CALL ACBD

CANADIAN LAW LIBRARY REVIEW

REVUE CANADIENNE DES BIBLIOTHÈQUES DE DROIT

VOLUME/TOME 41 (2016)
No. 2

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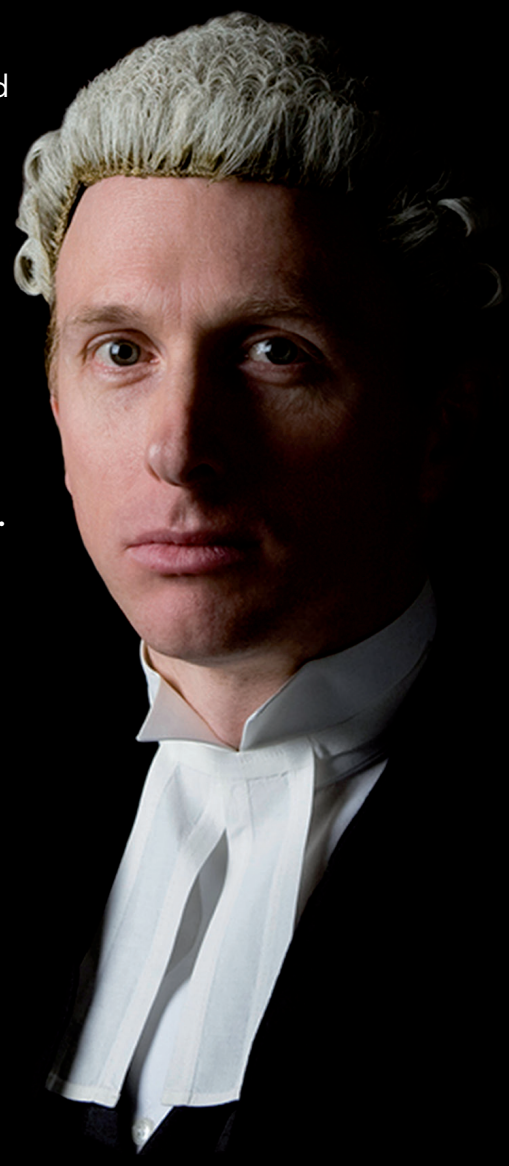

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Canadian Law Library Review is published 4 times a year by the Canadian Association of Law Libraries.

Subscription price (non-members) $90.00
Publications Mail – Registration No. 10282

CITÉ Rev can bibl dr

Revue canadienne des bibliothèques de droit est publiée 4 fois par année par l'Association canadienne des bibliothèques de droit.

Abonnement annuel (non-membres) 90.00$
Envoi de publication enregistrement no. 10282

IIII EDITORIAL BOARD / COMITÉ DE RÉDACTION

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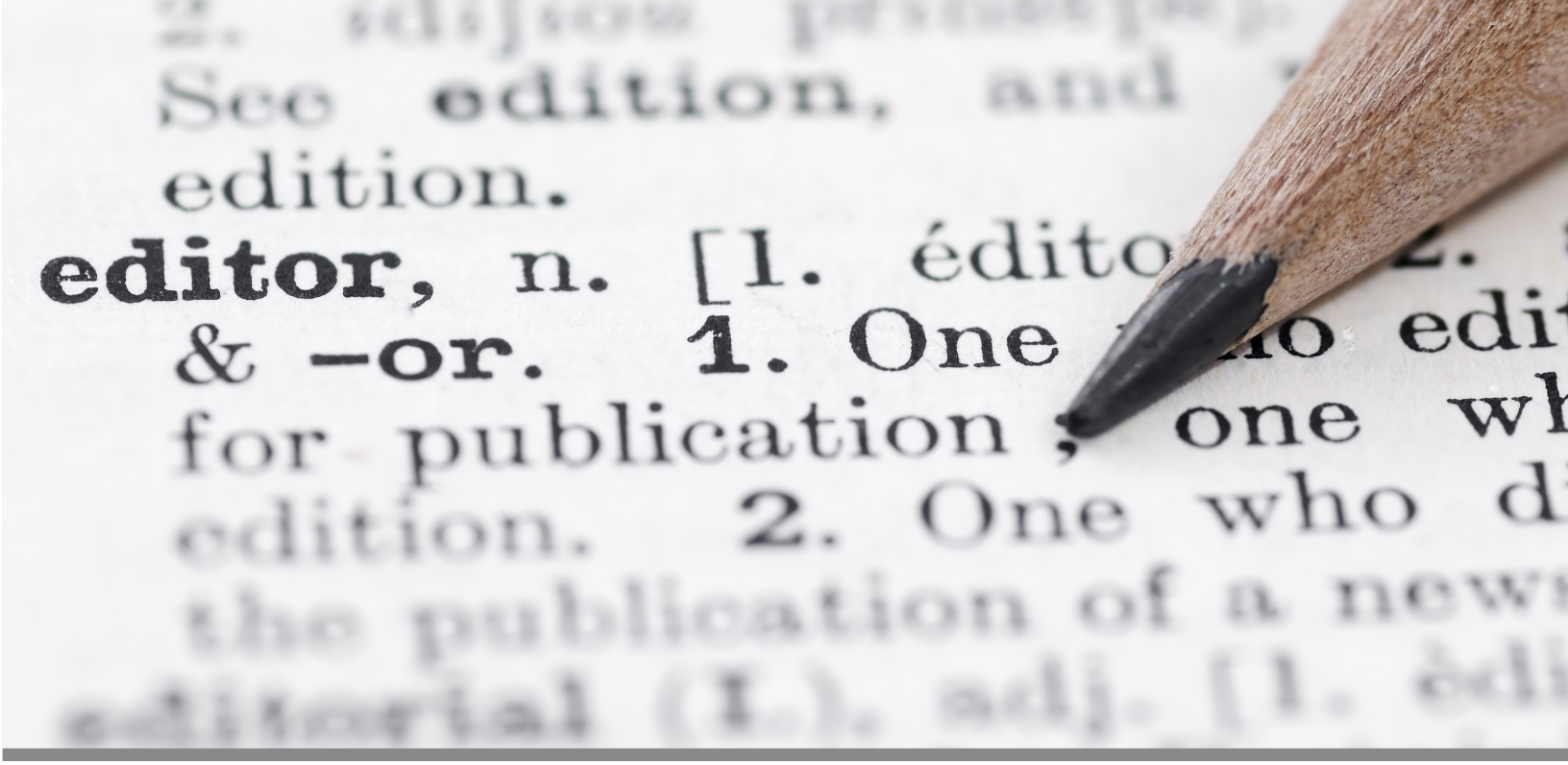


IIII From the Editor / De la rédactrice

Over the years the *Canadian Law Library Review* has benefited from the contributions of so many of our members. It is a lot of work, toiling over an article. Thinking, researching, organizing and writing all take time and commitment; and very often to what ostensibly seems like very little reward other than peer recognition and the gratitude of our editors. But digging deeper there is a lot more to it than that. John Bolan (our features editor) and I teach a course in Legal Literature and Librarianship at the University of Toronto iSchool. Each year for their final paper our students write an essay on a subject of their choice related to law librarianship. I have noticed that the students cite to the *Canadian Law Library Review* quite frequently in their papers. John and I counted fifteen articles from the CLLR (retrieved using HeinOnline) being cited in the papers we received this year, covering a wide variety of subjects including digital preservation, serving pro-se litigants, statutory interpretation and more. The CLLR is the only source for expert advice and reflection on law librarianship in Canada. And the reward, for you our authors, is knowing that you have an influence on the thinking and knowledge of present and future generations of law librarians. You should be proud!

Coincidentally, one of the student papers that I read was arguing in favour of academic law libraries collecting popular culture material like novels, true crime stories and movies in order to support courses in law and literature and the legal curriculum generally. It was a very interesting read and segues nicely into this issue's first feature article. George Elliot Clark's *White Judges, Black Hoods: Hanging-as-Lynching in Three Canadian True-Crime Texts* uses popular culture to inform his reflection on the influence of race on justice in the Maritime Provinces in the early twentieth century. It is a compelling read and challenges many or our assumptions about the idea of justice in Canada. This paper was originally presented to the membership at the CALL Conference in Moncton last year and so it is fitting that it is available just in time for this year's conference.

We have two more features in this issue as well. Elizabeth Bruton, in *Time Travelling: Intent Behind Regulations* looks back on her experience answering one of the trickiest reference questions: how to locate the legislative intent behind an Ontario regulation. These are the kind of questions that challenge even the most experienced law librarians and put our skills to the test and yet are the most gratifying to be able to answer. And speaking of challenges, Helen Mok, librarian at Parlee McLaws LLP was recently tasked with overseeing her library's move. She shares with us some lessons learned in her article *Moving the Library: A Solo's Reflection.*

And in *News from Further Afield,* there is an election coming up in Australia, a Supreme Court Justice to be nominated in

the United States and the British will be voting on whether to stay in the EU. Altogether exciting times!

Looking forward to seeing you all in Vancouver.

EDITOR
SUSAN BARKER

Au cours des années, la *Revue canadienne des bibliothèques de droit* (RCBD) a bénéficié des contributions d'un très grand nombre de nos membres. C'est beaucoup de travail, peiner sur un article. Penser, faire de la recherche, organiser et rédiger, tout cela exige du temps et du dévouement; et très souvent pour ce qui, en apparence, semble être une bien petite récompense, à part la reconnaissance des pairs et la gratitude des éditeurs. Mais en fouillant plus profondément, on découvre que ce n'est pas aussi simple. John Bolan (notre réviseur de chroniques) et moi donnons un cours de littérature juridique et de bibliothéconomie à la faculté de l'information de l'Université de Toronto. Chaque année, pour leur examen final, nos étudiants rédigent une dissertation sur un sujet de leur choix lié à la bibliothéconomie juridique. J'ai remarqué que les étudiants citent très fréquemment des articles de la *Revue canadienne des bibliothèques de droit* dans leurs travaux. John Bolan et moi avons dénombré quinze articles provenant de la RCBD (récupérés en utilisant HeinOnline) qui ont été cités dans les dissertations reçues cette année, couvrant divers sujets y compris la conservation numérique, le service aux personnes qui se représentent elles-mêmes, l'interprétation législative et bien d'autres encore. La RCBD est la seule source offrant des conseils et des réflexions d'experts sur la bibliothéconomie juridique au Canada. Et la récompense, pour vous nos auteurs, est de savoir que vous avez une influence sur la pensée et les connaissances des générations présente et future de bibliothécaires de droit. Vous devriez en être fier!

Par hasard, l'une des dissertations étudiantes que j'ai lue plaidait en faveur de recueillir dans les bibliothèques de droit universitaires des oeuvres de la culture populaire, comme des romans, de vraies histoires de crimes et des films en vue d'appuyer les cours de droit et de littérature et le programme de droit dans son ensemble. C'est une lecture très intéressante qui s'enchaîne très bien avec le premier article de fond du présent numéro. En effet, George Elliot Clark, l'auteur de *White Judges, Black Hoods: Hanging-as-Lynching in Three Canadian True-Crime Texts* utilise la culture populaire pour éclairer sa réflexion sur l'influence de la race sur la justice dans les Provinces maritimes au début du vingtième siècle. C'est un article passionnant qui remet en cause un grand nombre de nos hypothèses sur l'idée de justice au Canada. L'article a été présenté initialement aux membres dans le cadre du congrès de l'ACBD à Moncton, l'an dernier, et par conséquent il est approprié qu'il soit disponible juste à temps pour le congrès de cette année.

Nous avons également deux autres articles de fond dans le présent numéro. Dans son article *Time Travelling : Intent Behind Regulations,* Elizabeth Bruton jette un regard sur l'expérience qu'elle a vécue au moment de répondre à l'une des plus délicates questions de référence : comment cerner l'intention législative derrière un règlement ontarien. Il s'agit du genre de questions qui mettent au défi les bibliothécaires de droit les plus expérimentés et qui mettent nos compétences à l'épreuve, mais être capable d'y répondre est ce qu'il y a de plus gratifiant. Et parlant de défis à relever, Helen Mok, bibliothécaire à la Parlee McLaws LLP a récemment été chargée de superviser le déménagement de sa bibliothèque. Elle nous communique quelques leçons apprises dans son article *Moving the Library: A Solo's Reflection.*

Enfin, sous la rubrique *Nouvelles de l'étranger*, une élection aura bientôt lieu en Australie, un juge va être nommé à la Cour suprême des États-Unis et les Britanniques vont bientôt voter sur le maintien ou non dans l'Union européenne. Dans l'ensemble, nous vivons une période palpitante!

Je me réjouis à la perspective de vous voir tous et toutes à Vancouver.

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>.

