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CANADIAN LAW LIBRARY REVIEW

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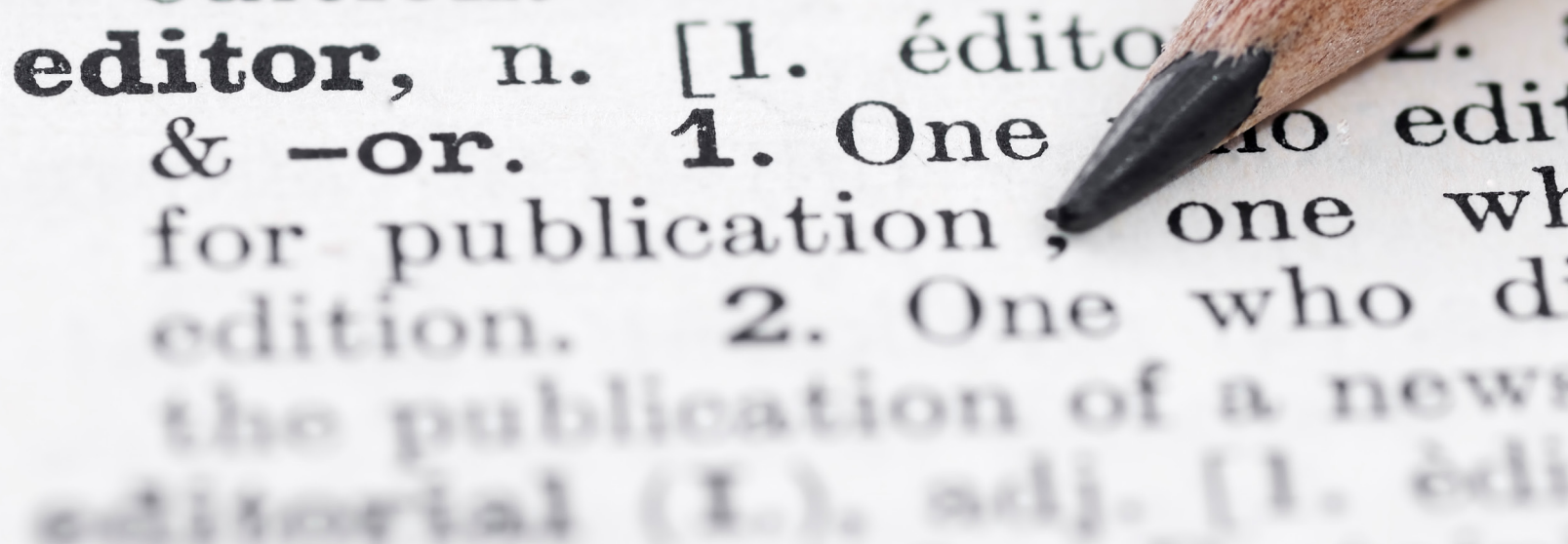
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III From the Editor / De la rédactrice

It's March 26th, and I am writing this letter from my home office. I know I'm not alone, and most of you will be reading this issue from yours. It pains me that my last letter was so positive about the future, positing the new decade as an opportunity for change and the ability to start over, and now, most of the planet is locked down. It's amazing how fast things went downhill. I'm afraid for my friends, family, country, and the world. Every day, the COVID-19 numbers increase, and with them, the death toll. I'm proud of how our country is handling the spread of the virus—even if there are some who refuse to social distance and thus put the rest of us in peril—and I worry for our friends across the border, where COVID is taking hold in frightening numbers, especially in New York.

I've always liked the idea of working from home, but now that I am, I have to say that working where you live, relax, and sleep can be difficult. I have to force myself to not check work emails after I leave my office and try to turn off my work brain as much as possible. I'm an avid fan of horror movies, and I usually use them as an escape, but I never wanted to live in one. Hats off to the people who can watch virus- or zombie-themed movies right now. I can't do it.

As expected, countless events and conferences are postponed or flat-out cancelled. The CALL/ACBD annual conference is postponed, and the New Law Librarians' Institute, which was to be held here at UNB Law, is now tentatively scheduled for 2021. Will next year be any different? I hope so. But I'll be honest, I don't want to go near an airport any time soon. I've never been a good flyer, and the virus isn't helping matters.

Hopefully this issue will provide you with a bit of a distraction. Our feature article, "Exploration of Attributes Associated with User Behaviour in Online Legal Research" by CanLII's Sarah Sutherland is a data lover's dream. I've said many times how lucky we are to have CanLII, and every year that passes it become more robust. CanLII's usage stats paint a vivid picture of legal information seekers from all walks of life. According to Sarah, in the future CanLII will use the information gathered to enhance the user experience and thus make access to the vital information they need easier for all types of users.

And that's what we should try to focus on: the future. We have to remember that life *will* go on. Speaking from experience, it's easy to tune into cable news, let the knots in our stomachs tighten further, and give in to the fear, but that helps no one. In her message from the president, Shaunna provides tips for working from home and taking care of your mental health during this time, so I won't repeat any here. But I will say: stay home, wash those hands, take care of yourselves, and I'll see you on the other side of this.

**EDITOR
NIKKI TANNER**

Nous sommes le 26 mars, et j'écris ce mot depuis mon bureau à la maison. Je sais que je ne suis pas seule, car la plupart d'entre vous liront ce numéro de chez vous. Ça me fait de la peine de penser que mon dernier mot était si optimiste au sujet de l'avenir en présentant la nouvelle décennie comme une occasion de changement et la possibilité de repartir à zéro. Et maintenant, la majorité de la planète est en confinement. C'est incroyable comme les choses ont dégringolé. J'ai peur pour ma famille, mes amis,

mon pays et le monde. Les chiffres de personnes atteintes de la COVID-19 augmentent chaque jour, de même que le bilan des décès. Je suis fière de ce que fait notre pays pour éviter la propagation du virus — même si certaines personnes refusent de respecter les consignes de distanciation sociale et mettent ainsi le reste de la population en danger — et je m’inquiète pour nos amis de l’autre côté de la frontière où le nombre de personnes atteintes du virus fait peur, notamment à New York.

J’ai toujours aimé l’idée de travailler de la maison, mais maintenant que je n’ai pas le choix, je dois avouer que ce n’est pas facile de travailler au même endroit où l’on vit, où l’on se détend et où l’on dort. Je dois me forcer à ne pas regarder mes courriels de travail une fois que je quitte mon bureau et à essayer de faire le vide du mieux que je peux. Étant une amatrice de films d’horreur, j’adore regarder ce genre de films pour m’évader, mais je n’aurais jamais cru vivre cette expérience. Je tire mon chapeau aux personnes qui peuvent regarder des films sur les virus ou les zombies de ces temps-ci. Ce n’est pas ma tasse de thé.

Comme on pouvait s’y attendre, de nombreux événements et congrès sont reportés ou carrément annulés. Le congrès annuel de l’ACBD/CALL est reporté et l’Institut pour les nouveaux bibliothécaires de droit, qui devait avoir lieu à la Faculté de droit de l’UNB, est provisoirement prévu pour 2021. Les choses seront-elles différentes l’année prochaine? Je l’espère. Mais pour être honnête, je n’ai pas l’intention de m’approcher d’un aéroport de sitôt. Je n’ai jamais aimé prendre l’avion, et le virus n’aide guère.

J’espère que ce numéro vous offrira un peu de distraction. Notre article de fond « Exploration of Attributes Associated with User Behaviour in Online Legal Research » par Sarah Sutherland, de CanLII, est le rêve de tout amateur de données. Comme je l’ai dit déjà maintes fois, nous sommes chanceux d’avoir la plateforme CanLII, qui prend de l’ampleur chaque année. Les statistiques d’utilisation de CanLII brossent un tableau saisissant des usagers de tous horizons cherchant de l’information juridique. D’après Sarah, CanLII utilisera à l’avenir les informations recueillies pour améliorer l’expérience des utilisateurs et ainsi faciliter l’accès aux informations importantes dont tous les types d’usagers ont besoin.

Et c’est sur cela que nous devrions nous efforcer de nous concentrer : l’avenir. Il ne faut pas oublier que la vie *continuera*. Par expérience, il est facile d’écouter les nouvelles, de se faire du mauvais sang et de céder à la peur, mais cela n’aide personne. Dans son mot de la présidente, Shaunna donne quelques conseils pour travailler de la maison et prendre soin de notre santé mentale pendant cette période. Je ne vais donc pas répéter ce qui a déjà été dit. Toutefois, j’en profite pour vous dire : restez chez vous, lavez-vous les mains, prenez soin de vous, et au plaisir de vous revoir lorsque cette tempête sera passée.

**RÉDACTRICE EN CHEF
NIKKI TANNER**

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III President's Message / Le mot de la présidente

Social isolation is hard. I miss coffee dates with my girlfriends. Live music performances. Wine Club. Eating out with my daughters. Hugging my daughters. Talking through problems with colleagues, and being able to see all the visual cues that made me gravitate to face-to-face meetings.

I am using my own perspective of someone who already works from home, who doesn't live alone, and who doesn't have the added challenge of teaching or entertaining young children while trying to work from a not necessarily private home office. I am privileged to have a dedicated workspace in my house with all the equipment I need. I have a good internet connection and adequate bandwidth that I no longer have to share with streaming young adults. I have a Fitbit that reminds me to get up and move about. My fridge and pantry are adequately stocked (and not overstocked). My dog has rug space in my office. My husband doesn't often interrupt me while I am working, except with random construction noise.

I already have a weekly Google Hangout meeting with my Alexsei colleagues, so I am familiar with the home version of video conferencing. The CALL/ACBD board is adept at phone meetings, and we have Basecamp for document sharing. I have used Zoom, GoToMeeting, and Skype and have Google apps, Microsoft Office, and Adobe, so I am confident in my ability to be productive while isolating. Productivity is not necessarily the key to happiness, though for me it is a factor.

What does it mean to be a legal information specialist, and how do we excel in our profession while staying completely away from our colleagues, collections, and customers? What are we supposed to do? Wait for the phone to ring or the email to ping? These are the questions that many

of us are asking ourselves as we cope with the COVID-19 virus mitigation plans our communities, businesses, and institutions require of us.

Keep Your Priorities in Line

Working remotely can be all-consuming. Don't forget to take breaks—yes, the ones that you usually skip at the office. The reason you skip breaks at the office is because people interrupt you and you change tasks, which is a mental break if not a physical one. Try to keep some good perspective. Just because you are working from home doesn't mean that you are working 10 hours a day.

If you have the luxury of some less busy times, make a list of all of the things that you (and your team, if applicable) have wanted to test or explore. Dive into those usage statistics. Try your hand at video editing. Review your library procedures manual. Dust off your strategic plan. Test your skills with the [LexisNexis Legal Research Certification](#). Do some training/watch some training videos.

Take time to reflect on what is important to you and your career. A personal career strategic plan is a wonderful thing. Think about what actions CALL/ACBD can do to help with your plan and share them with the executive board.

Talk to Your Colleagues and Your CALL-eagues

The Private Law Libraries Special Interest Group had a Q&A session in Slack on working remotely. It was a great way to have a discussion. The time was set, and the questions were published. Rebecca Tomlinson manages this special interest section. Reach out to her if you're curious about how that

SIG is using Slack. The overwhelming majority noted that they are very busy while working from home.

The [CALL-L listserv](#) remains an active group and is a valuable tool for advice and lending. I particularly appreciate the wrap-up emails like this one sent after a query about historical U.K. legislation relevant to Canada:

Hi

I had a request to share the new sources I learned about from my CALL colleagues in response to this query.

1. Canadiana Online - <http://www.canadiana.ca>
2. Silk Robes and Sou'westers History of the Law and the Courts - https://www.hertiage.nf.ca/lawfoundation/articles/doc5_1791judicature.html
3. Hathi Trust - <https://babel.hathitrust.org>
4. Internet Archive - <https://archive.org>

Thanks again for all your help. It is so wonderful to be part of an organization that can help each other out and share information like this.

All the best,
Jenny

Watch for CALL/ACBD webinars and other opportunities to learn and grow in your professional journey.

Self-care

On an airplane, you are always supposed to put your own oxygen mask on before helping others. This is an important analogy for the times we are living in. Please do your best to maintain your personal physical and mental health. Check your provincial or regional health authority for resources, as many jurisdictions recognize that this situation is hitting people hard. There was an excellent list of mental health resources posted recently on CALL/ACBD's social media channels that was collected at librarianship.ca. Try not to doom-browse at bedtime.

Soothe your soul with the things that make you happy, including reading the interesting articles, book reviews, and advertising offers in this issue.

Stay well,



**PRESIDENT
SHAUNNA MIREAU**

L'isolement social est difficile. Je m'ennuie de prendre un café avec mes copines, d'assister à des concerts, d'embrasser mes filles et de manger au restaurant avec elles, de parler d'enjeux avec mes collègues et de voir leur visage lorsqu'on tient des réunions en face à face, et du club de vin.

Je donne ici mon point de vue comme personne faisant déjà du télétravail, qui ne vit pas seule et qui n'a pas le défi supplémentaire de faire l'école ou de divertir de jeunes enfants tout en essayant de travailler de la maison dans un espace qui n'est pas nécessairement un bureau. J'ai le privilège de disposer d'un espace de travail qui comprend tout l'équipement dont j'ai besoin. Je dispose d'une bonne connexion Internet et d'une bande passante adéquate que je n'ai plus à partager avec de jeunes adultes qui utilisent la diffusion en mode continu. Je porte un bracelet Fitbit qui me rappelle que je dois me lever et bouger. Mon réfrigérateur et mon garde-manger sont bien remplis (mais pas surchargés). Mon chien a son tapis dans mon bureau. Mon mari ne m'interrompt pas souvent pendant que je travaille, à l'exception de quelques bruits de construction aléatoires.

Je participais déjà à des visioconférences hebdomadaires sur Google Hangouts avec mes collègues d'Alexsei, alors je suis à l'aise avec la version maison de la vidéoconférence. Les réunions du conseil d'administration de l'ACBD/CALL se déroulent souvent par téléphone, et nous utilisons Basecamp pour partager les documents. Comme j'ai déjà utilisé Zoom,

GoToMeeting et Skype, et que j'ai plusieurs applications Google, Microsoft Office et Adobe, je crois fermement que je peux être productive tout en étant isolée. Je sais que la productivité n'est pas nécessairement la clé du bonheur, mais c'est un élément important pour moi.

Que signifie être spécialiste de l'information juridique, et comment pouvons-nous exceller dans notre profession en étant loin de nos collègues, de nos collections et de nos clients? Que sommes-nous censés faire? Attendre que le téléphone sonne ou que la boîte de réception émette un bip? Vous êtes nombreux à vous poser ces questions alors que nous tentons de composer avec les stratégies imposées par nos collectivités, nos entreprises et nos institutions afin de limiter la propagation de la COVID-19.

Concentrez-vous sur vos priorités

Travailler à distance peut être très prenant. N'oubliez pas de prendre des pauses — oui, celles que vous avez l'habitude de sauter au bureau. La raison pour laquelle vous avez de la difficulté à les prendre est parce que les gens vous interrompent et que cela vous amène à faire une autre tâche, ce qui peut constituer une pause mentale ou même physique. Essayez de relativiser les choses. Ce n'est pas parce que vous travaillez de la maison que vous devez travailler dix heures par jour.

Si vous avez le luxe d'avoir des périodes moins occupées, faites une liste de toutes les choses que vous (et votre équipe, s'il y a lieu) souhaitez tester ou explorer. Par exemple, plongez dans les statistiques d'utilisation, essayez de faire un montage vidéo, passez en revue le manuel de procédures de votre bibliothèque, dépoussiérez votre plan stratégique, testez vos connaissances avec la [certification en recherche juridique de LexisNexis](#), suivez une formation ou regardez des vidéos traitant de divers sujets.

