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**CANADIAN LAW LIBRARY REVIEW**

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BIBLIOTHÈQUES DE DROIT**



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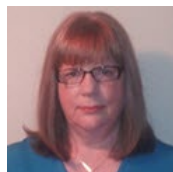
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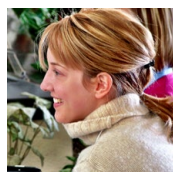
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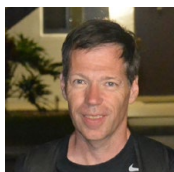
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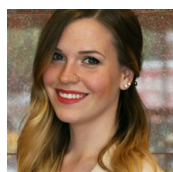
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See edition, and  
edition.  
**editor**, n. [1. édito  
& -or. 1. One who  
for publication; one who  
edition. 2. One who d  
the publication of a new  
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### III From the Editor / De la rédactrice

I have recently been binge-watching the addictive TV show “Orange is the New Black” on Netflix. As television goes, it is a great show with complex characters, interesting plot lines and some excellent acting. After I had reached the fourth season’s cliff-hanging ending, my curiosity about the fate of the characters was sufficiently piqued that I decided that I should read the book on which the TV series was based: Piper Kerman’s 2010 memoir *Orange Is the New Black: My Year in a Women’s Prison*. I was surprised and yet gratified to see that the book is vastly different from the show. The TV show is a fictionalized version of Kerman’s time in prison with a great deal of sensationalism and dramatic licence thrown in for entertainment value. In contrast, Kerman’s book is a very thoughtful examination of life in prison and the social constructs that the prison environment creates. To provide some background, Piper Kerman was jailed for money laundering, that is, for carrying cash across borders in the service of a West-African drug kingpin. For Kerman, as a young woman, this was an adventure and her crime was essentially victimless – until, that is, she came face-to-face with women in jail whose lives had been so profoundly affected by drug use and addiction. At that point she finally realized the human consequences of her “victimless” adventure. She notes that had she not come in contact with these women, she may never have realized the damage she had done and been truly repentant. One of the consequences of her incarceration is that she has become a vocal supporter of restorative justice. To quote *Orange is the New Black*:

Our current criminal justice system has no provision for restorative justice, in which an offender confronts

the damage they have done and tries to make it right for the people they have harmed. Instead, our system of “corrections” is about arm’s-length revenge and retribution, all day and all night.

So what does this all have to do with the CLLR? Well, synchronicity being what it is, my reading *Orange is the New Black* ties in well with our first feature article, Amy Kaufman’s “Restorative Justice: New Ways to Look at Old Ideas.” In this article Amy describes the lessons she learned from the 2015 National Restorative Justice Symposium in Quebec City that she attended with the support of CALL’s James D Lang Memorial Scholarship, as well as her own research on the subject. I hope you will enjoy reading it. Restorative justice is an important idea which deserves further study and understanding and Amy’s article is a good place from which to start that journey.

Attesting to how well-rounded the CLLR’s content is, our other feature is more practical, focussing on the use of social media by law firm librarians. Susannah Tredwell’s “Private Law Libraries and Social Media,” highlights how law firm libraries use social media for “communication, research, and current awareness.” Susan Jones’s Bibliographic Notes also looks at another aspect of making a connection electronically as she excellently summarizes a recent article entitled, “How to Smile When They Can’t See Your Face: Rhetorical Listening Strategies for IM and SMS Reference.”

And finally, don’t forget to read our *News from Further Afield* section. Our wonderful overseas contributors chime in on a couple of subjects close to our own hearts, Uber and

AirBnB for example, as well as BREXIT and an election or two. It always amazes me how many similarities Canadians have to our common-law cousins. These columns are a good way for us to keep informed and to remember what is happening in other jurisdictions if we are required to do any comparative or foreign law research.

As December and the New Year approaches, I would like to take the opportunity to wish you all a very happy and safe holiday season. Be well and enjoy!

**EDITOR  
SUSAN BARKER**



Dernièrement, j'ai regardé en rafale sur Netflix des épisodes de la série télévisée si envoûtante « Orange is the New Black ». Dans le domaine télévisuel, il s'agit d'une émission fantastique avec des personnages complexes, des intrigues captivantes et un excellent jeu d'acteurs. Après avoir visionné la finale époustouflante de la quatrième saison, j'étais à un tel point curieuse de connaître le destin des personnages qu'il me fallait absolument lire le livre autobiographique sur lequel est basée la série : *Orange Is the New Black: My Year in a Women's Prison*, de Piper Kerman, sorti en 2010. J'ai été surprise, et pourtant heureuse de constater que le livre est très différent de l'émission. La série présente une version romancée de la période que Piper Kerman a passée en prison, doublée de sensationnalisme et d'une licence dramatique à des fins de divertissement. En revanche, le livre est plutôt une étude très réfléchie de la vie derrière les barreaux et des constructions sociales que crée le milieu carcéral. Pour vous mettre en contexte, Piper Kerman a obtenu une peine d'emprisonnement pour avoir fait du blanchiment d'argent ou, plus exactement, pour avoir transporté de l'argent outre-frontière pour un baron de la drogue d'Afrique de l'Ouest. À ses yeux de jeune femme, ce n'était là qu'une aventure, et le crime qu'elle avait commis n'avait fait aucune victime – ou plutôt, c'est ce qu'elle croyait jusqu'à ce qu'elle soit confrontée à des femmes en prison dont la vie a été profondément marquée par la consommation de drogues et la toxicomanie. C'est alors qu'elle s'est finalement rendu compte des conséquences humaines de son aventure, qui n'avait soi disant fait aucune victime. Comme elle le dit, si elle n'avait jamais rencontré ces femmes, elle n'aurait probablement jamais pris conscience du tort qu'elle a causé ni eu de véritable repentir. L'une des conséquences de son incarcération, c'est qu'elle en est venue à plaider activement en faveur de la justice réparatrice. Pour reprendre un passage de *Orange is the New Black* :

Mais notre système judiciaire actuel ne fait aucune place à la justice de réparation, dans laquelle un

délinquant est confronté au mal qu'il a causé et s'efforce de réparer. Au lieu de quoi, nous avons un système de "correction" qui repose sur la vengeance à distance et le châtiement à toute heure du jour et de la nuit.

Quel est le lien avec la *Revue canadienne des bibliothèques de droit*, me demandez vous? Eh bien, la synchronicité étant ce qu'elle est, ma lecture d'*Orange is the New Black* cadre bien avec notre premier article de fond portant sur la justice réparatrice (« *Restorative Justice: New Ways to Look at Old Ideas* ») d'Amy Kaufman. Dans cet article, Amy décrit les leçons qu'elle a tirées du Symposium national sur la justice réparatrice 2015, qui a eu lieu à Québec et auquel elle a assisté grâce à la Bourse d'études à la mémoire de James D. Lang offerte par l'ACBD, et ses propres recherches sur le sujet. J'espère que vous aimerez votre lecture. La justice réparatrice est une idée importante qui mérite qu'on l'étudie davantage et qu'on la comprenne mieux, et l'article d'Amy constitue un bon point de départ en ce sens.

Comme preuve que le contenu de la Revue est bien équilibré, l'autre article de fond est plus pragmatique et porte essentiellement sur l'utilisation des médias sociaux par les bibliothécaires des cabinets d'avocats. En effet, dans l'article « *Private Law Libraries and Social Media* », Susannah Tredwell met en lumière la façon dont les bibliothèques de droit privées se servent des médias sociaux pour la communication, la recherche et les efforts actuels de sensibilisation. Dans sa *Chronique bibliographique*, Susan Jones explore un autre aspect des interactions électroniques en résumant un article récent intitulé « *How to Smile When They Can't See Your Face: Rhetorical Listening Strategies for IM and SMS Reference* ».

Et, finalement, n'oubliez pas de lire notre rubrique *Nouvelles de l'étranger*. Nos fabuleux collaborateurs à l'étranger abordent quelques sujets auxquels nous nous intéressons de près, dont Uber et Airbnb, le Brexit et une élection ou deux. Je suis toujours épatée de constater le nombre de similitudes qui existent entre les Canadiens et nos cousins de common law. Ces reportages sont un bon moyen de nous tenir informés et de ne pas oublier ce qui se passe ailleurs dans le monde, si jamais nous devons faire des recherches comparatives ou sur le droit étranger.

Le mois de décembre et le Nouvel An arrivent à grands pas, et j'aimerais profiter de l'occasion pour vous souhaiter à tous de très joyeuses fêtes. Soyez prudents, profitez-en bien et amusez-vous!

**RÉDACTRICE  
SUSAN BARKER**



<sup>1</sup> Piper Kerman, *Orange is the New Black: My Year in a Women's Prison*, New York, Spiegel & Grau, 2010.

# Call for Submissions

*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>>.

The Association is unable to make any payment for contributions. Authors will receive one complimentary copy of their article upon publication. The Canadian Association of Law Libraries does not assume any responsibility for the statements advanced by the contributors to, and the advertisers in, the Association's publications. Editorial views do not necessarily represent the official position of the Association.

*Canadian Law Library Review/Revue canadienne des bibliothèques de droit* is indexed in the *Index to Canadian Legal Literature*, *Index to Canadian Legal Periodical Literature*, *Legal Information and Management Index*, *Index to Canadian Periodical Literature*, and *Library and Information Science Abstracts*.

*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>>.

L'Association ne peut rémunérer les auteurs et auteures pour leurs contributions, mais ils ou elles recevront un exemplaire de leur article dès parution. L'Association canadienne des bibliothèques de droit n'assume aucune responsabilité pour les opinions exprimées par les collaborateurs et collaboratrices ou par les annonceurs dans les publications qui émanent de l'Association. Les opinions éditoriales ne reflètent pas nécessairement la position officielle de l'Association.

Les articles publiés dans *Canadian Law Library Review/Revue canadienne des bibliothèques de droit* sont répertoriés dans *Index a la documentation juridique au Canada*, *Index to Canadian Legal Periodical Literature*, *Legal Information and Management Index*, *Index to Canadian Periodical Literature et Library and Information Science Abstracts*.



## Are you a student?

Interested in publishing an article in the *Canadian Law Library Review*?

The CALL/ACBD award of \$250 is given annually to the student author of a feature length article published in the CLLR. Submit an article today to be considered! Articles can be submitted to any of our feature editors.



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

"In the middle of difficulty lies opportunity."

One of my law firm clients has this Albert Einstein quote on the wall in the boardroom. I see it often, and when I think about the difficult conversations that must take place in that room, it seems apt.

This quote has inspired me to think about the legal industry as a whole, how things are shifting quickly and how everyone is looking to get a good foothold on the future. What opportunity do these shifts bring for law library professionals? How can we adapt, step into any gaps, and help lead the way?

I was fortunate to be invited to the Federation of Law Society's conference on Legal Education in October. Participants were law society administrators, law school deans from across the country, and selected guests primarily from indigenous groups working on access to justice. I was the only librarian to have been given the unique opportunity. The two-day conference looked at changing needs in legal education and how the Academy and law societies need to work together to meet the needs of the legal field for the future. We also looked at Calls to Action #27 and #28 from the Truth and Reconciliation Commission (TRC) Report and at how to better work with indigenous communities. These Calls to Action are:

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.

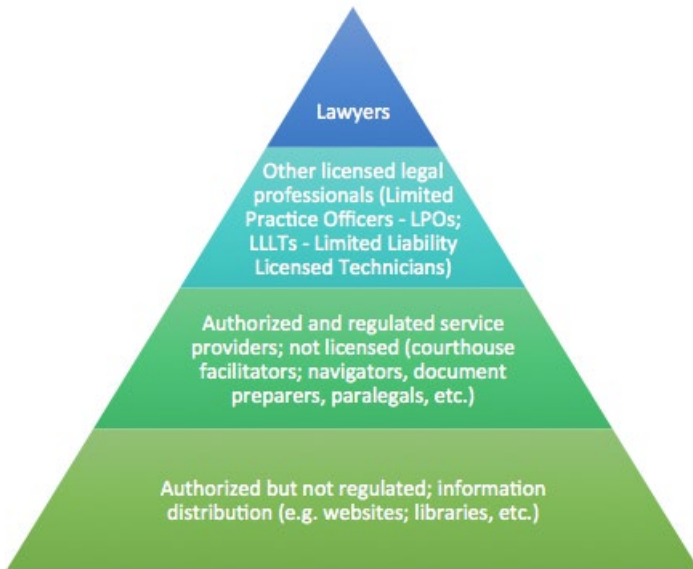
28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown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

Osgoode Hall Law School Dean Lorne Sossin invited me to participate in the conference, citing the need to include the librarians' collaborative mindset. There could have been more of us at this event to give a broader range of perspectives and larger voice, but it was a start.

On the first day we were presented with talks and debates about the changing legal profession and how both law society administrators and educators need to change and work together. Paula Littlewood, Executive Director of Washington State Bar Association gave the keynote, speaking about how the legal industry is being disrupted and how the nature of legal services is changing; how there is an increasing unmet need for legal services, and how that need is being met by others who are not lawyers. She encouraged the legal profession to embrace the changes. Asking if everyone wanted to "ride on the wave or crash on the beach" she encouraged everyone to participate, saying "we need to surf."



Littlewood presented an hierarchy of legal services (reproduced below), the first line of which includes information distribution and libraries. Let me put that another way: in the world of legal services, we are part of the first level of service. Before lawyers, before paralegals. We help put together and distribute legal information. We develop and organize legal information websites.



On the second day participants were put to work, being given specific topics and questions at each table to discuss and present. The group at my table examined how needs change as legal information is increasingly digital, and how the role of the law librarian is changing. It was gratifying to see leaders who had previously recommended the downsizing of their library staffs suddenly awaken to the idea that we can take on broader roles, and that our abilities are not just tied to paper books. Was this too little, too late in terms of advocacy? I am hoping this will have at least some influence into the future.

Aside from helping others to think about things, I also learned an enormous amount from participating. These are our employers and they are passionate about the law and access to justice. They are trying to determine how knowledge is shared and how to collaborate. At a time when they are trying to figure out how to lead for the future, we can become leaders and role models ourselves demonstrating how it is done. Not always an easy task, but the time may be right for many of us to show the way if we step up as leaders within our individual organizations.

Part of this is modelling behaviour we would like to see: a willingness to work together collaboratively; being open-minded and listening to other viewpoints; a willingness to adapt and change. We also may have ideas on how our organizations could innovate, and should not wait for an invitation to participate.

I came to realize that as a group CALL/ACBD members work across much of the legal field continuum in Canada and as an association embody much of what this conference was trying to achieve: to find common ground and work together to adapt into the future. It has me thinking deeply about our association's role in the larger legal industry.

One area we could work on is learning how to connect with indigenous communities and develop a better understanding of their orders of law. As our organizations look to meet the TRC Report Calls to Action, they will need information resources that we can provide. But many of us also need to ourselves learn what indigenization means. This goes far beyond making a few books or reports available in our libraries. How do we approach and work with local communities? How will our lawyers, professors and judges navigate between different communities and their orders of law? It is a complex question requiring a fair bit of work and patience.

As well, we as a group could do more to connect with the information technology industry aside from talking with our existing vendors. What are we doing to encourage innovation? How are we connecting with developers? In Toronto we have recently seen the rise of legal innovation "incubators" (MaRS LegalX and Ryerson's Legal Innovation Zone), but I don't see many – or any – of my colleagues getting involved. Where are our hackathons, library technology start-ups, and innovation groups?

Finally, I came away thinking about advocacy for our profession. If we can work toward the answers to these questions, and become drivers in our own organizations, we will be show-casing our talents in ways that are visible. Perhaps there are other ways as well.

As CALL/ACBD works on our strategic planning for the coming years, we can explore some of these questions and get some specific actions in place. If any of these thoughts have spoken to you (I hope at least one or two ideas have), please continue the conversation with our colleagues on the blog, on the CALL-L listserv, in our committees and special interest groups, and in person.

After participating in this conference, I have become extremely optimistic about the opportunities available to us and the roles we can play. It will take work and listening and perhaps some adapting. But the future is bright!

**PRESIDENT  
CONNIE CROSBY**



« En plein cœur de toute difficulté se cache une possibilité. »

L'un de mes clients, qui est un cabinet de droit, a mis cette citation d'Albert Einstein sur le mur de sa salle de conférence. Je la vois souvent et, quand je songe aux conversations difficiles qui doivent se dérouler dans cette salle, je la trouve parfaitement adaptée.

Cette citation m'a inspirée à réfléchir à l'industrie du droit dans son ensemble, à la rapidité avec laquelle les choses changent et à la manière dont tout le monde cherche à prendre un appui ferme pour affronter l'avenir. De quelles possibilités ces changements sont ils porteurs pour les professionnels des bibliothèques de droit? Comment pouvons nous nous adapter, combler les lacunes et contribuer à paver la voie?

J'ai eu la chance d'être invitée à la conférence sur l'éducation juridique de la Fédération des ordres professionnels de juristes du Canada, qui s'est tenue en octobre. Au nombre des participants, il y avait des administrateurs d'ordres professionnels de juristes, des doyens de facultés de droit de partout au pays et quelques invités sélectionnés, pour la plupart des membres de groupes autochtones œuvrant pour l'accès à la justice. J'étais la seule bibliothécaire à qui l'on a offert cette possibilité unique. La conférence de deux jours portait sur les besoins changeants dans le domaine de l'éducation juridique et sur le type de collaboration qui doit unir l'Académie et les ordres professionnels de juristes si l'on veut pouvoir répondre aux besoins de l'industrie juridique dans l'avenir. Nous nous sommes également penchés sur les appels à l'action nos 27 et 28 issus du rapport de la Commission de vérité et réconciliation du Canada et sur les moyens d'améliorer la concertation avec les collectivités autochtones. Ces appels à l'action se lisent comme suit :

27. Nous demandons à la Fédération des ordres professionnels de juristes du Canada de veiller à ce que les avocats reçoivent une formation appropriée en matière de compétences culturelles, y compris en ce qui a trait à l'histoire et aux séquelles des pensionnats, à la Déclaration des Nations Unies sur les droits des peuples autochtones, aux traités et aux droits des Autochtones, au droit autochtone de même qu'aux relations entre l'État et les Autochtones. À cet égard, il faudra, plus particulièrement, offrir une formation axée sur les compétences pour ce qui est de l'aptitude interculturelle, du règlement de différends, des droits de la personne et de la lutte contre le racisme.

