

Apps for Justice Challenge:

Background guide for “An artist despairs”

Student Handout

Areas of Law

Meera sure has a lot on her plate, huh? Let's think about the areas of law that her current set of issues raise. They fall into four major categories:

- **Landlord and tenant** (sometimes called “housing”)
- **Human rights** (think discrimination, among other things)
- **Artists' rights and intellectual property** (Meera's artistic creations)
- **Labour and employment** (all to do with Meera's workplace, the gallery)

Below, you will find some information about each of these areas of law. As you're reading through, think about which of these areas interest you. Is there one you're particularly passionate about? Does it spark any ideas for a technology-related solution?

Landlord and tenant law

What is the governing legislation in Ontario?

- The law which governs Landlord and Tenant relations in Ontario is the [*Residential Tenancies Act*](#).
- The law outlines rules relating to tenancy agreements, responsibility of landlords, responsibility of tenants, termination of tenancies, eviction orders, subletting, rules relating to rent and the composition and functioning of the Landlord and Tenant Board (LTB).
- The [**LTB**](#) is the administrative tribunal that administers the *Residential Tenancies Act*. Its main task is to handle conflicts that arise between landlord and tenants.

What can Meera do about the late or non-payment of rent issue?

- Meera had a flexible payment arrangement with her landlord. These arrangements can be quite common and are not prohibited by the above legislation.
- If a Landlord has an issue with late or non-payment of rent, there are steps they must follow before they can evict someone. Therefore, Meera is not at immediate risk of eviction.

What can Meera do about the repairs needed in her unit?

- Tenants [**have the right**](#) to live in a safe unit and have access to vital services like heat, hot and cold water, electricity and fuel.

- Meera has submitted a repair request which has been ignored. As a next step, she can file an application with the LTB using the Tenant Application Maintenance [form](#).
- The LTB is known for lengthy delays, especially since COVID.
- Meera can also report the problem to the local government and to initiate a property standards by-law review to seek a notice of violation and to enforce the maintenance repair.
- Considering that Meera's neighbour also has a pending repair request, Meera may want to consider collaborating with the co-tenant to seek a by-law review and enforce the repair requests in a timely manner, since the LTB will take time.

Human Rights

What is the governing legislation in Ontario?

- The Ontario [Human Rights Code](#) prohibits discriminatory actions against persons based on **protected grounds** in five parts of society that the *Code* refers to as **protected social areas**.
- **Protected grounds** are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, and disability. The scenario likely engages the grounds of race, ancestry, place of origin, ethnic origin, citizenship, gender identity, and gender expression.
- **Protected social areas** are:
 - (1) accommodation or housing
 - (2) contracts
 - (3) employment
 - (4) goods, services and facilities
 - (5) membership in unions, trade or professional associations

The scenario likely engages the social areas of accommodation/housing, contracts, and employment.

Artists' Rights and Intellectual Property

What are artists' rights?

- Intellectual property law ("IP") provides creators ownership rights for their "creations of the mind" or other intangible assets.¹ IP law automatically gives the creator exclusive rights to their creation for their entire life span, plus 50 years. The main social purpose of protecting intellectual property is the benefit that comes from encouraging and rewarding creative work and innovation.²
- An artist has automatic ownership rights to the original artwork they create.

¹Government of Canada, "Patent, copyright, trademark—Do you have these business assets?" (3 October 2016), online: *Canadian Intellectual Property Office* <<https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en/patent-copyright-trademark-do-you-have-these-business-assets>>.

²World Trade Organization "What are intellectual property rights?" (22 December 2022), online *wto.org* <https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm>.

- In Canada, legislation protects three categories of IP: *patents*, *trademarks*, and *copyright*. Copyright regulations under the [Copyright Act](#) protect artistic works, such as the art Meera created during her internship.

Is Meera’s art protected by copyright?

- An artist is the sole and primary owner of the artwork they create. Artists have an automatic copyright ownership of their creation.³ This ownership entitles the artist to the sole right to possess, copy, distribute, sell, or otherwise manipulate the work.
- Even if ownership is transferred to someone else, by selling or licensing the work for example, the original creator retains a separate “moral right” to the work. They are the named creator, and authorship of the work is attributed to them.
- If Meera sells one of her artworks to an art collector, for example, the collector owns the art, but this does not change the fact that Meera is the artist who created it. Ownership does not affect authorship.

What constitutes copyright infringement?

- Infringement of copyright is when someone does something that only the copyright owner has the right to do.⁴ Selling, copying, or distributing artwork without the artist’s authorization, is “infringement”.
- The plaintiff has the burden of proving that infringement has occurred.

Copyright ownership in employment contexts

- In an employment context, an artwork created by an *employee* in the scope of their employment is automatically owned by the *employer*, unless an agreement is made that says otherwise.⁵
- Independent contractors, on the other hand, retain ownership of the work they create during the span of their contract. Unless there is a written assignment of the ownership right to the employer, the rights remain with the contractor.
- Regardless of her employment status, Meera signed a contract that waived her ownership rights, and gave copyright ownership to the gallery. The contract said that the gallery would own the work she created, unless another arrangement was made.
- Meera was deprived of her chance to make other arrangements about owning her work.