Prenez le temps de réfléchir à ce qui est important pour vous et pour votre carrière. Avoir un plan stratégique de carrière est une excellente chose. Réfléchissez aux activités que pourrait entreprendre l'ACBD/CALL pour vous aider à élaborer votre plan et partagez-les avec le conseil d'administration.

Parlez à vos collègues de travail et de l'ACBD

Le GIS des bibliothèques de cabinets d'avocats a récemment tenu une réunion sur la plateforme Slack afin de répondre aux questions liées au télétravail. C'est un excellent moyen pour échanger. L'heure avait été fixée au préalable et les questions avaient été publiées. Rebecca Tomlinson est responsable de ce GIS. N'hésitez pas à la contacter pour savoir comment elle utilise Slack. La majorité des personnes ayant pris part à cette discussion ont dit qu'elles étaient très occupées en travaillant de la maison.

La [liste de discussion CALL-L](#) est toujours très active et constitue un outil précieux pour obtenir des conseils ou des prêts entre bibliothèques. J'apprécie particulièrement les courriels de synthèse, comme le courriel ci-dessous reçu après une demande de renseignements sur la législation historique du Royaume-Uni qui était pertinente au Canada :

Hi

I had a request to share the new sources I learned about from my CALL colleagues in response to this query.

5. Canadiana Online - <http://www.canadiana.ca>
6. Silk Robes and Sou'westers History of the Law and the Courts - https://www.hertiage.nf.ca/lawfoundation/articles/doc5_1791judicature.html
7. Hathi Trust - <https://babel.hathitrust.org>
8. Internet Archive - <https://archive.org>

Thanks again for all your help. It is so wonderful to be part of an organization that can help each other out and share information like this.

All the best,
Jenny

Surveillez les webinaires et les autres possibilités offertes par l'ACBD/CALL afin de poursuivre votre perfectionnement et d'enrichir votre cheminement professionnel.

Prenez soin de vous

Lorsque vous prenez l'avion, on vous dit toujours de mettre votre masque à oxygène avant d'aider les autres. C'est une excellente analogie dans le contexte où nous vivons. Il est important de faire de votre mieux pour rester en bonne santé physique et mentale. Consultez les ressources des autorités sanitaires dans votre province et dans votre ville, car les gouvernements sont conscients que la situation est difficile pour tout le monde. Une excellente liste de ressources sur la santé mentale a été affichée récemment sur les réseaux sociaux de l'ACBD/CALL (cette liste provient de librarianship.ca). Évitez l'exposition aux mauvaises nouvelles à l'heure du coucher.

Apaisez votre esprit avec des choses qui vous font plaisir, notamment en lisant les articles intéressants, les critiques de livres et les offres publicitaires dans ce numéro.

Restez en santé!



**PRÉSIDENTE
SHAUNNA MIREAU**



III Exploration of Attributes Associated with User Behaviour in Online Legal Research

By Sarah Sutherland¹

ABSTRACT

Improving user experience on legal information websites is a goal that has important implications for the work of the legal community and social justice. That said, there are privacy concerns that make it undesirable to use tools like tracking cookies to better predict user behaviour. This research explores how statistics associated with site visit logs can be clustered in order to develop groupings of user behaviours and a list of attributes that are useful in machine-learning systems to improve search results. This was accomplished by running k-means clustering on the data points and exploring how predictive of behaviour these statistics are.

SOMMAIRE

Améliorer l'expérience des utilisateurs sur les sites Web d'information juridique est un objectif qui a des implications importantes pour le travail de la communauté juridique et de la justice sociale. Cela dit, il existe des préoccupations en matière de protection de la vie privée qui rendent indésirable l'utilisation d'outils tels que les cookies de suivi pour mieux prévoir le comportement des utilisateurs. Cette recherche explore comment les statistiques associées aux journaux de visites de sites peuvent être regroupées afin de développer des regroupements de comportements d'utilisateurs et une liste d'attributs qui sont utiles dans les systèmes d'apprentissage automatique pour améliorer les résultats de recherche. Cela a été réalisé en effectuant un regroupement

à k moyennes sur les points de données et en explorant dans quelle mesure ces statistiques sont prédictives du comportement.

Introduction

It is difficult to know how best to target development and functionality in a general access legal information site, because site users are so diverse in their needs and levels of expertise. Legal information is also sensitive, and there are strong concerns about privacy, which make common online techniques for customizing user experience like tracking cookies unattractive. These difficulties give rise to the questions of how useful commonly available statistical attributes from server logs would be in profiling users. These statistics include number of visits to the site, the number of days since the first visit, visit duration, number of searches, and number of actions on a particular visit. Cluster analysis on these values gives six robust clusters with similar attributes and behaviours that imply that these statistics are predictive of behaviour and can be used in applications like machine learning to improve search results.

Methodology

The data used for this clustering was collected in late 2018 on two separate weekdays during the afternoons in Eastern time, which is generally the busiest time on the CanLII website ([canlii.org](https://www.canlii.org)). This covered approximately

¹ Sarah Sutherland is the director of programs and partnerships at CanLII (the Canadian Legal Information Institute). She has been interested in legal data and how it can be used to better understand the legal system and researchers for some time.

four hours of site activity and contained 12,401 visit logs. From this file, a random sample of 400 visits was selected for analysis to ensure a 95 per cent confidence level and five per cent confidence interval. Drawing from principles used in market research analysis, this sample was then clustered using k-means methodology into both five and six clusters. Examination of the cluster sets showed that six clusters gave more cohesive groups, so that was selected as the number for further analysis. Each cluster was then examined based on statistical attributes and a qualitative analysis of behaviour, such as uniqueness and complexity of search terms and what actions were done in what order. This gave nuance to the analysis of each cluster and allowed for their description. Figure 1 shows a graph of the data points for each of the five clustering attributes against each other, with numbers corresponding to the clusters.

Limitations of Study

This study included data from particular periods of time to populate the sample. This was necessitated by the

size of the data files generated. The initial data file representing under four hours of site traffic was 172 MB. A more ambitious study with access to advanced research computing resources might be able to have a better cross section of all visits over the year.

It is not possible or desirable to know who the individuals represented in the sample discussed here are. It is purposeful that there is no discussion of what professional designations the researchers may have, as experts for the purposes of these clusters could come from different groups, including people who work in the legal field or members of the public who have learned how to access this information.

Results

Analysis of the clusters using techniques drawn from market research led to the following six clusters (see Table 1 for more qualitative data about each cluster).

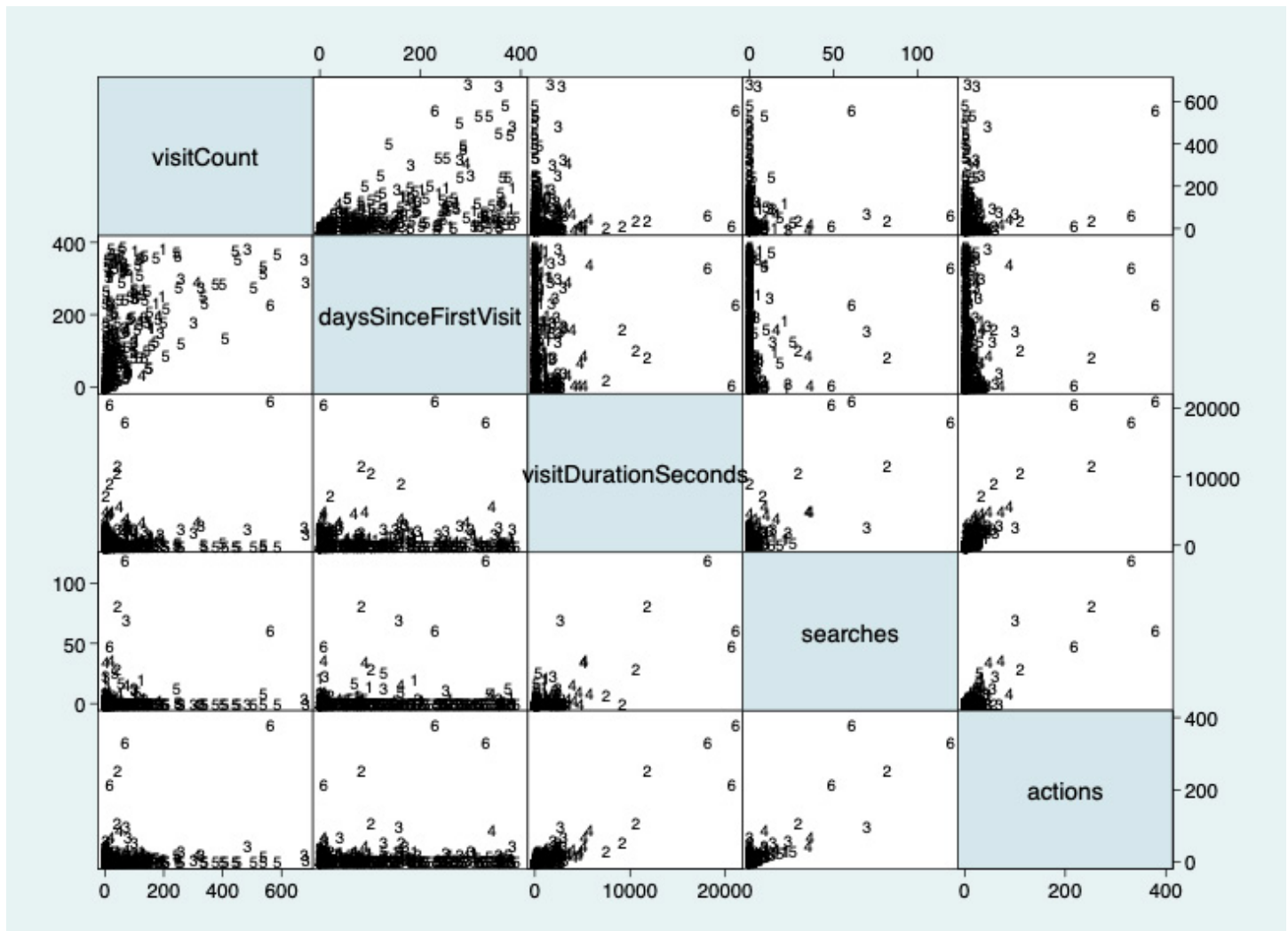


Figure 1. Graphs of values used to cluster visits, compared with points shown in numbers corresponding to clusters.

Clusters	Number in Cluster	Visit Count	Days Since First Visit	Visit Duration in Seconds	Searches	Actions
Dine and Dash	291	1	0	0	0	1
		49	94	81	0.51	4
		587	391	568	26	30
Infrequent Visitors	53	1	0	580	0	2
		50	116	1,070	2	14
		1990	383	1,640	22	42
Professional Dabblers	40	1	0	1,658	0	2
		103	109	2,285	4	25
		683	383	3,147	70	101
Document-focused Professionals	9	2	5	3,504	0	19
		69	112	4,516	13	41
		314	342	5,756	36	89
Strong and Steady	4	4	21	7,493	0	33
		27	92	9,778	30	114
		43	162	11,811	82	253
Exploratory Experts	3	17	8	18,171	49	218
		216	189	19,983	77	310
		562	330	21,108	120	380
Total	400	1	0	0	0	1
		56	100	778	2	12
		683	391	21,108	120	380

Table 1. Cluster data summaries with minimum, mean, and maximum values for each cluster.

Dine and Dash

Dine and dash visitors are a significantly larger proportion of visitors to the site than any other cluster with 291/400 or 73 per cent of visits. They have shorter visit durations, with a mean of 81 seconds and a maximum stay of under 10 minutes, and lower levels of interactions with the site, averaging just 0.5 searches and four actions in a visit. Eighty-nine per cent of these visitors don't run any searches at all. They have the least time since their first visit to the site, with this being the first visit to the site for 22 per cent of visits in this cluster. This is the only cluster with any visits that bounce from the first page (38 per cent of the *dine and dash* cluster, which is 28 per cent of the sample as a whole).

The searches run during visits in this cluster are generally less effective than those run in the other clusters, exemplified by one-word searches on common terms. Searches run as a fourth interaction with the site are far more likely to be effective than searches run as a second interaction with the site during a visit. This cluster brings together many use cases and groups. There are some users who clearly know what they want and access it and leave, or they see they won't find what they want and leave, which may both represent successful interactions. There are also many visitors who are running searches and behaving in ways that indicate a poor understanding of the content of the site and structure of the information. These users are unlikely to find what they need.

Infrequent Visitors

Infrequent visitors represent 53/400 or 13 per cent of site visitors in the sample and comprise the second largest cluster in the sample. Statistically, they are closest to the overall average in all values of any of the clusters. They have a relatively low rate of use, measured by average number of visits per day, with a below average visit count paired with the second highest number of days since their first visit. *Infrequent visitors* stay on the site for an average of approximately 18 minutes. They have the second lowest proportion of actions that are searches of any group aside from *dine and dash*.

This cluster represents long-term users of the site who do not use it very often. They search less than other groups as a proportion of their interactions with the site, and the searches they do are frequently unsophisticated with more one-word searches for common terms being used, which indicates the searches are unlikely to be successful. It is not clear if this is because they do not have a clear idea of what they are looking for or because they are not knowledgeable about how to search on the site. While the *infrequent visitors* are less expert than some of the smaller clusters, it is clear that they are more likely to have some expertise in law than the *dine and dash* cluster.

Professional Dabblers

Professional dabblers represent 40/400 or 10 per cent of site visits. They have a higher than average visit count and number of days since their first visit compared to other smaller clusters. In contrast, they have a lower number of searches run, actions, and time on site compared to the other small clusters, which tend to be composed of expert searchers. They spend an average of 38 minutes on the site.

The searches the *professional dabblers* run display an understanding of the way the CanLII site operates and what kinds of documents can be found in a legal database, but they don't display as much sophistication as the other small clusters. That said, the users in this cluster appear to have a high likelihood of finding what they are looking for. These researchers are obviously knowledgeable about the law and how to use the site, but maybe they are not doing in-depth research on this visit. Alternatively, legal research may not be a major part of their work. The research they are doing may not be as in depth, but it may be all they need on this occasion.

Document-focused Professionals

Document-focused professionals make up 9/400 or 2 per cent of visits. The number of times they have visited the site, length of time since the first visit, number of searches, and number of actions are not remarkable. They are all slightly higher than the mean. The place where this cluster is unusual is in the length of time they spend on the site and on each page. *Document-focused professionals* spend an average of 75 minutes on the site, and they spend the longest of any of the clusters on each document they visit. This group runs sophisticated searches and iterates on the same search rather than moving on to a different topic.

It is obvious from the sophistication of the searches run and evidence of interactions with the content that these are expert researchers. It seems that *document-focused professionals* are looking for something particular and not finding it easily. They spend more time on each document they find, and it can be inferred that they are reading the content closely. They are people who know what they want and make intensive use of the documents they access.

Strong and Steady

The *strong and steady* cluster is made up of 4/400 or 1 per cent of visits. They stayed on the site the second longest of any of the clusters at 163 minutes. They also had the second highest number of searches and had the second highest number of actions of any of the clusters. They were all returning visitors. There was a relatively long time since their first visit to the site, but they had the lowest number of visits per day of any of the clusters.

This cluster of visits are made by long-term users of the site with steady, but not heavy, patterns of accessing the site. They are knowledgeable about the information on CanLII and about how to do research on the site. They are steady, but not power, users. They seldom use CanLII, but when they do, they use it extensively and with sophistication.