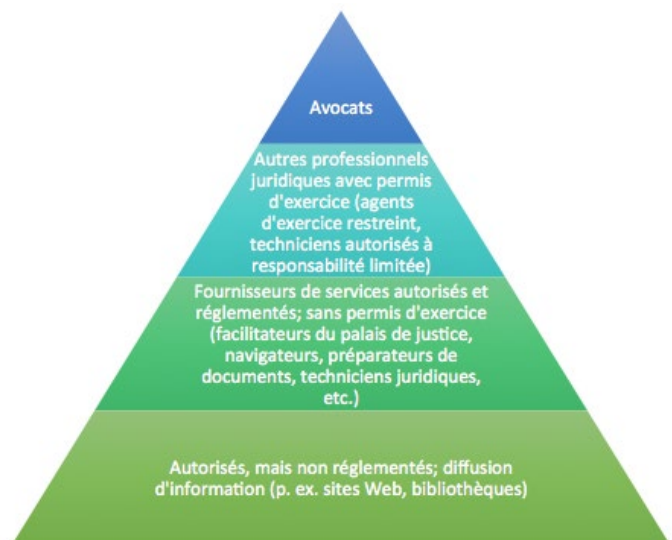
28. Nous demandons aux écoles de droit du Canada d'exiger que tous leurs étudiants suivent un cours sur les peuples autochtones et le droit, y compris en ce qui a trait à l'histoire et aux séquelles des pensionnats, à la Déclaration des Nations Unies sur les droits des peuples autochtones, aux traités et aux droits des Autochtones, au droit autochtone de même qu'aux relations entre l'État et les Autochtones. À cet égard, il faudra, plus particulièrement, offrir une formation axée sur les compétences pour ce qui est de l'aptitude

interculturelle, du règlement de différends, des droits de la personne et de la lutte contre le racisme.

C'est Lorne Sossin, doyen de l'Osgoode Hall Law School, qui m'a invitée à participer à la conférence, car il estimait que l'esprit de collaboration des bibliothécaires devait être mis à profit. Il aurait pu y avoir un plus grand nombre de bibliothécaires à cette conférence, pour offrir une gamme de points de vue plus vaste et mieux faire entendre notre voix, mais c'était un début.

La première journée, nous avons eu droit à des exposés et à des débats sur l'évolution actuelle de la profession juridique et sur la manière dont les administrateurs d'ordres professionnels de juristes et les enseignants doivent changer et travailler de concert. Paula Littlewood, directrice générale de la Washington State Bar Association, a prononcé l'allocution liminaire, qui portait sur les perturbations actuelles que subit l'industrie juridique et l'évolution de la nature des services juridiques, sur la hausse des besoins non satisfaits en matière de services juridiques et sur le fait que ces besoins finissent par être comblés par des intervenants autres que des avocats. Elle a incité les membres de la profession juridique à épouser le changement. Lorsqu'elle a demandé aux participants s'ils voulaient plutôt « surfer sur la vague ou s'écraser sur la plage », elle nous a tous encouragés à prendre part au mouvement en affirmant que nous devons surfer.

Mme Littlewood a aussi présenté une hiérarchie des services juridiques (reproduite ci dessous), dans laquelle on trouve à la première ligne la diffusion d'information et les bibliothèques. Autrement dit, dans le monde des services juridiques, nous appartenons au premier niveau de service. Avant les avocats et avant même les techniciens juridiques. Nous aidons à rassembler et à diffuser de l'information juridique. Nous créons et structurons des sites Web d'information juridique.



Le deuxième jour, les participants ont été mis à la tâche : ils devaient discuter de sujets et de questions précis leur

ayant été attribués et en faire une présentation. À ma table, nous avons examiné la façon dont les besoins changent, étant donné que l'information juridique est de plus en plus numérique, et l'évolution que subit également le rôle de bibliothécaire de droit. Je me réjouissais de voir des dirigeants ayant auparavant recommandé de réduire la taille du personnel de leur bibliothèque se rendre soudainement compte que nous pouvions assumer de plus grands rôles et que nos aptitudes ne se limitaient pas qu'aux livres en version papier. Était-ce trop peu, trop tard, en termes de sensibilisation? J'ose espérer que ces prises de conscience auront au moins une quelconque influence dans l'avenir.

Du fait de ma participation, j'ai non seulement contribué à la réflexion d'autres participants, mais j'ai aussi énormément appris. Ce sont là nos employeurs, et ils sont passionnés du droit et de l'accès à la justice. Ils tentent de déterminer comment les connaissances sont transmises et comment collaborer. En cette période où ils tâchent d'établir comment diriger pour l'avenir, nous pouvons tracer le chemin et leur servir d'exemple à cet égard. La tâche ne sera pas toujours facile, mais ce pourrait être le bon moment pour nombre d'entre nous de montrer la voie à suivre en assumant le rôle de leaders dans notre organisation.

À cette fin, nous devons afficher les comportements que nous voudrions voir s'implanter, c'est à dire : être disposés à travailler en collaboration, être ouverts d'esprit et écouter le point de vue des autres, et accepter de s'adapter et de changer. Nous avons peut-être aussi des idées quant à la manière dont notre organisation pourrait innover, et nous ne devrions pas attendre qu'on nous lance une invitation pour mettre la main à la pâte.

J'en suis venue à me rendre compte que, en tant que groupe, les membres de l'ACBD/CALL œuvrent dans presque toutes les sphères du domaine juridique au Canada et, en tant qu'association, incarnent en grande partie ce que cette conférence était censée accomplir : trouver un terrain d'entente et travailler de concert pour s'adapter en vue de l'avenir. J'ai réfléchi à fond sur le rôle que notre association joue au sein de cette grande industrie du droit.

L'un des aspects sur lesquels nous pourrions travailler, c'est d'apprendre comment tisser des liens avec les collectivités autochtones pour mieux comprendre leurs règles de droit. Lorsque nos organisations se prépareront à répondre aux appels à l'action du rapport de la Commission de vérité et réconciliation du Canada, elles auront besoin de ressources d'information que nous pouvons leur fournir. Par contre, bon nombre d'entre nous doivent commencer par apprendre ce que signifie l'indigénisation. Et le simple fait de rendre disponibles quelques livres ou rapports dans notre bibliothèque ne suffira pas. Comment approcher les

communautés locales et comment travailler avec elles? Comment nos avocats, professeurs et juges peuvent-ils naviguer entre les différentes collectivités et leurs règles de droit? Il s'agit là d'une question complexe qui ne se règle pas en vitesse sur un coin de table.

Par ailleurs, en tant que groupe, nous pourrions faire davantage pour interagir avec l'industrie des technologies de l'information plutôt que de seulement discuter avec nos fournisseurs actuels. Que faisons-nous pour encourager l'innovation? De quelle manière tendons-nous la main à des développeurs? À Toronto, il y a eu une augmentation récente du nombre d'incubateurs d'innovation juridique (LegalX de MaRS et Legal Innovation Zone de l'Université Ryerson), mais je ne vois que peu, voire aucun de mes collègues y participer. Où sont nos marathons de programmation, nos nouvelles entreprises en technologie des bibliothèques et nos groupes d'innovation?

Au final, je me suis mise à songer à la défense de notre profession. Si nous pouvons trouver des réponses à ces questions et devenir des éléments moteurs de nos organisations, nous afficherons alors nos talents au grand jour. Il y a peut-être d'autres façons de procéder aussi.

Pendant que l'ACBD/CALL voit à sa planification stratégique pour les années à venir, nous pouvons explorer certaines de ces questions et mettre en place quelques mesures précises. Si vous vous êtes senti interpellé par ces réflexions (j'espère qu'au moins une ou deux idées ont résonné en vous), n'hésitez pas à poursuivre la conversation avec vos collègues sur le blogue, sur la liste de discussion électronique CALL L, dans nos comités et groupes d'intérêt spécial de même qu'en personne.

Ma participation à la conférence m'a rendue excessivement optimiste quant aux possibilités qui se déploient devant nous et aux rôles que nous pouvons jouer. Il nous faudra travailler, nous mettre à l'écoute et peut-être même nous adapter dans une certaine mesure. Mais l'avenir est prometteur!

**PRÉSIDENTE  
CONNIE CROSBY**





## III Restorative Justice: New Ways to Look at Old Ideas \*

By Amy Kaufman\*\*

### Abstract

*Restorative justice allows us to respond to crime in ways that put the victim and the harm suffered at the centre. While our current criminal justice system focuses on rule-breaking and punishment, restorative justice allows for inquiry into what can be done to help the victim heal and can provide an opportunity for those who have caused harm to accept responsibility. Restorative justice, with its deep roots and widespread practice across Canada and the world, offers us new ways to look at criminal justice.*

### Sommaire

*La justice réparatrice nous permet de réagir au crime de manière à mettre la victime et le préjudice subi au centre de la problématique. Bien que notre système de justice pénale actuel se concentre sur la violation des règles et la punition, la justice réparatrice permet d'enquêter sur ce qui peut être fait pour aider la victime à guérir et peut offrir une occasion pour ceux qui ont causé un préjudice d'en accepter la responsabilité. La justice réparatrice, avec ses racines profondes et sa pratique répandue partout au Canada et dans le monde, nous offre de nouvelles façons d'envisager la justice pénale.*

Restorative justice offers opportunities to address crime and the harm it causes in new ways, but I don't remember hearing the phrase uttered once during law school. It was much later, after experiences working and volunteering in the justice system, that I started wondering if there were other ways to look at crime, and in particular, better ways to respond when people have been harmed. That's when I started learning about restorative justice, a concept that I have come to believe holds much promise to make our justice system more just and humane. While my own awareness of restorative justice may be new, the practices themselves are not. There are teachings in virtually every ancient spiritual tradition that support restorative justice practices.

Owing to the generosity of CALL/ACBD through the James D. Lang Memorial Scholarship, I was able to attend the 2015 National Restorative Justice Symposium in Quebec City, which helped broaden my knowledge of restorative justice – both within and beyond criminal justice settings. In this paper, I would like to share some of what I've learned so far, both from the conference and from my own research.

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\*\* Amy attended the National Symposium on Restorative Justice thanks to a James D. Lang award from CALL/ACBD. I am grateful to CALL/ACBD for making this possible. Many thanks to Simon Baron and Kate Johnson for their help with this paper.

## Restorative Justice: A Different Way of Responding to Harm

Choosing how we as a society will approach harm – preventing, reducing and responding to it – requires us to decide how we will relate to one another. It obliges us to tackle difficult questions about what causes harm and how people can recover from harm done to them, and whether there is space for those who have harmed others to make any amends.

The principles of restorative justice have been translated into many different contexts, and its practices are flexible enough to be applied in many ways. But at its core it is about changing the way we respond to harm.

Our current criminal justice system seeks to address these questions:

1. What rule has been broken?
2. Who broke the rule?
3. What consequence/punishment should the rule-breaker receive?

Our justice system has much to be proud of, particularly in its procedural and evidentiary safeguards that continue to evolve to ensure as fair a trial as possible. But for all its strengths, there are some blind spots as well. For one thing, it is focused on rules and offenders, often to the exclusion of anything or anyone else: criminal offences are committed against society, not the person who was harmed. Put simply, the two essential elements of a guilty verdict are to prove *mens rea* and *actus reus*: that the accused person had both a guilty mind and did the guilty act. Once that guilty verdict is rendered, it's on to arguing about the appropriate sentence. At a recent symposium, the aphorism “tail ‘em, nail ‘em, and jail ‘em” was used to sum up this approach.

By contrast, after harm has occurred, someone working with a restorative justice framework might put the questions this way:

1. Who has been harmed?
2. What harm has been caused?
3. What can be done to help the victim(s) heal (and who should do it)?

With this second set of questions, the focus is on the victim, the harm, and the consequences of harm. The offender is still important, and may have a role to play in answering these questions, but the victim is at the heart of the inquiry. Tim Newell, a governor in the English prison system and a proponent of restorative justice, makes this distinction: “criminal justice is about laws, guilt and sanctions; restorative justice is about emotional, physical and material

harms and what can be done to make amends for them.”<sup>1</sup> While restorative justice might seem like an alternative approach to criminal justice, Newell argues that they can be complementary, but observes that such an understanding “would challenge us to find ways of combining the two in response to every crime, rather than offer two separate roads as choices.”<sup>2</sup>

### Howard Zehr's Foundational Work

It would be difficult to discuss restorative justice without mentioning Howard Zehr's enduring book, *Changing Lenses: Restorative Justice for Our Times*, which was re-released as a 25<sup>th</sup> anniversary edition in 2015.<sup>3</sup> Zehr is the co-director of the Zehr Institute for Restorative Justice and distinguished professor at the Center for Peacebuilding at Eastern Mennonite University in Virginia. While Zehr didn't invent the term “restorative justice,” he certainly brought it into popular use. “We in the West view crime through a particular lens,” he begins early in the book. “The ‘criminal justice’ process that uses that lens fails to meet many of the needs of either victim or offender. The process neglects victims while failing to meet its expressed goals of holding offenders accountable and deterring crime.”<sup>4</sup>

Zehr draws a distinction between retributive justice and restorative justice by defining them side by side:

**Retributive Justice:** Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules.

**Restorative Justice:** Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.<sup>5</sup>

“Crime involves injuries that need healing,” he explains in a subsequent passage.<sup>6</sup> Those injuries occur to the victim, relationships, the offender, and the community. Our current system focuses on the harm to the state, with the state front and centre as the victim (the state as represented by our head of state, the Queen – so criminal cases are titled “*Regina v. Kaufman*,” or whoever the accused person is). Restorative justice programs emphasize the interpersonal dimensions of crime and concentrate on what can be done to repair the harm and promote healing.<sup>7</sup> Victims need “an experience of justice” in order to recover, and each person's needs can be different.<sup>8</sup> Zehr suggests some of the victim's needs that should be recognized, such as compensation for losses (restitution), answers to their questions, and opportunities to express their emotions, tell their stories and have their experiences validated. They also need to be

<sup>1</sup> Tim Newell, *Forgiving Justice: a Quaker Vision for Criminal Justice* (London: Quaker Home Service, 2000) at 43.

<sup>2</sup> *Ibid* at 43.

<sup>3</sup> Howard Zehr, *Changing Lenses: Restorative Justice for Our Times*, 25th anniversary edition (Kitchener: Herald Press, 2015).

<sup>4</sup> *Ibid* at 20.

<sup>5</sup> *Ibid* at 183.

<sup>6</sup> *Ibid* at 186.

<sup>7</sup> *Ibid* at 186 - 188.

<sup>8</sup> *Ibid* at 31-35.

empowered: how can they regain their sense of personal power and autonomy, which has likely been deeply violated by crime.<sup>9</sup>

After a crime has taken place, the person who committed the crime must be held accountable. When we look at the current criminal justice process, we should question whether it succeeds at this. “The intricate, painful, non-participatory nature of the process encourages a tendency to focus on the wrongs experienced by the offender, diverting attention from the harm done to the victim... At minimum, because the criminal process is complex and so offender-oriented, they are caught up entirely in their own legal situations,” Zehr observes.<sup>10</sup> “Consequently, offenders are rarely encouraged or allowed to see the real human cost of what they have done.”<sup>11</sup>

Zehr argues that “[w]ithout an intrinsic link between the act and the consequences, true accountability is hardly possible. And as long as consequences are decided for offenders, accountability will not involve responsibility.”<sup>12</sup> Zehr provides an alternative understanding of accountability: “an opportunity to understand the human consequences of one’s acts and to face up to what one has done and to whom one has done it... Accountability also involves taking responsibility for the results of one’s behavior. Offenders must be allowed and encouraged to help decide what will happen to make things right, then to take steps to repair the damage.”<sup>13</sup>

Many voices in the field of restorative justice belong to people of various faiths, and many restorative justice programs are run by prison chaplains or may be funded by faith or ecumenical groups, such as the Church Council on Justice and Corrections. However, restorative justice is not a religious movement and sits quite comfortably in a secular space and in our justice system. For example, the purposes and principles of sentencing in the *Criminal Code* include “to provide reparations for harm done to victims or to the community; and ... to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or the community.”<sup>14</sup> The *Criminal Code* also explicitly contemplates the possibility of using “alternative measures” in relation to someone accused of a crime and sets up a broad framework for when this may be possible; it also directs sentencing courts to consider “all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with harm done to victims or to the community... with particular attention to the circumstances of aboriginal offenders.”<sup>15</sup> As Sujatha Baliga of the Restorative Justice Project writes in the introduction to the 25th anniversary edition of *Changing Lenses*,

“[w]hile the text is Christian in its framing, as a Buddhist and atheist, I find *Changing Lenses* to be a universal call for equal compassion for those who have experienced harm and those who caused it.”<sup>16</sup>

## Canada's National Symposium on Restorative Justice

This annual symposium brings together psychologists, professors, educators, social workers, Correctional Services workers, First Nations leaders, lawyers, and anyone else who wants to consider how they could integrate restorative justice principles into their work. Many of these people have been doing restorative justice work for decades. In 2015, presenters came from the United States, France, and Belgium, along with many speakers and attendees who were from all over Canada, including a number of indigenous people. Beyond the interesting sessions, breaks and lunches provided time for thoughtful discussions with this diverse group.

Early in the Symposium, Mark S. Umbreit, the director of the Center for Restorative Justice and Peacemaking at the University of Minnesota, presented “Restorative Justice & Dialogue in the US: What Have We Learned from Practice and Research?”<sup>17</sup> which made a big impression on me. He began his talk by acknowledging that in all his experience, he has learned the most from his indigenous colleagues and friends. He stressed the need to use both our hearts and minds. What we now call restorative justice or restorative principles has deep roots, and many speakers acknowledged that the practices owe much to the teachings and longstanding practices of many indigenous people and cultures.

There is no single form of restorative justice. Umbreit stressed that the restorative justice movement should be a “big tent,” not a “litmus test.” Restorative Justice has and needs proponents from all political and ideological stripes, or as he memorably put it, “There are many streams that flow into the healing river of transformative dialogue.” He highlighted that restorative justice can be expressed in many different ways; there is no “one size fits all.”

According to Umbreit, there is restorative justice legislation in 39 American states, sometimes figuring broadly and sometimes in small ways. He lauded Colorado’s achievement of being the first state to pass a bill that included sustainable funding for restorative justice. Thirty-one states allow for the victim of a crime to meet with the offender in prison. His home state, Minnesota, is now trying restorative justice in schools to avoid suspensions, and they are achieving very positive results.<sup>18</sup> Restorative Justice has been endorsed

<sup>9</sup> *Ibid* at 31 - 33.

<sup>10</sup> *Ibid* at 46 - 47.

<sup>11</sup> *Ibid* at 47.

<sup>12</sup> *Ibid* at 46.

<sup>13</sup> *Ibid* at 47.

<sup>14</sup> *Criminal Code*, RSC 1985, c C-46, ss 718(e) – (f).

<sup>15</sup> *Ibid*, ss 717, 718.2(e).

<sup>16</sup> Sujatha Baliga, “Foreword” in Howard Zehr, *Changing Lenses: Restorative Justice for Our Times*, 25th Anniversary Edition (Kitchener: Herald Press, 2015) at 11.

<sup>17</sup> Mark Umbreit, “Restorative Justice & Dialogue in the U.S.: What Have We Learned from Practice and Research?” (presented at the National Restorative Justice Symposium, 16-17 November 2015, Quebec City).

<sup>18</sup> *Ibid*.

by organizations such as the American Bar Association in 1994<sup>19</sup> and the UN in 2002.<sup>20</sup>

The conference showcased many different restorative justice programs. But it also delved into the question of what unites these diverse initiatives and why, instead of accepting the current criminal justice system as it is, we should explore restorative justice.

