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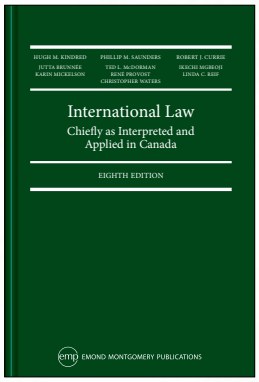


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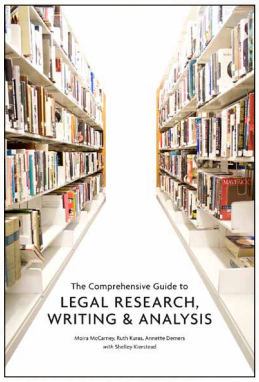


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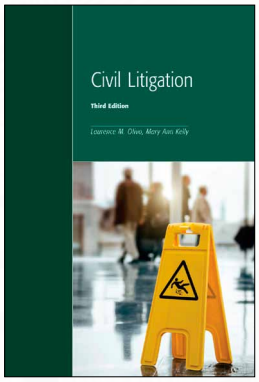


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# IIII CONTENTS / SOMMAIRE




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*Developing and Supporting Legal Information Specialists*
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# IIII From the Editor / De la rédactrice

I hope everyone had a wonderful holiday and is starting 2015 refreshed and rejuvenated. I have thoroughly enjoyed putting together this issue of the Canadian Law Library Review mainly because it has provided a lot of food for thought about who we are as librarians, about what we do and what we stand for.

To paraphrase broadly the Canadian Library Association's 1976 *Code of Ethics,*[1] the role of the librarian is to support intellectual freedom, to provide and facilitate access to information and to protect individual privacy.

We tend to take freedom of information and freedom of speech for granted here in Canada. However the recent dismantling of government science libraries along with draconian cuts to Library and Archives Canada, the disappearance of thousands of documents from Government websites and the attempted muzzling of the Library and Archives Canada employees should give us pause to consider whether this is really true anymore.

But in Argentina during the military dictatorship of 1975-1983, librarians were on the front line of opposition to government oppression of information and a few, quite literally, put their lives on the line to defend their principles. "Subversive" literature was seized from libraries throughout the country (and subsequently publicly burned). Most importantly, 25 librarians were among those "disappeared" by the military dictatorship for their opposition to these seizures and book burning.[2] These librarians were honoured at the International Associations of Law Libraries 33rd Course in International Law and Legal Information in Buenos Aires, Argentina. John Eaton's full report of the conference provides an interesting snapshot of a country emerging from a traumatic past with a strong commitment to human rights and democracy. Would you be willing to put your life on the line for your principles as these librarians did? I am not sure that I could.

Another jurisdiction where you would think you could take intellectual freedom for granted would be Australia but Margaret Hutchison's "Letter from Australia" highlights some proposed anti-terrorist legislation that just might threaten the right to freedom of information. The *National Security Legislation Amendment Act (No.1) 2014*, makes it possible to jail anyone who divulges information about intelligence operations. The fear is that journalists or those involved with reporting leaked information on these operations may be liable for imprisonment thus inhibiting reporting on national security operations. This legislation also gives intelligence officers greater powers to access computers and networks as well as to carry out domestic surveillance of Australian citizens. This all of course leads to concerns about the right to privacy, another cornerstone of the librarian's code of ethics.

Speaking of privacy in a context that directly affects law librarians, Hannah Saunders' article *Social Media as Evidence in Family Court* highlights the practicalities and the ethical considerations for researching personal information

* Canadian Library Association. Code of Ethics. <http://www.cla.ca/AM/Template.cfm?Section=Position_Statements&Template=/CM/ContentDisplay.cfm&ContentID=3035>

[2] Hart, Jim. IALL Program Recap: The Destruction of Literature and Librarians in Argentina during the Dictatorship <https://fcilsis.wordpress.com/2014/10/01/iall-program-recap-the-destruction-of-literature-and-librarians-in-argentina-during-the-dictatorship/>

online for use in the courts. Coincidentally, the Vancouver Association of Law Libraries recently hosted a session entitled "Finding Those Who Don't Want to be Found." So it is clear that searching for personal information online is a timely topic for the CLLR to cover and Hannah's article is a very interesting read. How far do you think librarians should go in researching personal information?

Not included in the code of ethics, but also crucial for us to think about as librarians and library workers is our roles and abilities within our parent organizations. Euan Sinclair, writing from the law firm perspective in *The Middle Office as a Bottom Line Contributor* discusses how law firm libraries can and should work closely and possibly converge with other middle office functions such as IT and knowledge management. One statement struck me as interesting:

> ".. librarians manage line staff (other librarian or library technicians) and a significant budget for purchasing publications… However, there is no reason that a lawyer librarian makes a better manager than any other information or knowledge professional. In the same way, librarians should not feel their career options are restricted to the library, as they might have in the past."

Well what do you think? Is the role of library manager limited to budgets and managing personnel? What about research, reference, collection development, dissemination of information or cataloguing? Don't library managers do those as well or at least have a good understanding of how those functions operate? Hmm. More to think about!

I hope you enjoy this issue and the matters raised by the authors. Here's hoping that they engendered some thought and discussion.

**EDITOR**
**SUSAN BARKER**

J'espère que vous avez passé un joyeux temps des fêtes et que vous commencez l'année 2015 reposé et plein d'énergie. J'ai eu énormément de plaisir à assembler le présent numéro de la *Revue canadienne des bibliothèques de droit*, principalement parce qu'il m'a amené à réfléchir sur notre rôle en tant que bibliothécaire, à ce que nous faisons et à ce que nous représentons.

Le code de déontologie de 1976 de l'Association canadienne des bibliothèques[1] stipule, dans les grandes lignes, que le rôle du bibliothécaire est d'appuyer la liberté intellectuelle, de fournir et de faciliter l'accès à l'information et de protéger les renseignements personnels.

Au Canada, on a tendance à tenir pour acquises la liberté d'information et la liberté d'expression. Cependant, avec le démantèlement récent des bibliothèques scientifiques du gouvernement ainsi que les coupes draconiennes à Bibliothèque et Archives Canada, la disparition de milliers de documents des sites Web gouvernementaux et la tentative de muselage des employés de Bibliothèque et Archives Canada, on devrait se demander si c'est toujours le cas.

En Argentine, lors de la dictature militaire de 1975-1983, les bibliothécaires étaient en première ligne de l'opposition à la répression de l'information exercée par le gouvernement. Certains bibliothécaires ont carrément mis leur vie en danger au nom de leurs principes. La littérature « subversive » était confisquée dans toutes les bibliothèques du pays (puis brûlée publiquement). Mais surtout, on compte 25 bibliothécaires parmi les « disparus » à cause de la dictature militaire, pour s'être opposés à ces saisies et autodafés de livres.[2] Ces bibliothécaires ont été honorés à Buenos Aires, en Argentine, lors du 33rd Course in International Law and Legal Information de l'International Association of Law Libraries. Dans son compte rendu complet de la conférence, John Eaton dresse un portrait intéressant d'un pays émergeant d'un passé traumatique, doté d'un ferme engagement envers les droits de l'homme et la démocratie. Seriez-vous prêt à risquer votre vie pour défendre vos principes comme l'ont fait ces bibliothécaires? Je ne sais pas si j'en serais capable.

Un autre pays où l'on ne remettrait pas en question la pérennité de la liberté intellectuelle est l'Australie. Pourtant, l'article « Letter from Australia », de Margaret Hutchison, se penche sur certains projets de loi antiterroristes qui mettent en péril le droit à la liberté d'information. La *National Security Legislation Amendment Act (No. 1) 2014* permet d'emprisonner quiconque divulgue de l'information relativement aux opérations de renseignement. On peut craindre que les journalistes ou les personnes impliquées dans la diffusion d'information sur ces opérations soient passibles d'emprisonnement, ce qui entravera la reddition de comptes sur les opérations de sécurité nationales. Cette loi confère également des pouvoirs étendus aux agents du renseignement en matière d'accès aux ordinateurs et aux réseaux et en ce qui a trait à la surveillance nationale des citoyens australiens. Bien entendu, cette situation soulève des inquiétudes relatives au droit à la vie privée, une autre pierre angulaire du code de déontologie des bibliothécaires.

Parlant de vie privée dans un contexte qui touche directement les bibliothécaires de droit, Hannah Saunders, dans son article *Social Media as Evidence in Family Court*, examine les considérations pratiques et éthiques de la recherche en ligne de renseignements personnels aux fins d'utilisation devant les tribunaux. Par hasard, la Vancouver Association

* Association canadienne des bibliothèques, Code of Ethics, <http://www.cla.ca/AM/Template.cfm?Section=Position_Statements&Template=/CM/ContentDisplay.cfm&ContentID=3035>.

[2] Jim Hart, IALL Program Recap: The Destruction of Literature and Librarians in Argentina during the Dictatorship, <https://fcilsis.wordpress.com/2014/10/01/iall-program-recap-the-destruction-of-literature-and-librarians-in-argentina-during-the-dictatorship/>.

of Law Libraries a récemment tenu une rencontre intitulée « Trouver ceux qui ne veulent pas être trouvés ». Il est évident que la recherche de renseignements personnels en ligne est un sujet d'actualité que la Revue canadienne des bibliothèques de droit doit traiter et que l'article de M^me^ Saunders constitue une lecture très intéressante. À votre avis, jusqu'où les bibliothécaires peuvent-ils aller dans le cadre de la recherche de renseignements personnels?

Nos rôles et nos compétences au sein de nos organismes d'attache constituent un point de réflexion essentiel pour nous, en tant que bibliothécaires et employés de bibliothèque, même si le code de déontologie ne l'aborde pas. Dans son ouvrage *The Middle Office as a Bottom Line Contributor*, qui exprime le point de vue des cabinets d'avocats, Euan Sinclair soutient que les bibliothèques des cabinets d'avocats peuvent et devraient travailler étroitement et, éventuellement, converger avec d'autres fonctions de suivi de marché comme la technologie de l'information et la gestion du savoir. Un passage a retenu mon attention : [traduction]

> « ... les bibliothécaires gèrent le personnel opérationnel (d'autres bibliothécaires ou des bibliotechniciens) et un budget important pour l'achat de publications… Cependant, rien n'indique que les bibliothécaires de droit sont de meilleurs gestionnaires que les autres professionnels de l'information ou du savoir. De la même façon, les bibliothécaires ne devraient pas restreindre leurs options de carrière à la bibliothèque, comme ils le faisaient auparavant. »

Qu'en pensez-vous? Le rôle du gestionnaire de bibliothèque se limite-t-il à l'administration des budgets et à la gestion du personnel? Qu'en est-il de la recherche, de la référence, du développement de collections, de la diffusion de l'information ou du catalogage? Les gestionnaires de bibliothèque ne remplissent-ils pas aussi ces fonctions, ou du moins n'en possèdent-ils pas une bonne connaissance? Voilà d'autres pistes de réflexion!

J'espère que vous avez apprécié ce numéro et les questions soulevées par les auteurs, et que celles-ci ont suscité la réflexion et la discussion.

**RÉDACTRICE**
**SUSAN BARKER**

# CALL/ACBD Research Grant / Bourse de Recherche de l'ACBD/CALL

CALL/ACBD invites members to apply for CALL's Research Grant which provides financial assistance to support members who wish to do research on a topic of interest to members and to the association. Applicants must be members of CALL/ACBD and the proposed research project must promote an understanding of legal information sources or law librarianship. For further details consult the Committee's pages on the CALL/ACBD website: http://www.callacbd.ca/en/node/383

To apply for this research grant please submit an application by **March 15, 2015**. The application form is available on the CALL/ACBD Research Grant Information page: http://www.callacbd.ca/en/content/call-acbd-research-grant-information

Applications for the grant should be sent via email to:

**Marianne Rogers**
Chair, Committee to Promote Research
email: rogers@yorku.ca
telephone: 416-736-2100 x33934

L'ACBD/CALL invite ses membres à soumettre une demande pour obtenir la bourse de recherche de l'ACBD/CALL, qui offre de l'aide financière aux membres pour effectuer des recherches sur des questions présentant un intérêt pour eux et pour l'association. Les candidats doivent être membres de l'ACBD/CALL, et le projet de recherche proposé doit viser à faire mieux connaître les sources d'information juridique ou la bibliothéconomie juridique. Pour en savoir plus, consultez la page relative au Comité sur le site Web de l'ACBD/CALL : http://www.callacbd.ca/fr/content/comit%C3%A9-pour-promouvoir-la-recherche

Pour présenter une demande de bourse de recherche, veuillez soumettre un formulaire de demande avant le **15 mars 2015**. Celui-ci est disponible sur la page portant sur la bourse de recherche de l'ACBD/CALL : http://www.callacbd.ca/fr/content/bourse-de-recherche-de-l%E2%80%99acbd-call.

Les demandes de bourse doivent être envoyées par courriel à :

Marianne Rogers
Présidente, Comité pour promouvoir la recherche
Courriel : rogers@yorku.ca
Téléphone : 416-736-2100, poste 33934

# IIII President's Message / Le mot de la présidente

**Membership Matters**

When I first joined the Paul Martin Law Library at Windsor, the director at the time, Professor Paul Murphy, immediately encouraged me to join CALL as one of my first tasks in getting oriented to the profession in Canada. I have been a member of CALL ever since, and have benefitted greatly from the professional development and networking opportunities that CALL provides.

Any professional association depends heavily on a stable membership base to ensure its long-term health. CALL has benefitted for years from a devoted base of members who recognize its importance in their professional lives. From senior members of the profession, who have been loyal CALL members for decades, to professionals at the interim stages of their careers, to new and student members – every member is important, and brings something new and unique to the Association.

As a Board, we recognize how important a strong membership base is, not only for providing the basic financial foundation of the Association, but most importantly, for the mentorship, the ideas, the volunteerism, the friendships, and the initiatives that they contribute. Every aspect of what we do depends very heavily on the interest and initiative of our committed members.

It is for these reasons that the Board continues to be stymied by our declining membership numbers. In 2011, CALL had 431 individual members (not including Emeritus/Retired, Student, Honoured, Unwaged). Last year, CALL had 334 individual members. That is a loss of about 100 members.

Since the Presidency of Cyndi Murphy, an important initiative for addressing this has been the Membership Development Committee. The MDC is an extremely active group who's members have pursued several great ideas and initiatives to welcome and attract new members, and to understand the needs of the members that we currently have. My hat goes off to Erica Anderson and Katherine Melville, the Co-Chairs of the MDC, together with the MDC members and Wendy Reynolds, their Board liaison for all of the great contributions of this group over the past few years!

> ***"My hat goes off to Erica Anderson and Katherine Melville, the co-Chairs of the MDC, together with the MDC members and Wendy Reynolds, their Board liaison for all of the great contributions of this group over the past few years!"***

In the meantime, I feel that further work is necessary to try to understand our membership trends. So at our November Board meeting, I announced my intention to do an in-depth study of CALL's list of all inactive members. The Board and many members stepped up to the challenge and many of us have now been involved in reviewing this list. We now have a somewhat better sense of where these inactive members are.

Here is the breakdown of what we've found so far:

1. There were 318 contacts on the inactive list.

2. We have determined that 29 people have retired (9%), and we will be reaching out to our retirees to encourage them to join CALL at the retired member rate.

3. We estimate that 21 people from this list are no longer in law libraries (7%).

4. 179 people from the list have not been identified by our reviewers, and this list includes 24 students and 10 people who have identified themselves as publisher representatives.

5. Probably our most important finding was that there are approximately 88 people (28%) on this list who we know are still in law libraries; (a few are colleagues that are currently active with CALL!), but who have not, for some reason or another, renewed their membership. It is this group who will be the target of our primary efforts. It is our intention to contact these individuals, both by a letter from the President, as well as a follow-up call from the MDC, to reach out to them to encourage them to re-join CALL.

Finally, we all know of colleagues in our region who may be operating in isolation, who may be new to the profession or who are not active in the profession. We would encourage all CALL members to reach out to colleagues who may be in these situations and encourage them to join CALL.

### Regional Networking Events

Another new initiative which the Board and National Office will be pursuing, and one that our sponsors are greatly interested in, is to have a wider variety of short networking events, regional speakers, professional development activities and social events which will take place throughout the year. We think that this will be an important intiative to help solidify our profession, strengthen our networks and to help support our colleagues. If you would be willing to organize one of these regional events, please send an email to events@callacbd.ca.

I truly hope that 2015 will be a great year for our Association!

**PRESIDENT**
**ANNETTE DEMERS**

### Importance des membres

Lorsque j'ai commencé à travailler à la bibliothèque de droit Paul Martin de l'Université de Windsor, le professeur Paul Murphy, qui était anciennement le directeur, m'a tout de suite encouragé à m'inscrire à l'Association canadienne des bibliothèques de droit (ACBD) afin de me familiariser avec la profession au Canada. C'est l'une des premières tâches qu'il m'a confiées. Je suis membre de l'ACBD depuis lors, et j'ai grandement profité des occasions de perfectionnement professionnel et de réseautage qu'offre l'ACBD.

La pérennité des associations professionnelles dépend largement d'un bassin de membres stable. L'ACBD compte depuis des années sur des membres dévoués qui reconnaissent son importance dans leur vie professionnelle. Qu'il s'agisse des membres chevronnés de la profession, qui ont été loyaux à l'ACBD pendant des décennies, des professionnels qui sont à un stade transitoire de leur carrière, des nouveaux adhérents ou des membres étudiants, chaque membre est important et apporte une touche de nouveauté et d'originalité à l'ACBD.

En tant que membres du Conseil, nous reconnaissons l'importance d'un bassin solide de membres, car ceux-ci constituent l'assise financière de l'ACBD, mais, surtout, ils contribuent sur le plan du mentorat, des idées, du bénévolat, des liens d'amitié et des initiatives. Chaque aspect de ce que nous faisons repose en grande partie sur l'intérêt et la motivation de nos membres dévoués.

C'est pourquoi la baisse du nombre de membres représente toujours un obstacle pour le Conseil. En 2011, l'ACBD comptait 431 membres individuels (sans compter les membres émérites ou retraités, étudiants, honoraires et non salariés), comparativement à 334 l'année dernière. Il s'agit d'une diminution de près de 100 membres.

***"Je tiens à féliciter Erica Anderson et Katherine Melville, les coprésidentes du CRM, ainsi que les membres du CRM et Wendy Reynolds, l'agent de liaison du Conseil, pour leurs contributions exceptionnelles au cours des dernières années!"***

Depuis la présidence de Cyndi Murphy, une initiative importante a été prise pour régler ce problème : la mise en place du Comité de recrutement de membres (CRM). Le CRM est un groupe très actif qui a mis en œuvre plusieurs idées et initiatives pour accueillir et attirer de nouveaux membres, et pour comprendre les besoins de nos membres actuels. Je tiens à féliciter Erica Anderson et Katherine Melville, les coprésidentes du CRM, ainsi que les membres du CRM et Wendy Reynolds, l'agent de liaison du Conseil, pour leurs contributions exceptionnelles au cours des dernières années!