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

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

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

Tous les membres de l'ACBD ainsi que toute autre personne intéressée à la bibliothéconomie et faisant partie du monde juridique sont invites á 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 s*ont répertoriés dans *Index a la documentation juridique au Canada, Index toCanadian Legal Periodical Literature, Legal Information and Management Index, Index to Canadian Periodical Literature et Library and Information Science Abstracts.*

CALL/ACBD Research Grant

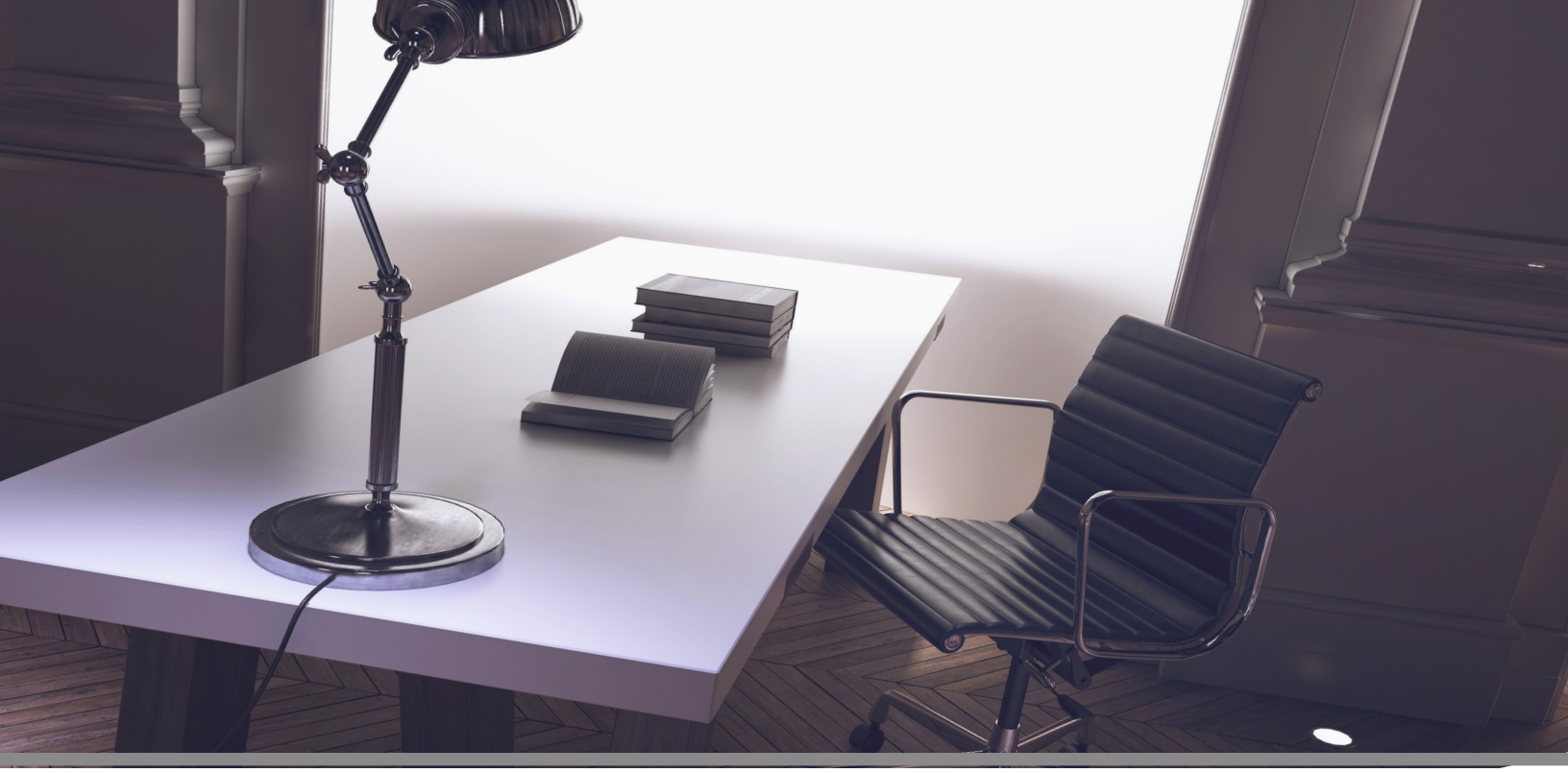
Perhaps it is time to start thinking about your next research project. The deadline for the 2016 research grant was March 15, 2016 and the grant will be awarded in May.

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



IIII President's Message / Le mot de la présidente

I have far more questions for you than answers.

What is the point of having a professional association in the year 2016? What value do we bring to Members in an age when they can connect with colleagues on LinkedIn, Twitter and Facebook, get professional development from free webinars provided by vendors, and take courses free through MOOCs (massive open online courses)? When they can text a friend to get an immediate answer rather than calling a stranger at another organization or posting a question on a listserv?

These are some of the questions we will be asking ourselves over the next several months, as we set out to develop a new strategic plan for CALL/ACBD. What value do we bring to long-standing members, new members, and potential members? What is our role in networking, career, professional development, and advocacy? How can we stay relevant? What are our priorities?

As I look at the previous Strategic Plan written in 2009, I note it was developed largely by the Executive Board, and shared with Executive Board members. As was the custom at the time (only 6 short years ago!), it was a document that has guided Executive Boards in a very private way. Member input came in the form of a survey, and then the Board developed a vision and a 5-year action plan for the Association. I am impressed with the vision that was put forth and the steps developed to carry things forward, largely echoing my vision for the Association.

I applaud past Executives for having successfully followed a good part of the plan, and especially those parts that were given highest priority, including reworking the structure of the Board, running the New Law Librarians' Institute on a regular basis, and redeveloping the website--since done a second time since the plan was documented. It is interesting to note some parts still remain a challenge, including broadening our appeal to potential new members.

Given that a good number of Members volunteer for the Association, including across Committees, Special Interest Groups (SIGs), article writing, blogging, conferences and webinars, I can't help but think that any future Strategic Plans need to be shared with all Members to help us all sing from the same songbook and know what we are trying to accomplish. Moreover, everyone should have some opportunity to feed into the Strategic Plan to help really make it reflect our values and goals.

At the conference in May we are kicking off our strategic planning with Member (and potential member) input at the President's Roundtable. We will only have an hour; I am hoping we start to uncover some of the value the Association can bring into the future, and continue the discussion from there. Some questions I have are how to support mid-career professionals, how to harness the knowledge of our more experienced professionals, and how to attract and provide value to our new colleagues beyond their life as students?

Please keep an eye out for opportunities to participate in our strategic planning activities. The more we know your needs

the more we can continue as an association that really is at the heart of our professional community. Consider this your personal invitation to help develop a vision and plan for the future!

PRESIDENT
CONNIE CROSBY

J'ai beaucoup plus de questions que de réponses pour vous.

Quel est l'intérêt d'avoir une association professionnelle en 2016? Quelle valeur apportons-nous aux membres à une époque où ils peuvent communiquer avec des collègues sur Linkedin, Twitter et Facebook, avoir accès au perfectionnement professionnel par l'intermédiaire de webinaires gratuits offerts par des fournisseurs et suivre des cours gratuitement grâce aux CLOM (cours en ligne ouverts et massifs)? Alors qu'ils peuvent envoyer un texto à un ami pour obtenir une réponse immédiate plutôt que d'appeler un inconnu dans un autre organisme ou d'afficher une question sur le serveur de liste?

Ce sont là quelques-unes des questions que nous nous poserons au cours des prochains mois, alors que nous nous apprêtons à élaborer un nouveau plan stratégique pour l'ACBD/CALL. Quelle valeur apportons-nous aux membres de longue date, aux nouveaux membres et aux membres potentiels? Quel est notre rôle pour ce qui est de la mise en réseau, de la carrière, du perfectionnement professionnel et de la défense des intérêts? Comment pouvons-nous demeurer pertinents? Quelles sont nos priorités?

En examinant le dernier plan stratégique rédigé en 2009, je constate qu'il a été en grande partie élaboré par le conseil exécutif et communiqué aux membres du conseil exécutif. Comme le voulait la coutume à l'époque (il n'y a de cela que six courtes années!), c'était un document qui guidait les conseils exécutifs de façon très privée. La contribution des membres se faisait par l'intermédiaire d'un sondage et, par la suite, le conseil élaborait une vision et un plan d'action quinquennal pour l'Association. Je suis impressionnée par la vision proposée et par les étapes élaborées pour faire progresser les choses, qui rejoignent dans une large mesure ma vision pour l'Association.

J'applaudis les anciens dirigeants qui ont suivi avec succès une bonne partie du plan, et particulièrement les éléments auxquels avait été donné la plus haute priorité, incluant le remaniement de la structure du conseil, la gestion régulière de l'Institut pour les nouveaux bibliothécaires de droit et le redéveloppement du site Web—fait une seconde fois depuis que le plan a été documenté. Il est intéressant de noter que certaines parties du plan constituent toujours un problème, y compris l'accroissement de notre attrait auprès des nouveaux membres potentiels.

Étant donné qu'un bon nombre de membres travaillent bénévolement pour l'Association, que ce soit au sein de comités et de groupes d'intérêts spéciaux (GIS), par la rédaction d'articles, le blogage ou encore l'organisation de congrès et de webinaires, je ne peux m'empêcher de penser que tout plan stratégique futur devrait être communiqué à tous les membres afin que nous parlions tous d'une même voix et que nous sachions ce que nous essayons d'accomplir. De plus, tous devraient avoir la possibilité de contribuer à l'élaboration du plan stratégique afin qu'il soit le plus étoffé possible.

Dans le cadre du congrès, en mai, nous allons lancer notre planification stratégique avec la participation des membres (et des membres potentiels) à la table ronde de la présidente. Nous ne disposerons que d'une heure; j'espère que nous commencerons par mettre au jour certaines des valeurs que l'Association peut apporter dans le futur et que nous poursuivrons la discussion en ce sens. Parmi les questions que je me pose, il y a les suivantes : comment appuyer les professionnels en milieu de carrière, comment mettre à profit les connaissances de nos professionnels plus expérimentés et comment attirer de nouveaux collègues et leur apporter de la valeur au-delà de leur vie universitaire?

Je vous invite à surveiller les occasions de participer à nos activités de planification stratégique. Plus nous connaîtrons vos besoins, plus nous pourrons continuer comme une association qui est vraiment au coeur de notre communauté professionnelle. Veuillez considérer la présente comme votre invitation personnelle à contribuer à l'élaboration d'une vision et d'un plan pour l'avenir!

PRÉSIDENTE
CONNIE CROSBY

IIII White Judges, Black Hoods: Hanging-as-Lynching in Three Canadian True-Crime Texts**

By George Elliott Clarke*

Abstract

This essay considers three different approaches to the "True-Crime" genre, reviewing how different writers and/or scholars have measured the possible impress of "race" upon the conduct of three capital cases involving African-Nova Scotian accused, all of whom were convicted and executed. The author canvasses popular crime writer Debra Komar's The Lynching of Peter Wheeler *(2014), Louise Delisle's play, "The Days of Evan" (a revisiting of the case of Everett Farmer) (2005), and David Steeves's legal history essay, "Maniacal Murderer or Death Dealing Car: The Case of Daniel Perry Sampson, 1933-35" (2012). The author finds that the most convincing and/or compelling accounts of alleged judicial or prosecutorial malfeasance are those in which anti-black racism is understood to have been a prime motivation.*

Cet essai examine trois approches différentes quant au genre « crimes véritables » et cela, en examinant comment différents auteurs et/ou chercheurs ont mesuré l'empreinte possible du « racisme » sur la conduite de trois causes importantes impliquant des accusés néo-écossais africains, et qui ont tous été condamnés et exécutés. L'auteur examine l'œuvre de l'écrivaine Debra Komar (crime populaire), « The Lynching of Peter Wheeler *» (2014), la pièce de Louise Delisle, « The Days of Evan » (une réexamination du cas d'Everett Farmer (2005), et l'essai historique et juridique de David Steeves, « Maniacal Murderer or Death Dealing Car: The Case of Daniel Perry Sampson, 1933-35 » (2012). L'auteur constate que les liens les plus convaincants de malversations judiciaires ou de poursuites présumées sont ceux dans lesquels le racisme anti-noir est entendu avoir été une motivation première.*

Literary theorist Frank Davey tells us "Murder may be in Canadian culture the crime that Canadians do not commit."[1] Indeed, "when it is committed in Canada it is an aberration. It represents an Americanization of Canadian streets, a spread of violence from the south, a breakdown of Canadian values."[2] Davey speculates that murder is viewed as

*©George Elliot Clarke

** The 4th Poet Laureate of Toronto (2012-15) and the 7th Parliamentary [National] Poet Laureate (2016-17), George Elliott Clarke is an Africadian (African-Nova Scotian). A multiply prized poet, his 15th work is Gold (Gaspereau, 2016). Now teaching African-Canadian Literature at the University of Toronto, Clarke has taught at Duke, McGill, the University of British Columbia, and Harvard. He holds eight honorary doctorates, plus appointments to the Order of Nova Scotia and the Order of Canada. His recognitions include the Pierre Elliott Trudeau Fellows Prize, the Governor-General's Award for Poetry, and the Dr. Martin Luther King Jr. Achievement Award.

[1] Frank Davey, Karla's Web: A Cultural Investigation of the Mahaffy-French Murders. (Toronto: Penguin Books Canada, 1994) at 206 [Davey]; Yet, counters Oscar Wilde, "There is no essential incongruity … between crime and culture" quoted in Peter Conrad, The Hitchcock Murders. (London: Faber and Faber, 2002) at 67 [Conrad].

[2] Davey, supra note 1 at 207; Canadian anthropologist Elliot Leyton affirms, "no single quality of American culture is so distinctive as its continued assertion of the nobility and beauty of violence—a notion and a mythology propagated with excitement and craft in all popular cultural forms, including films, television, and print". Elliott Leyton, Compulsive Killers: The Story of Modern Multiple Murder, (New York: New York University Press, 1986) at 287).

"un-Canadian"[3] because it seems more congruent with "the American ideology of individual freedom and of free-market competitiveness" as opposed to a Canadian ideology of state-supported collective action."[4] Given the pioneer context of Canada's origins, where "an ardent public loyalty to the Crown became the normal and demanded outlook of the Canadian colonist,"[5] homicide was constructed as an alien and proto-seditious act.[6] Thus, Davey suspects Canadians feel murder "and other crimes are committed not by Canadians but by strangers among us – by the Irish in the nineteenth century, by Italians [later], and currently by Jamaican and Irish gangs. In this view it is the foreign culture that creates murders and murderers, not the Canadian one."[7] This mythology fingers America as an exporting warren of treasonous libertarians, 'freedom fighters,' gangsters, rebel patriots, gun-club militias, aggrieved postal workers, weekend warriors, serial killers, and mass murderers. I cite Davey once more: "If English-Canadians see a culture of potential killers in North America, this culture is not aboriginal but European in origin, and lives immediately to the south."[8] The obviously bloody cultural history of America, a nation that Canadians think they know intimately, serves to excuse us from scrutinizing our own responsibility for our own homicides, which must be of lesser consequence because they are motivated more by passion than by ideology. If, as Peter Conrad writes, "Imperial America sought to consolidate its power by the Roman pomp of its architecture, and to erase the stains of history with successive coats of white paint,"[9] how much truer has been this endeavour for Canada, though we go more for the gravitas of the Gothic than the grandeur of the Romanesque in our architecture. In any event, the Canadian identity is founded, not on the negative declaration, "We are not American," but on the positive belief, "We do no evil – and we never have."