Exploratory Experts

Three out of four hundred or 1 per cent of visits are from *exploratory experts*. The researchers represented in this cluster of visits stayed on the site much longer than any other cluster, averaging 333 minutes or approximately five hours. This group had the highest average visits per user and highest average length of time since first visit of any of the groups. They spend little time on each page, with a large number of searches and actions being carried out in the amount of time the researchers are on the site.

These sessions show experts spending substantial amounts of time doing complex research about in-depth topics. They are running sophisticated searches and strategies doing exploratory research about a defined topic. They know what they are doing and run approximately three times as many searches and engage in three times as many actions as any other cluster of visits. This research is exploratory with less time spent on each page and more searches done than for other expert clusters.

Discussion

The most surprising thing about this research was the level of similarity in behaviour that these simple descriptors were able to isolate. Once the visit logs were clustered, a closer examination of the behaviour, such as searches run and progression through the site, displayed strong similarities within clusters and differences between clusters. There is an inverse correlation between the length of time spent on the site during each visit in a cluster and the size of the cluster—shorter visits are more common than long visits. This analysis raises some interesting questions about how to measure use of the CanLII site. Based on number of visits, the *dine and dash* cluster is by far the largest group using the site, but if time on the site, number of visits a particular user represents, or number of documents accessed are considered, it becomes significantly less dominant. It is interesting to note how much more diversity there is in the behaviour of expert users compared to novice users.

Conclusion

This study into user behaviour shows that it is possible to use impersonal statistics that are routinely collected by web servers to classify researchers into groups who exhibit similar research behaviours. This points to these statistics having potential to assist in improving machine-learning-powered search systems that can better predict what kinds of results will be most useful to researchers. They provide insights into how research sites are used that can be used to allow machine-learning systems to have more information about sources of differences in behaviour without having to maintain collections of personal information. Using additional data to better understand users and what they are looking for is that the site can be made better for everyone without favouring a particular group over the others.



III Reviews / Recensions

Edited by Kim Clarke and Elizabeth Bruton

***3D Printing and Intellectual Property.* By Lucas S. Osborn. Cambridge: Cambridge University Press, 2019. 234 p. ISBN: 978-1-316-60534-9 (softcover) \$45.95.**

3D printing is a technology with enormous potential. It allows manufacturers to produce objects more quickly and with less effort than traditional manufacturing methods. It enables the manufacturing of highly customized objects, making the technology useful for such diverse areas as the medical industry and museums (which can use 3D printing to duplicate works of art). However, it is still a technology in development.

The impression I got from this book is that the application of intellectual property law to 3D-printed goods is going to keep lawyers busy, as the “technological nuances [of 3D printing] raise novel challenges for IP law” (p. 4). Much of the existing intellectual property law in the U.S. and elsewhere does not address the unique set of circumstances related to 3D-printed objects.

This book is intended for a wide audience. In addition to lawyers, it is also aimed at policy makers, technologists, and artists. For that reason, the first part of the book addresses how the 3D-printing industry works, followed by an overview of intellectual property law intended for those without a background in the subject. Throughout the book, Osborn examines U.S., U.K., European, and Japanese intellectual property laws.

Osborn emphasizes that in order to meaningfully discuss the intellectual property issues, one needs to understand the various stages of the 3D printing process because the law affects each stage differently. There are three main file types: Computer-Aided Design, or CAD (roughly equivalent to a blueprint); Surface-Mesh Files (the most common of which is STL format); and machine-instruction files (e.g., GCODE files). It turns out there are many acronyms in 3D printing!

The author then moves to look at the relationship between 3D printing and the individual types of intellectual property law—patent, trademark, and copyright.

The patent system was designed for tangible objects. Surface mesh and design files—the two digital file types most in demand—are also the two file types that are least likely to be patentable subject matter. Under U.S. patent law, a digital object will generally not infringe a patent for a physical object and vice versa. Even if 3D printing files are patentable, the owner of the intellectual property rights may have difficulty suing end users who have infringed the patent for many reasons, including the large number of potential infringers, difficulty in determining the identity of infringers (simply downloading a digital file is not proof something was printed), the expense of litigation, and the potential nightmare of suing people who may not have been aware they were infringing copyright. Osborn suggests that potential laws should consider both a non-commercial use defense and a safe harbour framework for 3D print shops.

Osborn next looks at the relationship between trademark law and 3D goods. How do you apply trademark law to digital versions of goods bearing someone else's trademark? Trademarks have historically also functioned as a guarantee of quality, both for the manufacturing and design of an object, but this guarantee is lessened if the manufacturer is not the same as the designer.

Copyright law, which has been addressing digitization issues for years, is the best prepared of the three legal areas to deal with 3D printing. However, because the design of a "useful" article is not generally copyrightable (some creativity is required), the author concludes that digital manufacturing files (DMFs) for utilitarian objects will be protected by patent law rather than copyright law (if they are to be protected by anything).

Osborn concludes the book with a broader policy analysis. He argues that a separate law for 3D printing is not necessary since existing intellectual property law addresses most of the issues. He believes that the intellectual property issues can be addressed by other areas of law, predicting that contracts will be the "most ubiquitous legal protection used with DMFs" (p. 219) and that technical protection measures and social norms may also be factors that constrain infringement.

There is little written on this particular subject, so *3D Printing and Intellectual Property* would be an excellent addition to a library with a focus on intellectual property materials.

REVIEWED BY

SUSANNAH TREDWELL

*Manager of Library Services
DLA Piper (Canada) LLP*

***The Anatomy of Criminal Procedure: A Visual Guide to the Law.* By Steve Coughlan & Alex Gorlewski. Toronto: Irwin Law, 2019. vii, 425 p. Includes table of cases. ISBN 978-1-155221-505-0 (softcover) \$45.00; ISBN 978-1-55221-506-7 (eBook) \$45.00.**

The Anatomy of Criminal Procedure: A Visual Guide to the Law charts out the intersections of criminal law, criminal procedure, and police powers in Canada as defined in the common law. This resource has been created to clarify the relationships between the various statutory provisions, the common law and the various rules of criminal procedure that can be difficult and time consuming. Using annotated charts and diagrams, the authors have consolidated statutory and common law rules around each step of the criminal procedure process.

The objective of this book is to assist in making the statutory and common law rules of criminal procedure more comprehensible and accessible to practitioners and students. The authors strive to provide the benefits of both a big-picture overview of the criminal process as found in textbooks and the specific details on individual statutory provisions provided in the annotated *Criminal Codes*. The

entire criminal process is explained, from police powers to preliminary matters to the trial process, with jury selection and post-trial matters.

The law of criminal procedure is presented visually, depicting how the various steps fit together. Most of the diagrams are flowcharts, illustrating responses to a series of yes/no questions associated with a specific step in the criminal procedure process. For example, in 4.1(a) Appeals by the Crown: Grounds, the question posed is: "Was there an error of law?" If yes, "Did the error in the concrete reality of the case, have a material bearing on the acquittal?" If yes, "Allow the appeal." If the answer to either question was no, the provided response is "Dismiss the appeal." For each of these questions asked, a detailed, corresponding explanation is provided. These annotations reference specific *Criminal Code* sections and are enhanced with related cases. The use of plain language renders the processes more comprehensible and accessible.

The Anatomy of Criminal Procedure: A Visual Guide to the Law includes a detailed table of contents, a table of cases, and references to the *Criminal Code*. This book is designed to be a companion to criminal law texts and extensively references Steve Coughlan's *Criminal Procedure*, 3rd edition, also published by Irwin Law. The authors encourage readers to consult that text should they wish to obtain a deeper explanation of concepts or steps, which would be required for more in-depth research.

On its own, this book will be of interest to those who wish to see a logical presentation of the different routes criminal matters can travel. Logically presented and clearly illustrated, this is a handy tool that will allow for timely, process-specific responses. Students learning the law of criminal procedure for the first time will gain insight from exposure to this book. Practitioners who wish to ensure that they have examined all sections related to their process and potential outcomes should find their answers. This book offers an interesting and different approach that provides a start-to-finish illustrated view of criminal procedure.

REVIEWED BY

MARGO JESKE

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***Assisted Death: Legal, Social and Ethical Issues after Carter.* Edited by Derek B.M. Ross. Toronto: LexisNexis, 2018. xlii, 544 p. Includes table of cases. ISBN 978-0-433-49868-1 (softcover) \$125.00.**

Considering that *Carter*, 2015 SCC 5, the SCC's decision on medical assistance in dying (MAiD), was released in 2015 and that Bill C-14 became law in 2016, it is very surprising that only one book addressing its legal implications has been published. *Assisted Death* is that book. This collection of

essays is the result of a September 2017 symposium hosted by the Christian Legal Fellowship. The symposium had been sponsored by LexisNexis, the publisher of this book.

The essays are arranged in four parts: *Carter's* Impact on Canadian Legal Doctrine, *Charter* Implications for Health Care Professionals and Institutions, the Future of Palliative Care in Canada and Safeguards Moving Forward, and *Charter* Dialogue and the Constitutionality of Canada's MAiD Legislation.

The first essay, by American law professor Dr. John Keown, discusses the "flaws" in the SCC's analysis, including its "failure to understand the key principle of the 'sanctity of life'" (p. 1). This is followed by an essay focussing on the potential impact of *Carter's* application of the stare decisis doctrine in *Canada (AG) v Bedford*, 2013 SCC 72. The author suggests the *Bedford–Carter* approach to precedent is a "departure from both vertical and horizontal stare decisis" (p. 41), which could result in substantial legal uncertainty. The last essay in Part I critiques the SCC's statutory interpretation in *Carter* and finds it lacking. The author accuses the Court of making a section 7 review more "unwieldy and unpredictable" (p. 49) and then proposes a framework for interpreting *Criminal Code* provisions.

The essays in Part II revolve around *Carter's* impact on the *Charter's* freedom of conscience and religion provision from both individual and institutional perspectives. In the first paper, the author develops a framework requiring courts to first examine the claim of conscience, followed by an analysis into the nature of the counterclaim intent on overriding conscience to determine if the latter is founded upon a legal right. The second essay explores section 2(a) to determine what the freedom of conscience provision protects and why it was included in the *Charter*. The next essay, written by the editor, focusses on policies developed by the College of Physicians and Surgeons of Ontario that require physicians to make "effective referrals" to a "non-objecting, available and accessible" doctor (p. 145), even if doing so goes against their conscience. The last essay explores religious hospitals' pre- and post-*Charter* rights to oppose the provision of MAiD services.

Part III addresses the social implications of the *Carter* case. The second essay in this part explores the establishment of a right to palliative care, either in the *Canada Health Act* or in connection with the MAiD provisions in the *Criminal Code*. In doing so, the authors consider challenges that could be brought under sections 7 and 15 of the *Charter*. The final essay examines the autonomy requirement in the MAiD provisions. The author differentiates between deliberative autonomy (wherein individuals have the cognitive capacity to make decisions autonomously) and socially enabled autonomy (whereby the lack of social services and resources limit the choices the individual has). The lack of resources that would allow individuals to live in a hospitable environment may force an individual to elect end of life treatment.

The first essay in Part IV contains an interesting exploration of the dialogue theory, created by Peter Hogg and Allison Bushell to describe the fact that legislative bodies can take some action to bring acts into compliance with the

Charter. The author conducts a dialogue theory study of the parliamentary debate surrounding Bill C-14. The last essay examines the laws from other jurisdictions to determine whether MAiD should be broadened to cover mature minors, advance requests, and mental illnesses.

A common feature of all essay collections is the scattershot effect of its contents, and this book definitely suffers from that, possibly because it is essentially a conference proceeding. This is not a book that one would read to gain a general understanding of the MAiD law or how it may apply to a particular situation. Readers would have to know that one of the essays is on a topic that they are interested in.

There is a dearth of finding aids in this book. The most significant failure, in my opinion, is the absence of an index. The reader only has a somewhat expanded table of contents to help identify where topics of interest are discussed. The book contains a table of cases but does not have a table of statutes, which also would have been useful to identify where specific *Charter*, *Criminal Code*, and other legislative sections are analyzed.

I am torn regarding whether to recommend this book for purchase. The quality of writing is very high, which supports its recommendation. The hit-or-miss aspect of the contents, however, makes me question the number of readers, other than health law practitioners and students, who would find the book useful. In the end, I recommend that academic libraries purchase *Assisted Death*, primarily due to the lack of books on the topic.

REVIEWED BY
KIM CLARKE

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***Climate Change, Public Health, and the Law*. Edited by Michael Burger & Justin Gundlach. Cambridge: Cambridge University Press, 2018. 454 p. Includes figures, tables, footnotes, and index. ISBN 978-1-108-41762-4 (hardcover) \$126.95.**

This book charts the complex and intertwined relationship between climate change, public health, and the law, with a focus on the United States. The authors and editors elucidate the nature and arrangement of these relationships and recommend interventions for various issues under five recurring themes: policy silos, governance gaps, limited institutional capacity, costly information, and underinformed policy choices.

Indeed, this book has three purposes: (1) to provide a foundation for further research into and stimulate a more engaged discussion on the interplay between climate change, public health, and the law; (2) to inform stakeholders and assist decision-makers in finding more effective strategies and techniques to address the impacts on public health arising from climate change, while accounting for the cross-cutting issues and interdependencies between climate law and public health policy; and (3) to equip decision-makers with information that can enhance the implementation of important climate-oriented measures or policy changes with potentially positive public health outcomes.

In the 14 chapters of this book, legal scholars and lawyers, primarily from the United States, make the case for the duty to protect public health from climate change impacts; reveal the public health sector's challenges and responses; examine cross-cutting issues that include disease surveillance and the "built environment"; canvass the impacts of heat, rising sea levels, infectious diseases, food systems, and migration on public health; and review the interplay between international and American domestic environmental law.

Climate Change underscores the importance of environmental protections for public health and highlights a path forward to address climate change. The contributors are united in calling for quick, comprehensive, and deep actions in the United States and internationally to reduce the carbon pollution that fuels climate change and to adapt to the various climate change impacts.

For instance, extreme heat and warmer weather, being among the most recognized effects of climate change, have nefarious impacts on public health. While state and local governments have myriad legal tools to prepare for and respond to rising temperatures, the wide variation in vulnerability and sensitivity of different populations requires effective, tailor-made policies rather than a one-size-fits-all approach.

Similarly, on the international stage, while the health dimension has been progressively integrated into the development and implementation of international climate law, fundamental gaps and challenges remain that impede a fuller integration of health considerations. It is the creation of advisory bodies at both the World Health Organization and United Nations Framework Convention on Climate Change, along with domestic legal reforms such as streamlining and standardizing health impact assessments in legislative proposals, that can ultimately improve the legal regime.

Supported by statistics, figures, tables, case law, and references, *Climate Change, Public Health, and the Law* uses language that is even in tone and clinical in perspective to describe the vast and ongoing threats that climate change poses to the whole of humanity. The chapters also demonstrate the potential for law—under the international climate regime, international human rights law, U.S. Constitution, common law, and federal statutes—to protect public health from the impacts of climate change.

To summarize, this volume explores dynamic interactions between climate change, public health law, and environmental law in a primarily U.S. context. Written for the benefit of public health and environmental law professionals, as well as policymakers in the United States, this volume also provides insight and serves as a comparative framework for public health policymakers and other stakeholders in international jurisdictions.