Parallèlement, je crois que de plus amples travaux sont nécessaires pour comprendre les tendances reliées à l'adhésion des membres à l'ACBD. Par conséquent, à la réunion du Conseil en novembre, j'ai annoncé mon intention de mener une analyse approfondie de la liste des membres inactifs de l'ACBD. Le Conseil a relevé le défi, ainsi que plusieurs membres de l'ACBD. Nombre d'entre nous ont pris part à l'examen de la liste. De façon générale, nous

disposons maintenant d'un meilleur portrait des membres inactifs.

Voici un bilan de nos résultats de recherche jusqu'à présent :

1. Il y avait 318 membres inactifs sur la liste.

2. Nous avons déterminé que 29 personnes ont pris leur retraite (9 %); nous communiquerons avec elles afin de les inviter à adhérer à l'ACBD au tarif pour les membres retraités.

3. Nous estimons que 21 personnes de cette liste ne travaillent plus dans des bibliothèques de droit (7 %).

4. Nos analystes n'ont pas réussi à identifier 179 personnes sur cette liste; par contre, elle comprend 24 étudiants et 10 personnes qui se désignaient comme des représentants d'éditeurs.

5. La principale constatation est sans doute la suivante : nous savons qu'environ 88 personnes (28 %) sur cette liste travaillent toujours dans des bibliothèques de droit (certaines d'entre elles sont des pairs qui participent activement à l'ACBD!), mais qu'elles n'ont pas renouvelé leur adhésion – pour une raison ou une autre. Nous concentrerons d'abord nos efforts sur ce groupe. Nous comptons communiquer avec ces personnes, par l'envoi d'une lettre du président et un appel de suivi du CRM, afin de les encourager à adhérer de nouveau à l'ACBD.

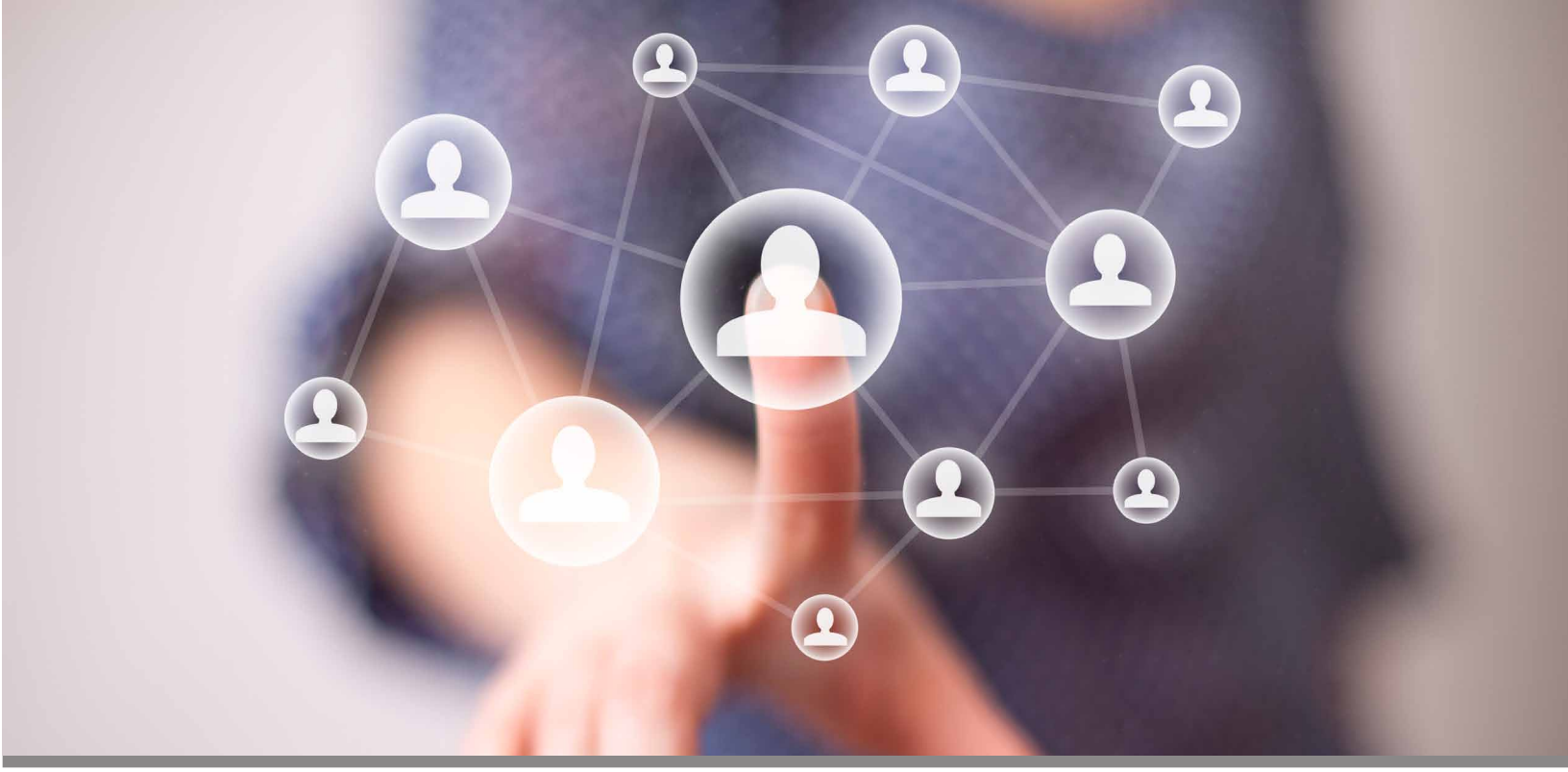
Enfin, nous connaissons tous, dans notre région, des collègues qui travaillent de leur côté, de nouveaux venus dans le domaine ou des personnes qui ne sont pas actives dans le domaine. Nous prions tous les membres de l'ACBD de communiquer avec leurs pairs qui se trouvent dans une telle situation et de les inciter à rejoindre l'ACBD.

## Événements de réseautage nationaux

Le Conseil et le Bureau national entreprendront une autre initiative, qui intéressera grandement nos commanditaires, soit la tenue d'un plus grand éventail d'événements de réseautage de courte durée, de conférences avec des intervenants régionaux, d'activités de perfectionnement professionnel et d'événements sociaux tout au long de l'année. Nous croyons qu'il s'agit d'une initiative importante pour consolider notre profession, renforcer nos réseaux et apporter du soutien à nos pairs. Si vous êtes disposé à organiser un événement régional de ce genre, veuillez envoyer un courriel à events@callacbd.ca.

J'espère sincèrement que 2015 sera une année fructueuse pour l'ACBD!

**PRÉSIDENTE**
**ANNETTE DEMERS**



# Social Media as Evidence in Family Court: Understanding How to Find and Preserve Information*

By Hannah Claire Saunders**

**Abstract**

*People use social media to share personal facts, feelings, and experiences, which makes these sites treasure troves of information for legal researchers. Information collected from social media sites is being used as evidence to build cases in family court. For this reason it is critical that legal researchers, including law librarians, understand how to find, use, and preserve this kind of information. It is also important for legal researchers to be familiar with tools and tricks for locating information from social media that could be used as evidence.*

*Les gens utilisent les médias sociaux pour partager des informations personnelles, des sentiments et des expériences ; ce qui transforme ces sites en véritables trésors d'information pour les chercheurs juridiques. L'information recueillie à partir de sites de médias sociaux est utilisée comme preuve dans des causes se retrouvant devant les tribunaux spécialisés en droit de la famille. Pour cette raison, il est essentiel que les chercheurs juridiques, y compris les bibliothécaires de droit, comprennent comment trouver, utiliser et préserver ce genre d'information. Il est également important pour les chercheurs juridiques de se familiariser avec les outils et astuces permettant de trouver de l'information provenant de médias sociaux qui pourrait être utilisée comme élément de preuve.*

Social networking and social media sites are in widespread use across the globe. In fact, in 2009 social networks surpassed email as the preferred method of online communication.[1] People post personal facts, feelings, and experiences on social media, which makes these sites a useful resource for collecting information for legal purposes. Information collected from social media sites has become an accepted form of evidence in many court cases and is being used more and more commonly, particularly in the field of family law. One report found that 81% of surveyed members of the American Academy of Matrimonial Lawyers have used information from social media sites as evidence.[2] For this reason it is critical that people who perform legal research in family law, such as law librarians, understand how to find and preserve helpful information from social media sites. With a focus on the area of family law, this article will outline the importance of social media, the ethical considerations of collecting social media evidence, and some of the existing rules for using social media postings as evidence. It will then discuss search tactics and tools for finding and preserving information from social media sites.



**Hannah Claire Saunders is a Masters of Information candidate at the University of Toronto's Faculty of Information. She is specializing in library and information science with a particular interest in the field of law librarianship.

[1] Michael R Holt & Victoria San Pedro, "Social Media Evidence: What You Can't Use Won't Help You" (2014) 88:1 Fla BJ 9 at 9.

[2] John Browning, "It's Complicated: Ethical Concerns in the Age of Social Media", *The Computer & Internet Lawyer* 31:3 (March 2014) 1 at 2.

## Why is Social Media Evidence Important in Family Law?

Michael Holt and Victoria San Pedro sum up the importance of social media for professionals in the legal field:

> [I]f used wisely it provides a treasure trove of information for counsel of either side of a dispute. Thanks to sites like Facebook, Twitter, LinkedIn, and Pinterest, to name just a few, we are now privy to a limitless array of data. This includes personal comments, messages, photographs, and information such as a person's hometown, date of birth, address, occupation, ethnicity, height, relationship status, income, and education.[3]

When it comes to family law, social media has become a crucial piece of the puzzle.[4] In many cases a lawyer could be accused of not doing due diligence if a thorough examination of a person's use of social media is not conducted.[5] What people post on social media often shows evidence of the kinds of lifestyle choices they are making.[6] There are many examples of social media evidence being used in family law cases including custody battles, child support disputes, and divorce proceedings.

An example of social media being used in custody battles can be seen in the 2011 case of *Bekeschus v Doherty*, in which a father was looking to increase his supervised access to his children.[7] He lost the case, in part because evidence was presented of a YouTube video he uploaded of his 8-year-old daughter dancing. In the video, his daughter had been positioned next to a movie advertisement with sexual content.[8] The video was used to show the father's poor judgment.[9] Another example is the 2008 custody case *MJM v AD.* In this case, a father was looking to gain guardianship over his daughter to prevent the mother from moving with her to Seattle.[10] The father's request was denied. The judge found that posts from the father's Facebook account in which he spoke ill of the mother showed "his disregard and callous lack of consideration of the mother, and his demeaning and dismissive attitude to her."[11] Furthermore, a comment the father posted on his Facebook page about an adult film actress was used as character evidence: the point was made that his new common-law partner's 12-year-old daughter was one of his Facebook friends and had access to everything he posted.[12]

Social media evidence is also used in child support and divorce disputes. In *Kolodziejczyk v Kozansk*i a father failed in his attempt to reduce the amount of child support he was paying.[13] In this case, photos from his Facebook account showing him posing with motorcycles and a powerboat and of his partner in skydiving gear were used as part of the evidence that he could afford the child support, given the "comfortable lifestyle" he displayed.[14]

In the 2012 divorce proceedings of *Waters v Waters*, evidence obtained from Facebook was used by both parties.[15] Excerpts from the wife's Facebook correspondence were used to prove she had shared a personal photo of the husband dressed as a woman.[16] Evidence of the husband's obsessive behavior was shown through screen captures he had shared of his wife's Facebook account and that, after being blocked from his wife's account, he created an alias and had his co-workers continue to view his wife's Facebook information and keep him apprised of her activities.[17]

From these examples it is clear that evidence from social media sites can be used to help create cases in family legal battles. For this reason, finding any information someone has posted on any social media site that may help support or challenge the case that is being made can be crucial. However, in order for anything found on social media sites to be useful, it must be admissible as evidence in court.

## What are the Rules for Using Social Media as Evidence?

The laws concerning evidence were created before the Internet, let alone social media sites existed.[18] Not only are evidence laws outdated, but many people do not fully understand how information technologies work, which makes it even more complicated to try and apply the law.[19] Without a thorough understanding around how these technologies actually work, it is difficult to try and figure out how the existing law should be interpreted. Although the law can be complicated when dealing with social media, existing evidentiary rules must be followed. David Paciocco points out that much of what is found online is the same kind of information that would have been used before the Internet was ubiquitous; it is just that the information is now found

[3] *Supra* note 1 at 9.
[4] Jodi Kovitz, "Using Social Media Evidence in Family Law Litigation", *The Lawyers Weekly* (5 August 2011) 9 at 9.
[5] Browning, *supra* note 2 at 2.
[6] Dan Grice & Bryan Schwartz, "Social Incrimination: How North American Courts are Embracing Social Network Evidence in Criminal and Civil Trials" (2012) 36 Man LJ 221 at 281.
[7] *Bekeschus v Doherty*, 2011 ONCJ 232, 2011 CarswellOnt 2969.
[8] *Ibid*, at para 23.
[9] Kovitz, *supra* note 4 at 9.
[10] *MJM v AD*, 2008 ABPC 379, 2008 CarswellAlta 2121.
[11] *Ibid* at para 52.
[12] *Ibid*.
[13] *Kolodziejczyk v Kozanski*, 2011 ONCJ 6, 2011 CarswellOnt 165.
[14] *Ibid* at para 7.
[15] *Waters v Waters*, 2012 ONSC 5393, 2012 CarswellOnt 11749.
[16] *Ibid* at para 33.
[17] *Ibid* at paras 49-52.
[18] David M Paciocco, "Proof and Progress: Coping with the Law of Evidence in a Technological Age" (2013) 11 CJLT 181 at 181.
[19] *Ibid*.

and shared in a different way.[20]

In general, the rules around evidence do not differentiate between electronic and more traditional forms of evidence in the United States. However, the situation is different in Canada. When it comes to federal evidence legislation, *The Personal Information Protection and Electronic Documents Act*[21] has amended the *Canada Evidence Act* to help deal with using electronic information and documents as evidence.[22] This Act sets out some basic rules for the admission of electronic evidence in court. For example, it states that it is up to the person trying to use electronic documents as evidence to prove their authenticity.[23] However, not all issues are addressed here, perhaps because this Act was created prior to the widespread use of social media and does not directly deal with these kinds of sites.

The advent of the use of electronic evidence gathered from social media has led to an expansion of the procedural rules regarding the preservation and disclosure of electronic documents.[24] Courts have had to create guidelines about when it is useful or relevant to allow the inclusion of information from social media in a case.[25] The Uniform Law Conference of Canada recommended that electronic evidence, such as information from social media sites, should be allowed as evidence in criminal matters. Provincial civil courts across the country have also adopted this recommendation; however, the rules about social media sites as evidence vary depending on jurisdiction.[26] Sometimes social media will provide pages and pages of publically available information about a person. However, in order for evidence to be admitted in court it must be possible to draw "meaningful conclusions" without explanation from a witness.[27] Furthermore, it is likely that any evidence found on the Internet will not be admitted if the accused is not given the opportunity to comment on it.[28]

In family law much of the evidence that is presented is meant to help judge the character of the parties involved.[29] Grice and Schwartz argue that social media are especially important in family law because it is the character of a person that is often to be determined. For example, Grice and Schwartz state that "almost any picture, status update, or link shared may be relevant to the capacity of a parent to raise a child."[30] Videos and pictures are often still accepted even if they are grainy. However, a judge may ask for the relevance of any social media evidence introduced as well as how the evidence was obtained.[31] This means that it is particularly important for law librarians and researchers to keep track of when, where, and how they found any information from social media sites because that information might be required later for the documents to be used in court. Furthermore, when dealing with social media sites there are certain ethical issues that have to be kept in mind to avoid potential problems.

## Ethical Considerations

On certain social media sites, such as Facebook, users can activate privacy settings to ensure their information will not be available publically. This means a person has to "friend" them in order to have access to it. Several bar associations have advised that the rules regarding misrepresentation and deception extend to the Internet. The New York City Bar Association has pointed out that internet research can be even more problematic because deception is easier online as people can almost effortlessly pose as someone else.[32] It is not just lawyers who need to be careful not to cross the ethical line related to pretending to be someone else online. In a case in New Jersey two lawyers were reprimanded for having a paralegal "friend" the plaintiff in a personal injury case to get at the private information on his Facebook page.[33] From this, one can assume that it crosses an ethical line for anyone connected to a case or doing research for a case to gain access to someone's hidden information on social media without being very clear about who they are and what they are looking for.

It is not always a complicated process to get access to a person's social media account, especially if one knows some personal information about them. However, the temptation to do this must be avoided because the evidence likely will not be allowed. Evidence discovered through unauthorized access to someone's social media account is typically thrown out; however, there has been a case in Canada where private information from a husband's account was allowed because the wife already knew the password.[34] While it would be unusual to have access to password-protected information on social media sites, there are many tools and techniques that can be used to find information about a person through social media that stay within ethical and legal boundaries.

## Finding and Preserving Information on Social Media

While social media can be an excellent source of information

[20] *Ibid* at 182.
[21] *The Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.
[22] Grice & Schwartz, *supra* note 6 at 227.
[23] *Ibid*.
[24] Kovitz, *supra* note 4 at 9.
[25] *Ibid*.
[26] Grice & Schwartz, *supra* note 6 at 228.
[27] CED (Ont 4th), vol 34, title 88 at §334.
[28] *Ibid* at §335.
[29] Grice & Schwartz, *supra* note 6 at 274.
[30] *Ibid* at 281.
[31] *Ibid* at 257.
[32] Browning, *supra* note 2 at 2.
[33] *Ibid*.
[34] *S(NM) v S(JT)*, 2009 BCSC 661, 2009 CarswellBC 1334 at para 12.

about a person, the ability to access this information is completely dependent on their use, or non-use, of privacy settings.[35] If a person has activated all the privacy controls, the only information available might be that they have a profile. Finding information about a person depends on how open their online presence is. However, there are many tricks and tools researchers can use to find information about people on social media.

