



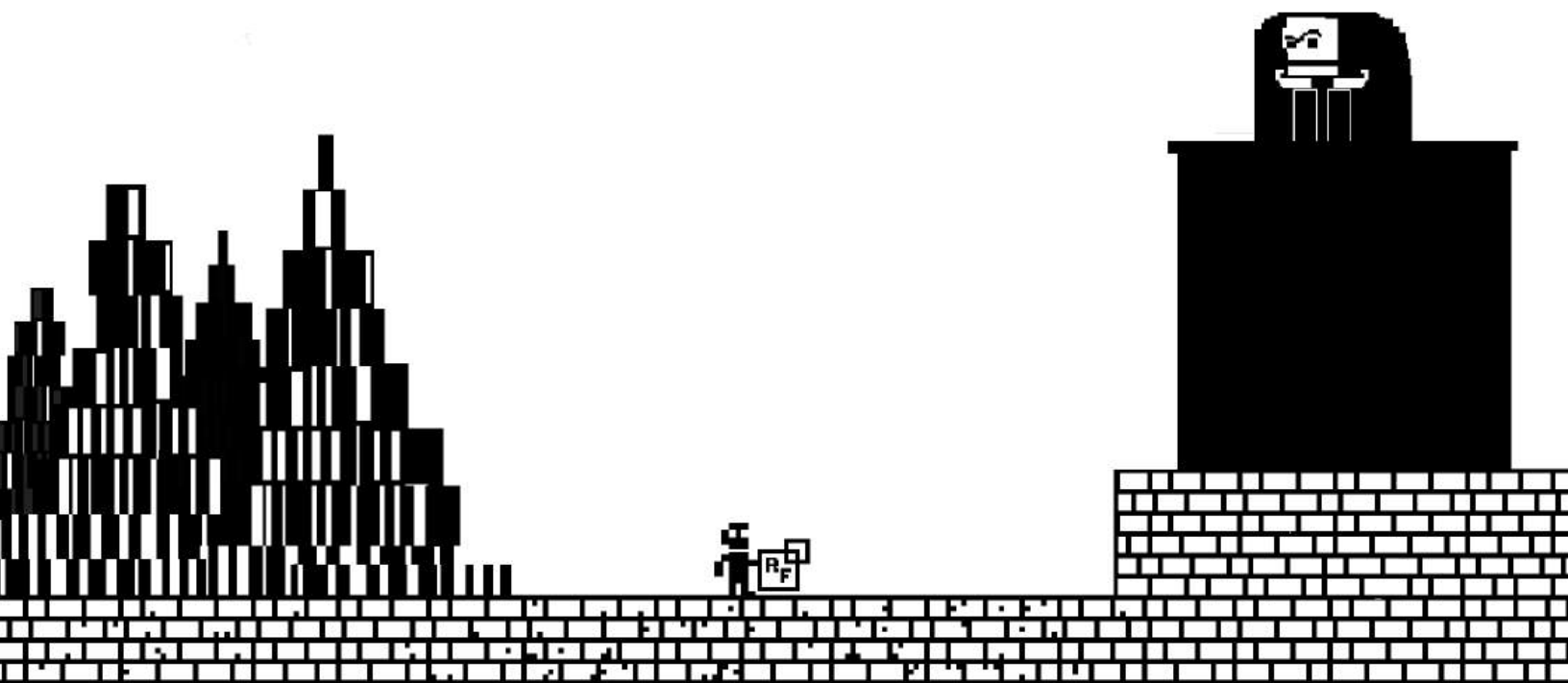
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III From the Editor / De la rédactrice

I am writing this on March 17, the one-year anniversary of UNB's COVID shutdown. We're having a virtual staff party this afternoon to commemorate this depressing milestone. A year ago today, I was back in the office after a bout with the flu, and my morning was spent packing everything I needed to work from home for the following two weeks. I'm glad I packed so much, because 365 days later, I'm still home.

I remember how surreal that day was. One of our library assistants gave me and all my stuff a ride home, and she said she thought it would be May before we'd be back to business as usual. I laughed at such a notion. Surely, everyone would do their part and stay home for two weeks and it would all be over. Here it is, a year later, and we're still not sure what our fall 2021 term will look like. Future historians are going to have field days with the 2020/21 pandemic years, and I hope they run out of material soon!

I'll try not to focus so much on the pandemic from now on. We're nearing the end, vaccines are being rolled out, and there are other, more positive things to talk about, including the great articles in this issue.

The first feature is "The Law Librarian's Role in Reconciliation" by Alexi Fox. In it, Fox deftly argues that law librarians/legal information professionals need to be able to provide sources of law when clients need it, and that includes Indigenous law. Indigenous law has a place in our legal system next to common and civil law, and it's our duty to know how to access it when necessary. Luckily, Fox provides research tips on finding the laws of various Indigenous Peoples. I hope you find it helpful for your own work.

Our second feature is "Artificial Intelligence and Access to Justice: A New Frontier for Law Librarians" by Laura Viselli.

Artificial intelligence is certainly a hot button issue in the legal information realm these days, and with good reason. The benefits and drawbacks of the use of AI are plentiful, and often conflicting. It can help marginalized people receive much-needed access to justice, while simultaneously using its own biases to treat these same people unfairly. It's going to be interesting to see its use unfolds in the coming years.

Stay safe!

EDITOR
NIKKI TANNER

J'écris ces lignes le 17 mars, jour du premier anniversaire de la fermeture de l'UNB en raison de la COVID-19. Nous organisons une fête virtuelle avec le personnel cet après-midi pour commémorer ce jalon déprimant. Il y a un an jour pour jour, j'étais de retour au bureau après une vilaine grippe. J'avais passé la matinée à rassembler tout le matériel dont j'aurais besoin pour travailler de la maison pendant les deux semaines suivantes. Je suis contente d'avoir apporté beaucoup de choses puisque je suis toujours à la maison 365 jours plus tard.

Je me souviens à quel point cette journée était surréelle. L'une des assistantes de bibliothèque m'avait raccompagnée à la maison avec toutes mes affaires et m'avait dit qu'elle pensait qu'il faudrait probablement attendre jusqu'en mai avant de reprendre nos activités habituelles. Cette idée m'avait fait rire. J'étais certaine que le fait que tout le monde reste à la maison pendant deux semaines mettrait fin à la situation. Nous voici un an plus tard, et nous ne savons toujours pas à quoi

ressemblera notre session d'automne 2021. Les historiens de demain auront du pain sur la planche avec les années de pandémie 2020-2021, et j'espère qu'ils seront bientôt à court de matériel!

À partir de maintenant, je vais essayer de ne pas trop mettre l'accent sur la pandémie. Nous approchons de la fin, la vaccination est en cours et il y a d'autres choses beaucoup plus positives à parler, notamment les excellents articles publiés dans ce numéro.

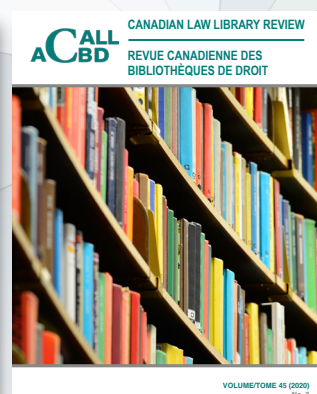
Le premier article, intitulé *The Law Librarian's Role in Reconciliation*, porte sur le rôle des bibliothécaires de droit dans la réconciliation. L'auteur de cet article, Alexi Fox, fait valoir que les bibliothécaires de droit et les professionnels de l'information juridique doivent être en mesure de fournir des sources de loi lorsque les clients en ont besoin, ce qui inclut les lois relatives aux peuples autochtones. Le droit autochtone a sa place dans notre système juridique, à côté de la common law et du droit civil, et il est de notre devoir de savoir comment y accéder en cas de besoin. Heureusement, elle nous offre des trucs pour trouver les lois relatives aux divers peuples autochtones. J'espère que ces renseignements sauront vous être utiles dans le cadre de votre travail.

Notre deuxième article, intitulé *Artificial Intelligence and Access to Justice: A New Frontier for Law Librarians* (l'intelligence artificielle et l'accès à la justice : de nouveaux horizons pour les bibliothécaires de droit) est rédigé par Laura Viselli. L'intelligence artificielle est certainement un dossier chaud dans le domaine de l'information juridique ces jours-ci, et avec raison. Les avantages et les inconvénients de l'utilisation de l'IA sont nombreux, et souvent contradictoires. Elle peut aider les personnes marginalisées à bénéficier d'un accès indispensable à la justice, tout en utilisant simultanément un parti pris pour traiter ces mêmes personnes de manière injuste. Il sera intéressant de voir l'évolution de son utilisation dans les années à venir.

Soyez prudents!

RÉDACTRICE EN CHEF
NIKKI TANNER

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III President's Message / Le mot de la présidente

Today I began my morning by observing the [webcast](#) of the Supreme Court of Canada's new Heraldic Emblems. I do enjoy having the Chief Justice of the SCC streaming in my living room. It is clear that thoughtful consideration went into the creation of the heraldic symbols of the court. The new emblems signify, to those outside the court, the values that the court stands for. These brand signals, particularly the two red vertical lines in the background of the coat of arms, which in part give reverence to the peace and mutual respect of the wampum belt, are a significant and subtle signal of change.

In a time where institutions at all levels recognize that the changes that "pandemic pivots" required of us are in many cases true improvements, it is nice to see the visual symbols of the Court updated.

Our association is prepared for change. Part of our DNA as legal information specialists has always been adapting to change. Members of our organization were integral to shifting to online access to legal information. We have managed through the emergence of commercial databases and open access. We published in print and through blogs. We continually innovate to serve our clients. We Zoom and Teams and podcast and Clubhouse and tweet.

Innovation without broadcasting enhances nothing.

Why would the Supreme Court of Canada go to the effort of changing their heraldic symbols?

"Until now, the Court has used the same emblems as the executive and legislative branches of the federal

government—Canada's Coat of Arms. We trust that the heraldic emblems being unveiled today will serve as a visual expression of the independence and role of the Supreme Court of Canada," said Chief Justice Richard Wagner.¹

An expression of the independence of the Supreme Court. The Court's independence is not new. The new heraldic symbols are a way of expressing what is most important about the institution.

In the corporate world, a symbol change—a new logo—is sometimes paired with a name change. A change of brand is done to indicate a new focus or to signal identity to those outside the organization.

When this issue of CLLR is released, CALL/ACBD will have held a town hall on April 6. The topic of discussion: changing the name of the association.

Why would we bother changing our name? Our brand is over 50 years old, it is solid, and substantial, like a fully staffed, well-stocked, and well-funded law library.

I ask this:

- Is your law library fully staffed; do you have all the human resources needed to undertake new work?
- Is your law library collection all that you would wish for without having sacrificed some content for lack of space or funding?
- Does your law library have the budget to purchase every piece of information needed by your clients?

¹ Supreme Court of Canada, "News Release" (15 March 2021), online: <decisions.scc-csc.ca/scc-csc/news/en/item/7091/index.do>.

I am guessing that the answer to all of these is no.

The name of our association, like all brands, invokes thoughts and feelings for those inside our group and importantly for those outside our group. Our name should inspire, include, and uplift the people we want to join our membership.

Inspire

Law libraries are shrinking. This sad trend is also reflected in membership numbers for our association trending downward. Having our association name tied to a physical space that can be perceived to be in decline may not inspire.

Legal information specialists are appearing in wider spheres. Members of our association are participating in management at the highest levels in law firms and on committees, making organization-wide decisions for academic and government institutions, and truly innovating within their organizations. The actions and roles of legal information specialists *are* an inspiration to those who work with them. That inspiration should be reflected in the name of our organization.

Include

No member should have colleagues or superiors question why they would find value in our association based on our name. We should be signalling a welcome to legal information specialists whose role is not in a law library. Our name should not deter people working in legal technology, legislative drafting, law reform, access to justice, legal research and writing instruction, legal informatics, knowledge management, and legal publishing from becoming members. Our name should be inclusive so that joining us is an intuitive step for anyone working in legal information. Member role diversity is a key driver for a professional association where long-time members who retire have their work replaced by those with skills and backgrounds that aren't necessarily librarianship. We should be welcoming to those who work with all aspects of legal information.

Uplift

Our name should help lift legal information specialists to the top of mind for employers. For a law library job early in my career, my future employer was pleased when he saw I was a member of the Canadian Association of Law Libraries. Fast forward a decade or two, I often hear surprise that law libraries continue to exist. As frustrating as that is, changing the name of our association is one potential path to increasing awareness that we are here, we are relevant, and we will bring value to any organization that hires us.

I look forward to the outcome of our discussions about what we should call ourselves to inspire, include, and uplift members of our association.

Stay well,



PRESIDENT
SHAUNNA MIREAU

J'ai commencé ma journée ce matin en regardant la [diffusion Web](#) du dévoilement des nouveaux emblèmes héraldiques de la Cour suprême du Canada. J'aime bien regarder le juge en chef de la CSC en direct dans mon salon. Il est évident que la création de ces symboles a fait l'objet d'une réflexion mûrie. Pour les personnes en dehors de la Cour, ces nouveaux emblèmes signifient les valeurs que la Cour défend. Le symbolisme, notamment les deux bandes verticales rouges en arrière-plan des armoiries qui évoquent la notion de paix et de respect mutuel représentée par la ceinture wampum, est un signe de changement important et subtil.

Cela fait du bien de voir les symboles visuels de la Cour actualisés en ce temps où les établissements à tous les paliers reconnaissent que les changements qui nous ont été imposés par le « pivot pandémique » constituent, dans bien des cas, de véritables améliorations.

Notre association est prête au changement. Une partie de notre ADN en tant que spécialistes de l'information juridique a toujours été de nous adapter au changement. Les membres de notre organisation ont joué un rôle essentiel dans le passage à l'accès en ligne pour le domaine de l'information juridique. Nous avons géré l'émergence des bases de données commerciales et du libre accès. Nous avons publié en version imprimée puis sur des blogues. Nous innovons sans cesse pour servir nos clients. Nous utilisons *Zoom*, *Teams* et *Clubhouse*, nous diffusons des balados et partageons des gazouillis.

Innover sans pouvoir diffuser n'améliore rien.

Pour quelle raison la Cour suprême du Canada se donnerait-elle la peine de changer ses symboles héraldiques?

« Jusqu'à maintenant, la Cour utilisait les mêmes emblèmes que les pouvoirs exécutif et législatif de l'État canadien – à savoir les armoiries du Canada. Nous sommes convaincus que les emblèmes héraldiques dévoilés aujourd'hui permettent d'exprimer visuellement l'indépendance de la Cour suprême du Canada et le rôle qu'elle joue en tant qu'institution », a affirmé le juge en chef.¹

Une expression de l'indépendance de la Cour suprême. Cette indépendance n'est pas d'hier. Les nouveaux symboles

¹ Cour suprême du Canada, « Communiqué de presse » (15 mars 2021), en ligne : <decisions.scc-csc.ca/scc-csc/news/fr/item/7091/index.do>.

héraldiques sont une façon d'exprimer ce qui importe le plus dans cette institution.

Dans le monde des affaires, un signe de changement – à savoir un nouveau logo – est parfois associé à un changement de nom. Un changement de l'image de marque se fait pour indiquer de nouvelles orientations ou pour faire connaître son identité aux gens en dehors l'organisation.

Lorsque ce numéro de la *RCBD* paraîtra, l'*ACBD/CALL* aura déjà tenu une rencontre virtuelle ouverte le 6 avril. Le sujet de discussion : le changement de nom de l'association.

À quoi servira de changer de nom? Notre marque a plus de 50 ans, elle est solide et substantielle, tout comme une bibliothèque juridique bien garnie, bien financée et dotée d'un effectif complet.

Je vous pose les questions suivantes :

- Votre bibliothèque de droit dispose-t-elle d'un effectif complet; avez-vous toutes les ressources humaines nécessaires pour entreprendre de nouvelles activités?
- La collection de votre bibliothèque de droit renferme-t-elle tout ce que vous souhaiteriez avoir, sans avoir sacrifié certains contenus par manque d'espace ou de financement?
- Votre bibliothèque de droit dispose-t-elle du budget nécessaire pour acheter tous les éléments d'information dont vos clients ont besoin?

Je présume que la réponse à toutes ces questions est non.

Le nom de notre association, comme toutes les marques, évoque des pensées et des sentiments pour les personnes qui font partie de notre groupe et, notamment, pour celles qui n'en font pas partie. Notre nom doit inspirer, inclure et aider les personnes que nous souhaitons voir adhérer à notre association.

Inspirer

Les bibliothèques de droit s'effritent, et cette triste tendance se reflète aussi dans le nombre de membres de notre association qui est en baisse. Le fait que le nom de notre association soit lié à un espace physique qui peut être perçu comme étant en déclin peut ne pas inspirer.

Les spécialistes de l'information juridique figurent dans une sphère plus large. Les membres de notre association participent aux plus hauts échelons de la gestion au sein de cabinets d'avocats et de comités, prennent des décisions qui concernent toute l'organisation dans les établissements universitaires et gouvernementaux, et apportent une innovation réelle au sein de leur organisation. Les gestes et les rôles des spécialistes de l'information juridique sont une inspiration pour les gens qui travaillent avec eux.

Cette inspiration devrait se refléter dans le nom de notre organisation.

Inclure

Aucun membre ne devrait se faire demander par un collègue ou supérieur quelle utilité lui apporte notre association en fonction de son nom. Nous devrions souhaiter la bienvenue aux spécialistes de l'information juridique qui ne travaillent pas dans une bibliothèque de droit. Notre nom ne devrait pas dissuader les personnes travaillant dans les domaines de la technologie juridique, de la rédaction législative, de la réforme du droit, de l'accès à la justice, de la recherche juridique et de la rédaction juridique, de l'informatique juridique, de la gestion des connaissances et de l'édition juridique à devenir membres. Notre nom doit être inclusif afin que l'adhésion à notre association soit une démarche intuitive pour toute personne œuvrant dans le domaine de l'information juridique. La diversité des rôles des membres est un facteur clé pour une association professionnelle où les membres de longue date qui prennent leur retraite sont remplacés par des personnes ayant des compétences et une expérience qui ne relèvent pas nécessairement de la bibliothéconomie. Nous devrions accueillir toutes les personnes qui travaillent dans les domaines couvrant tous les aspects de l'information juridique.

Aider

Notre nom devrait aider les spécialistes de l'information juridique à se hisser au premier rang des préoccupations des employeurs. Lorsque j'ai postulé dans une bibliothèque de droit au début de ma carrière, mon futur employeur était ravi que je fasse partie de l'Association canadienne des bibliothèques de droit. Une dizaine ou vingtaine d'années plus tard, il n'est pas rare que j'entende des gens dire qu'ils sont surpris de savoir que les bibliothèques de droit existent toujours. Même si cela est très frustrant, changer le nom de notre association est une voie possible pour mieux nous faire connaître et démontrer que nous sommes là, que nous sommes pertinents et que nous apportons de la valeur à toute organisation qui nous embauche.