### Restorative Justice in Canada: Past, Present, and Future

While restorative justice has not been prominent in the Canadian criminal justice landscape in recent years, I learned at the conference that Canada played an important early role in integrating restorative justice programs into the existing criminal justice framework.

Canada is acknowledged as an early leader in restorative justice and is widely credited with initiating the first restorative justice program. In 1974, two youths had been convicted of vandalizing 22 properties in Elmira, Ontario. Due to the intervention of a probation officer and the coordinator of Voluntary Service workers for the Mennonite Central Committee in Kitchener, and a judge who was willing to explore sentencing alternatives, the two youths visited the homes of all the victims still in the area and negotiated restitution with each one.<sup>21</sup> This is considered the original Victim-Offender Reconciliation Program. Such programs have multiplied and evolved since that first one and today are often called Victim-Offender Dialogue or Victim-Offender Conferencing programs.<sup>22</sup> One of the mediators responsible was a man named Mark Yantzi, who went on to do very powerful work as a mediator in Canadian federal corrections as well as maintaining a practice in Kitchener-Waterloo. At the end of this article there is a link to a video of Yantzi himself telling “the Elmira Story.” He taught for many years in the Restorative Justice Program at the Queen’s University School of Religion. Unfortunately that program folded a few years ago, but for more than ten years, it was a force for restorative justice in our country.

There are encouraging signs that restorative justice programs may once again be growing in Canada. In Prime Minister Justin Trudeau’s November 2015 mandate letter to Ms. Jody Wilson-Raybould, the Minister of Justice and Attorney General of Canada, one of her most important charges is to “conduct a review of the changes in our criminal justice system and sentencing reforms over the past decade...”, with one of the prescribed outcomes being “increased use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians[.]”<sup>23</sup>

But restorative justice isn’t just for Indigenous Canadians;

non-Indigenous Canadians have much to gain from restorative justice practices as well, and from recognizing and learning from their existing and traditional use in Indigenous communities. In a workshop on “Restorative Justice in Education: Reflexive and Critical Practice,” Brenda Morrison, Co-Director of the Centre for Restorative Justice at Simon Fraser University, stressed the need for community participation in restorative justice. She pointed out that the state can’t do it alone; its institutions weren’t designed for this. Instead, the state must create the backdrop for the community to stand up. It must be a partnership between the state and community. She also acknowledged the centrality of indigenous practitioners and their traditions and structures in informing and inspiring restorative justice practices.<sup>24</sup> People are taking on this work; it just doesn’t often make the headlines. Many Canadians from all walks of life are going about this work with passion and commitment but without acclaim. There are a host of Canadian authors, speakers, professionals, and volunteer activists who engage in this work and have powerful stories to tell and convincing statistics to offer.<sup>25</sup>

Learning about restorative justice has made me realize the need to question how our current justice system is serving Canadians. Understanding that there are other ways to respond to crime and harm reminds me that every justice system is designed by people, based on particular goals from a particular time. Our legal system, with its solemn responsibilities and profound impact on so many people, should always be open to questions, innovation and change.

### Further Reading, Viewing and Listening: Experiences of Restorative Justice in Canada

CBC, The Current, “Game Changer: Shannon Moroney’s Story” (11 October 2011), online: <http://www.cbc.ca/player/play/2151626162>

Community Justice Initiatives Waterloo Region, “Mark Yantzi tells the Elmira Story” (uploaded 16 February 2011), online: <https://www.youtube.com/watch?v=9vBHgeWs0UK>

Katy Hutchison, “Restorative Practices to Resolve/Build Relationships” (11 May 2013) TEDx West Vancouver ED, online: <https://www.youtube.com/watch?v=wcLuVeHlrSs>

Wilma Derksen, “When Polarity in Forgiveness Happens,” (9 February 2012) TEDx Manitoba, online: [https://www.youtube.com/watch?v=U7Byq9sW\\_XU](https://www.youtube.com/watch?v=U7Byq9sW_XU)

Shannon Moroney, *Through the Glass* (Toronto: Doubleday, 2011)

<sup>19</sup> American Bar Association, “Recommendation,” Report No. 3 of the Criminal Justice Section, in *Annual Report of the American Bar Association*, Vol. 119, no. 2 (Chicago: Headquarters Office, 1994) at 332-335. The recommendation was approved (see note on page 332 of report).

<sup>20</sup> UN ECOSOC Resolution 2002/12, *Basic principles on the use of restorative justice programmes in criminal matters*, online: <<http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>> (13 August 2002).

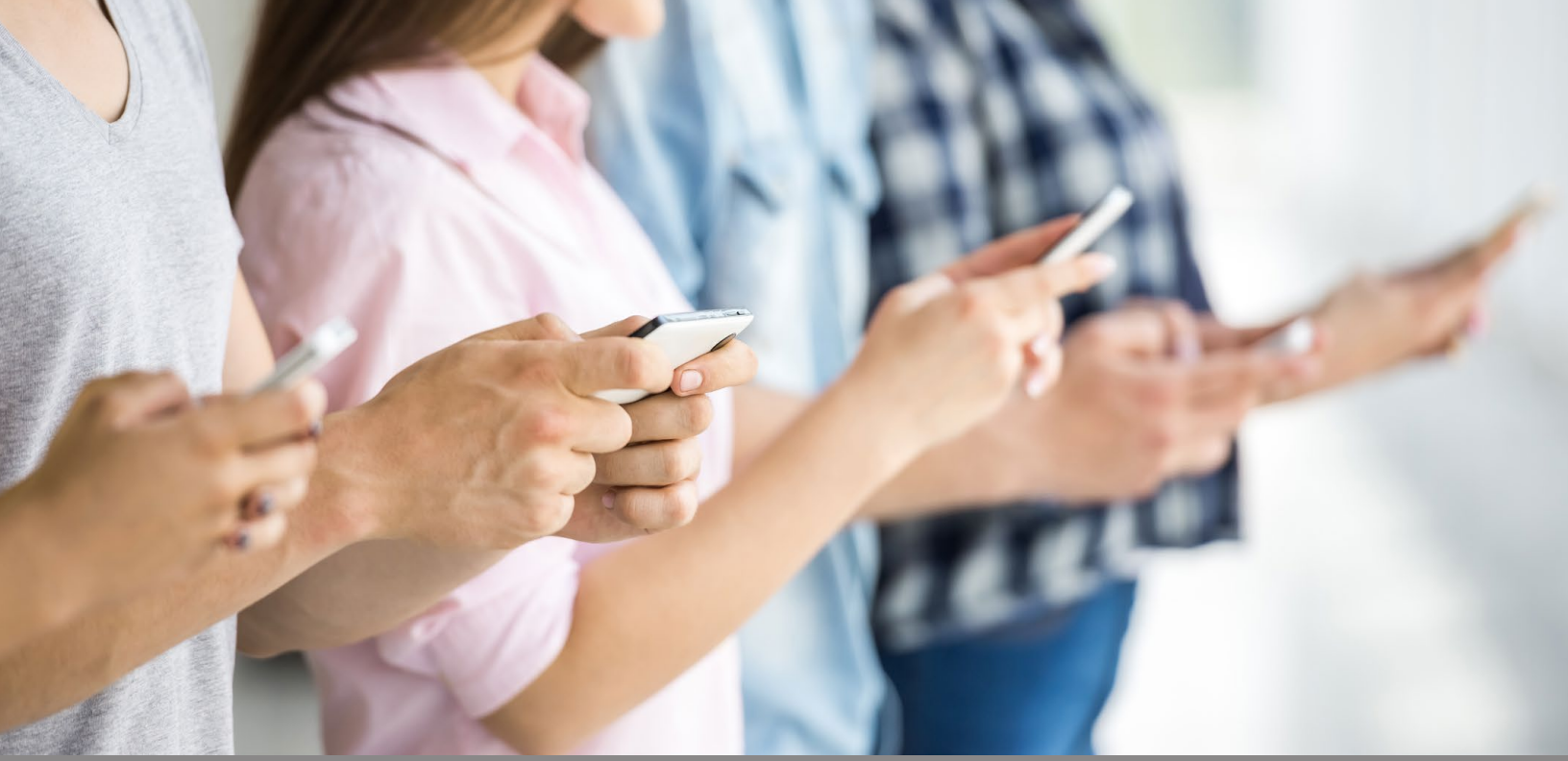
<sup>21</sup> Zehr, *supra* note 3 at 159-161

<sup>22</sup> *Ibid* at 161.

<sup>23</sup> Prime Minister of Canada Justin Trudeau, “Minister of Justice and Attorney General of Canada Mandate Letter” [n.d.], online: <<http://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>>.

<sup>24</sup> Brenda Morrison, “Restorative Justice in Education: Reflexive and Critical Practice” (presented at the National Restorative Justice Symposium, 16-17 November 2015, Quebec City, QC).

<sup>25</sup> See, for example, “Further Reading, Viewing and Listening: Experiences of Restorative Justice in Canada” at the end of this article.



## III Private Law Libraries and Social Media\*

By Susannah Tredwell\*\*

### Abstract

*Private law libraries tend to use social media differently from courthouse or university law libraries. This article describes a number of the ways in which private law libraries use social media as part of their work, including for research and current awareness. Social media can provide information that is not easily available through traditional sources. However, the nature of social media means that information may be inaccurate, out-of-date, or incomplete.*

### Sommaire

*Les bibliothèques de droit privé ont tendance à utiliser les médias sociaux différemment des bibliothèques de palais de justice ou des bibliothèques universitaires. Cet article décrit un certain nombre de façons dont les bibliothèques de droit privé utilisent les médias sociaux dans le cadre de leur travail, y compris pour la recherche et la veille documentaire. Les médias sociaux peuvent fournir des informations qui ne sont pas facilement disponibles à travers les sources traditionnelles. Cependant, la nature des médias sociaux signifie que les informations peuvent être inexactes, périmées ou incomplètes.*

A 2014 White Paper by Taylor and Francis revealed that over

70% of libraries have some sort of social media presence.<sup>1</sup> However, finding statistics that break down usage of social media by type of library is much harder, especially when looking for statistics for law libraries.

Private law libraries tend to use social media very differently from public or academic libraries, due to the different needs of their clientele. The primary clientele of a law firm library are the firm's lawyers, students and support staff. Although law firm libraries may work for the firm's clients directly, in general the majority of work is done for internal clients. Law firms are obligated to keep the names of their clients and the work being done for them confidential. As a result most of the library's communications are internal, and social media tools, which are public, are not the best choice for this communication.<sup>2</sup>

For example, very few law firm libraries have a Twitter account, since posting information on Twitter does not fit with the library's mandate. An example of a Canadian law firm library that does have a Twitter account is McCarthy Tétrault (@mccarthylibrary). The Twitter account is run by a staff member with a significant interest in social media and is less focussed on what McCarthy Tétrault is doing and more

\*© Susannah Tredwell 2016

\*\* Susannah Tredwell is the Manager of Library Services at DLA Piper (Canada) LLP. This article is based on my recent presentation "Law Libraries' Response to the Wave of Social Media: Developing Effective Solutions in New Economic Realities" at the 2015 Canadian Association Law Libraries Conference.

<sup>1</sup> Taylor & Francis Group, *Use of social media by the library current practices and future opportunities: A white paper from Taylor & Francis* (2014) at 2, online: <<http://www.tandf.co.uk/journals/access/white-paper-social-media.pdf>>

<sup>2</sup> For the purpose of this article, I am defining social media as being open, e.g. Facebook, Twitter, Pinterest, etc., rather than internal social software or tools such as SharePoint.



on legal news and information that is of general interest. The Twitter account was a library initiative and it has been received positively by management.

Law firm libraries use social media in a variety of ways, including communication, research, and current awareness.

## Blogging

Libraries are not the public face of law firms. Law firm blogs are used to sell the lawyers' expertise, not that of the library staff. However, the library may be involved in the blogging process, for example by identifying stories for lawyers to blog about. Even though private law librarians do not write blog posts for the law firm's external website, they may blog internally about legal and business developments of interest to lawyers.

Private law librarians are more likely to blog in a semi-professional or private capacity. They do this for a number of reasons: they enjoy writing, they consider it part of their professional development, or they use blogs to alert others to developments in the legal field.

Even if they are blogging in an unofficial capacity, private law librarians may find themselves constrained by their firm's social media policy. For example, one firm's social media policy reads (in part):

"If you choose to explicitly list your status as a [firm] employee on a social network, you should regard all activities on that network as you would in a professional setting as you will be held accountable for your online activities in the same fashion that you would if using Firm assets."

If a librarian identifies him or herself as an employee of that firm on a blog, that firm's social media policy will effectively apply. As a result, some librarians choose to blog anonymously.

Blogging may be more likely to have a positive effect for private law firm librarians than for their institutions. When Greg Lambert of "Three Geeks and a Law Blog" was asked if blogging had hurt or helped his career, he said:

"It definitely helped, but in ways that may not be obvious. As with many things, what's important isn't necessarily how much you know, as opposed to who you know. The blog has opened up many doors to leaders in the industry. There have been many times where I am in on a strategy meeting and a name comes up in the conversation, and I get to say "hey, I know him/her... do you want me to connect you to them?" It may sound a bit shallow, but in this industry, being connected is very powerful."<sup>3</sup>

## Using social media for research

Social media can be a valuable research tool for law firm librarians, albeit with certain challenges.

One major challenge is that social media is self-reported information. Researchers need to keep in mind that this information is not necessarily accurate and is definitely incomplete. A good example of this is on LinkedIn: researchers will find multiple profiles for the same person, profiles that have not been updated, and even profiles that are deliberately misleading.<sup>4</sup>

A second challenge is that a number of social media sites, particularly Facebook, are set up so that researchers will get more information if they are logged in. If a researcher wants to remain anonymous he or she may not get as much information. A researcher has to balance anonymity against possibly disclosing that they are researching a certain person or subject. Even if a researcher remains anonymous, the person being looked at may be able to see that someone is looking at their profile, even if they do not know who specifically is looking.<sup>5</sup> A researcher could set up a fake account for research purposes, but this has some obvious ethical problems.

A third challenge is that it is not uncommon for the IT department in law firms to restrict access to social media websites. In order to get access to these sites the library may have to present a business case.

The type of research depends on the firm's clients and the areas in which they practice. The following are three examples of research that a private law librarian might use social media for.

The first example is **client research**. Law firm libraries often work closely with marketing and business development, so they may be asked to research prospective clients. Some of the questions that can be addressed using social media include: Who are the key contacts? Do any of the firm's lawyers already have relationships with any of the key contacts? What are the client's marketing strategies? How is the client perceived by consumers? For the last question, using sentiment analysis of social media can be a very powerful tool.

The second example is **plaintiff/defendant research**. For example, a law firm specializing in insurance cases may ask the library to research plaintiffs' postings on social media, as courts are increasingly using evidence found on social media.<sup>6</sup> The social media searched will depend on the precise situation, but Facebook is frequently a key resource. The quality of results will vary depending on how stringent the targets' privacy settings are. What researchers can

<sup>3</sup>Jean O'Grady, "3 Geeks' Founder Greg Lambert Enters the C Suite At Amlaw 200 Firm Jackson Walker: An Interview With a Geek" (15 April 2015), *Dewey B Strategic* (blog), online: <<http://deweybstrategic.blogspot.ca/2015/04/3-geeks-founder-greg-lambert-enters-c.html>>

<sup>4</sup>That said, a 2012 article found that people were less likely to lie about verifiable information on their public LinkedIn profiles than on a traditional resume, presumably because there was more chance of getting caught. However, they were more likely to lie about unverifiable information. (Jamie Guillory & Jeffrey T. Hancock, "The Effect of LinkedIn on Deception in Resumes" (2012) 12 *Cyberpsychology, Behavior, and Social Networking*, 135)

<sup>5</sup>Connie Crosby (@conniecrosby) tweeted an example of this on May 20, 2015: "LinkedIn shows when your profile has been visited. Even anonymous, it shows someone was looking at juror's profile. ... If jurors suddenly see spike in views on their profiles, they know someone is looking."

<sup>6</sup>Douglas Quan, "Evidence found on social media increasingly deciding factor in personal injury cases" (7 May 2015) *National Post*, online: <<http://news.nationalpost.com/news/canada/evidence-found-on-social-media-increasingly-deciding-factor-in-personal-injury-cases>>

find depends significantly on the target's privacy settings. However, even if the target has locked down all their social media accounts, it is still possible to find a significant amount of information from the target's friends and family's social media accounts. There are a number of challenges with this type of research: users can have multiple social media accounts, lawyers may be unclear as to the scope or relevance of the information retrieved, as well as the challenges of preserving information once found.<sup>7</sup>

The last example is using social media to **find people**. In this situation social media is typically used in conjunction with other services. As with the example above, the usefulness of information on social media depends significantly on the numbers of social media accounts the target has and the privacy settings on those accounts.

There are a number of tools, both free and paid, that can be used to search and analyze social media, including Social Mention (socialmention.com), a search engine that monitors social media tools including Twitter and Facebook, Meltwater Icerocket (icerocket.com), which searches blogs and Twitter, Rival IQ (rivaliq.com), a resource that searches across social media, and Echosec (echosec.net), a resource that allows users to find social media for a specific location. The usefulness of the tools used depend what the researcher is looking for.

### Using social media for current awareness

Social media, Twitter in particular, can be an excellent tool for current awareness. Twitter can provide up-to-the second

information on legislative and judicial news. Decisions in court cases may be announced on Twitter before they can be found on official sites, with newspaper websites scanning in copies of the court judgments before they are available on official websites.

### Using social media for current education

For continuing education or analysis, lawyer and librarian blogs can be fantastic sources of information. The advantage of blogs is their timely nature; they allow people to post information and commentary with minimal delay. These posts range from brief updates about recent developments in the law to in depth analysis of legal issues.

Twitter can also be a useful educational tool. For example, for those unable to attend a conference, following the tweets from that conference can be a useful substitute:

[Steven Lastres and Jennifer Murray] find that tweeting enriches the conference experience and allows them to participate in the dialogue about a particular speaker or event. Sometimes this dialogue can continue well after the event ends.<sup>8</sup>

### Conclusion

For private law libraries, social media, used judiciously, can be a very powerful tool. Since private law libraries are not homogeneous, the selection and usage of social media tools will depend on the library's specific needs.

<sup>7</sup>In his Slaw blog post, Nate Russell provides a checklist for some of the considerations of what to think about when preparing social media evidence for court. See: Nate Russell, "Of a Social Media Evidence Checklist and Prepping for Lawmageddon" (11 May 2015), *Slaw* (blog), online: <<http://www.slaw.ca/2015/05/11/of-a-social-media-evidence-checklist-and-prepping-for-lawmageddon/>>. More discussion of the challenges of using social media in court can be found in Dan Grice & Bryan Schwartz, "Social Incrimination: How North American Courts are Embracing Social Network Evidence in Criminal and Civil Trials" (2012) 36:1 Man LJ 221.