Still, 'race' injects a mischievous complication in the Canadian dismissal of murder and murderers as 'beyond the pale.' However, we cannot know this truth unless we look beyond white-onion-paper or cotton-paper legal texts and accounts of Canadian murderousness and injustice to examine legal and popular culture archives to fathom how profoundly notions of law-and-order or right-and-wrong are embedded in black-and-white discourses. Moreover, as historian Jim Hornby points out, legal documents are often the only chronicles available of Black Canadian lives, though these accidental biographies posit them as either suspects or actual lawbreakers. Hornby comments, "any group is misrepresented when described through the experiences of those members who are charged with criminal offences." In addition, "while blacks are under represented in most of the historical records . . . , they were very probably over represented in criminal prosecutions, and thus in court records."[10] We need be careful, too, to recognize, that in popular, public conceptions of race and offense, "blacks and criminality are understood to go hand in hand," or so says African-American Nobel Laureate Toni Morrison.[11] One need be wary of the stereotyped criminalization of Africanness, blackness, or Negroness; yet, one must recognize that, it is in the would-be incriminating documents of transcripts and other trial matter that Negrophobia or anti-black bias and/or simple, elementary racism may find *itself* incriminated, even to the extent of the exculpation of the convicted and/or condemned citizen. In such cases, the supposed black hoodlum exchanges his stereotypical hoodie for the painfully exonerating mantle of victimhood or martyrdom. However, the removal of the 'hooded' or 'hoodwinked' status sometimes occurs long after the removal of the accused from among the living. What hangs in the balance, in such inquiries, is the credibility of our reading Canadian justice as colour-blind or as being invested solely in a Platonist and/or Judeo-Christian notion of *Truth* as opposed to the clandestine white hoods and dress of the Ku Klux Klan worn, if only metaphorically, under some black judicial robes.

Concluding my 2002 article, "Raising Raced and Erased Executions in African-Canadian Literature: Or, Unearthing Angélique," I argue that African-Canadian writers "are summoned to banish the disquieting silence around racially biased incarceration and state-sanctioned murder in Canada."[12] I go on to find that we must "examine all texts," legal and otherwise, "to begin to determine the lives of our 'martyrs' in colonial, modern, and postmodern Canada and to begin to hear their voices speaking back to us." Although this Cultural Studies impulse is freshly salient given recent protests – in Canada and the United States – asserting that "Black Lives Matter," my commission behooves us all urgently: It is only by examining the historical record of trumped-up charges, perjured testimony, false evidence, all-white or all-male juries, and wrongful convictions, or, rather, of when the pseudo-royal court morphs into a putative kangaroo court, that we begin to reveal the fissures in the marble edifices and statuary that represent our laws.[13]

Three recent works that take up this commission are Debra Komar's True-Crime account, *The Lynching of Peter Wheeler*;[14] Louise Delisle's play, "The Days of Evan,"[15] and

[3] Davey, *supra* note 1 at 208.
[4] *Ibid* at 231.
[5] *Ibid* at 216.
[6] Every murder suspect, on trial, faces The King or The Queen, the allegorical representations of the Canadian State.
[7] Davey, *supra* note 1 at 208.
[8] *Ibid* at 167.
[9] Conrad, *supra* note 1 at 122.
[10] Jim Hornby, *Black Islanders: Prince Edward Island's Historical Black Community.* (Charlottetown PEI: Institute of Island Studies, 1991) at xiv.
[11] Toni Morrison, "The Official Story: Dead Man Golfing" in *Birth of a Nation 'hood: Gaze, Script, and Spectacle in the O.J. Simpson Case.* Eds. Toni Morrison and Claudia Brodsky Lacour. (New York: Pantheon, 1997) at xx.
[12] George Elliott Clarke, "Raising Raced and Erased Executions in African-Literature: Or, Unearthing Angélique" in *Directions Home: Aspects of African-Canadian Literature.* By George Elliott Clarke. (Toronto: University of Toronto Press, 2012) at 90 [Clarke, Executions].
[13] Yes, I realize that "British Justice" frowns upon mob-enacted lynching. However, such scruples have not prevented the railroading of some unfortunates fairly straightforwardly to the gallows (nixing the strong limb of a nearby tree), thus achieving a constructive lynching, if not merely a veritable one.
[14] Debra Komar, *The Lynching of Peter Wheeler* (Fredericton: Goose Lane, 2014) [Komar].
[15] Louise Delisle, "The Days of Evan" in *Back Talk: Plays of Black Experience.* (Lockeport, NS: Roseway, 2005) [Delisle].

David Steeves's legal history essay, "Maniacal Murderer or Death Dealing Car: The Case of Daniel Perry Sampson, 1933-35."[16] I choose to conjoin – in order – a non-fiction account of actual crime and a likely fraudulent conviction, a historically inspired dramatization of a homicide and a hanging, and a pioneering legal essay to reveal how popular writer, creative writer, and scrupulous scholar may all sift relevant evidence to expose instances of probable, of racialized skullduggery. (Certainly, Delisle's fiction should prod just as much a re-examination of the hanging of Everett Farmer as Komar's non-fiction should urge us to reconsider the conviction and execution of Peter Wheeler.) Indeed, my textual trio addresses three cases in which the alleged perpetrators of capital homicide were all black, Nova Scotia residents, and, despite doubts on many accounts, hanged. Komar scrutinizes a death penalty case on the cusp of the twentieth century. Playwright Delisle and scholar Steeves focus on hanging cases of the 1930s. Of this group, only Delisle is black – or Africadian, and only Steeves is male. More vitally, only Delisle avails herself of the licence of a creative writer to re-imagine socio-historical facts to dramatize her impression of the impact of racism, alcoholism, and sexism on a rural, South Shore, Nova Scotia, Africadian clan in the mid-1930s. In reviewing these texts, I seek to highlight how their authors engage the too-often invisible – in Canada – category of "race" (save in regards to First Nations' peoples). I hold that Canadians have always found it difficult to scrutinize 'race,' as opposed to 'language' and class.[17] (In contrast, America has a highly developed discourse of 'race,' but an underdeveloped discourse of 'class,' and virtually no discourse on 'language,' except that Spanish may be used where corporate profitability and/or demographics warrant.) Moreover, the "Peace, Order, and Good Government," idealistic preamble to our Constitution influences Canadians to relegate criminal episodes to the noir – or whitewash – of oblivion. Thus, there exists 1) a general Canadian tendency to culturally obliterate 'criminal' acts and 2) an aversion to racial discourse. The exceptions to these rules are 1) the 19th-century Métis leader Louis Riel who led 1869 and 1885 rebellions against the Canadian Government and 2) the Mohawk Warriors who manned and 'womanned' the barricades of Oka, Québec, in the summer of 1990, to protect a cemetery against municipally backed, commercial infringement. It should be possible to add Canada's greatest mass murder – the Air India Flight 182 bombing of June 23, 1985 – in which 329 Canadian citizens (and others) died, as the result of sabotage cold-bloodedly carried out by, probably, other Canadians. However, because these Canadians were South Asian in heritage and either immigrants or the children of immigrants, the tragedy has been racialized or extra-territorialized as *theirs*, not *ours*. Says Davey, Canadians tend "to define the killer or killers as alien to everyday experience, and perhaps even as alien to English-Canadian experience,"[18] an interest that increases when the criminal – or victim – is non-white or non-Canadian. In their study of the Anglo-Canadian True Crime pulp mags of the mid-20th-century, Carolyn Strange and Tina Loo find that most of the stories "chronicled the police chase, skipped quickly through the trial and moved toward its inevitable outcome: the guilty verdict, which restored social harmony and reset moral values."[19] Strange and Loo agree with Davey that 'race' provided a way to both stigmatize offenders and eliminate them from ballyhooed, White-Anglo-Saxon 'norms' of citizenship:

> Racial profiling wasn't a dirty term in the 1940s pulps; in every story race provided a shorthand explanation for certain sorts of people's purported propensity to commit certain types of crimes. Anglo-Canadians and Northern Europeans were cool-headed … (unless addled by drink or maddened by temptresses); Southern and Eastern Europeans and francophones were brutish and lusty; Americans were greedy and sharp; and Native peoples were prone to be passionate and uncivilized…. [C]ases involving Asian or black victims or perpetrators were rarities. Pulp writers pandered to English Canadians' anti-Native prejudices and fears of European "foreigners," but they simultaneously reassured readers that law and order Canadian-style was there, ready to right any and every wrong.[20]

Indeed, racialized murderers were understood to represent inferior cultures that were either "inordinately passionate or beyond the pale of civilization…"[21] Canuck crime writing relied on "racial explanations for criminality."[22]

Given the foregoing assertions, the interventions of Komar, Steeves, and Delisle are most welcome in furthering our understanding of the ways in which Canada has historically demonized, excluded, and/or judicially oppressed or – in effect – *murdered* those considered racially inadmissible to the Canadian polity or resistant to assimilation or unredeemable – in their very genes. In examining Komar, Delisle, and Steeves, I will move from popular true-crime to creative writing and end with a brief assessment of a work of undoubted scholarship.

The Lynching of Peter Wheeler

The Lynching of Peter Wheeler is Debra Komar's second study of a historical crime. Komar posits that Wheeler, convicted of – and executed for – the 1896 rape and murder of 14-year-old Annie Kempton in Bear River, NS, was the

[16] David Steeves, "Maniacal Murderer or Death Dealing Car: The Case of Daniel Perry Sampson, 1933-35" in *The African Canadian Legal Odyssey: Historical Essays,* ed Barrington Walker. (Toronto: The Osgoode Society for Canadian Legal History, 2012) [Steeves].

[17] See Clarke, *Executions*, supra note 12; (I will maintain that my claim acquires greatest force if the libraries of black-and-white crime-and-punishment, in fiction and non-fiction, of Canada and the United States, are viewed side-by-side. That the United States has a larger population, a higher incarceration rate (and possibly more criminals, per capita) are not the only reasons for its mania for the annals of what Scotland Yard terms "The Back Museum").

[18] Davey, *supra* note 1 at 163.

[19] Carolyn Strange and Tina Loo. *True Crime, True North: The Golden Age of Canadian Pulp Magazines.* (Vancouver, BC: Raincoast Books, 2004) at 6 [Strange and Loo].

[20] *Ibid* at 7.

[21] *Ibid* at 91.

[22] *Ibid* at 59.

innocent victim of popular prejudice, police persecution, and yellow-press racism. Kempton was a white, working-class, country maiden, practically an orphan due to her parents' need to live and work elsewhere. For his part, Wheeler was a swarthy sailor, "peripatetic" says Komar,[23] and understandably so, being a mariner since the age of 8 in 1877, but one who found himself ready to settle in 1884 – "for the foreseeable future" in Bear River,[24] and willing to do domestic as well as forest work to earn his keep.[25] From the age of 15 until his arrest at age 27, Wheeler lived in the home of the spinster Tillie Comeau, whose surname and Bear River domicile imply an Acadian heritage. Komar relates local gossip that paired the twain as clandestine lovers, but she fails to recognize that Wheeler, born in the French-Creole parleying, British African, Indian Ocean isle colony of Mauritius might have been a handy interlocutor – as well as boarder – for the presumably francophone Comeau. (Later, we learn that Wheeler "reads Latin as well as English and talks French fluently."[26] However, this possibility is not the only racially inflected insight that Komar overlooks, and such omissions hinder her basic thesis that racism wove Wheeler's noose.)

A globetrotting, forensic anthropologist and now an Annapolis Royal, NS-based author, Komar reconstructs well the facts: Kempton was found kneeling, face down, in a sticky, bloody puddle, her underclothes disarrayed, her throat slashed, her head bashed.[27] Wheeler, who found Kempton's body,[28] was shortly fingered as the prime – and then sole – suspect, for the then-incriminating reasons that he was "coloured," a sailor come-from-away, and may have engaged in chitchat with the victim or bantered about her with pub pals. Indeed, regional newspapers named "railway employees" and "Italians" as suspicious characters and likely killers,[29] so the foreign and the off-colour (if we read "Italian" as meaning not-quite-white) were immediate suspects. Though the "Italian railway workers" were soon released,[30] the idea that the malefactor had to be a non-WASP non-Canuck now coloured the public mind. This was a tragic omen for Wheeler, who began to be fingered as the suspect, mainly because he was an alien who had lived near the Kemptons (as Tillie Comeau's boarder) for a dozen years, and had been the first to raise the alarm regarding the murder.[31]

Komar declares Wheeler a "feasible" suspect,[32] partly for the reasons stated, plus his proximity to the victim, and his claim to have merely stumbled upon Kempton's corpse. Still, Komar's pondering of Wheeler's suspect status skirts racial determinism. We read that Wheeler possessed "a world-class analytical brain,"[33] but this intellect crowned an "unfortunate eggplant-shaped physique"[34] or, rather, "short stout stature,"[35] that earned him the "endless mocking" of "burlier," if less brainy, shipmates.[36] No evidence is cited to confirm that Wheeler took a lot of ribbing from his saltwater fraternity, but, no matter: "What he lacked in mettle…, he made up for in bonhomie."[37] Komar fails to note the discrepancy between Wheeler's supposed unpopularity and the factoid that he put regularly to sea to earn extra money, and thus was readily able to work as a seafarer.[38] Komar also states that Wheeler was "Rough-hewn, but courteous and polite if not terribly refined."[39] Bluntly, she says, he lacked "social graces": "He was not a gentleman…, but he was every bit a man, despite his diminutive size and odd shape".[40] One sign of his intelligence was his "caustic wit"; one sign of his capacity for alleged viciousness was his enjoyment of "saucy exchanges."[41] The effect of these details, which Komar seems to have gleaned from a newspaper "confession" (though she does not pinpoint the source of her revelations), is to construct Wheeler as a "foreign" threat, not so much because of his different anatomy (he is male, if not a Nordic he-man or an aristocrat), but because of his intellect. Whatever exoticization – or Orientalization – was undertaken by the provincial press in 1896 seems to be reiterated, with terrifying innocence – if subtlety – by Komar. Given that, in her terms, Wheeler is a smart (or sly), vegetable-shaped person with a penis and an inferiority complex, it becomes imaginable – "feasible" – that he could have raped and murdered Kempton. However, one must wonder why, after twelve years of living near her on the same road, he would have chosen suddenly to attack her – and not Tillie Comeau with whom he lived – or some other woman somewhat further along the coast. Grimly, Komar's own reconstruction of Wheeler casts him as a monster in physique and nasty in speech. Komar also harps on Wheeler's sailor employ, his travels for seven years as a shipmate, between ages 8 and 15, his "Solitary and untethered life,"[42] his supposed lack of any "special lady laying claim to his heart,"[43] and his "vagabond ways."[44] These aspects of Wheeler's life should not be odd, but sensible: He was a mariner; thus, literally a "drifter." But after seven years of the Seven Seas, as a youth aged only 15, he put into Bear River, NS, deciding, in effect, to be a landlubber, and casual day labourer, while still seafaring, at intervals.[45] but mainly dwelling in Comeau's abode. Still, Komar terms Wheeler as "rootless,"[46] thus Orientalizing him as Semitic, that is, if we recall the Stalinist slur for a Jewish intellectual, i.e. "rootless cosmopolitan."[47] To recap Komar's own cataloguing of Wheeler, he was an off-shore, off-colour sailor, who falsely claimed Australian nativity,[48] but was often described, by the local press, as seeming "a Spaniard or Portuguese … and of a mulatto color,"[49] or, rather, of seeming kin to swarthy Europeans[50] often considered sub-Caucasian in the "Nordic"-European dominated racial hierarchies of