³ *Copyright Act* RSC 1985, c C-42, Part I <<https://laws.justice.gc.ca/eng/acts/C-42/page-2.html#h-102725>>.

⁴ *Copyright Act* RSC 1985, c C-42, s27 <<https://laws.justice.gc.ca/eng/acts/C-42/page-5.html#h-103180>>.

⁵ *Copyright Act* RSC 1985, c C-42, s 13(3) <<https://laws.justice.gc.ca/eng/acts/C-42/page-3.html#docCont>>.

Labour and Employment

What are Meera's employment rights?

- Meera is protected by federally regulated employer obligations towards interns and student interns.⁶
- Some protections she can expect are that her employer pays her fairly, that she works a fair number of hours per week, and that she gets holidays off.
- Employers have fewer obligations towards student interns because they are not considered “employees”.
- The [*Employment Standards Act*](#) (“ESA”) in Ontario regulates and distinguishes between what it means to be an “employee”, an “independent contractor”, an “intern”, and a “student intern”
- See for example, “[Employee or independent contractor: Common misconceptions](#)” on the ESA website for in-depth coverage of the distinctions.

Protecting intellectual property as an employee

- The default ownership rules of a work created during an employment relationship can be altered by a contract. The best time to do this is before the employment term begins, and it is best to put it in writing.
- At the start of any new project, these arrangements should be revisited to clear up any misunderstandings and put everyone on the same page about who will own what at the end of the project, employment term, or once a work is created.⁷

Protecting intellectual property as an independent contractor

- Generally, there are fewer obligations on a contractor to transfer or assign IP rights to their employer than there are on employees.

⁶ Government of Canada, “Federally regulated employer obligations towards interns and student interns” (01 November 2022), online: *Federal Labour Standards* <<https://www.canada.ca/en/services/jobs/workplace/federal-labour-standards/employer-obligations-interns.html#h2.4>>.

⁷ Heer Law “Intellectual Property Ownership Considerations for Employees and Independent Contractors” (17 August 2022) online: *Intellectual Property Law and Litigation* <<https://www.heerlaw.com/ip-ownership-employees-independent-contractors>>.

Relevant Facts and Barriers

In the table below, you'll find some sentences pulled out from the scenario. These excerpts exhibit some of the main issues that Meera is confronted with, along with the areas of law that they each raise. As you begin thinking about how technology could help Meera, try focussing on a specific problem.

Facts	Area of law and connected questions
"...sometimes she requires extra time to get it to her landlord. Her landlord has usually been understanding, but recently, they have been less flexible. Last month, they gave her a notice when Meera paid her rent two days late."	Landlord and tenant: - Meera may be at risk of an eviction for late or non-payment of rent. - What are Meera's rights and how can she avoid eviction?
"They have also not responded to the repair request Meera made for her stove. Meera mentions this to another tenant she meets while in the laundry room one day. The other tenant shares that she had also made a request to have her broken window replaced two months ago, but hadn't heard anything from the landlord, despite following up several times."	Landlord and tenant: - Meera's landlord has a responsibility to maintain the unit including appliances and windows. - How can Meera and her neighbour enforce this responsibility?
"The two other artists who participated in the same internship have their artwork labelled under their own names. They are both white men..."	Human rights: - Meera may be experiencing discrimination in the social area of contracts and on the grounds of race, gender identity, and gender expression. - What is the issue here? Is the issue that white men should not have ownership of their artwork, or something more complex?
"He says she should be grateful for this opportunity as an 'unknown artist from another country.'"	Human rights: - Meera may be experiencing discrimination in the social area of contracts and on the grounds of race, ancestry, place of origin, ethnic origin, and citizenship. - Can/should people use this kind of language? Why or why not?
"Meera's artwork is labelled with the gallery's name. [...] The other two interns negotiated that they would maintain ownership of their own works. Meera responds that she wants to claim ownership of her own work too."	Labour and employment and intellectual property: - If Meera decides to retain ownership of her work, can she arrange for that with the gallery after her internship ends? - Or, is it too late to change an agreement in the contract after it has been signed?

“When Meera confronts the gallery owner, Mr. Wintour, he refers to a clause in the contract she signed at the start of the internship that states: ‘Any work created during the internship becomes the property of the gallery unless other arrangements are made.’”	Labour and employment and intellectual property: • Meera may have signed away her ownership rights, but is it fair that her colleagues got the opportunity to make other arrangements, and she did not? • Should Meera automatically be entitled to make other arrangements for her work since her colleagues were given that opportunity, and they all did the same internship?
“Meera wants to be fairly compensated for her work. She knows that workers have rights but she isn’t sure which rights apply to her specific situation.”	Artists’ rights: • In accordance with section 13(3) of the Copyright Act, if work was commissioned or requested of an employee by their employer during the course of their employment, unless an agreement is made to the contrary, the work is owned by the employer. (<i>Hawley v. Canada</i>, [1990] 30 CPR (3d) 534 <https://canlii.ca/t/gbw0q>)
“If the contract made Mr. Wintour and the gallery, the legal owner of her work, what can she do? ”	Labour and employment: • Meera could reach out to the Employment Standards Information Centre to find out her rights as an intern, or to get help to try negotiating a new contract with Mr. Wintour.