J'attends avec impatience le résultat de nos discussions sur le nom que nous devrions nous donner pour inspirer, inclure et aider les membres de notre association.

Restez en santé!



**PRÉSIDENTE
SHAUNNA MIREAU**



III The Law Librarian's Role in Reconciliation

By Alexi Fox¹

ABSTRACT

Reconciliation is an effort that must be taken by all professions if the harm that colonization did to the Indigenous Peoples who reside in what is now Canada is to be truly rectified. For the legal profession, an aspect of reconciliation is recognizing Indigenous law as a legitimate source of law alongside common and civil law. Law librarians have their place in this, as they now have the duty to become familiar with the sources of Indigenous law, and how to find them, if they are to support the legal community in taking this step. To do this requires turning current thinking on its head: customs and traditions need to be embraced as valid sources of law, just as statutes and acts are. While finding these sources will require creativity and ingenuity on the part of the law librarian, it is necessary to do so if they are to take an active role in reconciliation.

SOMMAIRE

La réconciliation est un effort qui doit être entrepris par toutes les professions si l'on veut, que le tort causé par la colonisation aux peuples autochtones qui résident dans ce qui est aujourd'hui le Canada, soit vraiment réparé. Pour la profession juridique, il s'agit notamment de reconnaître le droit autochtone comme une source légitime de droit,

au même titre que la common law et le droit civil. Les bibliothécaires juridiques ont leur place dans ce processus, car ils ont maintenant le devoir de se familiariser avec les sources du droit autochtone et la façon de les trouver, s'ils veulent aider la communauté juridique à franchir cette étape. Pour ce faire, il faut renverser la pensée actuelle : les coutumes et les traditions doivent être considérées comme des sources de droit valables, au même titre que les lois. Trouver ces sources exigera de la créativité et de l'ingéniosité de la part des bibliothécaires juridiques, mais il est nécessaire de le faire s'ils veulent jouer un rôle actif dans la réconciliation.

Introduction

When Europeans came to the Americas, they did more than take land and transfer infectious diseases. An entire way of life was nearly wiped out. While this meant the loss of people, customs, rituals, and knowledge, it also meant the loss of a legal tradition. Indigenous law comes from the lessons imparted “through the teachings and behaviour of knowledgeable and respected individuals and elders.”² While law as most people see it today is state-centralized, Indigenous law is decentralized, with citizens taking responsibility for maintaining legal order.³ Despite the effects of colonization, Canada is still home to many groups

¹ Alexi Fox is a graduate student at the University of Toronto's iSchool, where she is pursuing both a Master of Museum Studies and a Master of Information, with concentrations in library and information science and archives and records management. Having completed an undergraduate degree in archaeology from Trent University, she is always trying to find ways to combine her skills in learning about the past with her current focus of working with information. This article was written for her Legal Literature and Librarianship course.

² John Borrows, “With or Without You: First Nations Law (in Canada)” (1996) 41 McGill LJ 629 at 646.

³ Val Napoleon, “What is Indigenous Law? A Small Discussion” (2016), online (pdf): *University of Victoria* <www.uvic.ca>.

of Indigenous Peoples who have passed down and continue to practice their legal traditions today. In fact, while Canada's system of bijuralism emphasizes common and civil law, it also recognizes that there is a place for Indigenous law and culture.⁴ While there has been growth in literature published regarding the importance of recognizing Indigenous law as law, there is a gap concerning how academics, lawyers, judges, and Indigenous community members can find and use these laws.⁵ There is an even bigger gap in how law libraries and librarians fit into this landscape. This article aims to fill that gap. The first half will answer why, as law librarians, we should care and focus energy on understanding and knowing how to locate sources of Indigenous law. The second half will include a discussion on what these sources are and methods to find them. Law librarians have a part to play in reconciliation, and it involves developing a deeper understanding and awareness of Indigenous legal resources.

Indigenous Law & Aboriginal Law

To begin, a quick distinction in terminology may be useful. This is a discussion of Indigenous law, not Aboriginal law. Aboriginal law is "the collection of Canadian laws relating to Indigenous peoples in Canada and their land/property such as the *Indian Act*, sectoral legislation such as the *First Nations Land Management Act*, and section 718.2(e) of the *Criminal Code of Canada*" as well as "colonial/British laws, constitutional laws, Royal Proclamations, international treaties, and jurisprudence."⁶ While Aboriginal law is about how Canada governs Indigenous Peoples, Indigenous law is about how Indigenous Peoples govern themselves. It is the "laws and legal traditions that govern behaviour within First Nation, Inuit, and Métis communities and their relationships with other nations."⁷ Indigenous laws can influence Aboriginal law (for example, the use of oral history as evidence in court), but they are not the same.

TRC's Calls to Action

So why should law librarians concern themselves with becoming familiar with the methods for locating Indigenous laws? Aside from the fact that an Indigenous person should be able to go into a law library and research their own laws as easily as one would research common or civil law, there are many practical reasons.

Canada's Truth and Reconciliation Commission included a list of Calls to Action and several of these calls are directly related to Indigenous law:

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate

cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, **Indigenous law**, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, **Indigenous law**, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.⁸

Additionally, calls 57, 86, and 92(iii) call for the corporate sector, journalism and media, and public servants to also become knowledgeable in areas of Indigenous knowledge, including Indigenous law.⁹ While these are suggestions, they have been taken up by many groups. The Canadian Bar Association has a list of resolutions aimed at reconciliation, as well as a section on their website with information regarding their commitment, resources, and advocacy for Indigenous Peoples.¹⁰ Law schools, such as those at the University of Victoria and Lakehead University, are offering an increasing number of courses in Indigenous law. Groups are trying to rise to the occasion and meet these Calls to Action. While it is not a Call to Action for law libraries to provide access to these materials, nor for law librarians to become competent in this, it is necessary for them to do so to support these groups in their efforts. These groups cannot fully reach their goal without having greater access to Indigenous legal resources, and the law librarian can work to connect people with the appropriate resources.

Indigenous Law as Part of Canada's Legal System

Overall, there is an increased interest and awareness around Indigenous legal traditions. As such, the law librarian/library is a likely spot to seek this information. Should a student go to the reference librarian at their school's law library for sources on Cree legal traditions, it would behoove the librarian to know where to direct them. When a partner at a law firm needs the creation story of the Anishinaabe for a case on Indigenous rights, the law librarian is likely the one tasked to find it. These information needs are not limited solely to legal professionals, but also to students of Indigenous policy and rights, who come from varying disciplines as far ranging as anthropology, economics, politics, health care, and

⁴ "About Bijuralism" (2015) online: *Department of Justice* <justice.gc.ca>.

⁵ Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11:1 *Indigenous LJ* 1.

⁶ "Justice Partnership and Innovation Program: What Are Indigenous Laws?" (2019) online: *Department of Justice* <justice.gc.ca>.

⁷ *Ibid.*

⁸ "Truth and Reconciliation Commission of Canada: Calls to Action" (2015) at 3, online (pdf): *Truth and Reconciliation Commission of Canada* <http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf> [emphasis added].

⁹ *Ibid.*

¹⁰ John DV Hoyles, "Resolution 10-03-M: Indigenous Legal Traditions" (16 February 2013), online (pdf): *Canada Bar Association* <www.cba.org/Our-Work/Resolutions/Resolutions/2013/Indigenous-Legal-Traditions>; "Truth and Reconciliation" online, *Canadian Bar Association* <www.cba.org/Truth-and-Reconciliation/Home>.

more, and are requesting the help of the law librarian to find Indigenous legal resources.¹¹ Interest and engagement with Indigenous law is increasing in professional, academic, and Indigenous communities in Canada, and these people need sources in order to write assignments, learn, teach, and argue cases.¹² It is the responsibility of law libraries to help all who aim to understand Indigenous law.¹³ Law librarians must be equipped to meet this rising demand as people look to them as a gateway to Indigenous legal sources.

However, Indigenous law did not merely survive in Canada: it is an official part of our legal system. Therefore, not only are these laws still used, but they are part of Canadian law.

Today, Indigenous law is followed by communities and supplemented by common law if there is no customary rule on a matter.¹⁴ However, Indigenous law did not merely survive in Canada: it is an official part of our legal system. Therefore, not only are these laws still used, but they are part of Canadian law as laid out by the Supreme Court of Canada in *Mitchell v Minister of National Revenue*:

Aboriginal interests and customary laws were presumed to survive the assertion of sovereignty, and were absorbed into the common law as rights, unless (1) they were incompatible with the Crown's assertion of sovereignty, (2) they were surrendered voluntarily via the treaty process, or (3) the government extinguished them. ... Barring one of these exceptions, the practices, customs and traditions that defined the various aboriginal societies as distinctive cultures continued as part of the law of Canada.¹⁵

Simply put, Indigenous law is part of Canada's legal system and should be acknowledged as such by all who interact with the law, librarians included.

As Indigenous law is a valid source of Canadian law, law librarians may be called upon at any moment to find examples of it.¹⁶ In *R v Van der Peet*, the court recognized that Aboriginal rights are based on Indigenous legal traditions and customs when they said, " 'Traditional laws' and 'traditional customs' are those things passed down,

and arising, from the pre-existing culture and customs of aboriginal peoples."¹⁷ Therefore, Aboriginal rights, which are included in section 35(1) of the *Constitution Act, 1892*, are dependent on Indigenous traditions and customs, which are, after all, the source of Indigenous law. Should a case that is being researched involve Aboriginal rights, the use of Indigenous legal sources may therefore be necessary.

An example of this is how Indigenous oral histories are accepted evidence in court and have been given the same weight as other types of evidence.¹⁸ In *Delgamuukw v British Columbia*, the court legitimized oral histories as a form of evidence when saying that they must

adapt the laws of evidence so that the aboriginal perspective on their practices, customs and traditions and on their relationship with the land, are given due weight by the courts. In practical terms, this requires the courts to come to terms with the oral histories of aboriginal societies, which, for many aboriginal nations, are the only record of their past.¹⁹

Oral histories are a source of Indigenous law and are accepted as a form of evidence in courts. Thus, oral histories must be accessible via law libraries, and law librarians must know how to locate them, or direct people toward them. This is a skill that would benefit the law librarian in their duty of providing resources for court cases.

For those familiar with Canadian law, Indigenous law requires a different viewpoint. In law school, students are taught that there is a hierarchy of sources.²⁰ The *Constitution Act, 1982* is at the top followed by parliamentary and legislative enactments and common law precedents, then parliamentary privilege, royal prerogative, and reliable published commentaries, with customs and conventions being ranked at the bottom. As legal researchers, we are taught the same thing: start with a reliable secondary source, but only so that it can direct you to the most authoritative sources of acts and jurisprudence. However, researching Indigenous law requires that this be turned on its head, where the customs, conventions, and cultures of a group are the main source. It was colonization that led to the implementation of the British legal tradition in Canada and instilled these hierarchies in the minds of scholars, lawyers, researchers, and courts.²¹ To properly research and understand Indigenous laws, these colonial hierarchies need to be dismissed, and traditions and customs need to be embraced as the main source of law.

¹¹ Renard Strickland et al, "Sources of American Indian Law" (1974) 67:4 Law Libr J 494.

¹² Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions Through Stories" (2016) 61:4 McGill LJ 725.

¹³ Strickland, *supra* note 11.

¹⁴ Jack Woodward, *Native Law* (Toronto: Thomson Reuters, 2019) (loose-leaf release 2020-6), ch 2.

¹⁵ 2001 SCC 33 at para 10.

¹⁶ Borrows, *supra* note 2.

¹⁷ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 11; *R v Van der Peet*, [1996] 2 SCR 507 at para 40, 137 DLR (4th) 289.

¹⁸ Napoleon & Friedland, *supra* note 12 at 735; Susan Barker & Erica Anderson, "Researching Legislative Intent" (Toronto: Irwin Law, 2019).

¹⁹ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 84, 153 DLR (4th) 193.

²⁰ Borrows, *supra* note 17.

²¹ *Ibid.*

Just as common law is shaped by court cases and precedence, Indigenous law is shaped by events and traditions. These “events” come from different sources. John Borrows, Research Chair in Indigenous Law at the University of Victoria, divides Indigenous law into five broad categories: sacred, natural, deliberative, positivistic, and customary. Sacred law consists of laws that come from the creator or ancient teachings, while natural law is from the physical world.²² Deliberative law is formed through group or council deliberation and discussion, and positivistic laws are proclamations and rules made by people in power such as elders, clan mothers, and others.²³ The last category is customary laws, which are customs based on accepted and repeated social patterns. These laws often overlap and interact with one another so that the line between them can become fuzzy.²⁴ Looking at the types of Indigenous law, the kinds of sources become apparent. Law is sung about in songs, recounted in stories, and shared through dances. It is seen in the relationships between people, the land, and institutions. It is coded in language phrases and place names.²⁵ Additionally they can come from tribal records, which may be written, but they can also be objects such as prayer sticks or wampum belts.²⁶ Oral histories and stories are two of the most common sources of Indigenous law. They have both historic and contemporary importance, and are used to teach within Indigenous society.²⁷ Val Napoleon, Director of the Indigenous Law Research Unit at the University of Victoria, describes how stories are intellectual resources that can be used to solve problems and conflicts, and says that “when we think of Indigenous stories we can also think of them as forming a public record, a public precedent, that people had access to and could draw on.”²⁸

Locating Indigenous Law

Places to find these laws vary. Oral histories are passed down orally from one generation to the next but can also be written about in a book or recorded and kept in an archive. Important items may be in museums or held by the Nation to which they belong. There are also elder testimonies, interview transcripts (both recent and historical), and affidavits of elders that contain stories or testimonies of legal principles.²⁹ Interpreting and understanding these documents is not the job of the librarian; rather, it is to support and aid researchers in locating the materials.³⁰ For this, the librarian must know what sources are available and what best suits the needs and experiences of the researcher.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Hadley Friedland & Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015–2016) 1:1 Lakehead LJ 16.

²⁶ Strickland, *supra* note 11.

²⁷ Friedland & Napoleon, *supra* note 25.

²⁸ Indigenous Law Research Unit, “Full Interview: Val Napoleon + Rebecca Johnson (Part 1)” (14 September 2015) at 00h:1m:18s, 00h:5m:50s, online (video): *YouTube* <<https://youtu.be/BazSdIjaN7M>>.

²⁹ Barker & Anderson, *supra* note 18.

³⁰ *Ibid.*

³¹ Friedland, *supra* note 5.

³² *Ibid.*

Hadley Friedland, Assistant Professor at the Faculty of Law, University of Alberta, argues that the resources of Indigenous law can be divided into three categories. The first kind of resources are those that require near complete involvement in the culture to understand, such as specific language terms, dreams, dances, art, beadwork, ceremonies, formal customs, and protocols.³¹ The second is those that need some community connection and include stories, oral traditions, and knowledge from elders. Lastly, there are publicly available resources including written work, descriptive academic accounts, court cases, and trial transcripts. The paradox is that the best and most accurate sources of Indigenous law is the first category, which is also the hardest to access. The last category is the most easily accessible, but it is the most removed from the sources.

This highlights the difficulties surrounding accessibility that a librarian is likely to face, especially when first becoming familiar with Indigenous laws. Unfortunately, it is the case that Indigenous laws are not readily available.³² Instead, they must be interpreted through other sources, something that may be difficult for those without deep cultural knowledge. This may require research on a specific group before being able to find the stories that are relevant to the issue. It also requires a different understanding, that while these stories include animals that speak and supernatural events, there is real meaning behind it. While the librarian’s job is not to interpret, they must be able to understand this and realize that what they might present to the user is not what is normally considered a definitive law, such as a statute would be. The librarian can find stories and accounts that are applicable to certain issues, but beyond that, it is the job of the community or lawyer to interpret them. The librarian’s job is to navigate the issue of accessibility and direct users to the appropriate sources.

Books can be quite useful as a starting place. They provide overviews and analyses of community traditions, and many even include written versions of oral histories or commentary on objects of importance. It is necessary to ensure that these books are reliable, just as it is with books on Canadian law. Canadian lawyer and law librarian Ted Tjaden has a list of criteria that, with the slight adaptations seen here, can be useful for determining whether the source is reliable.

Content: is the book applicable for the Indigenous group in question? A book on the Anishinaabe should not be consulted for oral histories of the Haudenosaunee.

Expertise of the author: is the author experienced enough in Indigenous traditions to write on them? Is it someone from this culture or someone writing as an outsider?

Currency: while old records and accounts of Indigenous traditions can be useful, Indigenous Peoples lifeways were thought of differently throughout history. Does the time period influence biases of the author?

Publisher: are they reliable?³³

Using these criteria, the librarian can narrow down the secondary sources to those that are most reliable. This means that even if they are more removed from the source of law, they are at least of greater accuracy and point to the correct, direct sources of Indigenous law.

There is still the question of how to find both direct and indirect sources of Indigenous law. For the librarian who is used to searching WestlawNext Canada and Lexis Advance Quicklaw for official cases and journal articles, this can be difficult. Of course, these resources can still be used, especially when looking for instances of precedence if it is an issue of Indigenous legal traditions in court. While rare, there are also articles and studies on the laws of specific groups.³⁴ The librarian may enjoy looking for these as they can be found using resources with which they are familiar. It should be noted, though, that like books, these are not the primary source of the law; rather, they are an interpretation of it and the authors' commentary and should be used accordingly.

However, there are other places to search. One should be aware when looking for sources that some may contain outdated terms such as "Indian" or "folklore." Often a product of their time, these resources may still contain relevant information, but more appropriate terms should be used when providing information to members of the public. What follows is a discussion on how to find sources to get the researcher as close to the source of law as possible, with a focus on sources for Canadian Indigenous law. The sources and process of Indigenous law in the United States can vary as they have the Tribal Court system and Tribal codes more readily written down.³⁵ It should also be noted that the boundaries of Canada and the United States are modern nation-state boundaries

and that the traditional land of certain Indigenous groups often extended into both countries.

In her article on researching Native Title, Moloney lists several useful resources.³⁶ While some of these resources are Australia specific, the categories of resources also apply to Canada, including government libraries, academic libraries, and representative bodies.