REVIEWED BY
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***Competition Enforcement and Litigation in Canada.* By Antonio Di Domenico. Toronto: Emond Montgomery, 2019. xiv, 1120 p. Includes an index. ISBN 978-1-55239-643-8 (hardcover) \$254.00; ISBN 978-1-77255-477-9 (eBook) \$216.00.**

Competition Enforcement and Litigation in Canada is a comprehensive resource and reference work that examines the ever-expanding and complicated area of competition law on a broad scale. Written for lawyers, law students, and anyone looking for a better understanding of how or why the Canadian marketplace is regulated, Di Domenico aims to provide the reader with a "practical guide regarding all aspects of competition enforcement and litigation in Canada" (p. xxxix). Though there are numerous books on Canadian competition law, what really sets this book apart from others is the author's focus on the enforcement and legal proceedings side of the equation. This aspect is generally lacking in other books, and Di Domenico's contribution in this regard is commendable.

What is the purpose of competition law? According to the *Competition Act*, RSC 1985, c C-34 ("the Act"), the purpose is "to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy ... and in order to provide consumers with competitive prices and product choices" (s. 1.1). In this regard, Di Domenico emphasizes how the Act is, at times, paradoxically at odds with its own objectives. For example, the Act's goal of ensuring that small companies can equitably participate in the Canadian economy can easily come into conflict with the Act's goal of ensuring product choices and competitive prices for consumers (p. 22). However, Di Domenico is quick to note that Canadian competition enforcement has a clear focus: "vigorous competition promotes an efficient and adaptable economy and provides consumers with competitive prices, innovative product choices, and information to make informed purchasing decisions" (p. 25).

Di Domenico is a leading competition law litigator and co-chair of the Antitrust/Competition and Marketing group at Fasken Martineau DuMoulin LLP. A former counsel to Canada's Commissioner of Competition, he has advised on matters relating to the Competition Bureau's guidelines and policy matters. This extensive experience is evident throughout the text.

This book has a very logical flow, and each chapter is thoughtfully organized and supported with a wealth of primary and secondary source information. Di Domenico provides extensive overviews of the various adjudicative processes with helpful advice along the way. Chapter 1 provides an excellent overview of the Canadian competition law landscape, especially its enforcement mechanisms. This historical backdrop is essential reading for anyone interested in learning about the origins and inner workings of the various institutions and bodies at play.

Chapters 2 and 3 offer helpful insight into the Commissioner of Competition and the Competition Bureau's powers to investigate alleged criminal offences and reviewable

practices. Di Domenico explains the procedural difference between formal inquiries and informal examinations. He then guides the reader through the various steps the Commissioner may take regarding these investigations. These two chapters also provide a solid understanding regarding the Commissioner's evidence-gathering powers. Di Domenico's Bureau experience resonates here in that he provides a balanced examination of both the Commissioner's powers and its obligations under the Act. This thoroughness is Di Domenico's strength as an author.

Chapter 4 examines the 25 competition law offences. For each offence, Di Domenico explains the necessary elements that must be proven. Applicable defences and strategies are also discussed, which once again speaks to the author's expertise and thoroughness. Of likely interest to any reader is the section that examines the Commissioner's enhanced powers to address false and misleading representations and deceptive marketing practices through electronic messages.

Having established a substantive law framework, Di Domenico guides the reader through the finer intricacies of the criminal process in Chapter 5. Anyone facing, prosecuting, or defending a competition-related charge will find this chapter extremely useful. Topics include jurisdiction, preliminary matters, disclosure, guilty pleas, and arrangements. Of note is the section dealing with sentencing where Di Domenico distills this very complex area into plain language.

Chapter 6 addresses the Competition Bureau's Immunity and Leniency Programs. These programs allow individuals engaged in anti-competitive activities to seek leniency or immunity from prosecution in exchange for cooperation with an investigation and subsequent prosecution. This captivating chapter dives into the sometimes competitive "race to confess" before a co-conspirator receives a better deal (p. 269). Di Domenico provides an intriguing synopsis of how beneficial these programs are to the Bureau in helping to uncover anti-competitive activities, in particular, those of criminal cartels.

Chapters 7 through 10 focus on the reviewable practices provisions of the Act. These civil provisions address actions that are, on their own, lawful business activities. However, there are times when the activity in question can rise to the level of anti-competitive behaviour. Consumer protection encompassing deceptive marketing and related practices are covered in detail here. Other reviewable practices discussed include bait-and-switch selling, performance claims, misleading representations through electronic messages, and promotional contests.

Di Domenico provides a comprehensive examination of each reviewable practice, including the associated defences and remedies. Chapter 10, in particular, is required reading for anyone dealing with a reviewable practice or related proceeding before the Competition Tribunal. Here, Di Domenico demystifies the Tribunal's operations and practices covering such topics as jurisdiction, procedural rules, contested applications, reference questions, and private access to the Tribunal.

The book ends with a chapter devoted to class actions and private enforcement. These actions afford private individuals the opportunity to seek redress for damages suffered from criminal anticompetitive conduct. This is an important inclusion given the rise of these actions in recent years (p. 785).

Overall, *Competition Enforcement and Litigation in Canada* provides an excellent starting point for anyone looking to learn something new about competition law or to dive deeper into a specific topic. Though the book does not answer all questions, it offers tremendous insight into the various bodies and processes involved in fostering marketplace innovation and protecting consumer choice. This well-organized and easy-to-read book will certainly become a "go-to" resource for anyone working or researching in this area.

REVIEWED BY
GEORGE TSIAKOS

*Acting Head & Instruction Librarian
UBC Law Library*

***Contract Law without Foundations: Toward a Republican Theory of Contract Law.* By Prince Saprai. New York: Oxford University Press, 2019. xvi, 235 p. Includes detailed table of contents and index. ISBN 978-0-19-877901-8 (hardcover) US\$ 99.00; ISBN 0198779011 (Kindle eBook) CA\$ 97.99.**

This volume is a scholarly collection of papers by Dr. Prince Saprai of University College London (with one paper co-authored by his colleague, George Letsas) on the philosophy of contract law. Most of the papers had been published previously, but Dr. Saprai has revised them to reflect subsequent changes in his own views as well as to incorporate the collection into a single, cohesive monograph proposing a republican theory of contract law. Dr. Saprai's stated purpose for this work is to show that the "foundationalist" promise theory of contract law is false and that a "normative pluralism" approach, such as a "bottom up" republican theory, provides a more convincing account of English contract law rules and doctrines.

The first four chapters of the book explain the discourse about different theories of contract law. Chapter 1 sets out the framework of the book and introduces concepts that will be explored. Chapter 2 examines foundationalism and defines promise theory. Chapter 3 provides a deeper analysis of the claim that *promise* is the foundation of contract law. Chapter 4 sets the genesis of Dr. Saprai's republican theory of law in Ronald Dworkin's idea that integrity influences or shapes legal content.

Chapters 5 to 9 put "flesh on the bones" of the republican theory by analyzing the development of certain doctrines related to contract law: intent to contract, undue influence and exploitation, restraint of trade and limits on the availability of equitable relief, penalty and liquidated damages clauses, and mitigation and loss-sharing. Dr. Saprai examines how or whether promise theory or the republican approach supports the evolution of the doctrine in question more ably. He concludes that promise theory alone does not adequately

explain how the case law has evolved. He also concludes that each of these “seemingly divergent doctrines of contract law” are really composite doctrines resulting from the interaction between the promise principle and other moral principles. The final chapter, Chapter 10, extends Dr Saprai’s republican theory of contract law into the transnational context and explains why transnational initiatives such as the E.U.’s proposed standardized contract law will not work well if his republican theory is correct.

While I am a former transactional lawyer who has drafted contracts, I am not a legal academic nor do I have a philosophy background; thus, I am in no position to evaluate the strengths and weaknesses of Dr. Saprai’s arguments or those of the other scholars whose arguments he concurs with or critiques. I was awed by his ability to synthesize and analyze claims made in the works of other scholars to support his arguments. However, I found the readability of some of the text suffered as a result of its complexity. Less use of Latin would also have improved readability.

Most of the chapters begin with a brief recap of the previous chapter and how it relates to the current one. Some chapters contain summaries of sections, and all end with a summarizing conclusion. I found these recaps, conclusions, and summaries very helpful. There is no table of cases or bibliography, which surprised me given the number of other scholarly works referred to repeatedly in footnotes throughout the book. The index was not comprehensive and omitted what I thought were several important references. For example, despite a half page discussion of the important twin U.K. Supreme Court cases, *Cavendish Square Holding BV v Talal El Makdessi* and *Parking Eye Limited v Beavis*, the cases are missing from the index.

This book was one of five shortlisted for the Society of Legal Scholars Peter Birks Prizes for Outstanding Legal Scholarship in 2019. I expect, however, that the audience for this book will be limited to legal theorists and philosophy of law scholars.

Because of the extent to which Dr. Saprai refers to papers in it, I would recommend that those considering acquiring this book also have access to Gregory Klass, George Letsas & Prince Saprai, eds, *Philosophical Foundations of Contract Law* (Oxford: Oxford University Press, 2014).

REVIEWED BY
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***Criminal Law and the Man Problem.* By Ngaire Naffine. Oxford: Hart, 2019. xiii, 205 p. Includes bibliographic references and index. ISBN 978-1-50991-801-0 (hardcover) £38.50; ISBN 978-1-50991-802-7 (ePub) £41.58; ISBN 978-1-50991-803-4 (PDF) £41.58.**

What is the “man” problem? Doesn’t the criminal law regulate human behaviour, regardless of gender? These questions keep the reader willing to engage Naffine’s text hanging in suspense. If you are like me (and likely you are), then

you might be several chapters deep before the topic of this treatise comes into focus.

The topic is, of course, criminal law and its relation to gender. But beyond that, it is difficult to summarize the arguments.

The book opens with an account of a 1975 British case in which a man was found not guilty of raping his wife. In a similar situation today, there would be no question of the man’s guilt. So has the “man problem” been solved?

No, it has not.

Criminal law was made by men to regulate the behaviour of men. It also provided exceptions for men, granted them privileges, and allowed them access to women’s bodies. A crucial point to Naffine’s argument is that criminal law did not recognize men as men, but as autonomous “bounded” human beings, a category which, until very recently, excluded women.

The entrance of women into criminal law, both as legal professionals and more broadly as autonomous individuals capable of rational thought and criminal behaviour, has been characterized as a product of the changing status of women. What happened to the status of men? Nothing, because there are no “men” in criminal law.

Over the last several decades, men have indeed lost some privilege in cases of murder; notably, the defense of a right of unlimited access to one woman, and the defense of an expectation of a faithful wife. So, two criminal defenses have been struck from the books, and women have entered the legal profession *en masse*—we are getting somewhere, right?

Yes, but also no.

Naffine’s topic, remember, is the criminal law, and the basic framework as such is still in place. Naffine argues, citing the historically great men of criminal law, that the aforementioned two defenses are not exceptional to the law, but are essentially central to it. Their elimination seals a dangerous fissure but ignores the seismic shift that initially exposed the fissure.

Who is the subject of criminal law? A bounded, rational individual person. For many centuries, this person was assumed to be a man (although never said to be a man). Who is it now? An abstracted human being. Criminal law has lost its subject, and in its place has an air-thin spectre, called “person.” Who is person? What are person’s qualities?

For the most part, “person” is still a man. Even after being stripped of his privilege, and after women have entered the category of the rational, bounded individual, the character of the abstract subject of criminal law is still, if you close your eyes and picture him, a man. This fact, as well as the seismic historical shift in the law, has been (for Naffine) glaringly undiscussed and unacknowledged. The criminal law has survived an earthquake—much has been destroyed—and the legal community refuses to look at it, pick through the wreckage, and assess the damage. What remains is a deeply flawed substructure having undergone superficial repairs.

The above is by no means an adequate summary of Naffine's complex and compelling argument. It is my own best effort to grapple with a set of ideas that are for the most part new to me (even though I have absorbed a fair amount of feminist theory and a modest amount of criminal law over the years).

There is little to criticize in this excellent book, but I will say that it is quite repetitive. It might have been half its length and covered the same ground. But I can't actually fault Naffine for repeating certain key ideas in new contexts. She expects to encounter cognitive dissonance in her exposure of the flaws in the historical institution of criminal law with its enormous modern-day influences. Thus, she is earnest in wishing to take her readers along with her and not leave us overwhelmed with dense legal-philosophical rhetoric.

And I would be remiss if I didn't note an absence in this book, as it deals with gender issues on a philosophical level. The book is written in an age where gender is increasingly seen as a spectrum, with significant and increasing numbers of people declaring themselves gender non-binary or transgender. But Naffine never strays from the standpoint of binary gender. As this is a mostly historical study, perhaps excluding contemporary views of gender can be justified as out of scope. But to the extent that it challenges the legal establishment to rethink the (genderless) subject of criminal law, and bring "men" back into focus, she might have found occasion to include gender fluidity (even briefly) in the picture.

This ground-breaking and readable treatise belongs in every predominantly English law library in the world.

REVIEWED BY
KEN FOX

Reference Librarian
Law Society of Saskatchewan Library

***Debating Rights Inflation in Canada: A Sociology of Human Rights.* By Dominique Clément. Waterloo, ON: Wilfred Laurier University Press, 2018. x, 161 p. Includes bibliographic references and index. ISBN 978-1-77112244-3 (softcover) \$24.99.**

In this timely book, five authors debate core issues surrounding the apparent increase of human rights violations in Canada. Dominique Clément is joined by four contributors: Nathalie Des Rosiers, Pearl Eliadis, Rhoda E. Howard-Hassmann, and Gert Verschraegen.

The text follows a unique format: Clément's main essay (described in the preface as "provocative"), followed by four critical essays by the scholars and rights experts who challenge Clément's arguments. Clément's opening argument hinges most notably on the contention that the inflation of framing broad issues within a human rights context devalues the concept of human rights violations in Canada, which were previously reserved for egregious violations.

This inflation raises many questions. Are social and economic rights distinct from civil rights? Is it possible to outline a core set or a hierarchy of human rights? Can and should the legal system adjudicate the increasing range of human rights

cases brought forward, and will this lead to rights collisions and other challenges?

Clément's essay provides a brief, accessible overview of the development of human rights in Canada. He notes that human rights are historically contingent and not based in natural law. Originally, rights claims in Canada appealed to other grounding frameworks such as British justice, Christian values, and citizenship rights. In the mid-19th century, there was a shift toward human rights talk, increasing in the 1960s and '70s, and culminating in the *Charter*.

Today, human rights talk is very active in Canadian blogs and social media, where an expansive definition of human rights is often used throughout. Clément notes that many of the social justice issues being discussed are actually long-standing issues, but that "human rights have become the dominant idiom for challenging anything that is unfair" (p. 44). The problem, he writes, "has to do with the conflation of human rights with social justice" (p. 44).

This is cause for concern, Clément argues, as "human rights is a discourse of absolutes" (p. 49). This framing of claims leaves little room for policy-making and a discussion of resource reallocation, yet resources remain finite. Further, rights inflation can lead to decisions creating an undesirable hierarchy of rights. More broadly, he suggests that social justice problems are beyond the scope of legal problems and framing them as such relies too much on a normative and overly simplistic approach. Quite simply, Clément claims, "human rights are the highest possible claim we can make in our society, but as legal rights, they are an ineffective solution to systemic social problems" (p. 56).

Nathalie Des Rosiers's essay is the first to critique Clément's. She argues against the idea of rights inflation, claiming that there is, in fact, no limit to human rights. Human rights discourse allows marginalized voices to be heard, a mechanism for the government to take notice and the court to hold the government accountable. Human rights today are about collective rights. Rights allow people to demand a benefit on these terms, rather than submitting them as a request for consideration. With respect to the court's capacity, she stresses the system of law has checks in place against inflation.