<sup>8</sup>Kathleen Brown, Steven Lastres & Jennifer Murray, "Social Media Strategies and your Library" (2013) 17:2 *Information Outlook* 22 at 24.

## Deadlines / Dates de tombée

Issue	Articles	Advertisement Reservation / Réservation de publicité	Publication Date / Date de publication
no. 1	December 15/15 décembre	December 15/15 décembre	February 1/1 février
no. 2	March 15/15 mars	February 15/15 février	May 1/1 mai
no. 3	June 15/15 juin	May 15/15 mai	August 1/1 août
no. 4	September 15/15 septembre	August 15/15 août	November 1/1 novembre

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## III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***The Constitution of Canada: A Contextual Analysis.***  
By Jeremy Webber. Oxford and Portland Oregon: Hart  
Publishing, 2015. 282 p. ISBN 1841133638 (Paper) £20.99

The gold standard in the English literature of constitutionalism and government in Canada was established by R MacGregor Dawson's *The Government of Canada* and J R Mallory's *The Structure of Canadian Government*. Professor Jeremy Webber, formerly Director of the Consortium on Democratic Constitutionalism and, since 2013, Dean of the Faculty of Law at the University of Victoria, sets out to meet that standard in *The Constitution of Canada: A Contextual Analysis*. He comes very close to the classics, basing his writing on necessarily updated analysis.

No doubt, this book will be of great assistance to students and other serious observers seeking to understand the governmental framework of Canada. Its first advantage is that it is comprehensive. After first laying out the country's constitutional evolution, Webber goes on to discuss each of the three branches of the state and to deal with the most prominent topics of constitutional discussion, namely federalism, rights and freedoms, and aboriginal peoples. This is a vast undertaking in a mere 266 pages, requiring balance between inclusion of topics and brevity in the analysis of each. Webber meets this challenge.

*The Constitution of Canada* is part of a series entitled *Constitutional Systems of the World*, which starts with the *The Constitution of the United Kingdom* and *The Constitution of the United States* and includes a seemingly random collection of other countries' constitutions. We may presume

that Webber's text is designed to fit into the parameters of this collection. This is a pity because it is apparent that the author knows more about constitutionalism than the space he is offered in which to express himself. The advantage of the enforced brevity is to give this book a completely different outlook than that of detailed technical works, such as the tome authored by Peter Hogg. Nevertheless, keeping the existing style of writing which essentially weaves the constitution into the political life of the country, Dean Webber may consider making this the nucleus of a larger, stand-alone, text.

In this book, the main counterpart of conciseness is interest. Webber's basic premise is that a primary role of a constitution – perhaps the primary role – is not to limit collective action but to enable it (p 59). This positive perspective is more rational than that adopted by many authors. It also enables Webber to conduct a very broad survey of the fabric of Canadian constitutional principles and practices.

Readers acquainted with the subject-matter will find much relevant material. A particular benefit of this book is its explanation of the rule of law as an aspect of executive power. This is a focus which this reviewer believes is often inadequately dealt with elsewhere. At first, Webber seems to follow the path traced by Lord Bingham in this regard; interestingly, Webber then goes on to tie the discussion of the rule of law to current debates about judicial activism (p 108).

There is also a brief glimpse into the effect of law on governance that leaves the reader hoping for elaboration.

In texts on democratic constitutionalism, there is a need to have authors state explicitly that the rule of law has a positive effect on governmental action in terms of inducing the state, its institutions and its officials to meet norms and standards. The conflicts and other negative effects that result from bypassing those norms and standards must also be avoided. The positive consequence of the rule of law is accountability while the negative ones are social strain, avoidable litigation and unnecessary statutory amendment.

Webber's book enables discussion of issues that are either unsettled or controversial. In dealing with Parliamentary officers (p 76), he discusses the Speaker, a parliamentarian member of each House, together with the Clerk, a public servant of each House, along with the Officers of Parliament, who are *sui generis* official in the service of the state reporting directly to one or both Houses. Some distinction might be suggested. Webber's assertion (p 93) that in forming a government, the Governor General calls upon the leader of the party that won the largest number of votes in an election should engender lively discussion: largest number of seats or votes? These are not faults but opportunities for dialogue resulting from the writing.

What some might consider the core of the book is devoted to federalism and the protection of rights and freedoms. These are topics now considered to be driven by litigation; Webber provides a rich historical overview. He explains how they involve the interplay among political philosophies and views of the state and governance, legislation and litigation. There is also a good overview of the contribution of aboriginal rights to constitutional discourse. These chapters excel.

Webber sees law as a driving force for change and improvement in society. This is a view shared by various progressive constitutionalists. Going beyond that, the intellectual foundation of *The Constitution of Canada* is that Webber draws methodological inspiration for this book from the Québec Secession Reference. He emphasizes what he entitles "agonistic constitutionalism." This is an umbrella of fundamental principles, covering the flexibility, accommodation and negotiation necessary to enable members of a constitutional community who may disagree on issues but who want to remain bound together within a country and society. Impressive!

REVIEWED BY  
**GREGORY TARDI, DJUR**  
Executive Director  
Journal of Parliamentary and Political Law

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***Constitutional Sunsets and Experimental Legislation: A Comparative Perspective.* By Sofia Ranchordás. Cheltenham, UK: Edward Elgar, 2014. viii, 238 p. Includes bibliographic references and index. ISBN 978 1 78347 895 8 (hardcover) \$128.00.**

Effective laws rely on the principles of legal certainty and equal treatment. How then do laws adapt to social change? This book discusses two forms of temporary legislation created to make laws more adaptable. The first – a sunset clause – imposes a time constraint on legislation that is designed to achieve a specific purpose, and compels legislators to review the effects of the legislation before extending its life. The second – experimental legislation – is enacted on a sample sub-population for a specified period, with the aim to create general legislative changes based on the success or failure of the experiment.

The author, a Professor at Tilburg Law School in the Netherlands, conducts a comparative review of the use of these legislative forms in the US, the Netherlands, and Germany. Apparently there is a dearth of knowledge about these types of legislation among lawyers, so the author compensates for this lack with more than one hundred pages of introductory material. I knew nothing of the book's topic before reading it, but found these pages tiring and repetitive, like a movie that goes on too long, unable to weave the background story into the main plot.

Indeed, there are several statements in the book that that should have been the greater focus of the editors, for example: "According to David Farber, the nature of the underlying problem or the characteristics of the sector at stake determine to a great extent the choice of a permanent or a temporary legislative or regulatory instrument." How could it be otherwise? Why include such a statement, and why bother attributing it to another scholar?

The book also examines its subject in relation to a series of legal contexts, with chapters on the principles of legal certainty, equal treatment, and proportionality. Each of these discussions held some interest and promise. In particular, I enjoyed a brief discussion on the critical difference between legal certainty and continuity, and got a sense of a larger historic argument about how to reconcile the need for predictability in laws with the legal needs of a changing world.

But for the most part, the book eschews sustained analysis and argument, and instead offers lists. The general strategy is to examine the two main topics in light of a particular legal concept, then list the advantages, implications, and possible difficulties of sunset clauses and experimental legislation in each context. The author has broad knowledge of her topic, but her analysis is mostly a tissue of citations. So many of the ideas raised are cited to other authors that it doesn't read like an original study so much as a long literature review.

Perhaps the most frustrating of the many categorical bulkheads that divide up this book and throttle the movement of ideas is the absence of politics until the final (and shortest) of three main parts, titled "Beyond the Law." Until then, the study looks at the legislator as a kind of disinterested scientist with only positive intentions. But don't four-year election cycles play a role in how and if these legislative instruments are deployed? As it turns out, they do – but as elections, lobbyists, and corrupt politics are "non-legal"

topics, they are pushed into a small corner at the back, and then only discussed in more lists of implications.

This book lacks a strong central argument, other than a generally positive attitude towards its subject. It is replete with 'shoulds,' but its recommendations to legislators rarely amount to more than trite statements no one could disagree with – a typical example: "the decision to proceed to a revision of existing law on the grounds of the experimental regulation should reflect not only the results obtained but also their evaluation." Is there a counter-theory that legislators should ignore the evaluation of experimental results?

The book does make a compelling point, in the penultimate chapter, when it argues that the decrease in use of sunset clauses in the US since the 1980s can be attributed to poor implementation. This might have been the topic of a more focused and motivated study, but the section is confined to just a few pages, and consists mostly of yet more lists and notes on earlier studies.

To be fair, my expectations may have been unduly raised by the promotional material which promised an innovative, illuminating study. The book is actually a review of literature on sunset clauses and experimental legislation, and in that regard is well-organized and thorough, particularly for the three jurisdictions under review. And it does get its point across that both types of temporary legislation have many advantages and are underused. As such, I would say it is good acquisition for legislative libraries, and is recommended for academic law libraries and government libraries.

REVIEWED BY  
KEN FOX

Reference Librarian  
Law Society of Saskatchewan Library

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***The Dignity of Law: The Legacy of Justice Louis LeBel.* Ed. Malcolm Thorburn and Dwight Newman. LexisNexis: Markham, Ontario, 2015. ISBN: 9780433487098 (Paper) \$99.00.**

Les abonnés de la [Revue canadienne des bibliothèques de droit](#) qui œuvrent dans le domaine du droit pénal ont intérêt à étudier cette collection de conférences portant sur la carrière du juge Louis LeBel, notamment les jugements qu'il a signés à titre de membre de la Cour suprême du Canada. Les avocats de la défense et les membres de la magistrature ont souvent l'occasion de puiser conseil au sein des nombreux jugements qui ont marqué tant l'évolution du choix de la peine que dans le domaine du droit administratif, pour ne nommer que deux des sujets qu'il a influencés grandement, et ce texte hors pair nous offre plusieurs analyses bien réussies portant sur ces domaines d'étude, et tant d'autres. Ces commentaires flatteurs d'ordre préliminaire quant à deux sujets ne devraient pas être perçus comme étant un reproche exprimé de façon déguisée en ce qui touche à la qualité des autres conférences portant sur d'autres domaines du droit, loin de là! Notre objectif étant de mettre

en relief certains des moult avantages qu'offre cet excellent livre pour le barreau et la magistrature, nous passerons sous silence tous les autres bienfaits qui se dégagent suite à la lecture de ce texte riche en aperçus révélateurs et en analyses, question d'espace.

Cela étant dit, relevons que cet élégant texte compte seize chapitres et il y est question de sujets d'actualité, notamment le droit de la faillite, la fiscalité, les droits autochtones et l'avenir du fédéralisme. Les auteurs des conférences comptent parmi les meilleurs chercheurs au pays et l'excellence de ce texte est à l'image du sujet, un juge qui a marqué son époque et celle à suivre.

REVIEWED BY  
GILLES RENAUD

Juge, Cour de justice de l'Ontario

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***Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody.* By Sherene H. Razack. Toronto: University of Toronto Press, 2015. xiii, 309 p. Includes bibliographic reference and index. ISBN 978-1-4426-2891-5 (paper) \$32.95 CAD.**

*Dying from Improvement* is a courageous, confrontational analysis into the roots of Indigenous injustice and deaths. The overall tone of the book is heavy, beginning with the cover, which depicts the gravestone of one Paul Alphonse, a Secwepemc man and residential school survivor who died in a hospital while under police custody. Sherene H Razack, a professor of social justice education at the University of Toronto, has devoted much of her career to bringing settler societies and systemic racism to the forefront of social justice, and this book is no exception. Razack holds settler societies accountable for creating the impression that improvements in dealing with Indigenous communities are on the rise, despite the existing contemporary cases of missing and murdered Indigenous people and the continual climb in an already over-represented Indigenous prison population.

The book addresses how inquests and inquiries are structured in such a way that no responsibility is attributed to society or the state, and are instead masked with medical explanations, especially racial predispositions. The introduction gives fair warning to the reader as to what is about to unfold by offering summaries of the stories detailed in the six chapters.

The first two chapters discuss the inquiry of Frank Paul, a Mikmaq man who fell victim to hypothermia after being left in an alley by police officers, and whose demise was credited to chronic alcoholism rather than police negligence. Chapters 3 and 4 follow the story of Paul Alphonse, whose hospital records show pneumonia and alcoholism as the causes for his death, while the large boot print across his chest and fractured ribs were unexplained. Razack raises the question as to why Indigenous lives are valued so much less than their settler society counterparts. Defending the failure to care for Paul and Alphonse shows an inherent

dehumanization of Indigenous lives and the characterization of those lives as a waste of resources.

Chapter 5 examines the quick passing of Anthony Dawson, who apparently suffered from positional asphyxiation even after onlookers reported visible police brutality during Dawson's arrest. Contrary to the testimonies of onlookers, Dawson's death was attributed to drug abuse.

The sixth and final chapter covers some of the numerous freezing deaths of Indigenous people, highlighting cases including that of Neil Stonechild. Razack recognizes a seemingly universal indifference towards caring for Indigenous people, leading to negligence and violence. The conclusion ties everything together, recapturing the alarming assumption of settler societies that Indigenous deaths are simply the result of a pre-modern race failing its attempts to survive in a superior, modern world.

Following the conclusion, a 9-page appendix containing a table of inquests and inquiries into Indigenous deaths spanning from 1995 to 2013 provides a chilling visual representation of what was discussed in the preceding pages.

Not only does *Dying from Improvement* analyze incidents of Indigenous deaths in custody, but it reviews historical cases involving other racialized groups including East Indians and African Americans. Razack draws on several sociological critiques and recollections to call out officials and the like for their failure to provide sufficient care for Indigenous people who, despite the way they were handled, are more vulnerable. Maintaining a focus on the issues of systemic racism and negligence towards Indigenous people, Razack asserts that colonialism is not a thing of the past, and in fact, still unfortunately exists in the modern day and in developed countries like Canada. The informed, but more importantly, the uninformed should consider this insightful read to acknowledge the other side of the stories behind each inquest and inquiry.

REVIEWED BY  
MEGAN SIU  
Librarian  
Emery Jamieson LLP

***False Security: The Radicalization of Canadian Anti-Terrorism.* By Craig Forcese and Kent Roach. Toronto: Irwin Law, 2015. xvi, 612 p. Includes list of abbreviations, endnotes, and index. ISBN 978-1-55221-410-7 (Paperback) \$35.00. ISBN 978-55221-411-4 (Ebook) \$35.00.**

*False Security: The Radicalization of Canadian Anti-Terrorism*, is the winner of the 2016 Canadian Law and Society Association Book Prize and the BC Civil Liberties Association's Reg Robson Award for 2016. It is also Craig Forcese and Kent Roach's response to the *Anti-terrorism Act, 2015*, or Bill C-51, which they describe as "the most

radical national security law ever enacted in the post-*Canadian Charter of Rights and Freedoms* period" (p viii), and which they suggest could more aptly be entitled, *The Temporary Disruption of Terrorism Act* (p 499).

The authors assert throughout the book that the legal remedies sought by the government following the October 2014 terror attacks in Canada created a false promise of security. They argue that the remedies do not incorporate lessons learned from past overreactions to terrorism, such as the October Crisis of 1970, and under-reactions to terrorism such as that of the Air India bombings (see chapter 2, "History: A Short History of Canada's Over- and Under-reaction to Terrorism"). Remedies also ignore key recommendations of the Air India Inquiry and the Arar Commission.

Forcese and Roach maintain that Bill C-51 is unnecessarily open to challenge under the Charter. They explore the ways in which the rights and liberties of Canadians may be infringed by the new terror laws, for example, through the expansion of "watch" tools that are exercised without court oversight (see chapter 4, "Watch: Surveillance and Threats"), or through the creation of new, overbroad speech crime (see chapter 10, "Delete: Criminalizing and Censoring Extremist Speech"). Lastly, they offer alternative approaches to national security law and policy that include strong oversight of national security activities and support for community-based counter-violent extremism programs. These approaches are compatible with the Canadian Charter of Rights and Freedoms and still support criminal prosecutions of terrorism offences.

In order to appeal to a broad audience of readers, Forcese and Roach focus equally on national security law and policy. *False Security* is comprised of fourteen chapters and includes a preface that explores the book's genesis, the authors' motivation for writing it, a list of abbreviations, endnotes, index and a number of tables and figures.

Chapter 1, for example, includes a table of legal concepts that provides the legal meaning for "believe on reasonable grounds," "suspects on reasonable grounds," "terrorist activity," "terrorist group," and "terrorism offence" (pp 18-19). Chapter 8 includes a figure detailing the mechanics of preventative (non-criminal-charge) detention (p 241). There is also a table describing measures the Canadian Security Intelligence Service could use to "disrupt" threats to national security that fall short of illegality along with those that would be illegal or violate *Charter* rights (pp 250-251).

Most chapters include helpful concluding sections that summarize the authors' key points and arguments. While the book does not have a table of cases, chapter 9 includes a table of completed terrorism prosecutions in Canada involving incidents occurring after the enactment of the 2001 *Anti-terrorism Act*, which lists the conviction count, outcome, charges and sentence for each of the twenty-one cases summarized (pp 317-322)

*False Security* offers a comprehensive and robust critique of Bill C-51, describes the current state of national security law

and policy in Canada and suggests alternative approaches for responding to terrorism. This book is recommended for policy bureaucrats and students and scholars of national security law and policy. You can preview the preface and chapter 1 of *False Security*, at <https://www.irwinlaw.com/titles/false-security>. For backgrounders and other commentary written by the authors on Bill C-51 and *False Security* visit the authors' website, *Canada's Proposed Antiterrorism Act: An Assessment*, <http://www.antiterrorlaw.ca/>.

REVIEWED BY  
GOLDWYNN LEWIS

Law Librarian  
Public Prosecution Service of Canada

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***Law and Law Breaking in Game of Thrones: Special Issue of Media and Arts Law Review.* By Melissa De Zwart and Jason Bosland, eds. Chatswood, NSW: LexisNexis, 2015. 123 p. Includes bibliographic references. ISBN 9780409343281 (Paperback) \$46.34.**

This special Issue of Australia's *Media and Arts Law Review* presents seven short articles that explore the legal dimensions of the HBO series *Game of Thrones* (and George R.R. Martin's books *A Song of Ice and Fire* – both here referred to as GoT.) Authors adeptly orient readers to a world similar to 15th century England during the War of the Roses, and strongly engage us with GoT and its real world analogues. Perhaps most importantly, the articles provide a rationale for binge-watching the series at the first available vacation.

Heath and Humphries establish the unifying theme in the first article by relating their experiences using GoT to engage law students with difficult materials. Heath teaches a variety of legal points by considering the evolution of Australian laws on rape in marriage, and notes that the causes of disengagement can include anxiety and distress triggered by difficult fact situations. Considering the statistically high number of students who have (or know well someone who has) experienced or perpetrated sexual violence, the authors carefully explain how they select suitable scenes, relying on the approachability of the fictionalized representations of legal status, consent, and family expectations to safely engage students in legal substance. But as GoT is known as one of the most affecting television dramas ever produced and has generated vociferous controversy around its depictions of sexual violence, this reader is not entirely convinced.

