

**CALL  
ACBD**

**CANADIAN LAW LIBRARY REVIEW**

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**REVUE CANADIENNE DES  
BIBLIOTHÈQUES DE DROIT**



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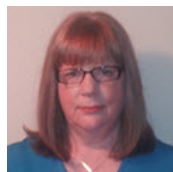
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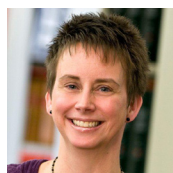
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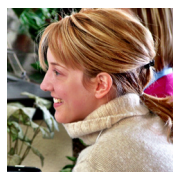
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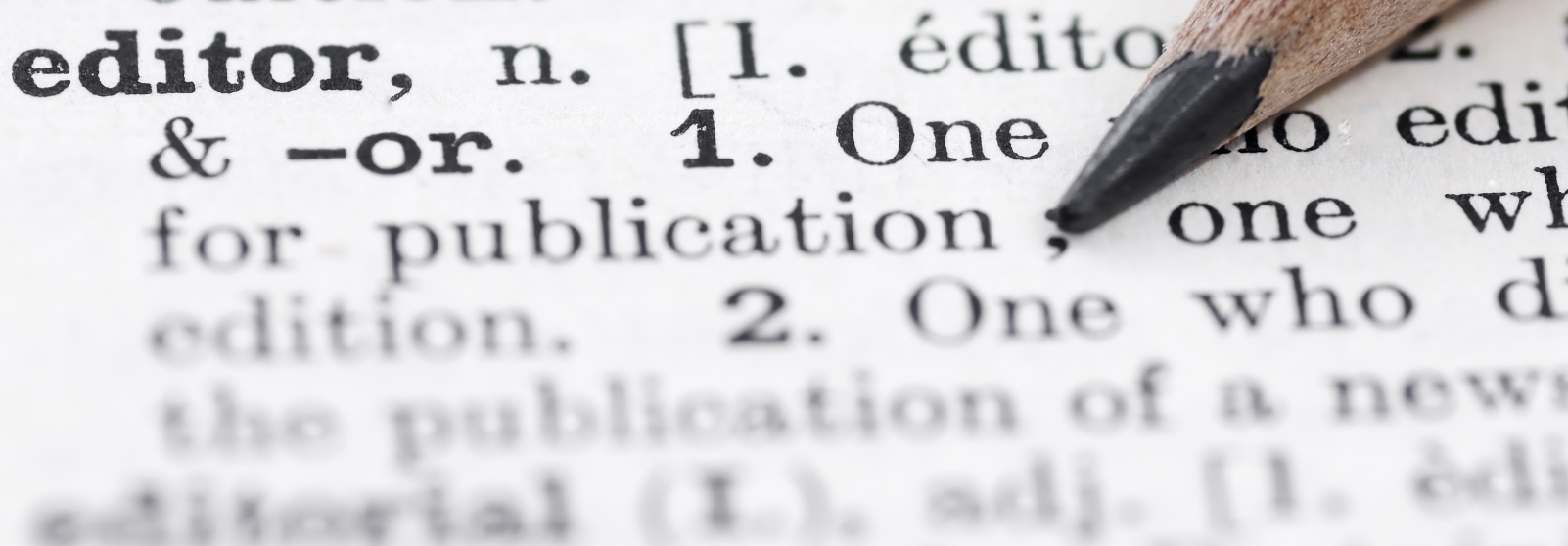
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for publication; one wh  
edition. 2. One who d  
the publication of a new  
editorial (1.), adj. [1. édi

## III From the Editor / De la rédactrice

Happy New Year Everyone!

It might be safe to call this issue of the CLLR the *Book Review Omnibus Edition*. I think we have a record number of reviews in this issue - 19 in total.

In general, book reviews are highly valued by librarians. They enable us to make informed purchasing decisions (so essential when budgets are shrinking) and they function as current awareness tools, giving us the opportunity to keep up to date with trends. They also provide enough information that we know where to turn for answers to questions on particular topics even if we haven't had time to read the books themselves. Book reviews can spark our own research interests and can even provide useful nuggets of information for dinner party conversations.

The book reviews in the CLLR are particularly valuable, because of the high quality of substantive and critical analysis that our reviewers provide. Our book review section reflects the variety and breadth of legal publishing. This issue, for example, includes reviews of a number of practitioner-oriented guides and handbooks, as well as treatises on such varied topics as equality, social rights, the environment, ethics, and sexting and cyberbullying. The Book Review section showcases the strengths and knowledge of our community and highlights the fact that we are confident

enough in our own expertise to not to pull our punches when a book requires an honest critique.

I am grateful that our community is so engaged (every time we put out a call for reviews, all the books are snapped up in a flash) and so willing to take the time to contribute to the CLLR. Congratulations to Kim and Nancy for putting together such a great collection and thanks to all our reviewers, past, present, and future.

This issue's two feature articles are also varied in scope. The first is Amy Kaufman's interview with Aldo Arango, in which Aldo describes what it is like to work as a law librarian in Peru. As Amy points out, despite differences in the legal systems and sources of law there are still many similarities in law librarianship as practiced in our respective countries: "*we devote a lot of our time to complex legal research questions, navigating our legal systems, and finding answers to procedural questions, and put a high value on making government information freely available to all.*"

In our second feature, *SAILing through Law School: Assessing Legal Research Skills within the Information Literacy Framework*, David Michel's describes an interesting research project evaluating the development of legal information literacy in law students and the value of using the Standardized Assessment of Information Literacy Skills (SAILS) to assess those skills. Since many of us

are involved in teaching legal research skills, often post law-school, this article provides an interesting insight into measuring the development of legal information literacy in law students.

Wishing you all a healthy and happy 2016.

**EDITOR  
SUSAN BARKER**



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Bonne année à tous!

Nous pourrions aisément dire que ce numéro de la RCBD est un « recueil de comptes rendus de livres ». Je crois que ce numéro comporte un nombre record de comptes rendus, soit 17 au total.

En général, les comptes rendus de livres sont très utiles pour les bibliothécaires. En plus de nous permettre de prendre des décisions éclairées en ce qui concerne l'affectation de nos budgets souvent décroissants, les comptes rendus de livres servent d'outils veille documentaire, et nous offrent ainsi la possibilité de suivre les tendances. En outre, ils nous fournissent des renseignements qui nous aident à savoir où nous pouvons trouver la réponse à une question portant sur un sujet particulier, même si nous n'avons pas le temps de lire le texte complet. Les comptes rendus de livres peuvent également éveiller nos propres intérêts en matière de recherche et peuvent parfois se révéler pratiques dans le cadre de conversations pendant un souper. Quelques connaissances peuvent être utiles!

Les comptes rendus de livres contenus dans la RCBD sont particulièrement utiles, principalement en raison de leur qualité et de l'analyse approfondie et critique qu'offrent nos lecteurs. L'édition juridique est très variée, et notre section de comptes rendus de livres reflète cette diversité. Par exemple, ce numéro comporte des comptes rendus d'un certain nombre de guides et de manuels orientés vers les spécialistes, de même que des traités portant sur des sujets divers comme l'égalité, les droits sociaux, l'environnement, l'éthique, le sextage et la cyberintimidation. La section des comptes rendus de livres met en évidence les forces et les connaissances de notre communauté et le fait que nous sommes suffisamment sûrs de notre propre expertise pour ne pas « feindre les coups » lorsqu'un livre exige une critique honnête.

Je remercie notre communauté d'être très engagée (chaque fois que nous lançons un appel de comptes rendus, tous les livres sont examinés en un clin d'œil) et disposée à prendre le temps de contribuer à la RCBD. Nous remercions Kim et Nancy, qui ont rassemblé un excellent recueil, ainsi que nos lecteurs, anciens, actuels et futurs.

Les deux articles de fond contenus dans ce numéro ont également une portée différente. Le premier est fondé sur l'entrevue réalisée par Amy Kaufman avec Aldo Arango, dans laquelle ce dernier décrit la nature de son travail à titre de bibliothécaire de droit au Pérou. Comme l'indique Amy, malgré des différences liées aux systèmes judiciaires et aux sources de droit, il existe de nombreuses similitudes en matière de bibliothéconomie juridique entre nos pays respectifs : [traduction] « *Nous consacrons beaucoup de temps à des questions complexes de recherche juridique, à l'exploration de nos systèmes judiciaires et à la recherche de réponses à des questions de procédure, et nous tenons à faire en sorte que l'information gouvernementale soit librement accessible pour tous.* »

Dans le second article, intitulé *SAILing through Law School: Assessing Legal Research Skills within the Information Literacy Framework* (Naviguer à la faculté de droit : Évaluation des compétences en matière de recherche juridique dans le contexte de la maîtrise de l'information), David Michel décrit un projet de recherche intéressant qui évalue le développement de la maîtrise de l'information juridique chez les étudiants en droit et la valeur de l'utilisation de l'outil SAILS (*Standardized Assessment of Information Literacy Skills* (évaluation normalisée des compétences en matière de maîtrise de l'information)) pour évaluer ces compétences. Puisque bon nombre d'entre nous participent à l'enseignement lié aux compétences en matière de recherche juridique, souvent après les études de droit, cet article offre un aperçu intéressant de la mesure de l'évolution de la maîtrise de l'information juridique chez les étudiants en droit.

Nous vous offrons nos meilleurs vœux de bonheur et de santé pour 2016.

**RÉDACTRICE  
SUSAN BARKER**



# 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>>.

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

Tous les membres de l'ACBD ainsi que toute autre personne intéressée à la bibliothéconomie et faisant partie du monde juridique sont invitées 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*.

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## CALL/ACBD Research Grant

Perhaps it is time to start thinking about your next research project. The deadline for the 2016 research grant will be March 15, 2016 and the grant will be awarded in May.

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

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

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

For further information please visit:

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



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

How do we welcome new people? How do we get them oriented, make them feel at home, and help them get started on a productive, fulfilling life in a new culture?

I've been fortunate to volunteer some time with The Clothing Drive, a grassroots initiative supporting the Syrian refugees arriving in the Toronto area. This group ensures that our newcomers have warm clothes to start on their Canadian life this winter. Watching this enthusiastic volunteer group that came together on very short notice to support both privately-sponsored and government-sponsored refugees has been to witness a real miracle. The group originally formed out of the efforts of one woman collecting clothes for one family. The outpouring of compassion filled her store floor-to-ceiling with clothes. Only six weeks later, 500 refugees were clothed in one weekend by this group, 100 of them having arrived directly from Syria on the Sunday night. These volunteers have lifted the spirits of weary travellers countless times, showing them a level of caring they are not used to after hard experiences in refugee camps. Participating—even with my nominal clothing sorting—has been a privilege. It has made me very proud to be Canadian, and to help provide others an example of how we care and share. Perhaps you have had a similar experience.

This has me thinking about CALL/ACBD and how we welcome those new to the law library and legal information profession, and to our Association. How can we help them get started on this new career path, whether they are students, recently graduated, or experienced in other fields? These are our new colleagues, and will carry the torch of the profession into the future.

As I was talking with students at the Employer Showcase at the University of Toronto's iSchool (Faculty of Information) in January, I heard a number of concerns and questions:

- They are learning a lot of academic theory, but are hungry for examples of how it is used in the real world
- What mix of programs should they be taking? Should they be developing more people skills? More tech skills? Are there any specific certifications they should be getting ?
- How can they get started working in their areas of interest?
- Where are the jobs? Who is hiring? Those in 2nd year have done lots of volunteer placements, but now they need paid work.

And they are so hungry for connection with those of us already in the profession! They want guidance and, as one talented young woman explained to me, “someone to take a chance” on them. They remind me so much of myself when I was trying to get a foothold in librarianship so many years ago.

I'm proud of all the work by the Membership Development Committee (MDC), reaching out to students in information and library programs across the country, spreading the word of what we do and encouraging them to consider working in the legal industry. Programming such as the October 2015 webinar “Job Search Skills: Employer Panel” with Joan



Rataic-Lang, Fiona McPherson, Kristin Hodges and Kim Nayer directly address the needs of students. This has increased the interest of students in CALL/ACBD as well.

But what happens when they graduate? And what about others who come to us later in life, after careers in other areas? How can we support them? My first thought is that it really is going to take all of us to be welcoming and encouraging, to show we are interested in them and care how they do in the profession. We already have a mentorship program; what else can we do?

The Membership Development Committee recently had a discussion with our association management company, Managing Matters, to explore how to engage better with young professionals and others new to the profession. We discussed ideas such as morphing the Student SIG into a “young professionals” SIG, as well as inviting young professionals to form a sub-committee to advise us. I came away understanding that we can't guess what others will need, that we need them to help develop future systems of support and other services of value from CALL/ACBD. We are still working through the specifics, but I am excited about where we will be going!

We are also due for some fresh high-level strategic planning for the whole Association, and will be talking strategy at the President's Round Table at the conference in May. In addition to thinking about young professionals, we are still very concerned about mid-career and more experienced professionals and meeting their needs. My philosophy has always been that the more we put into our Association, the more we will get out of it. In this regard, it is up to CALL/ACBD to have an infrastructure in place to allow everyone to get involved. What do we need to put in place to make that happen? I hope you will join us to help set the course for a bright future!

How do we share and how do we show we care? Creating a positive, compassionate culture is key. Strengthening the lines of communication between us will help. The more we can get involved as a group, the more each of us will feel supported and fulfilled in our careers. Your Executive Board would love to hear your thoughts. We always welcome your constructive ideas.

Namaste.

**PRESIDENT  
CONNIE CROSBY**



---

Comment accueillons nous les nouveaux arrivants? Que faisons nous pour les orienter, pour faire en sorte qu'ils se sentent chez eux et pour les aider à entreprendre une vie productive et gratifiante au sein d'une nouvelle culture?

J'ai eu la chance de faire du bénévolat pendant quelque temps auprès de l'organisme populaire The Clothing Drive qui offre du soutien aux réfugiés syriens qui arrivent dans la région de Toronto. Cet organisme s'assure que les nouveaux arrivants disposent de vêtements chauds pour commencer leur nouvelle vie au Canada cet hiver. J'ai vu ce groupe de bénévoles enthousiastes, qui s'est formé très rapidement pour appuyer des réfugiés parrainés par le secteur privé et par le gouvernement, accomplir un véritable miracle. Ce groupe a initialement été constitué à la suite des efforts d'une femme qui recueillait des vêtements pour une famille. L'élan de compassion qui s'est manifesté a inondé le magasin de cette dernière, du plancher au plafond. Six semaines plus tard seulement, le groupe a distribué des vêtements à 500 réfugiés en une fin de semaine; 100 de ces réfugiés étaient arrivés directement de la Syrie le dimanche soir. Ces bénévoles ont redonné espoir à des voyageurs fatigués à maintes reprises, en leur témoignant une bienveillance à laquelle ils n'étaient pas habitués après avoir vécu des expériences difficiles dans des camps de réfugiés. Ce fut un privilège de participer à l'initiative, même avec mon expérience élémentaire en matière de tri de vêtements. Cela m'a rendue très fière d'être Canadienne, et m'a permis de montrer aux autres que nous pouvons faire preuve de compassion et partager. Vous avez peut-être vécu une expérience similaire.

Cela m'amène à penser à l'ACBD/CALL et à la manière dont nous accueillons les nouveaux venus dans le domaine de la bibliothéconomie et de l'information juridiques, et au sein de notre association. Comment pouvons nous les aider à entreprendre ce nouveau parcours de carrière, qu'il s'agisse d'étudiants, de diplômés récents ou de travailleurs chevronnés dans d'autres domaines? Ils sont nos nouveaux collègues, et ils porteront le flambeau de la profession vers l'avenir.

Lorsque j'ai discuté avec des étudiants dans le cadre de la « vitrine des employeurs » de *l'iSchool* (faculté des sciences de l'information) de l'Université de Toronto en janvier, j'ai entendu un certain nombre de préoccupations et de questions :

- Ils acquièrent beaucoup de connaissances théoriques, mais ils demandent qu'on leur donne des exemples de leur utilisation dans le monde réel.
- Quels cours devraient-ils suivre? devraient-ils acquérir davantage de compétences humaines? Davantage d'aptitudes techniques? devraient-ils obtenir d'autres formations spécifiques?
- Comment peuvent ils commencer à travailler dans leur domaine d'intérêt?
- Où se trouvent les emplois? Qui embauche? Les étudiants de deuxième année ont effectué de nombreux stages bénévoles, mais ils ont maintenant besoin de travail rémunéré.

Et ils ont très hâte d'établir des liens avec ceux d'entre nous qui exercent déjà la profession! Ils veulent des conseils et, comme me l'a expliqué une brillante jeune femme, ils veulent trouver « quelqu'un qui prendra un risque » avec eux. Ils me font tellement penser à moi lorsque j'essayais de « mettre un pied » dans le domaine de la bibliothéconomie il y a de cela bien des années.

Je suis fière du travail accompli par le Comité de recrutement des membres (CRM); il atteint les étudiants dans le cadre de programmes de sciences de l'information et de bibliothéconomie à l'échelle du pays, leur fait connaître ce que nous faisons et les encourage à travailler dans le secteur juridique. Des programmes comme le webinaire d'octobre 2015 intitulé *Job Search Skills: Employer Panel* (« Groupe d'experts des employeurs sur les compétences en recherche d'emploi »), avec Joan Rataic-Lang, Fiona McPherson, Kristin Hodges et Kim Nayyer, abordent directement les besoins des étudiants. Ce type de programme a également accru l'intérêt des étudiants à l'égard de l'ACBD/CALL.

Mais qu'arrive-t-il lorsqu'ils obtiennent leur diplôme? Et qu'en est-il des autres qui nous arrivent plus tard au cours de leur vie, après avoir travaillé dans d'autres domaines? Comment pouvons nous les appuyer? Je crois d'abord que nous devons vraiment tous être accueillants et encourageants, afin de leur montrer que nous nous intéressons à eux et que nous nous soucions de leur rendement au sein de la profession. Nous avons déjà un programme de mentorat; que pouvons-nous faire d'autre?

Le Comité de recrutement des membres a récemment discuté avec la société chargée de la gestion de notre association, Managing Matters, afin d'examiner comment nous pourrions mieux mobiliser les jeunes professionnels et les nouveaux venus au sein de la profession. Nous avons discuté d'idées telles que de convertir le groupe d'intérêts des étudiants en groupe d'intérêt des « jeunes professionnels » ou d'inviter les jeunes professionnels à former un sous-comité pour

nous conseiller. Cette discussion m'a permis de comprendre que nous ne pouvons pas prévoir les besoins des autres et que nous avons besoin de l'aide de ces derniers pour élaborer les futurs systèmes de soutien et les autres services utiles offerts par l'ACBD/CALL. Nous en sommes encore à déterminer les particularités, mais je suis ravie de la voie dans laquelle nous nous dirigeons!

En outre, il est temps de renouveler la planification stratégique de haut niveau à l'échelle de l'association, et nous parlerons de stratégie dans le cadre de la table ronde de la présidente prévue au programme de notre congrès, en mai. En plus de réfléchir aux jeunes professionnels, nous sommes encore très préoccupés par les professionnels en milieu de carrière et plus chevronnés et par la satisfaction de leurs besoins. J'ai toujours eu comme principe que plus nous investissons dans notre association, plus nous profiterons de celle-ci. À cet égard, il lui incombe de se doter d'une infrastructure qui permet à tout le monde de s'engager. Que devons-nous mettre en place à cette fin? J'espère que vous nous aiderez à tracer la voie vers un avenir radieux!

Comment partageons-nous et comment témoignons-nous notre intérêt? Il est essentiel de créer une culture positive et bienveillante. Le renforcement de nos voies de communication sera utile. Plus nous pourrions nous impliquer collectivement, plus chacun d'entre nous se sentira appuyé et épanoui sur le plan professionnel. Votre conseil de direction aimerait connaître vos points de vue. Nous vous invitons à nous faire part de vos idées constructives.

*Namasté.*

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# III Law Librarianship in Peru: Interview with Aldo Arango\*

By Amy Kaufman & Aldo Arango\*\*

## Abstract

*Amy Kaufman\*\* and Aldo Arango\*\*\* are two law librarians from Canada and Peru, respectively. They recently participated in the International Librarians Network, a program in which librarians from different countries exchange ideas and respond to twice-monthly discussion points.<sup>1</sup> In this interview, Aldo discusses law librarianship in Peru, the Peruvian legal system, and how legal research is conducted there.*

*Amy Kaufman\*\* et Aldo Arango\*\*\*, respectivement bibliothécaire de droit au Canada et au Pérou, ont récemment participé au International Librarians Network. Il s'agit d'un programme grâce auquel des bibliothécaires de différents pays peuvent échanger des idées et répondre à des points de discussion bimensuellement. Dans cette entrevue, Aldo discute de bibliothéconomie juridique, du système juridique péruvien et de comment la recherche juridique est menée là-bas.*

*Amy: Hi Aldo, could you tell me a bit about yourself and how you became a law librarian?*

Aldo: Hi Amy, I've been working in libraries since 2008. At first it was just to earn experience in the field as I was studying library science. Later on I discovered that I prefer to

work within special libraries and enjoy adapting to different environments.

I graduated from the School of Library and Information Science at the University of San Marcos two years ago, and since then I have been working in reference services at the library of one of the top tier law firms in Lima.

I became a law librarian by pure luck. I was offered the position because of my experience in other research-oriented libraries, but at the time I just had a basic knowledge of the legal system. I had to learn from my co-workers how to address the specific needs of lawyers.