It can be difficult to know where to begin when researching a person's social media activity. There is no shortage of social media sites a person could be using. Search engines like Google and Bing are programmed to prefer social media sites in a search, so they are helpful starting points when looking for someone's social media presence.[36] Starting with a broad search is most useful, so that all possible results are presented at the beginning and can be narrowed from there. If initial searches are not returning good results, try searching with variations of initials.[37] If the opposite problem is occurring and there are too many results associated with a person's name, try geographically limiting the search. As long as a person has not turned off the setting many social media sites will show their geographic location. This can also be helpful because it will often say where a person was when they posted something.[38]

Although a person's real name is a good starting point when researching their online activity Steve Coughlan and Robert Currie point out that on some social media sites users adopt alternative identities to interact with other users.[39] These sites tend to be forums where people discuss certain hobbies, such as gaming. Many times people participate and contribute on these sites frequently, so they can be a good source of information. The first step is to find out what nickname a person might be using. Often people use the same nickname in multiple forums which means it can be input into a search engine to find where else they are participating online, which might not be the more common social media sites.[40] It can be difficult to figure out what a person's online persona or nickname is; however, there are some sites where nicknames can be linked to a real name. For example, on Twitter some people use a nickname for their handle but also include their real name on their profile. Also, if their Facebook page is made public they may have linked to other places they are participating online. If these strategies are not bringing up fruitful results it can be helpful to look at friends of the person being searched. A person's friends and followers are often publically viewable so with a little bit of digging it can become apparent what a person's online nickname might be.

Another way to discover where a person is active online is to do an image search.[41] Searching for a person's picture may bring up not only what other social media they are using but also what other people have posted about them and made publically available. Tineye and Google are useful tools that allow for image searching.[42] However, these searches are not foolproof, so using a close up image helps avoid matching the background of the picture instead of the person. Image searching can also be helpful to find people's online personas. The same way people tend to use the same nickname across multiple social media sites they may also use the same image or avatar on their profile on multiple sites.[43]

As stated above, if someone has made their social media presence highly protected it can be difficult to find anything useful. However, posts that their friends or followers have made about them may not be private. It is important to ensure you differentiate between information posted by the person you are researching and information posted by an acquaintance. Often, people can post a photo of a person or comments about them without consent.[44] While these can be helpful for painting a picture of the person being researched it is important to make sure it is clear what information was posted by the person directly versus what has been posted by an acquaintance.[45] That being said, even if a person keeps their profile private, any posts they make to a public profile or forum can be viewed by anyone.[46]

Often the search functions on social media sites are not the best for finding specific posts; there are better online tools for doing this. Gabberface is a freely available tool that searches all publically available Facebook content through keywords.[47] As well, FBSearch or Social Searcher will search through online posts and conversations using keywords.[48] Twitter's search function will only produce results from the last ten days; however, Snapbird will provide a more comprehensive search of Twitter conversations.[49]

Be aware that social media research can leave a trail. Many social media sites, such as Facebook, require that a person

[35] Daniel M Scanlan, *Digital Evidence in Criminal Law* (Aurora: Thomson Reuters Canada, 2011) at 194.
[36] David Whelan, "Find and Use Social Media Evidence" (Paper delivered at the Ontario Bar Association CLE on social media and litigation, December 2013), [unpublished] at 3.
[37] *Ibid*.
[38] *Ibid* at 7.
[39] Steve Coughlan & Robert J Currie, "Social Media: The Law Simply Stated" 11 CJLT 229 at 232.
[40] Whelan, *supra* note 36 at 3.
[41] *Ibid* at 10.
[42] *Ibid* at 5.
[43] *Ibid*.
[44] Grice & Schwartz, *supra* note 6 at 275.
[45] *Ibid*.
[46] Daniel Reid, "Online Tools: Finding and Preserving Online Evidence" (Handout from presentation delivered at the VALL seminar on defamation, October 2011), [unpublished] at 2.
[47] *Ibid*.
[48] Whelan, *supra* note 36 at 8.
[49] Reid, *supra* note 46 at 2.

have an account and be logged in, in order to see other people's profiles. Furthermore, some sites, such as LinkedIn, will notify users as to who has been looking at their profile. It may not be in a lawyer's best interest to have the person about whom they are gathering information find out that they are being researched. Privacy settings that can be enabled to allow for anonymity on these sites should be consulted prior to beginning research.

Once any relevant information is found, it should be preserved immediately. The Internet is inherently dynamic, and while some posts will remain the same for long periods of time, most online resources change frequently.[50] Social media can be challenging for collecting information because the account owner can easily delete posts and photos permanently.[51] It is important to remember that all the information surrounding a post or picture on a social media site can be essential; it is not enough to simply copy images or text.[52] Pictures and posts often have information about when the post was made, what kind of device it was posted from, and where the person was when they posted. Taking a screen shot will preserve exactly what you are viewing. Awesome Screenshot, Screenshot (by Google), and Fireshot for Internet Explorer are screen shot tools that will allow you to take a picture and also allow you to blur names and faces, or make notes as needed.[53]

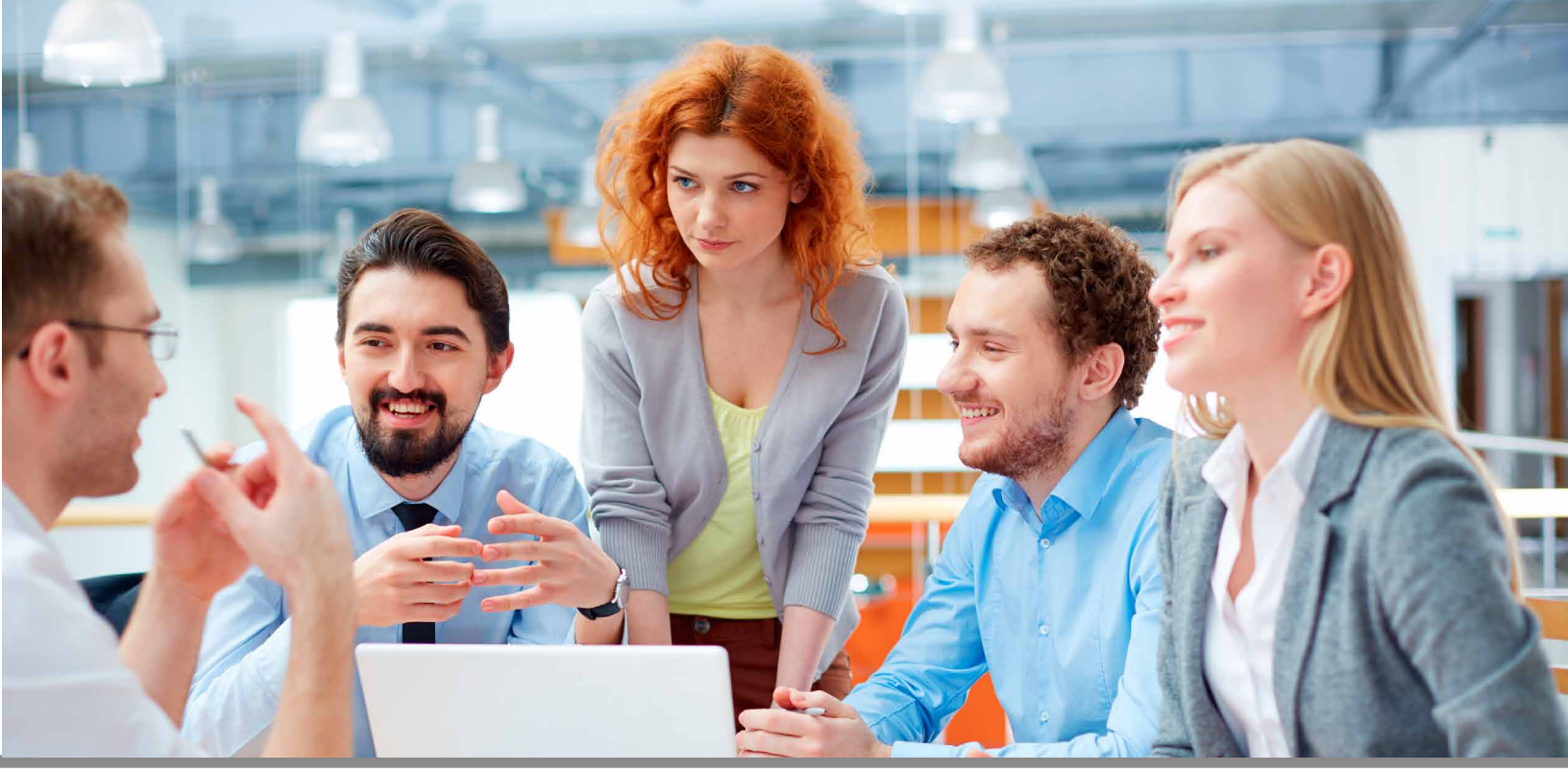
Since it is easy to delete items on social media sites it can be important to archive exactly what a webpage looked like at a given point in time. WinHTTrack is a free online program that can be used to create an archive of a webpage at any given time.[54] This tool can be particularly useful for blogs. However, sometimes, the information sought has already been deleted. When looking for what a webpage looked like previously, Holt and San Pedro suggest using the Wayback Machine to find archived information on the Internet.[55] The Wayback Machine is a service offered by The Internet Archive, a library of Internet sites and cultural artifacts in digital form. This service allows a person to search the Internet Archive's more than 150 billion stored pages. This resource allows one to search a particular webpage address and choose a date range to find the archived versions of the webpage.[56] The Wayback Machine does not allow you to look at archived Facebook pages; however, it could be helpful for researching someone who kept a blog, or is known for participating or commenting on certain websites. The archive will give you pictures of what a webpage looked like on a certain date, which is helpful for finding deleted posts or comments.

These tools and tricks can be employed to gather information about a person through social media that can be used as evidence in court. These tools are meant to facilitate access to information; however, the laws and rules around privacy and evidence are still in play. Although current evidence legislation does not address social media explicitly, one must exercise prudence when collecting information in this form. All the information gathered must be publically available and researchers should not attempt to "friend" a person to gain access to hidden material if that person is not aware of the identity of the researcher and why they are attempting to access information about them.

## Conclusion

Social media sites have become a key resource in family law for finding information that can aid in building a case. While the laws around evidence still need to be updated to deal adequately deal with changing technology, it is widely accepted that social media evidence can be admissible in court, particularly in family law matters. There are some ethical issues around finding information about people online; however, there are many ways of finding useful evidence without crossing any ethical boundaries. It is necessary that those responsible for legal research have good search strategies and tools for finding people and information on social media sites. Given that online information can be easily changed and manipulated, it is crucial that information be preserved as soon as it is found. Finding information on social media can be easy or it can require some digging but with the right tools legal researchers can produce essential documents to help in legal battles.

[50] Scanlan, *supra* note 35 at 191.
[51] Grice & Schwartz, *supra* note 6 at 270.
[52] Whelan, *supra* note 36 at 12.
[53] Reid, *supra* note 46 at 2.
[54] *Ibid.*
[55] *Supra* note 1 at 10.
[56] Reid, *supra* note 46 at 2.



# IIII The Middle Office as a Bottom Line Contributor

By Euan Sinclair**


## Abstract

*The author argues that law firms' middle office professionals have a unique opportunity to shape their own destiny and resist being "right-sized" by becoming bottom line contributors. They should outsource non-value transaction processing and instead focus on working as direct strategic support to the "front office" practice groups to deliver superior client service. In order to achieve this level of service, middle office professionals need to break down existing workplace silos and enter into a new covenant with their firm's executive.*

*L'auteur soutient que les professionnels travaillant pour des cabinets d'avocats de taille moyenne ont une occasion unique de façonner leur propre destin et de résister à des réductions de postes en devenant des contributeurs offrant des résultats concrets. Ils devraient externaliser le traitement d'activités sans valeur ajoutée et se concentrer à être un soutien stratégique direct pour les différents groupes de première ligne du cabinet afin d'offrir un service à la clientèle supérieur. Pour atteindre ce niveau de service, les professionnels de cabinets de taille moyenne ont besoin de briser les silos existants en milieu de travail et de conclure une nouvelle alliance avec la direction de leur entreprise.*


The term the "middle office" evolved in the financial services industry to describe the intermediary between the front office (trading) and the back office (administration). The middle office deals with such matters as transaction processing, tactical decision support and strategic decision support. The challenge for the middle office is to become a bottom line contributor to the enterprise by reducing its focus on transaction processing in order to spend more time on strategic business support. As PwC notes in a recent report on the asset management middle office, "[t]hose who take steps now to right-source the middle office stand to create a powerful infrastructure that results in competitive advantage – which, in turn, boosts the bottom line. Those who sit back and retain the status quo risk being left playing catch-up in an increasingly competitive and turbulent market."[1]

In a law firm, the front office equivalent is the array of specialized practice groups, principally made up of billing lawyers and paralegals. The back office is made up of the essential administration functions, such as payroll and benefits administration, finance, word processing, and human resources. The middle office, however, consists of functions that are generally more discretionary, but that are increasingly crucial to a law firm's success. Middle


** Euan Sinclair LLB, MBA, LLM, Director, Knowledge Management at Lawson Lundell LLP.
[1] PwC, fs viewpoint: Making the middle office top of mind: transforming the asset management middle office to a bottom-line contributor (February 2014), online: PwC <http://www.pwc.com/en_US/us/financial-services/publications/viewpoints/assets/pwc-fs-viewpoint-transforming-the-asset-management-middle-office-to-a-bottom-line-contributor.pdf>.

office functions vary from firm to firm, but generally they are recognized as including information technology (IT), library and research, business or competitive intelligence research, business development, knowledge management, and professional development and training. Other definitions include such functions as proofreading, creative services, and accounting.[2] Still others include marketing.[3] What is clear, however, is that the middle office embraces many of the functions that will drive law firm growth when it is reconfigured as a strategic business partner of the front office.

## Middle Office or Middle Kingdom?

Middle office functions have been allowed to develop as separate "kingdoms" with their own devolved and demarcated hierarchies, functions, budgets and personnel, with little overlap or critical oversight. In most Canadian law firms the development of these "middle kingdoms" has led to the creation of silos. The lack of joined-up thinking will imperil law firms' futures as the legal landscape becomes more challenging. As well, a general lack of accountability by middle office staff works to erode the service delivery ethos.

For example, consider a client-facing Continuing Legal Education session as a potential for dispute. Who does the initiative belong to? The practice group, professional development, or business development? Who organizes the room and who pays for the catering? Unless there is collaboration and co-ordination between the front and middle offices under the leadership of the business development team ("department" is a proscribed silo word), the initiative will fail to meet its business development objectives. The truth is that in a service-oriented environment, clients and potential clients want apparently seamless service delivery. Therefore, the silo culture must be physically and mentally broken down if the middle office is to fulfill its role as a strategic business partner of the front office.

It can be very difficult to introduce new ways of doing things in law firms. However, the introduction of knowledge management systems offers a break from the past, requiring as it does a multi-disciplinary and integrated approach to creating new systems and ways of working. In this way, a knowledge manager will often help to break down barriers and silos not just among lawyers and their practice groups, but also among the middle office professionals.

## The Muddle Office

In the author's experience, the middle office in Canadian law firms has tended to suffer from neglect and underinvestment, which is only now being corrected. For example, traditionally the library team would curate published collections while IT would keep the vital computer network running. The library team and the IT team would work in parallel, without much in the way of intersection. When it came to the introduction of the first document management systems about ten years ago, little thought, if any, was given to taxonomies, naming protocols and matter-centricity of electronically created documents, although a strategic collaboration between the library and IT teams could have achieved an elegant solution. Typically, there would be no consistent taxonomy for client-matter files, which would be indiscriminately opened, often in duplicate. There was no systemic distinction between memos for lunch orders and important legal research. The result has been that many law firms moved from having a well-organized paper-based filing system to an electronic system that is a muddle. It's not so much the case of legal professionals drinking from the proverbial hosepipe, as slipping beneath the waves in an ocean of information.

Consequently, information dislocation has become a critical operational risk to the efficiency of law firms. The best hope that many lawyers have for finding information quickly, or at all, is often placed in the dream of a google-like search engine that would cure all the ills of the dysfunctional system. But this remains a dream.[4] The first challenge for knowledge management professionals embarking on a knowledge management project, therefore, is to manage expectations as to what can be achieved. They must first underpin any knowledge management initiatives with robust information management practices.

## Bleeding Edges

Whatever the firm's structure, the middle office functions must now converge if the middle office is to support the firm properly in the new environment. Take the traditional example of a law firm's library. Tradition dictates that a law library can only be managed by a person with a post-graduate librarian degree and preferably a law degree. Those librarians manage line staff (other librarian or library technicians) and a significant budget for purchasing publications. In the past, some of the publication costs may have been recoverable from clients. However, there is no reason that a lawyer librarian makes a better manager than any other information or knowledge professional. In the same way, librarians should not feel their career options are restricted to the library, as they might have in the past. There are whole new areas of information and knowledge management as well as business research and competitive intelligence that librarians are well suited to occupy.

In the current post-recession "new normal," moreover, clients of the firm are demanding increasingly sophisticated value-added services. Although Canada has been less affected by the Great Recession than other battered economies, the country will not remain immune from shifting client expectations. The middle office must now reduce the amount

[2] John D McCamus, "Freedom of Information in Canada" (1983) 10:1 Government Publications Review 51.
[3] DTI Global, Solutions for Law Firms,online: < http://dtiglobal.com/about-us/solutions-for-law-firms/>. See e.g. Anthony Lin, "Inside the Revolution", American Lawyer Magazine 32:10 (1 October 2010) 140.
[4] Connie Crosby, "Why can't you just make it work like Google?" (2 December 2012) (blog post), online: Slaw < http://www.slaw.ca/2012/12/03/why-cant-you-just-make-it-work-like-google/>.

of transaction processing by outsourcing this non-value work and focus on working as a strategic support with the front office to deliver superior client service. In order to deliver on client-facing projects, middle office professionals require the executive committee of the firm to commit fully to a new covenant with the middle office. Significant authority over the projects must be delegated by the executive committee to the middle office project leaders in order to deliver on the projects, and this authority must be demonstrated and enforced. Because law firms are structured as consensual coalitions, it can be difficult to give professional managers clear authority over lawyers. Despite this difficulty, it is essential for the middle office to step out of the shadows and become that valued strategic business partner to the front office.

Consider just one area, for example: the evolution of Request For Proposal (RFP) responses. These documents are crucial to a firm's continued success and growth. And yet, proportionately few resources are applied to their creation and development. In the traditional model, the responses are completed by the marketing department only, using generic boilerplate language to describe the legal services the firm provides, together with a long list of the firm's past glories. This type of document can be compiled with minimal lawyer or other middle office input.

In today's more competitive market, however, the whole middle office must be mobilized to produce a compelling proposition for the prospective client. The compilation of a RFP response requires input from a number of middle office professionals and front office lawyers. Therefore, to reach the project goal of delivering a superlative RFP response on time, the business development professional would now be in the position of leading and managing a project of significant importance to the firm, co-ordinating and editing input from a multi-disciplinary team, drawn from all areas of the firm.

