this proposal and who will be able to assist me with the planning, development and application of this research and workshop. [University J] students will be invited to submit and present papers or posters on this topic for one session.

Current Research

My ongoing research within the fields of ethnobotany and ethnoecology is closely aligned with the topic of this proposal, namely, documenting the critical importance of plants and habitats to Indigenous Peoples of Canada, as reflected in the food systems, material culture, healthcare and medicinal practices, ceremonies and rituals, and language and classification systems, and how people applied different means, both ecological and social, to sustain and enhance the resources within their territories. Currently, my research is supported through a five-year research grant from the [Foundation K – Institute L] (co-directors [names of co-directors]) [period covered by grant] and, recently, from the [Research Council O of country P] [period officially covered by Research Council O grant]. Increasingly, I have become interested in the policy and decision-making aspects of Indigenous knowledge systems and how these can be recognized and incorporated more broadly into mainstream Canadian society to enhance social-ecological well-being in Canada. This work was initiated with my participation as ethnobotanist on the Scientific Panel for Sustainable Forest Practices in [Place Q] [period], in which Traditional Ecological Knowledge systems and Intellectual Property Rights of Indigenous Peoples played a major role, and decisions were made within a collaborative setting with both Indigenous leaders and experts and Academic scientists. My work is inclusive and interdisciplinary, with many Indigenous collaborators as well as partnerships with anthropologists, archaeologists, historians, linguists, conservation biologists and legal and policy experts. I have worked closely with colleagues in biodiversity conservation, heritage conservation, cultural ecosystem services and social-ecological resilience, both nationally and internationally. Much of my research is reflected in the topics covered in my recent two-volume book, [*Book Title*] [publisher and year of publication].

One of my current projects is in partnership with [First Nation R], and colleagues in [Institute L] from both [University J] and [University S], focusing on the Central Coast of [Province A]: [“Project Title”]. This research integrates diverse evidence for long-term occupancy on the north coast of [Place T], and examines the complex web of relationships among people, plants, animals and ecosystems along the central coast, extending back over the past several thousand years and projecting into the future. This research serves as a case example of the past, present and future importance of plants and habitats for Indigenous Peoples, and of the interrelationships and processes that people developed to enable continued use of lands, waters and resources in culturally relevant and sustainable ways throughout the entire region. The underlying hypothesis of the research is that many of the current ecosystems of the study area – from clam gardens, to riverine salmon harvesting areas, to estuarine root gardens, to crabapple groves (and later, fruit orchards), to berry patches and stands of culturally modified cedars – have historically anthropogenic origins or influences, reflecting integrated management

practices that may well date back over millennia. In particular we examine how various human resource management and production systems (for food, clothing, shelter and transport) fit together into a cohesive whole – ultimately supporting large numbers of very creative and active people along the central coast for countless generations.

I am just completing [end of project date] a project funded by [Research Council O of country P], [*Project Title*] (with [Dr. U]). Through this collaborative work with First Nations knowledge holders and communities, we have sought to gain better insight into plants important in Indigenous Peoples' diets and cultures, including the knowledge of the harvesting, processing and habitat management of these food plants, and how they relate to people's health and food security, past, present and future. To date, this project has supported new research in [Province A] and [Territories V] on estuarine root gardens, seaweed, inner bark of trees, berry patches, crabapple orchards, camas beds and other managed food-production habitats and has resulted in many publications.

Another, ongoing project, with [historical linguist W], is a comparative study of plant names in the 50-plus Indigenous languages and major dialects of northwestern North America, from central Alaska to the Columbia River, and east to the Rocky Mountains. Such linguistic evidence was a major part of my book [*Book Title*], and was also part of the evidence presented in the original [First Nation B] court case. Plant names and their relationships, coupled with distributions and other information on plant use, can yield significant information on people's history of occupancy and relationships across geographic and cultural space.

I am also completing several writing and publication projects which include researching and writing expert witness reports for [Province A] First Nations regarding Aboriginal rights and title cases, some for specific sites, and others broader in scope. I have always endeavored to apply my research in the public, policy and legal areas, as well as academia and First Nations communities. As these new research areas are opening up, I want to ensure that ethnobotanical and ethnoecological knowledge, research data and perspectives on Indigenous human-plant interrelationships have the greatest possibility of enriching the legal and policy development to come during the next decade.