[23] Komar, *supra* note 14 at 25.
[24] *Ibid* at 25.
[25] *Ibid* at 24-25.
[26] *Ibid* at 99.
[27] *Ibid* at 15-16.
[28] *Ibid* at 17.
[29] *Ibid* at 19.
[30] *Ibid* at 20.
[31] *Ibid* at 22.
[32] *Ibid* at 22.
[33] *Ibid* at 25.
[34] *Ibid* at 24.
[35] *Ibid* at 24.
[36] *Ibid* at 25.
[37] *Ibid* at 25.
[38] *Ibid* at 24, 81.
[39] *Ibid* at 25.
[40] *Ibid* at 25.
[41] *Ibid* at 25.
[42] *Ibid* at 25.
[43] *Ibid* at 25.
[44] *Ibid* at 24.
[45] *Ibid* at 81
[46] *Ibid* at 305.
[47] See "Rootless Cosmopolitans" in *Wikipedia*, online: <http://en.wikipedia.org/wiki/Rootless_cosmopolitan> which connects the Soviet Union campaign against "rootless cosmopolitans" as being, in particular, an anti-Semitic slur against Jewish intellectuals.
[48] Komar, *supra* note 14 at 89.
[49] *Ibid* at 90.
[50] *Ibid* at 90. Komar notes that newspapers then tended to label "all swarthy men" as "Spaniards or Portuguese". This identification suggests that some European cultures were deemed less 'white' than others and, thus, inferior.

the day,[51] and he is "untethered," or, let's say, a cast-off. Thus, Komar casts Wheeler as a kind of déclassé Othello, who, like Shakespeare's Moorish naval general, has finally decided to settle down, with liking or love for a white woman, and whose jealous passion for her must mandate her death.[52] Wheeler becomes, simply, a pulp-magazine villain. Intriguingly, Komar, sighting the deliberate darkening of one newspaper depiction of Wheeler likens it to the "one century later" blackening of African-American murder suspect O.J. Simpson's face on a *Time* magazine cover.[53] We should recall here that one of the framing narratives of the Simpson trial of 1994-95 was that he was Othello-esque, driven by fantastic, sexual jealousy to murder his ex-wife.[54]

Komar is correct that Wheeler's pseudo-landed-immigrant status helped to fit him for the noose. However, another way to appreciate this finding is that Canadians of colour are never accepted as being, well, Canadian, and having a right to be – to exist – in the country. Scares over Jamaican "gangs" or Chinese students "taking over" Canadian university campuses are all means of suggesting whom has a right to belong to the national imaginary, and whom does not and whom thus may be classed as a predatory interloper.[55] The occasional, notorious murderer or prostitution-ring operator, if a person of colour, serves always handily to configure *Crime* as un-Canadian and the criminal as an alien.

Komar ratchets up her *de facto* racialization of Wheeler, stating, "He also maintained a firm grasp of his true place in the world, exhibiting none of the usual immigrant striving."[56] This sentence also serves to Orientalize Wheeler, but with doubled negatives: First, he demonstrates the stereotypical apathy and fatalism for which some 'othered' ethnics are critiqued, for allegedly allowing despair and lethargy to vitiate ('manly') rugged individualism and the (Protestant) work ethic.[57] Secondly, Wheeler is unlike other 'othered' ethnics who seek supposedly to dominate discrete sectors of the economy and the class structure, to either displace or to join WASP elites by "striving" to amass wealth and garner concomitant, political clout. Yet, even while Komar castigates Wheeler for not, alas, fitting in successfully in Bear River, NS, she ignores her own contrary evidence that 1) he never failed to be hired as a sailor and 2) he had something akin to domestic tranquillity in Bear River, even perhaps enjoying a nostalgic recollection of his Mauritian home by trading light-hearted banter in French with Tillie Comeau and in English with Anne Kempton.

Komar does submit, however, that a kind of local, civil Ku Klux Klan – in judicial black robes, police uniforms, and press badges – conducted the trial-by-media and conviction-by-racism that resulted in Wheeler's hanging – or legal lynching – in Digby, NS, in September 1896. Komar's study shows convincingly that a Halifax detective, Nicholas Power, abetted by the press, led the drive to hang Wheeler, which he achieved by demonizing Wheeler and obfuscating the time-line of Kempton's murder. States Komar, Power "was never one to favour those born in warmer climes, particularly swarthy ne'er-do-wells that took up with the pale-skinned belles of the north…."[58] Again, Power's prosecutorial zeal suits a tabloid construction of criminals as coloured and/or perverse. Power seems to answer to the psychological motivation of white, Western racists and imperialists that Martiniquan-Algerian scholar Frantz Fanon provides: "When European civilization came into contact with the black world, with those savage peoples, everyone agreed: Those Negroes were the principle of evil."[59] In addition, because "The civilized white man retains an irrational longing for unusual eras of sexual license, of orgiastic scenes, of unpunished rapes, of unrepressed incest,"[60] says Fanon, "The Negro is taken as a terrifying penis."[61] Granted this perspective, Power was motivated to set a noose about Wheeler's neck as a device to warn other men of colour to keep their distance from white women and to stay in their place as vassals of White (economic, political, and armed) Supremacy.

Though Komar cites racism as a primary reason for Wheeler's execution, her analysis remains superficial. She registers that, "In 1896 Canada was unfathomably, unrecognizably racist;"[62] and that "Clashes verging on race wars were inevitable."[63] She does not contextualize this finding, and so ignores the Riel Rebellions in Manitoba (1869) and the Northwest Territories (i.e. Saskatchewan, 1885) as constituting, in part, "race wars." Closer to home, Komar ignores the 1880 race riot in Bridgetown, NS, that put a white man in the grave and a black man on Death Row.[64] The Bridgetown history is germane to the Wheeler case for the 1880 riot was touched off by white males upset by interracial dating, while popular cries – headed up by Power – for Wheeler's death were compelled in part by the fancy that a "Coloured" man had "outraged" a white woman.

Though she is certain that racism triggered Wheeler's hanging, Komar is, strangely, uncertain about Wheeler's "race." He was, she says, "a dark-skinned man of ambiguous ancestry and indeterminate parentage."[65] She asserts, though, that Wheeler was "dark-skinned, woolly-haired, and foreign-born."[66] Yet, knowing that Wheeler was a native Mauritian, Komar could have researched the Creoles – or Métis – of that nation, the result of unions, usually between Africans and French, but also sometimes between English and Indian and/or Chinese.[67] Mauritius flies a "rainbow flag" for this very reason. Though Wheeler's parents married in England, they were likely Mauritian Creoles, an identity that Komar never explores.[68] I do speculate that Wheeler's noted, unaccented English was due to his Mauritian boyhood and

[53] Komar, *supra* note 14 at 91.
[54] See e.g. "OJ Simpson—A Modern Othello?" online: <http://modernothello.blogspot.ca/>. The site also reproduces the notorious *Time* magazine image of a digitally 'blackened' Simpson.
[55] See Michael Valpy, "After the Funeral—A Look at Social Order." *Toronto Globe & Mail* (April 12, 1994), A2 for Toronto journalist Michael Valpy's 1994 blanket criminalization of the speech and styles of Jamaican-Canadian youth – thanks to the thuggish acts of a few individuals.
[56] Komar, *supra* note 14 at 25.
[57] See "Protestant work ethic" in Wikipedia, online: <https://en.wikipedia.org/wiki/The_Protestant_Ethic_and_the_Spirit_of_Capitalism> for a discussion of Max Weber's foundational and ethnocentric sociological classic on the "protestant ethic and the spirit of capitalism."
[58] Komar, *supra* note 14 at 226.
[59] Frank Fanon, *Black Skin, White Masks,* translated by Charles Lam Markmann (New York: Grove Press, 1967)at 190 [Fanon].
[60] *Ibid* at 165.
[61] *Ibid* at 177.
[62] Komar, *supra* note 14 at 87.
[63] *Ibid.*
[64] See the Mitchell, James (John). Capital Case file. RG 13, vol. 1417, file 146A; 1880-89. Ottawa: National Archives. James (John) Mitchell, a "Colored" man sentenced to death for murder of a white man in 1880. The context for the "murder," as divulged in court testimony, was a riot involving black men and white men at the roadway entrance to the Bridgetown-adjacent, Africadian community of Inglewood. The culprit stabbed his victim, who later died as a result of infection of the wound. Crucially, the only evidence that this riot occurred is in the trial transcripts of the accused.
[65] Komar, *supra* note 14 at 89.
[66] *Ibid* at 90.
[67] Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Africa: Mauritius: Creoles*, online: <http://minorityrights.org/minorities/creoles/>.
[68] Komar, *supra* note 14 at 24.

schooling. He was also adept in French.[70]

Komar tells us that, "Wheeler was a marked man, a dark cloud on the region's snowy white landscape,"[71] but Komar is herself oblivious to the racial demographics of the area. She describes the region as "insular" and the residents as "homogeneous."[72] Yet, Bear River was (and is) home to Mi'kmaw; plus there were notable Africadian communities in Lequille and Delaps Cove (both near Annapolis Royal), Bridgetown (Inglewood Road), and in Jordantown and Acaciaville (both near Digby). In fact, the only other person to meet suspicion, briefly, for Kempton's death was Joseph Pictou, a Mi'kmaq,[73] from, indeed, "a small reserve just outside of Bear River."[74] Komar omits the patriated Acadian communities adjacent to Bear River and ranging down the southwest, Fundy-side coast of Nova Scotia, from Digby to Yarmouth, the so-called District of Clare. Yet, no Nova Scotian could have thought the province 'whites-only' or even WASP-only in 1896. All anyone had to do to know otherwise was read Thomas Chandler Haliburton's *Clockmaker* sketches – often lampooning blacks, but also recording the presence of Francophones in his protagonist's Annapolis Valley and Cobequid Valley travels.[75] Moreover, anyone taking a train to Yarmouth or to Digby or to Halifax would have traversed Mi'kmaw settlements and Negro communities. Their presence was not new. This point leads me to urge that the debate over race, specifically of the status of blacks (Africadians) in Nova Scotia, has continued virtually unabated since enslavement in the 1760s and official emancipation in 1834. The occasional 'show trial,' of supposed black villainy, serves to underline – or reanimate – in public discourse two complementary ideas: 1) blacks are innate criminals; 2) they belong in jail or on slave plantations; thus, they cannot circulate as free Canadian citizens, not without suspicion, not without surveillance, not without meeting 'conditions.'[76]

In the end, Komar's study hints that Detective Power deserves disgrace; Wheeler deserves a posthumous pardon; and the Government of Mauritius deserves an apology from the Government of Canada. Her investigation of the police and media manipulations of the Wheeler case establishes that Peter Wheeler was "lynched," not hanged. (She notes that one newspaper described the people of Bear River as "Southern negro-lynchers."[77]) However, the full context of the politico-legal chicanery to which Wheeler fell victim is lost due to Komar's insufficient grappling with 'race' as the *bête noire* of her study.

Days of Evan

The eldest of a family of seven children, born and raised in Shelburne, Louise Delisle graduated from high school, became a nurse, and then became devoted to theatre, eventually founding the Black Pioneers Acting Troupe, the group for which she writes her plays. Her passion is Shelburne County Africadian history, and so a notorious hanging of a local black man in 1937 is of interest, and so we have her play, "The Days of Evan," which appears in her collection, *Back Talk: Plays of Black Experience.*[78] Given her subtitle, emphasizing the lived experience of South Shore Africadians, one may presume rightly that the Africadian Delisle will take an explicitly Afrocentric view of the injustice that she dramatizes. Moreover, as a creative writer, she need not respect any demands of realism or objectivity in addressing the hanging that is her concern. Her first adjustment, then, is to title the play, "The Days of Evan," thus displacing the play's true subject, the execution for murder of Everett Farmer, early on the morning of December 14, 1937, in Shelburne, Nova Scotia, for having shot his brother, Zachariah, to death, in cold blood, on August 1, 1837. Delisle is convinced that the justice system was out to lynch Farmer for having slain his half-brother Zachariah (who becomes "Mack" in the play), although Farmer claimed he acted in self-defence and to protect his family.