The middle office contribution is becoming an increasingly important factor when prospective clients determine the value-added proposition and therefore what differentiates the services on offer (assuming all legal teams are equally qualified and capable). Various other middle office inputs will be required: IT for creating or customizing a secure extranet for the potential client, the library for what legal or business services can be provided, personnel development for seminars that will be available for clients to attend, accounting for the pricing structures, and knowledge management for what precedents or practice notes will be available to the clients, legal project management inputs, and what business or legal alerts can be set up.

### Right-sizing the Middle Office

With the advent of more challenging markets for legal services, it would be tempting for law firm managers to scale back on the middle office. After all, their perception is that the middle office is pure overhead and not a bottom line contributor. This is tempting, but wrong. The author's experience of working for a leading UK law firm that managed to grow during the Great Recession indicates otherwise. Canadian law firms should use this period of prosperity to empower the middle office to deliver real added value to clients in order to drive growth. The middle office has to stop thinking in terms of being a back office function, one step removed from clients. Instead, the middle office must step up to the firing line and join the front office as a valued strategic business partner in providing excellent service to the firm's clients.

# Feature Article Submissions to the CLLR are Eligible for Consideration for the Annual $500 Feature Article Award

To qualify for the award, the article must be:

- pertinent to both the interests and the information needs of the CALL/ACBD membership;
- relevant to law librarianship in Canada;
- excellent in content and style, as shown in its research and analysis, and its presentation and writing;
- not published elsewhere and preferably written specifically for the purpose of publication in *Canadian Law Library Review / Revue canadienne des bibliothèques de droit*.

The recipients of the award are chosen by the Editorial Board. One award may be given for each volume of *Canadian Law Library Review/Revue canadienne des bibliothèques de droit*. Award winners will be announced at the CALL/ACBD annual meeting and their names will be published in *Canadian Law Library Review/Revue canadienne des bibliothèques de droit*. Should the article be written by more than one author, the award will be given jointly.


# IIII Conference Report:
## International Association of Law Libraries (IALL)

### Buenos Aires, Argentina | September 28 – October 2, 2014

By John Eaton

I was honoured to attend this conference in Buenos Aires on behalf of CALL/ACBD and to bring our association's best wishes to IALL.

This was the first time I had attended an IALL conference and the first thing I realized upon reading the programme is that it is less a conference than it is a learning opportunity. In fact, it is not even called a conference but rather the IALL's 33rd Annual Course on International Law and Legal Information. The theme for the course was *Libraries and the Rule of Law* and was dealt with almost entirely within the context of human rights in Argentina (and to a lesser extent, other Latin American countries).

The programme's curriculum included sessions on the Argentine legal system, women's rights in Latin America and methods of dealing with domestic violence, the impact of foreign law in Argentine cases, international co-operation across South America, and the impact upon libraries of the dictatorship which ruled Argentina from 1976-83, among other fascinating presentations.

There were also some instructive tours and social events, including trips to the Biblioteca Nacional de la Republica Argentina, to Espacio Memoria y Derechos Humanos, a former secret detention centre during the dictatorship's rule (now a Human Rights Memorial Centre), and to the Supreme Court of Justice of Argentina. These three tours were fascinating and enormously informative.

The conference taught me so much and left me with some impressions:

- That Argentinians divide their recent history into two periods, the pre-dictatorship past and the post-dictatorship past. The period of the dictatorship (called "state terrorism" by many people) is so recent and significant as to be impossible to ignore. It has spurred in the Argentine people a devotion to the protection of democracy and human rights that is truly inspirational. They have amended their civil code and subsumed provisions from *the American Convention on Human Rights* into their human rights law. They are arguably the most progressive country in South America with regard to democratic and civil rights.

- That Argentinians see themselves allied with their other South and Latin American neighbours in their efforts to build a more democratic, progressive country. In addition to telling us about the state of affairs in Argentina on many topics, many of the speakers included information about other South American countries, too, as they view those countries' experiences as important to the narrative. Moreover, there were sessions which dealt with the history and workings of MERCOSUR, the free trade agreement to which Argentina and essentially every other South American country is signatory. Regional co-operation (and to some extent, integration) is very important to

Argentinians.

- That the horrors of the recent dictatorship are still an open wound to many Argentinians. The effects of this period are still rippling through society and people are still struggling with them. We learned, for example, that among the 30,000 or so *Desaparecidos* (the Disappeared) a number were pregnant women who gave birth to their children while in detention. The women were subsequently executed and their babies were given to couples friendly (or at least inoffensive) to the junta. There were a supposed 500 such babies and there is an initiative to reunite them with their birth families. The babies are now adults in their thirties and, with the help of DNA technology, the initiative, led by the Grandmothers of Plaza de Mayo, has reunited 114 of them with their birth families. It is a story that still wrenches the hearts of Argentinians.

- That the military dictatorship affected libraries and librarians in a profound way. Many libraries were directed to remove "subversive" materials from their collections, and the military undertook book burnings quite enthusiastically. Even children's books were among the many prohibited titles. Tragically, there were a number of librarians among the *Desaparecidos* (approximately 25) and in one of our sessions a very powerful and moving tribute was paid to them by way of a presentation of their pictures with statements of their jobs and dates of disappearance.

- That Buenos Aires is a beautiful, vibrant, pulsating, and utterly fascinating city. If it is not on your list of places to see some day, it should be!

An IALL conference is well worth attending, particularly if you have an interest in the law of the host country or in comparative law in general. However, if you are seeking opportunities to gain knowledge which you can use in the management or administration of your library, there is little to chew on here. They do have exhibitors and sponsors in attendance (e.g., Thomson Reuters and W.S. Hein, among others, were in Buenos Aires) and this does provide one the opportunity to "talk shop" and perhaps even make a few important decisions for one's library, but the overall intent of an IALL Conference is to educate in substantive law and to expand the knowledge and horizons of its members with regard to the law and institutions of other countries. To that end, this conference did a tremendous job.

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Marianne Rogers
Présidente, Comité pour promouvoir la recherche
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Contributions are invited from all CALL members and others in the library and legal communities. Bibliographic information on relevant publications, especially government documents and material not widely publicized, is requested. Items may be in English or French. Full length articles should be submitted to the Features Editor and book reviews to the Book Review Editor. All other items should be sent directly to the Editor. Prior to publication, all submissions are subject to review and editing by members of the Editorial Board or independent subject specialists; the final decision to publish rests with the Editorial Board. If requested, articles will undergo independent peer review. Items will be chosen on their relevance to the field of law librarianship. For copies of the Style Guide please consult the CALL website at <http://www.callacbd.ca>.

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# IIII Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***Blocking Public Participation: The Rise of Strategic Litigation to Silence Political Expression*. By Byron Sheldrick. Waterloo: Wilfrid Laurier University Press, 2014. Includes bibliography and index. ISBN: 978-1-55458-929-6 (Paperback) $29.99 (CDN)**

*Blocking Public Participation* deals with the practice of using strategic litigation (i.e., *strategic lawsuits against public participation or* "SLAPPs") to silence political expression. Its particular focus is on Canadian political and environmental disputes and the attempt by certain parties to silence protestors, thereby blocking political engagement, participation, political expression and dissent. The author draws from a number of examples in Canadian politics and big business to show the efforts of various individuals and corporations to silence the voicing of public concerns or dissent.

Chapter One entitled "SLAPPs: Courts, Democracy, and Participation" provides an introduction to SLAPPs, and outlines its implications for political and democratic participation. In the Canadian context, the relationship between law and politics along with the role of courts is discussed, highlighting the way in which activists and elite groups conduct themselves and the way in which the law and courts help or hinder public activism and political expression. The author outlines strategies used to silence political expression and activism, with lawsuits being a primary weapon intended to achieve private ends rather than securing the collective public interest.

Chapter Two "SLAPPs: Balancing Law and Democracy" examines elements which are inherent in SLAPP claims, such as free speech and other related issues. Sheldrick describes how public issues are transformed into civil litigation, the types of organizations and individuals involved in this form of litigation, and how SLAPPs lawsuits present a real threat to the democratic values inherent in public participation.

In Chapter Three, "SLAPPs in Canada", the author surveys the historical development of SLAPPs in Canada, focusing on prominent case studies, and the impact of SLAPP judicial decisions. The selected case studies illustrate the impact this litigation has on public participation and political activism, the role of Canadian courts in the interpretation of jurisprudence, and constitutional considerations regarding political expression and association.

Chapter Four, "SLAPPs come to Parliament", explores the use of the existing systems of accountability on the one hand and the role of parliamentary privilege on the other to protect political criticism and dialogue as well as illustrating the implications for democratic institutions. In this context, politicians in power have threatened or actually initiated litigation against political opponents to silence them. The author discusses several prominent Canadian political lawsuits, including the *Cadman Affair*, *Harper v the Liberal Party of Canada*, and *Jean Charest v Marc Bellemare*, which illustrate the ability of politicians to make allegations against others in power. These cases highlight the importance of free public dialogue and the need for instituting legislative initiatives to block SLAPP ventures.

Chapter Five, entitled "The Regulation of SLAPPs" analyses and assesses regulatory and legislative initiatives of different jurisdictions to regulate SLAPPs, including the United States and Australia as well as Ontario, Quebec and British Columbia. The author examines in detail the resistance and political mobilization to regulate SLAPPs. Also discussed are legal remedies including existing civil procedure mechanisms and substantive remedies, along with current legislative developments in certain Canadian jurisdictions.

Chapter Six, entitled "Resisting and Defending against SLAPPs" focuses on social and other mobilizing movements to block SLAPPs, including the role of non-governmental organizations. The author outlines a strategy as to how social groups and activists can avoid legal difficulties but still empower themselves to maintain strong political pressure. In conclusion, the author advocates that anti-SLAPP legislation is required in all Canadian jurisdictions to safeguard democratic values and institutions as well as to protect the collective public interest in addition to individual and collective rights.

This book is a valuable study on the unique subject of SLAPPs, and should prove to be of immense interest to political scholars, academics, and political and social organizations striving for achievement of political social and legal reforms in Canada. The "Legal Resources" appendix provides a list of public law interest centres and other anti-SLAPP resources from Canada and various jurisdictions. The "Works Cited" section provides an extensive list of print and online resources, including journal articles that will provide guidance for further study and research into the use of strategic litigation to silence political expression.

REVIEWED BY
**HUMAYUN RASHID**
Head of Cataloguing & Reference Librarian,
Bora Laskin Law Library, University of Toronto

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***Canada the Good: A Short History of Vice Since 1500*. By Marcel Martel. Waterloo: Wilfrid Laurier University Press, 2014. 210 p. ISBN13: 978-1-55458-947-0 (Paper) 29.99, ISBN13: 978-1-55458-949-4 (ePub) 29.99.**

York University history professor Marcel Martel has written a fascinating book chronicling Canada's treatment of what used to be referred to as "vice" – drinking, gambling, smoking, drugs, and sex. At just approximately 200 pages, *Canada the Good: A Short History of Vice Since 1500* is a quick – but certainly not light – tour through this aspect of Canadian history.

The book's four chapters are divided by period in time and then subdivided by vice. The term vice itself can be seen as problematic given its negative connotation, and Martel sets the tone in his introduction by delving into the meaning of this term and its subsequent decline in use.

Chapter 1 chronicles the experiences of Canada's first European settlers and their observations – made through the lens of their Christian backgrounds – of Aboriginal society. Chapter 2 continues the narrative of how Christian European settlers began to attempt to regulate moral behaviour in Canada, primarily through church order. Chapter 3 shows how certain groups emerged in society to work against these behaviours and helped spur the creation of laws prohibiting drinking, drug use, and gambling. They also defined and regulated sexuality and placed limits on tobacco products.

Chapter 4 chronicles the last 100 years of change, in particular society's classification of these behaviours as medical conditions requiring treatment, and not merely moral transgressions. Concurrently, individuals and groups fought for the acceptance of what was deemed abnormal behaviour and the regulation of homosexuality, abortion and sex work, for example, softened.

The law and history of sexuality, drug use, drinking, smoking and gambling could fill several legal texts. This book is certainly not comprehensive nor does it provide substantive legislative content. It's a quick study of a certain aspect of Canadian history and would be enjoyed by those who have an interest in this topic, including criminal lawyers and those working for the public interest. Academic libraries certainly would benefit from having this book in their collection while private law firm libraries likely will not. Having seen this book at my local public library, I can see how the general public – including students – are a target audience.

One cannot discuss issues like prostitution, gambling, drugs or abortion without mentioning how the treatment of those who engaged in these behaviours differed for men and women, for those from different socio-economic classes, for those born outside Canada or for those of different ethnicities. Sure, these are generally accepted facts but reading example after example really drove this point home. Each page is packed with numerous facts and the handy index at the end is a great addition. My one minor quibble with the book's format is the inclusion of notes at the end of the book, rather than in footnotes, which some readers may find inconvenient.

This is a dynamic and ever changing area of Canadian law and although the book was published in 2014, there have already been substantive changes since then. Prostitution laws have recently changed, the Morgentaler clinic in New Brunswick closed in July 2014, the debate of legalization of marijuana continues, and even the recent end to Toronto's waterfront casino proposal have all been hot topics in recent months. Clearly, Martel's *Canada The Good: A Short History of Vice Since 1500* is timely and relevant.

REVIEWED BY
**JOANNA KOZAKIEWICZ**
Librarian, Reference & Training
Osler, Hoskin & Harcourt LLP

***Canadian Policing in the 21st Century: A Frontline Officer***

***on Challenges and Changes*. By Robert Chrismas. Montreal & Kingston: McGill-Queen's University Press, 2013. xiv, 309 p. Includes bibliography and index. ISBN 978-0-7735-4274-7 (cloth) $39.95. ISBN 978-0-7735-44406 (paper) $29.95. ISBN 978-0-7735-8935-3 (ePDF). ISBN 978-0-7735-8936-0 (ePUB).**

In this book, Robert Chrismas, a Winnipeg-based police officer and Ph.D. student in Peace and Conflict Studies at the University of Manitoba, combines his own first-hand knowledge of policing with high-level research to produce an overview of how policing in Canada has evolved over the past twenty years – a period of great technological, legal and societal change.

This introductory text highlights the challenges and changes facing policing in Canada. The first chapter provides an overview of the history of policing, and the remaining ten chapters each focus on key aspects of policing today, including the use of technology (chapter 4), the changing composition, training, and demands on police (chapters 5 and 6), issues of race and gender (chapters 7 and 8), and the organizational structure of policing to ensure effectiveness, responsiveness, and accountability (chapters 9 and 10). While these chapters are well-structured and can stand alone as treatments of their particular issues, Chrismas also acknowledges how they are all part of a whole and never considers these issues in isolation.

Chrismas' book is an important one for lawyers, particularly criminal lawyers and law students interested in the field. Despite the fact that both lawyers and police are integral to our criminal justice system, and must often work with each other – if not together – they are sometimes isolated within their own communities. This book offers criminal lawyers a greater understanding of criminal justice from a police perspective. For law students, it also provides context for a number of well-known and less well-known decisions, i.e., what happened before a case was tried as well as what went on during trial.

Chrismas uses various lenses to explore the justice system, such as justice economics, which may be less familiar to those whose background is in law rather than sociology or criminology. Through the lens of justice economics, one might ask how we should measure the costs and benefits of one policing approach versus another. Indeed, how can we measure the benefits of crime prevention? Chrismas also engages in a thoughtful analysis of the negative effects of longer mandatory minimum sentences, such as the argument that it leads to more police officers being killed.

He brings together a wealth of research – statistics, reports, academic articles and books – and synthesizes them using an engaging and succinct writing style. His discussion of the pitfalls in interpreting and comparing crime statistics would be helpful for many legal academics who use these types of statistics in their interdisciplinary work.

Chrismas illustrates how the implementation of criminal legislation can be just as important as the content of the legislation itself. For instance, under the *Youth Criminal Justice Act*, an accused youth is entitled to go before a local judge every few weeks to argue whether continued pre-trial custody is required. However, in Manitoba, the only holding centre for youth is in Winnipeg, so to fulfill this requirement, these individuals must travel all around the province for what he describes as a two-minute remand appearance. Chrismas knows what he's talking about: he explains that he did a lot of studying during his first degree while he was escorting people on these costly and lengthy trips.

The breadth of his experience shines through his analysis. He discusses various policing roles, and sheds greater light on statistics, theories, and studies. For example, he explains that, statistically, crime rates have fallen in recent years (something many of us know), but he reports that the rates of particular crimes have been rising, such as gang violence and shootings.

Chrismas' use of his own experiences to illustrate his argument is one of the book's strengths. It adds interest and context to what could otherwise be an academic discussion. While the reader may not always agree with his view on each issue, the author is careful to present each side and to explain how and why he has reached his conclusions.

Were we to concentrate solely on decisions from the courts, we might believe that policing is simply reactive, that its only role is enforcement of the laws, with court cases forcing occasional changes (such as the recent Supreme Court decision on the "Mr. Big" technique). However, this book challenges that narrow view of policing by presenting a different picture. Yes, policing has its faults and challenges, but it is also proactive, thoughtful, creative, and analytical – grounded in evidence-based research as well the years of experience of its front-line officers. As such, Christmas succeeds in offering his readers a broader, deeper and more nuanced view of police work in Canada.

**REVIEWED BY**
**AMY KAUFMAN**
Head, William R. Lederman Law Library
Queen's University

***Death or Deliverance: Canadian Courts Martial in the Great War. By Teresa Iacobelli*. Vancouver: UBC Press, 2013. x, 175 p. Studies in Canadian Military History. Includes index and bibliographic references. ISBN 978-0-7748-2568-9 (pbk.) $32.95.**

*Death or Deliverance: Canadian Courts Martial in the Great War* is part of the Studies in Canadian Military History series published by UBC Press in association with the Canadian War Museum. The author, Teresa Iacobelli, received a doctorate from the University of Western Ontario in 2010, and is a Social Sciences and Humanities Research Council post-doctoral fellow. The author's goal in writing *Death or*

*Deliverance* is to provide readers with a full and fair picture of the discipline, punishment, and authority experience for soldiers in the Canadian Expeditionary Forces (CEF) in World War One.

Most of what people know about desertion and cowardice in the First World War comes from depictions of firing squads in film, television, and popular literature. Given the attention military executions have received in popular media, you might think that a high percentage of soldiers found guilty of desertion or cowardice were ultimately executed. In reality, only 25 soldiers in the CEF were executed during the First World War, while the death sentences of another 197 were commuted. Earlier scholarship on Canadian courts martial focuses primarily on the executions, thereby creating a picture of military discipline during the Great War as both harsh and inflexible. According to the author, it's only by examining the commuted cases, in addition to the executions, that one can get a representative picture of military justice during World War One.