Interestingly, the next article in the collection, subtitled "Human Augmentation in the Known World" vividly explores the social and individual responsibilities to embrace difference through the story of a beloved GoT character, the young Bram. A scion of the House Stark (scan York), Bram witnesses a crime, loses the use of his legs in the consequent attempt on his life, and then gains the unexpected gift of

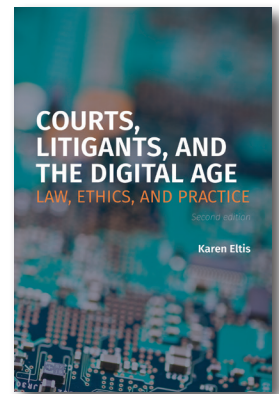
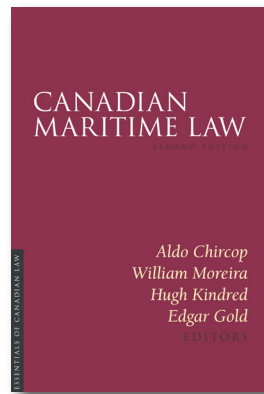
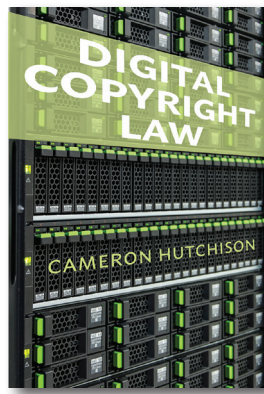
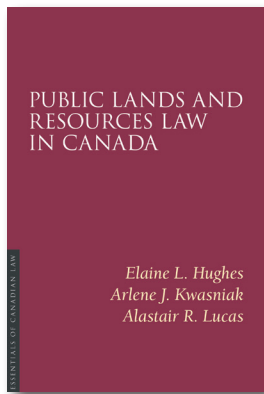
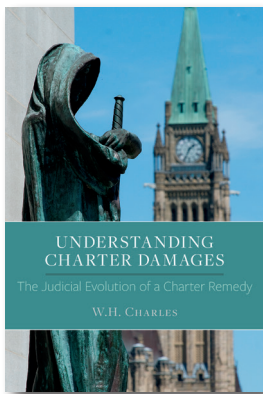
"skinchanging" – spiritually inhabiting the body of an animal and experiencing events through its senses. The analogy of his loss and gain to physical disability and technologies of human augmentation is clearly drawn, and brings to life strikingly a question that will arise commonly for legal consideration as technology develops: what is the extent of human identity?

Bond and Crosbie next explore the prospect of "How Patents Could Win the Game of Thrones," and along the way have much to relate about the actual development of the patents system in Europe. While acknowledging some 'practical' difficulties for the thought experiment's implementation in the GoT universe (such as the apparent lack of developed court and police systems in Westeros), they convincingly make the case that innovation has been stifled in GoT by guild-like bodies and illiteracy. Their underlying claim – the innovation of patent systems in renaissance Europe and after – is offered as a given, raising a question about the importance of the earlier seminal scholarly, cultural, and technical innovations of the 14th and 15th centuries.

"And the Gods will Judge: Trial by Combat in *Game of Thrones*," by US scholars Browning and Brown offers a nice summary of the history of the *duellum* (properly called) and its correspondences in GoT, relying mainly on Peter Leeson's work. Unsurprisingly, the GoT version is considerably more gruesome and dramatic. One point these authors uncover, though they do not remark on it, is the anachronistic nature of the GoT judicial battles; the practice was in deep abeyance by 1300 in England, yet GoT is mostly set about 200 years later. The series also departs in a major and intentional way from actual medieval life regarding medicine, religion, and communications (printing).

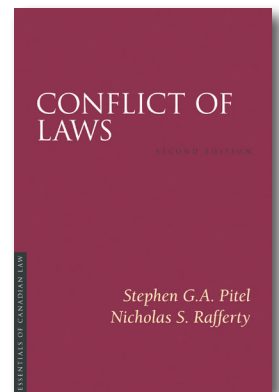
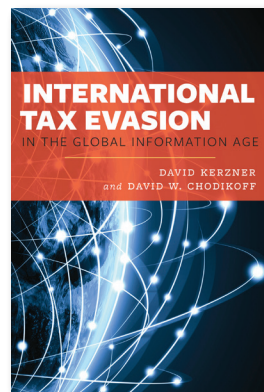
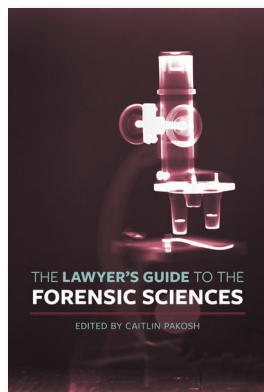
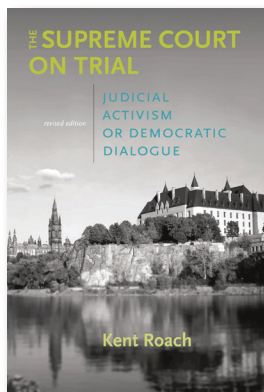
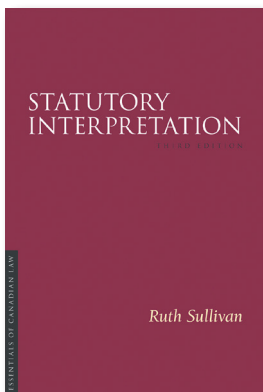
In perhaps the wryest of the articles, Smith and Shah consider the prospects of "Arbitration by Combat" as a method of private dispute settlement in the US. While I would not trust their one-page account of historical trial by combat as far as it could throw me, I do trust they are correct to see room for such agreements to be allowed under the US *Federal Arbitration Act*, *mutatis mutandi*. One obstacle to legality – murder – is acknowledged with reference to some state constitutional prohibitions. While they do not go so far as to suggest inflatable sumo suits, the article is very worth reading for the images that arise from the rather dry delivery. It is recommended that, for instance, lawyers refrain from participating directly as they could run afoul of ethical codes.

Husa takes the idea of engagement a step further in "Exploring Imaginative Legal History: the Legalism of the House Stark in the Game of Thrones." Attempting to show how fictionalized legal history opens up our own thinking about law to new possibilities, the author unfortunately also opens up the medieval legal history books, from which no amateur may escape without deep wounds. Leaping between centuries (5th, 9th, 15th) without regard for geography, the very complex nature of the sources, or the enormous role of the Church, Husa discusses the law of succession while equivocating on known issues (such as the complete lack of



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evidence for a *ius primae noctis*) and ignoring major legal concepts (such as the personality of the law). Citing some good sources while expressing very little awareness of the centuries of excellent scholarship that has provided the little clarity we have, this article may serve readers best as a case study in why not to talk about actual medieval legal history without careful preparation.

McGovern, Wise and Wise return a simpler iteration of the engagement theme by considering how effectively GoT raises and explores questions of justice. Detailing the progress of multiple injustices in the series and the absence of proper redress, the authors ask to what extent are these powerful onscreen depictions reinforcing and furthering popular conceptions of human justice as futile.

While these articles occasionally do a good job of comparing and contrasting the GoT universe with actual late-medieval England, none of them mention the elephant in the room, which is the starkly contrasting visions of medieval daily life that have been developed over the centuries by historians, artists, and many others. Examples of some relatively recent visions of medieval times digested in popular culture include Rowlings', Tolkein's, and William Morris.' The blue-tinted, grimy, dangerous world of Westeros plays well with some kinds of medievalisms, but is not to all tastes. A wonderful, palate-cleansing chaser to any GoT binge is 1982's *The Return of Martin Guerre*, directed by Daniel Vigne and

deeply informed by consultation with Natalie Zemon Davis, one of the greatest medieval historians. Another is the BBC series *Tudor Monastery Farm*, though both are slightly out of period.

REVIEWED BY

**MICHAEL LINES, MA MLS**

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***The Law of Government Ethics: Federal, Ontario, and British Columbia.* By Gregory J. Levine. 2nd ed. Toronto: Thomson Reuters Canada Law Book, 2015. xxxvii, 203 p. Includes table of contents, table of references, footnotes, and index. ISBN 978-0-88804-832-5 (softcover) \$120.**

Gregory J. Levine updates his 2007 work in the second edition of *The Law of Government Ethics: Federal, Ontario, and British Columbia*. As in the first edition, he outlines five primary topics: conflict of interest and integrity; administrative justice and the ombudsman plan; lobbying, transparency and the conduct of influence; access to information and the quest for transparency; and privacy protection and the information state. Levine does not add any additional chapters, although there are a few section headings in this edition that were not in the first. His focus is on updating and



expanding the existing, well-ordered content. Readers will see this in the new case law and legislation, which includes references to provisions that have yet to come into force.

Levine is lawyer whose expertise is obvious; he has professional experience at the local, provincial, and federal levels. His explanations are thorough, yet clearly-written and easy to follow.

He opens each section by defining relevant terminology in the context of public-sector law. Where necessary, he explains the nuances distinguishing the legal usage of terms from the popular understanding of their meaning. For example, he contrasts common interpretations of the term “lobbying,” with legislative descriptions of what activities do not legally constitute that term.

Levine also focuses on explaining relevant laws and policies, how they work, and the underlying principles guiding their construction. He also occasionally points out limitations and gaps in the existing system.

He draws most heavily on case law and legislation from both provinces, often providing fairly specific comparisons of legislation between the two jurisdictions. He devotes slightly less text to analysis of the federal level. Where there are no Canadian judicial decisions on a topic – such as the legitimacy of monitoring lobbying – Levine cites and analyzes US court decisions. Levine also makes occasional reference to other commonwealth jurisdictions, but only where those countries approach something differently than in Canada. He cites some secondary materials as well, when defining terms: legal, political, and business writings, including works from the US and Hong Kong. Yet his definitions draw most heavily from Canadian legislation.

As in the first edition, the detailed table of contents and index make this a convenient tool for anyone seeking definitions of government ethics terminology for the common law provinces. A table of references – divided into a table of cases, and a list of secondary sources – is a welcome addition. This second edition, however, does include frequent typographical errors that are occasionally distracting. Indeed, some reproduced content that was error-free in the first edition has typing mistakes in the second.

This book would be a valuable addition for any academic law library or government library, particularly, but not exclusively, in Ontario and British Columbia. Academic libraries serving political science departments will also want to purchase this title, as will politicians and lobbyists.

**REVIEWED BY**  
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***Mack’s Criminal Law Trial Book.* By Dallas Mack. 2015 Edition. Toronto: Carswell, 2015. cxxvi, 392 p. Includes table of contents, table of cases and index. ISBN987–7798-6681-6 (softcover) \$88.00.**

Dallas Mack is an assistant Crown Attorney in Ontario, best known as the founder of Mack’s Criminal Law Blog. In the preface to *Mack’s Criminal Law Trial Book*, he says the goal for the book was to compile the scattered precedents and caselaw that lawyers collect throughout their careers, and to have it become as well-thumbed and tabbed as the annual Criminal Code.

The book is organized into seven sections that follow the progress of most criminal matters: bail, offences, defences, trial, evidence, *Charter*, and sentencing. Each section is further subdivided by topic, starting from general principles and narrowing into subtopics. For each subtopic, there is a pithy one or two sentence statement of the state of the law, and then a citation for the case that supports that proposition. For example:

#### 4.3 Preliminary Hearings

##### 4.3.1 Purpose

The purpose of a preliminary hearing is to determine whether there is sufficient evidence to warrant the accused being committed to stand trial. A preliminary hearing is not a trial and should not be allowed to become a trial.

*R. v. Patterson*, 1970 CarswellAlta 61, [1970] S.C.R. 409 (S.C.C.) at para. 7.

This arrangement is especially helpful for the lawyer who is away from the office in court, who needs a quick answer to a legal question and doesn’t have time (or technology) to do in-depth legal research. It doesn’t replace deep or nuanced research, but it’s an excellent starting point for that research.

A few quibbles: Mack is an assistant Crown Attorney in Ontario, and the cases are quite Ontario-focussed, although there are citations from across the country. Similarly, all of the citations within the text are Carswell citations, with the table of cases including neutral citations.

The book includes an appendix with checklists for practical courtroom issues: Drinking and driving trial questions, including roadside approved screening device, evidence from the arresting officer and the qualified breath technician; judicial interim release factors to address; a sentencing checklist including aggravating and mitigating factors; and what to cover when leading evidence on voluntariness of statements. These are the sorts of questions handed from lawyer to lawyer, and it is delightful to find them as part of such a useful volume. Mack covers the most frequently litigated areas of law in these checklists; I would have liked to see a checklist for entering a child forensic statement under s. 715.1 or a K.G.B. application to admit a statement of an

uncooperative witness, primarily because those applications are less common.

The book has a narrow focus: only those matters appearing in provincial court or superior court at the trial level. It doesn't address appellate issues, nor issues arising pre-charge. This focus and its organization results in a strong, useful book, as one can find relevant information quickly to address issues at the appropriate stage of the proceedings.

*Mack's Criminal Law Trial Book* is recommended for criminal law firms, law society and courthouse libraries, or any collection with a strong focus on practical criminal law. It's thorough and thoughtful, and it's evident that Mack is a practicing lawyer who's been faced with these issues and had to address them on the fly. *Mack's Criminal Trial Book* won't replace my binder of materials that I take to court, but it will join my Criminal Code in my briefcase for easy reference.

REVIEWED BY  
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***Ontario Employment Standards Act: Quick Reference 2015 Edition.* By Eric M. Roher and Melanie A. Warner. Toronto, ON.: Carswell, 2014 xxvi, 434 p. Includes references and index. ISBN 978-0-7798-6182-8 (2015 edition) (softcover) \$84.00 [note price is for 2016 edition which is now available for purchase.]**

Every librarian, firm and lawyer must struggle with the question of whether it is worth purchasing any book that primarily consists of a statute and regulatory materials easily and freely available on line. In this case, the answer is that the 131 page "Introduction" by Eric M. Roher and Melanie A. Warner easily justifies the purchase price. They provide an excellent introduction, over-view, and update on new developments relating to the *Ontario Employment Standards Act, 2000*, as well as Regulations made under that Act and related areas of law. The authors have the impressive ability to write in a way that will be useful for the generalist, the tyro and the non-lawyer. They have also the related talent of being able to explain specific mechanisms of the Act while also providing appropriate contextualization that manages not to overwhelm or oversimplify.

The structure of the "Introduction" follows that of the *Employment Standards Act, 2000* and offers a helpful and pragmatic gloss on (and inevitably repetition of) the words of the Act. Generally, Roher and Warner provide clear and easy-to-follow explanations together with practical and useful examples. There is comparatively little discussion of cases which is in keeping with the volume's focus on providing "quick" reference.

The last 100 pages or so of the volume are filled with some of the Regulations made under the Act. Obviously, this is appreciated by those of us who prefer reading paper over viewing screens and there is certainly much to be said for the convenience of having the Act and most Regulations gathered together. Of course, like the Act, these are materials readily available online where they are kept up to date.

Both the table of contents and the index are sufficiently detailed so that it is easy and simple to find information on a specific topic. In other words, the book certainly lives up to the promise of "quick reference" made in the title. It can also be fairly said that this work is not intended to canvas the complexities or assist the specialist. It would be useful to the Human Resources Specialist, the generalist and the person who finds comfort in the tangibility of a well-introduced bound book.

REVIEWED BY  
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***Practice & Procedure Before the Human Rights Tribunal of Ontario.* By Katherine Ford & Leah Simon. Toronto: Carswell, 2015. 250 p. ISBN: 978-0-7798-6705-9 (softcover) \$120.00.**

Katherine Ford and Leah Simon's *Practice & Procedure before the Human Rights Tribunal of Ontario* is a useful summary of the steps of practice before the Human Rights Tribunal of Ontario (HRTO). The authors, both of whom practice labour and employment law, have written a thorough guide to the procedures before the HRTO, with many case examples. Given that 77% of HRTO cases deal with employment matters (in 2012/2013), understandably a large proportion of the examples are employment-related, however examples from other areas such as education and housing are provided.

The book begins with an overview of the human rights system in Ontario and the amendments that were made in 2008 that changed the role of the Ontario Human Rights Commission and the process before the Tribunal. Among other changes, one was a commitment to the timely resolution of applications. Pre-2008, it took 4.7 years for a complaint to reach a hearing stage – a statistic that has been significantly reduced despite a jump in applications. Having an understanding of the HRTO's history and transition in recent years is not just an interesting exploration but a useful one as it provides context for subsequent chapters. The introduction also provides some statistics on representation before the Tribunal. Specifically, recent Tribunal Annual Reports show that the percentage of applicants with legal representation ranged from 42 to 50 per cent, compared to 78 to 85 per cent for respondents at mediation. The inclusion of these statistics may inspire readers to explore the larger discussion of access to justice in Canada.

The book then goes through the various steps of a human rights proceeding: from the application and response, to mediation and the hearing itself, to available remedies. Along the way, the authors provide examples to illustrate the various outcomes of procedural matters, such as dismissal of the application and timeliness of document disclosure. New lawyers and law students who find the appeal mechanisms of administrative tribunals confusing will appreciate the chapters outlining requests for reconsideration and judicial review.

The order of the chapters is logical and follows the aspects of HRTO practice in the order in which they come. One suggestion I would make is the inclusion of a chapter at the start explaining and listing the various governing laws that apply to HRTO, both legislation and Tribunal rules and practice directions, as well as explaining their authority and binding nature. One of the most useful parts of the book is the inclusion of a remedies chart which summarizes monetary award amounts, divided by type of breach and including factors that led to the amount of award.

This book is a valuable addition for human rights lawyers as well as law school libraries in those schools that run a student legal clinic. Self-represented and represented litigants themselves will find this book useful, although it is not written in plain language. It would also go hand in hand with a more in-depth exploration of administrative tribunals, such as Macaulay and Sprague's *Practice and Procedure before Administrative Tribunals*. A handy index and table of cases is included, making it easy to navigate.

REVIEWED BY  
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***Rethinking Cyberlaw: A New Vision for Internet Law.* Jacqueline Lipton. Northampton, MA.: Edward Elgar, 2015. vii, 164 p. Includes bibliographic references and index. ISBN 978 1 78100 217 9 (hardcover) \$129.**

In *Rethinking Cyberlaw: A New Vision for Internet Law*, Jacqueline Lipton explores the still fluid field of the law of the internet. Lipton starts with an exploration of what should and what should not be included in the subject of cyberlaw. She explains that internet law can include everything from intellectual property, through online harassment, and the wiring and servers that comprise the internet's physical infrastructure. She argues that in defining the subject for the purposes of things like legal taxonomy and course design, it makes sense to include the intellectual property and behavioural aspects of the law of the internet, but to exclude the regulatory system governing the physical infrastructure, which is much more locally defined.

Lipton starts her substantive discussion of the law with copyright. She explains that traditional conceptions of copyright are in some ways meaningless in the online environment. The ways software and servers work mean that copies are made at each point in the process of saving or accessing content. Restricting the making of copies is not reasonable when doing anything with content one legally has rights to copy. She thoroughly explores the American legislative framework for copyright, including a discussion of the *Digital Millennium Copyright Act* and an overview of the cases considering online copyright.