I do not know what original research, if any, was undertaken by Delisle in preparing her play. However, journalist Dean Jobb covers the Farmer case in his *Shades of Justice: Seven Nova Scotia Murder Cases* (1988), and he favours poverty, rather than racism, as the inspiration for Farmer's conviction and execution. Jobb finds that Farmer could not afford a lawyer;[79] the court-appointed lawyer had little time to prepare a defence[80] there was no money to support an appeal[81] and no one bothered to pen a letter to the Department of Justice Remission Service to request commutation of Farmer's death sentence.[82] Jobb acknowledges that the trial jury was "all-white," not due, perhaps, to segregation but because "the requirement that jurors own land disqualified many [blacks] from jury duty."[83] Jobb registers that one writer, Alan Hustak, claims that "race was a factor in the conviction,"[84] but Jobb also urges that Hustak's account of the case is "marred by a number of factual errors"[85] or "several factual errors."[86] Jobb agrees that the Farmer case was a test of "how the justice system dealt with a penniless black man facing the gallows,"[87] but he does not find that it failed due to racism: "Lack of money undoubtedly prevented Everett from mounting an effective defence, but the charge of racial

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[70] Komar, *supra* note 14 at 99.
[71] *Ibid* at 98.
[72] Komar, *supra* note 14 at 90. Such language is suggestive of incest. Intriguingly, David Cruise and Alison Griffiths in *On South Mountain: The Dark Secrets of the Goler Clan* (Toronto; Viking Canada, 1997) at 55, 77, find that a notorious family of intergenerational child molesters and incest practitioners, not brought to "justice" until the mid-1990s, lived quite insular lives, and had done so for generations. Cruise and Griffiths cite an unpublished Acadia University study that found "ten or twelve people [living] in a few drafty rooms, … obviously sexual relationships between close family members, [and puzzlement due to] the thick [South] Mountain accents and [bemusement] that many of the women smoked pipes". Cruise and Griffiths do express a racialized genetics that is only somewhat more sophisticated than that available to the stereotype-iterating press of a century ago. Thus, they submit that War of 1812 Black Refugee Munday Goler's "black genes are so diluted they're all but invisible in the faces of the clan he founded. But every now and then his legacy shows up in the richer skin colour or the thick, wiry hair of his descendants."
[73] Komar, *supra* note 14 at 159-160.
[74] *Ibid* at 159.
[75] Thomas Chandler Haliburton, *The Clockmaker; or the Sayings and Doings of Sam Slick, of Slickville.* First Series (Halifax, NS: Joseph Howe, 1836).
[76] See also George Elliott Clarke, "Seeing Through Race: Surveillance of Black Males in Jessome, Satirizing Black Stereotypes in James," in George Elliott Clarke. *Directions Home: Aspects of African-Canadian Literature.* By Toronto: University of Toronto Press, 2012; George Elliott Clarke, "White cops, Black corpses: U.S. and Canada have histories of police violence against minorities." *National Post.* (Saturday, April 11, 2015): A17.
[77] Komar, *supra* note 14 at 105.
[78] Delisle, *supra* note 15.
[79] Dean Jobb, *Shades of Justice: Seven Nova Scotia Murder Cases,* (Halifax NS: Nimbus, 1988) at 104 [Jobb].
[80] *Ibid* at 106.
[81] *Ibid* at 109.
[82] *Ibid* at 111-112.
[83] *Ibid* at 106.
[84] *Ibid* at 110.
[85] *Ibid.*
[86] *Ibid* at 139.
[87] *Ibid* at 98.

discrimination is impossible to prove or disprove."[88]

I suspect that Delisle, through penning "Days of Evan," seeks to overturn Jobb's downplaying of racism as a motivating factor for Everett Farmer's execution. In a sense, she reads between the lines of Jobb's account to stress the role of race in Farmer's case, and does so for a homely reason: She is a lifelong resident of Shelburne, and as an Africadian may sense the racial subtleties of the town far better than does Jobb, whose chronicle is invested in official accounts and archival records. (Delisle might even be a relative of Everett Farmer, for Africadian bloodlines are compactly intertwined.) I will speculate that Delisle relies on oral history and community gossip about the 'facts' of Everett Farmer's – or 'Evan's' – guilt. Naturally, Delisle's choice to use drama to explore the Farmer case signals a perfect reliance on oral testimony, for that is what we will hear from the stage. In sum, Delisle's "The Days of Evan" is her 'back talk' to Jobb's reliance on white Establishment officials – lawyers, judges, journalists, politicians – and their records and documents and oral histories – to decide how vital a role – if any – that Negrophobia may have played in taking a black man's life.[89]

Revealingly, then, Jobb's account of the Farmer case relies on interviews with a Shelburne businessman who, once as a young reporter, had covered the Farmer trial (and whose own father was the sheriff who held Farmer in custody);[90] a lawyer;[91] and the niece of Farmer's attorney who had gone on to become the first Nova Scotian Acadian elected to the House of Commons.[92] While Jobb does utilize spoken insights and anecdotes from white officials and professionals, he does not seem to have sounded any Africadian Shelburne citizens' opinions of the case. Delisle's play challenges this omission. Her Africadian heroine, Susan, says succinctly, but comprehensively, of the Nova Scotia (or Dominion of Canada) justice system, "Their justice is just wrong."[93]

While Shakespeare's Othello is evoked in the image of the supposed dastard Peter Wheeler attempting to rape Anne Kempton and cut her throat, Delisle, perhaps due to feeling haunted by the Farmer case, allows the ghost of another Shakespeare play, i.e. Hamlet, to help animate her own. Recall that Hamlet commences with the apparition of the dead King Hamlet, summoning his son, Prince Hamlet, to avenge his murder.[94] Act I, Scene II, of Delisle's play opens with the "Ghost of Evan" visiting his wife, Susan, on the night following his execution.[95] Just as King Hamlet's ghost prods Marcellus to state, "Something is rotten in the state of Denmark"[96] so does the "Ghost of Evan" allow Delisle to posit that a like rottenness afflicts the Province of Nova Scotia, if not the Dominion of Canada. The back-story of Shakespeare's Hamlet is that Claudius, has slain his brother King Hamlet, usurped the throne, and is now bedding Hamlet's Queen, Gertrude, who is now his. King Hamlet's Ghost urges Prince Hamlet to correct matters. In Delisle's play, the "Ghost of Evan" represents a man slain by the State – the Dominion of Canada – due to improper application of the death penalty, when he – Evan – was merely thwarting the intent of his brother, Zachariah, to murder him and his children and rape his wife. As Komar's treatment of Wheeler reproduces him as a downscale Othello, so does Delisle's revision of Farmer reproduce him as an even unluckier type of Shakespeare's ghostly royal. Indeed, if The Bard's King Hamlet is a ghost because he could not arrest his brother's insidious and murderous plot against him, Evan is a ghost, in contrast, because he did prevent – violently – his brother from seizing his wife and endangering his household, which includes eight children. Furthermore, if Hamlet is a play that is partly about the failure to take timely action to prevent catastrophes (so Prince Hamlet's delay in simply stabbing King Claudius to death engenders arguably the destruction of his royal blood-line as well as the immediate ruling-class of Denmark), Delisle's play, again in instructive contrast, shows that taking immediate action can also engender grave results.[97]

Whereas Hamlet opens with the prince of Denmark garbed in funereal black,[98] Delisle's Act 1, scene I, opens with Susan "dressed in black."[99] Arguably, too, Delisle replaces Jobb's Hamletian hesitation to call a spade a spade (pun intended) with an insistence on the primacy of race.

Jobb recounts the story that Everett Farmer visits the Shelburne police chief, next the Shelburne County Mountie, who then picks up the coroner, and then all four drive to Farmer's "decrepit two-storey frame house."[100] The detail is vital: Everett has just journeyed from his shantytown locale into middle-class stolidity, as a black man under suspicion, if not arrest, and now these Establishment figures are in his home, save that it is, says Jobb, "decrepit." Delisle replays this scene to accent the racial peril into which her Everett – i.e. Evan – has just placed himself. First, his decision to report his killing of Mack (Zachariah) is hotly contested by his wife, Susan, who is busy trying to scrub up the blood from the slaying. Evan tells her that he will go "to talk to the sheriff."[101] She replies, "He'll never believe you. You know that."[102] However, Evan does go to see the sheriff, but, by doing so, becomes essentially a dead man walking.[103] Delisle has her sheriff address Evan in a terms echoing Southerners' stereotypical derision of African Americans. Her version of the Shelburne police chief – pointedly pretty much now a Dixie Sheriff – calls her Evan "boy," severally, accuses him of being into "the shine" (moonshine), and labels all Shelburne black males "niggers."[104] In Jobb's

[88] *Ibid* at 110.
[89] Intriguingly, Jobb's narration of the Farmer case follows the story structure that Strange and Loo identify in the true-crime, Canuck pulps: To chronicle "the police chase, [skip] quickly through the trial and [move] toward its inevitable outcome: the guilty verdict, which [restores] social harmony and [resets] moral values" Strange and Loo, *supra* note 16 at 6.
[90] Jobb, *supra* note 76 at 104.
[91] *Ibid* at 105.
[92] Ibid.
[93] Delisle, *supra* note 15 at 43 (I'm reminded of a Malcolm X speech in which he says, regarding alleged, Caucasian malfeasance, "You haven't done the right thing!")
[94] William Shakespeare, *The Tragedy of Hamlet, Prince of Denmark* in *Three Shakespearean Plays: Hamlet, Macbeth, King Lear,* (Toronto: Ryerson, 1965) at 33-41 [*Hamlet*].
[95] Delisle, *supra* note 15 at 40.
[96] *Hamlet, supra* note 88 at 32.
[97] Every cinema action-hero (James Bond, *et al.*) enacts a repudiation of Hamlet.
[98] *Hamlet, supra* note 88 at 14.
[99] Delisle, *supra* note 15 at 37.
[100] Jobb, *supra* note 76 at 96.
[101] *Ibid* at 49.
[102] *Ibid.*
[103] *Ibid* at 103. Jobb describes Farmer's midnight walk to the police chief's home as constituting "his last taste of freedom."
[104] Delisle, *supra* note 15 at 52.

rendition of this meeting, the police chief is pure probity, along with the RCMP officer, who reads Farmer his rights.[105] In contrast, Delisle transplants South Shore Nova Scotia to the US South, so her Caucasians mimic old-line Confederates. (By doing so, Delisle insists that readers and spectators remember that because mainland Nova Scotia was settled by New England and Southern slaveholders, first as Planters and then as Loyalists, their historical, anti-black attitudes, persisting in the province, link it to Dixie.) For his part, Jobb positions the police and the coroner at the killing scene as careful examiners of evidence, finding Zachariah "seated upright in a chair, with his legs crossed; there were no signs of a struggle…. The head was drooped forward, revealing a gaping bullet wound to the right side of the neck."[106] Importantly, Zachariah's eyes were "closed" and "an unlighted self-rolled cigarette [lay] in the dead man's lap."[107] These notes would be used, in the Farmer case, to suggest that Everett had shot his brother while he was asleep, thus removing self-defence as a defence and rendering him plausibly guilty of capital murder. Reproducing this incident in her play, Delisle has the Sheriff declare that he cannot see "any signs of a fight" between the brothers,[108] while the coroner, Dr. Muller, says, "This man was shot sitting down…. Look at his legs, they are crossed…. And his eyes are closed like he's asleep I would have to call this murder."[109] Dr. Muller also claims, "Seems to me that somebody tried to cover up a murder, by cleaning up the blood."[110] Seeing the death scene cast in a light that could get her husband hanged, Susan intervenes: "I crossed [Mack's] legs so he wouldn't fall off the chair, Sheriff. I closed Mack's eyes to make him decent…. I cleaned it up [Mack's blood], I couldn't leave that mess. I got eight children in the house."[111] Susan's statements are to no avail. The Sheriff handcuffs Evan, and as he leads him away, "whispers" to the suspect, "Your black ass is goin to hang."[112] Dr. Muller chimes in, "Talking about killing two birds with one stone. We'll get rid of both these niggers…"[113] Delisle hereby talks back to Jobb's depiction of official decency with a scene that turns the lawman and the coroner into KKK conspirators, whose investigation of the crime scene is merely a process to slant evidence to ensure that Evan enters the hoosegow and meets the noose. No wonder then, that Delisle's Act III, scene I, opens with four anonymous white men – representing the power structure of police, law, medicine, and journalism, conspiring to not "let this nigger get away with this;"[114] for if "they can murder their own, they will murder us;"[115] thus, "we have to hang this nigger:"[116] "No such thing as a fair trial here today."[117] Moreover, this lingo is closer to that of Klansmen than it is to the "federal fisheries inspector," "A merchant, a barber, a boat builder, and a spar maker," plus "two fishermen, two labourers, a painter, a farmer, and a driver" who comprised the actual Everett Farmer jury.[118] Again, Jobb presents the trial of Farmer as a matter-of-fact affair, hindered only by a lack of preparation time for his attorney. In Delisle's presentation of Evan's trial, the judge asserts that Evan has already confessed to murder,[119] he calls Susan "girl,"[120] and he denies that the Crown's comments are "prejudicial" because "the truth is never prejudicial."[121] Ultimately, Delisle has an elder black woman tell the court, "If it wasn't for you high and mighty white folks, the poor man [Evan] wouldn't be sittin here … [on trial].[122] In Delisle's play, because the verdict is a foregone conclusion, there is no charge from the judge to the jury about how and what they should deliberate.[123] But Jobb sees only one potential omission in the actual Farmer trial and that was the alleged failure of the judge to inform the jurors that they could recommend mercy.[124]

Jobb does provide some social context for Farmer's trial, revealing thereby some sensitivity to the influence of the popular racism of the day. First, the coroner's inquest was "packed with spectators"[125] and the pursuant trial so overshadowed the county fair, "A special detail of RCMP officers" was required to help control the crowds.[126] Secondly, the verdict prompted two local Christian ministers to complain that whites were neglecting "to provide moral and religious training for the people of the race to which the convicted man belongs."[127] Moreover, white Christians were setting a bad example for Coloured ones, for "cases of venereal disease and illegitimate births in Shelburne were on the rise."[128] Thirdly, some journalists felt squeamish about the all-white jury, and so one testified, anonymously, that, "the judge, lawyers, and court officials treated [Farmer] with the same courtesy and consideration that they would have accorded a man of wealth and position."[129] Read together, the public's intense interest in the potential hanging of a poor, black man; the white clergy use of the "crime" to try to shame white Christians to behave less immorally and with less prejudice; and sensitivity to the fact that an all-white jury could pervert the decorous nature of Canadian justice; all suggest that no one in 1937 Shelburne viewed the case with anything like race-neutrality. It is likely that the tacitly racialized public response to the Farmer case is precisely what prompts Delisle to propose that Shelburne, NS, in 1937, is as much the site of a deadly, racist conspiracy of Caucasians as were, notoriously, many Dixie cities of the Civil Rights Movement era. I believe that Delisle achieves this re-reading of the Farmer case by employing her own life experience of Shelburne, as a black woman, as well as the folk wisdom conveyed through Africadian speech, to pry open the racial subtext denied by professional – but superficial – objectivity (as in Jobb's treatment of the case). Thus, she closes her play on a note of Shelburne, anti-black racism.