Up to that point, I had various internships in different libraries, mostly in the public sector. We don't have a school of library technicians, so much of that type of work is done by LIS students or recently graduated librarians.

*Amy: What is it like working as a law firm librarian?*

Aldo: It is a very exhilarating experience. It is a lot more fast-paced than what I was used to. My workflow is mostly influenced by the needs of our lawyers. Usually when they start working on a new case they need to get all the relevant

\* © Amy Kaufman and Aldo Arango 2015.

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<sup>1</sup>To find out more about the ILN, and to register to participate in a future round, see <http://interlibnet.org>

information related to it, from recent news to analysis on similar cases, as soon as possible.

The firm's services are oriented to businesses, so we focus on civil and corporate affairs. The law library looks like an office, because we work mostly with digital documents. Our patrons are lawyers or law students exclusively.

I'm one of four library assistants. Our main function is to answer all kinds of information requests from the lawyers through a kind of digital reference service. I'm also in charge of the circulation of books and supervising the collection.

Since last year I have been leading the construction of a thesaurus that focuses on Peruvian legal matters. This is a set of 16 micro-thesauruses on different areas of law, focusing on the activities to which the laws apply. It has been an interesting project, since we don't have much previous experience to guide us. The other librarian on the team (who is the head of the library) is a very competent programmer and has designed the database to represent the semantic relations of the thesaurus in the catalogue.

Some of our daily work consists of dealing with government offices to get information that hasn't been made public. Sometimes we have to make calls or write letters to enforce certain rights to get this data.

*Amy: Could you give me an example of the kind of government documents that you track down?*

Aldo: We usually ask for documents containing opinions or technical norms in very specific topics. These kind of technical documents are only mentioned in some laws or decrees that are published in the official newspaper, El Peruano.<sup>2</sup>

The government has a paid service managed by the Ministry of Justice that keeps a record of all the laws and decrees Sistema Peruano de Información Jurídica (SPIJ<sup>3</sup>). However, it has a lot of flaws and most of the information is not publicly accessible, so we complement this with two other privately-run systems that do the same.

For example, once I had to get all the documentation that led to the approval of the law of oil and gas operations. This was particularly difficult because this law was passed after a coup d'état and under a constitutional assembly, a period of some political hassle.

Usually, this kind of information can be found on the Peruvian Congress web page, but for some reason this wasn't the case. I sent a letter formally asking for the documentation, but the official response didn't include a lot of the most important information. To get these documents, I had to make contact with some Congress Archives staff and spent two days getting all the documents in person.

It's great that in Canada you have so much legal information that is so well organized and free to access. All of our [Peruvian] laws get published, but with all the amendments

and specific regulations created every day, a system like SPIJ becomes very important, and not everyone in Peru can afford it [the basic service is free, but the enhanced service is subscription-based].

*Amy: Do you have a law that guarantees a public right to access government information that you can cite when you make requests for government documents?*

Aldo: Yes, Law N° 27805 on transparency and information access.<sup>4</sup> Normally, once we have defined the exact document that we need we try to get it from the internet. Every government office has its own system, and ease of access varies greatly among the ministries in Lima and the small local governments of the rural areas. If we can't get the information from the internet, we try other ways. Usually we call the offices that produce the documents and try to convince them to send us the information directly via e-mail. If this doesn't work we have to write a letter asking for the information formally under the law of transparency and information access. At the same time, we have to be a little cautious about revealing anything important about our clients.

*Amy: Are there a lot of delays or does it come pretty quickly once you ask for it?*

Aldo: According to the law, the government has 7 to 15 days to respond, but some lawyers have to meet close deadlines and these documents are key to their work. Therefore, we have to be in constant communication with these offices after we make the formal request and try to get the information delivered as soon as possible. That can be a lot work.

*Amy: What is the structure of Peruvian government?*

Aldo: The government is divided according to the principle of separation of power among legislative, executive and judicial branches.

Here in Peru we don't have a federal system. The government bodies of the regions only have some internal administrative powers and limited financial independence. The central government handles most of the administrative responsibilities (health, security, education, etc.). Almost all the legal cases fall under the central judicial power. Its courts are all over the country, and there is a Supreme Court in Lima. A Constitutional Court settles the disputes amongst all government bodies.

*Amy: What are Peru's sources of law?*

Aldo: In Peru we use the civil law system. Our main sources are doctrine, which "refers to the body of texts that have contributed to the development of Law during his history, by authors dedicated to describe, explain, systematize, criticize and find solutions within the juridical world,"<sup>15</sup> jurisprudence and the laws. Our system is heavily based on the interpretation of the written laws; that's why most of our lawyers give preference to the local sources.

<sup>2</sup>Diario Oficial El Peruano, online: <<http://www.elperuano.com.pe/edicion/>>

<sup>3</sup>Sistema Peruano de Información Jurídica, online: <<http://spij.minjus.gob.pe/>>

<sup>4</sup> Ley N° 27806, online: <[http://www.mef.gob.pe/index.php?option=com\\_content&view=article&id=830:ley-nd-27806&catid=298&Itemid=101008](http://www.mef.gob.pe/index.php?option=com_content&view=article&id=830:ley-nd-27806&catid=298&Itemid=101008)>

Amy: Is indigenous law or custom recognized in Peruvian law?

Aldo: The relation of our legal system with the indigenous communities has been complicated. There are some places in Peru where the state has little to no presence and the communities have maintained their customs. These are sometimes in conflict with others people's rights based on Peruvian law. Up to now the authorities have largely ignored this situation, probably because in recent years there has been a lot of social conflict between communities and the state for the use of the land. Fortunately the situation in the country is stabilizing again.

Amy: I'm curious if you ever have to research other countries' laws.

Aldo: Yes, we sometimes have to search for information from other countries. Most of the time that depends on the subject we are investigating. For example, in administrative law the most cited authors are from Argentina; for civil and labour topics we normally consult Spanish books; and for international arbitration matters we have to look in American and British reviews. We only consult foreign sources at the lawyer's request, or if we can't find the information in local sources.

Amy: What is the career path for law librarians like in Peru?

Aldo: Librarian career development in Peru is a little different from in Canada. Library and information science is an undergraduate degree, and we don't have postgraduate studies on the subject.

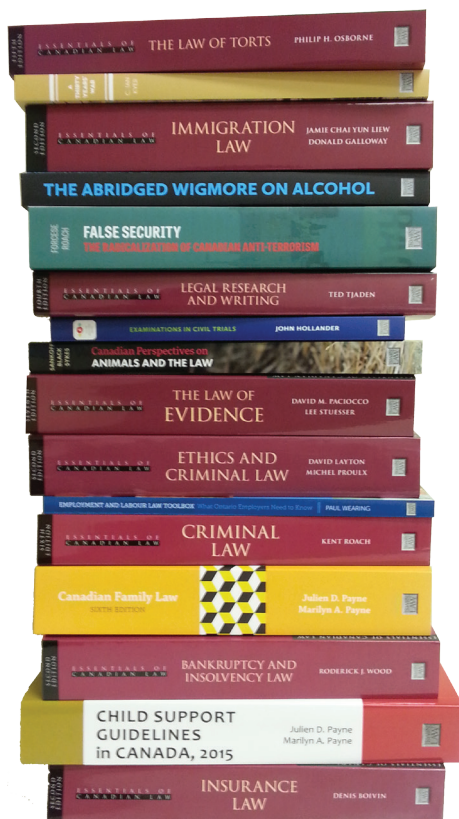
Peru is a very centralized country; all of our major universities, including the only two schools of librarianship, and companies are in the capital, so the rest of the country is not particularly well-served for librarianship. What I have seen is that some companies send their librarians to other parts of the country for a brief period of time to train people there, and then try to run all the company's activities from their headquarters in Lima.

Amy: Thank you for speaking with me today. Despite some differences, it seems to me that we share some important similarities as law librarians: we devote a lot of our time to complex legal research questions, navigating our legal systems, and finding answers to procedural questions, and put a high value on making government information freely available to all.

Aldo: Yes, it is very important to understand how legal information is accessible in our countries and elsewhere. I found it very interesting how information in Canada is easily accessible even when there are different levels of government producing laws.

<sup>5</sup> M Rubio. *El Sistema jurídico: Introducción al derecho*. (Lima: Fondo Editorial Pontificia Universidad Católica del Perú, 2009).

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# III SAILing through Law School: Assessing Legal Research Skills within the Information Literacy Framework\*\*

By David H. Michels\*\*

## Abstract

*In this study I ask the question: Can standardized information literacy tests help assess and benchmark the learning of information skills by Canadian law students? This study replicates an earlier study that found that a standardized test of information literacy competencies, SAILS, was not an effective measure of law student information literacy levels. By applying the same test under similar conditions to another group of law students, I found that while the test did not measure legal research competencies, it was effective in measuring basic information literacy skills in law students with often surprising results. I argue that legal research training programs cannot assume students have achieved competency in information literacy skills.*

*Dans cette étude, je pose la question suivante: est-ce que les tests normalisés utilisés pour la maîtrise de l'information peuvent aider à évaluer et à étalonner l'apprentissage de la maîtrise de l'information par les étudiants canadiens en droit? Cette étude reproduit une étude antérieure qui a révélé qu'un test normalisé de compétences en maîtrise de l'information, SAILS, n'avait pas été une mesure efficace pour évaluer les niveaux d'apprentissage de la maîtrise*

*de l'information des étudiants en droit. En appliquant le même test dans des conditions similaires à un autre groupe d'étudiants en droit, j'ai trouvé que, bien que le test n'a pas mesuré les compétences en recherche juridique, qu'il a été efficace dans la mesure des compétences informationnelles de base des étudiants en droit avec des résultats souvent surprenants. Je soutiens que les programmes de formation en recherche juridique ne peuvent présumer que les étudiants ont atteint une certaine compétence au niveau de la maîtrise de l'information.*

## Introduction

The Federation of Law Societies in the *Final Report of the Task Force on The Common Law Degree* has identified the ability to conduct Legal Research as an essential competency for the practice of law in Canada.<sup>1</sup> Candidates for licensure must demonstrate they are able to:

- a. identify legal issues,
- b. select sources and methods and conduct legal research relevant to Canadian law,

\* © David H. Michels 2015.

\*\* David H. Michels is the Public Services Librarian at the Schulich School of Law, Dalhousie University. I would like to acknowledge the financial support of the *Canadian Association of Law Libraries* and the *Schulich Academic Excellence Fund* for this study. I would like to acknowledge the assistance of the LRW instructors Anne Matthewman, Jennifer Adams, and Mark Lewis.

<sup>1</sup> Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree - Final Report* (Ottawa: FLSC, 2009), online: <[docs.flsc.ca/APPRTaskForceReportOct2009.pdf](https://docs.flsc.ca/APPRTaskForceReportOct2009.pdf)>.

- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues,
- d. identify, interpret and apply results of research, and
- e. effectively communicate the results of research.<sup>2</sup>

Although important to students' development as lawyers, legal research skills are in fact contextualized forms of broader information literacy skills; a set of abilities which require individuals to "recognize when information is needed and have the ability to locate, evaluate, and use effectively the needed information."<sup>3</sup> These skills are seen as essential to life and work, a belief that has led to the development of ACRL's Information Literacy (IL) competency standards<sup>4</sup> which define areas of competence in information literacy. Since the introduction of these standards, academic libraries have attempted to develop the means to effectively assess competence in these areas on a large scale. This has led to the creation of a variety of paper and online testing platforms, most notably the Standardized Assessment of Information Literacy Skills (SAILS)<sup>5</sup> and the Madison IL Assessment.<sup>6</sup>

Both tests include a series of questions that gauge students' performance against these ACRL standards. The SAILS test groups the ACRL outcomes and objectives into eight skill sets: Developing a Research Strategy, Selecting Finding Tools, Searching, Using Finding Tool Features, Retrieving Sources, Evaluating Sources, Documenting Sources, and Understanding Economic, Legal, and Social Issues. Not all ACRL IL outcomes are considered by these skill sets, as some are not considered appropriately measured in this manner. These tests have been criticized for their American bias, and the use of quantitative measures, but large scale quantitative assessments have been demonstrated to be an effective means to assess IL skills of university students on a large scale in Canadian contexts.<sup>7</sup> I have selected the SAILS test for this study because it has been widely applied across North American undergraduate and graduate university programs, has had scholarly critique in the literature,<sup>8</sup> has a significant support community, and is more affordable than other comparable platforms.

## Background

Although there has been considerable interest in the teaching of legal research skills,<sup>9</sup> Lewis and Michels<sup>10</sup> in 2009 noted the lack of research on IL skills in law school contexts. There has been renewed interest in using IL paradigms for legal instruction in the U.S.<sup>11</sup> but little research in Canada. This author is unaware of any comprehensive attempts to undertake standardized assessment of IL skills by a Canadian law school. At the time of this study, no Canadian law school had employed the SAILS test. The School of Law at Rutgers in the United States did use the SAILS test to measure the IL skills of their law students. Kim-Prieto and Brownfield, Law Librarians at Rutgers Law School, conducted a study in 2009<sup>12</sup> that determined that SAILS was ineffective in measuring law student IL. However, this test has been applied successfully in other disciplinary contexts, and there is no reason why it should not work in a legal context.<sup>13</sup> The Rutgers' study concluded that since there were few changes recorded over a three-year testing period, despite a rigorous legal research program, the test had failed to effectively measure IL in the student population. I contend that the test used by Kim-Prieto and Brownfield may have correctly measured a lack of IL skills development in the Rutgers' law students. Development of subject specific skills does not necessarily correlate to an increase in broader information literacy competencies. Consequently, it is conceivable that students could have developed advanced legal research skills, specifically facility with research tools such as Lexis or Westlaw, without grappling with issues such as copyright, information ethics, etc. Without a detailed assessment of the curriculum used at Rutgers during this period, it is not possible to determine which IL skills were actually taught, and how these were assessed. There is a need to replicate the Rutgers study results, and verify or refute these conclusions.

### *The Dalhousie Context*

Dalhousie University libraries do not use standardized tests to measure the effectiveness of IL instruction nor does the Sir James Dunn Law Library, which is part of the Schulich School of Law. Law librarians are engaged in regular instruction that

<sup>2</sup> *Ibid* at 7.

<sup>3</sup> American Library Association, Presidential Committee on Information Literacy, *Final Report* (Chicago: American Library Association, 1989.), online: <[www.ala.org/ala/mgrps/divs/acrl/publications/whitepapers/presidential.cfm](http://www.ala.org/ala/mgrps/divs/acrl/publications/whitepapers/presidential.cfm)>.

<sup>4</sup> Association of College and Research Libraries, *Information Literacy Competency Standards for Higher Education* (2000), online: <[www.ala.org/ala/mgrps/divs/acrl/standards/standards.pdf](http://www.ala.org/ala/mgrps/divs/acrl/standards/standards.pdf)>.

<sup>5</sup> Institute of Museum and Library Studies, Kent State University, *Standardized Assessment of Information Literacy Skills*, online: <<https://www.projectsails.org>>.

<sup>6</sup> Center for Assessment and Research Studies (CARS) at James Madison University, *Information Literacy Assessment*, online: <[www.madisonassessment.com/assessment-testing/information-literacytest/](http://www.madisonassessment.com/assessment-testing/information-literacytest/)>.

<sup>7</sup> See Brian Dettlor, Lorne Booker, Heidi Julien & Alexander Serenko, "The Effects of Information Literacy Instruction on Business Students" (*Proceedings of the 2010 Annual Conference of the Canadian Association for Information Science, Concordia University, Montreal, 2010*), online: [www.caais-acsi.ca/ojs/index.php/caais/article/view/352/92](http://www.caais-acsi.ca/ojs/index.php/caais/article/view/352/92).

<sup>8</sup> See Joseph A Salem & Carolyn J Radcliff, "Using the SAILS Test to Assess Information Literacy." *Building Effective, Sustainable, Practical Assessment: Proceedings of the Second Library Assessment Conference (Charlottesville: 2006)*, 131-137; Brian Lym et al, "Assessing the assessment: how institutions administered, interpreted, and used SAILS." (2010) 38:1 Reference Services Review 168-186; Juliet Rumble & Nancy Noe, "Project SAILS: launching Information Literacy Assessment Across University Waters." (2009) 26:4 Technical Services Quarterly 287-298.

<sup>9</sup> See e.g. Nancy McCormack, John Papadopoulos, and Catherine Cotter, *The Practical Guide to Canadian Legal Research*, 4th ed. (Toronto: Carswell, 2015) and Maureen Fitzgerald, *Legal Problem Solving: Reasoning, Research and Writing*, 5th ed. (Markham: LexisNexis Canada, 2010).

<sup>10</sup> David Michels & Mark Lewis, "The Changing Shape of Legal Information" (2009) 34:2 *Canadian Law Library Review* 59.

<sup>11</sup> Ellie Margolis & Kristen Murray, "Teaching Research Using an Information Paradigm", *22 Perspectives: Teaching Legal Res. & Writing 1* (2014), Temple University Legal Studies Research Paper No. 2014-29.

<sup>12</sup> Dennis Kim-Prieto & Mary Brownfield, "What we learned from our SAILS: Using Law Students as Human Subjects and Measuring Law Student Information Literacy" (Conference Presentation delivered at AALL 2009 Annual Meeting, 28 July 2009). The full presentation from the presentation has been obtained from the authors, and I retain a copy.

<sup>13</sup> Personal correspondence with Dr. Heidi Julien, Expert in Information Literacy in Canadian Higher Education, School of Library and Information Science, University of Buffalo (July 2010).

includes information literacy skills training as well as subject specific training. The course was taught as a combination of large group lecture and small group tutorials. The curriculum covered basic library skills, legal reasoning, fundamentals of legislation and caselaw searching, database use, legal writing and citation. The effectiveness of IL instruction is measured indirectly through assignments in courses such as LAWS 1004x *Legal Research and Writing* or anecdotally through student and faculty feedback. In light of the importance of IL skills, we were concerned that we were not comprehensively assessing these competencies.

## Methodology

### Test Design

After a review of the literature we selected the SAILS Cohort Test for this benchmarking study as noted above. The SAILS Cohort Test measures information literacy knowledge of groups (cohorts) of students by using multiple answers questions. Results are reported by class standing and by major. Comparisons with the entire SAILS benchmark are also offered. The measurement model used by SAILS is item response theory (IRT), specifically the one-parameter Rasch model. IRT calculates scores based on a combination of item difficulty and student performance. The process begins with merging data from all institutions into a benchmark file. Student responses to the items on the test are then used to determine the difficulty level of each item. Once that determination is made, student responses are analyzed to determine an average score for each group (or cohort). Scores in the report are placed on a scale that ranges from 0 to 1000.

### Data Collection

The study plan was to use the SAILS test as a modified pre and post-test to measure changes in law students' information skills over the course of their law school program. The first test was to be administered to third year students in March 2011 prior to their graduation. The second test was to be administered to first year law students at the beginning of their *Legal Research and Writing* course in September 2011. Delays in receiving ethics approval for the study required us to delay the 3rd year test until April 2012. We began with the 1st year test in September 2011. The limited classroom time did not permit us to have the students complete the test in class although I had time in class to explain the test, answer questions, and invite students to complete the test outside of class time. Students were provided with the principal investigator's contact information and information regarding ethics approval. As an added incentive I would enter the names of students who participated into a draw for one of two \$100.00 photocopy cards. The 3rd year students were invited through their student council class representative. A letter was provided with an explanation of the test and contact information for the principal instructor. In recognition of their participation I made a donation to the graduating class gift. Twenty-one first year students participated in the study, and twenty-nine 3rd year students. One student indicated that they were in the graduate program but as the tests codes

were only assigned to 3rd year students I assumed that this was an error and these results were kept. The participation levels were comparable to the Rutgers study but far below our collection goal of 200 students, the optimal collecting numbers for the SAILS test.

Students were directed to the SAILS website and entered the individual test code provided. Students would complete the test in forty-five minutes. When the testing period closed we coded the data and generated a comparison report with other similar student bodies. Specific test answers were analyzed to determine the key areas that would be normally covered in the subject specific research training, and areas normally not addressed in the curriculum, though essential for information literacy competencies.

### Research Ethics

The study was reviewed and approved through the Schulich School of Law Associate Dean of Research and the Dalhousie University's Social Science and Humanities Research Ethics Board and given one-year approval. The testing was conducted anonymously using assigned codes. The data held by SAILS and processed on their servers is completely anonymous. Although data from the tests was entered into the SAILS database, the testing design does not allow for external groups to access the testing scores of the Schulich School of Law. I included generalized data as part of my research reporting. There were no direct risks to participants, and participation was voluntary though encouraged through classes. Prior to the publication of this study, all participating students have graduated.