Iacobelli's examination shows that the military disciplinary process was not inflexible, straightforward, or routine. Instead, it was complex and dynamic, and sentencing especially was sometimes inconsistent and arbitrary. The imposition of the death penalty by some commanding officers was harsh to be sure, but as the author shows, commanding officers were just as likely to be sympathetic.

Iacobelli draws upon a variety of sources in building a representative picture of military justice during World War One. These sources include the personnel files and court martial records of the soldiers sentenced to death; government memoranda on the practice of execution, written after the war; personal accounts of military discipline and executions in newspapers, letters, diaries, and memoirs; and a variety of secondary sources on issues related to morale, shell shock, military discipline and executions, and executions in civil society during the Great War. The personnel files and court martial records are the main sources of information for the soldiers' stories described throughout the book and it's these personal stories which bring home to the reader the reality of life for court martialed soldiers in the CEF.

*Death or Deliverance* is a slim volume divided into six chapters representing a logical arrangement of the author's research. In the first chapter, the author examines in some detail the academic scholarship on military discipline in World War One, as well as its treatment in popular film and literature, all of which shows that there is little academic study of courts martial and executions from a Canadian perspective. In order to understand the crimes discussed in the book, it's important to have some understanding of military law during World War One and this topic is covered in the second chapter. In the third chapter, the author examines the crimes of Canadian soldiers that culminated in sentences of death by execution. The fourth chapter examines the process of the court martial trial in World War One, while the fifth chapter focuses on the confirmation process. In the sixth and final chapter, the author analyzes the pardon campaigns carried out in Britain, Canada, and New Zealand that began in the mid-1980s.

Iacobelli's clear writing style and analysis of a previously unexamined aspect of military discipline makes *Death or Deliverance* an entirely agreeable reading experience. This book is an excellent choice for academic libraries, law or otherwise, as well as public libraries. It will appeal as much to the academic legal or military historian as it will to the lay person with an interest in Canadian military history. *Death or Deliverance* is very reasonably priced by the publisher at $32.95 in paperback and it's also available in hardcover for $90.00.

**REVIEWED BY**
**SUSAN JONES**
Technical Services Librarian
Gerard V. La Forest Law Library, University of New Brunswick

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***Justice for Future Generations: Climate Change and International Law.* By Peter Lawrence, Cheltenham, UK: Edward Elgar, 2014. Xxiii, 227p. Includes bibliographical references and index. ISBN 978-0-85793-415-4 (hardcover)**

"What does justice require of current generations in addressing climate change to safeguard the welfare of future generations and how should such obligations be reflected in international law?" This is the overarching question asked in Professor Peter Lawrence's latest book, and one which is important for us all. Lawrence applies interdisciplinary approaches to analyze complex environmental legal issues in the international law context, making this an appealing book aimed at a wide audience.

The book begins with a thorough introduction, and explains the basics of climate change science. The intergenerational justice issues arising from climate change science and issues arising from "discontinuing" by economists along with related assumptions of increased wealth are also discussed. Specifically, the author justifies why intergenerational justice issues related to climate change need to be discussed in the international law context – namely that climate change is not restricted to national boundaries, and mitigation and adaptation efforts rely heavily on mobilizing technology and funds.

The remainder of the book is divided into three parts. Part I sets out theoretical foundations. In order to answer the question of what ethical obligations current generations owe to future generations in relation to climate change mitigation and how responsibility should be distributed amongst current and future generations, Lawrence applies a harm-avoidance principle and the notion of basic human rights recognized in the Universal Declaration on Human Rights and in other human rights instruments. Other principles such as responsibility for harm, capacity to pay, and core distributional justice principles of equality and subsistence, he posits, rest on widely-shared values. Based on these principles, current generations have an ethical obligation

towards future generations to take strong action to avoid anthropogenic harm to the climate system.

Part II focuses on evaluating the current international law regime on climate change. A review of current international treaties and general international law in relation to climate change reveals an extremely weak system. Lawrence connects international human rights law with climate change and assesses the former's value in addressing intergenerational justice requirements. Industrialized countries and developing countries are at different positions regarding these issues, but both have a long way to go for the global mission to reduce greenhouse gas (GHG) emissions. Most of the legal analysis of climate change issues is provided in this part.

In Part III, Lawrence looks to the next steps and proposes that intergenerational justice principles can be incorporated into the current international climate legal regime. He concludes that in order to achieve an international consensus surrounding significantly reducing GHG in the next 35 years, both industrialized countries and developing countries must make compromises. International climate legal regimes, international trade regimes, and international human rights mechanisms all have roles to play in this endeavour.

Even though environmental law is a relatively technical area of law, this book is easy to read and follow, providing a solid foundation for understanding environmental law in an international law context. A comprehensive bibliography is provided at the end of the book which could be valuable to those scholars and practitioners interested in researching this topic. *Justice for Future Generations*: *Climate Change and International Law* is a must have for every law library's environmental law collection. I would also recommend this book to those who care deeply about the environment and sustainability issues for future generations.

**REVIEWED BY**
**SHARON WANG**
Associate Librarian, Osgoode Hall Law School Library
York University

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***Law and the Question of the Animal: a Critical Jurisprudence*. Edited by Yoriko Otomo and Ed Mussawir. Abingdon, Oxon: Routledge, 2013. viii, 196 p. Law, Justice and Ecology series. Includes bibliographical references and index. ISBN 978-0-415-68350-0 (hardcover) $135.00. ISBN 978-0-415-66336-6 (softcover) $46.99. ISBN 978-0-203-07136-6 (e-book).**

The central premise of this book is that the discourse of animal rights has so far been mainly ideological and has not benefitted from a rigorous philosophical inquiry into the concept of animal and position of the non-human animal as a subject of law. Seeking to fill that gap, the editors present ten papers loosely organized into three themes (genres, cases, and habitats) designed to explore how humans construct the idea of the non-human animal through law.

Genres, the first central theme, brings together three papers that question how non-human animal subjectivity intersects with juridical notions of personhood and life. Connal Parsley looks at the human representation of animals as beings lacking agency, which he views as a barrier to seeing animals as subjects possessing rights. Piyel Haldar posits a mechanistic equivalency between the human and the non-human animal by considering the physicality of expression when witness demeanour in court is considered as evidence. Cressida Limon discusses attempts to patent non-human animal life and finds in patent law a gendered mechanism for control of reproduction, not just invention.

The papers in the cases section each focus on particular instances (if not always actual court cases) in which the relation in law between human and non-human animals is called into question. Ciméa Barbato Bevilaqua examines two cases that turn on the legal categorization of non-human animals as things, highlighting procedural and conceptual difficulties for proponents of animals as subjects capable of possessing rights. Ed Mussawir considers the jurisprudential meaning and status of the animal as expressed through two methods for adjudicating the liability for the conduct of animals, *scienter* and negligence. Through the prism of animal trials in medieval Europe, Victoria Ridler questions the "hierarchy of being" inherent in both property and subject approaches to animals in law, proposing instead a human relationship of duty to non-human animals. Dinesh Joseph Wadiwel challenges the right of domination of humans over non-human animals as epitomized by regulated violence against non-human animals, such as the whipping of horses during races.

The habitats section contains three papers that place non-human animal life in the context of the legal spaces shared by human and non-human animals. Marc Trabsky describes the repurposing of a particular place from human cemetery to non-human animal slaughterhouse to meat market to show how humans use law, along with architecture and technology, to separate themselves from non-human animals. Andreas Philippopoulos-Mihalopoulos reveals the intimate pastoral relationship between shepherd and sheep in terms of movement and stillness as they both obey the law of hunger rather than the law of property. Yoriko Otomo argues that international biodiversity treaties have failed to protect non-human animals because those treaties actually commodify non-human life, a natural result of the legal concept of common heritage.

In choosing papers for this collection, editors Yoriko Otomo and Ed Mussawir have assumed a level of philosophical literacy that may stretch the pragmatist's patience. There are very few implementable answers here for someone trying to protect animals or elevate the modern-day position of animals with respect to law. Granted, that was not the editors' project. However, despite a couple of cases in which it is quite difficult to discern or remember how particular papers relate to law at all (so thoroughly mired in the bog of their own ruminations do some of the writers get), *Law and*

*the Question of the Animal* has value for the original way it positions the concept animal within so many diverse human legal contexts. Perhaps pragmatists, or even activists, will find food for thought in the way these papers address the binary jurisprudential categorizations that humans use to frame our interactions with animals.

REVIEWED BY
**DARREN J. FUREY**
Librarian
Queen Elizabeth II Library. Memorial University of Newfoundland

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***Law Librarianship in the Digital Age*. Edited by Ellyssa Kroski. Plymouth, UK: Scarecrow Press, 2014. xv,515 p. Includes figures, tables, foreword, chapter bibliographies, chapter notes, index. ISBN 9780810888067 (softcover) $75.00. ISBN 9780810888050 (hardcover) $125.00. ISBN 9780810888074 (ebook) $74.99.**

Book titles with phrases like "in the digital age" or "for the twenty-first century" or "2.0" in relation to a profession often cause me to raise a skeptical eyebrow. They often attempt to direct what we need to do, or learn, or change in order to be able to respond to the effects of dramatic technological and economic forces. Even though I generally learn something by monitoring or even participating in the discourse, some works are so blue-sky or even bird's-eye in their view that, while thought-provoking, they are of limited practical value. Others tackle single issues only; for example, management of resources in a difficult economic environment, or how to deliver legal education in today's environment. As well, the relevance of these works may be limited given how rapidly and profoundly the world around us changes. Even blog posts risk staleness, if not obsolescence, shortly after publication.

Nonetheless, I can happily say *Law Librarianship in the Digital Age*, compiled in 2013 and published in 2014 is, at the time of this writing, profoundly informative and current. I read the entire book with great attention, even rereading chapters that speak directly to some aspects of my work and interests. The book is broad in scope and deep in content. The editor wisely chose to draw upon the wisdom of a number of knowledgeable law librarians. The result is a well-organized and well-sourced collection of essays that address all law library sectors, and the full range of law librarianship functions. Each chapter is not only current but also specific in its treatment of its topic.

The book comprises eight broad parts: Major Introductory Concepts, Technologies, Reference Services, Instruction, Technical Services, Knowledge Management, Marketing, and Professional Development and the Future. Of the twenty-eight chapters, I have space to highlight only a few. My examples reflect my own experience and interests, and, likewise, every law librarian or librarianship researcher will, no doubt, have their own favourite chapters.

The opening chapter, "Law Librarianship 2.0," is a keynote of sorts, setting the tone for later chapters. Jennifer Wertkin writes about the range of law libraries: academic, firm, government (which focuses on the U.S.), and special law libraries. She also discusses issues the "librarian 2.0" faces: shrinking collections and other realities flowing from the economic downturn of the last decade, ongoing technological change, globalization and interdisciplinarity.

In "Copyright in the Digital Age," Kyle Courtney describes recent developments in copyright law and examines their effect on practical realities in law libraries, both academic and private. While the chapter focuses on legal developments in the U.S., with detailed assessments of the HathiTrust and Georgia State University litigation, it also explores the practical reach of their implications in different kinds of libraries.

Ellyssa Kroski's "E-books in Law Libraries" presents a practical overview of the market and options, along with acquisition tips and strategies. It also reviews the benefits and challenges of e-books, as they touch both law firm and institutional libraries. Of note are her points about publisher-library tensions and the benefits and potential value of consortial arrangements.

An informative chapter for those who make operational recommendations or decisions in law libraries is Kim Clarke's "User Services Analysis for Decision Making." Clarke describes current tools and strategies that advance evidence-based decision-making for questions of instruction, reference, collection management, and the use of physical and virtual space. The tips explicitly encompass private as well as institutional libraries and can serve as a useful guide for ongoing planning.

In "Social Software," Marcia Dority Baker explores a topic that changes daily. She discusses applications and strategies in various sectors, offers best practices suggestions, and reviews the reasons law libraries use social media. She covers additional important topics including social media policies and the points they should address, privacy concerns, and third-party ownership of law library-generated content.

The analysis in "Reference Services in a Law Library" is itself a valuable reference tool for law libraries that must maintain or increase user engagement, often with a limited resource base. Carol Watson explores innovations such as personal librarian programs in academic institutions, virtual reference services, unified service desks, and roving and deskless reference services. She also offers suggestions for future-looking, enhanced, and efficient user-friendly research guides.

Two chapters, "Library Instruction in the Information Age," by Emily Janoski-Haelen, and "Educational Technologies," by Kim Clarke and Nadine Hoffman, focus heavily but not exclusively on academic settings to discuss complementary aspects of instruction: roles for law librarians, and strategies, techniques, and software that can enhance engagement and practical skills.

I expect to keep this book on my "currently reading" list for the foreseeable future. Any law librarian thoughtful about the field might consider doing the same. Likewise, any modern course on law librarianship ought to look closely at this book for course adoption. Even general courses on aspects of law librarianship – like reference and collection management, for example – can look to individual chapters. Certainly, it will alternate between my desk and my office bookshelf for some time to come.

REVIEWED BY
**KIM NAYYER**
Librarian, Law
University of Victoria Libraries, Victoria, BC

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***Lawyers as Leaders*. By Deborah L. Rhode. New York: Oxford University Press, 2013. 300 p. ISBN: 978-0-19-989622-6 (Cloth) $29.95.**

Peter Drucker once said "leadership cannot be taught or learned." Law professor Deborah Rhode has spent several years honing her message to the legal community to contradict that notion. Her book *Lawyers as Leaders* was published in 2013, and its major themes appeared earlier in Rhode's 2010 article, "Lawyers and Leadership," in the American Bar Association's journal *The Professional Lawyer*. The author's 2010 essay opens by noting the justified scorn that popular works on leadership may engender in lawyers. She then muses that, as a profession, lawyers perhaps *should* address the topic of leadership and in a more serious way than popular publications provide. *Lawyers as Leaders* is that serious address.

On page one, the author lays out the book's aim: "…to shed new light on why we trust lawyers with so much power and why we are so often disappointed in their performance." She also muses, "Why has the occupation that produces the nation's greatest proportion of leaders done so little to prepare them for that role?" (p. 25) In service of shedding new light on that question. The book's longest and last chapter parses the capabilities of leadership and articulates the prevailing principles. For example, "Leadership is a process, not a position, a relationship, not a status. A title may give someone subordinates but not necessarily followers." (p. 203)

The book is more about leadership than about lawyers. But one passage that resonated for me was this: "Most lawyers lead from the middle." They are leaders in some contexts, and followers in others. In either case, they require interpersonal skills such as empathy and active listening that foster trust and mutual respect" (p. 204). As I read that excerpt, I was struck that this insight applies equally to librarians, given the rapidly changing profession of librarianship.

Rhode's analysis of leadership qualities are also conducted through the lenses of ethics and diversity, and these chapters are the most compelling. The reader senses experiential authority in sections about challenges for women leaders in the law, in particular. And Rhode's chapter on leadership scandals is engaging; she discloses some intrigues and foibles regarding leaders in American public life, most of whom were also lawyers.

Early on, Rhode asks *why* lawyers and legal education have not actively focused on developing leadership capabilities, and by the end of the book, provides three incentives for change. The incentives are practical as well as altruistic: to lead social change; to ensure the survival of the law firm as an enterprise; and to leave a legacy.

Deborah Rhode is a distinguished American legal academic, and the book's tone and structure skew toward the scholarly. There are 1,422 end-notes, testament to the intense research infrastructure supporting this book. Rhode's writing style is engaging yet always serious, and the text is uninterrupted by graphic elements. As one might expect, there is a good index. Surprisingly, however, there is no bibliography. The book jacket, in black and grey, evokes a well-tailored suit.

Overall, this is a text worth sharing with students, lawyers and librarians. We can all learn more about leadership, after all.

REVIEWED BY
**DEBBIE MILLWARD**
Manager, Information Resources
Lawson Lundell LLP

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***Mediation for Civil Litigators: Issues and Solutions.* By John Hollander. Toronto, ON: Irwin Law 2013. xxii, 239 p. ISBN 978-1-55221-347-6 (softcover) $30.00. ISBN 978-1-55221-348-3 (e-book) $30.00.**

*Mediation for Civil Litigators* is one of six titles in the Young Advocates Series by John Hollander, published by Irwin Law. The series focuses on some fundamental legal and litigation skills that may not be readily available elsewhere. This publishing gap "creates a need for practical advice, in the form of concise, practical handbooks, for each of the many subjects that junior lawyers require to get through their days" (p. viii) which this series fills.

A foreword by Justice Robert Beaudoin of the Ontario Superior Court provides the context for the development of a mediation culture in Ontario. This has arisen, in part, due to the integration of the mediation process in the rules of civil procedure, known as the mandatory mediation rule. The background provided in the foreword is useful in understanding how fundamental mediation has become in civil litigation.

The book is organized into seven chapters, with a logical progression from the first chapter on preparation, through chapters on the plenary session, caucus, negotiation tactics, client focus, the mediation process, and specific subject areas. The book covers considerations that arise throughout the entire process – from choosing a mediator to preparing

the minutes of settlement (and everything in between).

Each chapter is divided into subsections containing commentary by the author, followed in many instances by focused remarks by one or more experts. The experts – Rohan B. Bansie, Rick Brooks, Blaine Donais, Steven C. Gaon, Hilary A. Linton, Richard J. Moore, Kevin Mullington, William L. Neville and Joel Wiesenfeld – are all experienced mediators and provide their commentary from that point of view. A resume setting out each expert's credentials and experience is included in the book.

The author and experts bring their years of experience to provide insight into the mediation process involving not a "how to" but rather a "what to think about" walk through the process. This approach recognizes that the intended users of this handbook are practising professionals who will be advising and representing clients at mediation, therefore making judgment calls, decisions, and giving advice in diverse circumstances. The book draws on the combined experience of the contributors to allow the reader to see how the mediation process unfolds generally and to anticipate many common issues that may arise.

While the author and experts are all Ontario based – the series having arisen from the Ottawa-based Advocacy Club – the commentary is general enough to be useful in all jurisdictions. There may be some variation in local practice or the application of provincial legislation (such as rules of practice/procedure), but the advice as to what lawyers should consider at mediation will still be of value.

Mediation is a dynamic process, sometimes fast-paced, and with many tactics and strategies at play. The author does not delve into the theory of mediation and alternative dispute resolution, but rather keeps the focus practical. The aim of the book is to help the reader understand the mechanics of mediation, and the roles and goals of the various participants. Hollander describes how this all relates to lawyers representing their client. Discussion of some issues, such as providing legal advice, confidentiality, and authority to settle recur throughout the book as there are nuanced and different points to be made.