Next, Pearl Eliadis argues there are more rights claims today because more issues are now rightly included under the umbrella of human rights. She suggests this is a sign of an evolving, progressive society. For instance, the definition of family is expanding. We need not to see more claims as expansionist, but as a clarification of core human rights or variations to adapt to a changing context (for instance, the Right to the Internet). While some rights are recast in a trivial light today, they aren't necessarily so; the actual devaluation occurs from misleading reporting of cases. As for the court's ability to handle these claims, she suggests the courts have already been doing so successfully for some time.

Third, Rhoda E. Howard-Hassmann expresses her concern that Clément does not clearly differentiate between the overlapping concepts of human rights and social justice.

She criticizes Clément's failing to provide us with the tools to distinguish frivolous claims from legitimate claims. Howard-Hassmann outlines three political ideals—democracy, liberal democracy, and social democracy—and makes a case that human rights need to evolve beyond Clément's liberal-level rights, toward a broader rights culture based in social democracy. She does, however, concede to Clément "that the actual rate of permissible inequality in society should be a matter for public debate" (p. 123).

Lastly, Gert Verschraegen's essay emphasizes the historical contingency of human rights. He highlights the past cold war tension between socialist states' emphasis on economic and social rights and the West's focus on civil and political liberties. Today, however, he notes this diversity of rights is seen as interdependent and indivisible. In fact, current human rights appropriately respond to pluralism: modern society has many spheres, and rights are mapped to protect people across these spheres, such as the economic sphere, or the sphere of science. In terms of the growing popularity of human rights framing, Verschraegen suggests human rights claims today empower individuals to take action, while simultaneously connecting people to a global, "imagined community" (p. 142) with common ground.

This book's generous debate format is enjoyable to read, although the sequence of essays criticizing the first does make it challenging to subsequently support Clément's original arguments; perhaps a rebuttal chapter by Clément is in order. The multiple essay format also creates some intellectual work to compare and contrast the various lines of argument (although authors occasionally reference each other). Nevertheless, this book is an excellent primer on the basic issue surrounding human rights inflation in Canada. Clément's essay, in particular, offers extensive endnote commentary, serving as a rich source for further reading, key cases, and significant human rights documents in Canada.

REVIEWED BY
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***Flawed Precedent: The St. Catherine's Case and Aboriginal Title.* By Kent McNeil. Vancouver, BC: UBC Press, 2019. 334 p. ISBN: 978-07748-6105-2 (hardback) \$75.00; ISBN 978-07748-6106-9 (paperback) \$27.95.**

Common law is a precedent-based system, meaning previous case law is considered when contemporary legal decisions are made. It is not unreasonable to think that relying on these established cases, cases considered to be good law, would create a strong line of consistent and just decisions over time. Still, in an adversarial judicial system, injustice is evident, something that is especially true when this "common law" is applied to the rights of Indigenous peoples.

In *Flawed Precedent*, Kent McNeil examines the negative effect that *St. Catherine's Milling and Lumber Company v The Queen*, an early seminal case established in 1888, has had on the interpretation of Aboriginal title in Canada. McNeil demonstrates how unsupported and "erroneous

assumptions" (p. 5) about Indigenous culture informed this decision and asks whether it is "appropriate to apply the doctrine of precedent in situations where the case law reveals racist attitudes unacceptable by today's standards?" (p. 5). McNeil's position is clear:

to the extent that these cases are the product of historical periods when racist attitudes towards Indigenous peoples prevailed, they must be treated with caution and replaced with jurisprudence that acknowledges the legitimate rights of Indigenous peoples as the original inhabitants of North America and that respects the validity of their cultures, including their legal orders. This is particularly necessary in cases where judicial decisions based on ignorance of those cultures resulted in factual assumptions that we now know to be erroneous. (p. 5)

This case was initiated to settle a dispute between Ontario and the Dominion of Canada to decide which jurisdiction had the right to issue a timber permit and therefore reap the bountiful resources found therein. The area in question is Saulteaux Nation territory, which had been "purchased" by the "Crown in right of Canada" under Treaty 3 in 1873. The "source and nature of the Saulteaux's land rights" was an important factor in this case and meant that this decision was to become a "leading decision on Indigenous land rights in Canada until the 1970s" (p. 6).

Despite the importance that establishing land rights had in this case, no Saulteaux were asked for any input about their land or their relationship to it. The Crown's title was "simply presumed." Rather than using "testimony or documentary evidence" (p. 40), the court relied on the assumptions of English society prevalent at the time, which included the "racially hinged theory of social evolution" (p. 15). This theory characterized Indigenous peoples as "primitive nomads," which was "a sufficient reason for denying them title to their lands" (p. 64). However, as McNeil reminds us, the more we learn from Indigenous peoples about Indigenous societies, the better we can "dispel prejudiced assumptions" (p. 7).

From a political perspective, assumptions were also informed by the thinking behind King George III's Royal Proclamation of 1763, where Indigenous land rights were not considered intrinsic but were "derived from and depended on the bounty of the Crown rather than being sourced in [Indigenous] laws and prior possession of their traditional lands" (p. 17). This assertion was fueled by the "doctrine of discovery" (p. 7), which, as McNeil notes, was based on "racist assumptions" (p. 7) and something that has been the subject of "severe criticism, including the condemnation of it by the Truth and Reconciliation Commission in its 2015 report" (p. 7).

This doctrine is the very embodiment of colonization. It was "based on false notions of racial and cultural superiority fabricated to legitimize European subjugation of Indigenous peoples and the taking of their lands" (p. 51). It gave European nations permission to "acquire sovereignty in North America" simply by finding undiscovered territory and establishing "symbolic acts of possession, treaties among themselves, and mere assertion" (p. 7).

With those interpretations in play, it is not surprising that Sir Oliver Mowat, the premier and attorney general of Ontario at the time, “[denied] the existence of Aboriginal title” (p. 35). He would only concede that there was a “right of occupancy.” And, as occupants, the Saulteaux had no claim of land ownership, which led Mowat to conclude that “prior to the signing of [Treaty 3] in 1873, [the lands] must have been public lands, the only question being whether they were vested in the Crown in right of Ontario or of the Dominion” (p. 37).

Before we can make any meaningful progress toward reconciliation, we must know the truth. We must understand the truth about how Indigenous peoples have been treated under colonialism and the faulty assumptions that continue to inform our actions today. It behooves us to learn about Indigenous people from Indigenous people and to be aware of our own role in a history where cases like *St. Catherine’s* have “distorted the legal conception of Aboriginal title in Canada” (p. 7).

This is a well-written, nicely illustrated, and meticulously researched book. McNeil’s analysis provides important political and ideological context and reveals the impact that this particular case has had on legal history in this country. This is a must read for anyone on the path toward respectful reconciliation. In addition, for librarians and researchers, the extensive notes and bibliographic essay makes this first volume in UBC Press’s Landmark Cases in Canadian Law series a valuable resource for any law library collection.

REVIEWED BY
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***Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity.* By Myers S. McDougal, Harold D. Lasswell & Lung-Chu Chen. New York: Oxford University Press, 2019. 1012 p. Includes table of contents, bibliographic references, and index. ISBN 9780190882631 (hardcover) \$160.00.**

Although the publisher’s website lists this book as a second edition, it might instead be described as a reissue with a new introduction. Said introduction makes it clear that “the 1980 edition is reprinted in its totality and original pagination” (p. lvi) and claims that “the text remains as relevant today as ever” (p. lvi). This assertion is, in large part, true. With more than 1,000 pages of text, the authors are afforded a great deal of space to bring the policy-oriented perspective of the New Haven School of International Law into context. The introduction lays out eight values essential to human rights, and these values are used continually throughout the book as a framing mechanism. Certainly, there is a great deal of value in providing the historical context surrounding the development of international human rights throughout the world, along with the detailed footnotes of excerpts and scholarly references. Likewise, a comprehensive table of contents and index make navigating the text more accessible. However, this is not a book for those new to the field of international human rights. Though the historical context may serve as an introduction,

the approach is very scholarly, with few explanations of general principles in the field.

With such a lengthy book, one might expect an in-depth look at the world of human rights, but in some ways the text remains very high-level. The advantage of this approach is that it helps to assert the introduction’s claim that the book continues to be relevant, despite the missing 40 years of progress in the world of international human rights between the two editions. For example, one could infer that when the text refers to the “deterioration of the environment that endangers health and human survival (ecocide)” (p. 29) that this includes the impact climate change has on human rights. This inference, of course, is left to the reader, since at the time of the original writing of the text, climate change as an issue of human rights was not what it is today. In other ways, the text remains timely, if not somewhat disheartening, as it discusses certain human rights issues (such as the wage gap between men and women), which are still very much problems in today’s world.

The value of the book suffers, however, when it delves into the specifics of rights. The new introduction does make an effort to bridge the divide of the 40 years between the publication of the main text and today by referencing major events affecting human rights that have taken place since 1980. Climate change, the impacts that advancements in technology have had on human rights, and more specific legal events, such as the Quebec referendum, are passed over briefly. These efforts, however, only serve to highlight the absence of such issues and events within the main text.

One glaring problem can be found in the footnotes. Though extensive, not a single footnote references a work written after 1980. This fact is particularly problematic when the book discusses something like genetic engineering, with references to works written in the 1960s and ’70s. Furthermore, given the amount of time that has passed between the two editions, some groups and issues have been left out of the conversation in this edition. Sexual orientation is omitted as a ground for discrimination, and although sex-based discrimination is given a hefty place in the text, issues of gender identity and intersectionality are likewise absent. Furthermore, when discussing a woman’s relation to the “affection value” (p. 621) of human rights, the text focusses on issues of a woman’s autonomy within a marriage and in relation to her husband. The text appears to be silent not only on non-married women in relation to affection but also on issues of sexual or physical violence as a human rights issue.

Regardless, there is a continued value in the theoretical framework for human rights laid out in the book. Its emphasis on the necessity for an equilibrium between public and civic order to move toward common human dignity is a message that remains timeless.

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***LGBTQ2+ Law: Practice Issues and Analysis*. Edited by Joanna Radbord. Toronto: Emond, 2020. xxvii, 607 p. Includes table of cases and index. ISBN 978-1-77255-432-8 (softcover) \$136.00; ISBN 978-1-77255-433-5 (digital) \$116.00.**

LGBTQ2+ Law: Practice Issues and Analysis adopts a comprehensive, intersectional approach to practical legal issues affecting LGBTQ2+ individuals. *LGBTQ2+ Law* discusses procedural aspects of civil and criminal law in detail, and these are contextualized within the broader history of LGBTQ2+ rights in Canada. Personal narratives at the end of every chapter provide real-world examples of how both a lack of legal protection and the results of legal advocacy have impacted individual lives. With this approach, general editor Joanna Radbord has produced a volume that is sensitive, inclusive, and relevant to a much wider audience than a typical practitioner's handbook.

The first two chapters detail the evolution of Canadian laws affecting LGBTQ2+ rights and sensitize the reader to cultural considerations when working with or on behalf of those identifying as LGBTQ2+. Chapter 2 in particular provides a valuable reminder not to generalize about LGBTQ2+ communities, stating that "some identities (such as 'two-spirit,' 'queer,' or 'trans') serve as umbrella terms that can represent a wide variety of lived experiences ... [and] gender and sexual orientation are not separate from other cultural aspects such as race, ethnicity, and socio-economic class" (p. 34).

Issues around language and intersectionality are further examined in Chapter 3, which focusses on federal and provincial human rights claims and defences. Chapter 4 provides a thorough discussion about the equality provisions outlined in section 15 of the *Canadian Charter of Rights and Freedoms*, cautioning that "[c]onstitutional litigation is a massive undertaking—a huge investment of a lawyer's time and of the community's hopes" (p. 109). This chapter, written by Radbord, details the many factors counsel and claimants must consider prior to, and during the course of, a *Charter* challenge.

The legal rights of trans people are given their own treatment in Chapter 5, as this is a rapidly evolving area of law. Specific concerns regarding changes to identity documents are addressed here, as is the awareness criminal lawyers need to maintain surrounding the sentencing, incarceration, and medical care of trans clients. Immigration issues specific to trans individuals who may be vulnerable to persecution in their country of origin are introduced here for the first time (these are further elaborated upon in Chapter 10).

Chapter 6 provides an overview of family law, detailing the areas in which LGBTQ2+ families have gained significant rights. However, it is also made clear that LGBTQ2+ individuals still face barriers to full participation in aspects of family life such as parenthood, particularly with regard to assisted reproduction. Chapter 7 examines how polyamorous and non-dyadic relationships intersect with aspects of criminal and family law. The information in this chapter would be useful to lawyers working with anyone in these relationships, including cisgender heterosexual individuals. Chapter 8 briefly touches upon the conflict of domestic and foreign laws affecting LGBTQ2+ family matters.

Chapter 9 discusses estate planning, while Chapter 10 covers immigration issues in depth, beginning with a history of Canada's approach to LGBTQ2+ immigrants and refugees. Chapter 10 then moves into some of the more common concerns practitioners will face when working in this area of law. Chapter 11 discusses children and youth legal issues, which span human trafficking, immigration, family law, and the ongoing efforts to make educational systems safer for, and more inclusive of, LGBTQ2+ students.

Finally, Chapter 12 examines criminal law and public health issues at length, discussing the ways in which LGBTQ2+ individuals continue to face discriminatory attitudes by authorities within the justice system. There is an extensive treatment of the jurisprudence regarding HIV transmission and the non-disclosure of HIV positive status.

LGBTQ2+ Law: Practice Issues and Analysis will be of great use to practitioners working in the fields of immigration, family, and criminal law, as it provides an excellent starting point for legal research in these areas. The various contributors have adopted a writing style that makes the content accessible not only to students and teachers of law, but also to those engaged in history, gender, or sexuality studies, among other disciplines. Service providers, such as those in medicine or social work, may also find useful legal information and context that may assist them when working with LGBTQ2+ clients. Given its wide readership potential, *LGBTQ2+ Law: Practice Issues and Analysis* would be a valuable addition not only to law libraries, but to any academic or public library.

REVIEWED BY
SALLY SAX

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***Millennial Leadership in Libraries*. Edited by Ashley Krenelka Chase. Getzville, New York: William S. Hein, 2018. xxxv, 453 p. Includes table of contents, preface, and author biographies. ISBN 978-0-8377-4081-2 (paperback) \$99.00.**

With millennials now forming the largest generation in the North American workforce, understanding millennial needs, traits, work habits, and aspirations is essential for any administrator. *Millennial Leadership in Libraries* helps library administrators do just this, by bringing together nearly 30 librarians of all generations—including 16 current or former law librarians—into a discussion about the impact of millennial librarians on the profession. More than this, the book also serves as a guidebook and source of inspiration for millennial librarians as they are either just entering the workforce or are moving into leadership positions.

The book is divided into five sections. Section I focusses on the challenges and changes libraries face and describes how millennials could be difference-makers. Section II looks at differences in leadership styles and general traits both between and within generations. In particular, Kirsch and White look at early and late millennial leadership styles. This section provides recommendations to both intergenerational

library leaders and the librarians who report to them. Section III focusses on millennial leaders, providing anecdotal examples of their novel contributions to libraries, notably in marketing and outreach. Section IV is focussed on the recruitment of millennial library leaders and on helping millennials find library positions. Lastly, Section V is designed to assist millennial librarians with career planning and management. In her preface, the editor suggests that the book is not intended to be read “cover-to-cover” (p. xii); rather, the usefulness of each chapter will depend on the librarian’s career aspirations or current role within a library.