## Findings and Discussion

There were insufficient law school results in the SAILS databank to compare Schulich with other law schools. When I reviewed the participant index I located only one other law school, Rutgers, cited above. The comparator group used by SAILS to develop the benchmarks was doctoral/professional schools. The first two questions were demographic questions added by the investigators. These questions explored the students' own skills perceptions and prior training.

|              |    |       |
|--------------|----|-------|
| Excellent    | 8  | 15.7% |
| Good         | 36 | 70.6% |
| Fair         | 7  | 13.7% |
| Poor         | 0  | 0%    |
| Not Reported | 0  | 0%    |

Table 1: How would you assess your own general research skills? (N=51)

|                    |    |      |
|--------------------|----|------|
| Never              | 14 | 27.5 |
| 1-2 sessions       | 27 | 52.9 |
| 3-4 sessions       | 7  | 13.7 |
| 5 or more sessions | 3  | 5.9  |
| Not Reported       | 0  | 0    |

Table 2: In your previous degree did you participate in any library research workshops? (N=51)



Law students generally viewed their research skills as good to excellent. Studies on students' self-perception and information literacy have often demonstrated an inflated self-assessment of skills levels, and have raised questions about the accuracy of self-perceptions.<sup>14</sup> Students also reported having little (1-2 sessions) or no library research training in their previous degree. Students were asked to indicate the discipline of their prior degree but due to the way the question was worded many students entered their current discipline: law. I had hoped to gain additional insight into the impact of learning prior to law school.

The remainder of the questions assessed SAILS skill sets. The results by the SAILS skill sets found the median scores for Schulich students to be higher than the Institution-type: Doctorate benchmark for all of the skills sets measured:

- Developing a Research Strategy
- Selecting Finding Tools
- Searching
- Using Finding Tool Features
- Retrieving Sources
- Evaluating Sources
- Documenting Sources
- Understanding Economic, Legal, and Social Issues

When the skills sets were ordered in terms of performance from best to worst (best being the farthest above the mean benchmark for both Institution Type: Doctoral and All Institutions) the list was:

| Best  |   |
|-------|---|
|       | Documenting Sources                             |
|       | Retrieving Sources                              |
|       | Understanding Economic, Legal and Social Issues |
|       | Evaluating Sources                              |
|       | Using Finding Tool Features                     |
|       | Searching                                       |
|       | Selecting Finding Tools                         |
| Worst | Developing a Research Strategy                  |

Table 3: Best to Worst Skill Sets

The Schulich LRW curriculum at that time stressed proper citation using the *Canadian Guide to Uniform Legal Citation*<sup>15</sup>, with this skill assessed in several assignments. It is therefore not surprising that students ranked highly on this skill. Conversely, the curriculum focused very narrowly on legal research platforms such as Westlaw Canada and LexisNexis Quicklaw, and natural language searching. Students may not have had significant exposure to a wide range of finding tools accounting for the low scores in "selecting research tools." The data table below presents the median scores for

each group's skills set and indicates the statistical variance for each category (+/-).

| SAILS Skill Sets                                | Schulich School of Law | Institution type: Doctorate | All Institutions |
|---|------------------------|-----------------------------|------------------|
| Developing a Research Strategy                  | 590<br>+/- 14          | 502<br>+/- 1                | 499<br>+/- 0     |
| Selecting Finding Tools                         | 629<br>+/- 19          | 507<br>+/- 1                | 503<br>+/-1      |
| Searching                                       | 617<br>+/- 14          | 487<br>+/- 1                | 483<br>+/-0      |
| Using Finding Tool Features                     | 685<br>+/- 17          | 532<br>+/- 1                | 531<br>+/-1      |
| Retrieving Sources                              | 694<br>+/- 18          | 519<br>+/- 1                | 518<br>+/- 1     |
| Evaluating Sources                              | 636<br>+/- 16          | 478<br>+/- 1                | 476<br>+/- 0     |
| Documenting Sources                             | 669<br>+/- 18          | 487<br>+/- 1                | 473<br>+/- 1     |
| Understanding Economic, Legal and Social Issues | 631<br>+/- 17          | 471<br>+/- 1                | 464<br>+/-0      |

Table 4: Data Table Showing Overall Scores Across All SAILS Skill Sets

The datasets for the two Schulich student groups' data was then separated and the resulting benchmarks were compared. When the two Schulich groups (1L and 3L) average benchmarks were compared for each skill set the following results were found:

| SAILS Skill Sets                                | Schulich Overall | Schulich Year 1 | OOSchulich Year |
|---|------------------|-----------------|-----------------|
| Developing a Research Strategy                  | 590<br>+/- 14    | 582<br>+/- 22   | 600<br>+/- 18   |
| Selecting Finding Tools                         | 629<br>+/- 19    | 683<br>+/- 31   | 590<br>+/- 16   |
| Searching                                       | 617<br>+/- 14    | 601<br>+/- 19   | 627<br>+/- 20   |
| Using Finding Tool Features                     | 685<br>+/- 17    | 665<br>+/- 28   | 700<br>+/- 21   |
| Retrieving Sources                              | 694<br>+/- 18    | 704<br>+/- 28   | 696<br>+/- 23   |
| Evaluating Sources                              | 636<br>+/- 16    | 607<br>+/- 1    | 668<br>+/- 0    |
| Documenting Sources                             | 669<br>+/- 18    | 645<br>+/- 30   | 686<br>+/- 24   |
| Understanding Economic, Legal and Social Issues | 631<br>+/- 17    | 657<br>+26      | 607<br>+/- 22   |

Table 5: Data Table for Skills Sets by Class

3L students were found to have higher scores than 1L students in five of eight categories: Developing a Research Strategy (+8, 1.4%), Searching (+26, 4.3%), Using Finding Tool Features (+35, 5.3%), Evaluating Sources (+61, 10.0%), and Documenting Sources (+39, 6.0%). Unexpectedly, 3L students scored lower in three categories than 1L students: Selecting Finding Tools (-93, 14.0%), Retrieving Sources (-8, 1.1%) and Understanding Economic, Legal and Social

<sup>14</sup> Catherine Hodgins, Marguerite C Sendall, & Lynn Evans, "Post Graduate health promotion students assess their information literacy" (2012) 40:3 Reference Services Review, 408-422. Catherine Hodgins, Marguerite C Sendall, & Lynn Evans, "Post Graduate health promotion students assess their information literacy" (2012) 40:3 Reference Services Review, 408-422.

<sup>15</sup> McGill Law Journal, *Canadian Guide to Uniform Legal Citation*, 7th ed (Toronto: Carswell, 2010).

Issues (-50, 7.6%). Understanding Economic, Legal and Social Issues stood out as the most puzzling result as these students would have completed coursework in property, ethics, and professional responsibility.

I finally compared our student benchmarks for 1L and 3L students with the respective median benchmarks of Rutgers Law School. Score medians were in the same ranges for both Rutgers and Schulich. This does strengthen the reliability of the data collected.

| Skills Sets              | RU 1L   | RU 3L   | RU Difference | Sch 1L  | Sch 3L  | Sch Difference |
|--------------------------|---------|---------|---------------|---------|---------|----------------|
| Research Strategy        | 643 ±31 | 643 ±35 | 0             | 528 ±14 | 600 ±18 | 18             |
| Finding Tools            | 629 ±56 | 643 ±45 | 14            | 683 ±31 | 590 ±16 | -93            |
| Searching                | 628 ±36 | 631 ±35 | 3             | 601 ±19 | 627 ±20 | 26             |
| Finding Tool Features    | 683 ±57 | 715 ±63 | 32            | 665 ±28 | 700 ±21 | 35             |
| Retrieving Sources       | 667 ±67 | 674 ±61 | 7             | 704 ±28 | 696 ±23 | -8             |
| Evaluating Sources       | 641 ±29 | 667 ±35 | 26            | 607 ±22 | 668 ±21 | 61             |
| Documenting Sources      | 662 ±37 | 674 ±39 | 12            | 645 ±30 | 686 ±24 | 41             |
| Econ., Leg., Soc. Issues | 625 ±32 | 624 ±29 | -1            | 657 ±26 | 607 ±22 | -51            |

Table 6: Data Table for All Skills Sets for 1L and 3L students at Rutgers and Schulich.

Differences between the benchmark scores for 1L and 3L students ranged from 0%-5% for each skill set at Rutgers. Differences between benchmark scores for 1L and 3L students ranged from 1%-15% at Schulich. Rutgers student benchmarks did not contain the same anomalous drops between 1L and 3L as were seen at Schulich, but neither did they demonstrate any significant skill development over time.

## Conclusion

I was able to replicate the Rutgers study results with similar sample sizes and found similar results. I found only marginal improvement in IL skills in many skills sets between 1st and 3rd year Schulich students, and recorded in three cases declines in IL skills between first and third year. Not being able to administer the study in class time resulted in a significantly smaller number of completed surveys, and may have impacted the reliability of answers as students could potentially collaborate. The sample sizes for both classes were small, and as students self-selected for participation in the study I cannot assume they were a representative sample. Although the study raises interesting questions, fuller sampling will need to be conducted before the results can be generalized. There are obviously differences between the instruction received by the two classes of law students including changes to the curriculum and the instructors. Ideally this study would track the same class for three years of the program. However, the changes in the overall curriculum were not considered significant.

It was significant that my results mirrored those of the Rutgers study. I believe that the tests did accurately measure law student IL skills, and that they correctly reported poor IL skill development over the course of the law degree. I theorize that legal research training programs used in Canadian and U.S. law schools focus narrowly on law sources and lawyering skills, without a wider focus on information literacy skills. I argue these tests correctly identified shortcomings in legal research instruction, and these results challenge us to rethink how we equip our graduates for both practice and for life-long learning. The Schulich School of Law has since implemented a new curriculum for LRW that is hoped will better address general as well as practice-specific information skills. This curriculum emphasizes hands-on skills development and addresses, for example, some of the ethical and economic issues of legal research such as research cost and the impact of tool selection on research results. In addition students in many research-intensive courses now participate in personalized research planning meetings. These meetings focus on the development of research strategies and appropriate tool selection. These initiatives have been positive steps toward building IL competencies as well as legal research skills.

## 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

***Advancing Social Rights in Canada.* Edited by Martha Jackman & Bruce Porter. Toronto: Irwin Law, 2014. vii, 441 p. ISBN 978-1-55221-374-2 (softcover) \$60.00. ISBN 978-1-55221-375-9 (ebook) \$60.00.**

This collection of papers came out of a 2012 symposium on how best to advance social rights<sup>1</sup> in Canada. Funded by a Social Sciences and Humanities Research Council (SSHRC) grant, the symposium experts – academics and activists – put forward their analyses of the current state of social rights in Canada, along with their suggestions on how to increase respect for these rights. The participants viewed Canada as at a crossroads and their aim was to ensure such rights continued to be protected into the future.

In an introduction discussing the history of social rights in Canadian society since the Charter, the editors explain how support for social rights has changed since the 1970s when they were considered core Canadian values. They also discuss the differences between civil and social rights, how the Charter was supposed to unite them, and the subsequent treatment of social rights by courts and legislators. The introduction also devotes a paragraph to each chapter in which the individual author's treatment of the chapter's subject is outlined.

The subsequent chapters cover a variety of subjects including the right to safe water, the right to housing, the fair distribution of health resources, and the role of administrative tribunals. They examine relevant legislation and case law, and outline the present opportunities and challenges. While focusing on the Canadian Charter, international law's impact

on social rights is also discussed.

The book is nicely structured: the Introduction provides a good overview and each chapter is clearly laid out with its own introduction outlining the content, headings and conclusion. This structure helps to orient the reader given that there is no index. As a substitute for a bibliography, works are cited in the extensive footnotes in each chapter.

The book's editors (a law professor and the Director of the Social Rights Advocacy Centre respectively) are experts in the social rights field and have written works on related topics. The editors and many of the individual contributors to the book are researchers with the Community-University Research Alliance Project (CURA) <[www.socialrightscura.ca](http://www.socialrightscura.ca)>.

Looking at the literature in this field, social rights seem to be more of a preoccupation in Europe than North America, suggesting a need for more Canadian coverage. This particular book demonstrates that social rights in our country have been increasingly ignored by government and action is required to turn the situation around.

This collection is aimed at scholars, individuals seriously engaged in these types of issues, and policy makers. As such, it would make a good addition to a government, academic or court library as well as any large public library.

REVIEWED BY  
**KATHERINE LAUNDY**

Collections Manager  
Library of the Supreme Court of Canada

<sup>1</sup> The authors' coverage of social rights also includes what are considered economic rights.

***After Legal Equality: Family, Sex, Kinship.* By Robert Leckey (Editor). Abingdon, Oxon: Routledge, 2015. 223 p. Includes table of cases and index. ISBN 978-0-415-72161-5 and 978-1-315-86303-0 (hardcover) \$137.66.**

This book consists of a series of articles that emerged from a conference hosted by McGill University in April 2013. The twelve papers cover the topics of family law, the state, formal equality, gender, parenting, sex, love, and different family formations which are, for the most part, viewed largely through a heteronormative lens, informed by feminist and queer theory. The content is international in scope with research from the United Kingdom, the United States, and Canada.

The book is divided into three parts: Part I, Care and Justice under Neo-liberalism; Part II, States' Reach; and Part III, Sex and Love. The theme throughout is on groups seeking equality, for example, within the LGBT communities. One question raised is whether, once legal equality is achieved, that should be the end of the enquiry. Not all of the articles focus on LGBT rights; however. Chapter 4, for example, focuses on the subject of father's rights in the UK, and how this has informed family law.

Most of the articles are written by law professors and are intended for an academic audience. Certain articles are narrow rather than sweeping in focus, and their authors offer a critique or other unique perspective that informs that topic. Other articles focus on specific pieces of legislation, for example, chapter 6, which covers Canada's Income Tax Act within the context of conjugality. Interestingly, some of the articles refer to the research done by the author of another article published within the book.

The material is dense and this is definitely not a book for the layperson exploring the issues of equality. Rather, those already in the academic arena seeking to further their own inquiry will benefit most. Each article has an extensive bibliography that should prove beneficial to future researchers.

REVIEWED BY  
**TRACY PYBUS**  
Lawyer  
Legal Aid Ontario

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***Cultural Law: International, Comparative, and Indigenous.* By James A. R. Nafziger, Robert Kirkwood Paterson, Alison Dundes Renteln. New York: Cambridge University Press, 2014. xxvii, 1012 p. Includes an index. ISBN 978-1-107-61309-6 (softcover). \$104.95.**

What is culture? What is heritage? How does the law interact, influence, and enhance our knowledge or understanding of these concepts? Is it a human right to practice one's cultural traditions even though they may clash with societal norms?

Is it ever acceptable for a person to sacrifice an animal based on a traditional cultural practice? Should land be communally owned and freely accessible to all? Should one have the right to exclusive use and occupation of private property and protection against unwanted intrusion? If any of these questions have piqued your interest, then this book is for you.

*Cultural Law: International, Comparative, and Indigenous* is a comprehensive course book and reference work that explores the ever growing field of study relating to cultural law on a grand scale. It is a stimulating collection of materials focusing on the intersection of law and culture and the influence these forces have on society. Included are excerpts from books, journals, newspapers, domestic and international cases, and international treaties and conventions. In publishing this work, the authors hope to "bring cultural law more into the mainstream of legal and social science education," and to offer educators, students, and practitioners a "more integrated, coherent framework for studying the diverse themes of cultural law" (p. xxiii).

The book is divided into ten chapters, has a logical flow and covers a number of dynamic topics that are both timely and thought-provoking.. including traditional knowledge, cultural identity and heritage, religious traditions, sports and recreation, and linguistic influences. Each chapter includes editorial comments, notes, and questions that not only help clarify and tie concepts together, but also challenge the reader to think more deeply about the issues raised.

The first two chapters establish a theoretical framework that guides readers through the remaining context-specific chapters. Chapter 1 provides a general introduction and includes sections on cultural diversity, cultural relativism, dispute resolution, and culture as a human right. Though the authors do not expressly define what 'cultural law' means, they do provide a working definition that focusses on a set of six relationships. Included here are the notions that law embodies culture and formalizes its norms and, in turn, culture reinforces legal rules (p 64). Chapter 2 adds to this framework by examining the interdisciplinary nature of law and culture through the lens of international, customary, and indigenous law and includes views from anthropology, sociology, and philosophy.

Later chapters focus on core topics that explore the complicated and multifaceted relationship between law and culture. Two chapters are devoted to cultural material. Chapter 4 considers aspects of 'protection' and draws upon the national laws of Canada, the United States, and Switzerland. Major international legal instruments such as *The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* (1970) and *The Convention on the Protection of the Underwater Cultural Heritage* (2001) are also examined. There is even discussion regarding the contested salvage claims over the RMS Titanic and the more complex moral and legal questions surrounding Holocaust related claims in U.S. courts.

Additionally, chapter 5 provides detail on rectification, criminal justice, and dispute resolution in relation to cultural material and heritage. Here, the authors draw upon a rich collection of domestic cases from the United States and England regarding ownership disputes. The major international conventions (UNIDROIT and UNESCO) are examined, as are contentious issues surrounding the calls for the return of cultural artifacts to territories of origin (e.g. the Elgin Marbles).

Chapter 7 discusses museums while Chapter 8 goes on to deal with sports. Yes, even sports and recreational activities are not immune from the interplay of law and culture. As the authors note, cultural assumptions about certain recreational activities such as hunting can play an integral role in how property rights are viewed and protected. For example, classifying an activity as “recreation or sport (rather than as a means of livelihood ...) may import a property-generated quality of exclusiveness to that activity and generate territorial imperatives” (p. 747). The final chapters of the book on religious and language issues focus predominantly international human rights.

Overall, the book is well organized, easy to read, and serves as a significant contribution to this burgeoning area of study. Students, professors, practitioners, and librarians will find this text an indispensable work on cultural law, providing an extensive intellectual framework whereby readers can gain a truly interdisciplinary perspective on a broad range of cultural law topics.

REVIEWED BY  
**GEORGE TSIAKOS**  
Instruction Librarian  
UBC Law Library

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***Debtor-Creditor Law.* By Sam Babe, Laurence M. Olivo and DeeAnn Gonsalves. Toronto: Emond, 2015. 672 p. Includes an index. ISBN/ISSN: 978-1-55239-626-1 (softcover) \$140.00; ISBN/ISSN: 978-1-55239-698-8 (Ebook (Extended)) \$119.00.**

Newly minted lawyers, paralegals, and law clerks often share an overwhelming sense of dread when thinking of the steep learning curve facing them during their first few years on the job. I remember that dread well when, many years ago as a law student, the lawyers I worked for handed me small claims and similar files requiring debt collection. While these types of tasks eventually become a routine part of practice, for individuals such as myself at that time, they seemed overwhelmingly labyrinthine and complicated. This is where a practical, up-to-date guide, such as *Debtor-Creditor Law* is indispensable. Its aim is to steer the new legal professional through the many steps required to collect money from people who (as the authors tell us) can't pay, won't pay or think they have a good defence for not paying. The book begins with an overview of the debt collection process including a discussion of the types of work which paralegals, law clerks and law students are permitted to do

in this area. The Introduction also explains the difference between the enforcement of unsecured judgments (i.e., where there is no collateral for the debt involved) and secured judgments (where personal property is used as collateral and that interest in the property is registered in accordance with the *Personal Property Security Act* –“PPSA” – or where collateral for the debt is held in the possession of the creditor). While there are distinct advantages for creditors registering under the PPSA, many types of transactions are not secured and, as a result, legal professionals involved in debt collection need to know something about both regimes.

Chapter Two sets out the steps to take before commencing proceedings and includes a checklist aimed at getting all the pertinent information on the client and on the debtor to be used in subsequent proceedings. A number of searches are necessary before commencing proceedings. These include identifying and locating the debtor, finding information on the debtor's assets and debts, and conducting *Personal Property Security Act* searches, *Bank Act* searches, Bankruptcy and Insolvency searches, Commercial and Consumer credit report searches and more. Information on these searches and other types of searches is set out Chapter Three.

Chapter Four involves determining, specifically, the amount owing on a claim (including various types of interest calculations). There's some math required at this stage, so several examples are provided to help with the number crunching.

If only I had had access all those years ago to Chapters Five through Eleven. Here the authors set out how to commence proceedings, how to file for default and summary judgement, what steps to take in a defended proceeding, how to conduct settlement negotiations, how to enforce superior court judgments and what steps to take in small claims court proceedings. Novice legal professionals simply can't get enough practical guides like these along with the sample forms that go along with them.

The final chapters cover specific topics such as deceased debtors, construction liens, bankruptcy, restructuring, safeguards against fraud, and debtors' remedies. They also include useful worksheets, along with sample forms, pleadings, orders, affidavits, requisitions, etc.

Clearly written and well organized, *Debtor-Creditor Law* is a must for law firms of all stripes. Court house libraries will certainly want a copy for lawyers to consult. For law school libraries with legal aid clinics whose files involve the collection of debts for clients (as they inevitably do), the book is indispensable.

REVIEWED BY  
**NANCY MCCORMACK**  
Librarian and Associate Professor  
Queen's University

**Earth Jurisprudence: Private Property and the Environment.** By Peter D. Burdon. Abingdon, Oxon: Routledge, 2015. xv, 171 p. Includes bibliographical references and index. ISBN: 978-0-415-63317-8 (Hardback) \$131.00.

Almost every day we hear accounts describing another environmental disaster or extreme weather event, along with alarming reports on climate changes. Even so, humans appear either overwhelmed by the seemingly impossible challenge of changing the course of a future fuelled by economic growth, or driven by the misguided view that the Earth, and everything on it, is here for human beings to develop and exploit.

This is the starting point for Peter D. Burdon, a senior lecturer at the Adelaide School of Law who has been writing about the environmental crisis and the role of law in its unfolding since about 2007. In *Earth Jurisprudence: Private Property and the Environment*, he explores the “evolving social institution” of private property in relation to Western cultural biases involving nature and the environment. He outlines a theoretical framework and presents an “alternative description of private property that is consistent with the philosophy of Earth jurisprudence” (p 101).