Overall, the book offers the reader a good overview of the process and the role of counsel in mediation, and the thorough index allows the reader to use the book as a quick reference on specific aspects of mediation. *Mediation for Civil Litigators: Issues and Solutions* is a valuable resource for junior lawyers and for libraries supporting practitioners. The book may also be useful for self-represented litigants to understand the mediation process in the context of civil litigation.

**REVIEWED BY**
**JANE CAVANAGH**
*Team Lead, North, Alberta Law Libraries*
*Government of Alberta, Edmonton, Alberta*

***Sex, Crime and Literature in Victorian England.* By Ian Ward. Oxford: Hart Publishing, 2014. 154 p. Includes index. ISBN 978-1-84946-294-5 (hardcover) $60.00.**

It was the best of times, it was the worst of times. During the nineteenth century, England's social, economic, and legal systems were remarkably transformed. Authors and poets such as Charles Dickens, William Makepeace Thackeray, Mary Braddon, and Dante Gabriel Rossetti were all witnesses to these developments. Associated with the publication of their novels and poems was a dramatic uptake in reading for pleasure and, as part of this, Victorians became especially interested in reading about the sensational topics of women and crime.

In *Sex, Crime and Literature in Victorian England*, Ian Ward, Professor of Law at Newcastle University, examines Victorian novels reflecting the contemporary attitudes towards crime and sexuality, alongside changes in legislation and relevant jurisprudence. As Ward suggests "no-one condoned adultery. But everyone liked to read about it" (p. 33).

Ward's analysis in the first two chapters highlights the legal ramifications of extra-marital affairs relative to legislative changes to marriage and divorce laws and contemporary views of these types of scandals. Also of note is Ward's contention that the novels discussed in these chapters were written with purpose, either to encourage reform or to reinforce the institution of marriage, which he suggests demonstrate the conflicting and changing views of women and their roles in marriage.

In the first chapter, "Criminal Conversations," Ward considers marriage and adultery by analyzing Thackeray's *The Newcomes* and Ellen Wood's *East Lynne* alongside the infamous case of *Norton v. Melbourne*, which, in 1836, saw George Norton bring a suit against Lord Melbourne, the Prime Minister of England, accusing him of an affair with Norton's wife, Caroline. These works are considered alongside the 1857 *Matrimonial Causes Act*, which allowed for couples to obtain a divorce through civil proceedings instead of through an expensive and complex Private Act of Parliament.

In Chapter 2, "Fashionable Crimes," Ward recounts the real-life *Yelverton* case to outline the state of matrimonial legislation, before analyzing Mary Braddon's *Aurora Floyd* and the topic of bigamy, a subject he purports that Victorians loved "almost as much as they loved a good murder" (p. 68). Also considered in this chapter is the growth of the genre of the sensation novel, of which *Aurora Floyd* was only one of many.

From the analysis of Victorian matrimonial law to criminal law and the regulation of sex outside marriage, the reader moves to the difficult topic of infanticide covered in the third chapter, "Unnatural Mothers." Here, Ward examines Frances Trollope's *Jessie Phillips* and George Eliot's *Adam Bede* along with the 1753 *Marriage Act,* Lord Ellenborough's 1803 "Infanticide" Act, and the 1834 Poor Law – laws that made it difficult for "fallen" women to bring charges against

fathers of their illegitimate children. The analysis of these novels exposes the reader's, and therefore, the public's, complicated and changing views of motherhood and infanticide, which were notorious topics in Victorian fiction.

Ward notes "there was nothing particularly unusual in finding a prostitute walking the pages of a Victorian novel, or indeed the pages of a Victorian poem" (p. 134). As such, Chapter 4, "Fallen Angels," analyses prostitution using Dickens' *Oliver Twist* and Dante Gabriel Rossetti's *Jenny*, amongst other works of fiction, which are framed against laws such as the *Contagious Diseases Act* and charitable efforts such as Magdelen hospitals. These texts reflected the Victorian-era fascination with prostitution and the conception of redemption and reform.

Ward successfully provides a legal and legislative context to texts that both shaped and reflected the Victorian psyche. His study of popular Victorian fiction and the contemporary reaction to them demonstrate that the tentative reforms made to matrimonial and criminal laws were reflective of the conflicted attitudes towards the changing roles of women during the nineteenth century. As such, this book would be an excellent addition to an academic library as it has broad appeal to those studying law, literature, history, and gender studies.

**REVIEWED BY**
**ALEXIA LOUMANKIS**
Reference Librarian, Law Library
Ministry of the Attorney General

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***Vicarious Liability in Tort: A Comparative Approach*. By Paula Giliker. Cambridge, UK: Cambridge University Press, 2010. xliii, 330p. Includes tables of cases and statutes, appendix and index. ISBN 9781107627482 (paper) $37.95.**

Written by Paula Giliker, a Professor of Comparative Law at the University of Bristol, this book, part of the *Cambridge Studies in International and Comparative Law* series, offers a detailed comparative examination of the doctrine of vicarious liability, a term which the author defines as "the strict liability of one person for the torts of another in the law of tort."

Professor Giliker examines vicarious liability across a number of jurisdictions spanning both common law and civil law legal regimes. The work considers the doctrine from a theoretical perspective and at a detailed level, examining key jurisprudence and legislation in an attempt to identify a common framework to discern the ability of legal regimes to produce a "clear and socially responsible doctrine of vicarious liability."

Giliker begins with a brief historical overview of the doctrine and moves on to its legal characteristics and significance in various modern legal systems. From this, she develops a general framework for liability. She scrutinizes the nature of the relationships and types of torts needed to trigger the doctrine in the various legal systems and explores in detail how the doctrine operates vis-a-vis employers and a few other parties. The limits on the scope of liability that have evolved in different legal systems is also examined. Interestingly, the author explores the desirability of extending the doctrine to impose strict liability on parents for the tortious actions of their children, comparing and contrasting the situations in English and European law. Later chapters consider the rationale for the doctrine and assess the potential impact of proposals to harmonize the doctrine in the EU.

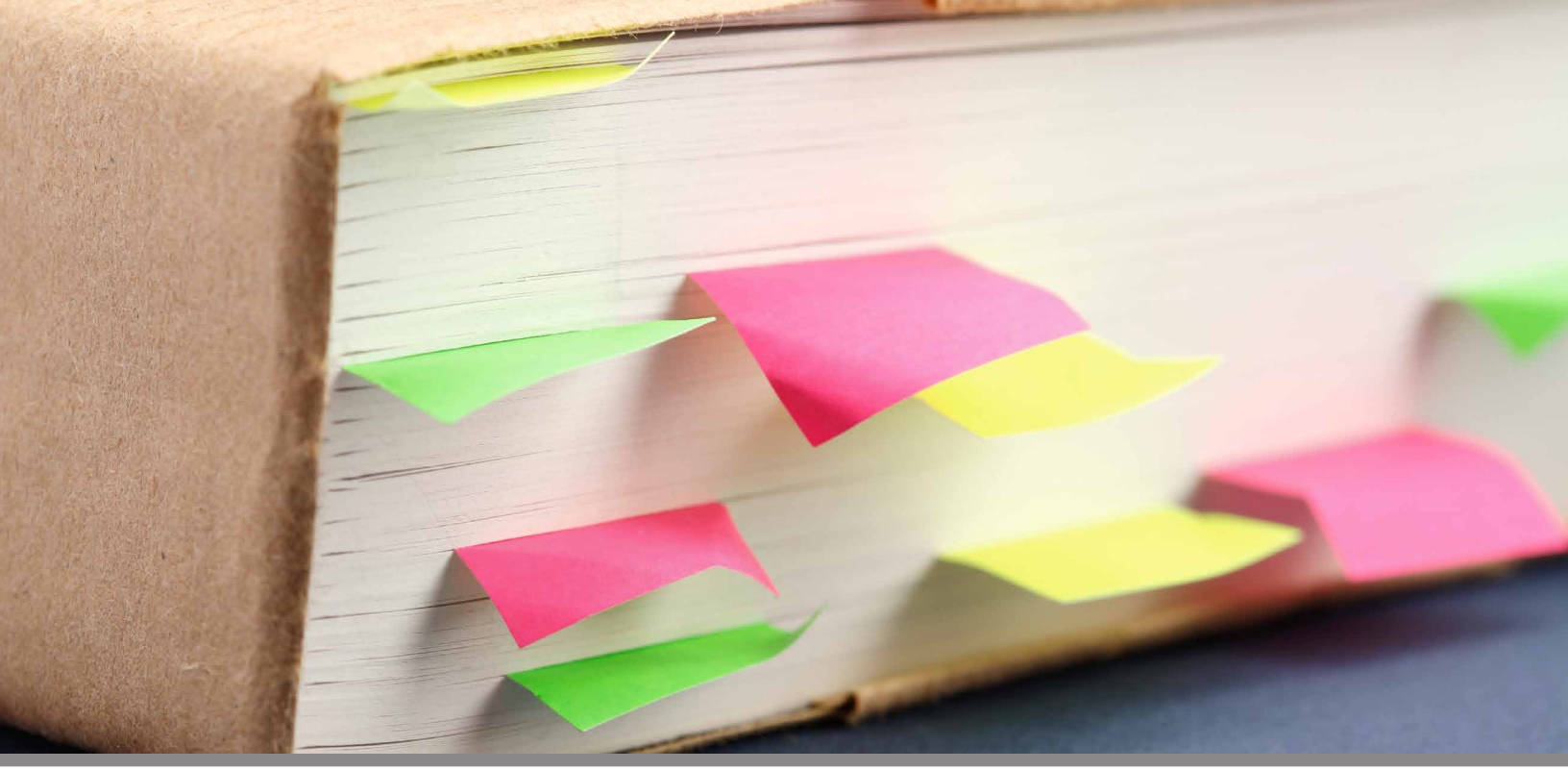
The author uses the differences in the legal development and application of the doctrine to clarify the rationale and policy considerations that underlie it, and in some cases to argue for changes to the common law doctrine. The author's attempts to distill the approaches taken across the various legal regimes into a clear rationale for the doctrine will be appreciated by anyone struggling to come to grips with the discrepancies found amongst the common law jurisdictions.

The subtitle of the work is "a Comparative Perspective" and readers used to comparative works that concentrate on a very limited number of jurisdictions will be pleasantly surprised with the scope of this book. Throughout, the author consistently refers to and examines in precise detail legislation and jurisprudence from a variety of jurisdictions to illuminate the principles and rationale behind the doctrine. This book expands its survey beyond the common law, extensively examining the legal situation in two civil law jurisdictions, France and Germany, with particular attention paid to the French context.

In terms of relevance to Canadian researchers, the book cites over thirty Canadian cases, including 19 Supreme Court of Canada decisions. Key Supreme Court of Canada decisions occupy a significant role in the book's search for the rationales and policy principles underlying the doctrine. As might be expected from an author based in the UK, English case law and legislation occupy a central place throughout the work. The book's comprehensive comparative approach will be interesting and useful to academics; however, these same features could conceivably be useful to practitioners or others looking to support a novel argument regarding the development of vicarious liability in this country.

The book contains a table of cases helpfully organized by jurisdiction and a similar table of legislation, a quite detailed index, and an appendix containing English translations of key provisions of the French and German Civil codes. The book will be of interest to academic law libraries and could be of interest in any setting where a comparative approach to this area of law or quick access to key foreign jurisprudence and legislation on this doctrine would be useful.

**REVIEWED BY**
**JOHN BOLAN**
Instructional and Reference Librarian, Bora Laskin Law Library
University of Toronto



# IIII Bibliographic Notes / Chronique bibliographique

By Susan Jones

**Melissa Maria Johnson & Matthew Buckley, "Downloading Ebooks: Solutions for a Complex Process" (May/June 2014) 38:3 Online Searcher 10-13.**

Last year, we held an information session for faculty on finding and using ebooks. We pointed out the dedicated ebook-only search option on the website, demonstrated that ebooks were discoverable through the catalogue, covered the various ebook providers, explained that some providers required users to set up accounts and download additional software, and noted that not every ebook can be downloaded in its entirety, or at all, in some cases. The result? Perhaps a little exasperation on the part of attendees (and maybe me, too). The process of finding, borrowing, and using ebooks is not a simple process, particularly if the ebooks in your collection come from a variety of providers. In fact, given the multi-step processes, the secondary logins, the additional software, varying loan periods, and differences in downloadability, I sometimes wonder why people use them at all. In this article, two librarians from the Alvin Sherman Library at Nova Southeastern University in Fort Lauderdale, Florida describe what we as librarians can do to make this process easier for our users.

The first thing to do is *ensure your library's ebooks are visible*. At the very least, the authors recommend that libraries devote valuable real estate on their websites to an ebooks-only search option.

Second, librarians need to *understand their ebook collections*. Whether it's EBSCO, MyiLibrary, ProQuest, OneClickdigital, OverDrive, or 3M, most databases provide some type of download for its ebooks. The problem, though, is that downloadability is not consistent across platforms. Some may allow the download of an entire ebook, while others may only permit users to download a chapter or a certain number of pages. What's more, some providers don't provide those details until the user has advanced some way along the borrowing process. One of the authors' main goals in trying to make their library's ebooks easier to use was to figure out a way for borrowers to easily determine the downloadability of ebooks. Part of the solution was the creation of a chart outlining how much of each database's ebooks are downloadable, the loan period, and whether the database offers an app.

To help librarians better understand their ebook collections, the authors also recommend that they *become active users of their collections*. According to the authors, you can't rely on vendor-issued press releases or announcements to find out about significant changes to databases. You need to set up the necessary accounts, install the needed software, and practice downloading and using ebooks. If possible, practise downloading ebooks on different devices. And whatever you do, don't wait until that urgent telephone call from a user to figure things out.

To make their ebook collection easily discoverable, and to avoid searching several databases separately, the authors included records for all of its ebooks in their library catalogue. Cataloguing records, however, didn't solve all of the problems associated with finding and using their library's ebooks. Many of the cataloguing records they received from vendors lacked any information about downloadability. Over

the course of several months, library staff at the authors' library worked with vendors to include this information in their MARC records.

While including MARC records for ebooks in the catalogue increases the likelihood of their discoverability, it doesn't address the problem of borrowing and using ebooks. As noted earlier, borrowing ebooks is a lengthy, multi-step process, sometimes involving secondary logins and special software. Until vendors streamline the process, the staff at the authors' library decided that the best solution would be the creation of online guides to steer users through the borrowing and downloading process. The online guide includes written, step-by-step instructions, plus video tutorials and can be viewed at nova.campusguides.com/downloadable.

The authors note that some vendors, such as 3M, have begun to create a less complicated, more streamlined process by allowing users to access ebooks using their own institutional login. However, until such time that vendors make the process of finding, borrowing, and using ebooks easier, the authors assert that it's up to librarians to educate users on how to use their ebook collections.

**Margaret Beecher Maurer & Roman S. Panchyshyn, "Understanding the Why: A Case Study in Managing the RDA Implementation (2014) 52:3 Cataloging & Classification Quarterly 259-284.**

I think I've mentioned this before in a previous column, but it's an exciting time in the world of cataloguing. Libraries, if they haven't already done so, are starting to implement Resource Description and Access (RDA). It's no small task to implement a new descriptive standard. The Anglo-American Cataloging Rules, 2nd ed. (AACR2), and its earlier manifestations, have been the standard for decades. A new standard means new instructions and guidelines, and with new instructions come new approaches to descriptive cataloguing, new procedures and workflows, and new policies, not to mention significant time and resources for managing the transition to RDA and the training of staff. And the implementation of RDA doesn't only affect cataloguing departments. It also impacts public services, library administration, and library users.

Fortunately, those of us who have yet to begin the transition to RDA can benefit from the experience of the early adopters. One such early adopter is Kent State University Libraries (KSUL) in Kent, Ohio. In this article, librarians Margaret Beecher Maurer and Roman S. Panchyshyn describe KSUL's RDA implementation process with the belief that other libraries can benefit from their own experience. The authors begin by describing the cataloguing environment at KSUL and then move on to discuss costs and advocacy, training, and policy.

To give you an idea of the context in which the authors were working, Kent State University is the second largest public university in Ohio with over 41,000 students, nine campuses, and 13 libraries. Instead of a centralized cataloguing unit, cataloguers and their supervisors are located throughout the library system. Original cataloguing is performed at six libraries and copy cataloguing at 11 libraries. The roster of cataloguing staff at KSUL includes specialist cataloguers for maps, rare books, music and media, serials, and government documents. Given the wide distribution of cataloguers across the library system, implementation had to be carefully coordinated in a way that encouraged and promoted a unified approach to RDA.

Given the costs associated with making the transition to RDA, the authors advise that cataloguing managers will need to gain the support of library administration. These costs encompass training, supplies, tools, staff time, and perhaps even travel. In addition to staff education and training, there are going to be some initial implementation costs. For example, the cost of indexing, displaying, and including the new RDA MARC 21 fields in the integrated library system, along with the staff time needed to prepare new cataloguing policies and documentation. There are ongoing costs associated with implementing RDA, too, including the annual subscription fee for access to RDA Toolkit. Although the implementation costs were high, KSUL cataloguing managers found that ongoing costs were comparable to those for AACR2 cataloguing. Furthermore, over time, training costs returned to pre-RDA implementation levels.

All of the costs associated with the transition to RDA must be justified to library administrators. The course of action elected by KSUL cataloguing managers to secure the support of administration was advocacy. More specifically, they undertook to emphasize the positive aspects of implementing RDA. Not only did their efforts help to win the support of administration, but it also helped to create a positive and welcoming atmosphere within technical services for the big changes ahead.

For the benefit of other libraries, the authors very helpfully describe those aspects of RDA that can be used as tools for advocacy. For example, one of RDA's positive aspects is its user-centred approach to the creation of bibliographic records. Under RDA, cataloguers are encouraged to simply transcribe what they see on the item in hand, eliminating the sometimes confusing abbreviations that are a hallmark of AACR2 and that were a necessity in the era of three-by-five-inch catalogue cards. Furthermore, unlike AACR2's "rule of three," RDA gives cataloguers the option of including all contributors noted on an item's preferred source of information. With the full transcription of creators, publisher names, countries, and formats, comes greater clarity and understanding on the part of the users of library catalogues. Another positive aspect emphasized by KSUL managers is RDA's focus on using data that can be repurposed in other ways. RDA parses metadata into discrete elements, making it possible at some point in the future for that data to be re-used by databases, as linked data, and in other Web environments. The precisely-defined nature of RDA data also brings with it greater flexibility in how that data is displayed in library catalogues and better searching and retrieval of information.