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[105] Jobb, *supra* note 76 at 96.
[106] *Ibid.*
[107] *Ibid.*
[108] Delisle, *supra* note 15 at 54.
[109] *Ibid.*
[110] *Ibid* at 55.
[111] *Ibid* at 54-55.
[112] *Ibid* at 55.
[113] *Ibid.*
[114] *Ibid* at 56.
[115] *Ibid.*
[116] *Ibid.*
[117] *Ibid* at 56.
[118] Jobb, *supra* note 76 at 106.
[119] *Ibid* at 57.
[120] *Ibid* at 60.
[121] *Ibid* at 58.
[122] *Ibid* at 62.
[123] *Ibid* at 65.
[124] Jobb, *supra* note 76 at 110.
[125] *Ibid* at 103.
[126] *Ibid* at 106.
[127] *Ibid* at 110.
[128] *Ibid* at 111.
[129] *Ibid* at 110.

Evan's widow, Susan, hears a "Voice from outside" shout, "We will kill you all before this is over! Do you hear that, niggers?."[130] However, the "Voice" is threatened by Evan's female survivors, and flees. Then, as Evan is hanged, the spiritual, "Swing Low" (or "Swing Low, Sweet Chariot"), is heard, thus asking the audience to make a connection between black enslavement long ago in the American South and black oppression in contemporary Canada. Thus, "The Days of Evan" verifies John Scaggs's insight that "all crime fiction is trans-historical."[131] I will add that it is also transnational and cross-cultural.

Maniacal Murderer or Death Dealing Car

I am unfair to conclude my canvass of my subject texts with David Steeves's excellent, prize-winning article, "Maniacal Murderer or Death Dealing Car: The Case of Daniel Perry Sampson, 1933-35," which appears in *The African Canadian Legal Odyssey: Historical Essays*, edited by Barrington Walker and published by the Osgoode Society for Canadian Legal History.[132] I am, after all, juxtaposing with Komar's popular True-Crime writing and Delisle's fiction-staging play, a work that is scholarly – unquestionably – and which is grounded in the most exacting research. In the comparison, Komar and Delisle could suffer, save that Delisle does have the safety of fiction backing her effort, while Komar is able to reach a general audience that Steeves, almost certainly, cannot and will not. Certainly, Steeves merits the benefit of a few cursory observations about his exemplary study.

My red-letter point is that the New Brunswick-born, Dalhousie-educated, Toronto-based lawyer, Steeves, LLB, LLM, seldom loses sight of the racial context of the legal drama that began on a July night in 1933. In the case history, the bodies of two boys, the brothers Edward and Bramwell Heffernan, were found near each other alongside railway tracks. The boys had been out the evening of July 19 picking blueberries, and there was some thought that they had met a passing train in a disastrous accident. An "inconclusive coroner's inquest"[133] was soon followed by months of "fruitless investigation" by police.[134] Eventually, one white officer, befriending a mentally deficient, Africadian, Great War veteran, over several weeks, was eventually able to ask him to "X" a confession and then lead RCMP officers to the murder weapon, a rusted knife with blood-like stains, that could not be conclusively identified as being human, let alone as belonging to either of the deceased brothers.

As in the case of Peter Wheeler, Sampson became a suspect simply by having been a "coloured" man who was seen "in the area where the boys were last observed."[135] Just as Wheeler was suspicious by virtue of being a swarthy foreigner, so did Sampson's darkling apparition – in the vicinity of the Heffernan brothers – render him a suspect. Yet, Sampson had good reason to be in that "neck of the woods" (pun intended) on that night: He lived there.[136]

So, unable to solve the case and lacking any other credible suspects, Corporal Walsh of the Halifax RCMP began to visit Sampson at his home, shared with his mother, between October 20 and December 13, 1933.[137] On one such occasion, Sampson was taken to the RCMP Headquarters, where a white woman who had seen a Coloured man walking in the opposite direction[138] from that where the Heffernan boys' remains were later found, was asked if she could pick out this Negro from a line-up.[139] Steeves does not tell us that all the other men in the line-up were white, but he does tell us they were all uniformed and plainclothes officers.[140] Given that the RCMP did not accept a black officer until 1969,[141] Sampson must have stood in a line-up in which he was visibly the only black.[142] Parsons was able to choose the single Negro from among the Caucasians with ease. Eventually, after more questioning from more officers and a visit to the murder scene, all of which took place without any notes being taken, Sampson was asked to "X" a confession, based on what he had supposedly told the police, but employing a vocabulary far above his limited intelligence. Indeed, Sampson was "unable to either read or write."[143]

Tried for the deaths of the Heffernans, Sampson faced – as did Wheeler earlier and Everett Farmer later – an "all-white judiciary."[144] This was no accident nor was the all-white jury a case of bad luck. Indeed, Jobb's assertion in the Farmer case, that his all-white jury was simply due to the failure of blacks to own enough land to qualify as jurors, is not so straightforward as it sounds. Steeves's research on jury selection in Halifax proves that great pains were taken by the province, specifically in Halifax, to set jury selection in such a way, regarding income and property holding, that practically all blacks and few white working-class persons would ever be considered as jurors.[145]

Thus, despite scrupulous cross-examination of Crown witnesses, and a recommendation for mercy from the jury, Sampson was convicted of murdering the Heffernans, and sentenced to death. However, his attorney, Ormond Regan, appealed the conviction successfully, partly because Sampson's X-signed confession to the RCMP had been lost and partly because of the Crown's prejudicial comments regarding Sampson's decision not to testify.[146] A new trial was ordered.

Steeves shows that, upon empanelling the new jury, Regan challenged several would-be jurors on their racial attitudes,

[130] Delisle, *supra* note 15 at 69.
[131] John Scaggs, *Crime Fiction* (London: Routledge, 2005) at 125.
[132] Steeves, *supra* note 16.
[133] *Ibid* at 201.
[134] *Ibid.*
[135] *Ibid* at 202.
[136] I am moved to note that suspicion directed toward blacks because they happen to be in the vicinity of a crime is really an expression of the deeper feeling that they do not belong here, anyway, or, if they are to be here, must endure constant surveillance if not jailing.
[137] Steeves, *supra* note 16 at 212.
[138] *Ibid* at 207.
[139] *Ibid* at 212.
[140] *Ibid.*
[141] Williams, Dawn P. *Who's Who in Black Canada 2: Black Success and Black Excellence in Canada*, (Toronto: D.P. Williams & Assoc., 2006) at 168. If one wants to imagine that a black Halifax police officer could have deflected attention from Sampson, the possibility is nixed, for the first black on the Halifax police force—Max Hartley—did not arrive until 1969.
[142] Steeves, *supra* note 16 at 212.
[143] Steeves, *supra* note 16 at 213; The Shakespeare play the Sampson case evokes? Titus Andronicus: Therein a sly black villain, Aaron, with near impunity, arranges rape and murders and disfigurements. William Shakespeare, *The Most Lamentable Roman Tragedy of Titus Andronicus*, in Jonathan Bate ed, *The Arden Shakespeare: Titus Andronicus* (London, Routledge, 1995).
[144] Steeves, *supra* note 16 at 214.
[145] *Ibid* at 222-226.
[146] *Ibid* at 218.

specifically whether they "might be 'prejudiced in respect of colour,"[147] thus exposing and introducing into the second trial the fact of "widespread intolerance towards [Haligonian] African Nova Scotians."[148] Regan was able, in fact, to show that "at least half of the jurymen called to the stand to give evidence respecting their own competency admitted frankly that they were prejudiced against the prisoner and hence incapable of rendering a true and fair verdict."[149] Surely, not all of those who admitted prejudice were acting on racial bias, but realistically some must have been, and it is presumable that some of those who actually got to sit the second Sampson trial were biased racially against the prisoner. Regan's tactic was, I believe, to set the stage for a second appeal of a second conviction by proving that Sampson could not possibly have received a fair trial, given the tainted jury pool. I assert this possibility due to the sage evidence Steeves provides.[150]

Yet, jury bias was rendered almost inevitable, given that, as Steeves's research has proven, the province of Nova Scotia amended its *Juries Act* in 1890, so that potential, Halifax-area jurors were drawn from ten polling districts in the "predominantly white areas of the downtown core and residential South End."[151] Significantly, too, potential jurors had to have a net worth of at least $4000 for grand jury service and $800 for admission to a petit jury panel.[152] Such relative wealth was far beyond the reach of most Haligonian Africadians, and none of them lived in the designated, jury-pool catchment area, anyway.

Moreover, during Sampson's second trial, a letter was received by Sampson's attorney that threatened the organization of a lynch mob to dispatch Sampson unless he were hanged by November 21, 1934.[153] Steeves reads this incident as indicative of "a long-standing animus against African Nova Scotians and others within Halifax's ethnic minority community."[154] It also serves to indicate that some white citizens considered the justice system merely an extension – under civil guise – of the anti-black attitudes prevalent in the common weal.

Not surprisingly, Sampson was soon again found guilty and was again sentenced to death. However, Regan, his attorney, organized appeals that failed, but not until there was a hearing at the Supreme Court of Canada on the question of jury bias as a ground for exclusion. Although Regan prepared the appeal, he was not able to argue it himself because of "Sampson's continued financial difficulties."[155] Notably, Sampson's penury did not prevent his lawyer from having a final appeal heard before the Supreme Court of Canada. This fact is a striking contrast to the failure of Everett Farmer's lawyer to even send a letter begging a commutation of his client's sentence. It also suggests that Jobb's finding that poverty, not racism, doomed Farmer to the gallows, must be nuanced substantially.

I end my study here, but I posit that Steeves's examination of the Sampson case establishes that it is impossible for us to understand the operation of racism within judicial discourse without taking into account the presence of racism within the larger society. Likewise, the narratives of Komar and Jobb of their respective interests – the cases of Wheeler and Farmer – accumulate authority only when racism is accorded due analysis by the authors. When it is not, as Delisle seems to feel is the case regarding Farmer, she feels free to exhume the racial subtext by applying folk memory and lived experience as well as riveting, oral testimony to reconfigure a legal hanging as a conspiracy of lynchers. Indeed, she recognizes the ethnic and racial and gender dynamics in play, in setting up the execution that transpires in "The Days of Evan," that Komar sometimes gets right in her treatment of Wheeler, but that Jobb chooses to pooh-pooh in his treatment of Farmer. Steeves's research establishes that Nova Scotian Justice was never colour-blind nor "innocent" when it came to consideration of the rights of black suspects to judicial fairness, and that there was actual legislative connivance to deprive black suspects of a right to a jury of their peers. His research establishes the fact of racialist and classist conspiracy, while Delisle points to the same in the imagined trial of Evan. Komar also finds that a complex of yellow journalism, WASP intolerance, and police machinations ended up frog-marching Wheeler to the gallows. Read together, however, these works establish that blacks are often considered foreigners, or interlopers, and are very likely to be incarcerated and/or executed, because of a general suspicion that they have no business being here (in Canada), first of all, and, secondly, no business being free.

I wager that a careful sifting of our archives regarding race-inflected trials will establish the haunting possibility that police procedural misconduct and judicial malfeasance, regarding black suspects, is a subtle – if not conspiratorial – nullification or sly repealing of British Slavery Abolition and/or American Emancipation. In other words, our fathoming of the law library will find undoubtedly that the bland term race relations is a euphemism for an endless civil war between empowered white supremacists and their racial and/or ethnic subjects…[156]

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[147] *Ibid* at 219.
[149] *Ibid* at 221 - 222.
[150] *Ibid* at 219-222.
[151] *Ibid* at 225.
[152] *Ibid* at 225.
[153] *Ibid* at 229.
[154] *Ibid* at 228.
[155] *Ibid* at 231.
[156] Because racism is so ineradicably an element of law enforcement, I move that we now understand 'money laundering' as representing the attempt of the 'criminalized' ethnic or racial minority to achieve respectability—to 'pass,' as it were,as a bona fide member of the WASP ruling class.

IIII Time Travelling: Intent Behind Regulations*

By Elizabeth Bruton**

Abstract

Law librarians face challenging questions every day. Legislative histories and inquiries into intent can be time consuming and may not always end satisfactorily. Travel down into "subordinate" legislation territory, and research into intent, can be very frustrating indeed. However, when the investigation is handled from the perspective of a journey back in time, with the Hansards becoming the vehicle of choice, the trip can be quite enjoyable while also fulfilling the librarian's insistent curiosity.

Chaque jour, les bibliothécaires de droit font face à des questions difficiles. La recherche quant à l'historique législatif et à l'intention du législateur peut prendre beaucoup de temps et peut ne pas toujours se terminer de façon satisfaisante. En effet, voyager dans le monde de la législation subordonnée et de la recherche de l'intention peut être très frustrant. Toutefois, lorsque l'enquête est traitée selon la perspective d'un voyage dans le temps, avec les Hansards comme véhicule, elle peut être très agréable tout en satisfaisant la curiosité insistante du bibliothécaire.

As a law librarian, I enjoy puzzling through a good legislative research question. There are the easy ones (when did this amendment come into force?), the more time-consuming but not really difficult ones (when did this wording first come into being?), and then there are the more challenging questions about legislative intent.

A good question will have me dodging back and forth between my office computer and a library table covered with statute and citator volumes. Photocopied pages will have lines highlighted, notes scribbled on the back, and reminders about further research. A good question will result in a cleanly typed up "answer" sheet to review with my patron.