Academic libraries are one of the best resources when conducting Indigenous legal research. One is the University of Victoria Libraries, which has a very useful site on Indigenous law and Indigenous legal traditions. While browsing through this website, the user can understand what Indigenous law is, find sources for Indigenous law in both Canada and the United States with links to repositories of oral stories, music, and songs, as well as research portals and resources about place names. The "Indigenous Oral Tradition and Traditional Stories by Nation" tab lists nine Nations along with sources for finding stories for specific groups.³⁷ This is a valuable resource for finding stories for specific groups. Another university resource is the iPortal, or the Indigenous Studies Portal Research Tool, run by the University of Saskatchewan,³⁸ which includes links to Indigenous specific materials and a section on law. While other university websites do not have the same wealth of information as the University of Victoria, those with programs in law, Indigenous studies, anthropology, history, and even linguistics and sociology will have materials on subjects related to Indigenous life, culture, and traditions that are applicable to Indigenous law.³⁹

Government and other non-academic libraries are other places to find material accessible to the public. Library and Archives Canada ran a project called *Our Voices, Our Stories: First Nations, Métis and Inuit Stories*. The website of this project contains a variety of information on different types of oral traditions and stories and includes links to specific stories.⁴⁰ While these links are often to published sources, this project was done with Indigenous consultation, lending an air of reliability and authenticity to these sources. Other archival repositories and libraries can also be searched for holdings such as recordings of stories, songs, and historical accounts.

There are also the representative bodies. In a perfect world the librarian would be able to direct the user to an

³³ Ted Tjaden, *Legal Research and Writing*, 4th ed (Toronto: Irwin Law, 2016) at 50–51.

³⁴ Snyder, Napoleon, and Borrows use the case method to analyse Indigenous stories and the law from them in a way to address violence against women. Emily Snyder, Val Napoleon & John Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources" (2015) 48:2 UBC L Rev 593; Napoleon, in her dissertation, lays out concepts of Gitksan Legal traditions: Valerie Ruth Napoleon, *Ayook: Gitksan Legal Order, Law and Legal Theory* (PhD Dissertation, University of Victoria, 2009) [unpublished]; Friedland, *supra* note 25, discusses her casework in analysing Cree law.

³⁵ If you're interested in Indigenous law in the United States, the following resources may be of use: "Tribal Law Gateway" (last visited 19 March 2021), online: *National Indian Law Library* <<https://narf.org/nill/triballaw/index.html>>; "American Indian Law Collection" (last visited 19 March 2021), online: *HeinOnline* <heinonline.org>. Certain American archives also contain recordings of oral histories; for example, "Plateau Peoples' Web Portal" (last visited 19 March 2021), online (database): *Washington State University Libraries* <<https://plateauportal.libraries.wsu.edu>>.

³⁶ Maria Moloney, "Native Title Research: Connection to Country and Other Land Use Issues" (2001) 9:1 Aust LL 23.

³⁷ "Indigenous Law/Indigenous Legal Traditions" (last updated 11 December 2020), online: *University of Victoria Libraries* <<https://libguides.uvic.ca/iluvic>>.

³⁸ "iPortal Indigenous Studies Portal Research Tool" (last visited 19 March 2021), online: *University of Saskatchewan University Library* <<http://iportal.usask.ca>>.

³⁹ Moloney, *supra* note 36.

Indigenous group, where they could hear the oral traditions and experience the laws for themselves. While this is not feasible, the librarian can use websites of these groups as a resource. Many Indigenous groups have websites or Facebook pages that contain information about their people and history. They are often less comprehensive than a book would be, but they can point the librarian in the right direction for finding other sources, as well as provide background on a specific group.

There is no single story or tradition that lays out Indigenous law, just as there is no one case that lays out common law.

Lastly, databases exist that contain primary sources and Indigenous histories, which may be of use when looking for direct sources of law or historical examples. Some require subscriptions or university access, such as Indigenous Peoples of North America by Gale Primary Sources, and American Indian Histories and Cultures.⁴¹ Others are open to the public, including Canadiana, the Hudson's Bay Company Archives, the Métis Nation Historical Online Database, and Our Legacy.⁴²

If one thing should be taken away from this article, it is that there is no single story or tradition that lays out Indigenous law, just as there is no one case that lays out common law. You would not provide a lawyer with only one book when they have a question on divorce matters. You would provide the most relevant case precedents, applicable statutes, and background commentary. The same principle must be applied to Indigenous law, as no one story or object will provide the full picture. Themes and legal principles become apparent when multiple stories are analyzed.⁴³

Conclusion

The aim of this paper was to prove why it is necessary for law libraries to have the same resources of Indigenous law as with common and civil law, as well as demonstrate to librarians the kinds of sources that they will have to interact with should this happen. Interacting with Indigenous legal traditions will require a change in mindset so cultures and stories are regarded as legitimate sources. Locating these sources can be difficult, and this paper provides starting points for locating resources that the librarian can use when beginning this journey.

Conducting Indigenous legal research will involve some creativity. It may mean browsing archives or community repositories, looking for historical documents, or reviewing a case that was published last month. It involves entering into an interpretive, dynamic, and collaborative way of thinking. It may be uncomfortable, and it may be frustrating, but it must be done. Indigenous law is a part of Canadian law, and law librarians need to do their part to make it accessible. We all have a part to play in reconciliation. Napoleon and Friedland perhaps said it best: "as long as Indigenous laws are not accessible or usable, in a crunch, by default, both Indigenous and non-Indigenous people in Canada will turn to state law to resolve disputes. This inaccessibility perpetuates the colonial process of undermining and obscuring Indigenous legal traditions."⁴⁴

⁴⁰ "Our Voices, Our Stories: First Nations, Métis and Inuit Stories" (2010), online: *Library and Archives Canada* <www.collectionscanada.gc.ca/stories/index-e.html>.

⁴¹ "Indigenous Peoples of North America" (last visited 4 February 2021), online: *Gale Primary Sources* <www.gale.com/c/indigenous-peoples-of-north-america>; "American Indian Histories and Cultures" (last visited 4 February 2021), online: *Adam Matthew Digital* <aihc.amdigital.co.uk>.

⁴² "Canadiana" (last visited 4 February 2021), online: *Canadian Research Knowledge Network* <www.canadiana.ca>; "Archives of Manitoba" (last visited 4 February 2021), online: *Government of Manitoba* <www.gov.mb.ca/chc/archives/search.html>; "Métis Nation Historical Online Database" (last visited 4 February 2021), online: *University of Alberta* <apps.srv.ualberta.ca/ns/mnc>; "Our Legacy" (last visited 4 February 2021), online: *Saskatchewan Council for Archives and Archivists* <<http://digital.scaa.sk.ca/ourlegacy>>.

⁴³ Friedland, *supra* note 5.

⁴⁴ Napoleon & Friedland, *supra* note 12 at 741.



III Artificial Intelligence and Access to Justice: A New Frontier for Law Librarians

By Laura Viselli¹

ABSTRACT

Artificial Intelligence (AI) has created new tools for legal research and changed the law librarian's role. In addition, it has been suggested that AI will have a positive effect on Access to Justice (A2J), the lack of which is a significant issue in Canada. Despite this positive viewpoint, biases in systems using AI—be they related to access to resources, user ability, or the inherent biases in data—are likely to perpetuate the digital divide rather than ameliorate it. These biases undermine the ability of the most vulnerable members of society to benefit from A2J tools, despite the fact they are the ones who need them most. Bringing these discussions together demonstrates how law librarians can take their evolving responsibilities and blend their passions for technology and A2J initiatives to ensure these technologies get into the hands of those who are in dire need. Law librarians are among the best suited to stand guard against proponents of AI interventions who will rush to bring products to the market that Canada's most vulnerable cannot access, afford, or understand. Law librarians can facilitate equitable A2J in Canada using AI by being reliable educators, experienced researchers, meticulous consultants, and relentless advocates for those in most need.

SOMMAIRE

L'intelligence artificielle (IA) a créé de nouveaux outils pour la recherche juridique et a modifié le rôle du bibliothécaire juridique. De plus, il a été suggéré que l'IA aura un effet positif sur l'accès à la justice (A2J), dont le manque est un problème important au Canada. Malgré ce point de vue positif, les biais des systèmes utilisant l'IA, qu'ils soient liés à l'accès aux ressources, à la capacité de l'utilisateur ou aux biais inhérents aux données, sont susceptibles de perpétuer le fossé numérique plutôt que de l'améliorer. Ces biais sapent la capacité des membres les plus vulnérables de la société à bénéficier des outils de l'A2J, alors qu'ils sont ceux qui en ont le plus besoin. La réunion de ces discussions montre comment les bibliothécaires juridiques peuvent assumer leurs responsabilités en constante évolution et combiner leurs passions pour la technologie et les initiatives d'accès au droit pour s'assurer que ces technologies se retrouvent entre les mains de ceux qui en ont le plus besoin. Les bibliothécaires juridiques sont parmi les mieux placés pour se tenir à l'écart des partisans des interventions de l'IA qui se précipiteront pour mettre sur le marché des produits auxquels les plus vulnérables du Canada ne peuvent avoir accès, qu'ils ne peuvent se permettre ou qu'ils ne peuvent comprendre. Les bibliothécaires de droit peuvent faciliter l'accès équitable à la justice au Canada (aux outils utilisant l'IA) en étant des éducateurs fiables, des chercheurs expérimentés, des consultants méticuleux et des défenseurs acharnés de ceux qui en ont le plus besoin.

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Introduction

Librarianship is a rapidly changing field. As libraries solidify themselves as community spaces, technology changes the ways information is stored and shared, and librarians respond to these changes by quickly evolving their skillsets. Technological developments are constant and, in conjunction with other employment sectors, there are concerns that some advances, like the use of artificial intelligence, might eliminate responsibilities within the profession entirely. At the same time, technology is being heralded as a solution to humanity's most pressing social issues like climate change, food insecurity, or access to education. It is at this intersection, where technology is being debated as a threat or as a saviour, that this discussion is situated.

Artificial Intelligence & Machine Learning

There are many definitions of artificial intelligence (AI). As a starting point, AI does not refer to the human-like robots found in popular works of science fiction, and there are more nuances in AI than many people recognize. Most people encounter AI every day in a manner described by Roy Balleste and Billie Jo Kaufman as a “‘virtual assistant’ that adds ‘invisible’ enhanced services to the browsing experience.”² Everyday uses of AI include social media channels and music and movie streaming services. The definition provided by Cassandra M. Laskowski in *Law Librarianship in the Age of AI* will serve as the foundation for this discussion, which is that “an *artificial intelligence system* is a machine behaving in ways thought to be intelligent if a human were so behaving.”³ This sentiment is echoed by other authors who describe AI as systems that demonstrate human-like or near human intelligence.⁴ Laskowski continues to say that this definition best encapsulates how users of technology in the legal system will interact with AI.⁵ According to Laskowski, AI in the context of the legal landscape most commonly means that systems are able to follow decision trees to a conclusion, review datasets to derive patterns, and generate new information.⁶ It is this second action of AI systems, reviewing datasets to derive patterns, known as machine learning, where AI and legal services meet most frequently.

Machine learning is distinguished from other branches of AI for its ability to analyze huge quantities of data and derive

patterns from them, thus generating new information.⁷ A point of contention with machine learning revolves around attempts to define what data is, and the definition today soars beyond traditional imaginations of data to include not only text and numbers, but images, URLs, page visits, and more.⁸ In machine learning systems, there are two types: supervised and unsupervised. In the former, the data is labelled, and the system is built with the goal of going into the data, finding those labels, and bringing the relevant data forward.⁹ In the latter, the system is given the same data, but the data is not labelled, and the system is tasked with discerning patterns to bring forward the relevant data.¹⁰

A cursory glance at unsupervised learning systems presents an approach that is free of human error or perspective, but exactly the opposite is true. Data is always collected, categorized, and disseminated within a context, and this is where issues with machine learning arise. For example, there is a rise in companies creating, and judicial systems using, predictive software to assess defendants' likelihood of reoffending, but these systems are built on datasets of criminal proceedings within contexts and institutions that have historically hurt certain groups of people.¹¹

Predictive software is on one end of the scale of tools that use AI in the legal sector. On the other end are myriad tools that are used by law professionals to make their day-to-day work more efficient. There are also tools being used by Canadian citizens as they seek to navigate a variety of legal matters. For lawyers, law librarians, and their firms and institutions, AI is being used through tools like CARA, Lexis Answers, IBM Watson, Ravel, and more.¹² Chris Laut succinctly articulates five categories to summarize how AI is being used in the legal sphere: “contract/document management review, extraction and automation, e-Discovery, legal research and litigation analytics, compliances and regulatory review/monitoring, and administrative analytics and automation.”¹³ In fact, total investment of legal technology in 2018 was more than \$1 billion, and just a year prior was only \$233 million.¹⁴

The influx of cash into the technology, and a large share of that into AI, has resulted in a new landscape for the legal profession. A dominant question regarding AI's increasing presence in the legal sector is the same question being asked in numerous professions across Canada: *Will AI*

² Roy Balleste & Billie Jo Kaufman, “The Future of Law Libraries: Technology in the Age of Information”, in Roy Balleste, Sonia Luna-Lamas & Lisa Smith-Butleri, eds, *Law Librarianship in the Twenty First Century*, 2nd ed (Lanham, MD: Scarecrow Press, 2014) 235 at 243.

³ Cassandra M Laskowski, “AI Defined” in Ellyssa Kroski, ed, *Law Librarianship in the Age of AI* (Chicago: ALA Editions, 2020) 1 at 2 [Laskowski].

⁴ Sam DeBrule, “What is Artificial Intelligence?” (5 April 2017), online: *Machine Learnings* <<https://machinelearnings.co/how-to-prepare-your-career-for-artificial-intelligence-driven-automation-1bb153759b3b/>> [DeBrule]; Karen Hao, “What is Machine Learning?” (17 November 2018), online: *MIT Technology Review* <www.technologyreview.com/s/612437/what-is-machine-learning-we-drew-you-another-flowchart/> [Hao].

⁵ Laskowski, *supra* note 3.

⁶ *Ibid.*

⁷ *Ibid.*; DeBrule, *supra* note 4; Hao, *supra* note 4.

⁸ Hao, *supra* note 4.

⁹ Laskowski, *supra* note 3.

¹⁰ *Ibid.*

¹¹ Julia Angwin et al, “Machine Bias” (23 May 2016), online: *ProPublica* <www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [Angwin et al].

¹² Marlene Gebauer et al, “Up Front: Trending: AI in Legal” (2017) 22:1 AALL Spec 9.

¹³ Chris Laut, “AI Tools and Applications” in Ellyssa Kroski, ed, *Law Librarianship in the Age of AI* (Chicago: ALA Editions, 2020) 41 at 42.

¹⁴ Robert J Ambrogi, “The Future of AI in Law Libraries” in Ellyssa Kroski, ed, *Law Librarianship in the Age of AI* (Chicago: ALA Editions, 2020) 159.

make my job obsolete? In the legal sector, this question is being asked by lawyers, law librarians, researchers, and many others. And if the answer to the first question comes back as no, the next question is certainly: *How will AI change my job?* It is at this question where this discussion takes a narrower turn.

“How Will AI Change My Job?”

A 2017 study by Dana Remus and Frank Levy set to address the first question asked above, but from the perspective of lawyers. They used data from a consulting company that analyzes lawyers’ invoices to create a dataset of the job responsibilities performed by lawyers¹⁵ Their study concluded that while doomsday headlines calling for the end of human lawyers and the introduction of robots may be abundant, the use of technology in law firms has changed *the way* lawyers work but has not seriously jeopardized *if* they will work.¹⁶ Remus and Levy go through more than 10 responsibilities of lawyers and assign a degree to which automation will impact each responsibility. Of the many duties analyzed, one stands prominently for the way it will also impact law librarianship: legal research. The authors use search query examples from Westlaw, Lexis, and other systems to show what results are returned when researchers enter in a keyword or a full question. After discussing the strengths, they reveal that most of these systems are supervised machine learning systems, meaning that human intervention is still required to add labels to cases or secondary materials. They conclude that due to the vast quantity of legal systems and the information therein, there is still a strong need for human researchers to input and label this information and, further, to find authorial cases and define search perimeters.¹⁷ Therefore, the authors conclude that “that there is no strong relationship between computers’ employment effects and positions within a firm.”¹⁸ Again, while this study focuses on the impacts of AI on the responsibilities of lawyers, there is some overlap in their described duties and those of law librarians. At this conclusion, we can address the second question mentioned above—*how will AI change my job?*—from the perspective of law librarians.

At this time, the literature overwhelming says AI will not result in the immediate job loss for law librarian positions, but it will certainly change them. A 2017 article in *AALL Spectrum* by Ed Walters posits law librarians as the information

professionals best suited to manage, evaluate, and monitor the introduction of AI products into their respective law institutions. He writes:

Libraries have a unique institutional advantage. Who will take the time to learn and use AI tools in the firm? Will it be senior partners? Junior associates trying to make their hours? Law professors trying to teach, publish, and grade? Information professionals in the library have the unique background and skills to master these tools.¹⁹

Walters reinforces that AI topics and applications can be overwhelming to institutionalize, and positive results are not always guaranteed. However, he reminds readers that the only way to see if or which AI tools are right for a particular firm, library, or even legal issue, is to test and to personally use them.²⁰ This is where law librarians can play an active role in their institutions. Law librarians are already using AI tools in their everyday work, and as new tools are introduced, they already have a base knowledge of the field, a familiarity with vendors and their products, and the ability to connect those with the needs of their colleagues. They are uniquely situated to become the advocate for AI in their institutions while also playing a significant management role in the adoption of this technology.

Ed Walters posits law librarians as the information professionals best suited to manage, evaluate, and monitor the introduction of AI products into their respective law institutions.

Librarians’ transferable skillset also plays a major role in their ability to manage AI tools. Grace Boivin reiterates this idea by writing that law libraries would be wise to capitalize on this potential by restructuring the work of their librarians in a few ways. First, she suggests that librarians trained in collection development can apply those skills to the evaluation and integration of new digital products.²¹ Second, in order to

manage the evolution to AI, she suggests that librarians, who already teach others on the evolving nature of research and eResource management, can train colleagues on products that use AI.²² Boivin recommends that the first step law librarians take is to recognize themselves as agents of change,²³ but it is highly likely that librarians have a tendency to already see themselves as such.

Therefore, although fears of a dystopian society run by AI robots may persist, there is no need to be afraid of AI tools changing the legal sector so significantly that it results in significant job loss or an unmanageable shift in responsibilities. AI in the legal industry is an exciting new frontier for the legal sector and law librarians, who are best suited to manage this change.

¹⁵ Dana Remus & Frank Levy, “Can Robots Be Lawyers: Computers, Lawyers, and the Practice of Law” (2017) 30:3 Geo J Leg Ethics 501.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid* at 505.

¹⁹ Ed Walters, “Read/Write: Artificial Intelligence in Law Libraries” (2017) 22:1 AALL Spec 21 at 23.

²⁰ *Ibid.*

²¹ Grace Boivin, “Opportunities for Law Librarians” in Ellyssa Kroski, ed, *Law Librarianship in the Age of AI* (Chicago: ALA Editions, 2020) 73.