It should come as no surprise to anyone that education and training are a necessary and very important part of implementing RDA. This part of the implementation process at KSUL began long before any best practices, documentation, and training materials were widely available. Even so, cataloguing managers didn't let the lack of training resources hinder their efforts. The education process began with short information sessions at regular committee meetings. These quick presentations were called RDA Sound Bites and introduced some aspect of RDA to staff. Topics, presented by KSUL cataloguers, included the new 3XX fields, the use of brackets, and new terminology. KSUL staff also received training through their informal participation in the National RDA Test (a nation-wide test of RDA in the United States organized by its three national libraries). This gave cataloguers the opportunity to experiment with RDA, provided them with access to training materials, and allowed them to make connections with other libraries undergoing the transition to RDA. Another training opportunity presented itself with NACO (Name Authority Cooperative Program) bridge training. Again, this provided staff with access to documentation on best practices and the opportunity to network with other cataloguers. KSUL managers and cataloguers also followed the national conversation on RDA carried out on listservs, blogs, and email as a way of staying informed and aware of the issues.

The authors recognize that approaches to training will vary among libraries, but they do believe, based on their own experience, that continual and repeated exposure to RDA over time leads to a better understanding of RDA. They also recommend that education and training be carried out over a period of time to give staff the chance to achieve a certain comfort level with RDA prior to its actual employment.

In addition to advocacy and training, another important component of RDA implementation is establishing cataloguing policies. The authors acknowledge that the decision-making process will be different at every institution, but they believe that other libraries can still benefit from understanding the whys and wherefores of the decisions made at KSUL. In order to promote consistency in cataloguing, policy decisions were made as a community, not just by cataloguing managers. And decisions were made with the understanding that some issues would need to be revisited as policies were established at a national level and as staff learned more about RDA.

Once training was underway, the KSUL cataloguing community began the decision-making process, starting with policies about original cataloguing and followed by decisions about copy cataloguing, record upgrading, hybrid records, authority control, and legacy data, in that order. Libraries aren't required to follow this strict order, but the authors do feel it's logical for other libraries to start with decisions about original cataloguing policy.

One of the important decisions about original cataloguing was how many access points to add in the case of four or more creators contributors to a work. KSUL managers and staff decided that cataloguers would add however many access points they deemed necessary, but that the question would be discussed again after gaining more experience with RDA. Other decisions about original cataloguing included the use of ISBD punctuation, the capitalization of titles, and the use of relationship designators, all of which are discussed by the authors in the article.

When policies had been established about original cataloguing, KSUL managers and staff moved on to copy cataloguing. One of the first decisions was about whether to accept AACR2 records "as is" or upgrade them to RDA. Managers and staff decided to accept and evaluate AACR2 records for what they were – AACR2 records – instead of automatically upgrading them to RDA. They recognize, however, that this policy will need to be re-evaluated at some point in the future when more original records are being created in RDA.

KSUL cataloguing managers also set about creating a checklist to guide copy cataloguers in evaluating and identifying acceptable RDA records. This was no small task given the dearth of documentation at the time, but staff recognized that the guiding rule in evaluating records, whether in AACR2 or RDA, was the same – the overall quality and usefulness of the record. With that in mind, staff developed a new RDA-focused copy cataloguing checklist that includes instructions on how to recognize differences in AACR2 and RDA records, standards for acceptable copy, and situations in which to forward records to original cataloguing. As the authors note, copy cataloguing is a more challenging activity in an RDA environment given the range in type and quality of records to be evaluated.

Another aspect of RDA that presented challenges for copy cataloguers was capitalization. Initially, RDA provided that titles were to be transcribed as capitalized on the preferred source of information. This instruction changed, however, for reasons of readability, clarity, and display in library catalogues. Sentence case is now prescribed, although libraries still have the option of direct transcription. Following the standard established by the national libraries, original cataloguers at KSUL transcribe titles in sentence case, but copy cataloguers encounter a variety of capitalization styles in the records they evaluate. For this reason, KSUL cataloguing managers and staff needed to decide whether resources allowed copy cataloguers to re-transcribe the title field of copy according to KSUL's own policy. In the end, they were instructed to ignore the capitalization style in records. One reason for the decision is that capitalization doesn't impact the search functionality within KSUL's catalogue. Another reason is that the number of records with titles in all-caps will likely decrease as more libraries start to follow the national standard. Finally, OCLC has developed macros for the modification of capitalization in records.

Policies also had to be established about record upgrading, an area with its own unique issues. KSUL managers and staff decided that all records of minimal quality routed to original cataloguers would be upgraded to RDA. The main

reason is that it's simpler to perform all original cataloguing in a single standard on a go-forward basis. There was also the issue of whether to upgrade a record's linked titles to RDA, too, which KSUL managers and staff opted not to do. KSUL managers and staff also made policy decisions about hybrid records or records that incorporate both AACR2 and RDA data. At first, KSUL cataloguers looked askance at these records, until they began to view them simply as non-RDA records with some RDA elements. The situation wasn't unlike enhancing AACR1 records with AACR2 data. Inserting RDA elements into an AACR2 record is the sort of continual improvement that records have undergone for years and what's more, there are many benefits to making AACR2 records look more like RDA. For one thing, the more records in the catalogue that look like RDA, the less ongoing education is needed for library users and new library staff. Furthermore, it doesn't make fiscal sense to support two cataloguing standards on an ongoing basis.

Some of the most important policy decisions libraries will need to make concern authority control. In preparation for full RDA implementation, over 200,000 of KSUL's bibliographic records were changed through vendor authority control processing. Described by the authors as a tsunami, the processed records from the vendor had to be incorporated back into the catalogue very carefully and over the course of several days in order to prevent system crashes. Even with vendor processing, there were still 100,000 headings in bibliographic records that needed to be changed manually, along with an untold number of other records that didn't find a match through the integrated library system's automated authority program. KSUL's authority control librarian developed a plan to contend with the cleanup work, some of which was done manually and some of which was completed through global updating. Needless to say, the introduction of RDA authorities presents many challenges and libraries will need to think carefully about how to manage the workload that accompanies this part of RDA implementation.

The final area in which KSUL managers and cataloguers made policy decisions was legacy data. Legacy data simply refers to the non-RDA records already existing in a library's catalogue. At issue is whether to hybridize the legacy data to make it look more like RDA. On the plus side, users would certainly benefit from the consistency that comes from a catalogue that uses a single standard and the data would be easier to maintain. And, as the authors point out, this sort of work doesn't have to be done manually, unlike the transition to AACR2. Many authority control vendors offer backfile processing to convert legacy data to be more like RDA. For example, backfile processing can replace AACR2 abbreviations with the fully transcribed vocabulary of RDA and it can add the new 3XX fields to AACR2 records, as well. On the negative side, all of this comes at a cost, and not an insignificant one if the database of bibliographic records is large. Larger libraries may find the costs, both in terms of hard dollars and staff resources to plan and manage such a project, prohibitive. Smaller libraries, however, may find these conversion services an attractive option.

Libraries just undertaking the transition to RDA today can benefit greatly from the experience of early adopters like KSUL. Maurer and Panchyshyn's article is filled with advice and recommendations, along with references to important national policy statements and articles. The authors also invite other libraries to consult KSUL's RDA website <http://extra.library.kent.edu/node/15168>, which is a valuable resource for documentation and local training materials.

**Stephanie J. Willbanks, "What's in a Name? Would a Rose by Any Other Name *Really* Smell as Sweet?" (May 2014) 63:4 Journal of Legal Education 647-666.**

I've always found the titles of scholarly articles, many of them anyway, somewhat intriguing and very often funny. The subject matter of the articles may be of little interest, but I often get a glimpse of the author's sense of humour from the title. So it was with delight that I read Stephanie J. Willbanks' bibliography of eclectic titles from various law reviews and journals. Here, for your amusement, are a few of my favourites. On the topic of Shakespeare, David Pratt's "To (B) Or Not to (B): Is That the Question? Twenty-First Century Schizoid Plans Under Section 403(b) of the Internal Revenue Code" (2009) 73 Albany Law Review 139 and Sophie Riley's "A Weed by Any Other Name: Would the Rose Smell as Sweet if it Were a Threat to Biodiversity?" (2009) 22 Georgetown International Environmental Law Review 157. With reference to Dr. Seuss, Elizabeth Chamblee Burch's "There's a Pennoyer in My Foyer: Civil Procedure According to Dr. Seuss" (2009) 13 The Green Bag (2d) 105. For fans of Harry Potter, Benjamin H. Barton's "Harry Potter and the Half-Crazed Bureaucracy" (2006) 104 Michigan Law Review 1523. And finally, Jennifer Sheppard's "Once Upon a Time, Happily Ever After and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda" (2009) 46 Willamette Law Review 255.


# IIII Local & Regional Update / Mise à jour locale et régionale

Edited by Sooin Kim

## Calgary Law Libraries Group (CLLG)

On September 7, 2014, 43 CLLG members, over three teams, participated in Ovarian Cancer Canada's Walk of Hope and raised $23 642.

The CLLG Fall Business Meeting was held September, 23, 2014 as the first meeting of the new CLLG Executive. This year's Executive, nominated and approved at the spring AGM, includes: Alison Young, chair; Rebecca Cleaver, secretary; Jason Wong, treasurer; Annamarie Bergen, membership and directory; Christy MacKinnon and Heather Wylie, program committee; Helen Mok, student committee; Helen Mok and Sue Winstanley, travel grant committee; Elda Figueira and Holly Booth, website; Annamarie Bergen, Bonnie Buchanan, and Heather Wylie, Shelagh Mikulak Library Leadership Award committee; Nadine Hoffman, CLLG listserv.

Christine Pinkney received the inaugural Shelagh Mikulak Memorial Scholarship in Library Sciences, awarded in October. This annual scholarship is intended for a student in any year of study in a Library program who demonstrates passion for the library sciences field and financial need. Christine is a Calgarian currently completing her MLIS at Western University in London, Ontario.

The Annual Vendors' Forum took place October 16, 2014. This CLLG-hosted event included product updates from Alberta Queen's Printer, Capital IQ, LexisNexis print and online, and Carswell.

**REBECCA CLEAVER**
Technical Services Librarian
Bennett Jones SLP (Calgary), CLLG Secretary

## Edmonton Law Libraries Association (ELLA)

Edmonton Law Libraries Association (ELLA) held its first meeting of the 2014-15 year on October 15. At this informal meeting, we discussed how Canada's Anti-Spam Legislation (CASL) impacts our association. Members are now required to complete an online form giving their consent to receive e-mail communications from ELLA.

We also discussed ELLA's blog, and the consensus among members was to re-launch the blog using a new platform. The new platform should make it much easier for ELLA members to create new posts, comment, and follow the blog. ELLA plans to institute the changes to the blog later this year.

In addition, we discussed the success of ELLA's Head Start 2014 and potential changes to the program for 2015. Head Start is an intensive and practical legal research workshop for law and library students entering the legal workplace,

and is held over two days each June in Edmonton.

**JULIE OLSON**
Alberta Law Libraries (Edmonton)

## Manitoba Libraries

The E. K. Williams Law Library at the University of Manitoba recently welcomed a new Library Assistant, Deborah Barnum. Deborah provides reference service and operates the Law Library's Document Delivery department. Her predecessor, Regena Rumancik, retired in early 2014 after many years with the University of Manitoba Libraries.

**KAREN SAWATZKY,**
Tapper Cuddy LLP

## Montreal Association of Law Libraries (MALL) / Association des bibliothèques de droit de Montréal (ABDM)

MALL has organized several social events in the recent months. All MALL members were able to meet and have lunch at the MALL Fall Lunch at Boccacinos Restaurant located on McGill College Avenue on October 2, 2014. This year the MALL Christmas Party was held at Café République on Peel Street on November 27, 2014. The Christmas Party would not be possible without the generous support of our sponsors in the legal publishing industry. Both events were a great success.

MALL organized an interesting presentation on common-law couples in Quebec on November 12 at the Chambre des Notaires. This presentation by Me Lucie Bédard provided participants with clearer understanding of recent jurisprudence including reference to the Lola case and the implication of a written agreement between common-law partners.

L'ABDM a organisé plusieurs évènements à caractère social depuis l'automne. Les membres ont été en mesure de se rencontrer lors du lunch de la rentrée le 2 octobre 2014 au Restaurant Boccacinos situé sur l'avenue McGill College. Le souper de Noël de l'ABDM a eu lieu le 27 novembre au Restaurant Café République situé sur la rue Peel. Cette dernière activité a été possible avec les commandites de nos partenaires de l'édition juridique. Les deux évènements ont été de grands succès avec une belle participation des membres.

Le 12 novembre, l'ABDM a organisé une présentation à la Chambre des notaires sur les conjoints de fait. Cette présentation de Me Lucie Bédard a permis aux participants d'avoir une meilleur compréhension des effets juridiques de l'union de fait avec référence à l'affaire Lola ainsi que les implications dans l'élaboration d'une convention de vie commune.

**MARYVON CÔTÉ**
MALL President / Président de l'ABDM

## Ontario Courthouse Librarians' Association (OCLA)

On October 15-17, 2014, the members of the Ontario Courthouse Libraries Association attended the annual Conference for Ontario Law Associations' Libraries (COLAL) in Toronto. This year's conference was entitled "Connecting People and Information." This historic conference brought together the stakeholders /shareholders of the Law Society of Upper Canada, the Legal Information and Support Services Working Group, The County District Law Presidents' Association, the Toronto Lawyers Association, LibraryCo and the staff from the 48 County and District Law Libraries. Every attendee contributed an unique perspective and rich experiences with the goal of developing a cohesive and strong County and District law library system for the future.

There were a number of dynamic guest speakers, including Kim Silk, Data Librarian, Martin Prosperity Institute, University of Toronto who gave the keynote address on "The New Librarianship;" and Rick Haga, Executive Director, County of Carleton Law Association, who provided valuable information on organizing and presenting CPD and mentoring programs.

The system has also experienced a number of staffing changes: Jackie Lefebvre of the Temiskaming Law Association retired in October with Shannon Wittmaack taking on the job as their new Library Assistant. We bid Jackie good luck in her retirement! Also of note, Jennifer Robinson has joined the Frontenac Law Association. Jennifer holds an MLIS and is working in the capacity of staff assistant. We wish Jennifer and Shannon much success in their new positions!

**CHRIS WYSKIEL**
Library Technician
Hamilton Law Association

## Vancouver Association of Law Libraries (VALL)

The autumn rains have started in Vancouver, and the 2014-15 membership year is trundling along. The association is grateful to continuing, outgoing, and incoming executives. Thanks go out to Sarah Munro, Alyssa Green, Rebecca Slaven, Stephanie Karnosh who left the board this year. We are also grateful to those who are staying on: Larisa Titova, Bronwyn Guiton, Emily Klomps-Spanjers, Kathryn Rose, Joni Sherman, and me. Finally a warm welcome to Debbie Millward, Kate Sloan, Angela Ho, Brenda Alm, and Taryn Gunter who have joined us this year.

We held our first meeting of the membership year in September. Alyssa Green, manager of InfoAction at Vancouver Public Library <http://www.vpl.ca/infoaction/index.html>, presented on "Research on Businesses and Their Markets." This session was very useful and well received by those in the room who got to learn a few new tricks to take back to work and use. In June we also had excellent programming with Sarah Glassmeyer, Director of Community Development for CALI (The Centre for Computer Assisted Legal Instruction) <http://www.cali.org/>,

discussing “Libraries and Librarians as Educators.” This gave us meaningful tips on conceptualizing ourselves as instructors and how to do it well.

VALL and the Knowledge Management Sub-Section of the British Columbia Legal Management Association hosted our annual workshop again this year in May on competitive intelligence. Euan Sinclair of Lawson Lundell LLP <http://www.lawsonlundell.com/>, Jeff Voon of Fasken Martineau <http://www.fasken.com/>, and Patti Wotherspoon of InfoAction at Vancouver Public Library (http://www.vpl.ca/infoaction/index.html) presented very ably on this important topic.

Coming up as I write this, but in the past as it is published, is “Finding Those Who Don't Want to be Found” with Julie Clegg of Toddington International <https://toddington.com/> to be held in November. This was a very popular session during the Special Library Association Conference in Vancouver this year, and we eagerly anticipate attending.

We have continued introducing alternative programming, and are also looking forward to a session entitled “Legislation Research Skills Refresher for VALL Members” offered by Tracy McLean and Alex McNeur from the Courthouse Libraries BC.

For more news about VALL, please visit the website at <http://www/vall.vancouver.bc.ca>.

**SARAH SUTHERLAND**
Past President, Vancouver Association of Law Libraries


# IIII News from Further Afield / Nouvelles de l'étranger

## Notes from the UK

### London Calling!

By Jackie Fishleigh*

Greetings from the still United Kingdom

I thought I would devote the whole of my contribution to the historic Scottish vote on 18th September.

You probably know the outcome by now (55% No 45% Yes).

I'm not sure to what extent you followed the campaigns and run-up? I was very interested to discover that there have been two referenda on possible independence for Quebec, the second in 1995 ending almost too close to call with only 51% against. I must say I dreaded a similar result in ours but fortunately it was more decisive and a clear rejection of independence despite an energetic and heartfelt campaign from the Yes camp who even managed to get 70% of the vote in Glasgow, the largest city, and also the majority in Dundee.

Only about 2 weeks before the day of the referendum in Scotland, an opinion poll showed the Yes campaign to be ahead for the first time. At this point the possibility of losing Scotland from the Union suddenly felt very real and certainly the people I spoke to in London were all deeply unhappy and nervous at the prospect. It was a pivotal moment…

After nearly 50 years on the planet I came to fear for my nationality. It was a very strange feeling. Not one I would ever have expected to have. Was it the end of the line for the United Kingdom? Was the blue part of the flag about to disappear? How could we carry on calling ourselves united if we so clearly weren't?

There was also a less charitable feeling that the Scots actually have a good deal out of the Union. They have free prescriptions for medicine and free personal care for the elderly. Higher education is cheaper there etc. Some English people adopted a sort of "clear off and take your bagpipes with you" attitude. There is nothing worse than a badly played bagpipe. Personally I was quite surprised to find that some Scots really don't much like the English! Nicola Sturgeon, a solicitor and Deputy Leader of the Scottish National Party, kept saying the Scottish were sick of getting a Conservative government in London for which they hadn't voted. Has she forgotten this chap called Tony Blair who was actually a Labour politician who won three successive elections?! Plenty of English people, especially in the regions, were thoroughly sick of Westminster themselves and hankered after some degree of self-government.

My suspicions are that the shocking Yes poll result strengthened the No campaign and Scots who might not have bothered to vote decided that they would come out against independence rather than stay at home and assume the Nos would have it! A year earlier many had assumed the Nos would coast to victory.