Burdon draws from many sources in this work but admits his primary influence is the philosophy of theologian Thomas Berry, the self-described cosmologist and “Earth scholar.” Writing from the context of an “Earth community,” Berry observed that “law is central to the present environmental crisis” and posited that what we are experiencing is part of a broader “crisis of culture.” At the root of this cultural crisis is an “anthropocentric assumption” that human beings have been given dominion over the Earth.

Burdon equates this human-centred paradigm with the historical view that the Earth was situated at the centre of the universe. The current environmental crisis reflects the need for what David Suzuki has called a “second Copernican revolution,” a revolution demonstrating that “human beings are not the centre of the Earth community” (p. 47). As Klaus Bosselmann states in the foreword: “The only realistic perspective is to see ourselves as a small part in an evolutionary process of life.”

It is perhaps not surprising then to read that Burdon believes “our law is deeply anthropocentric and directed toward maintaining hierarchical structures for the protection of property and economic growth” (p5). More startling, he considers that the law of private property not only contributes to our environmental problems it actually “promotes environmental harm” (p 10). It’s a strong opinion and an argument Burdon clearly supports in this book.

He begins by describing how the “myth of *dominium*” has been reinforced by the scientific revolution which had characterized nature as a “lifeless machine.” He notes that, in the context of current liberal and neoliberal political theory, property owners are invited to “live as isolated

individuals concerned only with their own self-interest” (p 11). It is this perspective that produces a reduced sense of responsibility for one’s actions which can potentially generate environmental harms.

The proposed alternative is to adopt an “ecocentric” basis for law; essentially an “ecological natural law.” Placing the Earth at the centre of our law-making would enable the reconceptualization of our place in an interconnected Earth community which Burdon describes as follows:

At the top of the hierarchy is the ‘great law’, which represents the principle of Earth community and the scientific concept of ecological integrity. Beneath the great law is human law, which represents rules articulated by human authorities, which are consistent with the great law and enacted for the common good of the comprehensive Earth community (p 13).

He argues that “the anthropocentric paradigm that has characterised the Western idea of private property is in a period of crisis and needs to be replaced by a sustainable ecocentric paradigm” (p 49). Indeed, “all components of the Earth community have value” (p 10).

Although Burdon touches on the wisdom of indigenous peoples as “a necessary component of any genuine transition toward an ecocentric era” and notes that “the liberation of the Earth community is commensurate with the liberation of indigenous people around the world” (p 119), it would have been useful to learn more about how Western culture can learn from the experience of indigenous peoples. Also conspicuously absent is any reference to the impact of colonialism, something that might have been brought out as part of Burdon’s discussion of Francis Bacon’s views on “mastering nature” cited as an influence during the scientific revolution of the 16th and 17th centuries.

Despite the notion that we are at a critical juncture where the “capacity of human beings to inflict environmental harm has increased in proportion to developments in technology” (p 114), Burdon leaves us with a somewhat optimistic outlook. In his concluding remarks he notes the potential for law to have a positive influence on the future:

While property rights would still be limited by the competing rights of other human beings, they would also be limited by the integral responsibilities we have to the Earth community. Thus, property rights would be shaped, restricted and given formal content by reference to the common good of the comprehensive community. If this position were adopted in the vernacular law of individuals, communities and eventually formalised by the state, it could change the role of private property, from being a fundamental cause of the present environmental crisis, to being an agent for its mitigation (p 118).

Aside for a smattering of annoying typographical errors<sup>2</sup>, for example, ‘dispute’ instead of ‘despite’, ‘though’ instead

<sup>2</sup>The best example occurs on page 129 in reference to Wisconsin Supreme Court decision *Just v. Marinette County*. It’s referred to as *Mariette* County in the text and *Marietee* County in a footnote. All intellectually jarring like a skip in a vinyl record or a scratch in a DVD.

of 'through' and many missing conjunctions, this is a well written and researched study of law in an ecocentric context. It will be of interest to anyone interested in expanding their understanding of our role in the environmental crisis and learning more about the Earth jurisprudence movement. It makes a great addition to an environmental law collection and a nice companion to both Paul Anderson's *Reforming Law and Economy for a Sustainable Earth*<sup>3</sup> and Klaus Bosselmann's *Earth Governance: Trusteeship of the Global Commons*.<sup>4</sup>

**REVIEWED BY  
F. TIM KNIGHT**

Head of Technical Services  
Osgoode Hall Law School Library  
York University

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***Ethical Reasoning in Criminal Justice and Public Safety, 4th ed.* By David R. Evans and Craig S. MacMillan. Toronto: Emond Montgomery Publications, 2014. xii, 274 p. Includes glossary and index. ISBN: 978-552394755 (paperback) \$86.50. ISBN: 9781552398906 (digital) \$56.50.**

The authors of this most recent edition have attempted to cast a somewhat wider net than in earlier versions, by incorporating aspects that discuss ethical reasoning for people involved in policing, corrections, security, as well as, lawyers and judges. Each author is more than qualified to consider the matters dealt with in this publication: Evans was a professor of clinical psychology and worked closely with several police services in Canada. MacMillan is an experienced police officer with a law degree and a Ph.D. in law. Of course, any publication that has survived into its fourth edition must have found resonance with its readership. This review considers the current state of that resonance.

The subject matter of ethics is made enormously difficult in what we consider a postmodern world. It is now conventional to make a clear distinction between facts and values. Facts are things which can be demonstrably proven or empirically known; for example, hot air rises, water will freeze at 0 degrees Celsius, and other such things. Values, on the other hand, are not susceptible to such proofs and, therefore, fall into a category that is both variable and impermanent; for example, cultural values are relative, economic values (e.g., the Canadian dollar) are fluid, and religious values are wide-ranging and often in conflict. Ethics, as a category of human knowledge, is decidedly non-scientific and is, accordingly, found within the realm of values and not facts. This makes the job of anyone purporting to offer insight on the skill of ethical reasoning a complex one indeed.

Evans and MacMillan observe in their Preface that "...no Canadian text was available...." on the nexus of ethics and criminal justice. While it is commendable that someone is seeking to cater to a Canadian audience, no textbook could

possibly address the incommensurable challenges facing the whole notion of ethical reasoning. The remainder of this review will consider the difficulties that might impede success in this realm.

The authors divide their work into two parts: principles of ethical reasoning and applications of ethical reasoning. They offer nine chapters exploring these two parts. Included with each chapter are learning outcomes, key terms, references and exercises consistent with the formal structure of any useful textbook. The information is consistent with a learning tool for this purpose; however, the work struggles to deliver on this complex topic.

The cover shows a photograph of a person's hand holding a compass over open water. The implication here is that ethical reasoning provides us with some kind of moral compass to guide our (oh so human) behaviour and thoughts. Symbolic of the overall problem with this text is that, unlike a conventional compass which seeks out a magnetic North that is always and everywhere the same, ethical reasoning only operates within the highly contingent and variable span of human affairs, which are infinitely malleable, unpredictable and frequently in conflict. So while this publication offers a great deal of information regarding ethical matters for a range of individuals involved in criminal justice and public safety, it cannot truly deepen our wisdom on the fundamental questions of good and right action.

One insurmountable difficulty that undermines the content particularly as it relates to policing, corrections, and security, is that police, corrections, and security officers belong to occupational categories that are not yet truly 'professional' in nature. Sociologists have enumerated the characteristics of professions, and while policing, corrections and security are striving in their own ways to "professionalize," they both fall short in terms of having a detailed body of knowledge to inform their work. Nor do they exist within a self-regulated environment, such as that found for lawyers, doctors and accountants. For example, many of Canadian universities have degree granting law schools. There are, as of yet, no policing (or other) schools with similar qualities and characteristics. Absent this professional foundation, a great deal of the substance of the textbook is undermined because police, corrections and security officers operate on a more conventional basis.

The discussion of topics such as euthanasia, safe injection sites and terrorism while important from a public policy perspective are really not immediately relevant to police and security personnel at the level intended for this publication. The law dictates what is permissible, impermissible, and necessary for each of these topics and no individual officer may apply any degree of independent ethical reasoning outside the parameters of Canadian law. More to the point for readers of this work are those sections dealing with codes of conduct and legal (including regulatory) requirements for the jobs associated with policing and security. The need to stay competent in order to do one's job has very little to do with

<sup>3</sup> Published by Routledge in 2015 (ISBN: 978-1138013865).

<sup>4</sup> Published by Edward Elgar in 2015 (ISBN: 978-1783477814).

ethical reasoning and much more to do with showing up for firearms requalification exercises, or completing the latest in-service training session on criminal law or police powers. For lawyers and judges, a higher standard may be applied precisely because the individuals who hold these positions are in the fullest sense professionals and, therefore, wield more autonomy.

So, my overall view may be summarized as follows: writing a textbook on ethical reasoning for police and security officers presents an almost impossible task because these are not professional categories that allow for the depth of education and instruction that might permit meaningful learning. Furthermore, since moral standards (i.e., 'values') are infinitely variable in this postmodern era, it makes more sense to simply school members of the criminal justice and public safety network on their specific duties, obligations and codes of conduct and forgo the pretence that they are learning ethical reasoning.

REVIEWED BY  
**PAUL F. MCKENNA**

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***A Handbook for Corporate Information Professionals.* Ed. Katharine Schopflin. London: Facet, 2014. 224 p. Includes index. ISBN 9781856049689 (paperback) £59.95.**

This short collection of essays is written by information professionals who share their experiences and insights on their roles and profession. Some chapters offer practical suggestions and approaches to managing a particular task or responsibility, while others introduce and summarize a subject. Each chapter includes recommended resources for the reader who requires more information on the topic.

The editor, Katharine Schopflin, begins the collection with a brief history of special libraries and the changes experienced due to the increased use of computers, digital content and online access to information. She discusses some trends the corporate information professional is dealing with today, noting the chapters within the text that discuss these in greater detail. The topics and trends included are selected based on the editor's research into recent hot topics at conferences, in online discussion boards, and in conversation with colleagues. They range from managing information (intranet, taxonomies, knowledge management) to dealing with people (suppliers, end-users, and library staff).

As a relatively new law librarian, I found some of the chapters very informative as an introduction to the selected topics. The chapter on working with suppliers and licensing for e-libraries includes an insightful discussion of the technical considerations involved in providing access to e-resources including the benefits of using an IP address or a password

system. The authors discuss the challenge of promoting resources and educating researchers in the efficient use of databases in the age of the google search box. The final section of this chapter is contributed by a vendor representative and provides a valuable perspective on the contract negotiation process and benefits of the ongoing relationship between vendor and client.

Chapter seven, 'Successfully managing your team through change and transition' reviews the potential warning signs that restructuring may be imminent in an organization and the possible underlying reasons. The author provides practical actions a manager can take to stay ahead of change and to have real input into the direction taken by the organization, as well as suggestions on how to transition a team through change that may seem overwhelming to those affected. The recommendations in this chapter would apply to any manager dealing with a restructuring or a downsizing within an organization.

The final chapter examines training end-users on library resources, stressing the importance of educating them on the critical evaluation of research sources and search results. The authors provide cautionary tales of research that was not fact-checked or validated which resulted in negative consequences to the users. They consider formal and informal approaches to workplace training, and the importance of the training follow-up. The expanded list of resources provided at the end of the chapter points the reader to free online software for content creation.

The audience for the handbook is corporate information professionals working for government, NGOs, and commercial/corporate organizations, including law firms. It would be useful as a subject overview for library and information studies students, new information professionals, and those considering taking on a new role or responsibility within their organization. Experienced professionals may find much of the content familiar, with an occasional "aha!" moment or insightful nugget that makes the chapter worth reading.

REVIEWED BY  
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Reference and Information Management Librarian  
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***The Idea of Labour Law.* Edited by Guy Davidov and Brian Langille. Oxford, UK: University of Oxford Press, 2011. xii, 441 p. Includes bibliographic references and index. ISBN: 9780199669455 (paper) \$45.00.**

As the title suggests, this is a sweeping, philosophical, and substantial treatment of the topic of labour law. Consisting of 25 lengthy chapters written by experts in the field, this edited collection is the product of a conference held in Cambridge in 2010, sponsored by the Inter-University Research Centre on Globalization and Work. Thoughtful, wide-ranging, and



passionate, it would likely be of interest to students and scholars who are interested in understanding and exploring this vital branch of law.

Labour law is currently understood to refer to collective bargaining among employers and unionized employees. As such it is considered to be both limited (in that it does not address the universe of employment law) and “in crisis” given the decline in union membership and the incredible changes occurring in the modern workplace. In addition, labour law differs from other legal fields in that so much of it goes on in non- or quasi-legal channels such as agencies, tribunals, or through non-legal experts such as labour and management representatives. Labour law is strongly intertwined with human rights law, economic policy, and social justice movements, to name but a few. These factors all combine to create opportunities to re-define and expand the boundaries of labour law, which is the focus of a large part of this volume; however, no “authoritative conclusion,” in the words of the editors, is reached.

The book is divided into five sections. The first section deals with the historical context, chiefly European influences and ideologies that informed the development of labour law. At least two chapters describe the influence of Hugo Sinzheimer, regarded as the founding father of German labour law. Historical background is in fact provided throughout the book, whether it is the Industrial Revolution, slavery, or the post-WWII era.

In the middle sections the contributors give free rein to their musings, theories, and ideas regarding “normative foundations,” definitions, and boundaries of labour law. Most of the authors have as their main preoccupation the domain and scope of this branch of the law, which is viewed as being in the midst of an “identity crisis.” Labour law is examined as it relates to a range of other phenomena, notably human rights, “applied ethics,” economic growth, and constitutional law. Most of the authors argue for taking labour law beyond the traditional employment contract. It is suggested, among other things, that labour law be broadened to include industrial policies such as tariff protection; i.e., that the focus be less on the worker and more on those who depend on the labour market to make a living. Another option presented is to secure broad worker protections at the local level through “community benefits agreements.” Many of the authors focus on the challenges presented by informal employment (notably unpaid labour and the self-employed), and on the vitally important role of labour law in protecting the vulnerable. Some chapters make use of case studies to examine initiatives that are currently underway, notably in Australia, Los Angeles, and Germany.

The last section provides an international perspective. The role of international agencies, regulations, and declarations is examined, in particular the question of how to determine which individuals are covered by these rights. Consideration is also given to transnational law, which is viewed as

increasingly critical given greater mobility of companies and labour, as well as the prevalence of global economic and financial crises.

True to the title, this collection is jam-packed with ideas (though repetitive in parts, especially when it comes to historical background). Some chapters are heavily footnoted, adding to the “heft” of the volume. Most but not all chapters have an introduction and conclusion; it would have been more helpful to see an abstract at the beginning of each chapter, given the breadth and complexity of the ideas presented. This would help the reader quickly to focus in on the key concepts being presented. Although an index is included, it is somewhat lacking in detail for a book of this depth. This detail aside, however, there is a lot here to educate those looking to immerse themselves in the foundations, future directions and possibilities of this essential branch of law.

REVIEWED BY  
**THORA GISLASON**  
Corporate Librarian  
Metro Vancouver

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***An Introduction to Environmental Law and Policy in Canada. 2nd ed. By Paul Muldoon, Alastair Lucas, Robert B. Gibson, Peter Pickfield, and Julie Williams. Toronto: Emond, 2015. xv, 414 p. Includes a companion website, discussion questions, key terms, suggested readings, case studies, charts & tables, maps, bibliography, glossary, and index. ISBN 978-1-55239-620-9 (softcover) \$75.00.***

The second edition of *An Introduction to Environmental Law and Policy in Canada* continues in the footsteps of its predecessor by providing a well-rounded primer on the topic of environmental law and regulation in Canada. The publisher is marketing this title to a higher education audience, and the book includes many pedagogical features such as discussion questions, key terms, suggested readings, and case studies. It also comes with a companion website where readers can stay up-to-date on regulatory and legislative changes in Canada. However, what the book lacks is in-depth analysis of environmental case law on a comprehensive level. There are only 14 cases referred to throughout the book, and while notable cases are highlighted, they by no means represent the full breadth of issues or decisions in the area of environmental law. As such, this title is clearly intended as a general textbook geared towards the non-lawyer rather than a legal reference text one would use to find judicial consideration on issues of environmental law.

The book is broadly divided into five sections: 1) the history and context of environmental law in Canada, 2) judicial and legislative aspects (both domestic and international) that affect Canadian environmental law, 3) the different regulatory regimes that exist in our country, 4) various integrated approaches to managing and protecting the environment,

and 5) the tools available to citizens in protecting the environment. Each section is divided into several chapters and each chapter begins with learning objectives and a mini-outline.

The first six chapters in Parts I and II cover introductory topics: the history of environmental law in Canada; an overview of Canada's legal framework; a broad discussion on the context and challenges for environmental law and policy; a description of Canada's judicial, administrative law, and alternative dispute resolution systems; a summary of aboriginal law and its relevancy to environmental law; and a discussion of the relationship between Canadian and international law. These chapters give the reader a basic understanding of the themes and issues that affect Canadian environmental law and regulation. Later chapters explore and digest aspects of these themes in more detail.

Parts III-V present the core content of the book by examining the different approaches to environmental assessment, management, regulation, and protection. Chapters 7 & 8 introduce the general structure of environmental law followed by a description of the command and control approach that exemplifies Canadian regulation. Chapter 9 summarizes how the energy, fisheries, agriculture/aquaculture, and biotechnology sectors are regulated in Canada. Chapters 10, 11, and 12 on environmental assessment, planning and management, and the influence of market forces are, in my opinion, the most interesting as the topics in these chapters reflect the complex interplay between human development and the environment. Discussions on topics like urban planning and renewable resources ground the environmental theory presented in the book with current, real-world examples that reveal the complexities and challenges inherent when applying law and policy. The final three chapters of the book review options that members of the public or certain organizations may use to influence the development and application of environmental law and policy: judicial actions, administrative hearings and inquiries, and legislative instruments such as environmental bills of rights and access to information statutes.

The authors contribute their combined experience and knowledge from the areas of academic teaching, administrative law, and government policy making, the result of which is a book that is well-rounded but not in-depth in its examination of Canadian environmental law and policy. Information is presented in a descriptive manner and the authors strive to keep an objective tone rather than promoting a certain position. The case studies and highlight boxes add a current affairs aspect to the book's overall academic survey of the topic.

Nonetheless, if one is looking for in-depth analysis and commentary on environmental issues or a citizen's handbook for environmental advocacy, *An Introduction to Environmental Law and Policy in Canada* will not meet these objectives. All of the authors are educators and their goal is to present a general overview of this complex and hotly

debated area of law. With this basic education, readers may then make informed decisions on how they choose to further educate themselves or participate in creating a sustainable future.

REVIEWED BY  
**HELEN MOK**  
Calgary Librarian  
Parlee McLaws

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***LLP Introduction to Forensic Writing.* By Dr. Michael Arntfield and Justice Kelly Anne Gorman. Toronto: Carswell, 2014. xvii, 458 p. Includes table of contents, glossary, works cited, and index. ISBN 978-0-7798-6382-2 (softcover) \$95.00**

This is the first Canadian book, and possibly the first book-length study ever, on the topic of forensic writing. For that reason alone it should find itself on the shelves of courthouse libraries, judge's libraries, prosecution offices, police stations, and any firm that practices criminal law.

As the first of its kind, however, the book struggles to define the scope of its subject. Forensic writing is defined simply as writing for the courts, but the topic extends to all types of written documents that are presented in court as evidence. Many of the case studies involve texts that were written with other audiences in mind, but became court document through the discovery process. Thus, a corporate memo written for an executive-level auto industry co-worker becomes key evidence in a wrongful death class action.

The implication of these case studies is that the writers of such memos misconstrue their audience. Rather than (or in addition to) writing for a colleague, they should envision a probing investigator or adversarial litigator or the public at large. The authors make frequent mention of "hostile audiences," as the court process exposes documents to close and critical scrutiny, and in even rarer cases, public scrutiny.

So here is your course in defensive writing. The book recommends a careful, even clinical, strategy for word selection. Idioms and colloquialisms are to be avoided, and generic "parent" synonyms are to be used rather than subsidiaries – thus "travelled" rather than "walked," "device" rather than "laptop" – an interesting combination of lexical precision and semantic imprecision.

What types of professional communications should be written in the forensic style? According to this book, "all professionals are engaged, whether they want to be or not, in a potentially forensic exercise with every function they perform." Or even more broadly: "any sample of writing in any form is potentially subject to public disclosure."

Such a view, if widely adopted, could create a chilling effect on professional and corporate communications. But as the book envisions writing to protect the writer from culpability,

it can't entertain the idea that candid, nuanced speech or writing may have more evidentiary value than that which is guarded, generic and formal, or that in some instances the goal of writing, where a hostile audience is envisioned, may be to miscommunicate. Operating with hindsight, the authors review texts that by fate or accident exposed their writers' organizations to liability, and propose the forensic style to minimize risk.

Despite the difficulties in defining the scope of "forensic writing," the bulk of the content (220 pages) is focused on the much narrower subject of writing for police investigations. As such, there is a wealth of useful information on every aspect of "Squad Room" communications. There are numerous examples of search warrants, field notes, surveillance logs, communication intercepts, and every other type of evidentiary writing police officers engage in--all with detailed marginal commentary by the authors.