²² *Ibid.*

²³ *Ibid.*

Access to Justice

In tandem with positive conversations regarding AI tools for legal professionals is the emerging potential for AI to create tools to help vulnerable Canadians navigate the legal system. Access to Justice (A2J) is a concept that encapsulates the idea that every citizen should be able to access the legal system in a fair, unhindered manner. Defining A2J can be difficult, as historically it has meant the notion of one's right to appear in court, but now encompasses providing access to those who have financial, physical, or societal barriers to the legal system and even the overhaul of the justice system.²⁴ Tawnya K. Plumb, an associate law librarian, shares how technology has furthered A2J in the past by making legal resources available through the advent of phone systems, the personal computer, and now a variety of free tools like online forms and chat systems.²⁵ For the purposes of this paper, A2J is defined as initiatives created to reduce the systematic barriers that prevent Canadians from using and understanding the justice system. This paper will not call on AI to overhaul Canada's justice system, but rather will analyze how AI could impact A2J for Canada's vulnerable populations.

The Access to Justice subcommittee reveals that a consistent roadblock in A2J is the lack of trust Canadians have in the justice system.

To speculate on the potential for AI to impact A2J in Canada, we must situate ourselves on barriers to justice in Canada. The Canadian Bar Association (CBA)'s report *Reaching Equal Justice: An Invitation to Envision and Act*,²⁶ prepared by the CBA's Access to Justice subcommittee, provides a comprehensive overview of A2J in Canada. The Access to Justice subcommittee is responsible for the advocacy and implementation of the recommendations in the report.²⁷ The report includes targets to improve A2J in Canada that should be met by 2030. Each goal is broken down into shorter milestones to meet and tangible actions to complete to achieve those goals.²⁸ Analyzing the entire report is beyond the scope of this discussion, but the following will provide a selection of findings relevant to the capacity of AI in A2J initiatives.

In the first section of the report, the Access to Justice subcommittee reveals that a consistent roadblock in A2J is the lack of trust Canadians have in the justice system,²⁹ which was cited as being a result of an interaction with a specific person in a professional capacity in the justice system.³⁰ Further, through the consultations, the authors found that many people believe that the justice system is "not to be trusted, only for people with money, arbitrary, difficult to navigate and inaccessible to ordinary people."³¹ These sentiments reveal that there is an initial roadblock in A2J, based on perception and experience, and whether these sentiments ring true or not is irrelevant, as this reluctance to engage with the justice system could prevent Canadians from attempting to access assistance that is available to them.

A second finding of importance is the cyclical nature of Canadians' involvement with the legal system. The authors reveal that "people who experience one legal problem are much more likely to experience more than one"³² and that "for every additional problem experienced the probability of experiencing more problems increases."³³ What further exacerbates this problem is the finding that legal problems are compounded with issues arising from poverty or health issues and a lack of social or economic wellbeing.³⁴ Ultimately, those who are experiencing disadvantages or issues outside of the justice system are proportionally more likely to become involved in multiple legal issues.

Finally, the report cites leading A2J surveys from the Law Society of Ontario, which found an extensive list of barriers to the justice system, most notably for this report: "[a] lack of knowledge about the legal system and resources available to support individuals, especially knowledge regarding how to access legal aid or affordable legal services and information."³⁵ The complexity of the legal system and its niche vocabularies and policies, in conjunction with volume of information, is cited as one of the most dominant issues in the legal system.³⁶ The report also recalls Dr. Patricia Hughes, who notes that issues of geographic location, race, gender, class, and economic factors are among the many factors that are contributing to a lack of A2J in Canada.³⁷ People who experience disadvantages and or discrimination in society due to these factors face additional repercussions in the legal sector. They are more likely to experience

²⁴ Alberta Civil Liberties Research Centre "What is Access to Justice?" (last visited 4 February 2021), online: *Alberta Civil Liberties Research Centre* <www.aclrc.com/what-is-access-to-justice>.

²⁵ Tawnya K Plumb, "Access to Justice in the Age of AI" in Ellyssa Kroski, ed, *Law Librarianship in the Age of AI* (Chicago: ALA Editions, 2020) 117 [Plumb].

²⁶ "Reaching Equal Justice Report: An Invitation to Envision and Act" (2013), online (pdf): *Canadian Bar Association* <www.cba.org/CBA-Equal-Justice/Resources/Reports-Discussion-Papers> [CBA Report].

²⁷ "Access to Justice Subcommittee" (last visited 4 February 2021) online: *Canadian Bar Association* <www.cba.org/Sections/CBA-Access-to-Justice-Committee>.

²⁸ *Ibid.*

²⁹ *CBA Report*, *supra* note 26.

³⁰ *Ibid.*

³¹ *Ibid* at 16.

³² *Ibid* at 34.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid* at 36.

³⁶ *Ibid.*

³⁷ *Ibid.*

more legal problems, have greater difficulty solving these problems, be unable to solve these problems, and ultimately further their marginalization in society. This cycle can be more detrimental to low-income families, whose legal needs may be pushed to the backburner while they fund other necessities like shelter or healthcare.

In the second section of the report, which focuses on strategies for A2J, the authors briefly discuss technology and its potential. They reveal that the justice system in Canada has been slow to integrate technology, but they believe it to be an integral tool that will improve A2J.³⁸ Although they make no specific mention of AI, its dominance as an emergent technology enables it to be safely presumed to be a part of the aforementioned technology. The Access to Justice subcommittee believes that technology can bring legal tools directly to consumers and automate existing processes thereby creating new levels of efficiency, which will “provide new pathways to justice.”³⁹ Unfortunately the report does not provide specifics, but they do provide the target that “by 2020, all justice sector organizations have plans to harness technology to increase access to justice, ensuring inclusivity by eliminating barriers to underserved populations and avoiding the creation of new barriers.”⁴⁰

AI in Canadian A2J Initiatives

One of the most in-depth studies on the use of AI in A2J was conducted in 2017 by McGill, Bouclin, and Salyzyn, who analyzed 60 legal apps in Canada.⁴¹ The authors found that although private and public entities in Canada are keen to adopt technologies in A2J initiatives, they are overall much slower in their advances than comparable groups in the United States.⁴² They share examples of apps that have been created to determine financial eligibility for legal representation and to determine legal problems, from Legal Aid Ontario and the Halton Community Legal Services, respectively.⁴³ The authors also provide examples from universities in Ontario, where the creation of A2J tools was embedded in coursework, and another example that saw a government partnership for start-up incubators that aim to produce products that increase A2J in Ontario.⁴⁴

The authors categorized the apps available to the Canadian public into three categories: apps that direct people efficiently and quickly to relevant legal services; apps that help people understand what types of legal services they need for particular issues; and, lastly, apps that help reduce legal

issues by offering assistance in new ways for things that traditional law professionals, like lawyers, would not do.⁴⁵ Examples include JusticeTrans, LegalZoom, Thistoo, and LegalSwipe.⁴⁶ The report summarizes the ways in which legal apps are being created to further A2J in Canada, but apps such as the examples above, and more broadly using technology to further A2J, is not a wholly agreed upon solution. In fact, quite the opposite is true, and the issues inherent in AI and technology may be doing more harm than good. Two of the biggest issues are bias and the digital divide.

Bias & the Digital Divide

Bias is predominately referenced in the use of AI in the legal sector with predictive software systems. As previously mentioned, these systems are built on datasets of criminal proceedings within contexts and institutions that have historically hurt marginalized groups.⁴⁷ These types of predictive software have shown to perpetuate stereotypes and incorrectly assess who is more likely to commit more crimes based on race. ProPublica obtained the risk assessment scores for over 7,000 people arrested in 2013 and 2014 and used the algorithm from Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), to see which of those people committed another crime in the two years following their assessment score.⁴⁸ The study found that of the people COMPAS predicted to commit subsequent violence crimes, only 20 per cent actually did.⁴⁹ While COMPAS is software used as a part of sentencing, and not in A2J, this example demonstrates how AI tools can become rife with bias.

The people who stand to benefit the most from technological A2J products are also the ones who are more likely to be unable to access the technology.

Patricia Hughes connects bias to the issues inherent in AI solutions for A2J in her *Background Paper: Developing Guidelines for Using Technology to Advance Access to Justice*, which was discussed during Access to Justice Week in 2016.⁵⁰ Hughes advocates for the deliberate and cautious use of technology in A2J initiatives. She defines technology broadly, but her central thesis, which is paramount to this

³⁸ *Ibid.*

³⁹ *Ibid* at 76.

⁴⁰ *Ibid* at 83.

⁴¹ Jena McGill, Suzanne Bouclin & Amy Salyzyn, “Mobile and Web-based Legal Apps: Opportunities, Risks and Information Gaps” (2017) 15:2 CJLT 229.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Angwin et al, *supra* note 11.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Patricia Hughes, “Background Paper: Developing Guidelines for Using Technology to Advance Access to Justice” (2016) [on file with author].

discussion, is that there is an inherent struggle within advocating for technology to provide A2J to those who need it most. The struggle is that these vulnerable members of society are the same people who are more likely to face roadblocks in using or accessing the infrastructure required to use these technologies.⁵¹ Hughes uses the example of online dispute resolutions (ODR) that can use AI as adjudicators, instead of humans, which supporters say reduces or even eliminates bias.⁵² Hughes insightfully points out that bias exists in the ability for some people to access technology while others cannot.⁵³ The bias is assuming that everyone can access the information infrastructure necessary to use the internet or download an app. The people who stand to benefit the most from technological A2J products are also the ones who are more likely to be unable to access the technology. This is due to a pressing social situation called the digital divide.

The digital divide is the second issue within AI solutions to A2J because there are social, economic, geographical, and cultural reasons why large sections of the Canadian public are unable to access or use information technology. Hughes cites authors Smith and Paterson, who “group factors underlying the digital divide as follows: ‘physical access to the relevant technology; the technical ability to use it; the cultural inclination to do so.’”⁵⁴ Hughes agrees that these new technologies have the capacity to serve disadvantaged groups through the removal of geographic and physical barriers, and even personal and interpersonal barriers, such as confidence or intimidation. But Hughes says that the companies in the legal industry who are creating these technologies approach them most often as an opportunity to reduce costs or increase efficiency and are rarely taking a user-centered approach.⁵⁵ This user-centered approach must have Canada’s most vulnerable users at its forefront. As Hughes told the *Law Times* shortly after Access to Justice Week in response to her background paper, “if you’ve assumed that these technological mechanisms are allowing those people to access whatever they need, these people are going to be left behind even more.”⁵⁶ McGill, Bouclin, and Salyzyn point out that the digital divide also encompasses the cost of these technologies, as not all these technologies in Canada are free. If an app connects a user with a lawyer for advice or consultation, then the app is not likely to be free.⁵⁷ They also call attention to the fact that even if a user

had the money, had the infrastructure such as a computer or smartphone, and had access to the internet, the user still needs a level of knowledge to navigate the information they are reading and know how to use it appropriately.⁵⁸

AI & A2J: Law Librarians’ Role

A partnership between a legal clinic funded by Legal Aid Ontario and 14 public libraries in southern Ontario demonstrates how librarians can become reliable educators in AI solutions to A2J. The report of the partnership summarized the results of the five-year relationship between these libraries who support small urban and rural communities and the legal clinic.⁵⁹ Through focus groups with patrons and consultations with library staff, the researchers found that librarians are “trusted intermediaries”⁶⁰ and that they play a pivotal role in reducing the digital divide in their communities.⁶¹ These findings reinforce that librarians are regarded as sources of trust, and that significant effort must be made to ensure librarians are aware of current and developing AI tools for A2J, as patrons are more willing to go to librarians to seek reference information on legal matters. The readiness of public libraries to provide credible information on legal tools combats a major issue unearthed by the Access to Justice subcommittee, which was the lack of trust Canadians have in the justice system.⁶²

Librarians’ daily interaction with patrons produces a unique in-depth knowledge on the types of legal issues facing Canadians. In conjunction with their skillset as information professionals, they are well suited to become researchers in the field of AI tools in A2J. The previously mentioned partnership also found that patrons in remote communities were hesitant to attend in-person workshops run by volunteer lawyers due to the lack of anonymity.⁶³ Proponents of AI solutions to A2J point to the anonymity inherent within these solutions as a reason why they are a top choice for Canadians living in remote or small communities.⁶⁴

Authors Remus and Levy, and McGill, Bouclin, and Salyzyn all found that there is a lack of research on the existing and developing legal technologies,⁶⁵ especially in Canada.⁶⁶ Furthermore, McGill, Bouclin, and Salyzyn share that a risk of legal apps is the unknown reliability of the information provided within and reveal that questions remain as to what a

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.* at 10.

⁵⁵ *Ibid.*

⁵⁶ Alex Robinson, “Addressing Tech Divide Improves Access to Justice” (2016), online: *Law Times* <www.lawtimesnews.com/news/general/addressing-tech-divide-improves-access-to-justice/262296>.

⁵⁷ *Supra* note 41.

⁵⁸ *Ibid.*

⁵⁹ Michelle Leering, “Librarians & Access to Justice Outreach: Project Report & Resources” (2015), online (pdf): *Community Advocacy and Legal Centre* <<http://communitylegalcentre.ca/wp-content/uploads/2018/03/Librarians-and-access2justice-report.pdf>>.

⁶⁰ *Ibid.* at 2.

⁶¹ *CBA Report*, *supra* note 26.

⁶² *Ibid.*

⁶³ Plumb, *supra* note 25.

⁶⁴ Remus, *supra* note 15; McGill, *supra* note 41.

licensed lawyer's role should be in the development of legal apps to maintain reliability and credibility.⁶⁷ It is reasonable to surmise that lawyers' responsibilities would render them unable to lead such a research project, but librarians, as stewards of AI in the legal sector, could advocate for and become leaders on such areas of research. The future of AI in legal technologies for A2J depend on the production of credible research, and law librarians are equipped to do it.

Law librarians have always been, and will continue to be, advocates for the right to access credible information.

As new technologies for A2J are developed, another key role that law librarians can play is that of consultant. With a unique understanding of their patrons' communities and the larger information needs inherent within A2J, librarians can work in tandem with private and public entities to ensure the AI tools that are being created do not harm vulnerable communities further. This can include working with law schools, as Patricia Hughes points out that courses need to incorporate technological solutions to A2J and their issues.⁶⁸ In the rising field of chat bots, Plumb writes that opportunities for law librarians are abundant. Librarians in academic settings could build partnerships with law schools or their technology classes to build these tools, librarians at law firms can provide insight into the needs of lawyers and clients within new tools, and public librarians could consult the needs of patrons, especially in remote communities.⁶⁹ Having librarians act as consultants is especially important when AI developers are unable to speak to patrons themselves. In any context this is difficult, but especially so given the lack of trust Canadians have in the justice system.⁷⁰ Any organization affiliated with the legal sector would face immediate roadblocks when attempting to meet the people their A2J tools seek to help.

Finally, law librarians have always been, and will continue to be, advocates for the right to access credible information. Technology has changed the field of librarianship, but this core value remains intact. As opportunities arise to become

involved in A2J, law librarians must not hesitate to seize them. Advocacy is not confined to places of employment and can take place within social circles, professional associations, and in writing, all either online, in person, or both.

Conclusion

Law librarians' professional skillsets and understanding of community needs enable them to be relentless advocates. The story of Sarah Lamdan and Yasmin Sokkar Harker, both law librarians, who criticized LexisNexis for participating in the call from the U.S. Immigration and Customs Enforcement agency (ICE) for firms to create software for homeland security screening⁷¹ is a powerful example of such advocacy. Advocacy emerges as the most important role a law librarian can take on in AI solutions in A2J, because the cyclical nature of Canadians' involvement with the legal system is the most pressing problem to tackle. Access to Justice is an issue that involves social, political, and economic sectors and resolution will require the interventions of many groups outside of law. Law librarians are among the best suited to stand guard against eager proponents of AI interventions who will rush to bring products to the market that Canada's most vulnerable cannot access, afford, or understand.

It is not difficult to imagine an individual's reluctance to engage with the legal system, or its related tools, due to innumerable personal issues, all of which require time, money, and energy they may not have. Commentaries on the benefits of AI are abundant, and the growing investment into legal technology and AI shows this trend will continue. Equal, if not more, attention must be invested into understanding the ability these tools have to increase A2J in Canada. Canadians' engagement in the legal system does not exist in a vacuum, and AI interventions in A2J may create further injustice if not carefully controlled. Due to law librarians' dynamic skillset as information professionals, they are best suited to become the reliable educators, experienced researchers, meticulous consultants, and relentless advocates for AI solutions in A2J. As the digital divide increases vulnerable Canadians' inability to access the tools that are in large part being created to serve them, these four roles will become more pressing in law firms, academic institutions, and in the public and private sectors.

⁶⁶ McGill, *supra* note 41.

⁶⁷ *Ibid.*

⁶⁸ Hughes, *supra* note 50.

⁶⁹ Plumb, *supra* note 25.

⁷⁰ CBA Report, *supra* note 26.

⁷¹ Plumb, *supra* note 25.



III Reviews / Recensions

Edited by Elizabeth Bruton and Dominique Garingan

***Abortion and the Law in America: Roe v Wade to the Present.* By Mary Ziegler. New York: Cambridge University Press, 2020. xvii, 312 p. Includes timeline, notes, bibliographic references, and index. ISBN 9781108735599 (softcover) \$33.95.**

On January 22, 1973, the United States Supreme Court handed down the landmark decision [Roe v Wade \(1973\)](#), holding that the United States Constitution protects a woman's right to choose abortion. For almost fifty years, *Roe v Wade* became shorthand for the American abortion debate. In this comprehensive legal history of a vital period, the author illuminates the shift in the terms of debate, from the clash between pro-life and pro-choice rights, to battles about the policy costs and benefits of abortion and the laws restricting it.

Author Mary Ziegler is the Stearns Weaver Miller Professor of Law at Florida State University College of Law. She specializes in the legal history of reproduction, the family, sexuality, and the United States Constitution. She has written extensively about *Roe v Wade* and its influence on American abortion law. Her first book, *After Roe: The Lost History of the Abortion Debate*, was published by Harvard University Press in 2015 and won the 2014 Harvard University Press Thomas J. Wilson Memorial Prize for best first manuscript published by the press in any discipline. Her second book, *Beyond Abortion: Roe v Wade and the Battle for Privacy*, was published by Harvard University Press in 2018.

In this, her third book, Ziegler presents a comprehensive legal history of abortion in America. Using stories from the abortion conflict, Ziegler weaves together numerous threads:

the quest for incremental restrictions; the distinction between rights-, policy-, and consequences-based arguments; LGBTQ+ rights; movements for a constitutional amendment; and the quest to ensure access. Ziegler situates the new reader within the abortion debate and provides new insights for those more familiar with the history.