In the end a total of 3,619,915 people voted Yes or No – a turnout of 84.5% in Scotland as a whole and a new record for any election held in the UK since the introduction of universal suffrage in 1918.

Turnout reached 91% in East Dunbartonshire, 90.4% in East Renfrewshire and 90.1% in Stirling.

Key issues proved to be the currency – would the UK pound be retained post-independence? The subsequent impact on the economy and the financial sector in Scotland was portrayed as likely to be negative. The No campaign also pointed out that the Yes campaign appeared to have no Plan B and that it was a risky and uncertain step to take. There was a degree of scare-mongering thrown in.

In London the unpopular conservatives led by Coalition PM David Cameron promised big changes if Scotland stayed, in the form of a strengthened Scottish Parliament. He also warned that independence would not be a trial separation but a painful divorce. Former PM and No campaign bigwig Gordon Brown urged Scotland to stay and safeguard pensions, social security, funding of the NHS, currency, interest rates, the economy, defence and security. In the sort of emotional and eloquent speech he does so well he ended:

> "Scotland doesn't belong to the Scottish National Party, to the Yes campaign, nor to any politician; it belongs to all of us!"

In the end most Scots voted and the majority wanted to keep the Union. The Queen was reportedly deeply unhappy at the thought of losing Scotland since she was crowned Queen of the United Kingdom.

However the official statement from Buckingham Palace read:

> "The sovereign's constitutional impartiality is an established principle of our democracy and one which the Queen has demonstrated throughout her reign.
>
> "As such the monarch is above politics and those in political office have a duty to ensure that this remains the case.
>
> "Any suggestion that the Queen would wish to influence the outcome of the current referendum campaign is categorically wrong.
>
> "Her Majesty is firmly of the view that this is a matter for the people of Scotland."

When David Cameron phoned to let her know that the independence vote had fallen short she "purred down the line" apparently. Embarrassingly this private moment was divulged by Mr. Cameron to former New York mayor Michael Bloomberg and was reported back through the media. No doubt the next audience between the two would have involved the eating of much humble pie by the PM who had himself been terrified of a No vote! This was particularly the case since he had been instrumental in making the options in the referendum a stark Yes or No, rather than offering so called "devo max" – a giant carrot of self-governing measures within the framework of the UK. He has since said in jest that he would like to sue the polling organisation that produced the poll that indicated independence was a reality for the stomach ulcers and sleepless nights it gave him.

I wasn't at home in the early hours of Friday 19th September when the result became clear. My 82 year old mother had had a fall and I spent the night with her on the surgical assessment ward at East Surrey Hospital. I gathered around the TV with a small group of nurses. The sense of relief and something that felt a bit like joy were palpable! It was clear that whether we had deep roots in the UK or had arrived more recently, England, Wales, Northern Ireland and Scotland were "better together" as the UK. "Better Together" and "Best of Both Worlds" were mantras of the No campaign.

This was the view from London and Southern England as far as I could gauge it from my vantage point as a thoroughly English middle-aged woman. Interestingly the Yes campaign had much of its support from women, young people and the so called "working classes." I have no Scottish blood although I really like shortbread and am a massive fan of Andy Murray.

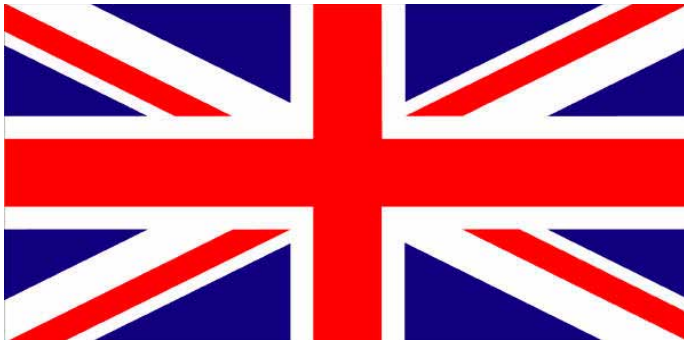
Andy had kept out of the debate but at the eleventh hour he took to twitter to say that he had been persuaded to support the Yes vote due mainly to the depressing negativity of the No campaign. "Let's do this" he urged Scottish voters. Mmm. Only those living in Scotland had the vote and his main residence in Oxshott, Surrey is about half an hour from where we live. Whether he was pushed into voicing an opinion by someone else we will probably never know. He did later apologise and say his comments had been rather rash, out of character and that he had been proud to play for Great Britain. He had also backed the wrong horse as it turned out.

There was speculation in the media that Andy will have less support at Wimbledon next year and that his mother, Judy, would make any early exit from Strictly Come Dancing in which she was competing. Well, she is still in at Week 5, in defiance of the speculation.

### The View from North of the Border!

After the result, a retired Scottish law librarian friend described herself as:

> "both relieved and disappointed! Voting was the most difficult decision. I had thought it would be a yes vote given that the Yes campaign was based on emotion (and not enough facts) – no more David Cameron / no more Bedroom Tax / Bairns not Bombs. The No campaign was just negative and scare tactics until Gordon Brown's speech just before voting day. My personal opinion is that he brought out more No voters."



And so from Land's End to John O'Groats we remain the United Kingdom. Hurrah for that!

Until next time!
**JACKIE**

## Notes from the Steel City

By Pete Smith**

### The Scottish Independence Referendum

As Jackie has covered in more detail, the Scottish independence referendum was held on 18th September, the culmination of a long and often acrimonious campaign. The No campaign saw all three major parties come together to support continued Union; the Yes campaign saw a rise in support for the Scottish National Party. In the end, despite the high profile of the Yes campaign and its extensive work on social as well as traditional media, the vote went to the No campaign. The margin was ten percent, with 55% voting No and 45% Yes.

Towards the end of the campaign the leaders of the Conservative, Labour, and Liberal Democrat parties offered a – vaguely defined – "vow" to Scotland, promising further devolution reforms in the event of a No vote. This was met with some scepticism, compounded by the slow pace of implementing this "vow" after the vote.

After the referendum, the issue of the relationship between Scottish MPs and "English" issues – the so called West Lothian Question – was raised once again. Prime Minister David Cameron has pledged a wide ranging reform of devolution, including an "English votes for English matters" exclusion of Scottish MPs on certain issues and greater powers for English regions and major cities.

The recent resignation of the Scottish Labour Party leader, Johann Lamont, reflects the growing sense of crisis within the party after the referendum. Despite having "won," the party has lost support to the SNP and other left-leaning parties. Too close an association with London politics seems to have damaged its standing, and it could lose seats in 2015's general election, with the SNP standing to benefit. This, as much as any moves on English devolution, could have a huge bearing on Scottish-English relations and the nature of the Union. The possibility that the No vote was carried by older voters also has implications for the future, as a new politically engaged and less Union minded generation begins to get involved.

### The Role of the Lord Chancellor

From devolution we turn to another constitutional issue, that of the role of the Lord Chancellor. Regardless of political affiliation it is fair to say that the current Lord Chancellor, Chris Grayling, has been controversial. Much of this is due to the wider issue of cuts in public services and their effect on the justice system, as discussed in previous columns. Some criticism, however, has been aimed at Grayling himself – his qualifications for the role and the manner in which he carries out his work, in particular.

The first issue, his qualifications for the role, has been the focus of recent criticism. Grayling is not legally qualified, the first non-lawyer Lord Chancellor since Lord Shaftesbury in the seventeenth century. Some feel that this has been an important and negative element in his decisions; his lack of legal qualifications meaning that he does not have the insight into legal systems and the work of lawyers to be an effective head of the legal system. One of his predecessors in the role, Lord Falconer, was critical of his responses to the House of Commons constitutional committee; Grayling said that as Lord Chancellor he had no more or less a duty to protect the rule of law than any other minister. Falconer argued that this comment reflected Grayling's poor understanding of his role and its place within, not only the legal system, but the government and the constitution as a whole.

Grayling has argued that not being legally qualified is not an issue; no other ministers are required to be qualified in their area. This is indeed true, and ministers may move from department to department. What is perhaps most important is that a minister of justice have a good understanding of the particularities of the role of Lord Chancellor and access to qualified lawyers to provide advice.

### The Human Rights Act & the European Court of Human Rights

In previous columns we have discussed the fraught relationship between the Conservative elements of the Coalition government and human rights legislation. *The Human Rights Act 1998* is seen by many on the right as a criminal's charter that needs to be reformed if not replaced.

Chris Grayling has issued the latest in a series of critiques and reports. "*Protecting Human Rights in the UK*" sets out the Conservative vision for human rights law reform, with particular regard to the HRA and the relationship between British courts and the European Court of Human Rights.

The document has been subject to intense criticism, some of it from within the Conservative party. Former Attorney General Dominic Grieve described the plans as "unworkable." Kenneth Clarke, former Lord Chancellor, expressed concern that attempts to limit the HRA and the effect of the European Court of Human Rights could lead to future governments feeling free to act in arbitrary and potentially illiberal ways.

Campaign group “Liberty” characterised the document as “legally illiterate.”

Several commentators have suggested that the plans may well represent a move in the 2015 general election strategy rather than a clear plan for future legislation. They certainly reflect the anger and concern many have with what they see as “interference” from a vaguely defined “Europe.” The Grayling plan promises to restore “common sense” and “sovereignty.” It will be interesting to see if the plans are further developed or quietly shelved.

### The Quality Assurance Scheme for Advocates (QASA)

The aim of the QASA is to maintain and improve standards of advocacy in the courts. To that end the three regulators of those acting as advocates – the BSB, SRA, and ILEX Professional Standards – created QASA, which the Legal Services Board approved in July 2013.

QASA has not proved universally popular, as seen in previous columns. A judicial review back in January saw the courts reject the claim that QASA was unlawful; this decision was appealed, only for it to be upheld. This means that QASA can now go ahead, although it is unlikely to do so without further opposition. To work, the scheme will require the co-operation of advocates, and there are many who have said that such co-operation will not be forthcoming.

### Legal Aid

A recent judicial review ruling found that elements of a government consultation on cuts in legal aid were so flawed as to make the consultation unlawful. This represents a setback to the government in its reform programme, but the government has reiterated its determination to save money in the court system.

As discussed in previous columns the cuts to legal aid – and associated cuts to court funding – have caused deep and widespread anger amongst lawyers. Both solicitors and barristers have come out on strike against the cuts, and have supported judicial review. Recently a retired judge, Sir John Royce, added his voice to the criticism. He argued that the cuts have reduced access to justice, made working conditions worse, and had made it less likely that good lawyers will want to work within the criminal justice system. Returning to an earlier theme, he laid much of the blame squarely at the feet of the Lord Chancellor, claiming that he was not listening to the concerns of those affected by the cuts.

### 2015 Election Debates

The United Kingdom Independence Party (UKIP) has emerged as a Parliamentary party, with the defection from the Conservative Party of Douglas Carswell leading to a by-election in which he was victorious. This victory, plus their presence in the European Parliament and local government in England, has led to their gaining a much higher profile – which in turn has led to them being invited to be part of the 2015 election campaign debates and has angered members of other parties. One example is the Green Party, which has the same number of MPs (one) and representation on local government. They, along with the SNP and other parties, are now campaigning for a place in the debates.

### Training For Tomorrow – Competence Standards

As part of its response to the Legal Education and Training Review, the Solicitors Regulation Authority set up its *Training for tomorrow* program. The most recent stage is its consultation on the competence standards expected of solicitors. This sets out the “threshold” of competence that practicing solicitors are expected to meet, along with a detailed breakdown of the knowledge and skills they should have.

The Bar Standards Board will in time issue their own competence standards, as will other legal services regulators. These are of interest to me as a legal educator, as they will shape the content of law degrees – we will be following these consultations with interest, to see where they might take us.

### Leaf Fall and Fall Back…

The leaves have fallen, the weather is turning, and the clocks gone back. Autumn is with us, and winter not far off. The next issue will be with you in 2015! May the weather be kind, the holidays joyful, and the New Year happy. See you then!

All the best!
**PETE**

## Letter from Australia November 2014

By Margaret Hutchison***

As I'm writing this, I'm looking at Australia from the wrong end of the telescope, i.e. I'm in the northern hemisphere (Amsterdam at present to be precise) while on leave. So this will be briefer than usual.

The Federal government has introduced the first two “tranches” of legislation into Parliament to combat the increased threats of terrorism posed by Australians participating in, or returning from conflicts in foreign states.

The first part is the *National Security Legislation Amendment Act (No. 1) 2014*. This covers four main areas:

- greater protection for intelligence officers who commit crimes while conducting operations;
- cracking down on the leaking and publication of information about secret operations;
- expanding the Australian Security and Intelligence Organisation's (ASIO) access to computer networks;
- making it easier for Australia's spying agencies to work together.

ASIO is Australia's *internal* intelligence agency while the

agency responsible for *external* intelligence is the Australian Intelligence Security Service (ASIS). ASIO, by the way, has a very new and obvious headquarters across from Lake Burley Griffin, which they have not been able to move into yet, due to possible foreign penetration of the computer systems during installation.

1. Australian Security Intelligence Organisation officers will now have greater immunity from prosecution if they commit a crime in the course of a "special intelligence operation".

   Authorised ASIO officers will decide which operations are classed as "special intelligence operations" and there is no limit on how many operations can be designated as such. The immunity is broad. The laws state only that ASIO officers must not be engaged in conduct that causes death or serious injury, involves a sexual offence against any person or the significant loss of or damage to property.

2. The laws increase the penalties for intelligence officers who share information about secret operations. ASIO agents who remove or copy intelligence material without authorisation will now face up to three years' jail. If they hand the information to a third party – for example a journalist – they will face 10 years in jail, up from two currently.

   Furthermore, anyone who discloses information about a "special intelligence operation" faces five years in jail. If the disclosure endangers anyone's health or safety – or the effective conduct of an operation – then they face 10 years in jail.According to Attorney-General George Brandis, these laws are aimed at intelligence officers – not the media. But the laws leave open the possibility that journalists could be jailed for publishing reports based on leaked information from intelligence agencies. The union representing journalists, is concerned that journalists may become liable for committing a criminal offence for publishing stories such as the alleged tapping of phones in Indonesia by intelligence agencies and Edward Snowden-style revelations about intelligence gathering. There are fears there will be a "chilling effect" on reporting about national security operations.

   Also, anyone who exposes an undercover ASIO operative could face up to 10 years in jail.

3. The laws give ASIO officers greater power to access computers, computer systems and computer networks. There is no limit on the number of computers that can be accessed if a warrant is issued. Legal experts have warned that this power is extremely broad and could theoretically allow ASIO to monitor the entire internet.

   Internet rights group Electronic Frontiers Australia is concerned that the privacy of Australians with no connection to terrorism could be affected.

4. The laws also allow Australia's domestic surveillance agency, ASIO, to work more closely with the Australian Security Intelligence Service, which has traditionally handled overseas intelligence operations. ASIS will now have greater powers to produce intelligence on Australian citizens.

A second tranche of national security legislation, the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, currently working its way through Parliament, will make it a criminal offence, punishable by up to five years in jail, to incite terrorism and will create new restrictions on jihadi fighters who return to Australia. The Foreign Affairs Minister will also be able to declare regions within countries such as Syria and Iraq as "no-go zones" Anyone returning from a proscribed area would be compelled to prove they had not been engaging in terror-related activity. The legislation was referred to a parliamentary committee who recommended changes, somewhat watering down the legislation. Even with these changes, this legislation is expected to be passed by the end of October 2014.

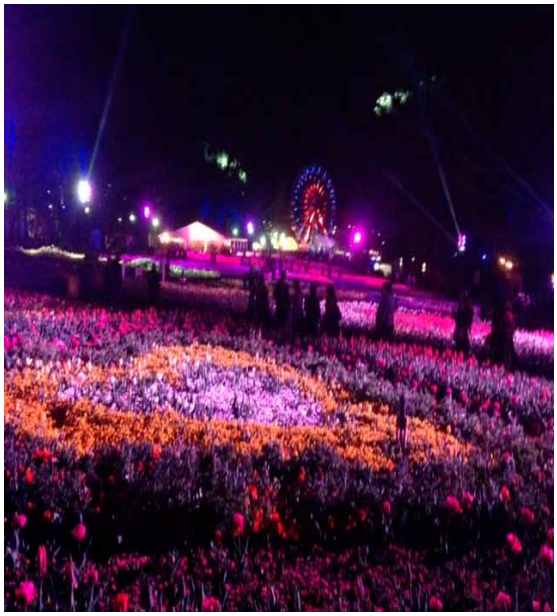
The third tranche is data retention legislation. This is under development and negotiation but is expected to be before Parliament by the end of the year. This legislation, as indicated by the government,

- will require telecommunications companies to retain customer's phone and computer metadata for around two years
- include a "statutory definition" of metadata to ensure clarity on what information will be kept
- still require security agencies to obtain a warrant before accessing the actual content of messages or conversations.
- The government is negotiating with telecommunications companies as to who will pay for the data retention storage.

Another recent event was the death of Gough Whitlam, a former Labor Party prime minister, at 98. He came to power in December 1972 and was dismissed by the then Governor-General, Sir John Kerr, in November 1975. Whitlam was the first Labor prime minister after 23 years of Liberal/Country party governance. In his brief term in office, punctuated by 2 more federal elections, the Labor government changed the face of Australia.

- Universal national health insurance, similar to the NHS in Britain
- Education for all, both through direct federal funding of schools, both public and private and the abolition of fees for higher education.
- Aboriginal land rights
- Recognition of China and the beginning of the change of regional emphasis to Asia from Europe.
- Changing the national anthem to “Advance Australia Fair”

- Abolishing knighthoods and the introduction of Australia's own honours system, the Order of Australia.
- Direct federal funding of local government of projects such as sewage, urban renewal.
- Abolition of conscription and withdrawal of troops from Vietnam
- "No-fault" divorces and the initial setting up of a national Family Court system.
- *The Racial Discrimination Ac*t 1975 ratified a United Nations convention, although signed by Australia, had remained unratified for nine years.



On a lighter note, these are photos from this year's Floriade in Canberra, during the day and at night. The flowers do smell stronger at night!

Until next time,
**MARGARET**

## Developments in U.S. Law Libraries, Summer 2014

By Anne L. Abramson****

Will return in the next issue!

* Jackie Fishleigh, Library and Information Manager, Payne Hicks Beach.
** Pete Smith, Information Adviser, Development and Society Faculty Support Team, Sheffield Hallam University.
*** Margaret Hutchison, Manager of Technical Services and Collection Development at the High Court of Australia .
****Anne L. Abramson is the Foreign and International Law Librarian at the John Marshal Law School, Chicago IL.

*Please note that any and all opinions are those of the authors and do not reflect those of their employers or any professional body with which they are associated.*

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E-Mail: office@callacbd.ca

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