Many of the people I envision as participating in the proposed symposium on the role of ethnobotany and ethnoecology in Indigenous Peoples' land rights and title in the legal arena are already colleagues, with whom I have worked and collaborated over the years. In some cases, I have participated together with them in workshops, and in others, I have served together on graduate student committees. I have coauthored papers with many of these people, and reviewed and/or partnered in their research. I have worked with many lawyers in preparing reports and affidavits relating to Indigenous land claims, as well as on reports for review panels in the case of resource development proposals on Indigenous peoples' territories.

My research legacy has been to weave together ethnographic descriptions of human – plant relationships within a broader framework of Indigenous cultural landscapes and resource management systems that reflect the deep and enduring relationships between

First Nations and their territories. Most of my work has been in [Province A], in collaboration with Indigenous botanical and cultural experts as well as with linguists and other academic colleagues but this work has also taken me into the national and international realms. Throughout my career I have endeavored to make my research responsive and useful to society and to the First Nations communities with whom I have been engaged. To this end, I have presented my findings through a wide variety of media, to First Nations and other communities around [Province A] and, over the past two decades, to researchers and communities throughout the world. (I have given lectures and participated in conferences and workshops across Canada, and in the United States, Chile, Mexico, Japan, Thailand, New Zealand, Australia, Italy, Turkey, Sweden, United Kingdom, and France.) My greatest pleasure has been when I have been told by the members of the Indigenous communities with whom I have worked that my research has had a positive impact on the retention and perpetuation of traditional ecological knowledge amongst their peoples. I believe that there is now a tremendous opportunity for research in the areas of ethnobotany and ethnoecology to have even greater impact in the political, social and legal context of Aboriginal title, rights and resource development in our province and other parts of Canada.

Impact of Project

Proposed Symposium Structure and Outcomes

A schematic overview of the Project Structure is provided with this nomination. It focuses on the proposed symposium, its format, the topics to be covered, audiences, outputs, and benefits.

I hope that the symposium at [University J], over a two-three day period, will provide a range of opportunities to share research and ideas for effectively including ethnobotanical and ethnoecological knowledge in the legal, policy, and decision-making arenas around Indigenous peoples' land use rights. The symposium would be held towards the end of April, in 2016, a time of spring flowering of camas and other culturally important plants, and usually with mild, pleasant weather.

The more detailed framework for the symposium would be developed collaboratively with colleagues in the initial phase of the three-year Trudeau program, but in principle it will offer a varied exchange. Along with a welcoming session, there would be some keynote presentations, papers presented in coordinated sessions, round-table discussions, and presentations of new methods and technology for examining historical, archaeological, ethnographic and ethnobotanical evidence. Key topics to be presented and discussed in the symposium would include: history and philosophy of Indigenous land rights and title in Canada and internationally; history of treaty negotiations and relevant legal decisions on Indigenous land use in [Province A] and Canada, including an overview of the recent [First Nation B] Supreme Court decision; overview of ethnobotany and ethnoecology as disciplines, the methods they employ and how they can be applied in questions of land and resource use; Traditional Land and Resource Management approaches, both ecologically and socially based; relevant technologies in these fields to apply in land use research including dating methods, new archaeological techniques, culturally modified tree dating and analysis; use of maps (historical, vegetation, place name, and Lidar) in land use and occupancy research; relevant conceptual tools (e.g. cultural keystone species, cultural keystone places, cultural ecosystem services); and new models for Indigenous governance of lands and resources (e.g. tribal parks, conservancies).

Instructors from Environmental Studies, Law, Political Science and other related disciplines will be informed well in advance about the symposium, so that they might be able to structure courses and projects in concert with this event, and be able to incorporate some of the topics to be covered, creating networks of interest across the campus. I aim to establish an interdisciplinary working group (including Indigenous, legal, government and industry professionals) to identify research gaps to be discussed and examined at the symposium. My hope is that this will identify where new research questions need to be posed, and support the direction of research in this area for the next several years.