Throughout this book, Ziegler discusses the importance of politics alongside actors such as special interest groups, religious institutions, and medical professionals and the roles these actors have played and continue to play. The stigma around abortion is a continuing thread. Ziegler investigates the journey from *Roe v Wade*, the constitutional right to abortion; through to the Hyde Amendment, a United States federal ban on abortion coverage for federally funded healthcare recipients, including women enrolled in Medicare and Medicaid; and the introduction of the undue burden standard from the [Planned Parenthood v Casey \(1992\)](#) United States Supreme Court decision. Arguments and actions from both sides of the debate are detailed in this work.

Changes to the makeup of the United States Supreme Court fuel the continued anticipation of a *Roe v Wade* reversal. Ziegler suggests that overturning *Roe v Wade*, seen by many to be inevitable, is unlikely to make the abortion battle less polarized. Ziegler concludes with reflections on how such a reversal will result in substantial legal and social changes and how these changes will be unlikely to resolve existing conflicts. Ziegler suggests what new avenues will likely be examined.

A notable addition to this book is the timeline, which highlights when major United States court decisions were rendered, along with significant news items, judicial appointments,

and special interest group and political activities. The notes section provides extensive references and annotations that enable readers to delve deeper into critical analysis and research. It refers to articles, books, cases, precedents, and further analysis. The index assists the readers in pinpointing specific points of law along with the people or parties involved. Abbreviations of organizations are listed at the beginning of the book with names often repeated in full throughout the text for ease of comprehension.

There is much literature to be read on the topic of abortion. Given its unique place in society, and the passion with which it is debated, there is much benefit to the addition of a readable, thorough legal history. This book is strongly recommended for academic or large public library collections and is a critical title for law libraries.

Those involved in studying divides within social movements will find this a fascinating read. This includes those who are interested in how various legal strategies are undertaken or abandoned and those who are interested in the development of political party interests. Although the book focuses on the United States, parallels can be drawn in debates surrounding abortion rights in other jurisdictions.

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***A Great Revolutionary Wave: Women and the Vote in British Columbia.* By Lara Campbell. Vancouver: UBC Press, 2020. 310 p. Includes photographs, illustrations, table of contents, bibliographic references, and index. ISBN 9780774863223 (hardcover) \$27.95; ISBN 9780774863254 (eBook) \$27.95.**

A Great Revolutionary Wave is a captivating work that explores women in British Columbia and their multifaceted journey toward suffrage and enfranchisement. The book is authored by Dr. Lara Campbell, a professor of gender, sexuality, and women's studies at Simon Fraser University and author of publications in the field of Canadian gender history. This book is an engaging narrative that conveys the challenges faced by women of various racial, social, economic, and political backgrounds while also showing how historical societies responded to their campaigns for equality. Although most of the book concentrates on the stories of British settler suffragists, this account of women's suffrage identifies and reflects on the racial, economic, and gender disparities that endure to this day.

The book is divided into 11 chapters, inclusive of an introduction and conclusion. The book's bibliographic resources consist primarily of monographs, textbooks, academic articles, and news periodicals covering the women's suffrage, gender, and the socio-political climate of Western Canada from the turn of the century to the post-war years. The book provides numerous search tools, such as a comprehensive index. The discursive *Sources and Further Reading* section provides the reader wishing to engage in further research with references and bibliographic notes. It must be noted that the book uses the term "women" in the

cisgender context and does not delve into non-cisgender identities, gender expression, or sexual orientation.

The introduction and first three chapters of the book introduce readers to the global suffrage movement and how women's suffrage manifested in the unique socio-economic and political climate of British Columbia. Characteristics such as multi-culturalism, immigration, Indigenous heritage, British settler heritage, Canada's federal political structure, Eastern trade, and the Western pioneering ethos are cited as factors necessitating a regional look at women's suffrage in the province. The book begins by conveying how philosophies underpinning religion, education, self-determination, and normalized gender roles all contributed to women seeking a voice in the legislative process and greater influence upon laws that governed them. While relegated to domestic life and cited as having intellects and dispositions that were unsuitable for law and politics, early suffragists responded by positioning themselves as integral stakeholders to regulatory processes governing health, food, temperance, property, inheritance, and the education of children, all of which had a direct impact on family wellbeing and the home.

In early chapters, the author discusses how suffragists were compelled to demonstrate acute social perception by treading political lines and remaining cognizant of the social tenets that some women, along with many men and lawmakers, still embraced and sought not to deviate from. Debates on suffrage were peppered with views on morality and religion along with social and political considerations. These multi-layered perceptions contributed to the difficult task of compartmentalizing suffragists' political agendas. The book highlights the way suffragists possessed diverse moral and social opinions regarding the grounds upon which enfranchisement should be sought. Some viewed suffrage as an issue of non-partisanship and humanistic self-determination, while others viewed suffrage as a vehicle for greater representation for their political affiliations.

The author conveys how anti-suffragist sentiments were similarly diverse, with opinions grounded in the disruption of family life and the endangering of public and economic roles typically reserved for men. Positions held by oppositionists were anchored on moral and religious views surrounding the woman's subservient place. Oppositionist claims also included the desexing of women, increased competition for occupations, insufficient education, and the incapability of women to engage in responsible political participation.

In succeeding chapters, the author insightfully contextualizes the issue of suffrage within historical ideas influencing the dominance of upper-class British settlers in Canada over labouring classes as well as Indigenous, Asian, and Black Canadian populations. Examples of how the book delves into the darker and possibly lesser-known matters surrounding the suffrage movement include a view of the grounds for enfranchisement that adhered to systemic negative perceptions and the stigma of superiority held by some British settlers toward immigrant and visible minority populations. Many visible minority groups formed associations and engaged in their own battles for enfranchisement and were not granted suffrage until several decades after the vote was granted to British settler women. The author sympathetically

weaves both shared and contending interests of British settler suffragists and non-British settler groups, as some suffragists presented enfranchisement as a solution for advancing British colonialist agendas amidst ongoing non-British immigrant settlements in Western Canada.

In its final chapters, the book invites readers to critically examine the reverberations of the suffrage movement in British Columbia. Despite commonly held views of women's suffrage being an integral accomplishment in the journey toward gender equality, the author thoughtfully notes the "rhetoric of injustice and unfairness" (p. 121) that persisted throughout the suffrage campaign. The author posits how few British settler suffragists may have understood the issues of racial, gender, and economic inequality as being interconnected and how many may have been incognizant of the disparities embedded in and perpetuated by the women's movement. The book adequately reflects the dearth of historical documentation speaking to the enfranchisement of visible minority women of Indigenous, Black, and Asian descent in British Columbia and suggests how their journeys were often viewed through the lens of race first and the lens of gender second.

A great strength of this book, and one that relates it to present-day social and political movements such as Black Lives Matter, 2SLGBTQ+ alliances, and more inclusive forms of feminism, is found in its intersectional examination of how various forms of inequality operated together and exacerbated each other during the relevant historical timeframe. The book incorporates discussions on historical disenfranchisement, as it affected people of all genders and not just cisgender women.

Finally, the book compellingly argues that the stories of women's suffrage cannot be read in isolation without recognizing their intimate connections with the stories of all people who were discriminated against and denied the vote on account of race, ethnicity, religion, marital status, and other characteristics of their personal, social, and political identities. It concludes by urging readers to reflect on the legacies left behind by early women suffragists with whom we may be more familiar and extend these to many of the unknown women who fought the same battles and carried with them other intersectional barriers to equality, in addition to that of being women. Readers are encouraged to examine present-day implications of the views perpetuated by the women's suffrage movement and the continuing need for inclusivity, equality, and political representation for all people and groups.

This book is recommended for the collections of academic libraries and public-serving law libraries, as well as the personal collections of readers seeking to expand their knowledge on women's suffrage, gender history, politics, and human rights in Canada. The book is part of a series entitled *Women's Suffrage and the Struggle for Democracy*, edited by Dr. Veronica Strong-Boag, and is likely to engage interest in other titles within the series. Although the book centralizes on the women's suffrage movement, it does a commendable job of contextualizing timeless human struggles and victories in the pursuit of social justice and political equality by emphasizing historical perspectives that

continue to underpin contemporary discourses on diversity, inclusion, self-determination, and equality.

REVIEWED BY
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***Artificial Intelligence and the Legal Profession.* By Michael Legg & Felicity Bell. Oxford: Hart Publishing, 2020. xiii, 408 p. Includes bibliographic references and index. ISBN 978-1-50993-181-1 (hardback) US\$90.00; ISBN 978-1-50993-183-5 (PDF) US\$90.00.**

Claims abound in both the popular and professional imagination about how artificial intelligence (AI) will alter the legal profession, from visions of robot lawyers to dismissals of overrated hype. *Artificial Intelligence and the Legal Profession* seeks to strip away these overgeneralizations and get to the root of these claims: What is a lawyer? What is artificial intelligence? And in what roles and tasks does one complement or supplant the other? By focusing analysis on areas of legal practice where AI impact is high, Legg and Bell explore existing dynamics between humans and machines in a way that provides clarity on the current state of AI and the practice of law.

The book comprises three parts. Part 1, *Lawyers and the Evolution of Artificial Intelligence*, explains in an accessible manner the history and current state of AI and contrasts this with a concise explanation of the legal profession that highlights commonalities in an international context.

Part 2, *The Use of Artificial Intelligence in Legal Practice*, depicts six aspects of legal practice where AI has had a major impact and explores how the lawyer fits into the technological landscape for each. These aspects are outcome prediction, litigation, transactional law, dispute resolution, regulatory law, and criminal law. For example, chapter 7 describes how transactional law has been bolstered by AI in areas such as contract review, drafting, and due diligence, and explores the role of the lawyer in relation to these technologies.

Part 3, *The Future of Lawyers and the Legal Profession*, investigates AI's limitations, both those inherent to the technology and those that relate specifically to the legal profession. The section concludes with a discussion of the lawyer's place in the future of legal practice.

Legg and Bell's stated goals in this book are to "inform the legal profession about what AI is and how it is being used in specific areas of legal practice" and also to "consider the role of the lawyer in an AI world" (p. 9). They argue that because "the effects of AI on law will not be unitary," we must disregard sweeping claims about the profession and instead assess impact on a case-by-case basis (p. 38). This may not be a novel argument, but the text's main strength lies in deploying this approach to specific aspects of legal practice in a thorough and consistent manner, which facilitates comparison and illuminates the strengths and limitations of both humans and technology in specific legal tasks.

The strength of this approach may, however, also be a weakness to general readership, as the level of detail in

these sections may prove unappealing to a reader who is less involved in the specific areas of law outlined in Part 2. The level of detail in descriptions of AI may also be a barrier to the text's longevity, as is so often the case with books on emerging technologies.

For a librarian, one disappointment is the absence of discussion about AI legal research tools, which are not explicitly covered beyond general reference to AI-driven information retrieval systems. The authors' decision not to emphasize research tools is perfectly understandable due to their narrow focus on a few aspects of legal practice; however, the concluding chapters make some generalizations about AI's ability to supplant legal research work. These claims come across as unsubstantiated since legal research is not given the same contextualization and analysis that the authors provide for other aspects of the legal profession.

Despite these caveats, this book provides a useful overview of many important aspects of the ongoing conversation about AI and the legal profession. The arguments are clearly laid out with consistency in headings and subheadings that allow the reader to draw comparisons between analyses. Extensive footnotes make it easy to further pursue parts of the discussion of interest to the reader, and a substantial index functions as a helpful finding aid.

Artificial Intelligence and the Legal Profession would be a valuable addition to many different types of libraries, including academic and law firm libraries. Practitioners—especially those who deal with the types of law described in Part 2—may find it valuable for its accessible descriptions of how AI tools work in relation to accomplishing discrete legal tasks and for the authors' practical advice in appraising a tool for use in practice. Those involved in the legal tech industry may also find this book helpful in outlining current challenges and limitations that AI faces in this profession.

REVIEWED BY
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***Fixing Law Schools: From Collapse to the Trump Bump and Beyond.* By Benjamin H. Barton. New York: New York University Press, 2019. 282 p. Includes index. ISBN 9781479866557 (hardcover) \$44.44.**

From its title, I expected *Fixing Law Schools* to be more forward looking than it turned out to be. I should have paid more attention to the book's subtitle, *From Collapse to the Trump Bump¹ and Beyond*, which refers to the past, present, and future of legal education. Barton makes the book's focus clear in the introduction, stating that he will be taking "a deep dive into the remarkable last ten years [which he calls 'the lost decade'] to prove that law schools faced (and still face) exceptional challenges and to argue that more must be learned from the experience" (p. 13). In fact, his discussion of the future of law schools is relegated to the book's conclusion.

The first three chapters explore "relatively recent vintage and some long-standing" (p. 69) challenges facing law schools. Barton tackles two age-old topics of debate, namely teaching students how to "think like a lawyer" rather than teaching the practicalities of practicing law, and the disconnect between the number of students who graduate from law schools each year and the job market for new lawyers over the past three decades. The third challenge he discusses is the potential impact of technology, specifically artificial intelligence, on the practice of law and on law school curriculum.

Barton devotes a third of the book to contemplating why more of the lowest ranked law schools didn't close in the lost decade. He explores this question through three lenses: market pressures, including U.S. News rankings, admission numbers, endowments, job placements and bar passage rates; the American Bar Association's (ABA) accreditation standards and process; and the federal Department of Education's (DOE) regulations. The DOE has significant power over educational institutions as they can remove the school's ability to offer federal student loans that will directly affect enrollment and the school's viability.

The next two chapters focus on other groupings of law schools: those found in the middle of the 200 ranked law schools, and the 20 schools fighting for the Top 14 (T-14) slots. Barton undertook case studies of four middle-ranked law schools (Washington & Lee, Cincinnati, Minnesota, and American) to examine how they reacted to the challenges of the lost decade. His analysis of the behaviour of the T-14 schools revealed continued tuition increases, which were offset by augmented financial aid and sustained good job prospects for their students.

Barton turns to the future of law schools in the book's conclusion. The bulk of the chapter is devoted to what law schools *should do*, with the remainder a realistic portrayal of what they likely *will do*. Barton proposes four actions that law schools should consider taking. His first suggestion is for them to take urgent action in reducing tuition costs and the debt load of their graduates for "political, logistical, and moral reasons" (p. 232). The second is to find smart ways to teach technology. Barton argues that law schools should offer courses on how to work with current AI-based computer programs through e-Discovery and Advanced Legal Research courses, rather than focusing on technologies that may be developed in the future. The third is that law schools should embrace the ABA's transition from regulating their input to regulating them on outputs that allow them to be innovative and unique in their approach. And finally, law schools should embrace new programs, but "don't be evil" (p. 241) in intentions or actions. Many American law schools have created non-JD programs for foreign students that are not closely regulated by the ABA, providing them with unfettered opportunities to use experimental teaching methods, which could later be incorporated into the JD program. Barton's concern, however, is that these programs are created primarily for financial reasons and would not meet the unstated desire of many of the students of ensuring they qualify to practice in the U.S. upon completion of the program.

¹ The Trump Bump" refers to the increase in enrollment numbers at American law schools since former President Donald Trump took office in 2017.

We are then brought back to reality when Barton acknowledges that nothing will likely change at law schools, as everything revolves around enrollment figures. If the enrollment numbers increase, law schools will likely, over time, revert to their pre-2007 behaviours and spending. If the enrollment numbers do not increase, law schools will need to continue reducing their spending, which will not encourage innovation. He concludes that law “schools that face struggles, but not extinction, will likely stay the course as long as they can” (p. 245).

While I was initially disappointed over the focus of the book (which was my own fault), I was not disappointed with the book itself. In fact, my first read-through of *Fixing Law Schools* was fast—under three hours! Barton provided an excellent exploration, in a very readable style, of what American law schools have experienced since the 2007 recession. I highly recommend this book to anyone interested in legal education.

REVIEWED BY
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***Law and Reputation: How the Legal System Shapes Behavior by Producing Information.* By Roy Shapira. Cambridge: Cambridge University Press, 2020. 250 p. Includes bibliographical references and index. ISBN 9781107186507 (hardback) \$102.95; ISBN 9781316637258 (paperback) \$45.95; ISBN 9781316953143 (eBook) US\$32.00.**

Based on author Roy Shapira’s 2014 doctoral thesis from Harvard Law School, *Law and Reputation: How the Legal System Shapes Behavior by Producing Information* examines how Western legal systems affect and develop the reputations of corporations. In Shapira’s opinion, “the legal system provides better information to the public for them to base reputational judgments on” (p. 2).

Shapira investigates this argument and divides his text into three parts: *Theory*, *Applications*, and *Implications*. The introduction provides a detailed overview of the main arguments in Shapira’s eight-chapter discourse. In the text, written in a style similar to a postgraduate thesis, Shapira provides the overview, methodology, and scope of the journey on which the reader will embark. He warns the reader, “If you read only one chapter of this book (a pity), read this one [chapter two], as it contains the core elements of the arguments that appear throughout” (p. 4). Aware of his readers’ interests in reading legal commentary, Shapira straightforwardly navigates and organizes his research for the reader who wants a simple analysis and solution. In his research, Shapira uses triangulation as a research methodology. Triangulation examines an issue from multiple theoretical and empirical angles and assists with minimizing biases.

Aware of the limited publications within the last decade, Shapira provides an introductory approach to correlating how reputation is inherently influenced by the law. Using recent real-life examples of public corporations, Shapira’s research questions why businesses donate to charity for reputational

purposes and whether judicial reviews can check regulators’ behaviours effectively. Summarized succinctly, Shapira provides solutions to these important questions along with the consequences involved.

Shapira states,

For law to affect reputation meaningfully, government agencies need to grant Freedom of Information requests, judges need to resist the temptation to approve the sealing of court documents too easily, and regulators need to resist the temptation to quickly settle enforcement actions without releasing a detailed investigatory report. If they do not, the law’s role as a source of media scrutiny diminishes, and, in turn, the effectiveness of reputational deterrence diminishes as well. A social planner should therefore take into consideration the information-production function of the law when evaluating the desirability of legal institutions. (p. 7–8)

By concisely providing a solution and the consequences involved, Shapira’s style of commentary is an easily comprehensible argument for the reader who is unaware of this legal discourse. Due to the limited literature, Shapira innovatively reminds the reader of how the law subliminally and inherently influences the public reputation of corporations. Through the transparency of information, public legal documents become primary sources of media. Consequently, the legal system’s own reputation as a credible and truthful source of information becomes questioned by the public if such information is not disclosed. The correlation of one’s reputation depending on the law becomes an argument Shapira pioneers in his further investigations.

This publication is recommended for business, information, and marketing legal professionals seeking to comprehend the influences of law upon corporate reputations. Shapira provides considerable research with references to numerous American case law and law review articles to support his arguments. As Shapira suggests, transparency and availability of information affect how the public perceives and curates a reputation. Shapira’s transparent style of writing inherently leads readers to further their own knowledge on what defines reputation and what influences reputational judgment.