There are also shorter parts on Forensic Writing in Newsrooms & Boardrooms (45 pages) and Forensic Writing for the Courtroom (40 pages). The latter, consisting of the book's final three chapters, embodies the perceptual difficulties of always writing "for the courtroom" (when typically one is not), but includes a useful list of document types that mercifully limit the scope of forensic writing.

Although advertised as a "guidebook," *Introduction to Forensic Writing* rarely adopts the practical, reader-friendly tone of a writing handbook. More often, it reads like a broad academic treatise on forensic communication, and frequently mimics the detached, excessively formal style of its subject. The second chapter includes a tedious 30-page section on word types, but the book as a whole is stingy with advice on how to use these grammatical lessons to improve a piece of writing. Even so, the many writing samples alone will be abundantly useful to forensic writers. Like any good style guide, it doesn't aim to invent a new way, but serves to codify existing practices.

But the true value of this book may be in its commentary. Along with the often befuddling writing advice (worst example is a brief section on "Grammatical Case"), the authors provide detailed histories and critiques of various genres and subgenres, displaying great depth as well as breadth of knowledge in their field. In that regard, maybe the topic of the book could best be described as "forensic literacy" or "forensic communications." Experts and enthusiasts in this area will revel in what is surely a long-awaited book-length discussion on the subject.

**REVIEWED BY  
KEN FOX**

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Law Society of Saskatchewan Law Library  
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***Judging Judges: Values and the Rule of Law.* By Jason E. Whitehead. Waco, Texas: Baylor University Press, 2014. 253 p. ISBN: 9781602585256 (hardcover) \$49.95.**

In the midst of so many media reports decrying the undemocratic nature of the function of judges, especially when their decisions result in setting aside the work of legislators, it is important to read a text on the subject of how difficult it is for judges to attempt to give effect to the wishes of the law-makers. As the introductory chapter notes, "... most appeals to the rule of law seem to assume that judges must slavishly follow the letter of the law. But this assumption ignores the many cases ... where the letter of the law is ambiguous, contradictory, or seems to require or allow judicial discretion." Indeed, the main contribution of this excellent text, distinguished both by the quality of the research and the excellent writing style, is that it seeks above all to define the various roles that judges play in the course of their fact-finding.

The author has marshaled his research into a number of chapter-length discussions under the headings: Judges and Formalist Values; Good-Faith Values; Cynical Values; and Rogue Values. Employing a balanced and insightful overview of the elements of the rule of law, the result is a superb analysis of the spectrum of "perspectives" judges adopt in the discharge of their duties.

Amongst the specific themes addressed by the author, the book early on mentions the subject of the values that are bound up with the rule of law. I commend in particular the historical discussion on the subject of whether the sovereign is above the law, a subject also addressed very ably in the recent text *Magna Carta Uncovered*, by A. Arlidge and I. Judge (Oxford: Hart Publishing, 2014).

The author reminds the reader that "judges must be motivated by fidelity to law" and makes plain the calamitous results when this situation is not present. An illustration of this situation is found in *Bentham's Theory of Law and Public Opinion*, ed. by X. Zhai and M. Quinn (Cambridge: Cambridge University Press, 2014) in which a judge in Pennsylvania was convicted (and jailed) for his repeated decisions to jail youthful offenders in order to collect money from the administrators of the detention facilities.

The author makes reference to traditional values but reminds us that a number of these are now either the subject of complete rejection by all civilized societies (notably slavery), or the subject of ongoing debate (racial and sexual discrimination), in order to underscore the chameleon nature of values and the concerns arising from public opinion as the foundation for judicial law-making.<sup>5</sup> I note in particular that certain well-known American judgments such as *Brown v. Board of Education* (1954) 347 U.S. 483, apparently representing bedrock values of equality, were subverted for so many years by judges whose values differed fundamentally from the values of the leading lights in the

<sup>5</sup> A thorough review of the subject of public opinion in sentencing is found in J. Ryberg and J.V. Roberts, ed. *Popular Punishment On the Normative Significance of Public Opinion* (New York: Oxford University Press, 2014).

<sup>6</sup> Refer to C.E.B. Wattley, *A Step Toward Brown v. Board of Education Ada Lois Sipuel Fisher and her Fight to End Segregation* (Norman: University of Oklahoma Press, 2014), a recent text setting out the remarkable mental gymnastics resorted to by judges in Oklahoma to uphold segregated education in terms of the teaching of law, going so far as to conclude that a one-student law school was capable of delivering a "separate, but equal, education."

crafting of jurisprudence. As convincingly discussed by Professor Whitehead, these rogue judges sought to justify their “unlawful dissents” by resort to tortuous interpretations of language such that black meant white if taken to its extreme form.<sup>6</sup>

Professor Whitehead is quite successful in framing the introductory discussion, and he returns frequently to these initial concepts, especially the typology of values, throughout the book. The reader has little trouble in situating the debate and in recalling the earlier guidance on any subject and in following the author as he adds new layers to the discussion. The result is a well-honed exploration of a thorny and complex issue marked by rigor in analysis, such that the reader gains a thorough understanding of this contemporary issue of note.

As someone who has long been fascinated by the study of the judicial function, I highly recommend this book to those judges, lawyers, criminologists and other academics interested in this vital area of this branch of government.

REVIEWED BY  
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***Judicial Deference to Administrative Tribunals.* By Joseph Robertson, Peter Gall, and Paul Daly. Markham: LexisNexis Canada Inc., 2014. 270 p. Includes table of contents and table of cases. ISBN 978-0-433-47849-2 (soft-cover bound), \$80.00.**

*Judicial Deference to Administrative Tribunals* consists of three chapters – one written by each author. The first chapter, written by Justice Robertson, is entitled *Judicial Deference to Administrative Tribunals: A Guide to 60 Years of Supreme Court Jurisprudence*. Robertson was a member of the New Brunswick Court of Appeal which decided *Dunsmuir* (2006). He, later, sat on the Federal Court of Appeal.

The second chapter is written by a practicing lawyer, Peter A. Gall, and is entitled *Problems with Faith-Based Approach to Judicial Review*. The final chapter, written by University of Montreal Professor of Law Paul Daly, is entitled *Unreasonable Interpretations of Law*.

Michel Bastarache, one of the majority judges in the *Dunsmuir* (SCC, 2008) case, wrote the Forward to the book. He describes it as “a volume of great significance and usefulness.” The Forward could stand alone as a summary content of the book. Bastarache describes Judge Robertson’s chapter as “a wonderfully comprehensive guide” that is “descriptive in nature.” Gall’s and Daly’s contributions are a “pressing and critical analysis of the deference doctrine.” He concludes that Gall favours a presumption of deference to a review standard of “reasonableness.” He suggests that Daly is very critical of the case law; paying special attention to the rules of statutory interpretation, and general laws of central importance to the legal system in practice.

Gall and Robertson both maintain that the Supreme Court of Canada in *Dunsmuir* sought a principled framework to judicial review. The framework reduced the standards of review for administrative decisions to two: correctness and reasonableness. Gall summarizes the applications from *Dunsmuir*: the standard of reasonableness is dependent on a number of relevant factors including the privative clause, if any, the enabling statute, the nature of the question at issue, and the expertise of the tribunal. Correctness is appropriate to apply to constitutional questions, lines of jurisdiction between two or more competing tribunals, questions of law of importance to the legal system and outside the expertise of the decision maker, and real questions of jurisdiction.

Contrary to Bastarache’s suggestion, Gall does not appear to take real issue with the reasonable standard. Rather, he suggests that the reasonable standard necessarily includes a *presumption* of deference, and that the degree of deference, if any, is appropriate and dependent on the factual context and circumstances of the individual case. Gall states

... rather than rely on what has become in practice a meaningless distinction between reasonableness and correctness, it would be more accurate, and lead to more transparency on the part of reviewing courts, to talk instead of deference or no deference based on an express consideration of all the factors to be taken into account determining whether to defer to the conclusion of an administrative decision-maker.

It does not seem that Daly and Gall are far apart in their thinking. Both seem to suggest that reasonableness and correctness, without context, do not assist in the analytical framework.

Daly summarizes the nascent Canadian approach after *Dunsmuir* as “1) that “clear” statutory provisions must be enforced by reviewing courts and 2) that “clarity” is to be determined by application of the judicially developed principles of statutory interpretation. There are also two important implications: 1) ambiguity has become the gateway to deference and 2) the test of reasonableness of administrative decision makers’ interpretations of law is one of conformity with the general principles of statutory interpretation...Where deference is appropriate, identifying the limits of the range [of reasonable outcomes] imposed by the statute is a matter for the administrative decision-maker, not the reviewing court.”

Daly’s summary is that intervention should be the exception and not the norm. However, “where the fabric of the legal system is threatened by decision-makers who inexplicably or unjustifiably reach irrational, disproportionate or inequitable decisions reviewing courts should step in.”

Included is the work is a table of cases, with reference to the page(s) in the text where the case is cited. Throughout the book there are notes at the foot of each page, and case citations are included in the footnotes.

This book serves as an essential doctrinal map (aimed at

target audience of reviewing judges and administrative law practitioners) regarding the review of administrative law. Law students should find it very useful in their studies, alongside general texts on Administrative Law and Statutory Interpretation. The text could also serve as a springboard in debates to better describe, if necessary, the grounds and analysis for review of administrative decisions.

REVIEWED BY  
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*Lawyer (Ontario Bar)*

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***Legal Literacy: An Introduction to Legal Studies.* By Archie Zariski. Edmonton: AU Press, 2014. xiii, 206 p. Includes glossary and bibliography. ISBN13: 978-1-927356-44-9 (print); ISBN 978-1-927356-45-6 (pdf); ISBN 987-1-927356-46-3 (epub) \$24.95.**

When I received this book I was initially puzzled; is it about legal studies or legal research? There are already good texts in both areas. *Introduction to Legal Studies* (5th ed) by Kazmierski *et al* has been a Canadian standard for twenty-five years. At over 600 pages, it offers an in-depth look at legal culture and institutions. There are also many good legal research texts written for the law school market such as McCormack's *The Practical Guide to Canadian Legal Research* (4th ed) at 610 pages. What Zariski offers in his shorter text is a synthesis of key materials from both types of texts: "This book is for readers who wish to know enough about the law and legal systems to be able to accomplish something within the law or to go about changing it" (p 1). It is not written for lawyers or law students and assumes little or no knowledge of the law. Appropriately the text is part of Athabasca's Open Paths to Enriched Learning program offering texts for undergraduate students and lifelong learners. The book is written from a Canadian and occasionally U.S. perspective though Zariski proposes that the concepts are applicable to most common law systems.

Zariski chose a non-lawyer audience intentionally, arguing that lawyers and judges, as socialized insiders of the legal system, have difficulty critiquing and initiating change within that system. The need for legal change is an important theme throughout this book, and Zariski is both a persistent critic and passionate advocate. Although writing for a non-lawyer audience, Zariski himself is an insider with fifteen years' experience as a litigator and fourteen years as a law and legal studies educator in Australia and Canada. Many of his previous writings have focused on dispute resolution, a re-occurring theme in this book.

*Legal Literacy* is arranged in nine chapters including the introduction. Each chapter includes questions for review at the end. There are eighteen pages of endnotes, a glossary of terms, and a bibliography of primary and secondary sources. As well as works by Canadian writers such as McLachlin, Mullan, Sullivan, and Scassa in the bibliography, I was surprised to find theorists like Freire, Derrida, Dworkin,

and Foucault. I learned Zariski was not afraid to engage in theoretical discussions where appropriate.

Chapter one introduces such concepts as substantial and procedural justice, adversarialism, and uncertainty in law. Zariski makes an extended case for the importance of legal literacy, the ability to understand and engage with an increasingly complex legal system that he sees as in crisis: "The price of justice is too high" (p 12). Legal literacy, he argues, provides tools to allow someone to engage the adversarial system without a lawyer. These tools are legal analysis, legal planning, legal research, and legal communication. He also discusses the importance of critical legal literacy to bring about change within legal systems.

Chapter two offers a more nuanced discussion of legal literacy in the context of other literacies like information literacy and media literacy, and its importance for full participation in society. Zariski presents the goals of legal literacy as the dissemination of knowledge about the law, empowerment of individuals to use the law, and support constructive criticism of the law. These goals provide structure for the following chapters.

The next three chapters offer a sociological look at legal structures, legal systems, and legal processes and procedures. Across these chapters, Zariski discusses how law describes and controls society, and defines concepts like actors, rights, civil and common law etc. He then turns to how legal institutions interact to create a legal system, and how this system functions to create social order and resolve disputes.

The fifth chapter attempts to explain the processes and procedures that are used by legal institutions like civil litigation and procedure. Zariski uses numerous examples in the form of excerpts from procedural rules, the Charter, and the Criminal Code. Each chapter also includes alternatives and critical analyses. For example, in the systems chapter, he discusses alternative dispute resolution and offers a rationale for the use of alternatives. His critical systems analysis examines the effectiveness of the current system.

The final chapters consider more practical issues of legal language, legal research, legal interpretation, and legal communication. These chapters are brief but offer a wealth of examples to illustrate his points. Zariski includes help features like screen captures of databases in his discussion of online legal research. As in the previous section, each chapter includes a critical analysis engaging such topics as the importance of plain language to crown copyright and access to legal information.

I found this an interesting read, particularly as a non-lawyer, and I was inspired by its well-articulated advocacy message. However, the scope of this book seemed too broad. I felt as if each chapter was originally a lecture or preparatory reading for a longer unit. For example, twenty-one pages are barely an introduction to a complex topic such as

legal research. As a companion text for a course in legal studies, this would be an excellent resource, but a further reading or supplementary resources section following each chapter would have strengthened it for individual readers. Nonetheless, the work is cost effective and accessible, and it is my hope that it does contribute to a wider conversation about the future of Canadian law.

REVIEWED BY

DAVID H. MICHELS

Public Services Librarian  
Sir James Dunn Law Library  
Dalhousie University

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**Made in Court: Supreme Court Decisions that Shaped Canada.** By Richard W. Pound. Markham: Fitzhenry & Whiteside, 2014. 335 p. Includes table of contents and index. ISBN 978-1-55455-347-1 (soft cover) \$34.95.

Only a small percentage of the cases that enter our legal system are ever heard by the Supreme Court of Canada, the highest court in the land since 1949. With an educated lay audience in mind, Richard Pound illustrates a variety of ways that the Court's decisions affect a broad range of Canadians. In particular, the book contains a digest and commentary on 57 seminal cases that the Court rendered between 1879 and 2014, which in turn helped to shape the Canadian legal landscape.

In the Introduction, Pound provides an overview on the history of the Court, and how it expanded from handling a fairly narrow range of matters to hearing cases that concern essentially every aspect of modern life. He notes that courts over time changed in style and purpose, from simply rendering a decision in a particular litigation matter to writing with a pedagogical view and providing guidance for the courts below.

Covering a broad spectrum of subjects, the selected cases cover a variety of areas of law, including criminal law, administrative law, Charter rights and freedoms, as well as Aboriginal law. Pound includes key extracts from the Court's majority and dissenting opinions, in order to illustrate the different approaches and language used by the judges over time.

He also provides insightful perspectives on whether the Court got it right in selected decisions. For instance, in *Quong-Wing v The King* [1914] 49 SCR 44 and *Christie v The York Corporation* [1940] SCR 139, the majority of the Court rendered decisions that endorsed discriminatory practice against minorities. *The Charter of Rights and Freedoms* and provincial human rights legislation made these cases "a relic of an earlier and less enlightened era." In contrast, Pound explains that, in *Vriend v. Alberta* [1998] 1 SCR 493, the Court determined that "reading in" was the appropriate constitutional remedy to a legislative omission, in order to prevent discrimination based on sexual orientation.

Two of the early *Charter* cases, *R v Big M Drug Mart Ltd.* [1985] 1 SCR 295 and *R v Oakes* [1986] 1 SCR 103 provide the analytical framework and outline the purposive nature of the judicial inquiry to be undertaken. Pound notes that the *Oakes* decision has been cited in the constitutional courts of many countries as a model of proportionality analysis, whereby certain guaranteed rights are justifiably overridden by important social or government objectives.

Also noteworthy is that, in the face of changing social conditions and the advent of new legislation, the Court is capable of reaching two different conclusions based on essentially the same facts, as was the case in *R v Morgentaler* [1988] 1 SCR 30. Instead of being convicted a second time for performing abortions, Dr. Morgentaler was acquitted by a majority of the Court in light of section 7 of the *Charter*. This case effectively decriminalized abortion and demonstrated that the *Charter* has become a "constitutional bulwark."

Yet, in certain delicate and complex matters, the Court appears reluctant to provide a black and white answer. Pound cites *R v N S* [2012] 3 SCR 726 as an example in which a woman's freedom of religion (in the form of wearing her niqab to testify in a criminal trial) is pitted against the accused's right to a fair trial. Rather than choose between the two, the Court provides a set of guidelines to direct the trial judge in conducting the proportionality inquiry.

Pound shows through his examination of interesting and important cases in the administrative, criminal, civil, political, procedural, and private realms that decisions from Canada's highest court have far-reaching implications in the daily lives of many Canadians. Moreover, the Court performs multiple roles in interpreting the law, including assuming a role in judicial policy and correcting any error in decisions of the lower courts.

While the book was written for interested members of the lay public, the analysis of the selected seminal legal cases can be used as a "Coles Notes" study guide by pre-law and law students, as well as an informative tool by young members of the legal profession. The author did not wish the book to become "a hernia-producing tome or several volumes;" nonetheless, the relative pace of case-law evolution will likely call for a sequel.

REVIEWED BY

ZOË J. ZENG

Lawyer (Ontario Bar)

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**Modern Jurisprudence: A Philosophical Guide.** By Sean Coyle. Oxford: Hart Publishing, 2014. 280 p. ISBN 9781849460248 (paperback) \$29.00.

Some books written about jurisprudence or political philosophy stop just short of causing a reader to want to poke his or her eyes out with a pencil. The writing is self-indulgent, convoluted and not at all pleasurable. This is not

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<sup>7</sup> Surely there cannot be more than a few hundred people in the whole world who would sit down in a comfortable chair, get a cup of tea and a cookie, and read about the different concepts of law put forward by Aristotle, Kant or Hart for the sheer joy of it?

one of those books given that, for the most part, ideas are expressed clearly (although some chapters are better than others). Even so, this is not a book intended to be read for pleasure; indeed, if it were, it would likely be a dismal failure<sup>7</sup>. Most readers of this type of work, even a relatively succinct one like this, are looking for instruction, not pleasure. They are hopeful that the instruction will involve as little pain as possible, but they understand there will be some pain. This was made minimal in Professor Coyle's book most of the time, and for that he is to be commended.

Readers of this kind of book are also looking for a framework for understanding legal concepts and, in a broader sense, a framework for understanding law itself.<sup>8</sup> The majority of the time the text will be part of a course and there will be a professor and seminar leaders to help the reader over the tough patches and to illuminate some of the more opaque passages that appear in the book. Despite the difficulty students might have from time to time, in understanding the material, *Modern Jurisprudence* would serve as a good text for an introductory course on jurisprudence.

Some may ask whether we need yet another book on jurisprudence. It is a fair question. Jurisprudence, like philosophy, explores certain concepts – the same concepts often explored in other texts – and examines them again, while throwing in an examination of the previous texts that discussed the same concepts. Possibly if the examination is illuminating, the new book will be valuable. So here's a philosophical question: Is *Modern Jurisprudence* valuable?

If by "valuable" we mean it answers all our questions, then no, it is not. To be fair to Professor Coyle, he is up front (if putting something in your last chapter is up front) about this. He says "Can anything be concluded from all of this?" If by this question he means, *finally* concluded, then the answer is no. Philosophical questions are too all-encompassing and allow for too many considerations to offer conclusive answers (p 241). All we can really hope is to have questions identified and fleshed out, and certain answers suggested.

In achieving this end, Professor Coyle covers, as he should, most of the leading "names" in jurisprudence and legal philosophy and summarizes their positions. He has theories and ideas he likes and others he does not. For example, the great significance of the works of Hart, Dworkin and Rawls for modern times "is that their errors teach us much more than does the wisdom of many lesser philosophers" (p 245). On the other hand, he is clearly a fan of Fuller and Finnis, whom he says "offer the soundest starting points for a fluxion of the meaning of law and justice in modern times" (p 245). Professor Coyle suggests, as noted earlier, that there are no conclusions or answers to philosophical questions, only observations. In reviewing the work of leading scholars, he states that he covers two broad concepts. The first is that law is merely an instrument of the state to achieve certain ends, which do not necessarily have to be good ends but could be unjust or oppressive. As he puts it, "there is no intrinsic

connection between the substance or content of laws, and demands of morality" (p 241).

The second theory is that the law is equated with justice, with the goal of internal peace and stability of the state seeking to ensure a peaceful life with work performed, debts paid, and crimes punished. He writes, "Are not unjust laws precisely *bad* laws, perversions of the values we look for in the law, and regard as emblems of a healthy and well-functioning legal order?" (p 241) This question harkens back to comments made in his introduction, where he suggests that it is possible to distinguish between good and evil, and characterizes an unwillingness to condemn practices deemed evil as a form of "moral cowardice: the fear of upsetting cultural sensitivities" (p 6).

I am not sure I would have understood these to be the two main principles, and part of that may lie in the fact that when one is outlining the thoughts of Aristotle, Grotius, Kant or, in more modern years, Hart, Rawls, and Finnis, one can sometimes get lost in the details and lose track of the bigger picture. At certain points, one of us – Professor Coyle (the writer) or myself (the reader) – lost track of the big picture. I hesitate to say it was him, but if the reader loses track, is the writer not at least partly responsible?