As a millennial librarian, I recognized myself and my colleagues (of all generations) throughout the many stories and examples shared in the book. This helped me realize that my concerns, relationships with my colleagues, outlook on the profession, and professional aspirations are far from unique. This was surprising, but also humbling and reassuring. In this sense, the book had an immediate impact on me and on my relationship with my colleagues. As a law librarian, this book resonated with me because 14 of the 24 chapters were written by current or former law librarians.

A couple of weaknesses in this book should be mentioned. First, there is a certain amount of repetitiveness between the chapters, in particular the descriptions of generational traits. Second, there were weaker chapters in the first two sections of the book that likely should have been edited out, especially given the length of the book and repetitive content. These chapters offered superficial examples, made overgeneralized statements, provided little valuable insight, and were generally poorly written.

Despite these shortcomings, *Millennial Leadership in Libraries* is a must-read for millennial librarians looking to establish themselves in the workforce or seeking leadership positions, administrators involved in the hiring and retention of librarians, and library leaders working with millennial librarians. I believe that several chapters, which contained comments based on broad generational traits of millennial librarians, could easily be found in a more general text on millennials in the workforce. In this sense, the book (or at least, certain chapters therein) could be of interest to a much wider audience. Aside from the personal bookshelves of millennial librarians and library administrators and leaders, this title belongs in any academic library that supports a library school.

REVIEWED BY
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Policy Change, Courts and the Canadian Constitution. Edited by Emmett Macfarlane. Toronto: University of Toronto Press, 2018. 448 p. Includes selected bibliography and index. ISBN 978-1-4875-2315-2 (paper) \$35.21.

Editor Emmett Macfarlane is an associate professor in the Department of Political Science at the University of Waterloo. His previous works are *Governing from the Bench: The*

Supreme Court of Canada and the Judicial Role (UBC Press, 2013) and *Constitutional Amendment in Canada* (University of Toronto Press, 2016).

Policy Change is a compilation of essays and case studies on the relationship between the courts, public policy, and the constitution and is written by political scientists and legal scholars from across Canada. The book is divided into three parts. Part 1 focusses on various theories of policy change as a basis for understanding the role the courts play in changing or influencing public policy. Chapter 1 outlines three institutionalist theories of public policy (rational choice, historical, and idealist institutionalism). Chapter 2 applies a multiple streams theory to *Carter v Canada*, 2015 SCC 5, and the subject of medically assisted dying in Canada. Chapter 3 examines punctuated equilibrium—long periods of stability interspersed with conditions ripe for short bursts of rapid change—in the Supreme Court of Canada.

Part 2 examines institutional contexts that affect how the courts and the Constitution affect policy change in Canada. The reader gains interesting insight into how Department of Justice lawyers weigh the likelihood of proposed legislative amendments requested by government departments being successfully litigated. Chapter 5 looks at the role of the SCC in developing and promoting federalism and intergovernmental relations. Part 2 concludes with a timely examination of the desuetude of the notwithstanding clause and how to revive it.

In Part 3, contributors discuss specific case studies or policies. The chapters cover the impact of rights decisions on Canadian policing, cruel and unusual punishment, *Harper v Canada* (2004), official-language minority instruction, the *Charter of the French Language*, citizenship, the Harper government’s refugee policy, the SCC and medical assistance in dying, the Canadian abortion policy, Indigenous rights and reconciliation, and queer and trans rights.

Macfarlane’s conclusion to the text includes a summary and chart of the impact of the courts on public policy and identifies areas for further research. As the editor points out, there are not many texts in the area of public law that focus on the policy changes rather than the relationship between the courts and the constitution, and this text aims to fill that gap.

The case studies in this text are fascinating and provide insight into how changes in public policy have (or have not) come into effect. That said, this is a book aimed at scholars in the area of public and constitutional law and at times is a stretch for the casual reader. *Policy Change, Courts and the Canadian Constitution* would be a useful addition to a university law library or a law firm engaged in litigation.

REVIEWED BY
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Surrogacy in Canada: Critical Perspectives in Law and Policy. Edited by Vanessa Gruben, Alan Cattapan & Angela Cameron. Toronto: Irwin Law, 2018. 313 p. Includes index. ISBN 978-1-55221-488-6 (softcover) \$75.00; ISBN 978-1-55221-489-3 (PDF) \$75.00.

Surrogacy in Canada: Critical Perspectives in Law and Policy offers an overview of this controversial subject. Edited by Vanessa Gruben, Alana Cattapan, and Angela Cameron, each chapter provides a unique viewpoint and voice from experts of varying backgrounds, most of whom are legal, ethical, and medical academics. Canadian surrogacy law is in a state of uncertainty at the moment, and a critical look at how this novel area of law can, or should, develop is perfectly timed.

A recurring topic in the book is the fact that while the federal *Assisted Human Reproduction Act (AHRA)* has been undergoing changes since 2001, its most controversial regulations—the *Reimbursement Related to Assisted Human Reproduction Regulations*—are still not in force. This has led to uncertainty and lack of momentum. Other topics covered by the authors include opinions on the commercialization of children and reproduction; an analysis of the reasons Canada developed into a destination for international surrogacy and what this means domestically; an overview of the lack of sufficient information and empirical evidence regarding surrogacy and the impact of this deficiency on developing public policies; the various approaches in provincial legislation, in particular the vastly different approach in Quebec; and a proposal of a flat-rate reimbursement model for surrogacy arrangements. There are a lot of questions, concerns, and unknowns in surrogacy law. One line in the book succinctly describes this theme: “it is surprising how little we know about surrogacy in Canada” (p. 240).

Mark C. McLeod’s chapter examining the potential sub-delegation of regulations was particularly interesting. It provided an overview and critique of the practice of incorporating documents by reference into regulations simply by referring to them by title, without the need to reproduce the document’s contents. The author suspects that Health Canada intends to use the incorporation by reference technique to incorporate guidelines drafted by the Canadian Standards Association Group (CSA), a third-party for-profit

organization, into the reimbursement regulations. This possibility raises several concerns, including the fact that a non-elected CSA, which is not accountable to the Canadian public, would be defining the content of regulations; the potential elimination of any public discussion, and a lack of transparency regarding these terms; and that the guidelines are not freely available, as the CSA charges \$168 per copy of the guidelines. Furthermore, the terms of guidelines themselves are drafted in an inconsistent manner to the *AHRA* and go beyond what the current act allows. While other regulations have been created this way, this chapter was insightful as to why it is not a good idea.

While the book provides an insightful look into the current state of surrogacy laws in Canada, a couple of critiques are warranted. The book lacks representation from lawyers *currently* working in the reproductive or family law fields, whose inclusion would provide a view of how the current policies impact those involved in surrogacy arrangements in the legal system. A discussion of surrogacy arrangement disputes that ultimately required a court’s intervention would have given this book a more rounded overview and a peek into the difficulties that may arise. Despite this, the book was well written and edited and, overall, a very enjoyable read on a topic that may not be well known from a Canadian perspective.

This book would be a welcome addition to any academic library or in the collection of those working in public policy related to surrogacy or other similar fields. It will also be of interest to lawyers practising in the area of reproduction, health, or family law, although its content is not practitioner-focused.

REVIEWED BY
JOANNA KOZAKIEWICZ

Reference Librarian
City of Toronto Legal Services Division



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III Bibliographic Notes / Chronique bibliographique

By Nancy Feeney

Janet Sinder, “Correcting the Record: Law Journals and Scholarly Integrity in the Digital Age” (2020) Brooklyn Law School Legal Studies Paper No 623, online: [SSRN <ssrn.com/abstract=3521475>](https://ssrn.com/abstract=3521475) or dx.doi.org/10.2139/ssrn.3521475.

To paraphrase Alexander Pope, to err is human, to correct, divine. As most academic research is built upon the foundation of prior work, it is crucial to maintain scholarly integrity in academic publishing. When mistakes are made, they must be identified and corrected in a timely fashion. If there are errors in the foundational documents, all subsequent research can be tainted.

In law, the importance of accurate precedents cannot be overstated. Lawyers and legal researchers who rely on erroneous materials are subject not only to academic criticism, but reputational and professional liability as well. Consequently, law students, legal researchers, and lawyers are trained to rigorously ensure the currency and correctness of law that they rely on to support their positions. With regard to secondary sources—law journal articles, for example—it can be difficult, if not impossible, to easily determine whether there have been post-publication revisions or retractions affecting the integrity of the content.

In the pre-digital age, journals would issue an erratum in a subsequent issue. The notification would indicate that an error appeared in the earlier issue, identify that error, and correct the mistake. Alternatively, publishers would send corrected pages to subscribers with instructions on how to properly insert them in the existing edition. If the error were serious enough, publishers would republish the offending

issue in its entirety, either with the corrected version of the article in question or without the article at all. In all of these instances, efforts were made to inform readers that there was a problem with a published article.

Informing readers of corrections is an essential element of the transparency in academic research that directly affects scholarly integrity. While it is debateable whether the acknowledgement of the existence of minor typographical errors is necessary, the admission of errors significant enough to trigger retraction is not. Readers should be informed that an article has been amended, or, if entirely retracted, the reasons why. This not only safeguards the integrity of authors and the journal, but it also protects unsuspecting readers and researchers from relying on questionable materials.

Janet Sinder, professor of law and director of the library at Brooklyn Law School, investigates how post-publication errors are addressed by digital publications. Ostensibly, correcting typographical or simple factual errors in an electronic format should entail a simple revise and replace. However, Sinder identified additional considerations editors must address:

- How to ensure all electronic versions are updated;
- How readers of the print version are informed of the existence of a superseding corrected electronic version;
- How readers are informed that the article has been revised and what those revisions are; and
- How readers can identify the most up-to-date version of the article.

As a strong proponent of the principal of transparency ensuring academic integrity, Sinder's goal was to determine how legal journal editors and publishers tackled these issues.

Sinder interviewed representatives of HeinOnline, Westlaw, and LexisNexis. It is the practice of all three to replace the imperfect article with a revised version, but among the commercial database providers, there is no standardized approach to indicate to readers that the article had been revised. Sinder also examined the print and electronic versions of a sampling of legal journal articles that had been corrected or retracted post-publication. She identified some of these articles by employing the search string "errata OR erratum" in HeinOnline. Others were recommended to her by colleagues or were found searching the news. The range of the corrections included the replacement of one sentence, adjustments to data errors, and the complete retraction of an article.

Sinder discovered a lack of consistency in how changes were effectuated and a lack of transparency surrounding the post-publication correction process. Both the corrected and uncorrected versions were available to readers, and information about the corrections was not uniformly available. In one instance, an article was retracted three years after publication due to serious questions about the presentation of the data. The retraction appeared as a separate item in the table of contents of a subsequent issue of the journal, giving notice to readers of the print version. In databases like HeinOnline and JSTOR, the original article and retraction were not linked. Conducting a Google search for the author and the title of the article brought up both the article and the retraction; however, it is possible some users will follow only the direct link to the article.

Acknowledging her sample size was small, Sinder is nevertheless confident in the conclusion that legal journal publications have not yet developed practices to ensure transparency and consistency in their correction processes. She posits that this lack of a standardized practice can be attributed, at least in part, to the fact that most academic law journals are published by student editors who are replaced every year, as well as the fact that many of these publications have very flexible publishing, copyright, and distribution policies.

Sinder suggests that the lack of transparency regarding what actually has been corrected, when the corrections were made, and the reasons for them leaves scholarship open to manipulation by authors who might want to correct past statements for reasons other than academic integrity, like, for example, applying for a job or a political position. With regard to instances of serious errors like plagiarism, the lack of standard procedures for retractions allows for the possibility that a researcher will unknowingly rely on a discredited article. Furthermore, allowing the offending article to just disappear without explanation potentially shields authors from meaningful consequences for their reputation. Sinder suggests that "silent retractions," where an article is removed from a database without providing notice to readers, also reflect poorly on the integrity of the publication.

Sinder recommends policies and practices that journal publishers can adopt to preserve the integrity of the content they publish and ways they could work together to provide uniform solutions. She recognizes that different approaches might be taken to rectify different types of errors; however, minimum standards should apply. For example, corrections should be described in detail or be clearly marked on the revised version. Additionally, corrected versions should include the date of any changes or corrections. Sinder believes that by providing public notice of any and all revisions made after publication, journals demonstrate their commitment to transparency for their reading public.

She encourages the adoption of policies similar to those used by scientific journals, which have more developed practices. For example, the National Library of Medicine (NLM) is the main aggregator of medical journals and has established standardized responses to errors and corrections. It requires any journal included on its database to follow these practices. Publishers who do not are removed from the NLM and its databases, which include PubMed and MEDLINE. Additionally, Retraction Watch, an independent watchdog website funded by the Center for Scientific Integrity, tracks retractions in scientific articles. These approaches promote transparency and academic integrity in science and scientific publishing. These methods could be adopted by legal publishers.

Related to her devotion to the idea of transparency, Sinder believes that journal publishers should develop systems for tracking changes. Specifically, she recommends the adoption of a versioning system by legal journal publishers. In such a system, each version of an article is labelled either "corrected" or "original" and is linked to all the existing versions. To effectuate the linking process, Sinder describes how programs like Crossmark use digital object identifiers (DOIs), numerical strings assigned by publishers to articles used to locate electronic articles even when their location on the web has changed. Crossmark uses DOIs to keep track of any content change and provides links to all versions, corrections, and retractions. Unfortunately, Crossmark requires a subscription, which is expensive and may be beyond the budget of many law school journals.

Sinder also believes that legal citation manuals could raise awareness of post-publication correction issues by suggesting ways to cite revised or retracted articles or creating a rule requiring that citations include a reference to the version of an article being cited. This might encourage journal publishers to include versioning information.

Similarly, Sinder advocates for the creation of consistent policies by legal publishers to address these issues. She suggests publishers:

- Address the different types of errors with specific procedures;
- Publish a note in an annual update with a citation, watermarking the original online version with the word "retracted";
- Make the correction policy available to readers;

- Adopt a version of record that would act as the most current and correct version of the article;
- Maintain a list of the databases that publish their journals' articles, in case they need to send the corrected versions;
- Require the author to update any versions under the author's control, such as those on SSRN or in the repository of the author's law school; and
- Coordinate across journals.

Sinder recognizes that this is a problem without a simple fix. The predominance of student editors and publishers in the legal publishing field, and related budgetary constraints, make some of her suggested solutions difficult to launch. Nevertheless, by revealing these issues and inconsistencies, Sinder's paper should raise awareness among information professionals working in the legal field. While continuing to exercise diligence and caution when providing or facilitating research using secondary sources, legal information professionals can advocate for the adoption of better correction/retraction policies by legal publishers and legal institutions.

Rachel Evans, "Cleaning Up Messy Records: Uncovering Match-Points in ILS and Repository Data" (14 January 2020), online (blog): [TSLL TechScans <tslltechscans.blogspot.com/2020/01/cleaning-up-messy-records-uncovering.html>](https://tslltechscans.blogspot.com/2020/01/cleaning-up-messy-records-uncovering.html).

Rachel Evans, the metadata services librarian at the University of Georgia Law Library, is a regular contributor to the TSL TechScans blog, which discusses the latest trends and technology tools for technical services law librarians. In her latest post, Evans shares the challenges she faced when undertaking the project of updating MARC records in her library's catalogue.

Tasked with updating the MARC field 856 by adding links to freely accessible digitized versions of the same items in her library's catalogue, Evans encountered messier data than she initially anticipated. She came up with a number of recommendations and resources to consider when updating MARC records across multiple locations.

To start, Evans suggests:

- having a current list from the repository to work from;
- making sure that the content of fields is consistent;
- having a complete, uniform list of items from the integrated library system; and
- making sure all control fields are clean by following the Anglo-American Cataloguing Rules.