REVIEWED BY
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***Managing Privacy in a Connected World.* By Éloïse Gratton & Elisa Hendry. Toronto: LexisNexis Canada, 2020. 488p. Includes bibliographic references and index. ISBN 9780433503651 (softcover) \$190.00.**

Managing Privacy in a Connected World expertly ties together privacy and emerging practice areas with technologies that are shaping our environment. In recent years, privacy law has developed and extended into new and exciting areas like artificial intelligence, blockchain, the Internet of Things, and smart and connected devices. Although this book has a wide scope in considering a variety of existing and developing

legal issues interrelated with privacy, it masterfully captures the essence of each issue.

Several key texts on privacy that address historical contexts and the current state of the law are already available. These include *The Law of Privacy in Canada*² by Barbara Mclsaac, Kris Klein, and Shaun Brown and *Information and Privacy Law in Canada*³ by Barbara von Tigerstrom. What *Managing Privacy in a Connected World* adds to the existing literature is a monograph that combines timely and emerging topics with practitioner insights in one resource. The authors, Éloïse Gratton and Elisa Hendry, are lawyers who practice privacy law and are recognized experts in their field. They serve as co-leaders of the Cybersecurity, Privacy & Data Protection Group of Borden Ladner Gervais LLP.

The book contains 13 chapters, all of which provide the current lay of the land in privacy law. It provides citations to existing law and looks ahead at developing areas like privacy class actions and outsourcing. The book partly serves as a practical guide to managing complex privacy issues. For finding tools, the book contains an index, extensively footnoted material, bibliographic references, and detailed tables of contents, all of which will likely serve researchers well.

The first chapter, entitled “Digital Consent,” serves as the anchor of the book. It defines digital consent and provides an overview of the language of privacy and the practical issues associated with developing privacy policies, transparency, and obtaining consent. The second chapter, entitled “Global Risks and the General Data Protection Regulation,” is a primer on the European Union’s General Data Protection Regulation (GDPR),⁴ which came into effect in May 2018. This chapter discusses the global risks potentially faced by Canadian companies in respect of the GDPR. The third chapter, entitled “Cyber Risks and M&A Transactions,” identifies the types of cyber risks existing in M&A transactions and provides practical strategies for managing those risks.

The fourth chapter, “Privacy Class Actions,” tackles this developing area of Canadian privacy law and identifies various causes of action in civil and common law jurisdictions. The fifth chapter is all about the burgeoning field of artificial intelligence. This chapter defines artificial intelligence and explores the growing connections between artificial intelligence and Canadian privacy laws. The sixth chapter, entitled “Outsourcing,” lays out issues arising from outsourcing the processing and storage of personal information, a common practice for Canadian companies handling consumer data. The seventh chapter provides readers with a practical guide to handling personal information related to business transactions, including relevant legislation in Canadian jurisdictions and advice on compliance.

The eighth chapter is entitled “Online Reputation.” The first half of this chapter provides a detailed discussion of current Canadian laws that protect online reputation while the second half addresses the status and potential of the legal concept of the “right to be forgotten” (RTBF) in Canada. With the GDPR, the European Union serves as a leader in enacting

legislation for the “right to be forgotten,” and the authors consider the potential for implementing RTBF legislation in Canada and the challenges that might arise. The ninth chapter focuses on distributed ledger technologies, more commonly known as blockchain technology. Here, the authors outline the history and character of distributed ledger technologies and consider key privacy issues related to them. The tenth chapter deals with targeted advertising and privacy issues surrounding transparency, consent obligations, restrictions on using sensitive information for targeted advertising, and industry best practices.

The eleventh chapter explores the intersection of privacy and competition law and outlines how the Competition Bureau Canada deals with big data issues arising in the areas of mergers and misleading advertisers. The twelfth chapter outlines regulatory and litigation risks associated with the Internet of Things, which is defined as “a network of physical objects or ‘things’ embedded with electronics, software, sensors, and connectivity to enable objects to collect and exchange data” (p. 395). The final chapter examines the regulation of connected and smart technologies in Canada, the United States, the United Kingdom, and the European Union. This chapter considers the regulation of devices and technologies in more detail. It focuses on three different industries, namely automotive, medical devices, and children’s products. These final chapters convey the ubiquity of technology and the opportunities available to new and experienced practitioners to become subject matter experts in these emerging areas.

Technology will continue to have an impact on business processes and the delivery of legal services. An overarching achievement of this book is its curation and assembly of many different privacy-related topics. This book would be a useful addition to academic libraries and law firm libraries at firms with dedicated privacy and technology practice groups. It is also recommended for professionals working in the areas of privacy, regulatory, compliance, marketing, procurement, and risk management. Readers and researchers will greatly benefit from the expertise of authors who are both practitioners in the field and who can provide expert analysis and practical guidance on these emerging topics. With wide-ranging Canadian content, this book is also useful for practitioners operating in multiple Canadian jurisdictions.

REVIEWED BY
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***Murder in Montague: Frontier Justice and Retribution in Texas.* By Glen Sample Ely. Norman, OK: University of Oklahoma Press, 2020. 166 p. Includes illustrations and map. ISBN 978-0-8061-6709-1 (paperback) \$21.95.**

When I undertook to read this text, describing the murders of a Methodist minister, his wife, and two children, and the subsequent investigation, trials, convictions, and multiple

² Barbara Mclsaac, Kris Klein & Shaun Brown, *The Law of Privacy in Canada* (Toronto: Thomson Reuters Canada, 2004) (loose-leaf).

³ Barbara von Tigerstrom, *Information and Privacy Law in Canada* (Toronto: Irwin Law, 2020).

⁴ Regulation (Eu) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

appeals, and ultimately the granting of hard-fought-for pardons, I assumed that it would provide a number of insights into the system of justice at the relevant time (the 1870s and 1880s) in that part of the world. I also assumed that the investigative actions, trial scenes, and appellate manoeuvres would provide welcome instruction that might be informative today, especially as to human nature. In this belief, I was not wrong, for this slim but well-written and superbly researched volume reveals scores of lessons related to police procedures, advocacy at both the first instance and upon review, and how humankind may best be studied through the lens of psychology.

What I did not expect was the significant guidance the author provides on the contemporary issue of “dying declarations”: their value, limits, and potential for prejudice, to name but three points. And, in addition, we are offered a treasure trove of examples of how an advocate may prove their point by “reversing the proposition” put forward by their adversary.⁵ If a trial lawyer doubts that much may be gained from an analysis of such distant events, I invite them to consider how often this trial technique has been used to their disadvantage and whether dozens of examples might not prove a useful “crash course” on neutralizing it, not to mention gaining the upper hand next time the opportunity arises.

Accordingly, prior to turning the pages of this book for the reader, so to speak, allow me to illustrate what I mean by this “turning the table technique.” The best example I know of “reversing the proposition” surrounds the Berlin Wall. You may recall that the East German officials claimed, without shame or honour, that the construction was motivated by a need to prevent the further massive influx of western Berliners seeking to flee the evils of Capitalism and not, as suggested, to imprison those living under the hammer and sickle.

Drawing attention now to the facts of this case, if any facts were ever established other than multiple murders, the author skillfully weaves a strong narrative setting out the various reports of the killings, including the dying declarations, to then attempt to flip each proposition to demonstrate their relative lack of likelihood. It was said that the accused and the victims were at odds, and yet there was a great deal of evidence of cordial social intercourse, including a wedding ceremony. It was reported that the accused were seen all around the house of the victims earlier, countered by the argument that this was a curious method of preparing to assassinate others, by making one’s presence nearby known to many who were not molested in any way. To the prosecution’s argument that the accused were out of control with bloodlust, the defence suggested that it was a singular thing to run amok, and yet to ignore other family members within easy striking distance.

These are but a few of the many examples of the factual controversies that are analyzed with method and rigour, aided by the passage of time, and affording contemporary counsel with clear illustrations of techniques of impeachment. I could go on to discuss the sound review by the author of the post-charge conduct of the accused, inconsistent with their suggested bloody course of action, but I prefer to

underscore one further exceptional element of this text. This is the detailed and masterful examination of the conduct of the accused after they began their imprisonment. Very little escaped Mr. Ely’s attention, and one must confess that exemplary behaviour for decades is quite telling!

Murder in Montague is of interest, and of assistance, to any person involved in criminal justice, as it makes plain what Shakespeare described in *Coriolanus*, Act 2, Scene III: “And mountainous error be too highly heapt / For truth to o’er-peer.” Trials are often quite controversial as they involve all kinds of emotions. As for improbabilities, Lord Halsbury wrote:

If an advocate were to reject a story because it seemed improbable to him, he would be usurping the office of the judge, by which I mean the judicial function, whether that function is performed by a single man, or by the composite arrangement of judge and jury which finds favour with us. *Very little experience of courts of justice would convince any one that improbable stories are very often true notwithstanding their improbability.*⁶

In the final analysis, if these guilty verdicts were perverse, then this book has much to teach us about injustice and wrongful convictions. If they were just, the decades in prison (and death in one case) surely represent sufficient justice in light of the fact that the ultimate judgment had no doubt been rendered.

REVIEWED BY
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***Terrorism and Counterterrorism in Canada*. Edited by Jez Littlewood, Lorne L. Dawson & Sara K. Thompson. Toronto: University of Toronto Press, 2020. viii, 341 p. Includes bibliographic references, list of figures, list of tables, and index. ISBN 9781487521707 (softcover) \$36.95; ISBN 9781487514129 (eBook) \$36.95.**

Terrorism and Counterterrorism in Canada is a collection of essays prepared by “established and emerging scholars” that examines terrorist threats in Canada, the national response to terrorism, and the impact of terrorism and counterterrorism on Canadian society.

The collection includes an introduction, a conclusion, and 12 topical chapters, which are grouped into three broad themes: *Terrorism*; *Security and Counterterrorism*; and *Society, Terrorism and Counterterrorism*. This review addresses key elements of the various chapters and highlights important caveats pertaining to these important topics.

Part One, *Terrorism*, commences with a brief survey of terrorism in Canada from 1960 to 2015. This is followed by a discussion of Canadian foreign fighters in Syria and Iraq between 2012 and 2016. The next article examines the amorphous, right-wing movement known as Freeman-on-the-Land where the author discusses an anti-government ideology that has taken root in Canada. This part concludes with an interesting survey of jihadism and the significant impact of online media in the promulgation of jihadi propaganda.

⁵ I have written extrajudicially on this subject. See Gilles Renaud, *Advocacy: A Lawyers’ Playbook* (Toronto: Carswell, 2006) at 119–161.

⁶ Showell Rogers, “Ethics of Advocacy” (1899) 15:3 L Q Rev 259 at 265 [emphasis added].

Part Two, *Security and Counterterrorism*, concerns itself with the patterns of counterterrorism that have evolved in Canada. This part includes an assessment of the role of imperialism in Canada's approach to security planning as well as an examination of the possible adverse consequences associated with "hard" versus "soft" governmental responses to terrorist attacks. An insightful analysis and discussion of extremist websites is followed by an effort to explore and explain the concept of "terrorist resourcing" and the process in which money, financial instruments, goods, and services are procured and exchanged between groups for operational means.

Part Three, *Society, Terrorism, and Counterterrorism*, contains four chapters, the first of which delves into the involvement of elected officials in the structures of national intelligence accountability and provides some comparisons to the oversight model extant in the United Kingdom. Some consideration is given to media presentations and their possible distortions of lone-actor violence in Canada, the engagement or disengagement of Canadian Muslims, and the capacity of Canadian police organizations to build effective community relations in support of national security.

The contributions in this collection vary in both quality and relevance. It is apparent that the topic of terrorism is evolving at a bewildering and unpredictable pace. For instance, not many observers, expert or otherwise, would have been able to foresee the destruction, extremism, and violence associated with the attack on the U.S. Capitol building on January 6, 2021. Similarly, few may have predicted that the Canadian government would be the first to include the far-right group the Proud Boys and other associations to its list of terrorist organizations.

Marshall McLuhan taught us many decades ago that we now inhabit a "global village." As such, we must broaden our scope of vision to prepare for the threats associated with terrorists across the entire ideological spectrum and in every corner of the world.

It seems there may be considerable value in providing a more careful analysis of the legislative framework within which Canada's national security and counterterrorism infrastructures operate. It may be somewhat unfair to evaluate this collection of contributions on what they have not included. Nonetheless, this publication would have benefitted from greater attention to the legal dimensions of our federal government's response to global terrorism. This comparative perspective could have been handled in a manner that brought significant insights from across multiple jurisdictions to the surface. While the collective interdisciplinary background of the contributors to this volume is impressive, the collection lacks the presence of any legal scholars, either established or emerging, to provide this kind of substance.

With respect to the contribution entitled "Who's a Terrorist? What's Terrorism? Comparative Media Representations of Lone-Actor Violence in Canada," it is this reviewer's opinion that it is not fruitful to attempt to argue that someone such as Justin Bourque is a terrorist. The authors of this article

may have neglected to consider the thorough and thoughtful independent review of the Moncton shooting by retired RCMP Assistant Commissioner Alphonse MacNeil.⁷ This examination concluded that Bourque had no relationship to any extremist group and appeared to be, quite simply, a troubled individual with a strong anti-government and anti-police *animus*. We may anticipate that the recently activated Mass Casualty Commission may make similar determinations regarding Gabriel Wortman.

It is exceedingly worthwhile to learn about the improvements in data collection pertaining to terrorist events, including the Canadian Incident Database. Careful tracking, cross-referencing, and analysis of this data is essential in tackling and counteracting terrorist actors and activities. In the current climate, it is not useful to place too much reliance on police organizations for building trust and confidence within various communities impacted by terrorism and radical ideologies. While the pressing calls for defunding police organizations are debatable on multiple levels, there is ample evidence that Canadian police organizations are not defined, designed, or deployed in ways that would make them reliable human resources in this context.

This title may be a useful addition to public-serving law libraries. While this collection is certainly educational and enlightening on several fronts pertaining to the Canadian context of terrorism and counterterrorism, it does not rise to the level of being an indispensable acquisition for an academic law library. In these cases, the inter-library loan process would be sufficient for access.

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The Canadian Law of Obligations: Access to Justice.
Edited by Hilary Young. Toronto: LexisNexis Canada, 2020.
xxx, 255 p. Includes illustrations, bibliographic references,
and index. ISBN 9780433505754 (softcover) \$130.00.

The Canadian Law of Obligations: Access to Justice is a compilation of nine scholarly legal papers on the law of obligations and the rights and duties that exist between individuals. The book is a product of the second biennial *Canadian Law of Obligations* conference held at the University of New Brunswick in 2019. This conference brought together legal scholars who presented and discussed how the Canadian law of obligations should evolve, particularly in light of the need for greater access to justice.

The editor, Hilary Young, is an associate professor at the University of New Brunswick's Faculty of Law and one of the authors of the eleventh edition of Feldthusen and Linden's *Canadian Tort Law*. Young served as the organizer of the 2019 conference and undertook the role of selecting and editing the papers in this compilation. Young also features as a co-author of one of the papers in the compilation.

⁷ Alphonse MacNeil, "Independent Review - Moncton Shooting - June 4, 2014" (16 January 2015), online: *Royal Canadian Mounted Police / Gendarmerie royale du Canada* <www.rcmp-grc.gc.ca/en/independent-review-moncton-shooting-june-4-2014>.

The book is divided into three parts and nine chapters. The three parts are *Contract Law*, *Tort Law*, and *Property, Procedure, and Unjust Enrichment*, and each chapter presents one paper from the conference. For finding tools, the book includes a table of contents and a table of cases. Each paper is between 20–35 pages long and includes an abstract, its own table of contents, and extensive footnotes and bibliographic references. The book contains an index for the full collection of papers. The book is the second volume in *The Canadian Law of Obligations* series and follows *The Canadian Law of Obligations: Private Law for the 21st Century and Beyond*, which was published in 2018.

Each paper in the book presents multiple perspectives on seminal and burgeoning topics falling within the law of obligations and puts forth creative considerations for facilitating access to justice such as innovative technologies, the simplification of certain torts, and the rethinking of certain substantive aspects of the law of obligations. An underlying theme throughout the compilation is the idea of pushing boundaries and thinking differently about traditional tort and contract law problems with a lens toward access to justice. Select papers featured in the book address subjects such as unconscionability in clauses used to access adjudicative procedures for disputes; the recent destabilization of the law of unjust enrichment by the Supreme Court of Canada in [Moore v Sweet, 2018 SCC 52](#); and how adverse possession both undermines property law and illuminates its social and communal nature.

A notable contributor to the book is Angela Swan, who served as the conference's keynote speaker. Swan is counsel at Aird and Berlis LLP, adjunct professor at Osgoode Hall Law School at York University, and author of the fourth edition of *Canadian Contract Law* alongside other academic legal works. Swan's paper falls within and introduces the *Contracts* part of the book. In her paper, Swan criticizes the formalistic approach to how law practitioners and students begin thinking about a contract law problem. To a certain extent, the paper is drafted for law students and academics. Swan challenges them to approach contract law problems from the point of view of a practicing solicitor and by using a client-centered approach. Litigation and economics are still very much in the background, but the focus is on using the law for an agreement to achieve a beneficial outcome for both parties.

Young's paper, co-authored with Emily Laidlaw, is one of several papers having a tort focus. It tackles the timely and sensitive topic of creating a new tort for revenge porn as well as developing better laws to fast-track proceedings for the effective de-indexing of websites and the takedowns of non-consensual disclosures of intimate images. Their paper is the result of research funded by the Social Sciences and Humanities Research Council and was written by invitation from the Uniform Law Conference of Canada.

The final paper is authored by Shannon Salter. Salter serves as the chair of the Civil Resolution Tribunal of British Columbia, Canada's first online tribunal that resolves small claims, condominium disputes, and motor vehicle disputes. Salter addresses the access to justice crisis in Canada as requiring a fundamental shift away from the needs of judges and lawyers toward the needs of the public. Her article

includes interviews with community legal advocates in British Columbia on the court fee waiver process and proposes a 10-part, human-centered design framework that may be adopted by courts and tribunals across Canada.

Overall, this book serves as a timely addition to the existing body of literature covering contracts, torts, and restitution. The papers in this volume invite readers to challenge the status quo and re-examine current assumptions on how traditional problems relating to contracts, torts, property, unjust enrichment, and civil procedure are addressed. The papers are each written with the underlying intention of reducing barriers present in people's actual lived experience.

This book would suit as an addition to an academic library. It is likely to assist researchers seeking to contextualize the application of the law of obligations and would be useful for course readings and class discussions in the area. The book would also suit as an addition to public and private law libraries and the collections of practitioners as it offers new and timely perspectives on traditional private law issues.