Additional Reading

As you begin to think about what your app may look like, you’re likely going to want to do some research on the particular problem that it’s targeting. To help you get started on your search, here are some places that you may find useful to turn to.

Landlord and Tenant

- To better understand her rights as a tenant as they relate to payment of rent, Meera can consult the [CLEO Guide to Tenant Rights](#). This resource [CLEO – Eviction Guide](#) will help Meera navigate a potential eviction notice.
- To better understand her rights related to repair and maintenance requests, Meera can consult this guide: [What can I do if the place I rent needs repairs](#). Since she is a tenant, it is ultimately Meera’s landlord’s responsibility to fulfil repair requests. To help Meera in communicating this responsibility, she can consult this guide: [Landlord’s Responsibility to Repair](#). And if Meera or her landlord choose to escalate the matter to the Landlord and Tenant Board,

Meera can refer to this guide [Landlord and Tenant Board](#) to navigate her claim at the Landlord and Tenant Board.

Human Rights

- The **Ontario Human Rights Commission** (“OHRC”) promotes, protects, and advances human rights through research, education, targeted legal action, and policy development. The OHRC has [eLearning modules](#) that may be helpful for Meera, including the [Human Rights 101](#) module as well as other webinars.
- If Meera decides to seek legal advice or assistance relating to her human rights, the **Human Rights Legal Support Centre** (“HRLSC”) is her next stop. Meera could complete their [Decision Tree](#) survey to see if she is eligible for their services. If she is, she can receive legal support services to file an application to the Human Rights Tribunal and beyond. If Meera is not eligible to receive legal advice or assistance from the HRLSC, she may have to try to file her human rights application to the Human Rights Tribunal on her own.
- The **Human Rights Tribunal of Ontario** (“HRTO”), where human rights applications are filed and decided, has resources on how to navigate the application and hearing process if Meera wishes to proceed to submit an application under the Ontario *Human Rights Code*. These are good starting points whether Meera files the application with or without the help of counsel: [application and hearing process](#), [forms and filing](#), [FAQs, videos, and guides](#). However, even with the help of these resources, the process could still be very time-consuming and difficult for Meera.

Labour and Employment

- [CLEO](#) has a number of resources to help with employment standards, help on making a claim, workers compensation, etc. that may be useful for Meera.
- [Ontario Employment Education and Research Centre](#) has tools and links to get help about a range of topics like: employment standards, health and safety in the workplace, human rights, taxes and help with finances, etc.
- [Ontario.ca](#) employment standards filing a claim: A self-help guide to filing a claim in Ontario for acts that do not meet workplace standards that Meera may want to consult.
- [Canada Labour Code](#) is the comprehensive guide to all regulations governing workers and employers in Canada.
- [Employment Standards Act \(Ontario\)](#) The *ESA* covers workers and employers in Ontario. A comprehensive guide to all regulations governing working relationships in Ontario.
- Canadian regulations for federal labour standards [employees](#) and [interns](#), comprehensive online tools and [links to file claims](#) and get information about workers’ rights.

Artists' Rights and Intellectual Property

- This short video provides a general overview of copyright in Canada: <https://youtu.be/ljNS5p3cqls>.
- For a more in-depth discussion, this resource from the *Canada Intellectual Property Office* explores copyright resources and the benefits of registering a copyright: [A Guide to Copyright](#).
- <https://www.carfac.ca/> is a website for Canadian artist representation. CARFAC is a co-op style organization that supports artists' rights. The organization provides access to information about artist ownership rights, the right to be paid for their work, how to write contracts, etc. CARFAC unites a network of artists and professionals to empower each other with the knowledge and resources needed to uphold their rights. Meera may want to consider joining the [Ontario chapter](#).
- There are a couple of artist-specific legal clinics in the province: [Visual Artists' Legal Clinic of Ontario \(VALCO\)](#), is a pro-bono initiative between CARFAC Ontario and Torys LLP (but limited to CARFAC members) and [ALAS \(Artists' Legal Advice Service\)](#), funded by a few provincial and federal organizations.
- ["Peter's Path"](#) is a one-page infographic outlining the basic guidelines to IP protection in Canada. A quick visual reference can help visual learners chart the path to IP protection.
- [Guide to Copyright](#) Canadian IP Office's Guide to Copyright is a comprehensive in-depth online guide that explains copyright law.
- [Canadian Intellectual Property Office](#) and [Copyright Board Canada](#) are government websites that provide information through links to education, tools, and resources about registering copyrights, and how copyright affects other aspects of work and life.
- [Copyright Act](#) allows you to quickly lookup any copyright regulation in Canada's copyright legislation, available online.