A challenging question will demand more reading between the lines; there are no clear-cut answers in a legislative table. In particular, one area I find difficult is the question of legislative intent of regulations. I don't get a lot of questions about regulations. There is the odd Summer researcher who is given the task of tracking down the history of immigration regulations or there are those questions about regulations that "may be created" (but weren't).

Occasionally, I also get the "but why" question regarding the creation of a particular regulation. The standard answer to these reference requests is that regulations are not debated. They do not go through three readings. They are more or less announced and that's that. Having some time in the summer has allowed me to revisit one of these past queries.

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A few years ago a history student came to the law library to learn about an Ontario regulation from the early 1980's regarding handicapped transit. He not only wanted to find the original regulation; he wanted to know the story behind it. Note: History students are not turned off by something that is "old news" and they will not veer away from searching microfilm.

At the time we did some quick research to find an amendment to the *Highway Traffic Act* which would account for the creation of this regulation. Nothing seemed to fit but there were some wisps of a story that the student took away. Three years later I sat down again to develop a more in-depth and systematic search. Meandering through the debates of the Ontario legislature took me on an historical journey back to the late 1970's and early 1980's; an era of change to human rights laws. Working with the *Highway Traffic Act* I can say that I did quite a bit of "off-roading" before I found my answer.

The Regulation

RRO 1990, Reg 629 originally appeared on the scene in 1981 as O REG 167/81 under the *Highway Traffic Act.* It was created on March 10, 1981, filed March 23, 1981, appeared in the Ontario Gazette on April 11, 1981 and came into force Sept. 1, 1981.

The regulation defined "physically disabled person" and "physically-disabled-passenger vehicle", and contained technical specifications on vehicle doors, mirrors, lighting, flooring, power lifts, occupant restraint assembly etc. It's normal to want to start finding updates to the regulation, but I restrained myself and hunkered down in the past.

Hansard

I had already reviewed, with the history student, the Ontario Debates' index volumes, which used index terms such as "Transportation - aged, handicapped" and "Transportation - handicapped" hoping to at least find some discussions that could be used as clues. This time around I also tried the search feature for the Ontario Hansard Debates on the Legislative Assembly website[1], which fortunately, start at the 3rd Session of the 31st Parliament (March 6, 1979). The site is quite clean and easy to use. I used simple search terms such as *transportation and handicapped.*

I regard the Hansard Debates as a sort of time machine. The difficulty is that back in time, everyone understood the references made. Move forward 35 years and the reader requires more background to recreate the scene and grasp the context of the debates. Search term language, which may not be appropriate today, also needs to be revived. By the way, I usually had a second screen on my computer open to Google.

What I have pulled out for this article are the "clues" that moved my research forward.

Transportation and Human Rights

> Mr. R. F. Johnston: Supplementary: Since the Life Together report, which formed much of the basis of yesterday's human rights' announcement, stated "that provincial and municipal governments can and should provide transportation which is accessible to all," and given the fact that transportation planners agree that parallel systems are only useful as interim measures, will the minister take action similar to that of the United States in its Rehabilitation Act, which ties financial assistance for transit to development of local policies for total accessibility?
> [November 23, 1979][2]

In 1977 a report came out from the Ontario Human Rights Commission called "Life Together; A Report on Human Rights in Ontario".[3] The report contained over 100 recommendations for a new Ontario *Human Rights Code.* The Code was first enacted in 1962[4] and this was to be the first full scale revision.

One thing the Commission noted in the Report was that "[a] great many physically disabled people would like to be able to make use of regular transportation facilities – of buses, trains and subways – like anyone else, and it should usually be possible for them to do so."[5]

The Debates revealed frustrations with government attempts both to overhaul the Ontario Human Rights Code and to introduce separate bills dealing with individual human rights issues. In particular, Bill 188, *An Act to provide for Rights of Handicapped Persons*, was contentious.[6]

Bill 188 (The First One)

This bill was introduced in 1979 by the Minister of Labour Mr. R. G. Elgie. When the Globe & Mail reported that Mr. Elgie was withdrawing this bill,[7] Mr. Elgie argued in the legislature that he never said he was withdrawing the bill, only that he saw no point in taking it to second reading because there was too much criticism from the Opposition to the bill. The Opposition took the stand that it was the organizations representing handicapped persons who did not wish to support a separate Act but rather wished to see changes introduced to the Ontario *Human Rights Code*. The Opposition proposed that the bill be withdrawn but that the ideas found in Bill 188 be reintroduced as an amendment to the Ontario *Human Rights Code*.[8]

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[1] *House Hansard Search,* online <http://hansardindex.ontla.on.ca/hansarde.asp>.
[2] Ontario Legislative Assembly, *Official Report of Debates (Hansard),* 31st Parl, 3rd Sess, No 116 (23 November, 1979) at 4774 (RF Johnston).
[3] Ontario, Ontario Human Rights Commission, *Life together: a Report on Human Rights in Ontario*, (Toronto: Ontario Human Rights Commission, 1978) [Life Together].
[4] *Ontario Human Rights Code 1961-62*, SO 1961-62, c 93.
[5] *Life Together, supra* note 3 at 75.
[6] Bill 188, *An Act to provide for Rights of Handicapped Persons*, 3rd Sess, 31st Leg, Ontario, 1979 (first reading 22 November 1979) [Bill 188].
[7] Elgie reverses stand on bill for disabled", *The Globe & Mail* (8 December 1979) 5 online: Globe and Mail: Canada's Heritage from 1844.
[8] Ontario Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl, No 133 (11 December, 1979) at 5361 (Robert Elgie).

What was bandied about in Bill 188? Pre-1979, the Ontario *Human Rights Code* included in its language persons being discriminated against based on race, creed, colour, nationality, ancestry or place of origin. In 1972, the original language was amended to include sex and marital status. However, it did not specify handicapped persons. Bill 188 mirrored Ontario *Human Rights Code* language but with the inclusion of handicapped persons.

> 1. No person shall knowingly discriminate against a person on the ground of a handicap so as to deny or qualify the equal enjoyment by that person of services, goods and facilities.[9]

The Fall of 1980 revealed to me the "fork in the road" so common to legal research. Bill 188, which did not go beyond first reading, re-emerged on the *Human Rights Code* trail as Bill 209 while a new Bill 188, amending the *Highway Traffic Act*, entered the story as the possible enabler of O Reg 629. With a foot on both trails I contemplated which way I would go.

Bill 209: Almost There

Bill 209, *An Act to revise and extend Protection of Human Rights in Ontario*[10] was introduced on November 25, 1980 to address the problem that "some substantive issues discussed in *Life Together* have not been dealt with."[11] Bill 209 dealt with protecting the disabled against discrimination in employment, accommodation, and the provision of goods and services. The debates reveal once again criticisms similar to those directed at Bill 188 from the previous year. Groups such as the Coalition on Human Rights for the Handicapped, argued against singling out the disabled in a separate act rather than including the disabled in the Ontario *Human Rights Code*. The discussions around what constituted "services" danced around necessary changes to other pieces of legislation.[12]

April 1981, less than two months later, marked the beginning of the International Year of Disabled Persons. Bill 209 disappeared in a standing committee and re-emerged the next April as Bill 7, *An Act to revise and extend Protection of Human Rights in Ontario* (introduced April 24, 1981).[13] It was proclaimed in force June 15, 1982 as the new *Human Rights Code* for Ontario.[14]

Bill 188 (The Next One)

On November 14, 1980 *An Act to amend the Highway Traffic Act* [15] was introduced by the Minister of Transportation and Communication, J.W. Snow. Although it dealt mainly with motor vehicle permits and number plates, section 13 of the bill discussed new safety regulations (my underlines and crossouts):

> 13. - (1) Clause a of subsection 1 of section 60 of the said Act is repealed and the following substituted therefor:
>
> [60.-(1) The Lieutenant Governor in Council may make regulations,]
>
> (a) requiring the use or incorporation of any device or any equipment, in or on any vehicle or any class of vehicle, that may affect the safe operation of the vehicle on the highway or that may reduce or prevent injury to persons ~~in a vehicle on a highway or to persons~~ using the highway, and prescribing the specifications and regulating the installation thereof.[16]

Although these amendments are mainly concerned with individuals who have lost their right to drive after suffering a medical condition such as a heart attack, MPP Montgomery Davidson (Member, Standing Committee on Social Development) spoke about the importance of safely transporting handicapped persons:

> Section 13 deals with the handicapped, and my colleague from Bellwoods (Mr. McClellan) will be speaking to that section a little more specifically than I. We in this party are pleased to see that the minister has included this amendment in the bill, given that over the years there have been very serious accidents and implications resulting from the transportation of handicapped persons. I hope passing this amendment will make that a little bit better for those people.[17]

One comment from the debates for this bill gave me the green light to proceed in this direction:

> Mr. McClellan: Mr. Speaker, I have a question for the Minister of Transportation and Communications arising out of the coroner's inquest into the death of Linda Ann Pyke who, according to the inquest, died as a result of head injuries sustained while falling from the passenger seat of a wheelchair-carrying van last November 29.
>
> I want to ask the minister if he is aware of the recommendations made by the coroner's jury, specifically that there be amendments to the Highway Traffic Act covering six points but particularly to introduce licensing standards for all companies operating transportation services to the handicapped and dealing as well with safety devices. Is the minister aware of those inquest recommendations? When can

[9] *Bill 188, supra* note 6 at s 1.
[10] *Bill 209, An Act to revise and extend Protection of Human Rights in Ontario*, 31st Leg, Ontario, 1980, (first reading 25 November 1980).
[11] Ontario Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl, 4th Sess, No 122 (25 November, 1980) at 4593 (Robert Elgie).
[12] Ontario Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl, 4th Sess, No 135 (9 December, 1980) at 5122 (James Renwick).
[13] Bill 7, *An Act to revise and extend Protection of Human Rights in Ontario,* 1st Sess, 32nd Leg, Ontario, 1981.
[14] *Human Rights Code,* 1981, SO 1981 c 53.
[15] Bill 188, *An Act to amend the Highway Traffic Act,* 4th Sess, 31st Leg, Ontario, 1980, cl 13 (first reading 14 November 1980).
[16] The explanatory notes accompanying the first reading of the Bill read: "Section 13. The provisions, as recast, clarify the authority to make regulations in respect of the use of safety devices and equipment in vehicles."
[17] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 31st Parl, 4th Sess, No 138 (11 December, 1980) at 5213 (Montgomery Davidson).

> we expect the amendments to the Highway Traffic Act that were recommended January 29, 1980?[18]

The response from James Snow, Minister of Transportation and Communications was that:

> Certainly, certain action is being taken on some of those recommendations and certain actions were in the mill of my ministry being developed.
>
> For instance, we are developing standards for safety devices through the Canadian Conference of Motor Transport Administrators - this was discussed at our meeting of CCMTA ministers about two weeks ago - safety standards for special van-type vehicles for transporting the physically handicapped. We are also preparing special guidelines for the training courses for drivers for this type of vehicle. These things are all being worked on at present.[19]

Mr. McClellan did push for more details about amendments to the *Highway Traffic Act* but did not get specific answers.

Enter the Poet

I googled Linda Ann Pyke and found this lovely old .pdf file of a 1979 issue of "The Communicator Magazine" from Springhill Nova Scotia (complete with an ISSN 1381-095X). The editorial by Bob Eby is a memorial to Linda Pyke, a 31 year-old Toronto poet, wheel-chair bound since childhood.

The editor writes "[w]hen she spilled from her wheeled-chair and died on a Toronto street in the month of December, she left at least one person behind knowing her truth."[20]

I referred back to the RSO 1970 *Highway Traffic Act* in order to compare the amendments found in Bill 188. However, the more useful clarification came from comments in the debates made by Ross A. McClellan, MPP (Select Committee on the Ombudsman):

> Mr. Speaker, I want to speak on the principle of one part of the bill, and that has to do with section 13, which permits the ministry to pass regulations governing the use of vehicles for the physically handicapped. One would not know it from reading the section, but that is what I understand the section is designed to accomplish. This is something that is very long overdue. The failure of the government to act sooner on this matter has had serious and, in fact, tragic consequences.
>
> What we are dealing with in section 13 is the implementation of a recommendation of the coroner's inquest into the death of Linda Anne Pyke, who died while riding in a van that belonged to a network of private van services for the physically handicapped in Metropolitan Toronto. The coroner's inquest verdict recommended that legislation should be introduced to amend the Highway Traffic Act to regulate vehicles carrying wheelchairs, and then made a number of specific recommendations.
>
> I am in the difficult position of not knowing what the regulations are going to be, because all we have before us is the power given to the ministry to pass the regulations. I want to stress the seriousness of the problem and make a number of suggestions to the minister which I hope he will incorporate in the regulations when they are promulgated.[21]

James Wilfred Snow, MPP, Minister of Transportation and Communications continued:

> "The new regulations will help in terms of making sure that there are safety devices available in those buses, that there are proper tie-down or hold-down facilities and many other things."[22]

I had the text of the regulation in front of me but what I still needed was this coroner's inquest report. I went back to an old "Ontario Legal Desk Book" - from 1999 - that sat on my office shelf. I remembered sticking a bookmark in there about how one contacted the Coroner's Office. In the end I googled "Ontario Office of the Chief Coroner" for the website and current contact information. The contact information was more readily available from the Ministry of Community Safety and Correctional Services site (occ.inquiries@ontario.ca) under the heading "death investigations" - "Common Questions about Death Investigations."

I sent in a request for the inquest report and heard back right away that the file would be pulled and sent to me. The actual report was only two pages long. The verdict read that Linda Pyke's death was a result of head injuries "sustained accidentally falling from the passenger seat of a wheel chair carrying van while being loaded into the van at the Ross Building at York University on 29 November 1979"[23]

The verdict is followed by the following recommendations:

1. That Legislation be introduced amending the *Highway Traffic Act* to Regulate wheel-chair carrying vehicles with respect specifically to:

> (a) Introduction of licensing standards for all companies wishing to operate transportation services for handicapped persons.
> (b) Restraint devices which apply both to wheelchairs and to any passenger anywhere situate within the vehicle, preferably permanently affixed and retractable.