To elaborate, a work of philosophy is generally written by a bright person who clearly understands complicated words and concepts, but might not comprehend the level of explanation necessary for readers to understand them. For example, when flipping open my copy at random the first question mark I saw that I had penciled in the margin while reading the book appeared in a discussion of Hart:

In Hart's terminology, the validity of legal rules derives from acceptance of an underpinning 'rule of recognition' that 'specif[ies] some feature or features possession of which by a suggested rule is taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts. (p 87)

I recognize that pulling a quote out of context is possibly unfair to the writer. However, I did not understand this sentence at the time I read it, in context, and I still do not understand it. This sort of writing throws off the reader, and more elucidation is needed; in other words, it would be necessary to have Professor Coyle at the front of the class to explain its meaning.

Despite these comments, however, the book is, in the final analysis, a decent choice for an introductory course on jurisprudence, or for a serious student who wishes to study on his or her own. There are clearly moments in the book where it would be helpful to have a good instructor, but isn't there always?

REVIEWED BY  
JOHN K. LEFURGEY  
Martens Lingard LLP

<sup>8</sup> In addition, jurisprudence or legal philosophy courses in university or law school may be designed, or at least the syllabus may say they are designed, to help a student learn how to think, or to expand his or her way of thinking.

**Noted, But Not Invariably Approved. By J.R. Spencer. Oxford: Hart Publishing, 2014. 256 p. ISBN-13: 978-1849466714 (paperback) \$26.00.**

Don Stuart's text, *Charter Justice in Canadian Criminal Law*, 6th ed., is noteworthy for its multiple references to the annotations published in the pages of the Criminal Reports, and for the excellent "mini-tutorials" they provide on subjects of on-going controversy in that domain. Legal readers are vitally interested in, and greatly thankful for, up-to-date and insightful commentary on emerging case-law discussed by writers like Professor Stuart or by individuals like the late Professor James McLeod whose astute headnotes and superb annotations appear in the *Reports of Family Law*. The Bench and Bar are avid consumers of such excellent and focused case comments, and herein lies the merits of Professor Spencer's book: a signal source of authoritative commentary that is modest in scope. Indeed, I can think of no better collection of incisive and insightful comments on Commonwealth jurisprudence.

*Noted, But Not Invariably Approved* reproduces over sixty of the most impressive case notes and comments published by Professor Spencer in the *Cambridge Law Journal* in the course of his four decade long tenure at the Law Faculty at Cambridge. In reading them, I was reminded of the complexity of the "Ogopogo" case (*Matthews v. MacLaren* (1970), 11 D.L.R. 277 (Ont. C.A.) and [1972] S.C.R. 441) that bedeviled my (now distant) first year torts class and which was recently cited in *Maguire v. Padt* 2014 ONSC 6099, at para. 37 and footnote 34, along with the direct instruction on the possible interpretation to be given to the recent amendments to the *Canadian Criminal Code* on the subject of violent responses by homeowners and shopkeepers (and others) to trespassers. In addition to matters of this sort, Professor Spencer tackles in great detail the law of kidnapping, "the egg-shell rule" and blasphemy. Although these subjects rarely arise on the docket where I preside in Cornwall, Ontario, when they do, I shall be prepared!

All jocularly aside, however, I submit that it is the function of the academy to address not only bread and butter issues, i.e., those that are of quotidian interest, but also to delve into the difficult and uncommon questions that arise in order to provide the profession with the benefit of guidance and instruction borne of reflection and wide-reading, including developments in civil jurisdictions. At this, and aided by his fluency in different languages Professor Spencer excels.

With a sharp pen and a caustic tongue (the better to gain our attention as it sustains our interest), he examines such thorny issues as the correct means of charging the jury when dishonesty is alleged, the duty of judges in providing reasons, how best to assess the testimony of children<sup>9</sup>, the insanity defence, "rape shields", naming and shaming of young offenders, the secrecy of the jury room, and a verdict arrived at by means of a Ouija board, to name but a few examples.

Civil practitioners will profit from the in-depth study of a number of subjects, notably strict liability, damages for lost chances, liability for pure economic loss, suing the police for negligence and the Rule in *L'Estrange v. Graucob* on the subject of *non est factum*, amongst many other themes explored.

I know of no other author who could write "the common law should move by little steps, like centipedes and corgis, not leaps and bounds, like kangaroos" whilst tweaking the noses of the higher judiciary in the course of one thousand words essays and yet, seemingly, remain a mainstream commentator by reason of the rigor of his analysis and the breadth of his scholarly interests. I only wish I had been familiar with his writings when in practice when I was hopeful not only of convincing the Court, but of doing so by means of a lively citation or two.

REVIEWED BY  
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***The Right to Work: Legal and Philosophical Perspectives.* Edited by Virginia Mantouvalou. Portland: Hart, 2015. xiv, 351 p. Includes foreword, list of contributors, index. ISBN 978-1-84946-510-6 (hardcover). \$120.00.**

This challenging book examines the concept of a "right to work" through a variety of philosophical and international legal lenses. Together, they produce a fascinating and multi-faceted discourse on the nature of work and the meaning of rights. Readers should not expect an exposition of labour rights in the same way we might expect it in the context of the *Canadian Charter of Rights and Freedoms*. Rather, the chapters explore the existence of a right to work along with its content, scope, and relationships involved.

The contributors are legal academics, one of whom hails from Canada. Together, they explore related areas such as human rights, European law, international considerations, and philosophy, in addition to labour and employment law.

Rather than a foundation of established and unquestioned rights and duties, *The Right to Work* assumes a *toile de fond* of philosophical query, discussing the nature of work, dignity, social inclusion, and the meaning of rights and duties. Contributors draw from Aristotle and the *Nicomachean Ethics*, as well as Hannah Arendt and Amartya Sen, in examining questions such as the conception of remuneration or a right to work and to be paid for it (Chapter 5), and a right to work irrespective of disability (Chapter 4).

The contributors also reflect on the formal legal underpinnings of a posited right to work, exploring, for example, the relative initiating roles of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Chapter 6,

<sup>9</sup> See John R. Spencer and Michael E. Lamb, eds. *Children and Cross-Examination Time to Change the Rules?* (Oxford: Hart Publishing: Oxford, 2012).



for instance, delves deeply into interpretations of the right to work deriving from international accords such as the ICESCR and the European Social Charter.

Beyond the European and international spheres, several different foreign domestic legal systems are represented, among them, Japan, France, the United Kingdom, and the United States. The book consciously and explicitly stops short of entering into discussions of comparative law, however.

*The Right to Work* raises and examines thoughtful questions, forestalling a mere presumption of a right to work. If there can be said to be a right to work, what is its conception – what is its nature, what does it encompass, what are the facing duties? Is a right to work really a freedom from unjust treatment at work? Can it include a right to free choice of employment? Does a right to work impose concomitant duties on others— like the employer, the state, the union— and would such duties include a duty to provide work? Chapter 10, for example, considers a right to work and whether a duty to work then flows from it. More generally, it asks, how do rights become duties?

Particularly accessible and topical is Chapter 3 which addresses a simpler aspect of a right to work: a right to non-exploitative work. The straightforward appeal of this aspect of work gives way to a more troubling conditionality of such a right for undocumented migrant workers, suggesting a right based not on dignity but on citizenship. The contributor here considers two cases: *Hounga v Allen* 2014 UKSC 47 and *Hoffman Plastic Compounds v National Labour Relations Board* 535 US 137 (2002) both of which illustrate the limits of current recognition of an intrinsic right to work. Where one has no right to work, for reasons of documentation, for instance, one may see no rights at work.

This slim but complex and weighty book will be an excellent selection for academic libraries supporting advanced or interdisciplinary study in labour law, workers' rights, or human rights law— particularly its international aspects. Other libraries, law firms or legal practitioners will find it of interest where information is required on philosophical conceptions of labour, international or human rights law.

REVIEWED BY  
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***Sexting and Cyberbullying: Defining the Line for Digitally Empowered Kids.* By Shaheen Shariff. Cambridge: Cambridge UP, 2015. xviii, 219 p. Includes illustrations, bibliographic references, appendices and index. ISBN 978-1-107-62517-4 (softcover) \$29.99.**

With this book, Shariff intended to write the second edition of her 2009 work, *Confronting Cyberbullying: What Schools Need to Know to Control Misconduct and Avoid Legal*

*Consequences*, but realized that the use of digital media by young people and adults alike had evolved quickly in a few years and that she would have to reflect this evolution in any update. Rather than create another edition that focused on cyberbullying within school communities and the legal responsibility of educators to intervene, Shariff cast her net wider with this text to address the responsibilities of not only educators, but of judges, lawyers, law enforcement officials, policy-makers, the media and parents.

Throughout the book, the author stresses that sexting and cyberbullying are not phenomena that exist in a vacuum, but rather that there are a number of forces at play which influence the online behaviour of young people. She describes the impact on youth of rape culture, the sexism and misogyny so prevalent in popular culture, slut-shaming, the media, as well as poor examples set by adults. As such, Shariff demands that her readers consider the acts of young people and their online activities within the context of these influences as well as the acceptable social mores and behaviour of teens and to react accordingly, rather than criminalizing them with the use of outdated or reactionary legislation.

Shariff describes her own “Define the Line” research in which she worked with children and teens to determine whether they were able to differentiate “between online jokes, teasing, and actual harm...[and] assess whether... [they] can easily define the line between public and private spaces and online content” (p 48). She refers frequently to the theme of lines or boundaries, some of which are blurred for young people, some of which are well-defined. She discusses the blurred lines for teens when it comes to the idea of public versus private; the foggy area of “victim-perpetrators” – perpetrators of online bullying who have been victims themselves; the “very clear social lines in the minds of these generations that should not be crossed” (p 37); and the “undeclared line in teen digital culture with respect to the amount of agency girls can use to express their sexuality” (p. 46). Based on the results of her research, Shariff again stresses the importance of protecting and educating young people rather than criminalizing them.

Chapters 3 and 4 focus on case law, emerging legislation, constitutional considerations, civil law issues and international human rights law as each is relevant to the treatment of young people who participate in sexting and cyberbullying. Cases discussed include the Amanda Todd case, the Nova Scotia Jane Doe case, the Laval Snapchat case as well as a number of U.S. cases. Shariff also discusses the problems with the treatment of young people in Bill C-13, the *Protecting Canadians from Online Crime Act*, which received Royal Assent since the publication of this book.

Shariff addresses the issue of privacy in legal proceedings for young people in her discussion of the landmark trial, *A.B. (Litigation Guardian of) v Bragg Communications Inc*, 2012 SCC 46, where the importance of balancing the protection of children's privacy with the open court principle and free press coverage is at issue. She discusses human rights

law as it pertains to protecting children and the international *Convention on the Rights of the Child*.

Chapter 5 concludes with a number of recommendations for policy makers, educators and the judiciary. These include valuable recommendations to use education to address the root causes of cyberbullying rather than having a reactive approach where youth are criminalized; to honour the Youth Criminal Justice Act when developing legislation that relates to young people and their online activities; to provide sensitivity training for law enforcers and the media; and to engage children in discussions around legal literacy and their rights.

Useful appendices include a chart of Canadian and U.S. anti-bullying legislation as it applies to cyberbullying, both federal and provincial/state; an outline for a university-level course including a syllabus and suggested readings and activities; as well as a PowerPoint workshop for undergrad students about “Defining the Lines.”

The audience for whom this book would be useful is wide-ranging. The author aims to inform policy makers and the judiciary, educators and law enforcement. Indeed, anyone in the position of guarding the best interests of children, parents included, would benefit from reading this book as the author’s research and commentary provides an excellent insight into how young people’s social behaviour is very different from that of adults and how we must not forget this when developing legislation. Law librarians would find it a suitable addition to collections in academic and government libraries.

REVIEWED BY  
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***Solicitor-Client Privilege*. By Adam M. Dodek. Markham, ON: LexisNexis, 2014. liv, 449 p. Includes table of cases and index. ISBN 9780433465324 (hardbound) \$165.00.**

The Bench and Bar have traditionally been fond of associating the academic writings of certain authors with a particular subject matter so that questions of evidence, by way of limited example, are approached by asking “What does Cross say?” This penchant is far less pronounced today as there are often many splendid authors on the same subject. On the question of privilege, however, it might be apposite to begin to ask “What does Dodek say?” based on his recently published text that appears to provide a definitive account on so difficult a subject.

Not only does it appear that every imaginable question is addressed fully and ably (a signal feature of any text but one enhanced by the quality of the index) but the author goes on to point out how the leading judgments are either wrongly decided or susceptible of being distinguished in future litigation. Beyond criticizing these decisions, Dodek frames better tests for analyzing these thorny questions, including criticism of the common interest exception at pages 249-253 and the concerns raised respecting the dominant purpose test at page 115. Many, many more might be cited but for limitations of space.

Thus, we have a text notable for the breadth of the inquiry, with references spanning the ruler of Sharjah (fn 203) on the one hand to precise examples of improper attempts by lawyers to have their clients waive privilege should a controversy arise over fees in the future (p 254). The author discusses the origins and rationale of the solicitor-client privilege and its evolution--drawing valuable attention to the concerns inherent when a client seeks advice, considering the question of the legal adviser acting as a lawyer and confidential communications, and then, with a deft hand, turning to the issues surrounding waiver and overriding the privilege. The last few chapters are devoted to civil litigation, administrative proceedings and issues implicating corporations and government.

Professor Dodek is to be commended for the skill with which he has organized and discussed the cases, notably by drawing lists of essential points or elements in play in each decision. The author is also skilled at recalling earlier discussions and conclusions in subsequent chapters when different but related themes are addressed, but without needless repetition or cumbersome cross-references that are anathema to counsel attempting to make a point in the heat of litigation. *Solicitor-Client Privilege* is highly recommended.

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REVIEWED BY  
**JUSTICE GILLES RENAUD**  
*Ontario Court of Justice*



## III Bibliographic Notes / Chronique bibliographique

By Susan Jones

**Artie Berns & Corrine Vogel, "Tell It To the World (Wide Web): Promulgating Academic Law Library Pro Se Patron Policies Via the Internet" (April 2015) 19:6 AALL Spectrum 29-30, 34. Available online: <<http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-19/No-6/pro-se-policies.pdf>> (accessed 28 October 2015).**

Do you have a *pro se* patron policy at your library? If so, how do you make self-represented litigants and members of the public aware of it? In this article, two former graduate assistants at the Albert E. Jenner Law Library at the University of Illinois describe their survey of how the *pro se* patron policies of academic law libraries are promulgated via the World Wide Web. In addition to outlining their findings, the authors offer their suggestions for improving the discoverability of *pro se* patron policies on law library websites.

A *pro se* patron policy is an important part of any law library's reference service, even for those libraries whose doors aren't open to the public. An easy-to-find policy that clearly outlines what, if any, services are available for *pro se* patrons goes a long way to helping this group of users understand what they can expect from librarians and the boundaries and limitations of their services. As noted by the authors, a *pro se* patron policy is consistent with the American Association of Law Libraries' Core Organizational Values (<http://www.aallnet.org/mm/Leadership-Governance/strategic>), including equitable and permanent public access to legal information, the continuous improvement in access to justice, engagement and collaboration with the community, and the

essential role of law librarians within their organizations and in a democratic society.

The authors began their survey by going to the website of every American Bar Association-accredited academic law library. Once on the library's homepage, the authors then looked for its *pro se* patron information. In doing so, they noted how many screens they clicked through before finding the policy. If their efforts to find the information proved unsuccessful, the authors then looked for a search box on the homepage and conducted a search of the library's website using the terms, "*pro se*," "public patron," and "patron policy."

Based on these exercises, the authors allocated a score from one to five to reflect how easy or difficult it was to find the *pro se* patron information. A score of one meant the information was easy to find, while a score of five indicated it was more difficult. The ease of finding the information was assessed according to its distance from the library's homepage, the relevance of the pages leading to the information, the relevance of the page title assigned to it, and whether a search of the site was needed to locate the information. A second score was allocated to reflect the clarity of a library's *pro se* patron information. Again, this was a score from one to five, with a score of one indicating the information was very clear. Clarity was assessed according to whether the policy included details about access for the public, details about reference services for the public, the presence or absence of a legal advice disclaimer, and the type of language used in the policy.

Although the authors don't include any of the hard numbers resulting from their examination, the article does include some basic diagrams to give the reader some idea of the results. The first diagram represents the number of pages between the library's homepage and the *pro se* patron information. For the vast majority of the websites surveyed, the information was within two to three pages of the homepage. A small number of websites, though, required four clicks to reach the needed information, and for an even smaller number of websites, the information was within one click of the homepage. There were also a small number of websites for which no *pro se* information was found.

The second diagram represents the score assigned by the authors for the ease or difficulty of finding the *pro se* patron information. Slightly less than three-quarters of the websites surveyed received a score of one or two indicating that the information was easy to find. Of the remaining websites assessed by the authors, less than one-quarter received a score of three, while the remaining sites received scores of four or five.

The third diagram represents the score allocated by the authors for the clarity of the *pro se* patron information. Almost half of the websites surveyed had a clearly written policy and received a score of one. Of the remaining websites, equal numbers received scores of two and three, and a smaller number of websites received scores of four and five.

The fourth and final diagram in the article represents the number of websites that both state they admit members of the public *and* include a legal advice disclaimer. Slightly more than half of the websites examined met both conditions. Interestingly, of the 134 websites that clearly stated they admitted members of the public, 61 lacked a legal advice disclaimer.

Based on their own survey and evaluation, as well as the American Association of Law Libraries' Core Organizational Values, the authors offer their best practices for the promulgation of *pro se* patron policies on law library websites. First, a law library's *pro se* patron information should be no more than two clicks away from the library website's homepage. The authors also advocate using clear, non-legal terms when describing a *pro se* policy. For example, instead of calling it a *pro se* policy, they suggest referring to it as "visitor information," "public services," "visitor access," or "public access." They also think it's a good idea to clearly set out the hours during which the public may access the library and what services are available to them. When it comes to reference services specifically, the authors suggest that libraries include a detailed description of the scope of those services, as well as a clear disclaimer that library staff can't provide legal advice or answer specific legal questions. To aid the public's understanding of what constitutes legal advice, the authors recommend including examples of questions that reference librarians can and can't answer for members of the public.

For those librarians who wish to update or modify their current

policies, the authors offer the names of a few libraries that illustrate some or all of the aforementioned best practices. Those libraries include Lewis & Clark's Paul L. Boley Law Library, the University of Missouri-Kansas City's Leon E. Bloch Law Library, and the University of Florida Law Library. Equally important, the California Western School of Law Library is an example of a law library that makes it very clear on its website that it doesn't admit the general public.

To close, the authors want to make it clear that they aren't suggesting all academic law libraries should admit the public or provide reference and research services to this group. Rather, the authors just want law libraries to make it clear on their websites where they stand with respect to *pro se* patrons, which in turn may save their staff and the public a lot of time and unnecessary frustration.

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**Dunstan Speight, "Space: The Final Frontier for Law Firm Libraries" (September 2015) 15:3 Legal Information Management 156-159.**

It seems that law libraries, especially law firm libraries, are always fighting to hold on to their space. With this article, Dunstan Speight, Library Manager at Berwin Leighton Paisner LLP in London, aims to help librarians prepare a business case for maintaining their space and collections.

Law firm librarians have learned to take a business-like approach to the development and maintenance of their collections, carefully scrutinizing new publications and purchase requests and examining the renewal of existing resources to determine their relevance and importance to the business of the firm. Law firm librarians have also developed keen negotiating skills in order to secure the best possible terms from vendors for the benefit of their firm's bottom line. The author encourages librarians to adopt the same business-like approach to managing their space as they do for managing their collections.

It's almost a certainty that at some point the managing members of any firm are going to cast a critical eye over the library's space, and when they do, librarians must be prepared to justify their occupancy of every valuable and expensive square foot of that space. According to the author, there are several key elements that librarians must understand in order to adopt a proactive, business-like approach to space management. Those key elements are, understanding the business drivers for saving space, knowing the collection, understanding the practice needs for resources, understanding the individual publications, recording the decisions, grading the collection to understand the priority of resources, and developing creative solutions for using space efficiently.

When it comes to *understanding the business drivers for saving space*, it's not difficult to see why law firm management may target the library when you learn the actual cost of office space. In the article, the author includes statistics

from current research showing that the top 100 law firms in the United Kingdom are spending an average of £24,900 per lawyer on office space every year, with each lawyer, on average, occupying 490 square feet of space. What's more, the total volume of space occupied by firms seems to be falling, while the cost of office space only seems to be rising. It's no wonder then that reducing space is one way law firm management may try to cut its costs.

So what can librarians do? The author advises librarians to consider whether their collections really justify the cost of their space. This isn't an easy question to answer and it's certainly not one that librarians will want to grapple with on short notice. For these reasons, it's best to be proactive and start reviewing the collection *before* any last-minute request to reduce the amount of the library's space. More specifically, the author encourages librarians to consider what resources can be discarded and what items are critical to the business of the firm. Even better, if librarians can discard unneeded material now, they can show they're aware of the firm's business needs and can make decisions in alignment with what it requires.