Later in her process, Evans uses two freely accessible applications, MarcEdit and OpenRefine, for further data wrangling. She supplemented her use of these by consulting a number of wikis and help pages, for which she provides access information.

Evans admits that her "clean up" project is a work in progress, but the process has afforded her a number of learning opportunities. She encourages readers to submit their own tips and experiences.

Madeleine Baran, *In the Dark* (2016–), online (podcast): [APM Reports <www.apmreports.org/in-the-dark>](https://www.apmreports.org/in-the-dark).

Related to the theme of rectifying mistakes, this Peabody and Polk Award-winning podcast created by APM Reports is truly binge-worthy. Hosted by investigative reporter Madeleine Baran, *In the Dark* offers comprehensive reporting on two horrific crimes and the subsequent actions of law enforcement and the legal system. In each case, significant errors are committed.

The first season deals with the 1989 abduction of 11-year-old Jacob Wetterling in rural Minnesota. For 27 years, the case went unsolved. Baran and her team reveal how the Stearns County Sheriff's Office mishandled the investigation and failed to follow up on credible leads. The case fueled national anxiety about "stranger danger" and led to the creation of sex-offender registries.

The second season of the podcast details the murder trial of Curtis Flowers, an African-American man accused of fatally shooting a number of white people in his hometown of Winona, Mississippi, in 1996. Flowers has steadfastly maintained his innocence. Over the course of more than 20 years, and despite a number of hung juries and several appeals in Flowers's favour, local district attorney Doug Evans has tried Flowers a record breaking six times. In each trial, Evans has sought the death penalty. The case and the podcast received significant media coverage during the summer of 2019, as the Flowers case was considered by the United States Supreme Court. To describe the podcast further would require spoiler alerts! Listen for yourself—you will not be disappointed.



||| Local and Regional Updates / Mise à jour locale et régionale

By Josée Viel

Here is a quick look at what has been happening in the law library community across the country.

EDMONTON LAW LIBRARIES ASSOCIATION

ELLA members and friends gathered informally at a local brew house at the end of February and will convene for another informal social gathering in April, COVID-19 permitting. In March, ELLA held a lunch-and-learn with Nejolla Korris, CEO of InterVeritas International Ltd, which provides lie detection, social media risk consulting, and training. She provided a compelling session called “Social Engineering: Awareness and Support for Librarians.” Check out Nejolla’s [YouTube channel!](#)

Plans are well underway to host ELLA’s 19th HeadStart program for recent law school graduates this June, in collaboration with the University of Alberta.

Correction to our CLLR 45:1 submission: Michelle De Agostina spoke to us in January about her work as a prison librarian at the Edmonton Institution, which is a maximum facility for men, not the Edmonton Institution for Women.

**SUBMITTED BY
ANKE EASTWOOD**
Past Chair, ELLA

ONTARIO COURTHOUSE LIBRARIES ASSOCIATION

We are pleased to welcome the following new members into our association: Alex Bradley is the new librarian at the Elgin Law Association; Sheri Proulx is the new library technician at the Renfrew Law Association; Karen Cooper is the new library technician at the Halton Law Association; Stacey Zip is the new librarian at Simcoe County Law Association; the Middlesex Law Association welcomed Shabira Tamachie to their staff; Carlyne Alsop joined the Oxford Law Association; and Lee Holstead joined the Durham Law Association. In addition, the Peel Law Association hired Lily Duong to cover a maternity leave contract, and the Hamilton Law Association welcomed back Laura Richmond from her maternity leave.

Our fall conference was held in Toronto from October 3–4, 2019. During the conference, we heard a short presentation by Iona McCarith, the archives advisor at the Archives Association of Ontario, who spoke to us about preservation basics for our associations and libraries. As well, Katie Robenette, Executive Director of FOLA, reported on the status of the Legal Information Resource Network (LIRN). Currently, the transition team is working on hiring a new board of directors. Discussions on this new framework for LibraryCo continue. We look forward to future communications from the LibraryCo LIRN Board in 2020.

**SUBMITTED BY
PIA WILLIAMS**
Chair, OCLA

TORONTO ASSOCIATION OF LAW LIBRARIES

Planning is well underway for TALL's 3rd biennial conference, TALL eXchange 2020: Vision for the Future. This one-day conference will be held on Thursday, October 22, 2020 at the MaRS Discovery Centre in downtown Toronto. Be sure to check our [conference website](#) often for updates on special events, speakers, and more! Early bird registration will begin in June. If you would like to get involved, please email us at talladmindc@gmail.com or visit [our conference site](#) for available opportunities.

We hope to see you in Toronto!

SUBMITTED BY
JULIE HETHERINGTON-FIELD
President, TALL

VANCOUVER ASSOCIATION OF LAW LIBRARIES (VALL)

Greetings from Vancouver! The first few months of 2020 have been a whirlwind, as usual. Our first event of 2020 borrowed an idea from the CALL conference: we had dine-arounds, hosted by one or two members of the VALL executive during Vancouver's Dine Out festival. It was wonderful to have an opportunity to get to know each other in a more intimate and casual setting, and we are already looking forward to next year's dine-arounds! Lawson Lundell hosted a coffee morning in March, in part to show off their new—and beautiful!—library space, and in June our final session of the season will discuss the new B.C. [Declaration on the Rights of Indigenous Peoples Act](#).

SUBMITTED BY
MARNIE BAILEY
President, VALL

CALL/ACBD Research Grant

The CALL/ACBD Research Grant was established in 1996 to provide members with financial assistance to carry out research in areas of interest to members and to the association. The Committee to Promote Research manages the grant process, receiving and evaluating applications and making recommendations to the Executive Board for award of the Research Grant.

Previous applicants who were not awarded funding are welcome to reapply.

Please contact

Elizabeth Bruton
Co-Chair, CALL/ACBD Committee to Promote Research
Email: ebruton@uwo.ca

Michelle LaPorte,
Co-Chair, CALL/ACBD Committee to Promote Research
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For more information.

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III News from Further Afield / Nouvelles de l'étranger

Notes from the U.K.: London Calling

By Jackie Fishleigh*

Hi folks!

Coronavirus Grips Europe

I have been writing this column since 2011 and recently turned 55. I swear, Coronavirus (COVID-19) is the most alarming crisis that has hit us in my lifetime.

That one word seems to dominate so many conversations at the moment. When I last wrote to you, I had never even heard of it!

As I'm writing this, six people have already died, and so our government is passing measures to allow workers to give up their jobs and work in our health service, along with returning retired health workers, as they fight against COVID-19. That sort of thing only usually happens in wartime. But then, this is becoming a war against a different kind of deadly enemy. In Italy, the battle has led to the whole country being locked down. God bless Italy. We are told that we are only two weeks or so behind the Italians. And yet Boris Johnson and his cabinet seem reluctant to bite the bullet and enact the tough measures seen in other European countries.

Panic buying is rife, with empty shelves in supermarkets where sanitizers, toilet paper, kitchen towels, thermometers, and even pasta once sat. Masks and gloves are being seen more and more frequently.

Rishi Sunak, our new chancellor of the Exchequer, yesterday [delivered his first budget](#). He has only been in the job for a few weeks. The previous chancellor, Sajid Javid, [resigned](#)

when he was asked to ditch his advisers and use the PM's instead!

Measures in the budget to help individuals with mortgage repayments and businesses during the virus outbreak have been announced. The Bank of England has [cut the main interest rate](#) from 0.75 per cent to 0.25 per cent.

The government has pledged to do whatever it takes, whatever it costs, to halt the virus and protect the public. Billions of pounds are (potentially) being thrown at the virus crisis.

Update: An eighth person has died here, over 1,000 in Italy, and President Trump has now banned flights to Europe (although not to the U.K.).

Boris Johnson is this morning convening [an emergency COBRA meeting](#) to discuss whether we need to move on from the "containment" to the "delay" phase of the virus. COBRA stands for Cabinet Office Briefing Room A. Nothing to do with snakes! [Editor's note: Boris Johnson has tested positive for COVID-19 and is self-isolating.]

Large gatherings are likely to be banned, schools closed, and staff asked to work from home. The government is to establish [virtual courts](#). Emergency legislation will be used to enforce these measures as required.

HS2: Throwing Good Money after Bad, or Strengthening the Nation's Infrastructure?

Amid the chaos, it is hard to believe that we only had an election a few months ago in December.

As part of our new government's efforts to "level up" the North with the South (particularly in areas that feel "left behind" and lent Boris their vote, as they had no faith in the Labour Party to effectively represent their interests), the controversial rail building project, High Speed North Rail Project (HS2), has been given [the green light](#). Since the project is apparently "shovel ready," the government has committed to press on with it. The aim is to demonstrate that change can be good for everyone, not a threat.

Third Runway at Heathrow Thrown out by the Court of Appeal on 27 February

In a landmark ruling, the Court of Appeal stymied plans to build a third runway at Heathrow Airport, declaring that the government illegally neglected its commitments to reduce carbon emissions and protect the planet from dangerously high temperatures.

As reported in the [Independent](#), environmental groups hailed the decision as an

absolutely ground-breaking result for climate justice ... Heathrow will be challenging Thursday's ruling, but the government has said that it would not appeal.

Legal action had been brought by a group of councils in London affected by the expansion, environmental charities including Greenpeace, Friends Of The Earth and Plan B, and London Mayor Sadiq Khan.

Lords Justice Lindblom, Singh and Haddon-Cave ruled the government did not take enough account of its commitment to the Paris Agreement on climate change when setting out its support for the proposals in its National Policy Statement (NPS).

The UN's Paris Agreement, which came into force in November 2016, commits signatories to take measures to limit global warming to well below 2C.

Lord Justice Lindblom told the court: "The Paris Agreement ought to have been taken into account by the Secretary of State in the preparation of the NPS and an explanation given as to how it was taken into account, but it was not."

Mayor of London Sadiq Khan said the ruling was "a victory for Londoners and future generations."

Organ Transplants

From April 2020, organ transplants can only be [opted out](#) of where citizens have actively registered not to be donors. The reason for this is straightforward. Thousands are currently dying because no transplants are available.

Ed Balls's "Travels in Euroland"

Former Shadow Chancellor Ed Balls has been [touring Europe](#) in an attempt to understand why extreme right political parties are gaining so much traction among mainstream voters, even in traditionally liberal countries such as the Netherlands. The reasons vary across the European Union

but seem to involve championing the preservation of popular activities, which are in the process of being phased out; e.g., mining in Poland, bullfighting in Spain, and the Christmas tradition of Zwarte Piet (Black Pete) in the Netherlands.

Attack on BBC Licence Fee

The new government is promising a review of how the BBC is funded. Currently this is done through a time-honoured [licensing of TV sets](#).

Floods

After a series of named storms—[Dennis](#) is the only one I can both remember now *and* spell—parts of the country are in despair as they try and clear up after yet another unprecedented flooding event.

Fallout from Sussexit

Guys! I understand that Harry and Meghan are chilling out on your beautiful [Vancouver Island](#) as they recover from the trauma of being put-upon and hounded senior royals. Let's not talk about who will pay for their security, eh!

Stay safe. Until next time!

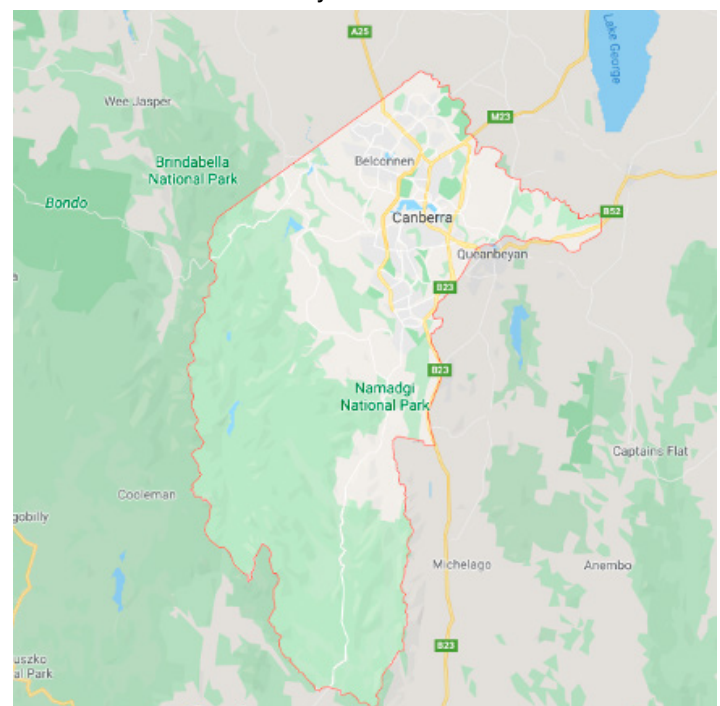
Jackie

Letter from Australia By Margaret Hutchison**

Hello from a very burnt out Australia.

Australia on Fire

When I wrote in very early January, the fires were burning along the southeast coast of Australia. Just when people thought things couldn't get any worse, a fire caused by a [landing light](#) on an Australian Defence Force helicopter started a fire that severely burned the southern end of the



The Australian Capital Territory (ACT).

Australian Capital Territory (ACT) and surrounding New South Wales. If you look at a map of the ACT, you can see that most of it is bush toward the south. Most of that area was burnt in the 2003 fires and had just recovered. People living in the southernmost suburbs could look out and see the flames, and they were on evacuation alert for many days.

One unexpected outcome from the fires and the massive fundraising results is more business in the NSW Supreme Court. The court may have to intervene to enable more than [\\$50 million in donations](#) to be distributed to bushfire victims and first responders. Australian comedian Celeste Barber raised a staggering \$51.2 million for the Trustee for NSW Rural Fire Service (RFS) & Brigades Donations Fund, after she started with a modest early target of \$30,000. But no money has been paid out yet because the RFS trust deed prevents donations being spent on purposes other than firefighting equipment and facilities, training, and some administrative costs of the brigades. Lawyers for Celeste Barber are in talks with RFS representatives about ways to unlock the funds. It apparently is an unusual case, as the RFS is a state government body, but its funds are governed by its own trust deed, meaning the NSW Parliament can't resolve the matter. So, the NSW Supreme Court has been asked to advise on the situation so that the enormous amount of money can be spread around to other organisations and other states.

Rebuilding and supporting the burnt regions and towns is going to be a very long process. People have been [encouraged](#) to take an “empty esky” to burnt areas and fill them with produce bought from producers in the area to help rebuild. The word “esky” is commonly used in Australia to generically refer to portable coolers or ice boxes, although it is also a specific brand, and is part of the Australian vernacular. I like the New Zealand version, which is a “chilly bin,” especially when spoken in the New Zealand accent.

Love & Thoms

A recent [High Court case](#) that has been causing a [great deal of comment](#) amongst the legal fraternity is the case that will become known as [Love & Thoms](#). The plaintiffs, Mr Thoms and Mr Love, were both born outside Australia and are not Australian citizens. Mr Thoms was born in New Zealand on 16 October 1988 and became a New Zealand citizen by birth. He has resided permanently in Australia since 1994. Mr Thoms is a descendant of the Gunggari People through his maternal grandmother. He identifies as a member of that community and is accepted as such by members of the Gunggari People. He is also a common law holder of native title. Mr Love was born on 25 June 1979 in Papua New Guinea. He is a citizen of that country but has been a permanent resident of Australia since 1984. Mr Love is a descendant, through his paternal great-grandparents, of Aboriginal persons who inhabited Australia prior to European settlement. He identifies as a descendant of the Kamilaroi tribe and is recognised as such by an elder of that tribe.

