

# Empirical Jury Research in Canada: Moving the Field Forward

This symposium brings together three scholars to discuss their empirical jury research and its implications for criminal legal trials. Each speaker will present their interdisciplinary work on the role of extralegal factors in jurors' decision-making, best practices for work in the area, and proposed future directions for the field.

## Timeline of the Event (tentative):

October 20, 2022	
1:00 p.m.	Welcome/Opening Remarks – Dr. Brenda O'Neill
1:05 p.m.	Introduction to the Symposium – Dr. Evelyn Maeder
1:15 p.m. – 2:00 p.m.	<b>Lay Punishment Ethics:</b> Dr. Susan Yamamoto, Campion College, University of Regina
2:00 p.m. – 2:45 p.m.	<b>Specialized Instructions on Anti-Indigenous Prejudice for the Common Sense Juror in Barton and Chouhan:</b> Scott Franks, Toronto Metropolitan University
2:45 p.m. – 3:00 p.m.	Coffee Break
3:00 p.m. – 4:00 p.m.	<b>Race and Juror Decision-Making in Canada:</b> Dr. Evelyn Maeder, Carleton University

## Presentation Descriptions:

**Lay Punishment Ethics:** Dr. Susan Yamamoto, Campion College, University of Regina

Cross-disciplinary researchers have made sizeable efforts to understand the experience of morally sanctioning harm (i.e., punishing). Such work typically examines laypersons' engagement with normative ethical frameworks (e.g., utilitarianism, deontology). There is evidence that people sometimes retrospectively justify their moral intuitions rather than relying on case facts. This basic science has application in juror decision-making research and is ripe for empirical investigation. This presentation will detail a program of work that examines the role of punishment orientation in case types that elicit moral objections. Results demonstrate that jurors may be unwilling to apply legally appropriate verdicts (e.g., the insanity defence) due to intuitions about fair punishment. These data have significant implications for juror selection, judge's instructions, and lawyers' opening/closing statements.

**Specialized Instructions on Anti-Indigenous Prejudice for the Common Sense Juror in Barton and Chouhan:** Scott Franks, Toronto Metropolitan University

In *R. v. Barton* and *R. v. Chouhan*, the Supreme Court of Canada recommended modified post-trial jury instructions for reducing anti-Indigenous prejudice in criminal jury trials involving Indigenous victims or accused. The Court articulated a rationale that recognized the dangers of racial prejudice in criminal jury trials, while maintaining the court's "faith" in the common sense of jurors to set aside such prejudice when instructed to do so. The Court, however, did not consider the

empirical research on jury instructions related to racial bias or prejudice in criminal jury trials. This presentation will review the Court's reasoning in *R. v. Barton* and *R. v. Chouhan*, the current empirical research on jury instructions and anti-Indigenous bias in the Canadian criminal jury context, and offer insights for future research and pre- and post-trial interventions.

**Race and Juror Decision-Making in Canada:** Dr. Evelyn Maeder, Carleton University

A large body of research has investigated the potential influence of trial party race on jurors' decision-making in the United States, but relatively little work has been conducted in Canada. The research that has been conducted here has suggested that U.S. findings may not apply to the Canadian context, implying that interventions deemed successful there may be unsuccessful or even backfire. This talk will summarize some literature on the role of race on mock jurors' decision-making in Canada (simulation research being necessitated by s. 649 of the Canadian Criminal Code) and discuss how the field might move forward to better inform courts about these effects.

## Speaker Bios:



**Scott Franks** is an Assistant Professor at the Lincoln Alexander School of Law. He is a citizen of the Manitoba Métis Federation. Franks is a former clerk of the Honourable Madam Justice Andromache Karakatsanis of the Supreme Court of Canada, a former associate with the national Indigenous rights law firm Olthuis Kleer Townshend LLP, a member of the Indigenous Bar Association, and an Indigenous and Aboriginal law scholar with expertise in Indigenous legal theory and research methodologies. Franks' Master of Law research applied an interdisciplinary methodology based in legal pedagogy and prejudice reduction theory to the study of the barriers and opportunities to the implementation of the Truth and Reconciliation Commission's Calls to Action in Canadian law schools. Franks current research investigates racial prejudice in Canadian criminal jury trials involving Indigenous victims or defendants. Broadly, he argues for the importance of interdisciplinary perspectives in law and psychology for the development of legal doctrine in the area of criminal procedure.



**Evelyn Maeder** is a Professor in the Institute of Criminology and Criminal Justice at Carleton University. She is also cross-appointed in the Department of Law and Legal Studies and the Department of Psychology. With training in both Psychology (Ph.D., University of Nebraska-Lincoln) and Law (Master's of Legal Studies, University of Nebraska College of Law), Dr. Maeder's scholarship investigates social psychological principles in the criminal legal system. Her research projects include studying the effects of extralegal information (e.g., race, gender, and pre-existing attitudes) on juror and jury decision-making, legal decision-making in NCRMD (Not Criminally Responsible on account of Mental Disorder) trials, and lay conceptions of punishment. She is the director of the Legal Decision-Making Lab at Carleton, and her work has been funded by SSHRC (Social Sciences and Humanities Research Council of Canada), APLS (American Psychology-Law Society), and CBA (Canadian Bar Association).



**Susan Yamamoto** is an Assistant Professor in Psychology at Campion College, University of Regina. Her current research in the Normative Ethics and Law Lab (NELL) focuses on lay punishment ethics, the insanity defence, and racial/cultural differences in the courtroom. The lab's aim is to better understand basic social processes and help promote fairness in legal and political decisions.