The second element of taking a proactive, business-like approach to space management is *knowing the collection*. Librarians may think that currency and relevancy are all they need to know about the collection, but when it comes to space management, it's important to know the extent of the collection, too. An accurate accounting of the number of volumes in the collection, along with the amount and size of shelving needed to house it will mean librarians are well-prepared to discuss space requirements when approached by the firm's management. In preparing for these discussions, librarians should remember to take into account those parts of the collection housed outside the library, such as in offices or practice group areas. And when calculating the amount of shelving required, librarians should remember to take into account any shelving required for oversized or generally odd-sized materials.

The third element to proactive space management is *understanding the practice needs for resources*. When justifying the amount of space required for resources, librarians must balance the cost savings of reducing library space with the information needs of the firm's lawyers. In doing so, librarians often deal with widely-held beliefs about the necessity and value of print resources in today's online environment. Law firm management may be under the misapprehension that everything their lawyers need is available online. Furthermore, they may think that where a resource is available electronically, the print equivalent can be discarded. Librarians, however, understand that collection management is not so simple or straightforward. There's a process involved in assessing a collection and it's not one that can be carried out in accordance with oversimplified opinions and mistaken beliefs of law firm management. In the author's opinion, the responsibility of assessing a collection falls mainly to library staff, but that's not to say there won't be cases where it'll be necessary to consult the users of resources being assessed. In fact, it's

beneficial to secure the support of those users in deciding to discard a resource. In the author's experience, those users most often agree with the assessment of library staff, but on occasion the consultation reintroduces a long-forgotten or unknown resource to lawyers who then recognize its value and usefulness to their work.

The fourth element of proactive space management is *understanding the individual publications*. The criteria used in deciding to retain or discard resources can be deceptively simple and don't necessarily apply equally to all resources. One such criterion is publication date. Whether a resource can be discarded based on its publication date really depends on the pace of change in the area of law covered in that resource. As the author notes, a 10-year-old book in a slow-to-change area of the law can be just as relevant as a recently-published one in a fast-paced area of practice.

Another deceptively simple factor in deciding whether to retain or discard resources is the availability of online alternatives. To dispose of an item solely on the fact that it's available electronically would be to ignore a number of other important considerations. This includes the ongoing cost of access to online resources, not to mention the uncertainty of their future availability. It's also important to consider the type of resource when deciding whether to discard it in favour of an online-only format. This consideration is best exemplified by the difference between case law and commentary. Using online resources for case law research is time-efficient and cost-effective. Browsing a book online, however, can be cumbersome and although the quality of e-books has improved, some electronically-available titles don't include the tables and illustrations found in their print equivalents. Just as librarians shouldn't discard print materials just because they're available online, librarians also shouldn't retain print materials just because they're not available electronically. Resources should be retained only if they continue to be of some relevance to the firm's lawyers.

The fifth element of a business-like, proactive approach to space management is *recording decisions*. It's important to record the reasons leading to the decision to discard or retain a resource, along with who authorized the decision. The author notes that documenting these decisions is especially helpful when it comes to retaining superseded items for a specific period of time. He suggests recording these decisions as a staff note in a bibliographic record or in a simple spreadsheet.

The sixth element is *grading the collection to understand the priority of resources*. According to the author, every library should have a document outlining which items are essential; which items are useful, but not critical; and which items could be discarded with no or few consequences. The author describes his own experience with this exercise when he was asked if he could relocate his firm's corporate and finance libraries. The resources in those libraries were categorized as business critical, accessible, archive, store offsite, or discard.

The business critical items were those that needed to be available to lawyers in the library at all times, like textbooks and current directories. In the accessible category were items that were needed, but not all the time, so these resources could be stored outside the library, but still within the building. This category included many of the collection's journals and law reports. The archive, store offsite, and discard categories are self-explanatory. Resources in the archive category included superseded items that were still relevant to the firm's lawyers. Interestingly, though, none of the library's resources ended up in the store offsite category and the author offers a couple of reasons for this decision. Firstly, there's a cost involved in storing material offsite. Secondly, the time it takes to retrieve items, even if only a few hours, can be too long for time-sensitive legal research. As a result of carrying out this exercise, the author now knows the shelving requirements for each category of materials, how much space could be saved by the items in the archive and discard groups, and what items are really essential to the practitioners in the firm.

The seventh and final element to proactive space management is *developing creative solutions for using space efficiently*. When faced with reducing the size of a library, the author recommends considering the layout of the space. Proper library shelving, or even custom-built shelving to take advantage of awkward or small spaces is one option, and double-shelving of journals or law reports is another.

In closing, the author advises that collection and space management is, and will continue to be, an ongoing challenge. As the business needs of the firm change and develop, so too will the library's resources, and by necessity its collection management policies and space management strategies, too.

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**Susan Barker & Erica Anderson, "Cinderella at the Ball: Legislative Intent in Canadian Courts" (Summer 2015) 38:2 Canadian Parliamentary Review 15-21. Available online: <[http://www.revparl.ca/38/2/38n2e\\_15\\_BarkerAnderson.pdf](http://www.revparl.ca/38/2/38n2e_15_BarkerAnderson.pdf)> (accessed 28 October 2015).**

It wasn't until I worked at a legislative library that I really became familiar with legislative intent research. Although I've since moved on to work in an academic law library, I won't soon forget the long hours spent poring over Hansard to search for discussion of a bill or to determine why the legislators chose to use particular language in a statute. It was work I found interesting, so naturally I was drawn to this article by Susan Barker, Digital Services and Reference Librarian at the Bora Laskin Law Library at the University of Toronto, and Erica Anderson, Research Librarian at the Legislative Library and Research Service at the Legislative Assembly of Ontario.

While legislative intent research may be more familiar to those working in parliamentary or legislative libraries, this type

of statutory interpretation has become more common and increasingly important in the past few decades, especially since the dismissal of the exclusionary rule in Canada in the late 1990s. For this reason, it's important to understand what legislative intent research is, why it's important, why for so long it wasn't admissible in court, and the types of resources used to carry out this research. It's precisely these questions that the authors of this article set out to answer.

To help librarians and researchers understand what's meant by legislative intent research, the authors provide an explanation. It basically means closely examining how a piece of legislation came about or changed over time, including what might have been discussed and debated about the legislation as reported in Hansard, or even influential works that preceded the legislation, such as law commission reports, government policy papers, and commissions of inquiry. Anyone who has gathered together the relevant discussion about a bill from Hansard, tried to determine what the legislature meant by a particular word or phrase, or figured out why and when a statute was amended has researched legislative intent.

This type of research is called different things by different people – legislative history and "backtracking" being two popular ways to describe the process. The authors, though, refer to the definitions used by Ruth Sullivan in *The Construction of Statutes* to describe how lawyers and judges determine the intent of the legislature or parliament. According to Sullivan, *legislative evolution* refers to a statute, from its very beginning and all its subsequent changes. Legislative history, on the other hand, refers to everything relating to those changes including, but not limited to, the works of law reform commissions, the studies and recommendations of government departments and committees, comments made by the legislative member responsible for the bill, explanatory notes and other documents introduced during the legislative process, explanatory information and press releases issued by government, and the debates and reports of legislative committees.

In explaining why this type of research is so important, the authors turn to the history of legislative intent. We all recognize today how important legislative intent is when the outcome of a case can turn on the meaning of a statute, but determining legislative intent wasn't always recognized as so important. In fact, at one time, due to the exclusionary rule, using legislative intent or legislative history to interpret a statute wasn't even admissible in court. The story of the exclusionary rule began with a dispute in England between a London bookseller and a Scottish publisher. The outcome of the case depended on the meaning ascribed to certain copyright provisions in the 1710 *Statute of Anne*. One of the parties to the dispute wanted to use information from the time when the copyright provisions were passed in order to show the intent of parliament. The judge, however, wouldn't allow it, stating that the meaning of an act must be determined from the act itself when passed into law and not from anything preceding that point in time. And there you have it – the exclusionary rule. It set the stage for statutory

interpretation in the United Kingdom and Canada for the next two hundred years.

To better understand the judge's reasoning for excluding any evidence of legislative intent, it's important to understand that at that time, there was no legal or reliable record of the debates and therefore, no way to know what parliament may have intended when it passed the copyright provisions in the *Statute of Anne*. Interestingly, for procedural and practical reasons, the exclusionary rule continued to be upheld by courts even with the lawful publication of reliable and official records of the debates. It did come to an end, rather abruptly, in the United Kingdom in 1992, but its end in Canada was more gradual. In Canada, exceptions to the exclusionary rule were first allowed in the late 1970s when evidence of legislative intent was allowed in constitutional cases, and later, in interpreting the *Charter of Rights and Freedoms*. The exclusionary rule was finally dismissed for good in 1998 in the case of *Rizzo & Rizzo Shoes Ltd.*, the leading case on statutory interpretation in Canada. The exclusionary rule has been replaced by Driedger's modern principle of statutory interpretation, now the Canadian courts' primary approach to interpreting legislation. Using this approach, and to paraphrase Driedger, the words of a statute are to be read in context and in accordance with their ordinary and grammatical meaning taking into account the purpose of the act and the intention of parliament.

The types of resources consulted by lawyers, librarians,

and legal researchers in determining legislative intent have already been mentioned and include white papers, policy papers, law commission reports, bills, Hansard, committee reports, and witness submissions. In the context of statutory interpretation, these are called extrinsic aids. Determining legislative intent can also look to intrinsic aids, such as the statute's preamble, marginal notes, and headings. The list of acceptable extrinsic and intrinsic aids to interpreting legislative intent will continue to grow and develop and for this reason, it's important to understand how to go about researching legislative intent. To further people's understanding of this type of research, though, the authors believe that more resources and manuals are needed. To that end, they advocate the support, expansion, and development of resources like LEGISinfo, the Historical Debates of the Parliament of Canada, and the Government and Legislative Libraries Online Publications Portal (GALLOP). To understand how to research intent, it's also important for librarians to monitor the case law as the list of acceptable aids to statutory interpretation evolves and as courts clarify the limits of, and the weight to be attributed to, those materials.

In writing this article, the authors hope to both help others and themselves in their efforts to research legislative intent. And if, like me, you'd be happy to learn more about this topic, then you'll look forward to the authors' forthcoming book on researching legislative intent by Irwin Law.

# CALL/ACBD Research Grant

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

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

## Please contact

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For more information.

**CALL**  
**ACBD**

CANADIAN ASSOCIATION  
OF LAW LIBRARIES  
ASSOCIATION CANADIENNE  
DES BIBLIOTHÈQUES DE DROIT



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

Edited by Sooin Kim

### Calgary Law Library Group (CLLG)

The beginning of the 2015-2016 year was busy for CLLG. Our annually supported charitable events, Betty's Run for ALS (June 14, 2015) and Ovarian Cancer Canada's Walk of Hope (September 13, 2015), saw the following amounts raised: \$15,980 and \$6,860, respectively.

On October 1, 2015, we held our fall business meeting and welcomed the members of our current Executive: Alison Young (Chair); Heather Wylie (Past-Chair); Jason Wong (Treasurer); Helen Mok (Secretary); Liba Levicsek (Membership & Directory); Heather Wylie (Programs Committee); Tracy Leung (Student Committee); Annamarie Bergen, Bonnie Buchanan & Heather Wylie (Shelagh Mikulak Library Leadership Award Committee); Elda Figueira & Sierra Robson (Education Grant Committee); Nadine Hoffman (CLLG Listserv); Annamarie Bergen, Nadine Hoffman & Alison Young (CLLG Guidelines Committee); and Elda Figueira & Holly Booth (Webmasters). Through the hard work of the webmasters and treasurer over the summer, CLLG implemented online payment to complement our existing online membership registration. We are also exploring online event registration and payment options for the future.

Our annual Vendors' Forum took place on October 20, 2015 with 24 members in attendance. LexisNexis and Alberta Queen's Printer provided an overview of new titles and product developments including a preview of Lexis Advance Quicklaw and the addition of more legislative material to the

public Queen's Printer website. CLLG closed 2015 with a holiday party on December 9, 2015 where 16 members gathered to indulge in some holiday cheer.

**SUBMITTED BY HELEN MOK**  
CLLG Secretary

### Edmonton Law Libraries Association (ELLA)

The Edmonton Law Libraries Association has had a busy fall and winter. In October, the Honourable Justice Andrea Moen of the Court of Queen's Bench spoke to ELLA about the "Reforming the Family Justice System project." This collaborative initiative between the Courts, the Government, the Bar and other family justice partners aims to steer families going through separation away from the adversarial system and offer rounded solutions to their situations. The main driver for the project is the welfare of the children (for more information, see <http://www.rfjs.ca/>).

The Honourable Justice J.E. Côté of the Court of Appeal was the guest speaker in November, discussing his recent paper "Practical Legal Research" ((2014) 52:1 Alta L Rev 145). Articling students were invited to attend this session, which was very popular.

December brought the Association together for its Christmas gathering at a local pub. Good fun for all with drinks, food and a lot of cheer!



In January, the members got together at the Legal Education Society of Alberta offices to learn more about their new online library (<http://library.lesaonline.org/>). This session will be followed by a presentation at the end of the month by Sonia Poulin, Director of Alberta Law Libraries, on the Alberta Law Libraries Review ([available at https://www.lawlibrary.ab.ca/](https://www.lawlibrary.ab.ca/)).

**SUBMITTED BY ANA SAN MIGUEL,**  
Edmonton Law Libraries Association

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### **Vancouver Association of Law Libraries (VALL)**

VALL's year-end seminar was held in November, with guest speaker Dorothea Hendriks covering "The Art of Speaking for Success". This engaging session reminded us to be aware of our body language while communicating in person, and provided tips on the art of asking questions. This was the association's holiday event, and we commemorated the late Peter Bark, with comments from Sarah Richmond, VALL's vice-president. Applications are now being accepted from VALL members for the annual Peter Bark Professional Development Bursary.

The VALL Review's fall issue was themed "Back to the Future", with several articles revisiting predictions about the future of legal information that the Review had published back in 2001.

VALL members are looking forward to joining colleagues from across the country, at the CALL/ACBD 2016 Conference here in May.

**SUBMITTED BY DEBBIE MILLWARD**  
Edmonton Law Libraries Association

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### **National Capital Association of Law Librarians (NCALL)**

A new NCALL Executive was elected at our Annual General Meeting in June 2015, with Caroline Hyslop (Library of Parliament) stepping up as President, joined by Paul Taylor-Sussex (Nelligan O'Brien Payne LLP) as Secretary and Emily Landriault (University of Ottawa) as Treasurer. The new executive members would like to thank the outgoing executive (Jennifer Walker, Barbara Pilek and Claire Banton) for all their hard work over the previous years.

Since the formation of the new Executive, we have had three meetings. The first was a session on the process of Charter

Compliance and the Canadian Parliamentary Process; then a presentation by University of Ottawa professor Adam Dodek on Solicitor-Client Privilege; and finally a WestlawNext refresher by Carswell's Josée Provost, covering some of the more obscure tricks and shortcuts. The Executive is already planning a series of sessions for 2016 that they hope will be both thought-provoking and entertaining.

**SUBMITTED BY PAUL TAYLOR-SUSSEX**  
Librarian  
Nelligan O'Brien Payne LLP

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### **Ontario Courthouse Libraries Association (OCLA)**

2016 started off with sad news with the death of Paul Dumond, of the Stormont, Dundas & Glengarry Law Association on January 2nd. Paul worked for the Association for 13 years as the law librarian and was an integral part of the functioning of the law library and the Association. Our deepest sympathies go out to his family. He will not be forgotten.

The system experienced some staffing changes in the last few months. Nira Persaud left the Hamilton Law Association in 2015. On January 14, 2016, library assistant Kyla Urquhart of the Middlesex Law Association accepted a position at Western University. As of January 4, 2016, Librarian, Amanda Ward-Pereira of the Algoma District Law Association has returned from maternity leave and is now at the library helm and back in the OCLA fold.

On January 12, 2016, Librarian, Brenda Lauritzen of the County of Carleton Law Association accepted the opportunity to teach the online LIBRLT405 Law Libraries and Legal Research course which is part of Mohawk College's Library and Information Technician Program. Kudos to Brenda! Her spot-on research knowledge will surely benefit those taking the course.

On November 11 – 13, 2015, County and District Law Library staff attended the parallel Federation of Ontario Law Presidents Association Plenary, and LibraryCo Conference for Ontario Law Associations' Libraries (COLAL) which gave us an opportunity to share ideas and collaborate on ways to improve the practice resource centers in the system.

**SUBMITTED BY CHRISTIANE WYSKIEL**  
Brant Law Association



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

### Notes from the UK

#### London Calling!

By Jackie Fishleigh\*

#### Hi Folks!

Your new Prime Minister, Justin Trudeau was on the BBC's flagship news programme, Newsnight recently. He interviewed very well and I have a feeling he is going to be a successful leader for you. He seemed grounded and was measured in his pronouncements. Apparently his election was a surprise victory for the Canadian Liberals. Well done everyone! I get the impression he is popular.

Meanwhile elsewhere in North America, controversial Republican Candidate Donald Trump has just (I'm writing this in early December) been offending Muslims and threatening to ban them all from the US while he finds out "what is going on," whatever that entails! Trump even said that the police here consider parts of London to be "no go" areas because they are hot beds of Islamic radicalism. This is news to me, and the police have stated that this is not the case. A UK parliamentary petition is seeking to ban Trump from coming to the UK on the grounds that he is a preacher of hate.

#### **Modern Slavery Act 2015 passes into law.**

This act came about after a number of disturbing cases of slavery and human trafficking in Britain in recent years.

The offence of slavery, servitude and forced or compulsory labour is committed when a person holds another person in

slavery or servitude, or requires another person to perform forced or compulsory labour, and the circumstances are such that the person knows or ought to know that this is the case. The offence of human trafficking is committed when a person arranges or facilitates the travel of another person with a view to that other person being exploited, regardless of whether such travel is consented to.

Commercial organisations are now required to prepare a slavery and human trafficking statement for each financial year of the organisation. The statement must state the steps that the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business, or otherwise state that the organisation has taken no such steps.

#### **Heathrow Airport – third runway decision delayed again**

For the past 15 years the topic of whether to have a third runway has been discussed. Due to a curious mixture of questionable political motives, potential legal challenges and general reluctance to take the plunge, this decision has now been kicked further down the road to the annoyance of pretty much everyone, even local residents and environmental groups.

We try to avoid Heathrow whenever possible, apart from the lovely Terminal 5, which is very nice and in its own building. Otherwise Gatwick is much handier for us; maybe a new runway might one day be built there in West Sussex. Even when I was growing up nearby, the airport noise was not a problem— unlike in Richmond, West London, where if you stand on the Green by the theatre you will see and most definitely hear plane after plane taking off from Heathrow over your head, until you can stand it no longer.

## EU referendum and talk of a BREXIT

**When will this be held? We know not. What will the result be? We know not.**

In the meantime David Cameron is bustling around with an important looking folder under his arm saying he has found a “pathway” to giving the EU the sort of make-over that he feels might persuade some of the UK public to at least consider saying yes. It’s a hard sell after years of Greek bail outs and the current migrant crisis. Several in my circle would likely vote no if the EU is not changed...

But as former Conservative PM, John Major has recently pointed out:

Many of the things we are told we would regain with sovereignty are illusory, let me run through some of them. People say we can save on our net contribution, not true. We would have to pay at least as much and possibly more of it for entry to the single market. They say we can easily renegotiate entry to the single market, that’s very disingenuous. If we leave the European Union, it won’t be a friendly departure, it would be very acrimonious. Negotiations with an irate ex-partner could be very difficult. We may get a very substandard deal to enter the single market ... Flirting with leaving at a moment when the whole world is coming together seems to me very dangerous and against our long-term interests.

I am hoping that when we have a date for the referendum, the Pro-EU membership lobby will start work in earnest to keep us in.

Their website states the following:

We are stronger, better off and safer in Europe than we would be out on our own.

Of course the EU isn’t perfect – but leaving Europe would risk our prosperity, threaten our safety and diminish our influence in the world.

The benefits of being in clearly outweigh the costs:

- A stronger economy that delivers opportunity now and for future generations – opportunity through growth, trade, investment, jobs and lower prices.
- Stronger leadership on the world stage, enabling us to shape the future – influence through participation.

- Stronger security in a dangerous world, keeping Britain safe – safety through partnerships.

To vote to remain part of Europe is to vote for a stronger, better off, safer Britain that delivers opportunity for individuals and families, now and in the future.

To vote to leave is to take a leap into the unknown, risking a weaker economy, the prospects of future generations and a loss of influence on the world stage.

I couldn’t agree more. How many other Britons feel likewise I really couldn’t say. Tens of millions hopefully.

All the best.

Until next time!

**JACKIE**

## Letter from Australia

By Margaret Hutchison\*\*

Happy New Year!

It’s just before Christmas as I write and as I look back over the year, it’s been a year that has seen changes but nothing really startling.

13 October saw the controversial data retention laws come into force with confusion publically expressed by the telecommunication companies as to how the scheme will work and how much of the cost will be passed on to consumers. More concerning for the government however, fewer than one in five Australian telecommunications companies say they are ready to store all the information required under Australia’s new data retention laws. Most major providers do not expect to fully comply with the scheme – which requires them to store Australians’ “metadata” for two years – for another 18 months.

Just 16 per cent of telecommunication companies are ready to retain and encrypt the data required of them, according to an industry survey conducted over the past two weeks by the Communications Alliance. The survey, based on responses from 63 telecommunications providers, found more than two thirds of providers were not confident at all or only somewhat confident they understood what is required of them under the laws.