The plaintiffs were sentenced for separate and unrelated offences against the *Criminal Code* (Qld). After their convictions, the visas of both men were cancelled by the

Department for Home Affairs under the *Migration Act 1958* (Cth). They were taken into immigration detention on suspicion of being “unlawful non-citizen[s]” and were liable to deportation. The Commonwealth relied upon the aliens power to support the validity of the *Migration Act* in its application to Mr Thoms and Mr Love. The High Court, by majority, answered a question in two special cases to the effect that Aboriginal Australians (understood according to the tripartite test in *Mabo v Queensland* [No 2]) are not within the reach of the power to make laws with respect to aliens, conferred on the Commonwealth Parliament by section 51(xix) of the *Constitution* (“the aliens power”). That is the case even if the Aboriginal Australian holds foreign citizenship and is not an Australian citizen under the *Australian Citizenship Act 2007* (Cth). The tripartite test requires demonstration of biological descent from an Indigenous people together with mutual recognition of the person's membership of the Indigenous people by the person and by the elders or other persons enjoying traditional authority among those people.

In their seven individual judgments, the Justices forming the majority held that it is not open to the Parliament to treat an Aboriginal Australian as an “alien” because the constitutional term does not extend to a person who could not possibly answer the description of “alien” according to the ordinary understanding of the word. Aboriginal Australians have a special cultural, historical, and spiritual connection with the territory of Australia, which is central to their traditional laws and customs and is recognised by the common law. The existence of that connection is inconsistent with holding that an Aboriginal Australian is an alien within the meaning of section 51(xix) of the *Constitution*. The High Court held, by majority, that as an Aboriginal Australian, Mr Thoms is not within the reach of the aliens power. However, the majority was unable to agree on the facts stated in the special case as to whether Mr Love has been accepted, by elders or others enjoying traditional authority, as a member of the Kamilaroi tribe. For that reason, the majority was unable to answer the question of whether he is an “alien” within the meaning of section 51(xix).

Cardinal Pell Update

As I write, the special leave application hearing has finished in the Pell case. This is an application for special leave to appeal by Cardinal George Pell against his six-year sentence for sexual offences against two choirboys. The original special leave application was referred to a full bench of the High Court. The leave hearing lasted two very long days, and [the decision has been reserved](#). The parties were asked for further written submissions within two working days. The bench will then consider those materials before returning to deliver their decision at a future date. Once they return to court, if the court does grant special leave, the bench may then immediately decide whether to accept the arguments from Pell's team and acquit him, or they could dismiss the appeal in which case the verdict would hold or possibly there will be a full hearing of the appeal. We've had extra police and some protestors out the front of the building and a courtroom full of spectators, very unlike a regular High Court hearing.

Religious Freedom Bill

The draft religious freedom bill keeps puttering along, drawing objections from all sides. The [submissions on the second exposure drafts](#) of a package of legislation on religious freedom closed on 31 January with 6,972 submissions. No doubt there will be a third draft coming along some time this year.

Canberra Balloon Spectacular!

To end on a lighter note, here are the crowd pullers in this year's [Canberra Balloon Spectacular](#). [Skywhale](#) (the smaller balloon) was commissioned for Canberra's centenary in 2013, and whilst flown a little in Canberra during that year, it disappeared after that time. However, in 2019, she was donated to the National Gallery of Australia, who said she would be flown in Canberra at times. Hopefully in May, Skywhale will be joined by Skywhalepapa, who will be cradling Skywhale children. So, in a future letter, I may have the Skywhale family to show.



Skywhale (right) and a Canadian T-rex!

The 38.7m Tyrannosaurus rex balloon, in his first Australian appearance, comes from Toronto, so here's to an unexpected Canadian connection!

Until next time,

Margaret

The U.S. Legal Landscape: News from Across the Border

By [Julienne E. Grant](#)^{***}

COVID-19? A month ago, I'd never heard of it. Now (on March 20, 2020), that's all any of us hear about. Like many academics, I am quickly trying to digest the skills needed to teach online, and I'm struggling to revamp my syllabus to reflect this new reality. In Chicago, restaurants are shut down (except for takeaways), the Art Institute is closed, the Chicago Cubs' opening day has been postponed, Chicago Public Schools are closed, and forget about buying toilet paper. At the state level, Illinois's governor has ordered residents to shelter-in-place (no nonessential travel). Thankfully, [Stan's](#)

[Donuts](#) is still open (that counts as essential travel, right?) and is located on my block.

There's lots of legal-related news to report from the first three months of the year, including the impeachment of U.S. President Donald J. Trump. Read on. Whether there will be much to write about over the next three months is questionable. Bring on the donuts.

AALL & ABA News

AALL President Michelle Cosby [testified](#) before the U.S. House Appropriations Subcommittee on the Legislative Branch on March 4, requesting full funding for the Government Publishing Office's 2021 fiscal year and advocating for \$23 million to be earmarked for the Law Library of Congress. The [2020 AALL Annual Meeting](#), scheduled to take place in New Orleans from July 11 through 14, is still on (as of today). The designated keynote speaker is [Jim Kwik](#), who will open the meeting with a talk on "Master Your Mind: Learn Anything and Become Limitless."

American Bar Association (ABA) President Judy Perry Martinez [spoke at the association's 81st Midyear Meeting](#) on February 17, denouncing personal attacks on judges and prosecutors. Also at the Midyear Meeting, held in Austin, Texas, the ABA House of Delegates [passed resolutions](#) supporting federal legislation that would protect attorneys from prosecution when representing clients in states where the marijuana industry has been legalized. Both resolutions were sponsored by the ABA's [Tort Trial & Insurance Practice Committee](#).

Law Schools

The U.S. News & World Report's [2021 law school rankings](#) were released in mid-March. With regard to the top 10, Yale is still number one, Stanford number two, Columbia moved up one place from last year, and so did Northwestern and the University of California, Berkeley. Duke dropped two places to number 12. [Big movers](#) include Washburn University (up 25), Fordham (up 12), Wake Forest (down 11), and the University of Tulsa (down 24).

The ABA's [Standard 316](#) for law schools was revised in 2019, requiring that at least 75 percent of an ABA-accredited law school's graduates who take a bar exam pass it within two years of graduation. So, this year, compliance is based on 2017 graduates. [According to the ABA](#), 89.5 percent of 2017 graduates passed within two years of graduation. The [ABA Journal](#) (March 5, 2020) concluded that 11 U.S. law schools didn't make the cut, including Western Michigan (Cooley), the University of South Dakota, and Florida A&M. First-time bar takers in 2019 had an [aggregate bar passage rate of 79.64 percent](#), up from 74.83 percent in 2018.

The American Association of Law Schools (AALS) reported that 2019 was a banner year for pro bono legal services provided by law students. [According to AALS](#), 19,885 law students from the class of 2019 contributed more than 4.38 million hours in legal services, representing an average of 220.5 hours per student. The estimated monetary value of this student work is more than \$111.5 million.

It appears that another U.S. law school is on the brink of closure. Concordia University, located in Portland, Oregon, has announced it is shutting down, and, accordingly, its law school in Boise, Idaho, has an uncertain future. According to [an article in the ABA Journal \(February 11, 2020\)](#), the law school opened in 2012 and received ABA accreditation in February 2019. The class of 2016 had a 100 percent bar passage rate. Concordia is just one of two law schools in Idaho (the other falling under the umbrella of the University of Idaho).

The Trump Impeachment: Quid Pro Quo

The U.S. House of Representatives voted to impeach President Donald J. Trump on December 18, 2019, prompting a trial in the U.S. Senate on two articles of impeachment: abuse of power and obstruction of Congress. Trump is only the third sitting U.S. President to be impeached. The trial began on January 16, 2020, without witness testimony, in the Republican-heavy U.S. Senate. Trump was acquitted on February 5, as expected, with 52 in favor and 48 against on the abuse of power accusation, and a vote of 53 to 47 on the obstruction allegation. The [U.S. Constitution](#) (art. 1, § 3) requires a two-thirds majority vote in the Senate to remove a president from office. Senator Mitt Romney, a Republican from Utah, was the [first U.S. Senator in history](#) to vote to remove a president of his own party. Although many Americans seemed to find the whole process rather blasé, they did manage to learn some Latin: [quid pro quo](#).

SCOTUS Chief Justice John Roberts, who presided over the Senate proceedings, managed to emerge from the trial seemingly unscathed. Although his role as a decision-making authority was minimal, he did [admonish both sides](#) for some of the language they used, and he also [refused to read a question](#) from Senator Rand Paul (a Republican), which would have revealed the name of the whistleblower who initially triggered the impeachment inquiry. Roberts also made it clear that he would not provide a tie-breaking vote, if needed, at the end of the trial. The Senate gave Roberts a symbolic golden gavel, and he, in turn, invited Senators to SCOTUS to observe an oral argument, [“or to escape one.”](#) I think Justice Roberts was mighty happy to return to the more familiar territory of SCOTUS, located just across the street from the U.S. Capitol.

SCOTUS News

SCOTUS [announced on March 16](#) that it was postponing oral arguments for the rest of the month because of COVID-19. As of this writing, no word on April's schedule.

The Court had four cases on religious freedom scheduled for oral arguments this spring. One was heard on January 22, while the others may be rescheduled. [According to UC, Berkeley Law Dean Erwin Chemerinsky](#): “Some [of these cases] involve constitutional issues, while others involve interpretation of federal statutes. All involve issues concerning free exercise of religion and are likely to be a strong indication of the direction of the Roberts Court as to religious liberties.” On March 4, SCOTUS heard [two consolidated abortion cases](#) appealed from the Fifth

Circuit—the first since Justices Neil Gorsuch and Brett Kavanaugh joined the Court. The outcome of this case will likely signal the fate of abortion rights in the United States going forward. Also, SCOTUS has [announced](#) that it will decide the future of the *Affordable Care Act* (“Obamacare”) next term, presumably after the presidential election. Chief Justice John Roberts has already voted twice to support the law; this will be the third time SCOTUS will address it.

Eighty-seven-year-old Ruth Bader Ginsburg (RBG) continues to amaze. On January 30, [RBG received](#) the LBJ Liberty & Justice for All Award at the Library of Congress. On February 5, RBG was the subject of the New York City Bar Association's biennial [Twelfth Night production](#), which poked fun at her collars, poor culinary skills, exercise routines, and love of opera. RBG herself was in attendance. The Illinois Holocaust Museum opened an exhibit on February 9, 2020, called [“The Notorious RBG: The Life and Times of Ruth Bader Ginsburg.”](#) On February 10, [she was interviewed](#) at the Georgetown University Law Center in celebration of the 100th anniversary of the Nineteenth Amendment, which gave women the right to vote. RBG called for a renewed effort to pass the *Equal Rights Amendment* (ERA). As of February 26, despite some health scares, RBG [had written more opinions](#) than her SCOTUS colleagues during the 2019–2020 term, including all dissents. Stay well, RBG.

Justice Elena Kagan has also been out and about. She was in New York on January 30 to receive the New York City Bar Association's Gold Medal for Distinguished Service Award. Upon accepting the award, [Justice Kagan admitted that she uses Twitter](#) under a different name: “I've never had a Facebook account, but I do lurk on Twitter. So I use a different name and I never tweet myself. But, you know it's sort of interesting what you see sometimes.”

In other SCOTUS news, on [February 25](#), President Trump called for Justices Sotomayor and Ginsburg to recuse themselves from any cases involving him or his administration. The following week, Chief Justice Roberts chided New York Senator Chuck Schumer (a Democrat) for statements he made about the two Trump-appointed justices on the Court (Gorsuch and Kavanaugh). At an abortion rally in front of the SCOTUS building on March 4, Schumer said that the two would [“pay the price”](#) if they voted against abortion rights. [Justice Roberts said](#) that “threatening statements of this sort from the highest levels of government are not only inappropriate, they are dangerous.”

In happier news, on March 5, the [Sandra Day O'Connor Institute](#) in Phoenix, Arizona, launched [a digital library](#) focusing on the life and work of its namesake. O'Connor was the first woman to serve on SCOTUS; she turned 90 on March 26. The digital library includes bills that Justice O'Connor sponsored when she was a state senator in Arizona, opinions she penned while serving on the Arizona Court of Appeals, an index of her law review articles, transcripts of some of her speeches, SCOTUS opinions she authored, videos, and a photo archive. Meanwhile, at Harvard, the [Antonin Scalia Collection](#) opened in February. The collection, which is housed in the law library, will be made available in stages

over the next 40 years. Scalia graduated from Harvard Law School in 1960 and served on SCOTUS until his death in February 2016.

Legal Miscellany: Blago, etc.

- Disgraced former Illinois governor [Rod Blagoevich](#) (referred to as “Blago” by the locals) was released early from federal prison on February 18, 2020, per President Trump’s commutation of his 14-year sentence. Blago, who was a Democratic governor, now refers to himself as a “[Trumpocrat](#).” Blago was a no-show at a status [hearing on his Illinois law license](#) on February 25. Blago’s Illinois bar license was suspended when he was sent to prison, and he will now likely be disbarred. The Illinois Supreme Court has the final say on the matter.
- The Goodman Theatre in Chicago staged a play called [Roe](#) from January 18 through February 23, 2020, which depicted the backstory of the 1973 [Roe v Wade \(410 U.S. 113\)](#) abortion decision. The production generally received positive reviews.
- Minnesota artist and lawyer Maddy Buck explains legal concepts with illustrations. Check out her [Let’s Draw Law Blog](#).
- The opening of a travelling exhibition, “[Lawyers Without Rights: Jewish Lawyers in Germany Under the Third Reich](#),” scheduled for March 8 at the Law Library

Association of St. Louis, has been postponed. The exhibition has already been displayed at various U.S. courts and libraries.

- The [ABA Journal \(January 27, 2020\) reported](#) that a West Virginia lawyer, who had been suspended in 2016 for overbilling, was arrested in January in Nicaragua.
- Meanwhile, in Cleveland, the [ABA Journal \(February 18, 2020\) reported](#) on another lawyer who was in a bit of trouble. There, an attorney was ordered to pledge his compliance to ethics rules with the payment of a \$500 fine and writing in legible handwriting 25 times that he would not breach Ohio’s lawyer ethics rules again.
- Check this out: a new exhibition at the Lillian Goldman Law Library at Yale, “[Legally Binding: Fine and Historic Bindings from the Yale Law Library](#),” is available for online viewing.

Concluding Remarks

That’s a wrap. Who knows what the world will look like in three months. To my Canadian colleagues, stay healthy and safe. As always, feel free to email me with comments or suggestions: jgrant6@luc.edu. My next column will sadly be my last. Namaste.

Julienne E. Grant

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Canadian Law Library Review/Revue canadienne des bibliothèques de droit, l'organe officiel de l'Association canadienne des bibliothèques de droit, publie des informations, des nouveautés, des articles, des rapports et des recensions susceptibles d'intéresser ses membres. Des enquêtes et des relèves statistiques préparés par les divers comités de l'Association et par les groupes d'intérêt spécial, des nouvelles d'intérêt régional et les procès-verbaux du congrès annuel de l'Association sont également publiés.

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CALL/ACBD Research Grant

Perhaps it is time to start thinking about your next research project. The deadline for the 2020 research grant has been extended to May 30, 2020.

The grant can be applied to research assistance, online costs, compensating time off, purchase of software, travel, clerical assistance, etc.

There is no fixed amount for the grant but in the past years the awards have ranged from \$1400.00 to \$4400.00.

The grant comes with some expectations. Research is to be completed within two years of receipt of the award with a progress report submitted to the Committee after one year. The deliverables are a written report, publication or presentation at the CALL/ACBD conference.

Please contact

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For more information.

<http://www.callacbd.ca/Resources/Documents/Awards/Research%20Grant1.pdf>

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