Engaging with youth on this complex and important subject is another priority of my proposed project. The issues surrounding Aboriginal title and resource development are

complex and require a large intellectual investment over time to learn. While the symposium of experts will serve as an outstanding opportunity to network, share ideas and propose solutions, I also want to expand this networking experience to Indigenous and other Canadian middle and high school students in a project-based learning opportunity. Through including a poster session, classes from [Region X] will be invited to conduct a project-based learning unit on this topic with the unit's final product (a poster, interpretive display, multi-media display, etc.) being shared by class representatives in an open presentation area of the symposium. Here, students will be able to interact with each other and to learn from and engage with the expert symposium participants at the end of the day. This would also give an opportunity for the elders and experts to observe the work of the students the first day of the symposium, and then, on day two, they would have an opportunity to talk to them about their work, give them praise, and feedback.

The Legacy of the Project

This project would have significant impact in the legal arena, and, I anticipate, will help to strengthen and clarify the role of ethnobotany and ethnoecology in documenting and supporting Indigenous people's rights to meaningful participation in land and resource use decisions and in recognizing their distinctive values and worldviews deeply embedded in their relationships with their homelands and with other lifeforms.

Hopefully, working together, we can develop new ways of recognizing and acknowledging First Nations' perspectives and values, and identify how these can be better served by our laws and decision-making processes, in keeping with the spirit of the recent Supreme Court Decision. Learning about approaches taken in other places, both nationally and internationally, and sharing successes, as well as failures, will also be an anticipated outcome of this work.

The legacy products of this symposium and associated activities will be:

1. A plain language and engaging publication outlining the nature of how research in ethnobotany and ethnoecology can be used to support legal claims of Aboriginal rights and title, and how it can help perpetuate ongoing relationships with the land. The target audience for this publication will be professionals from industry and government, as well as possibly students and the general public. This publication would be produced in print and online.
2. A multi-chaptered, peer-reviewed publication (perhaps a special issue of [titles of scientific journals]) developed by the participants that integrates perspectives and case examples in light of the Supreme Court [First Nation B] decision and other land rights and title cases, as well as of the decisions of review panels related to resource development in [Province A] and beyond.
3. A white paper discussing the policy recommendations of the symposium. The symposium provides a rare and ideal opportunity to bring together a multi-disciplinary group of experts to weigh in on new directions and policy recommendations on this issue. Provincial, federal and international policy makers can benefit from this paper. Also, by identifying new directions needed for research and applications of ethnobotanical and ethnoecological research, this

paper will be useful to educational institutions and funding agencies.

In short, the project will offer a suite of benefits to different sectors of society, including participants in the symposium and those accessing the resulting publications. For Indigenous peoples and communities it will provide a venue for sharing their perspectives and knowledge around land and resource relationships in a respectful and supportive environment, as well as providing a roadmap for using ethnobotanical and ethnoecological research to support land occupancy and rights to within their homelands.

For decision-makers and lawmakers in provincial and federal governments it will provide case examples and new dimensions for consideration in policy formulation and enactment. For legal practitioners, it will suggest lines of evidence relating to botanical and ecological knowledge, as well as methods to obtain and present the evidence effectively in hearings and in court. For those in commerce and industry it will help to clarify Indigenous people's interests, beyond economic interests, in their own lands and resources. For legal professionals it will provide additional case studies and tools for evaluating and representing Indigenous entitlement. For students and youth, both Aboriginal and non-Aboriginal, it will provide information and learning opportunities that could be transformative in their futures and the choices which they, in turn, make in their personal lives and for their communities. For international lawmakers and decision-makers, it will provide a chance to share successes and perspectives in their own efforts to accommodate Indigenous peoples' rights and perspectives in governance, resource development and land use.

A significant issue in this area is how information and research is shared between First Nations, governments and outside interests. In large part, First Nations' traditional land and resource use information is only shared through the mediator of the Courts. This project focuses on the nature of the information being shared and how this influences a wide array of public policy that in turn is essential to the dignity and well-being of [Province A] and Canada's First Nations. I hope that this symposium will help establish a network of First Nations experts, academics, lawyers, students, industry and government representatives to continue sharing information about these important topics. Further, I see the documents arising from this project (each targeted at different but equally significant audience) as helping to bring the community outside of the legal system to a better awareness about these issues that ultimately affect all of us in [Province A], Canada and beyond. Mostly, I believe that the symposium, its published outcomes and the relationships it will foster will help to ensure that this body of ethnobotanical and ethnoecological knowledge and wisdom of Indigenous cultural specialists, which has been such a major focus of my research and that of my graduate students over the past 40 years, will continue to be recognized and applied in culturally appropriate ways, for the benefit of Indigenous knowledge holders and their communities – and of all Canadians – long into the future.