Trademark law is also different in the online environment, with some unique trademark issues such as domain registration and the purchase of keyword advertising using the trademarks of other companies. Lipton discusses both and gives examples from the primary law.

The final issues Lipton addresses are online defamation and other harmful speech, and digital privacy and victimization. These issues are becoming more pressing as the culture of the internet becomes more mature, and any extended discussion of internet law needs to address them. They are also more in flux than the intellectual property issues as, according to Lipton, intellectual property law is fairly well harmonized internationally with treaties and legislation in place. In contrast, the laws dealing with defamation, privacy, and cyber-victimization are less consistent.

Lipton does a good job of explaining both the technological aspects of the law and the legal aspects of the technology. The book is written in an engaging style, and is a good introduction to the subject. It is focused mainly on American law, so it is likely to be of primary interest to Canadian law libraries that collect books on intellectual property or internet issues, or ones that require a text with an American perspective on the subject. For American institutions, I would recommend it as a good candidate for a textbook and a good text to provide background. It is probably not sufficiently in depth to provide extensive insight to an expert in the field.

REVIEWED BY  
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## III Bibliographic Notes / Chronique bibliographique

By Susan Jones

**Maria Kingsbury, "How to Smile When They Can't See Your Face: Rhetorical Listening Strategies for IM and SMS Reference" (January 2015) 5:1 *International Journal of Digital Library Systems* 31-44.**

A 2013 study by Pew Internet and American Life referenced in this article suggests that people value the services and skills of reference librarians. Research also shows, however, that people value convenience and efficiency, especially when facilitated by technology. Forms of digital communication technology then, such as instant message (IM) and short message service (SMS), would seem to offer library users the ideal type of reference service – a convenient form of digital communication combined with the professional skills of a reference librarian. Reference interactions in the digital environment, though, are fraught with pitfalls. In the non-physical space of IM and SMS reference service, librarians can't rely on the non-verbal communication cues that guide their face-to-face interactions with users and shape their reference interviews. Facial expressions and tone of voice are the sort of non-verbal communication cues that help librarians understand the feelings, mood, and psychology of the user on the other side of the reference desk.

In this article, author Maria Kingsbury, Reference Librarian and Assistant Professor at Southwest Minnesota State University, explores how best to replicate the traditional face-to-face reference interview in the digital environment of text-based IM and SMS. She suggests that *rhetorical listening* can provide librarians with tools for communicating in a way that replaces or makes up for the lack of non-verbal cues in IM and SMS reference interactions. More specifically,

the author suggests that material sensitivity, syntactical mirroring, emoticons, and the maintenance of professional ethos through language can help librarians "listen" when they can't see or hear their users. In addition, these tools can help librarians infuse warmth into their interactions in the digital environment and assist them in creating a sense of place.

Before exploring the tools of rhetorical listening in more detail, the author examines IM and SMS as a form of communication. Providing reference service using IM and SMS may seem relatively simple and straight-forward, but in reality, it's quite complex. Unlike other forms of written communication, the immediacy of IM and SMS reference doesn't allow librarians the time to edit and reflect upon what they've written. And it's not like spoken language, either. In IM and SMS reference, librarians don't have access to the information behind spoken language, such as the rise and fall of someone's voice or its tone. Instead, IM and SMS fall somewhere between written language at one end and spoken language at the other. The author calls it an improvisational form of communication. She also notes that in using IM and SMS in reference service, it's not just the meaning of the words that matter, but also how those words are arranged, and in some cases, even the words that aren't used.

So what does the author mean by rhetorical listening? To explain, she quotes Krista Ratcliffe, author of *Rhetorical Listening: Identification, Gender, Whiteness* (SIU Press, 2005), who defines rhetorical listening as "a stance of openness that a person may choose to assume in relation to any person, text, or culture." Again, by using strategies of

rhetorical listening in their text-based digital reference work, librarians can try to preserve the human connection and the advantages of a face-to-face reference encounter.

The first of the rhetorical strategies for listening described by the author is *material sensitivity*. Material sensitivity simply refers to paying attention to how a patron contacts the reference desk. In other words, taking note of whether a patron is using a mobile phone, a laptop or tablet computer, or a stationary desktop computer. It may not be obvious what kind of device a patron is using, but librarians can take cues from the patron's incoming message to find out – phrase length, syntax, spelling, and vocabulary are all good clues. By taking note of these things, librarians can then respond in a way that shows they're aware of and appreciate the context in which the patron is communicating. For example, in reference transactions using IM (e.g., Facebook Messenger), patrons likely have access to a full-size keyboard, thereby allowing them to type easily from a seated position. In this context, it's more likely that patrons can read longer messages from the reference librarian without difficulty, comfortably type longer messages in response, and easily follow links to websites and view online videos.

In comparison to IM, SMS messages (e.g., text messaging) are usually sent from mobile phones with small keyboards that present many challenges when typing. As a result, messages are typically short, and thanks to the autocorrect and autofill features on these devices, they're often laden with spelling mistakes. What's more, SMS messages often lack the capitalization and punctuation that one might expect in other forms of written communication. Also, poor cellular reception or lack of a data plan may prevent patrons from following website links or viewing online videos sent during a reference transaction. Understanding the limitations and expected behaviour of patrons using IM and SMS, and responding in a way that takes these things into account, is a great way for librarians to let patrons know they're "listening."

The second rhetorical listening strategy described by the author is *syntactic mirroring*. Establishing a connection with a patron is one of the keys to a successful reference interview and syntactic mirroring is one way to do that. Syntactic mirroring simply means responding to a conversational partner's verbal and non-verbal signals. During a reference transaction, this means a librarian may change his or her own style and tone of language to more closely match that of a patron. The author cautions against taking this mimicry or mirroring to an extreme. The adjustment of one's own language should never come across as exaggerated or artificial. As the author points out, in a face-to-face interaction, a librarian wouldn't adopt the accent of the patron sitting on the other side of the reference desk!

The author offers a few textual strategies for librarians trying to mirror the patron at the other end of a text-based reference transaction. One suggestion is to follow the patron's use of acronyms. For example, "lol" is a frequently-used acronym meaning "laugh out loud." The author also suggests paying attention to the patron's use of contractions

and responding accordingly to match the formality of the patron's language. A lot of contractions in a message signals a casual tone, while an absence of contractions suggests a more formal one. Librarians should also follow the lead of the patron when it comes to phrase length and complexity of phrases in messages. By mirroring a patron's digital "voice," librarians are showing they're listening, and at the same time, developing a rapport with the patron.

The third rhetorical listening strategy described by the author is *emoticon use*. Emoticons (e.g., ☺) are very effective in conveying a state of mind and feeling in non-verbal, text-based communication. The presence of emoticons in a patron's message, then, can assist librarians in developing an appropriate response. By using the same emoticons as the patron, librarians are signaling that they "hear" and understand the patron's message. They're also effective in dealing with a patron that may be stressed or anxious. In fact, an article referenced by the author suggests that emoticon use may lead to "emotional contagion." For example, a message with a smiley-face emoticon may lead the recipient to mirror the emotions associated with that representation of a smile.

The final rhetorical listening strategy described by the author is *professional ethos awareness*. Librarians' use of syntactical mirroring and emoticons may raise questions in some people's minds about their professional conduct and demeanor. The level of formality or informality in IM and SMS communication is something librarians will have to gauge on a case-by-case basis, or even moment-to-moment. Although IM and SMS communication lend themselves to more informal exchanges, there may be situations when a formal tone is warranted. To that end, the author offers a few textual strategies for raising or lowering the formality of the interaction. For example, to raise the level of formality, the author suggests that librarians point to policies and procedures online, rather than trying to explain them in their own words. Additional strategies for raising the formality of a message include eliminating the use of contractions and writing in complete sentences.

All users deserve our full attention and the very best service we can offer. By applying the rhetorical listening strategies described in this article to IM and SMS reference transactions, librarians can ensure they do, even when they can't see or hear the patron.

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**William Joseph Thomas & Daniel Shouse, "This Is Not a Dumpsite: The Problem of Evaluating Gift Books" (January 2014) 38 Library Collections, Acquisitions & Technical Services 63-69.**

In a previous job, I received more than a few telephone calls from people inquiring about donating their books to the library. It was a small library with no room for yet another set of provincial case reporters, especially considering the multiple sets already on the shelves and the many others in

storage. I suspect though, as do the authors of this article, that few people donate their books for purely altruistic reasons. More than likely, the potential donors just can't muster the courage to pitch their own books. So instead, they turn to libraries, often believing that their books will be added to the collection.

As noted in this article and alluded to in the title, academic libraries are frequently the dumpsites for people's used books. That's not to say that academic libraries can't benefit from donations. In fact, academic libraries can benefit greatly from donations if they happen to include books that are relevant to, and are needed for, the collection. The problem is, though, that not many gift books are suitable for the collection. And then there's the cost – in terms of money, staff time, and storage space – of uncovering those few gems amongst the many boxes of donated books. All of these issues led the authors of this article to investigate whether it was even worthwhile to have a gift program at their library. The authors are William Joseph Thomas, Assistant Director for Collections and Scholarly Communications, and Daniel Shouse, Collection Development Librarian, at the Joyner Library at East Carolina University in Greenville, North Carolina.

The Joyner Library's gift program underwent many changes prior to the authors' evaluation. At one time, all donations were administered by a single staff member in acquisitions and evaluated by liaison librarians. Any items not deemed suitable for the collection were added to the Friends of the Joyner Library book sale. This process changed, though, when the staff member in acquisitions retired, collection development responsibilities were removed from liaison librarians, and the Friends of the Joyner Library book sale was no longer considered cost effective. The final death knell for the gift program was the arrival of 12 boxes filled with mouse droppings and spider-infested books. At that point, the Joyner Library's gift program was put on hold and no further donations were accepted.

During the break from the receipt of donations, the procedures for processing gifts were revised and streamlined, and a gift policy was developed. A gift policy not only helps librarians decide how to direct donated items, but also helps to manage the expectations of donors. Today, a single collection development librarian leads the gift program at the Joyner Library and serves as the contact point for donors. That person also seeks the advice of subject specialists, when needed, and makes the final decisions about the disposition of items. Other changes made during this time include the requirement of an appointment to drop off any donations, and a rigorous initial cull of all gifts to remove unneeded items. Following the initial cull, a graduate assistant searches the catalogue for the items left and notes which ones are already part of the collection, along with their circulation statistics. Unwanted books are given to a book consignment agency to sell on behalf of the library, offered to the local public library for its book sale, or recycled. Even with these changes, though, there were still concerns about the staff time and storage space required for processing gifts when

balanced against the small number of items actually added to the collection. To address those concerns, the authors sought to answer two questions: Do they need to continue to receive gifts? And if so, are there ways to more easily identify the items worth adding to the collection?

Proceeding on the basis that a gift program's usefulness can be assessed according to how much the gifts are actually used, the authors looked for answers to their questions by examining the circulation statistics of the 4,386 gift books added to the Joyner Library's collection over a seven-year period. To begin, the authors used their institution's integrated library system to extract information about the gift books, including each item's title, author, call number, subject headings, last-used date, and circulation numbers. The statistics they gathered showed that only 31 percent of the gifts had circulated during the seven-year period in question, and only eight percent had circulated more than three times. By comparison, 48 percent of purchased print books had been checked out within two years of being added to the collection. Although the average number of checkouts per gift book was a very respectable 3.07, the authors caution that this high rate was due to the heavy circulation of a small number of gift books, mostly popular novels and books on required reading lists. Based on their assessment, the authors concluded that the overall circulation rate of gift books was acceptable, but the actual percentage of books that circulated was low.

In an attempt to find an easier way to identify which gift books might be worthwhile additions to the collection, the authors decided to examine the circulation statistics of gift books according to their subject. They didn't examine all subjects, but rather, only those ones in which they expected higher circulation rates. More specifically, they looked at the circulation rates of gift books added in the P (Language and Literature) and H (Social Sciences) classes. During the period in question, 960 gift books were added to the P class and total check outs numbered 832 for a use rate of 0.87. These statistics suggested that the P class was a good area to review in more detail, but a closer examination actually revealed otherwise. In fact, only 26 percent of gifts in the P class circulated at all, and the gift books with the highest circulation rates were popular novels.

Fewer gift books were added to the H class than the P class – only 551 items – but the use rate was higher: 726 checkouts for a use rate of 1.32. Thirty-seven percent of the gift books in H circulated during the period in question and there were 20 books with 10 or more checkouts. Of those 20 books, 15 were on the topic of business and leadership, three on women's and gender studies, and two on social work. Interestingly, three of the business and leadership books had multiple copies in circulation with more than 10 checkouts each. Further investigation into the circulation of gift books in the H class showed that books in subclass HV (Social pathology. Social and public welfare. Criminology), and more specifically, books on criminology and criminal justice, had higher circulation rates. Similarly, books in subclass HQ (The family. Marriage. Women), specifically

those on women's studies, were more likely to circulate. Looking at subclass HD (Industries. Land Use. Labor), the books with the most circulation were on the topics of management and leadership. Their analysis of circulation by subject led the authors to conclude that high-circulating subject areas could be a helpful factor in determining what gifts to add to the collection.

The authors also looked at the impact of age upon gift books' circulation rates, especially since the negative effect of a book's age was noted in an article in their literature review. Although the authors found that age had some impact on the circulation rates of the Joyner Library's gift books, it wasn't as great as expected.

The authors also looked at the impact of outside factors on the circulation of gift books, namely, interlibrary loan activity and their appearance on required reading lists. Interlibrary loan activity did account for some of the circulation activity of the gift books in question, but only seven percent. This led the authors to conclude that interlibrary loan activity shouldn't be a factor when evaluating gifts. To assess the impact of the appearance of gift books on required reading lists, the authors examined the lists from the two most recent semesters. Not surprisingly, very few of the gift books appeared on the required reading lists, but their circulation rates were higher than other gift books. In fact, gifts that appeared on required reading lists were four times more likely to circulate than other gift books in the collection.

Public relations is an important aspect of any academic library's gift program. Undoubtedly, the future possibility of a financial contribution to the library could influence the decisions about a donor's gifts. In their study, the authors wanted to determine if the possibility of a future financial contribution is a factor to consider in the gifts-selection process. To find out if book donors also donated money, the authors examined a list of the financial donors to the library for a ten-year period. Comparing that list to one for book donors, the authors determined that only 14 individuals donated both money and books, which represented just three percent of financial donors and 12 percent of book donors. The authors concluded that there wasn't a significant amount of crossover between the two groups of donors, so rather than worrying about offending book donors, librarians instead should just focus on the consistent application of the gift policy. Their conclusion was in keeping with the literature on this aspect of gifts, which suggests that gifts of books only leads to more of the same, rather than to gifts of money, trusts, or endowments. Even so, the authors acknowledge that book donations aren't without political repercussions altogether and that there may be justifiable public relations reasons for adding particular gift books to the collection.

Based on their experience, the authors offer a couple of suggestions to other libraries with gift programs. Their first suggestion is to occasionally examine the circulation data of gifts to better inform the future selection of donated items. Second, given their significant impact upon the circulation rates of gift books, it's a good idea to have required reading

lists at hand during the gift-selection process. The authors note that as a result of their analysis and study, the Joyner Library will continue to receive gifts. Proposed amendments to its gift policy, however, will outline for potential donors what will and will not be accepted, and will give the library the right to determine the final disposition of all gifts.

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**Alex Caro & Chris Markman, "Measuring Library Vendor Cyber Security: Seven Easy Questions Every Librarian Can Ask", online: (April 2016) 32 Code4Lib Journal <<http://journal.code4lib.org>> (accessed 11 July 2016).**

I think it's safe to say that most librarians take privacy and the protection of data very seriously, so it makes sense that their library vendors should, too. But do they? One way to find out is through a cyber security risk assessment. Despite the importance of these assessments, many may avoid them, thinking that they just don't have the know-how, the time, or the money to carry one out. But a cyber security risk assessment doesn't need to be such a daunting and costly venture, at least not according to the authors of this article.

Alex Caro, a graduate student in Science Technology and Policy at the University of Sussex in Brighton, and Chris Markman, an Academic Technology Specialist at Clark University in Worcester, Massachusetts, developed a cost-effective tool for conducting internal audits of library vendors. Called LibSec, this tool is for technical and non-technical librarians and staff who want to take some positive action toward ensuring the security of their library's data by conducting periodic reviews of their vendor agreements. It's also for those who want to better understand what security features they should expect from their vendors.

LibSec comprises seven categories against which a vendor's agreement is assessed. Each category is assigned a point value according to its impact on patron cyber security. At the end of the assessment, the points are tallied and a grade assigned according to a grade scale. The authors acknowledge that the impact of each of the categories may vary depending on the type of library, so users of LibSec should make whatever modifications are appropriate for their institution. For example, the impact of a vendor's terms of service may be different for an urban academic law library than for a rural public library. It's also important to note here that it's not just how librarians and library staff assess each category, but also how the library's users would do the same.

Before embarking on a description of each of the categories in LibSec, it's worth passing on the authors' advice to those using the risk assessment tool for the first time. It can take a while to collect all the information needed for the assessment, so the authors recommend that librarians and staff take careful notes on what documents or information they consulted during the process, where they found the information or documents, and how they determined vendor compliance. With this information at the ready, subsequent risk assessments can be carried out more quickly and efficiently.

The first category against which a vendor's agreement is assessed concerns the vendor's *data breach policy*. In this case, librarians should ask: *Is there a formal process in place to report data breaches if or when they occur?* The absence of any such process or policy means the vendor may or may not advise their users about a known security breach in which user data (e.g., user borrowing data) is compromised. Award +1 point if the vendor in question has a data breach policy that meets the library's requirements. If there's no data breach policy, award 0 points, and award -1 point if the data breach policy doesn't meet the needs of the library.

The second category is about the vendor's approach to *data encryption*. The important question here is: *If patron data is stored by the vendor, is it encrypted?* The authors believe that it's not a matter of if a security breach happens, but when and how, and data that's encrypted when that breach occurs is less vulnerable than it would be otherwise. Assign +1 point to a vendor that uses data encryption, 0 points if it's unclear or unknown whether they do, and -1 point if it's clear the vendor doesn't use data encryption.

The third category is about *data retention*. When it comes to assessing data retention, librarians should ask: *Does the vendor purge patron search history records on a regular basis?* A vendor receives +1 point if its data retention policy is acceptable to the library, 0 points if it's not known whether the vendor has any such policy, and -1 point if its data retention policy is unacceptable.

The fourth category concerns the ease of *use of a vendor's terms of service*. In this case, the important question is: *Can the average library user read and fully understand the vendor's terms of use policy?* How many of you have clicked past or skipped over a vendor's terms of service (TOS) statement in order to access a resource more quickly? The fact is, most people do. TOS statements are usually long and difficult to understand, but as noted by the authors, it's important to read them and to encourage our users to do the same. Doing so allows them to make informed choices about the vendor's use of their personal information. Assign +1 point if the vendor's TOS is easy to read, 0 points if the TOS can't be found, and -1 point if it's difficult to read.