REVIEWED BY

EMILY NICKERSON

Law & Business Librarian

Diana M. Priestly Law Library, University of Victoria

***Torts and Other Wrongs*. By John Gardner. Oxford: Oxford University Press, 2019. 346 p. Includes index and footnotes. ISBN 9780198852940 (hardcover) \$90.00.**

Torts and Other Wrongs, completed just a few weeks before the author passed away, is a collection of 11 papers written by Gardner on different aspects of the law of torts. Topics range from the broad purpose of tort law to the specific application of the legal standards used by practitioners in tort law every day. Nine of these papers were previously published, while the papers comprising the final two chapters are published for the first time in this book. Gardner engages with the theories of other legal scholars as well as provides his own insight and critiques to the discussion of jurisprudence in the area of tort law. Although Gardner taught in the United States, his references are primarily from tort law in the United Kingdom, along with other common law jurisdictions.

In his examination of the purpose of tort law in chapters 2 and 3, Gardner discusses the legal theories of tort law as the instruments of corrective justice and distributive justice. While Gardner does not see these as mutually exclusive concepts, he does make important distinctions between the two. For example, Gardner identifies the aim of corrective justice as regulating the relationship between two persons or parties to a claim. Distributive justice, however, has the aim of regulating the allocation of resources among society more broadly. Gardner describes the interplay between these two concepts by stating that corrective justice provides the structure of tort law within which distributive justice operates (p. 82). He does not discuss these concepts merely in the theoretical, but grounds them in the practical realities of tort law. For example, he considers the concepts of corrective and distributive justice in terms of apportioning liability among defendants to a claim.

Of particular interest to legal practitioners is Gardner's deep discussion of the origins and evolution of the "reasonable person" in chapters 8 and 9. Gardner argues that the introduction of the "reasonable person" changed the judicial analysis in tort cases from determining a question of law to a question of fact. Gardner opines the concept of the reasonable person was introduced to permit judicial decisions to be made while avoiding the need for judges and the common law to make legal generalizations. He states, "They are used by the law to avoid the need for a legal generalization to be made. And that, so far as the law is concerned, is the genius of the reasonable person as all-purpose standard-setter" (p. 280). Gardner's exploration of this artificial, male-gendered standard-setter, whose actions are always legally justified, gives the legal practitioner a fresh perspective on this fixture of tort law.

Torts and Other Wrongs is an academic discussion of the purpose and theories of tort law and is recommended for all academic law libraries. This book is also recommended for civil litigation lawyers looking to think more deeply about, and obtain a better understanding of, the legal concepts, standards, and principles we work with every day.

REVIEWED BY
JONATHAN HOOPER
Civil Litigation Lawyer
Cox & Palmer
Halifax, Nova Scotia

***Wounded Feelings: Litigating Emotions in Quebec, 1870–1950.* By Eric H. Reiter. Toronto: University of Toronto Press, 2019. xiii, 482 p. Includes illustrations, bibliographic reference, and index. ISBN 9781487506551 (hardcover) \$55.00; ISBN 9781487526986 (softcover) \$44.95.**

Wounded Feelings: Litigating Emotions in Quebec, 1870–1950 examines "moral injury litigation" dealing with affronts to reputation, breaches of promise, compulsory medical examination, and other emotionally charged circumstances governed by private law. This book masterfully blends jurisprudence and legislation, with emphasis on the *Quebec Civil Code*, to elucidate how the subjectivity of emotions has been legally interpreted over time.

The author, Eric H. Reiter, is an associate professor in the Department of History at Concordia University and co-editor of the *Canadian Journal of Law and Society*. He is the winner of the 2020 Canadian Historical Association Prize for the Best Scholarly Book in Canadian History and the 2020 Governor General's History Award for Excellence in Scholarly Research for this title.

Based on jurisprudence from Quebec, the title explores how the courts have responded differently to diverse states of emotional distress in conjunction with norms that have changed over time. The title contains an introduction and eight chapters, inclusive of a conclusion, that reflect on the intersection of social environments, judicial dispositions, and human emotions.

The concept of injure, which is based on Roman law, had long been recognized in Quebec law as a moral injury caused by

insult or defamation. This notion of "wounded honour" serves as a fundamental theme throughout the work. By establishing the existence of moral rights in a courtroom setting, the author exposes and discusses the underlying and interrelated issues of class, gender, race, ethnicity, and cultural values.

This title explores a time wherein the actions of an individual often reflected on the family name. Loss of reputation and family dishonour were paramount considerations at the turn of the century, and acts of public humiliation against an individual, in turn, reflected on the reputation of the family. In one case, a churchwarden who had forced a young adult to stand and kneel throughout a service brought into question the religious devotion of the entire family. By extending the idea of "family" as well as recognizing antisemitic speeches and calls to boycott Jewish businesses, the courts were able to acknowledge the collective injury inflicted upon a group of Quebec families.

Bodily intrusion, a broad category of unwelcome touching, is discussed in its own chapter. This category encompasses unsolicited medical procedures, a jostle by a stranger in the park, unreasonable handling by the police, and the grief over an unauthorized autopsy of a family member. The courts developed a theory of *droits personnels*, or personal rights.

Betrayal, which may result from the emotional investment in a spoiled personal relationship, also receives its own chapter. Here, the author examines cases of broken commitments that include unfulfilled promises to marry, alienation of affection, adultery, and the perceived failure of another person to honour their word.

In the chapter on grief and mourning, the author examines a spectrum of issues encountered by parties surviving the death of a loved one. These include emotional responses to accidental death, arguments over where to bury the deceased's body, and even the selection of appropriate clothing for the funeral. The final chapter on indignation, anger, and fear deals with the mental harm of discrimination on individuals and social groups.

Wounded Feelings: Litigating Emotions in Quebec provides a uniquely Canadian perspective on the interrelated topics of litigation, social history, legal history, and human sentiment. Upon reading, it is clear why this book has been so well received. This book comes highly recommended for academic law libraries, as well as the history collections of academic libraries.

The book provides an invaluable bibliography for those seeking to do further research. One article, "La réparation pécuniaire du dommage moral," written by Armand Dorville,⁸ provides readers with an early historical perspective on the subject. For those seeking other books that explore perspectives on the social history of emotions, I would recommend investigating the works of Natalie Zemon Davis, William Reddy, and Daniel Lord Smail.

REVIEWED BY
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Faculty of Law, Thompson Rivers University

⁸ (1928) 6:9 Can Bar Rev 670.



III Bibliographic Notes / Chronique bibliographique

By Nancy Feeney

Jeremy N Bailenson, “Nonverbal Overload: A Theoretical Argument for the Causes of Zoom Fatigue” (2021) 2:1 Technology, Mind & Behavior, online: <<https://doi.org/10.1037/tmb0000030>>.

In the absence of rigorous studies examining the psychological consequences of spending the better part of the day videoconferencing, Jeremy Bailenson, Thomas More Storke Professor of Communication at Stanford University and founding director of the Stanford’s Virtual Human Interaction Lab, offers a theoretical explanation as to why users are finding the use of the platform is so exhausting. “Zoom fatigue” has entered into the vernacular, due, in part, to the meteoric rise in its usage over the past year; however, Bailenson’s use of the phrase is not intended to be a commentary on the platform itself: “the ubiquity of the software has resulted in genericization, with many using the term ‘Zoom’ as a verb to replace videoconferencing, similar to ‘Googling.’”

Zoom fatigue is basically what it sounds like: the exhaustion caused by feeling the need to be perpetually switched on and to maintain connections through video chat. It can lead to burnout, stress, and the feeling of tedium on the job.

Bailenson focusses on four possible explanations for Zoom fatigue:

- Excessive amounts of close-up eye gaze
- Cognitive load
- Increased self evaluation for staring at video of oneself
- Constraints on physical mobility

Intense eye contact is tiring; furthermore, being stared at while speaking has been shown to cause physiological reactions, such as escalations in blood pressure and respiration rates. During in-person meetings, direct eye contact occurs less frequently, as there are other things to look at or focus on. During Zoom meetings, if eye contact is not maintained, a participant runs the risk of appearing not to be paying attention. Moreover, Bailenson believes the size and placement of faces on the Zoom screen replicate the interpersonal distance reserved for more intimate relationships, rather than professional one. To counteract this stressor, Bailenson recommends avoiding use of the full screen setting.

In virtual meetings, participants are forced to consciously monitor nonverbal behaviour and to send intentionally generated cues to others. Examples include centering oneself in the field of view, nodding in an exaggerated way to signal agreement, or looking directly into the camera (as opposed to the faces on the screen) to try and make direct eye contact when speaking. This constant monitoring of behaviour adds up and leads to what Bailenson calls cognitive overload. One suggestion he offers to alleviate this is to make audio only meetings the default Zoom setting or, alternatively, insist on taking some calls via telephone.

Watching oneself during video conferences is draining; the constant self-evaluation can be stressful. Zoom users see reflections of themselves for periods of time unprecedented in the history of media. And while the specific effects on habitual Zoom users have not been studied in depth, Bailenson believes it is an area ripe for study. A simple fix he recommends is hiding the self-view window.

During Zoom calls, participants are tethered to their keyboards and webcams, limiting mobility. During in-person meetings, people can move around. The loss of this ability can have negative impacts on creativity, performance, and retention. Bailenson suggests investing in an external webcam and keyboard to allow for more workspace flexibility. Alternatively, shutting off the camera and using wireless headphones affords users a greater freedom of movement while participating in calls.

By pointing out the design flaws of Zoom (and by extrapolation, those of other video conferencing platforms), Bailenson hopes to encourage improvement in the interface to better address the fatigue many users are experiencing. Additionally, Bailenson urges more research in the area, as the use of these platforms will likely continue to grow.

Christian Sundquist, “The Future of Law Schools: COVID-19, Technology, and Social Justice” (2020) 53:1 Conn L Rev (online edition), online: *Connecticut Law Review* <www.connecticutlawreview.org/current-online-issue>.

In the spring of 2020, educational institutions abruptly shifted to remote learning in response to the COVID-19 pandemic. American law schools were also concurrently dealing with calls for structural changes to their teaching, offering more courses on racial justice, for example, as a direct response to the murders of George Floyd, Ahmaud Arbery, and Breonna Taylor, among others. Christian Sundquist, Professor of Law and Director of Faculty Research and Scholarship, Albany Law School, believes that law schools should take advantage of the unique confluence of the forces of COVID-19, social justice awareness, and technological change to reform legal education.

Sundquist’s article is divided into three parts. Part I examines the responses taken by law schools to adapt to providing instruction during the pandemic. In the spring of 2020, the American Bar Association lifted existing restrictions on the number of “distance education” courses permissible at accredited law schools. Several schools prepared for continuing fully online courses for the foreseeable future, while a majority are planning hybrid models. The latter option is motivated by a host of reasons, including preserving the in-person benefits of instruction, responding to student desires for residential opportunities, and forestalling a possible decrease in enrollment and tuition revenue. Nevertheless, the specifics of the teaching methodologies to be employed are less than clear, as very little information concerning how faculty will adapt their instruction to an online format has been made available. Sundquist suggests that law school administrators provide support and professional development opportunities for faculty to succeed in transitioning to these new teaching formats.

Part II explores recent demands by students, faculty, and administrators that racial and social justice issues be incorporated in law school curricula and that the number of tenured and tenure-track BIPOC law faculty be increased. The COVID-19 pandemic forced change in the methods of instruction delivery at all educational levels; the confluence of the raised awareness of racial justice and inequality

issues during this time has triggered the demand for a major transformation of legal education. Sundquist details the scope of these mandates and recommends their adoption so law schools can innovate, adapt to changing demographics, and prepare future lawyers to practice in a diverse world.

Part III assesses the impact of technology on legal education, specifically focussing on the disruptive role of artificial intelligence software. While emerging technologies were being introduced into the legal profession prior to the pandemic, COVID-19 accelerated their adoption. Sundquist believes law schools should incorporate these new realities into their programs to better prepare students for practicing in a changed and changing environment.

Sundquist concludes by offering predictions on the future impact of COVID-19 and technological innovation and social justice demands on legal education, and he provides recommendations for law school reform. He believes law schools should take advantage of the opportunities afforded during this unprecedented time to re-evaluate current methodologies and policies and embrace change to transform legal education for the future.

Brad Stulberg, “The Pandemic Is a Marathon. Here’s How to Stay Strong” (20 January 2021), online: *Outside* <www.outsideonline.com/2420136/covid-19-coping-skills-winter>.

Likening the COVID-19 pandemic to an endurance event, performance coach and author Brad Stulberg believes we are currently hitting the proverbial marathon wall: “Right when you can sniff the finish line, usually between mile 20 and 22, the race invariably feels the longest. The same is likely to be true with COVID-19.” He offers six principles to get through this:

- Set appropriate expectations
- Practice tragic optimism
- Keep moving
- Stay connected
- Have a routine, but be flexible
- Don’t get lazy

By following these suggestions, we will be better prepared for “the wall” and will hopefully cross the COVID finish line healthy and strong!

Joyce Vance et al, #SistersInLaw (2021–), online (podcast): <<https://politicon.com/podcast-title/sisters-in-law>>.

Available on a multitude of platforms, this roundtable-style podcast features conversations between four legal experts, Kimberly Atkins (Boston Globe Opinion columnist), Barb McQuade (former U.S. Attorney, Eastern District of Michigan), Joyce White Vance (former U.S. Attorney, Alabama), and Jill Wine-Banks (former Department of Justice attorney and the only woman on the Watergate prosecution team). Recent episodes have canvassed sexism in the legal profession, the history and projected future of the U.S. Senate filibuster, and the political weaponization of words in drafting legislation. New episodes drop every Friday.

Marian Royal, *Masterful Librarian with Marian Royal* (2020–), online (podcast): <<https://masterfullibrarian.com>>.

Marian Royal, a librarian with a career spanning more than 30 years, retired from librarianship after losing her job during the COVID pandemic and transitioned into professional coaching. As a Librarian Success Coach, Marian launched this podcast, available on iTunes and Google Podcasts. Her goal is to help librarians achieve greater relevance, meaning, and impact in a changing world. Episodes include the importance of understanding budgets and funding streams, the benefits of older librarians, and motivating team members. These motivational episodes are short, generally 10 to 15 minutes, and applicable to information professionals working in all sorts of library environments.

CALL/ACBD Research Grant

Perhaps it is time to start thinking about your next research project. The deadline for the 2021 research grant will be March 15, 2021 and the grant will be awarded in May.

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

The maximum amount of the grant award is \$3000.

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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||| 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.

Vancouver Association of Law Libraries (VALL)

VALL continues to work hard to create fun and relevant virtual programming for our members. In December, we had a virtual holiday social with a host-provided trivia game, scavenger hunt, and Christmas sweater contest. We had a new year's coffee morning at the end of January, which gave members a chance to connect and chat. VALL is also soft launching a new Members Forum platform, like an online message board, for members to communicate with each other. We hope to have the Members Forum up and running for the September 2021 VALL year.

SUBMITTED BY

BETH GALBRAITH

President, VALL 2020/2022

You may have noticed that the Local and Regional Updates are a little sparse this issue. Nikki and I had some discussion as to whether we should just ditch this issue's column but eventually decided that it is important for posterity's sake to memorialize the times we are in and the challenges, however minor, that these times present.

I have a recollection that many years ago when I was editing the Toronto Association of Law Libraries Newsletter, we did a survey of members' favourite columns, and the member's update column came up as one of the most popular. While

I don't have any stats for CLLR, I will extrapolate from my experience with the TALL Newsletter to say that, as CALL/ACBD members, we are interested in what is going on in our community. We like to get ideas for our own professional development, updates on people we know, and a broader sense of what is timely and important in legal research.

It is quite understandable, however, that during the pandemic much of this interest has gone by the wayside. Many of us are facing unique challenges, both from our work life and our emotional life. We are faced with being locked down and working from home (often combined with parenting), or not being locked down and having to face the world each day, as well as the toll that the stress of COVID has taken on our lives and families. And, while virtual meetings and get togethers have become the norm, they can be exhausting and are no substitute for in-person connection. Given all this, it is not surprising that we have had few contributions for the column for this issue; in fact, it is gratifying (and perhaps more surprising) that there were contributions at all during the first year of the pandemic. We have done well.

So rather than make this column a (minor) casualty of COVID-19, we have decided to continue, knowing that the vaccine is on the horizon, times will get better, and eventually we will be able to enjoy the professional development and connections that our local and regional associations have to offer.

Susan Barker
Editor Emerita & Associate Editor



III News from Further Afield / Nouvelles de l'étranger

Notes from the U.K.: London Calling

By Jackie Fishleigh*

Hi folks!

First, the Good News...

Since I last wrote, my partner Rob has fully recovered from his very nasty encounter with COVID. He lost his sense of smell for a while, but this has now returned.

Meanwhile, I have been lucky enough to receive my first dose of the Oxford/AstraZeneca vaccine. I am 56 years old and was expecting to have to wait until late summer for this. The surgery I attended has been vaccinating 14,000 per day, with sometimes as few as four no shows each day.

Across the U.K., 80,000 people answered the call for volunteers to work at the vaccination centres. I found the atmosphere was really positive and supportive, rather like our Olympics/Paralympics. The job itself was barely noticeable; it was so quick and painless. I had a few side effects such as chills, aches, and a sore arm. Almost 23 million people had had their first jab here by early March.

Some negative comments by President Macron of France regarding the effectiveness of the Oxford/AstraZeneca vaccine on older people have since been retracted. It was very disappointing to see the Heysel Stadium in Brussels ready to inoculate local people but empty of patients because of his misguided remarks.

Death Toll Hit 100,000 on 26th January

This was a [terrible day](#) for us here in the U.K. Such levels of grief and loss are beyond comprehension.

Why a disaster on this scale happened is obviously a major concern, and there will be an inquiry. Given that the U.K. is the world's third most overcrowded island with some of the globe's busiest airports, we were perhaps likely to be hit hard, but not as hard as this.

Our current national lockdown, which started in early January, will continue to partially paralyse Britain until well into June. I will not be returning to our firm's office before mid-April at the earliest. I last commuted to work on the 15th of December.

Death of Captain Sir Tom Moore from COVID

2nd February was another very sad day when the 100-year-old national fundraising hero [succumbed to COVID](#) in hospital. Parts of his funeral were broadcast on 27 February. Only eight close family members were present. His 20-year-old grandson Tom said he didn't think his grandfather would have wanted a big funeral. "March in, march out ... Pay your respects, then move on, get on with your lives" would have been his approach, he ventured.

Harry & Meghan v the Palace

Oprah Winfrey's two-hour interview with the ex-royals was watched by [over 11 million](#) in the U.K. It was a remarkable piece of television, raising a myriad of difficult issues.

I have one friend who is a self-confessed royalist and another who was ranting about the interview and hated the very thought of it. I am an enthusiastic royal watcher. I wondered how the 120 minutes would be filled and was shocked when I found out about Meghan's suicidal thoughts and the racist comment. Prince William and the Duchess of Cambridge have done a great deal to increase the understanding of mental health issues through their "Heads Together" charity.