The laws allow companies to work towards full compliance within 18 months, as long as they submit an “implementation plan” to the government. Approximately 80 per cent of companies – including the biggest players – have taken this option, according to the Communications Alliance survey. Security agencies have argued they must have access to two years’ worth of telecommunications data so they can catch terrorists and other offenders such as child abusers.

The other change in Australian federal politics was the change in Prime Minister (yet again). Malcolm Turnbull replaced Tony Abbott as leader of the Liberal Party in September.

This means that Australia has had 4 prime ministers since 2013. No wonder that Australia has been described as the “[coup capital of the democratic world](#)” It has been nearly 10 years since the last Australian prime minister served a full term. This was John Howard, who left politics in 2007 after his party was defeated in a general election and he himself lost his seat.

Regular ABC TV political satirists, John Clarke and Bryan Dawe had an episode on the similarities between the two major political parties and their leaders, quizzing Mr Gerald Mander, a culling contractor in the Department of the Arts. <http://www.abc.net.au/news/2015-09-25/clarke-and-dawe-australian-political-history-in/6804500>

To segue nicely, John Clarke is of New Zealand origin and first came to prominence as Fred Dagg, a sheep farmer who commented on various matters on the radio. New Zealand, often considered to be the seventh state of Australia, has just had a referendum to choose an option to replace the present flag as the first stage of a 2 stage process.

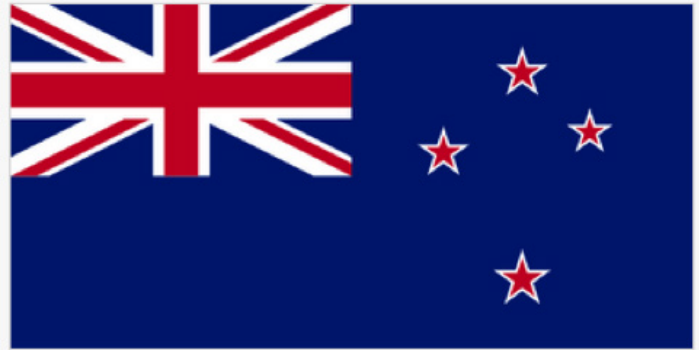
In 1788 Captain Arthur Phillip assumed the position of Governor of the new British colony of New South Wales which according to his commission included New Zealand. New Zealand became a British Crown colony in 1841, then a self-governing colony in 1855. New Zealand became a dominion rather than a colony in 1907 but did not become independent until the Statue of Westminster 1931 was adopted in 1947.

During the debates leading up to the Australian colonies federation, both New Zealand and Fiji were involved in early discussions but did not continue in the process.

The New Zealand flag debate has been bubbling along for several decades. Proponents argue that the NZ flag is too similar to the Australian flag and causes confusion exacerbated by Australia and New Zealand's close ties. In 2014, the Prime Minister, John Key, announced a 2 stage binding referendum process by postal vote. The first stage to select an alternative flag from the final five alternatives has just been completed. The winner is the flag in the top left hand corner. The final referendum will be held in March 2016. Opinion polls give the view that the vote will easily retain the present flag.



Proposed New Zealand Flags



Present New Zealand Flag

Another update is that there is now a new Chief Justice of Queensland. In my previous letter, I wrote of the controversy surrounding the previous incumbent, Tim Carmody. The news of the appointment of Catherine Holmes, previously on the Court of Appeal was greeted with relief. Chief Justice Holmes is also the first female Chief Justice in Queensland.

On a note closer to home, the Court Librarian at the High Court Library, Petal Kinder has left and been replaced by John Botherway. Some of you will know of Petal through her extensive involvement in IALL. Petal has been elected onto the Australian Law Librarians' Association board and is busy being the vendor relations representative.

Until next time,

**MARGARET**

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

By Julienne Grant\*\*\*

This is my second column, reporting on various legal developments in the US This installment looks at an array of news, ranging from AALL's rebranding initiative, to a quick rundown on the US Supreme Court's 2015-2016 term. Interspersed is an update on a new effort to digitize US case law, "Free the Law." Also, if you're clamoring to learn more about negligence, strict liability, and intentional torts, you can't miss the recently-opened American Museum of Tort Law, which is described below under "Legal Miscellany." Surgeons have the International Museum of Surgical Science (Chicago), so I guess it's about time that plaintiffs' attorneys have a museum dedicated to their craft as well. Enjoy!

### American Association of Law Libraries

The American Association of Law Libraries' 2016 Annual Meeting & Conference will be held in Chicago from July 16-19. The Conference's theme is "Make It New: Create the Future," and the Annual Meeting Program Committee is already reviewing program proposals. The official conference hotel is the Hyatt Regency, which is also where the Meeting will take place. The Hyatt overlooks the Chicago River and is close to several of Chicago's greatest attractions-- Millennium Park, the Art Institute, and the Magnificent Mile.

Foodies will also love the fact that it's within walking distance of Eataly (a sprawling 63,000 square foot Italian food emporium) and Latinicity (Chef Richard Sandoval's Latin version of Eataly). I encourage CALL members to attend this meeting, as Chicago is truly a fantastic city (I've lived there for over 20 years). As an aside, I admit that I have never visited the aforementioned International Museum of Surgical Science (you're on your own).

In other AALL news, the Association has released the digital edition of its latest biennial salary survey. Last published in 2013, the new survey reports on the information provided by 455 law libraries – the majority falling within the academic category. Among other statistics, the tables show mean, median, and first and third quartile compensation data for various professional and non-professional positions in law school, law firm/corporate, and government law libraries. Salary figures are broken down further into specific categories, such as years of experience, degrees earned, geographic location, and membership status in the Association.

According to AALL's news release pertaining to the 2015 survey, notable increases in salaries over the past two years include almost a 12 percent upturn for foreign, comparative, and international law (FCIL) librarians in academia, and an 8 percent increase in compensation for solo librarians in the law firm/corporate law libraries category.<sup>1</sup> The survey also indicated that the average number of professional librarians per library increased from 4.22 to 5.06, with the largest jump in professional librarians noted in law firms (37.6 percent).<sup>2</sup> Law school libraries actually saw a decline of 5.9 percent in the number of professional librarians per library.<sup>3</sup> Access to the online version of the survey is restricted to AALL members, but print copies may be purchased by non-members at a price of \$175.00 (USD).

Also noteworthy is the Association's rebranding initiative, which began in March 2015. The initiative has two phases, and is set for completion in June 2016. Members first had input on the project through a survey that was conducted in May 2015. According to the AALL website, this is the Association's "opportunity to redefine and reinvigorate the value of the [sic] law librarians and legal information professionals and to shape the brand to align with and support our strategic goals."<sup>4</sup> A marketing communication firm that specializes in non-profits is spearheading the project.

Part of the rebranding project is a proposed name change for AALL. At its November 2015 meeting, AALL's Executive Board unanimously agreed to recommend a new name for the organization—the Association of Legal Information

(ALI, pronounced like "ally"). AALL members will vote on the proposed change beginning January 12, with the results scheduled for release on February 11.

It would be an understatement to say that the name change proposal has been controversial. Since the Board made the recommendation, various discussion forums have been inundated with AALL members' opinions—both pro and con. Examples of the threads posted on AALL's "My Communities" forum dedicated to the topic are: "How does 'legal information' form an association?"; "An unequivocal vote for ambiguity"; "Is becoming a 'big tent' a good thing for AALL?"; "Words Matter. Professional IS a word"; and "Why we don't need to Specify an Association of People."<sup>5</sup> The AALL Board also sponsored two virtual town hall meetings focusing on the proposed name change.

I will go on record here and openly state that I will not be voting in favor of the new name for a number of reasons. First, the Association of Legal Information is too broad and doesn't capture the essence of what AALL members actually do on a daily basis. Additionally, AALL has been a trusted brand for over 100 years, and I don't think it needs to be changed (look what happened when Coca-Cola tried to "improve" its original formula). Further, where does the Association of Legal Information fit into the general scheme of law library organizations? There's IALL (International Association of Law Libraries), the Canadian Association of Law Libraries (CALL), the British and Irish Association of Law Libraries (BIALL), etc., and ALI just doesn't have a niche in this community. Speaking of the acronym ALI, it's already being used for the American Law Institute. Finally, I agree with Jamie Baker's November 17, 2015 blog post when she asked why AALL is spending up to \$185,000 (USD) on this initiative; there are certainly better ways to invest a sum that large.<sup>6</sup> To be fair to the other side of the coin, though, see Jean O'Grady's comments posted a few days later.<sup>7</sup>

My general impression is that law firm librarians are in favour of the change, while academics are opposed. It will certainly be interesting to see how the vote turns out. A colleague of mine has vowed that he will leave AALL if the name change goes through and will start his own professional organization for FCIL librarians. Stay tuned.

## Law School News

The US media (as exemplified by the *New York Times*) continues to be filled with "doom and gloom" reports related to law school enrollments, standards for admission, and the job market for JDs. In a October 26, 2015 piece, the *Times* cited a study conducted by the non-profit Law School Transparency group that concluded that too many US law

<sup>1</sup> News Release, American Association of Law Libraries, American Association of Law Libraries Releases 2015 AALL Biennial Salary Survey (November 4, 2015), <http://www.aallnet.org/hc/NewsCallout/2015AALLSalarySurveyReleased.pdf>.

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

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

<sup>4</sup> AALL Rebranding Initiative, American Association of Law Libraries, <http://www.aallnet.org/rebrand> (last visited December 29, 2015).

<sup>5</sup> See, Association for Legal Information, American Association of Law Libraries: My Communities, <http://community.aallnet.org/communities/community-home?CommunityKey=f614832e-9190-4016-a58e-4edfaa7d194d> (password protected).

<sup>6</sup> Jamie J. Baker, JD, MLIS, AALL Rebranding Initiative, The Ginger (Law) Librarian (November 17, 2015, 7:32 AM), <http://gingerlibrarian.blogspot.com/2015/11/aall-rebranding-initiative.html>.

<sup>7</sup> Jean P. O'Grady, J.D., M.L.S., Has the Librarian-ship Sailed? The American Association of Law Libraries Board Votes to Rebrand As the Association for Legal Information, Dewey B. Strategic (November 20, 2015, 12:16 AM), <http://deweybstrategic.blogspot.com/2015/11/has-librarian-ship-sailed-american.html>.

schools are enrolling students who risk failing the bar exam<sup>8</sup>. According to that study, around a third of ABA-accredited law schools last year had at least 25 percent of entering students who were “at risk,” or who scored below 150 on the LSAT.<sup>9</sup> The *Times* article also reported on early results from July 2015 state bar exam administrations; passage rates in Oklahoma and New Mexico dropped by double digits, and Arizona’s passage rate slipped to 65.7 percent last year.<sup>10</sup>

The *Times* has also published several editorials that harshly criticize law schools for charging hefty tuition, thereby contributing to the high debt loads of thousands of law students who face a difficult job market. In an August 25, 2015 opinion piece, author Stephen J. Harper (*The Lawyer Bubble: A Profession in Crisis* (Basic Books, 2013)) called on the American Bar Association (ABA) to step in and address the problem.<sup>11</sup> A similar *Times* editorial was published on October 24, which characterized the continuing trend to enroll unqualified law students who take on alarming amounts of debt as a “death spiral.”<sup>12</sup> That editorial opened the door to a series of rebuttals submitted by several officers of the Association of American Law Schools (AALS), various law school deans, the president of the New York City Bar Association, and the executive director of Equal Justice Works.<sup>13</sup>

### "Free the Law"

Harvard Law School has announced that it is teaming with Ravel Law to digitize its library’s entire collection of US federal and state case law. Ravel Law, a legal research and analytics company based in San Francisco, is funding the digitization costs. The Harvard Law School Library’s print collection of US case law contains over 40,000 books, encompassing some 40 million pages. The case opinions will be available for free on the Internet and will be searchable through Ravel’s innovative platform that utilizes data science, visualization, and machine learning. The entire collection is scheduled to be online by mid-2017.<sup>14</sup>

### US Supreme Court

The US Supreme Court opened its 2015-2016 term on October 5, 2015 (always the first Monday in October). Court aficionados can easily follow the Court’s activities via a number of blogs and beat reporters, such as SCOTUSblog, *New York Times* Supreme Court reporter Adam Liptak, and National Public Radio’s (NPR) legal affairs correspondent Nina Totenberg.

Included in the docket in October were a number of compelling capital punishment cases. On October 7, the Court heard back-to-back arguments in two cases from Kansas (*Kansas v. Gleason* and *Kansas v. Carr*). At issue in those cases was

whether the Eighth Amendment (prohibition against cruel and unusual punishment) requires that a jury considering the death penalty be instructed that mitigating circumstances need not be proven beyond a reasonable doubt. On October 13, the Court heard arguments in another capital punishment case (*Hurst v. Florida*), which involved the constitutionality of Florida’s death penalty scheme. At issue was whether the Florida law violates the Sixth Amendment (right to a speedy trial by an impartial jury) or Eighth Amendment, given the Court’s opinion in *Ring v. Arizona* (536 US 584 (2002)). The ABA, the ACLU, and the Constitutional Accountability Center filed or joined amicus briefs on the defendant’s side in the *Hurst* case.

Other cases heard this term involve race discrimination in jury selection (*Foster v. Chatman*), companies posting false information about consumers on the Internet (*Spokeo, Inc. v. Robins*), and another round with affirmative action (*Fisher v. University of Texas at Austin*). Also noteworthy is *Luis v. United States* (heard November 10), a case in which the Court examined whether the Sixth Amendment allows the government, prior to trial, to freeze a criminal suspect’s untainted assets (not traceable to a criminal offense) needed to retain an attorney of choice. The Court has also agreed to hear a new challenge to Obamacare’s contraceptive care provision; specifically, whether the “opt-out” provision designed to respect religious objections still makes the employer complicit in providing contraception coverage. Oral arguments for that case (*Little Sisters of the Poor Home for the Aged v. Burwell*) may take place in March, with a decision likely in June 2016.

Speaking of the US Supreme Court, a recent article in *USA Today* points out that the next US President will likely have a remarkable chance to reshape the Court. The article notes that Justice Ginsburg is 82, Justice Scalia will turn 80 in March 2016, Justice Kennedy’s 80th birthday is in July, and Justice Breyer will be 78 next August. According to the article, the average age of retirement from the Supreme Court is just shy of 79.<sup>15</sup> As the piece points out, “The stakes with four aging justices are huge: if a Democrat wins the White House and outlasts Kennedy and Scalia, the result could be a liberal court for decades to come...”<sup>16</sup>

### The Cybersecurity Information Sharing Act and America Votes

On October 27, 2015, the Senate passed the long delayed bill (S.754) for the Cybersecurity Information Sharing Act of 2015, which would make it easier for corporations to share information about cyber threats with each other or the government.<sup>17</sup> The bill was backed heavily by industry and

<sup>8</sup> Elizabeth Olson, “Study Cites Lower Standards in Law School Admissions,” *N.Y. Times*, October 26, 2015, [http://www.nytimes.com/2015/10/27/business/dealbook/study-cites-lower-standards-in-law-school-admissions.html?\\_r=0](http://www.nytimes.com/2015/10/27/business/dealbook/study-cites-lower-standards-in-law-school-admissions.html?_r=0).

<sup>9</sup> *Ibid.*

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

<sup>11</sup> Stephen J. Harper, Opinion, “Too Many Law Students, Too Few Legal Jobs,” *N.Y. Times*, August 25, 2015, <http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html>.

<sup>12</sup> The Editorial Board, Editorial, “The Law School Debt Crisis,” *N.Y. Times*, October 24, 2015, <http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html>.

<sup>13</sup> See, Letters, “The Debt Burden of Law School Graduates,” *N.Y. Times*, November 2, 2015, <http://www.nytimes.com/2015/11/02/opinion/the-debt-burden-of-law-school-graduates.html>.

<sup>14</sup> “Harvard Law School Launches ‘Free the Law’ Project with Ravel Law to digitize US case law, provide free access,” *Harvard Law Today*, October 29, 2015, <http://today.law.harvard.edu/harvard-law-school-launches-free-the-law-project-with-ravel-law-to-digitize-us-case-law-provide-free-access/>.

<sup>15</sup> Richard Wolf, “Aging Supreme Court energizes Republicans more than Democrats in 2016 race,” *USA Today*, October 25, 2015, <http://www.usatoday.com/story/news/politics/elections/2015/10/25/supreme-court-president-age-80-election/74003698/>.

<sup>16</sup> *Id.*

<sup>17</sup> See, S.754, 114th Cong. (2015), <https://www.congress.gov/bills/114th-congress/senate-bill/754>.

business groups, such as the US Chamber of Commerce. Privacy advocates, such as the ACLU, contend however that the bill simply facilitates the government's ability to gather private information. The bill was also opposed by AALL. Two different versions of the legislation passed the House in April 2015, so S.754 needs to be reconciled with those before a final unified version could be sent to the President. The White House has indicated it supports the legislation, with some qualifications.<sup>18</sup>

Many Americans went to the polls on November 3, 2015, to vote on a number of important local issues. Of note was an Ohio initiative to legalize marijuana, which was rejected by the state's voters. In Colorado, voters decided that the \$66 million (USD) in taxes collected on the sale of legal marijuana should be earmarked for state initiatives, rather than refunded directly to Colorado residents. In Houston, voters rejected a nondiscrimination ordinance that was designed to protect the rights of LGBT citizens. Presidential candidate Hillary Rodham Clinton was outspoken in her support of HERO (Houston Equal Rights Ordinance). For additional information on the aforementioned votes, as well as other election results, see the Ballotpedia website.

### American Museum of Tort Law & Other Legal Miscellany

Eighty-one-year-old environmentalist and sometime US Presidential candidate Ralph Nader has opened the American Museum of Tort Law. The Tort Law museum, located in Nader's hometown of Winsted, Connecticut, opened in September and displays such items as defective toys and unsafe machinery. The Museum's centerpiece, however, is a Chevrolet Corvair, a car that was highly criticized in Nader's 1965 book, *Unsafe at Any Speed*. Admission to the Museum is \$7.00 (USD) for adults, and \$5.00 (USD) for seniors and students. If you want to bring in your kids under ten years old, they're admitted for free (they're sure to enjoy the unsafe toys exhibit). Further information is available on the Museum's website, which promises that visitors to the Museum will learn the answers to burning questions, such as "Why did the jury decide McDonald's should pay, when the woman spilled hot coffee on herself?"<sup>19</sup>

In other legal miscellany, Supreme Court Justice Ruth Bader Ginsburg's love of opera continues to make news (see my first column for additional info on this topic). Justice Ginsburg's

deep knowledge of this musical genre was on display in Chicago recently as she served as a guest DJ at WFMT, the city's highly regarded fine arts station. On September 21, Justice Ginsburg spent an hour spinning operatic works that had special meaning to her, and then subsequently hosted a live performance of legally-themed operatic selections. The Justice also revealed her five favorite operas of all time—the first two being Mozart works, *The Marriage of Figaro* and *Don Giovanni*. Justice Ginsburg's son James heads up an independent classical music label in Chicago (Cedille Records), and he is her connection to Chicago and its vibrant classical music scene. For more on Justice Ginsburg, see the new biography, *Notorious RBG: the Life and Times of Ruth Bader Ginsburg* (Irin Carmon and Shana Knizhnik, Dey Street Books/Harper Collins, 2015).

Speaking of US Supreme Court Justices and books, Justice Stephen Breyer just published *The Court and the World: American Law and the New Global Realities* (Knopf, 2015). Justice Breyer, who was nominated by President Bill Clinton, has served as an Associate Justice for over 20 years and generally falls on the liberal side of the bench. In this book (his third as a Justice), Breyer explores the impact of an increasingly interdependent world on the rule of law generally, and on the US Supreme Court specifically. Breyer argues that, because of this interdependence, the Court can no longer effectively do its job without some engagement with foreign and international law. Justice Breyer's sentiments are famously contrary to his colleague Justice Scalia's beliefs about the Court's reliance on foreign law; that is, the conservative Scalia has vehemently attacked the Court's application of foreign law in interpreting the US Constitution<sup>20</sup>. For more on Justice Breyer's book, see John Fabian Witt's write-up in the *New York Times Sunday Book Review*.<sup>21</sup>

### American Museum of Tort Law & Other Legal Miscellany

That's a wrap for this column, and I hope I have managed to capture again some of the more important and compelling news items associated with the US legal landscape. I look forward to checking in again in a few months. 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).

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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.

<sup>18</sup> Andrea Peterson, "Senate passes cybersecurity information sharing bill despite privacy concerns," Wash. Post, October 27, 2015, <https://www.washingtonpost.com/news/the-switch/wp/2015/10/27/senate-passes-controversial-cybersecurity-information-sharing-legislation/>.

<sup>19</sup> American Museum of Tort Law, <https://www.tortmuseum.org/>.

<sup>20</sup> See, e.g., Jimmy Hoover, "Scalia Sears Supreme Court for Foreign Law References," Law360, May 29, 2015, <http://www.law360.com/articles/661690/scalia-sears-supreme-court-for-foreign-law-references>.

<sup>21</sup> John Fabian Witt, "Stephen Breyer's 'The Court and the World,'" N.Y. Times Sunday Book Review, September 14, 2015, <http://www.nytimes.com/2015/09/20/books/review/stephen-breyers-the-court-and-the-world.html>.



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