The fifth category is about *patron privacy*. The important question to ask about patron privacy when assessing the vendor's agreement is: *Does the vendor use Google analytics or other tracking software to monitor users?* Google Analytics and similar tools are used by many websites and online resources to collect information about the web pages users are visiting, usually without them even realizing it. It's information that's undoubtedly useful to the vendor, but from a cyber security risk management perspective, it's best to disable such tools, or at least limit their use. Assign +1 point if the vendor respects browsing privacy, 0 points if the tracking is acceptable to the library, and -1 point if the tracking is unacceptable.

The sixth category concerns *secure connections*. In this case, the question to ask when examining a vendor's agreement is: *Does the vendor's website enforce secure connections only (HTTPS or better)?* Unlike the previous categories, which concerned stored data, this category assesses data in transit to other computers. The authors describe the detection of unencrypted data in transit as "laughably easy." Believe it or not, there are free software tools and YouTube tutorials to show you how. And while even secure connections aren't infallible, the existence of a secure connection is a simple step in the right direction to better cyber security on the part of a vendor. Assign +1 point if the vendor forces secure connections on its networks, 0 points if this information is unknown, and -1 point if its connections are unencrypted or unsecured.

The seventh and final category is about *advertising networks*. With respect to this category, librarians should ask: *Does the vendor's website participate in advertising networks?* This is the most heavily-weighted category because a library's cyber security risk management not only depends on the vendor's security in relation to its own use of advertising networks, but also on what the advertiser does on its end. For example, many advertising networks re-sell their user information to other advertisers and, unfortunately, there's little a library can do about the sale of that information. The advertising network's contract is with the vendor, not the library, so even if the vendor receives top marks in the previous six categories, it's of no consequence if it's handing over user data to an advertising network with no obligations regarding the data's retention or encryption. Keeping in mind that not all advertising networks are alike, assign +6 points if the vendor doesn't use advertising networks, 0 points if this information is unknown, and up to -6 points depending on how advertisements are used.

As noted earlier, at the end of the assessment, the points are tallied and a grade assigned according to the authors' grade scale. An A grade is awarded to a vendor with  $\geq 11$  points; a B grade to a vendor with  $\geq 10$  points; a C grade to a vendor with  $\geq 9$  points; a D grade to a vendor with  $\geq 7$  points; and an F grade to a vendor with  $\leq 6$  points. To help potential users of LibSec, the authors provide sample assessment worksheets as appendices to their article, one for the vendor of an integrated library system and the other for a social media site.

Ideally, LibSec should be just one part of a larger security risk management program at a library. Even on its own, though, LibSec is a great start to ensuring better cyber security by helping librarians understand where their vendors may be falling down and by assisting them to identify the security features they may want to demand of their vendors in the future.





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

### Notes from the UK

#### London Calling!

By Jackie Fishleigh\*

Hi folks,

It's been a very turbulent period here as you have no doubt gathered. More on that story later...

#### New Mayor of London – Sadiq Khan

We have a new Mayor of London, the successor to the controversial and flamboyant Boris Johnson. His name is Sadiq Khan and he was elected in May. He is a qualified solicitor and the first Muslim to hold this office. He was one of eight children born to Pakistani immigrant parents: a bus driver and a seamstress. He grew up on a south London housing estate.

Despite attempts to link him to terrorist groups he has won the biggest personal mandate in the UK and a job with wide-ranging powers over London.

So far he seems equal to the task and has pledged in his manifesto to:

- Tackle the housing crisis, building thousands more
- homes for Londoners each year, setting an ambitious target of 50 per cent of new homes being genuinely affordable, and getting a better deal for renters.

- Freeze Transport for London transport fares for four years and introduce a one-hour bus 'Hopper' ticket, paid for by making TfL more efficient and exploring new revenue-raising opportunities. Londoners won't pay a penny more for their travel in 2020 than they do today.
- Make London safer, with action to restore neighbourhood policing, tackle gangs and knife crime, a plan to tackle the spread of extremism, and a review of the resourcing of our fire service.

Etc. etc . - you get the picture...

That all sounds good to me and in fact similar wish lists are probably in place for most major cities in the UK, Europe and beyond. The one-hour bus "Hopper" ticket has already arrived. Clearly as the son of a London bus driver he was keen to get this moving!

As I write this, the mayor is touring Canada, showing that London is open for business and advising Donald Trump that it is better to build bridges rather than walls!

#### “Safe country, nice country – Thank you England”

These were the simple but rather charming words of a man

who recently arrived in the UK after fleeing his own country.

Given the result of our recent Referendum on our membership of the EU I do wonder whether we will maintain this sort of reputation in years to come. Around 16 million of those who voted wanted to remain in the EU (me included) while over 17 million wanted to leave. There were a number of reasons why the BREXITEers wished to leave but loss of sovereignty and the influx of what were felt to be too many immigrants were major factors.

Although the referendum result has been described as a surprise, the writing was on the wall in the weeks beforehand. In my last column I must have sounded as if the Titanic were going down. And it did and now we will have to live with the consequences for many years. Those of us who enjoyed being in the EU have gone through a painful process of bereavement. Those in positions of authority and power, even the House of Lords have been warned not to try and block BREXIT, on the grounds that leaving is “the will of the people.” Grrr.

My view is that the result was narrow, only advisory and definitely not legally binding. If a threshold of 5% had been put on it then the result would not have been decisive enough. Crucially no proper plan exists on how to re-orientate the UK after we leave the EU in 2 years. Within days of the result all the Vote Leave leaders had resigned – Boris Johnson, Michael Gove and Nigel Farage.

It was political drama on a scale that, if it had been a plot in a novel it would have been deemed too far-fetched to be credible — and yet it happened.

### **Cameron out, May in**

The main practical change that occurred was the almost immediate resignation of David Cameron and the installation within a matter of a few weeks of Theresa May. Cameron has now left politics all together. Even the honours he bestowed when he left office were mired in controversy, particularly when stylist Isabel Spearman was nominated for an OBE. Mind you she did actually do a good job with the Camerons and on the morning after the BREXIT she volunteered to come in and style them for their departure for no pay. We wouldn't want them appearing before the world's media in tears, wearing their pyjamas now would we!

Andrea Leadsom briefly challenged Mrs. May for the leadership of the Tories and vacant PM slot but she proved to be way out of her depth. She was quickly caught out for exaggerating on her CV and for claiming she was the better candidate simply because she had had children, unlike Mrs. May.

In her first speech our new PM stressed that she was the Leader of the Conservative and Unionist party (the full title) and in so doing swore a seemingly heartfelt allegiance to both Scotland and Northern Ireland. Seconds later she boomed

“BREXIT means BREXIT,” adding that we were going to make a success of it. There are at least two problems with this. First we still don't really know what BREXIT means in practical terms and secondly since Scotland and Northern Ireland were strongly in favour of remaining in the EU, it seems possible that this fracture may lead to the break-up of the UK in due course.

She also emphasised her commitment to making the UK work for everyone and to provide opportunities for all. These were fine words. Since then she has shown an obsession with bringing back selective schools, known as grammar schools. In my view, more and better housing is what people are actually crying out for.

May immediately made changes to the Cabinet so substantial that the press dubbed it a “bloodbath.” Personally I think it was quite understandable that she would wish to establish a fresh team for her premiership.

May was quick to dump the nightmare of making BREXIT happen on three hapless men: Boris Johnson (a case of keeping an enemy close), David Davis (resurrected from semi-retirement) and Liam Fox (a disgraced former Defence secretary). When it was announced that these men were to share use of Chevening, a lavish grace-and-favour country house, Liberal Democrat leader, Tim Farron, described the scenario as “a bit like Brexit Towers,” a reference to the wonderful 70s sitcom *Fawlty Towers* which featured Monty Python's John Cleese as Basil.

What will emerge and when, I honestly do not know and nor, it seems, does anyone else. Mind you it doesn't stop panicked EU leaders like Donald Tusk and Jean-Claude Juncker constantly attempting to usher us towards the exit door. On a personal level, I am still bewildered that we have decided to leave the largest trading block in the world i.e. the EU single market, purely based on the narrow result of an ill planned and thought through vox pop!

### **Team GB Do Us Proud in Rio!**

Meanwhile awesome displays of sporting prowess at both the Olympics and currently the Paralympics are keeping our spirits up. The UK was second only to the mighty USA in August and is at present second to China in the Paralympic medal table. At the Atlanta Olympics in 1996 we got just one gold....

I can assure you our athletes are not on drugs. No, sir! The secret is the substantial funding they receive from the National Lottery. Our success is in fact based on gambling! Oh and an excellent coaching set up.

With very best wishes.

Until next time...

**JACKIE**

## Letter from Australia

By Margaret Hutchison\*\*

Greetings!

In my last letter, I wrote about our forthcoming election. Well, it's been and gone after what has seemed like the longest campaign ever. I went and voted at Old Parliament House again, it's rather a fun idea to vote where the people you voted for, actually represented you. As at most polling stations, there was a sausage sizzle for charity as at the neighbourhood schools. In fact, there's a [website](#) dedicated to finding the sausages sizzles. The Australian Embassy in the Netherlands had a sausage sizzle the day before the election, as did the High Commissions in Singapore and India.

What has resulted from this election is a swing to the Labor Party, which was expected but occurred at a much greater magnitude than was predicted. There are also even more minor parties and independent senators now. The unstated aim of the Prime Minister in calling a double dissolution election and amending the electoral laws for the Senate was to clear out the minor parties. It rather backfired on him, as there are more minor parties and independents than in the previous parliament. Some are returning, like Pauline Hanson, leader of the Pauline Hanson's One Nation Party, (she has policies similar to Donald Trump but not as scary) and others are new, like Derryn Hinch, a television and radio personality from the state of Victoria. The platform of his party, Derryn Hinch's Justice Party, is anti-paedophile, tough on crime and in favour of parole and bail "reform," based on its founder's previous public campaigns.

There is still the possibility of the High Court being involved as the Court of Disputed Returns. Newly elected senator, Rodney Culleton, belonging to Pauline Hanson's One Nation Party from Western Australia is facing trial in New South Wales for larceny dating back to 2014. He was convicted in his absence in March 2016 but the conviction was annulled in August 2016 so that the original case can go ahead. If he is convicted, and the sentence is more than a year, a replacement will have to be found via a recount. If it is a shorter sentence, then it is treated as a casual vacancy and Mr. Culleton will wait on the sidelines until his sentence expires and he can take his seat. However, Professor Tony Blackshield, in his blog posting [Void or Vacant? The Vibes of Vardon' on AUSPUBLAW \(26 August 2016, updated 28 August 2016\)](#), raises the point that during the whole election campaign, Mr. Culleton was ineligible to stand as Culleton was "convicted and ... subject to be sentenced" for an offence potentially open to punishment "by imprisonment for one year or longer", and was therefore "incapable of being chosen" under s 44(ii) of the Constitution. So the election problem rolls on.

Otherwise, there's not much happening. With a federal election, especially a winter election, most state parliaments

go into campaigning mode for the federal branches of their parties. They'd probably all be in a non-sitting period anyway, because it's winter.

As I'm about to go on long service leave, the thought of hotels and travel has been occupying my mind. Victoria is about to legalise Uber, joining South Australia, Western Australia, New South Wales and the Australian Capital Territory and leaving Queensland as the only state vehemently opposed to it. The ACT had to legalise Uber after New South Wales did, to avoid possible cross-border situations such as hiring a Uber driver in NSW but not being covered for insurance if there was an accident in the ACT while transporting paying passengers. The problems of being surrounded by a much larger state have been continual since the ACT was established, the most pronounced being partial prohibition in the early years from 1911 to 1928 in the ACT and just over the border, New South Wales was flowing with alcohol. Prohibition was partial, since possession of alcohol purchased outside of the Territory remained legal and the few pubs that had existing licences could continue to operate. The Federal Parliament repealed the laws after residents of the Federal Capital Territory voted for the end of them in a 1928 plebiscite. Prohibition was pushed through federal Parliament by the then Minister for Home Affairs, King O'Malley, who claimed to have been born in Stamford Farm in the Eastern Townships of Quebec but was more likely to have been born in Kansas. He claimed to have been born in Canada to be a British subject and therefore eligible to be a Member of Parliament. His name lives on in Canberra in a highly expensive suburb full of diplomats and also a popular pub!

AirBNB is still very much a grey area in Australia. The laws regarding short-term lets have not caught up and court decisions are not going in favour of resident owners trying to moderate the use of private residences as AirBNB rentals. A decision in the Victorian Civil and Administrative Tribunal found that a landlord could not evict tenants who had listed their apartment on the website as they technically had not sublet their apartment. Other states are still grappling with these issues. The key issue is that, under most local council regulations, 'tourist and visitor accommodation' is generally not allowed in residential areas. While 'Bed and Breakfast accommodation' may be permitted under council regulations in areas with high tourist numbers, consent is generally required. Consent generally comes with a number of complications such as insurance, various fees and lengthy application processes. There are also the issues of strata body corporate by-laws and insurance to be revised.

There also has been great controversy in New South Wales and the ACT over the banning of greyhound racing from July 2017. This arose after proven reports of animal cruelty involving the slaughter of dogs and the mistreatment of racing dogs. The ACT has followed suit, however the other states are still allowing greyhound racing & breeding.

To finish on a lighter note, On Canada Day, Canberrans were invited to join Canadians at Regatta Point at 6.50 for the

raising of the Canadian flag and to sing the national Anthem. They were also asked to BYO ready-to-cook pancake batter for volunteers to cook if they wanted pancakes afterwards, Maple syrup & coffee were supplied.

Also, at the National Arboretum, the world's biggest knitted maple leaf was created. The scarves creating the giant leaf were to be given to charity afterwards



Until next time,

**MARGARET**

## **The US Legal Landscape: News from Across the Border**

By Julienne Grant\*\*\*

I'm writing this at the end of another crazy week in American politics. Democratic presidential candidate Hillary Clinton has pneumonia, and her Republican opponent Donald Trump discussed his own health status on national television with Dr. Oz.<sup>1</sup> Mr. Trump also retreated from his contention that President Barack Obama wasn't born in the US, although he blamed Mrs. Clinton for initiating the "birther" controversy. The US presidential election is indeed almost upon us, and like many Americans I'm fed up with the whole campaign process. Actually, if a certain candidate becomes the next US President, I may flee to Canada.

Despite the "background noise" of US politics, I had a great summer. In July, the American Association of Law Libraries' (AALL) annual meeting was held in Chicago, and I was a busy hostess. At the end of July, I ventured to England where I attended the International Association of Law Libraries' (IALL) Annual Course. Along with short reports on those events, this column imparts news on US law schools, the American Bar Association (ABA), SCOTUS (Supreme

Court of the United States), and some wildly weird cases in the lower federal courts. Under the category of "Legal Miscellany," there is also a report on two Ms Crawfords who want to become judges. Enjoy!

## **AALL 2016 Annual Meeting**

AALL's 109th Annual Meeting & Conference (July 16-19) was held at the Hyatt Regency in downtown Chicago with "Make it New, Create the Future" as its theme. According to Pam Reisinger, AALL's Director of Meetings, total paid attendance was 1,476 with total onsite attendance reaching 2,623.<sup>2</sup> There were 79 international attendees representing 10 foreign countries, with the largest contingent from Canada at 35, followed by 26 from the UK.<sup>3</sup> Attending a conference in a host city, I discovered, is a lot different than flying in and staying at a hotel. My volunteer duties ran the gamut (everything from stuffing goody bags to hosting a dine-around), and I didn't have a lot of extra time to attend programs. The weather was cooperative for the most part, and the City of Chicago was truly the star; I was so pleased that attendees really seemed to love our city. Next year's AALL meeting is in Austin, Texas with the theme "Forgo the Status Quo."

## **IALL 2016 Annual Course & A Visit to the UK Supreme Court**

IALL held its 35th Annual Course in Oxford, England, and I was fortunate to receive an IALL bursary so I could attend. Running from July 31 through August 3 (plus an optional day at Blenheim Palace), the Course was entitled "Common Law Perspectives in an International Context." The conference featured a number of excellent speakers from the University of Oxford, as well as Canadian Sonia Poulin (Director, Alberta Law Libraries and Information Services), who presented during the final program on Open Access. The experience of lodging at Keble College, which included dining in the College's magnificent Hall, was unique and very Harry Potteresque. Check out the *DipLawMatic Dialogues* blog for summaries of the Course's programs.<sup>4</sup>

After IALL, I spent a few days in London and had an opportunity to tour the UK Supreme Court, which included a visit to the Court's stunning library. As I was exiting the library, I serendipitously ran into Katherine Laundy (Manager Collection Development, Library & Information Management Branch, Supreme Court of Canada), who was scheduled to meet with the UK Supreme Court's Head Librarian Paul Sandles. Both very graciously invited me to join them, so the three of us sat down for tea in Paul's office. For a blog posting on my visit to the Court and library, see also *DipLawMatic Dialogues*.

<sup>1</sup> Dr. Oz is Dr. Mehmet Cengiz Öz, a controversial surgeon and television personality who hosts "The Dr. Oz Show."

<sup>2</sup> E-mail from Pam Reisinger, Dir. of Meetings, Am. Assoc. of Law Libr., to Julienne Grant (Sept. 7, 2016) (on file with author).

<sup>3</sup> *Ibid.*

<sup>4</sup> *DipLawMatic Dialogues*, FCIL SPECIAL INT. SEC., AM. ASSOC. OF LAW LIBR., <https://fcilsis.wordpress.com/>.



*Julienne Grant, Paul Sandles, Katherine Laundy and an unidentified teddy bear at the UK Supreme Court*

## Law School News

Still facing dwindling enrollments, US law schools continue to seek creative ways to attract more students. Here at Loyola Chicago, the first class of our new Weekend JD program matriculated in August. According to our Dean of Admissions, 19 women and 24 men collectively representing 10 states comprise the inaugural class.<sup>5</sup> The median age is 29, half of the students hold an advanced degree, and there are physicians, legislators, educators, and business executives enrolled in the program.<sup>6</sup> The program is unique in that it combines an online portion of study with 14 weekends of on-campus coursework during the academic year.

In another attempt to boost law school enrollment, Ohio just became the 50th state to allow “3-plus-3” law programs.<sup>7</sup> The “3-plus-3” programs allow students to combine an undergraduate degree with a JD, so they complete both in six years instead of seven. The program saves time and money over the dual degree sequence. Capital University in Columbus became the first Ohio school to offer the “3-plus-3” option.

In other law school news, the *ABA Journal* reported that several schools now require the GRE (Graduate Record Examination) instead of the LSAT (Law School Admission Test) for admission.<sup>8</sup> Many more people sit for the GRE than the LSAT, and the GRE is offered year-round, thus the thought is that use of the latter might increase applications and perhaps broaden access to law school. The University of Arizona is taking the lead with the policy, promoting its belief that the LSAT was overly weighted and that the GRE is

as good or better a predictor of law school success. Arizona commissioned an empirical study that supports its position, which it has submitted to the ABA’s Accreditation Committee.