A post-interview public poll showed that [80 per cent supported the Queen](#), although younger people were more likely to be critical of the monarchy. Elizabeth II has done a huge amount to support the Commonwealth, which is a beacon of diversity.

Meghan and Harry are generally sliding in popularity in the U.K. but have received a warm reception in California. Keeping chickens seem to be a key factor in being authentic and staying happy. Around here in the South of England we have too many hungry foxes for that sort of lifestyle to succeed!

It remains to be seen what the fallout will be from it all. It is a lot for the two nonagenarians at the top of the "institution" to take on. The Royal Household (i.e., courtiers, etc.) may receive a root and branch review of some sort, I would imagine.

Safety of Women in the Spotlight

The horrific abduction and murder of Sarah Everard near Clapham Common in South London earlier this month has led to an outpouring of concern about male violence toward women generally. In Parliament last week Labour MP Jess Phillips, who is shadow domestic violence minister, [read out a list](#) of 120 women killed by men in the U.K. in the past year, finishing with Sarah's name. She has gone on [to demand urgent changes to the law](#), stating that "women matter less than cars, fly-tipping [illegal dumping] and statues." Heavier prison sentences are required, she said.

A vigil to remember Sarah at the bandstand on the Common was cancelled due to COVID concerns and difficulties in policing it. A large crowd turned up nevertheless, and when numbers became unmanageable and those present refused to leave, [the police stepped](#), in a manner considered by many to be heavy-handed. Images of young women being restrained by police officers, who forced them to lie helplessly on the grass, have generated a very unfortunate impression of police behaviour and led to calls for the resignation of Cressida Dick, Commissioner of the Metropolitan Police.

Positive Thoughts on the Future

Could some good eventually come out of the pandemic?

Early in 2020, I attended an evening with the writer, broadcaster, and all-around national treasure Sandi Toksvig at London's huge—and now firmly shut—South Bank Centre. She emphasised the importance of making the most of being alive, while we have the opportunity. Her own father, a famous Danish newscaster, had suddenly died in his early fifties.

Consider this: the Roaring Twenties occurred after the devastation of the First World War, and later the Swinging

Sixties emerged out of the Big Freeze of 1962–63. This was a period my mother found especially difficult caring for a newborn, when two feet of snow caused chaos in London and two months of mayhem generally in the U.K.

Until next time, with very best wishes,

Jackie

Letter from Australia

By Margaret Hutchison**

Hello from Australia, the land that Facebook unfriended (for a time).

In my last letter, I mentioned a bill, the [Treasury Laws Amendment \(News Media and Digital Platforms Mandatory Bargaining Code\) Bill 2020](#), introduced into Federal Parliament to ensure that Australian media will be able to bargain with Google and Facebook to quickly secure fair payment for news content used on their platforms. This bill was originally proposed as a voluntary code between the tech giants and local media companies to negotiate deals because of an inquiry into digital platforms by the Australian Competition and Consumer Commission.

Google entered negotiations with local media publishers to use their material in the Google News Showcase. It was clear that Google had to, as there were obvious competitors such as Bing, DuckDuckGo, and many other search platforms who would be very happy to increase their footprint if Google pulled out of Australia.

The two major media publishers, Nine Network and News Limited, have both signed with Google for significant amounts, rumoured to be \$30 million in the Nine Network's case.

Facebook, having been very quiet, suddenly announced late on the night of 17 February that it was restricting publishers and people in Australia from sharing or viewing Australian and international news content. It was interesting seeing how my Facebook feed changed. I did miss the links to interesting stories in various media, such as the ABC (Australian Broadcasting Corporation), BBC, and the New York Times. Facebook put a statement on the front page about the new restrictions, as did Google.

However, Facebook also managed to remove the posts for many sites, such as the Bureau of Meteorology, state health departments, the Western Australian opposition leader, charities, and many community groups such as domestic violence support and women's refuges, Cricket Australia, and the Australian Council of Trade Unions. Also hit was Facebook itself. Facebook blamed the errors on their own inexperience, never having done this before, and poor legislative drafting, which did not provide clear guidance on the definition of news content, so they took a wide view. Most sites were restored within 24 hours.

The original [explanatory memorandum](#) defines core news content as content that

can relate directly to matters of public policy and government decision making at any level of government. However, it can also include other matters of public significance, such as reporting on law and order, health, education, environmental issues, science, industrial relations and business.

After negotiations, the treasurer, Josh Frydenberg, [announced](#) that “Facebook has refriended Australia.” The government’s changes to the measure gave both Google and Facebook more time to negotiate with publishers and clarified that they could potentially avoid forced arbitration if they reached agreements and news started reappearing on Facebook feeds.

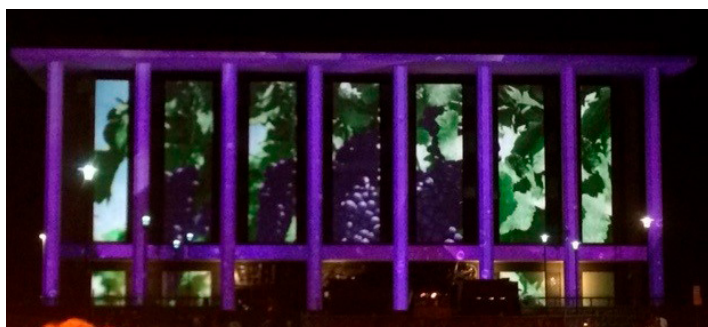
The bill was passed on 25 February and received assent on 2 March. It then came into effect the day after. So, we shall see what happens now. Many countries were closely watching the events in Australia and no doubt other similar pieces of legislation will be introduced worldwide.

Back at work, this week at the High Court of Australia saw the swearing-in of Justice Jacqueline Gleeson. What made the appointment of Justice Gleeson remarkable was that her father, Murray Gleeson, was Chief Justice of the High Court of Australia from 1998 to 2008. This is an Australian first, but not a world first. The first daughter to follow her father as a judge of a superior court was Mary Finlay Geoghegan, who was on the Supreme Court of Ireland from 2017 to 2019. Her father, Thomas Finlay, was Chief Justice of Ireland from 1985 to 1994.

It’s March and time for the Enlighten Festival photos. The first one is all the members of the first parliament projected onto the front of Parliament House.



The second photo is part of the National Library’s [tribute to the International Year of Fruits and Vegetables](#). It shows watercolours of Australian native fruits. Later projections included the wine and tinned fruits industries.



There’s lots of other things going on, such as the culture inside Parliament House, especially for women, which I’ll write about next time. It’s still too fluid at present.

Until next time,

Margaret

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

By Sarah Reis***

Greetings! The weather is starting to warm up around here, and we are heading into our last month of the spring semester. During the 2020–21 academic year, I worked from home and taught my Foreign, Comparative, and International Legal Research class remotely. I am grateful that my law school prioritized the safety of faculty and staff and allowed us to work from home while still ensuring that we could provide necessary support and assistance to students.

I am hoping that by the time this column is published, most Americans and others around the world will have had the opportunity to get the vaccine so we can have a more enjoyable and less anxiety-filled summer than last summer.

U.S. Election

When the year 2020 came to a close, we knew that a new president and vice president would take office in January, but we were not sure which political party would control the U.S. Senate. The two Senate seats in Georgia still needed to be determined through runoff elections, putting Biden’s agenda at stake because Republican members of Congress indicated that they intended obstruct all progressive proposals.

The first week of January 2021 surely ranks among one of the most eventful weeks in U.S. history. On January 5, Georgia held two runoff elections for the U.S. Senate. [Democrats Jon Ossoff and Raphael Warnock won the two Senate seats](#), which means that the U.S. Senate is split with Republicans holding 50 seats and Democrats holding 50 seats (Bernie Sanders and Angus King are independent senators, but caucus with the Democrats). As a result, Vice President Kamala Harris can cast any tie-breaking votes per the U.S. Constitution, which she had to do for the [first time on February 5](#) to pass a COVID relief budget measure. Additionally, this shift in balance of power meant that Mitch McConnell got demoted from Senate Majority Leader to Senate Minority Leader.

On January 6, as the U.S. Congress went through the [formality of counting the electoral votes to confirm the result of the presidential election](#), supporters of Donald Trump, who were bolstered by his remarks at a rally near the White House, started to make their way toward the U.S. Capitol to stop Congress from certifying Biden’s victory. What followed was a horrifying, violent attack in which a mob of pro-Trump supporters overtook the U.S. Capitol Police, breached and entered the Capitol building, and instigated numerous acts of violence and destruction of property both inside and outside of the Capitol building. The [cases related to crimes](#)

[committed as part of this coup attempt](#) were major national security concerns and are being prosecuted by the U.S. Attorney's Office for the District of Columbia.

Donald Trump was [impeached](#) for a second time in January, this time for his role in inciting the mob that stormed the Capitol. However, the Republican-led U.S. Senate delayed the [trial](#) until he was out of office and then tried to use the fact that he was no longer in office as an excuse to dismiss the trial as unconstitutional. The Senate voted to proceed with the impeachment trial, but most Senate Republicans opted to put party over country (and many did not even bother paying attention to the trial), so the [57–43 vote](#) fell short of the two-thirds majority needed to convict Trump.

On January 20, [Joe Biden took the oath of office](#) as the 46th President of the United States and [Kamala Harris was sworn in](#) as our first female, first Black, and first South Asian vice president.

Although the Democratic party may have been victorious in the 2020 presidential election and the U.S. Senate runoff elections in Georgia, there have been an [alarming number of efforts by Republican state legislators](#) to introduce bills to suppress and restrict votes—particularly minority votes—in future elections.

Bar Exam and Diploma Privilege

Several jurisdictions administered a remote bar exam for the first time in October 2020, and many of these jurisdictions saw an increase in the pass rate. California [announced](#) that the pass rate for the October 2020 exam was the highest pass rate since July 2008, with 60.7 percent of all applicants passing the exam and 74.0 percent of first-time applicants passing the exam. New York [announced](#) that 84 percent of applicants passed the October exam compared to 65 percent who passed the in-person test administered in July.

The National Conference of Bar Examiners [announced](#) that it will offer jurisdictions a remote option for the July 2021 bar exam. Jurisdictions have started to [announce](#) their plans for administering the exam.

Last spring and summer, law students, professors, and deans fought for emergency diploma privilege in response to the COVID-19 crisis to allow law school graduates to practice under the supervision of a licensed attorney without taking or passing the bar exam. Certain jurisdictions, such as Louisiana, Oregon, Utah, Washington, and Washington, D.C., [permitted a temporary emergency diploma privilege](#) for law school graduates who met certain requirements, but other jurisdictions denied petitions or requests for emergency diploma privilege. However, these jurisdictions held [remote February 2021](#) bar exams instead of continuing to offer emergency diploma privilege this year.

Law Schools

As law schools around the country work on developing diversity action plans and commitments to improve diversity and inclusion, USC Gould School of Law became the first of the top 25 schools to [announce](#) that it will add a required

course on race and racism in its curriculum. Beginning next academic year with the Class of 2024, JD students will be required to take a course called “Race, Racism and the Law.”

Many law schools postponed OCI from August 2020 (the start of the fall semester) to January 2021 (the start of the spring semester) due to COVID-19. Several law schools, such as [Georgetown](#), [Duke](#), and [NYU](#), have already indicated that their OCI recruiting programs will return to the August/fall timeline this coming academic year.

Law Firms

The National Association for Law Placement (NALP) released its [2020 Report on Diversity in U.S. Law Firms](#), showing some minor improvements in representation, but less than 4 percent of all partners are women of color at firms of all sizes and in most jurisdictions, which remains a significant underrepresentation of women and people of color at the partnership level.

ALA & AALL

Both ALA and AALL announced that their annual conferences will be in virtual format again this year. The [ALA Annual Conference](#) will take place from June 23–29, while the [AALL Virtual Conference](#) will take place from July 19–23.

Legislation Affecting Libraries

As part of the [America Rescue Plan Act of 2021](#) (COVID relief package), which was signed into law by President Biden in mid-March, [\\$200 million in funding was allocated to the Institute of Museum and Library Services](#). IMLS plans to use the funds to support State Library Administrative Agencies in every state and territory and to offer grants to allow museums, libraries, and Native American and Native Hawaiian communities to continue to respond to the COVID-19 emergency.

SCOTUS

In the aftermath of the election, former President Donald Trump refused to accept that he had lost the election and filed various lawsuits with baseless allegations of voter fraud in an attempt to overturn the election results. In February and March, the U.S. Supreme Court formally brought an end to these lingering election-related cases, declining to take up the last of Trump's appeals, including petitions relating to [the extension of the deadline for mail-in ballots in Pennsylvania](#) and a petition asking the court to [throw out more than 220,000 of absentee ballots from Milwaukee and Dane counties](#) (Democratic counties in the state of Wisconsin).

In January, the Supreme Court [dismissed](#) two cases questioning whether Trump illegally profited off his presidency in violation of the U.S. Constitution's Emoluments Clause, indicating that these cases are now moot because Trump is no longer in office. In February, the Supreme Court [denied Trump's attempt to conceal his taxes and financial records](#) from the Manhattan District Attorney and grand jury, so they can obtain his tax filings and other financial records in connection with state investigations.

The Supreme Court's [Pereida v Wilkinson opinion](#) makes it harder for undocumented immigrants who have been convicted of a crime to avoid deportation because undocumented immigrants must bear the burden of proving all elements of eligibility for relief. The 5–3 ruling was along party lines, with Justice Gorsuch's majority opinion joined by Chief Justice Roberts and Justices Thomas, Alito, and Kavanaugh, and with Justice Breyer's dissent joined by Justices Kagan and Sotomayor. Justice Barrett did not take part in consideration or decision of this case.

Justice Barrett, who Senate Republicans had hypocritically rushed to quickly confirm immediately following the death of Justice Ginsburg to solidify a strong conservative majority on the Supreme Court for years to come, [issued her first majority opinion](#) in early March. The decision limits the ability of environmental groups to use FOIA to obtain government documents.

Federal Courts

The Administrative Office of the U.S. Courts [announced](#) that 13 federal district courts will begin livestreaming courtroom audio in selected civil proceedings over the next two years as part of a pilot program. The 13 courts participating in this pilot program include the districts of Northern California, Southern Florida, Northern Georgia, Kansas, Montana, Eastern Missouri, Nevada, Northern New York, Western Pennsylvania, Rhode Island, Eastern Tennessee, Eastern Washington, and Washington, D.C. Real-time livestreams for these selected proceedings are available on the courts' YouTube channel. This pilot program temporarily suspends the [prohibition](#) against "broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto" in federal criminal and civil cases.

U.S. Legal Research

The Library of Congress completed a large-scale, long-term project to [digitize the papers of 23 early presidents](#). The four newly digitized collections include the [Papers of President Benjamin Harrison \(1833–1901\)](#), [Papers of President William Howard Taft \(1857–1930\)](#), [Papers of President Grover Cleveland \(1837–1908\)](#), and [Papers of President Calvin Coolidge \(1872–1933\)](#).

[Fastcase](#) and [Casemaker](#), which are two cost-effective alternatives to Westlaw and Lexis for conducting U.S. legal research, [announced](#) a merger. Every state bar association provides access to either Fastcase or Casemaker to its members at low or no cost, so it will be interesting to see how this merger affects the market for legal research platforms.

[Data.gov](#) launched a new version of the Data.gov catalog in early February, which should improve the process of automatically updating the website with recent datasets. Data.gov provides access to more than 280,000 datasets from the U.S. government on topics ranging from climate to health to education.

[Congress.gov expanded its access to the United States Statutes at Large](#) to include the text of laws from 1973–1994. The U.S. Statutes at Large contains the laws passed by the U.S. Congress in chronological order. Consequently, coverage of full-text legislation on Congress.gov is now available from 1973 to present (93rd Congress to present).

Access to federal court dockets and court filings have always been relatively easy to obtain electronically—assuming the dockets and filings are from the past twenty years or so—using [PACER \(Public Access to Court Electronic Records\)](#) or subscription services that pull from [PACER such as Bloomberg Law: Dockets](#). PACER [charges a fee](#) of 10 cents per page to view a document with a \$3 maximum cap on all documents, while searches, reports, and transcripts of court proceedings incur charges without maximum fees. [Court Listener's RECAP Archive](#) is a nice free alternative to check prior to attempting to retrieve documents on PACER. On the other hand, online access to state court dockets and filings is much more limited: some states do not have any dockets and court filings available online, while other states may only have the dockets available online. Maine courts are transitioning to online records with its [Maine eCourts system](#), which should improve access to this state's court dockets and filings, but the courts charge \$1 per page to view a document online with no cap on the cost for accessing a single document. The Maine Judicial Branch plans to use the fees to pay for their new electronic case management system, but the fees may create some barriers to public access for these court records.

Miscellaneous News Affecting Libraries

A [class action lawsuit](#) filed in the U.S. District Court for the Southern District of New York alleges that Amazon and the "Big Five" publishers (Penguin Random House, Hachette, HarperCollins, Macmillan, and Simon & Schuster) colluded to fix eBook prices in violation of federal antitrust law. The law firm that filed this new lawsuit had filed a similar antitrust lawsuit against Apple and the Big Five publishers back in 2011, in which the five book publishers [settled their claims for \\$166 million](#) and [Apple lost at trial and had to refund \\$400 million to consumers](#).

Despite this year getting off to an eventful start, I am optimistic that the United States will start rebuilding its relationships with allies around the world, learn from other countries so we can continue to improve our response to COVID-19, and contribute to global COVID-19 vaccine efforts to help other countries in need. Thank you to our friends in the north and elsewhere for sticking with us over the past four years and welcoming us back on the world stage!

Until next time!

Sarah

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Canadian Law Library Review/Revue canadienne des bibliothèques de droit, the official publication of the Canadian Association of Law Libraries, publishes news, developments, articles, reports, and reviews of interest to its members. Surveys and statistical reviews prepared by the Association's Committees and Special Interest Groups, regional items and the proceedings of the Association's annual conference are also published.

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

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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.

Tous les membres de l'ACBD ainsi que toute autre personne intéressée à la bibliothéconomie et faisant partie du monde juridique sont invités à soumettre des articles. La revue sollicite également des commentaires bibliographiques d'ouvrages de nature juridique et plus particulièrement de publications officielles et de documents peu diffusés. Les contributions peuvent être soumises en français ou en anglais. Les articles de fond doivent être envoyés à la personne responsable des recensions. Avant d'être publiés, tous les textes seront revus par des membres du Comité de rédaction ou par des spécialistes de l'extérieur. La décision finale de publier relève toutefois du Comité de rédaction. Les articles pourront, sur demande, faire l'objet d'un examen indépendant par des pairs. La priorité sera accordée aux textes se rapportant à la bibliothéconomie juridique. Pour obtenir des exemplaires du Protocole de rédaction, visitez le site web de l'ACBD au <http://www.callacbd.ca>.

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