## ABA News

The *ABA Journal* reported in June that a US Department of Education (DOE) panel has recommended that the ABA’s accreditation power for new law schools be revoked for a year.<sup>9</sup> According to the article, the DOE contends that the ABA “failed to implement its student achievement standards and probationary sanctions, while also not meeting its audit process and analysis responsibilities regarding students’ debt levels.”<sup>10</sup> No word yet on whether the suspension will be implemented. The DOE has recognized the ABA’s accreditation authority since 1952.

The ABA’s law school accrediting body is also in “hot water” within the Association itself for a March proposal that would simplify the bar passage standard.<sup>11</sup> The proposal would require a law school’s graduates in a particular calendar year to pass the bar at a rate of 75 percent or higher within two years of graduation. A hearing on the plan was held on August 6 at the ABA’s 2016 Annual Meeting during which multiple critics panned the proposal. These critics primarily contended that the plan would threaten the diversity of the legal profession, as black and Hispanic students from low-income households have traditionally had more difficulty passing the bar exam.

## New Leadership for the ABA, AALL, and the Library of Congress

The ABA’s 2016-2017 president is Linda A. Klein who is the senior managing partner at Baker Donelson in Atlanta. According to the *ABA Journal*, Ms Klein has three ambitious initiatives for her one-year term.<sup>12</sup> Specifically, these involve assisting veterans with legal issues, ensuring children receive quality education, and developing tools to help attorneys run their practices more efficiently. In her bid to assist veterans, Ms Klein has already launched the Veterans Legal Services Initiative, which will develop a central resource for needy vets to find legal assistance.

AALL also has a new president for the 2016-2017 year. He’s Ronald E. Wheeler Jr., Director of the Fineman & Pappas Law Libraries at Boston University. Mr. Wheeler is the first African American male to hold the position. In his initial “President’s Message” in the Sept./Oct. 2016 issue of *AALL Spectrum*, Mr. Wheeler indicated he also has three broad goals for his term. First, is to increase the Association’s commitment to diversity, second is to improve the quality

<sup>5</sup> E-mail from Pamela Bloomquist, Asst. Dean, Admissions and Fin. Aid, Loyola U. Chicago School of Law, to Julienne Grant (September 6, 2016) (on file with author).

<sup>6</sup> *Ibid.*

<sup>7</sup> Julie Carr Smyth, *3-plus-3 law programs expanding*, Chi. Daily L. Bull., Aug. 29, 2016, at 1.

<sup>8</sup> David L. Hudson Jr., *Testing a Test*, ABA J., July 2016, at 67.

<sup>9</sup> Stephanie Francis Ward, *ABA threatened with 1-year suspension of law school accreditation powers*, ABA J., June 24, 2016, [http://www.abajournal.com/news/article/aba\\_threatened\\_with\\_1-year\\_suspension\\_of\\_law\\_school\\_accreditation\\_powers/](http://www.abajournal.com/news/article/aba_threatened_with_1-year_suspension_of_law_school_accreditation_powers/).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Bar passage proposal underscores tension between consumer protection and diversity concerns*, ABA News Archives, Aug. 8, 2016, [http://www.americanbar.org/news/abanews/aba-news-archives/2016/08/bar\\_passage\\_proposal.html](http://www.americanbar.org/news/abanews/aba-news-archives/2016/08/bar_passage_proposal.html).

<sup>12</sup> Terry Carter, *Education, veterans’ rights and expanding services for ABA members will be focus of Klein’s term*, ABA J., Aug. 8, 2016, [http://www.abajournal.com/news/article/education\\_veterans\\_rights\\_and\\_expanding\\_services\\_for\\_aba\\_members\\_will\\_be\\_focus](http://www.abajournal.com/news/article/education_veterans_rights_and_expanding_services_for_aba_members_will_be_focus).

and relevance of AALL's educational offerings, and third is to identify ways to "enhance and deepen the opportunities for members to share, grow, and learn from one another."<sup>13</sup> An in-depth profile of Mr. Wheeler and his aspirations for his AALL presidency starts on page 28 in the same issue of *AALL Spectrum*.

The Library of Congress also has new leadership. President Barack Obama nominated Dr. Carla D. Hayden for Librarian of Congress in early 2016, and the Senate approved her nomination in July. Dr. Hayden had been head of the Enoch Pratt Free Library in Baltimore for 23 years. She also served as president of the American Library Association (ALA) and worked in the Chicago Public Library system. Dr. Hayden has a Ph.D. in library science from the University of Chicago, and she is the first woman and first African-American to hold the post. SCOTUS Chief Justice John G. Roberts Jr. swore in Dr. Hayden on September 14.

## SCOTUS News

The nomination of Judge Merrick B. Garland for SCOTUS is still at a standstill; in fact, SCOTUSblog's web page displays in real time the number of days of Senate inaction on the nomination (187 as of this writing). Assuming there will not be a lame-duck session confirmation, the US' new president will surely nominate a Scalia replacement early next year. As such, there will likely not be a ninth SCOTUS Justice until the spring of 2017.

Over the summer, the US press was full of analysis and commentary related to SCOTUS' 2015 term (October 2015-June 2016). Commentators seemed to generally agree that the Justices had worked diligently to avoid 4-4 ties, producing only four since Justice Scalia's death. Indeed, there was actually an uptick in unanimous decisions during the 2015 term (48 percent) compared to the 2014 term (40.5 percent).<sup>14</sup> Pepperdine law professor Donald Childress suggested that there now appear to be three camps in the Court: four Justices in the middle (Roberts, Breyer, Kagan, and Kennedy); two on the left (Sotomayor and Ginsburg); and two on the right (Alito and Thomas).<sup>15</sup> Childress opined that this configuration of ideology resulted in pragmatic consensus-making and an ensuing minimalist approach that produced opinions on very narrow points of law.<sup>16</sup>

Collectively, the Justices wrote fewer dissents during the 2015 term (48.5) than in 2014 (66).<sup>17</sup> Justice Thomas remains the most prolific dissent drafter with 18 during the 2015 term; his former conservative colleague Scalia wrote 14 in the 2014 term.<sup>18</sup> Three justices stood out for writing decisions that drew numerous dissents during last year's term. Leading the way was Justice Kennedy drawing a total

of 10, followed by Justice Breyer with 8.5, then Justice Alito with 8.<sup>19</sup> In the 2015 term, the Court overturned appeals court rulings 54 percent of the time, compared to 72 percent last year.<sup>20</sup> This past term, the 9th Circuit was rebuked most often with a 70 percent overturn rate.<sup>21</sup> For a complete study of the Court's 2015 term, see SCOTUSblog's 2015 "Stat Pack."<sup>22</sup>

CNN Supreme Court Reporter Ariane de Vogue wrote an interesting piece on Justice Sotomayor in June positing that Sotomayor has become American liberals' answer to Justice Scalia – penning scathing opinions and dissents and posing tough questions during oral argument.<sup>23</sup> Justice Sotomayor was raised in a Bronx housing project, attended Yale Law School, and her professional background includes stints as an assistant district attorney and a trial judge. This background, Ms de Vogue suggested, has shaped the Justice's personal style on the Court and her views of the law: "Sotomayor has emerged as a hero to an audience emboldened by her life story and the direct language of her opinions that sometimes focus on those she feels might be underrepresented."<sup>24</sup>

SCOTUS' 2016 term begins on Monday, October 3. During the new term, the Justices will look at a variety of important issues, such as appeal rights in class actions, racial considerations in the design of voting districts, how much religious groups can be excluded from secular government programs, and the evaluation of mental disabilities in death penalty trials.<sup>25</sup> To assist the Justices with their work this term will be 32 law clerks, primarily representing Yale and Harvard – Yale with 11, and Harvard with 7.<sup>26</sup> Most SCOTUS clerks will be men. In a first, Justice Sotomayor has chosen a clerk who is a graduate of the University of Hawaii's law school.

## Ruth Tells It Like It Is

Liberal SCOTUS Justice Ruth Bader Ginsburg has always been well-known for her candor. In an interview with the *New York Times'* Adam Liptak in July, Justice Ginsburg didn't hold back.<sup>27</sup> Regarding Donald Trump, she was unequivocal in her criticism, "I can't imagine what this place would be – I can't imagine what the country would be – with Donald Trump as our president....For the country, it could be four years. For the Court, it could be – I don't even want to contemplate that."<sup>28</sup> During the interview, Justice Ginsburg also endorsed the nomination of Judge Garland and gave Chief Justice John Roberts a thumbs up for leading the Court through a difficult period with only eight Justices. She also characterized Justice Kennedy as the hero of the 2015 term as important cases on abortion and affirmative action turned on his vote.

<sup>13</sup> Ronald E. Wheeler Jr., *President's Message: Shaking Up the Status Quo: Aspirations for a New Year*, *AALL Spectrum*, Sept./Oct. 2016, at 7.

<sup>14</sup> Cristina Violante, *A Divided Court Finds New Ways To Be Unanimous*, *LAW360*, June 27, 2016.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Carmen Germaine, *The Top Supreme Court Dissents Of The Term*, *LAW360*, June 27, 2016.

<sup>18</sup> *Ibid.*

<sup>19</sup> Jacqueline Bell, *The Supreme Court Term By The Numbers*, *LAW360*, June 27, 2016.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> SCOTUSblog, *Final October Term 2015 Stat Pack*, <http://www.scotusblog.com/2016/06/final-october-term-2015-stat-pack/>.

<sup>23</sup> Ariane de Vogue, *Sonia Sotomayor channels liberal voice on Supreme Court*, CNN, June 29, 2016, <http://www.cnn.com/2016/06/29/politics/sonia-sotomayor-supreme-court-liberal-voice/>.

<sup>24</sup> *Ibid.*

<sup>25</sup> Jeff Overley, *Scalia's Death To Loom Over High Court's Next Term*, *LAW360*, June 30, 2016.

<sup>26</sup> Kaili Hays, *Yale, Harvard Nab Majority of Supreme Court Clerkships*, *LAW360*, July 25, 2016.

<sup>27</sup> Adam Liptak, *Ruth Bader Ginsburg, No Fan of Donald Trump, Critiques Latest Term*, *N.Y. Times*, July 10, 2016, [http://www.nytimes.com/2016/07/11/us/politics/ruth-bader-ginsburg-no-fan-of-donald-trump-critiques-latest-term.html?\\_r=0](http://www.nytimes.com/2016/07/11/us/politics/ruth-bader-ginsburg-no-fan-of-donald-trump-critiques-latest-term.html?_r=0).

<sup>28</sup> *Ibid.*

Justice Ginsburg took a lot of flak for her comments on Mr. Trump, including from CNN's well-known legal analyst Jeffrey Toobin and some members of the legal academe who chided her for a breach of neutrality.<sup>29</sup> Reacting to Justice Ginsburg's sharp disapproval, Mr. Trump himself claimed that her mind was shot, and she should immediately resign.<sup>30</sup> Justice Ginsburg did subsequently express regret for her statements on Trump, although the 83-year-old shows no sign of leaving the Court.

## Only in the US of A: Chicken, Beef and A City Fights Inflatable Rats

There are always unusual cases in the US court dockets, but a few recently caught my attention. In June, Chicago lawyer E. Leonard Rubin wrote in the *Chicago Daily Law Bulletin* about a 2015 1st Circuit case that held that a chicken sandwich recipe can't be copyrighted.<sup>31</sup> As Rubin put it, "[t]he operative rule that may be gleaned after plucking the feathers from this lawsuit is that generally, recipes are not protected by copyright."<sup>32</sup> Also not copyrightable is a Culver's commercial that features a butcher and three cuts of beef. In that case, a US district court opined in a 19-page opinion that a Steak 'n Shake commercial was not substantially similar, while providing a brief historical overview of U.S. hamburger advertisements.<sup>33</sup>

Then there's the case recently considered by the 7th Circuit that addressed whether unions can place large inflatable rats and cats on public property – specifically in Grand Chute, Wisconsin. Judge Frank H. Easterbrook succinctly described the case as follows: "Rats. This case is about rats. Giant, inflatable rats, which unions use to demonstrate their unhappiness with employers that do not pay union-scale wages. Cats too – inflatable fat cats, wearing business suits and pinkie rings, strangling workers."<sup>34</sup> Embedded in the opinion are photos of the rats and cats in question. A three-judge panel in a 2-1 decision sent the case back to a federal district court in Wisconsin for further consideration. Judge Richard A. Posner partially dissented, concluding that the union's free speech rights under the First Amendment had been violated. In his dissent, Posner attached photos of a local inflatable "fat rat" named Drape he was accustomed to

seeing on his commute to work in Chicago. Although I also live in Chicago, I must admit that I'm not familiar with Drape.

## Legal Miscellany: Ms Crawford

The July 2016 issue of the ABA Journal reported that a 21-year-old is serving as an assistant state's attorney in Florida.<sup>35</sup> Ms Robyn Crawford earned an undergraduate degree and a law degree in just 4.5 years. She passed the bar at 20, and her ultimate goal is to be a judge. Here in Chicago another Ms Crawford wants to be a judge. Ms Rhonda Crawford is running uncontested in the forthcoming November 8 election to fill a Cook County Judicial Subcircuit vacancy. This Ms Crawford, however, was recently fired from her position as a law clerk for a Cook County Circuit Court judge. This was after the judge allegedly allowed Ms Crawford to sit on the bench, wear her robe, and decide two cases. The cases involved minor traffic violations and will be heard by another judge. A spokesman for Illinois' Attorney Registration and Disciplinary Commission (ARDC) described the allegations as "unique."<sup>36</sup> The judge has been reassigned. It remains to be seen whether either Ms Crawford will make it to the bench.

## Conclusion

There was no dearth of US law library, law school, legal, or political news over the past 12 weeks, as evidenced by the above paragraphs. From Justice Ginsburg's views on Donald Trump, to a rogue Cook County law clerk, political and legal journalists had plenty to keep them busy during the summer months. When I submit my next column, the US presidential race will have been decided and SCOTUS' future ideological composition will be more apparent. I look forward to checking in after the election (unless I do flee to Canada). As always, if any readers would like to comment on the above, or make suggestions for additional content, please feel free to contact me at [jgrant6@luc.edu](mailto:jgrant6@luc.edu).

<sup>29</sup> See, e.g., Stephen Gillers, Opinion, *It's Clearly Not Right for Justices to Say Which Candidate They Support*, N.Y. Times, July 12, 2016, <http://www.nytimes.com/roomfordebate/2016/07/12/can-a-supreme-court-justice-denounce-a-candidate/its-clearly-not-right-for-justices-to-say-which-candidate-they-support>.

<sup>30</sup> Aaron Blake, *'Her mind is shot': Donald Trump-Ruth Bader Ginsburg feud goes nuclear*, Wash. Post, July 13, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/07/12/donald-trump-vs-ruth-bader-ginsburg-the-politics-of-yet-another-unthinkable-feud/>.

<sup>31</sup> See *Lorenzana v. South Am. Rest. Corp.*, 799 F.3d 31 (1st Cir. 2015).

<sup>32</sup> E. Leonard Rubin, *Chicken sandwich suit can't get off ground*, Chi. Daily L. Bull., June 22, 2016, at 4.

<sup>33</sup> *Culver Franchising Sys., Inc. v. Steak N Shake Inc.*, 2016 WL 4158957 (N.D. Ill. Aug. 5, 2016).

<sup>34</sup> *Constr. and Gen. Laborers' Local Union No. 330 v. Grand Chute*, 2016 WL 4410073 (7th Cir. 2016).

<sup>35</sup> Jenny B. Davis, *A Quick Study*, ABA J., July 2016, at 12.

<sup>36</sup> David Thomas, *Judge yanked from hearing cases*, Chi. Daily L. Bull., Aug. 18, 2016, at 1.

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\*\*Margaret Hutchison, *Manager of Technical Services and Collection Development at the High Court of Australia.*

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



## III New awards recognize contributions of members

By Wendy Reynolds

At the 2016 conference in Vancouver, delegates learned of the passing of Gisele Laprise and Michael Silverstein. Both of Gisele and Michael were prominent in the legal information world. Michael was the champion of the Canadian Abridgment, legal information resource extraordinaire, and regular fixture at our annual conference, particularly at the meetings of the Canadian Abridgment Advisory Board. Gisèle's contributions to law librarianship and legal information are numerous and varied – she wrote, actively participated in the life of this association and MALL, and generously shared her vast knowledge of legal research and writing with anyone who approached her. She was particularly passionate about bridging the gap between common law and civil law traditions, and worked to improve the understanding and appreciation of both traditions.

In their honour, Thomson-Reuters has established two new awards to be administered by CALL/ACBD. The Gisèle Laprise Prize recognizes an outstanding contribution by members of the Association in the understanding and appreciation of the civil and common law systems in Canada. A second award, named for Michael, will recognize an outstanding contribution by a member in the understanding, analysis and appreciation of primary law or legal taxonomy in Canada.

Upon learning of the prize created in his wife's name, Michel Johnson wrote a lovely letter to CALL/ACBD and Thomson Reuters. In it, Mr. Johnson said:



*Gisele's mother and father, her sister and her brother, were deeply touched as they learned of this recognition, and her daughter Lauralie and myself are grateful to Carswell and CALL/ACBD for making known and underline in*

*this manner the endeavour Gisele had made hers. We are touched by the way you chose to convey it; that is, announcing a bursary intended to support an individual who would share Gisele's vision of making bridges between the concepts of Common Law and those of Droit Civil, enlightening their concordances.*

*To put it simply, as successors to Gisele, her daughter Lauralie and I are offering to affect a factor of two to the action you already took, that is we are offering annually an equal amount of one thousand and five hundred dollars so that it may be two individuals instead of one producing more of what Gisele had in sight, and who will be judged by peers as having reached that goal.*

Each of the three awards is \$1500, and more details on the nomination and selection processes can be found in the Scholarships and Awards area of the website.

Members are reminded that there are many opportunities to nominate others (or yourself) for recognition or support. Nomination processes for the Denis Marshall, Eunice Beeson, Honoured Member, James D. Lang, Janine Miller and other prizes and awards are detailed on the website. Many of these awards are intended to support professional development, while others recognize significant contributions by members. Don't let these opportunities pass by!





## III Index of Volume 41 / Indexe du volume 41

Compiled by/Compilé par Janet Macdonald

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Les articles sont indexés selon la langue d'origine. Les vedettes-matières sont tirées des *Library of Congress Subject Headings* et les mentions. «voir aussi» sont établies entre les vedettes françaises et anglaises si l'article a été publié dans les deux langues. Les mentions «voir» sont établies, le cas échéant, entre une vedette française et une vedette anglaise ou vice versa. Les titres des articles et des rubriques sont en caractères **gras**, les titres des livres sont en *italique* et les recensions sont indexées selon le nom de l'auteur, ainsi que selon le nom et le titre de l'ouvrage sous la rubrique Reviews/Recensions.

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