[18] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 31st Parl, 4th Sess, No 93 (20 October, 1980) at 3539 (Ross McClellan).
[19] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 31st Parl, 4th Sess, No 93 (20 October, 1980) at 3539 (James Snow).
[20] Bob Eby, "Editorial", The Communicator Magazine 8:6 (1979), 1, online: <http://penalpress.com/wp-content/uploads/communicator_V8_6_1979.pdf>.
[21] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 31st Parl, 4th Sess, No 138 (11 December, 1980) at 5214 (Ross McClellan).
[22] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 31st Parl, 4th Sess, No 138 (11 December, 1980) at 5218 (James Wilfred Snow).
[23] Report of Inquest into the Death of Linda Anne Pyke (January 29, 1980) (Ministry of Community Safety and Corrections Services, Office of the Chief Coroner).

(c) Safety approved loading and unloading mechanisms.
(d) Safety approved grab bars, hand holds and interiors, all of which should be padded.
(e) Safety approved vehicle construction including specific heights, widths and steps, preferably retractable.
(f) Passenger seats be equipped with vertically- lifting arms and the "Co-Pilots" seat be able to swivel and of a type commonly known as a Captains Chair.
(g) All wheel chairs carrying vehicles bear exterior markings making them easily identifiable for traffic courtesy and vehicular and pedestrian safety

2. That all drivers of wheelchair carrying vehicles be required to complete a comprehensive approval training program including first aid specifically relating to handicapped persons, prior to being in charge of the vehicle.

3. That all vehicles used commercially to transport the handicapped undergo regular government inspections to ensure that safety standards as legislated are maintained.
4. That the Ministry of Transportation and Communications be notified of these recommendations forthwith and that all Municipalities in Ontario particularly Toronto be also notified in order to consider implementation of the foregoing at the earliest possible time.

5. That the Ministry of Transportation meet with representatives of the handicapped community in order to receive their recommendations regarding design and safety of wheel chair carrying vehicles. [24]

Many of these recommendations did end up in O Reg 629, in particular language about "wheelchair securement devices."[25] The regulation was amended over time (big revision in 2011)[26] and became, as regulations are prone to do, more technical. References to standards were introduced to the regulation from the Motor Vehicle Safety Act as well as from the Canadian Standards Association (CAN/CSA-D409...- Motor Vehicles for the Transportation of Persons with Physical Disabilities) (padded grab bars)

This was an interesting journey into the past. I could continue on with the research but I think I did answer the initial question — just a few years later than it was asked. Who knows, how often do we get the same question twice in a law library? (Well, almost never).

[24] *Ibid* "Recommendations"
[25] O Reg 167/81, s 6.
[26] O Reg 172/11.

IIII Moving The Library: A Solo's Reflection**

By Helen Mok*

Abstract

This article is a reflective piece on the experience of moving a law firm library to a new building by a solo librarian. It touches on topics such as the planning process, design of the library space, the moving experience, and recommendations for others.

Cet article représente une réflexion sur l'expérience de déplacement d'une bibliothèque de cabinet d'avocats dans un nouveau bâtiment par un bibliothécaire solo. Il aborde des sujets tels que le processus de planification, la conception de l'espace dans la bibliothèque, le déménagement, et des recommandations.

In the fall of 2014, I moved my firm's Calgary office library to a new building. I am a solo librarian, and it was also the first time I had ever been involved in a library move, let alone having responsibility for overseeing the entire process. This article recounts my experience and offers some suggestions to others who might find themselves in charge of moving their library (as solo librarians or not).

Initial Planning

I joined Parlee McLaws LLP in February 2013. As I was going through my office and all the information left by the previous librarian, I came across a printed email sent by the COO to everyone at the Calgary office in late 2012 announcing that we would be moving offices in the fall of 2014. This was when moving the library first appeared on my radar, and my initial thought was that I needed to go and talk to the COO right away and get more information about the new library space and how the move would actually occur. This didn't happen – I procrastinated and put the task off. In part, I was busy getting up to speed in other aspects of my position and internalizing a lot of new information. But to be honest, I was also quite intimidated by the concept of a library move so I decided to ignore it temporarily. I felt there was still a significant amount of time before I needed to start addressing the issue. The COO's email also stated that he would be contacting various individuals and departments to discuss the move as time progressed so I assumed he would contact me in due course.

If any readers groaned and shook their heads in dismay at the last two sentences of my previous paragraph, I don't blame you. Now that I've gone through the experience of moving a library, I would not recommend delaying speaking to those in charge and instead suggest gathering relevant information as soon as possible. Even if you're only told

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that no information is available yet, you may get a better sense of general timelines so you can follow up and ensure that library needs are considered by the moving committee. Being proactive and inquiring about information also lets those in charge know that there may be specific issues around moving a library that need to be considered.

By September 2013, I had not heard any additional information regarding our office move so I approached the COO to ask him for a copy of the new library's layout and an outline of how the library would be moved. This was when I began to understand the full scope of what moving the library would entail for me. And thank goodness I received the new library layout when I did because it kickstarted a process of redesigning the new space to better fit my needs. When I met with my COO to discuss the move, I learned three main pieces of information: what the new library would look like, that we were reusing our library shelving, and that the moving company would be responsible for moving the physical collection of books as well as dismantling, moving, and rebuilding the library shelving. Each piece of information presented its own set of challenges and benefits that required some communication and planning to ensure a smooth move.

New vs. Old Library Space

In the original design I was given, the new library had 38 bays of shelves. At the time, I had 80 bays in my library. My first concern was maximizing shelving so I went through several redesigns to add additional shelving bays. As part of this process, I requested that a second entrance to the library be walled over to support additional shelving, removed a closet from the design to use that wall space for shelving, and modified the placement of the back-to-back shelving ranges to add more bays. Unfortunately, there was a rather large support column in the middle of the library that couldn't be moved. In the final design, the support column blocked one of my aisles and took away two shelving bays but it couldn't be helped. In the end, I was able to increase my shelving to 47 bays. Additionally, I also modified the consultation space in the library (getting rid of computer terminals in favour of clear desk space), confirmed over the counter shelving to accommodate more material, and replaced a second desk in my office with additional shelving.

One change in the new library that I didn't truly understand until after I settled into the new space was the visibility of the librarian's office. My old office was visible from the library entrance, and I had a glass wall and door that further provided visibility and opened up the area. My new office is located at the back of the library and once the shelving was reassembled and the books re-shelved, I realized that my office was completely concealed from the library entrance. Most of my lawyers will walk back to my office to speak to me about a request so I know they know how to reach me in person, but I do wish my office was more visible as an overall aid in promoting me and my services. Another change is that I no longer have a door. While I don't feel I need a door to provide noise control (the shelving does a great job of that), I do wish I had a door for privacy in certain occasions (e.g. when speaking to my Edmonton colleague about library issues/operations over the phone or taking part in a conference call). Now that I understand how these aspects of my office affect my work, if I had to go through this experience again, I would advocate for changes in their design early in the planning process.

During the redesign process, I communicated with the COO, my supervisor, and the designers making sure to keep everyone in the loop of any changes and suggestions. I was fortunate that all parties were open to my involvement and recognized the insight I brought to the table in terms of designing the new library space, but my experience also highlights the need for library staff to be proactive in inserting themselves into the design process, if possible. Architects and interior designers may focus on the aesthetics of a space without truly understanding its practical functionality, especially in a library, so it is very important that library staff who know how the space is used and what it needs to accommodate, to provide input in the design process.[1] If you wait for an invitation, it may not come or come too late. Also, if it's possible to communicate directly with the designers, that is often more efficient than routing your questions and suggestions through your organization's contact with the design company. The designers can quickly explain or confirm measurements and tell you whether something will work or not – just make sure all appropriate individuals are copied on the messages.

Weeding the Collection

After finalizing the number of shelving bays in the new library, I was still faced with a rather large overall reduction in shelving space so I had to engage in a massive weeding project. This is another reason to ask for the new library design and confirm shelving space as early as possible. In most cases nowadays, library moves result in loss of shelving space, and it's important to know how much you will lose so you can begin weeding your collection accordingly. I had already started a weeding project over the summer, but I had to ramp it up considerably for the move, both in terms of the amount of material to be weeded and how quickly it needed to be done. My first step was to determine the number of bays by material in my current collection and prioritize the print material by category – what material had to be kept and what material could be weeded. My secondary texts and seminar material needed to stay and currently took up 33 bays. In theory, everything else was weedable and I had to fit all remaining material (legislation, periodicals, reference material/directories/newspapers, and Canadian/English reporters) onto the other 14 bays. In terms of priority of weedability, Canadian reporters were at the top of the list followed by English reporters, periodicals, and reference material/directories/newspapers. In my mind, legislation was not weedable and so another 9 shelving bays were added to the existing 33 bays which brought my total to 42. After reviewing the remainder of my material, I decided I could

[1] Joanna M Burkhardt, "Do's and Don'ts for Moving a Small Academic Library: Fourteen Helpful Tips" (1998) 59:7 College & Research Libraries News 499 (Library Literature & Information Science Full-Text).

weed all Canadian reporters, a large portion of my English reporters, and a selection of my periodicals to fit the material into the 5 remaining shelving bays. While I intended to keep reference texts, seminar material, and legislation, I did still review and weed this content to maximize shelving space and avoid moving material that I would end up discarding later.

After matching my material to the number of shelving bays in the new library, I then decided how I would arrange and shelve the material. Since I was reusing my shelving and the designers had drafted the new shelving layout to exactly match my existing shelving (i.e. each shelving bay was represented by a block that matched my shelving dimensions), it was easy to map out where I would shelve certain material and how many shelves within a bay would be allocated to that material. Once this was done, I decided to weed my collection and shift/shelve the remaining material to exactly match the new layout in terms of number of shelving bays and shelves per bay. My reasoning being that once this was done, come moving day, all I would have to do was tell the movers which bays to move and both books and shelving could be dismantled and packed away quickly without too much thought.

This was where I first ran into an issue between the old vs. new layout and reusing my shelving. As I was mapping out where I would shelve material in the new library, it occurred to me that the new library layout included more single-sided wall shelving than my current library. My existing shelving is no longer manufactured, and I couldn't swap in any of the back-to-back, freestanding shelves because wall brackets were required. As I contemplated where I would try to find wall brackets to fit my shelving and create more wall shelving, I happened to walk by some shelves outside my library that housed client files. I noticed the wall shelving matched the library's shelving and used the same wall brackets. I counted the number of bays and they matched the number I was short by in the new library. After consulting our office administrator, I was delighted to learn that shelving was free to take as no one else was planning on re-using it. Problem solved – or so I thought. This wall shelving issue would rear its head again once I had moved to the new office.

With my shelving issue apparently resolved, I jumped into the weeding process. Following some advice from my Edmonton colleague, I arranged for delivery of disposal bins provided by the company that does our shredding. Two 64 gallon bins were delivered to the library every two weeks beginning in October 2013. I would fill the bins with discarded material and they would be replaced bi-weekly. I initially thought this schedule would be more than adequate to see me through the entire weeding process, but when March 2014 rolled around, I was still in the process of getting rid of case law reporters and had not even moved to weeding my reference texts yet. While the 64 gallon bins could accommodate a lot of loose paper, putting bound books into the bins filled them up rather quickly. I moved to a weekly delivery schedule, and once I moved to weeding general reference material, any bindered material was taken apart and the paper recycled and binders put in the trash rather than placed into the disposal bin so I could maximize the space. Even with all of these strategies, I didn't complete all of my weeding until the end of June 2014. Once the weeding was complete, I devoted my time to shifting and re-shelving the remaining material to match my new library layout which took until the end July. With the completion of this task, I felt like all of my pre-move activities were complete and I could finally breathe a sigh of relief.

The Moving Process

The moving process was quite easy for me as I didn't really need to do anything except supervise the movers over a two day period. I had already packed up my office and that material was being moved as part of the overall office move. I only needed to supervise the move of the print collection which consisted of me telling the movers what shelving bays needed to be emptied, dismantled, and moved over to the new building. I didn't even need to pack the books – that was all taken care of by the moving company. Once at the new office, the re-assembling of the shelving and unpacking of the books was also done by the movers. All I did was provide a copy of the layout to help them determine where to position the shelving bays and provide a comment here and there to direct them on how to reassemble the shelving to my specifications. The main reason for this simplicity was that the moving company our firm hired was already very familiar and experienced with moving corporate libraries. They had proper moving carts and processes in place to ensure that my collection was packed and unpacked to facilitate re-shelving the material properly. As the library collection was re-assembled in the new space, I shelf-read to double-check that everything was shelved properly and only found two small instances of mis-shelving by the movers.

After arriving at the new office, the issue of wall shelving appeared again. I came into work one day and was informed that the movers had run out of wall brackets for my wall shelving which meant I was short five shelving bays. I was astounded! How could this happen?! I had counted the number of wall shelf bays in the new layout and matched it to the number of bays I could bring over and the numbers were the same. However this mismatch had happened, there was nothing I could do about it but source and order new wall shelving as the movers continued on unpacking and shelving as much of the print collection as possible. Over the next couple of months as I researched different vendors for wall shelving, placed an order, and finally had the new shelving delivered and installed, I came to realize how this shortage had occurred. My existing wall shelves are composed of two vertical wall brackets screwed into the wall and individual shelves slotted into holes in the brackets at a certain interval. In my old library, the wall shelving was flush against two walls without any shelving wrapping around corners. In my new library, I had wall shelving wrapping around the entire room so at each corner, two wall brackets were used up that could have supported shelving if they were anchored against a flat wall. Once I realized this, it made complete sense why I was short wall shelving: I had

counted the number of shelving bays when I should have counted the number of wall brackets instead. Although this problem initially caused me great anxiety and the process of getting the new shelving took much longer than I anticipated, in the end, I solved the problem at a reasonable cost to the firm. The day that I unpacked and shelved the final moving cart of books and put up the last signage in my new library felt great! And I have to thank the moving company for being patient with me as they had to wait several months longer for the return of five large moving carts.

Final Reflections and Advice

As previously mentioned, this was my first library move and although I'm a planner by nature and usually engage in substantial research prior to doing something new, I didn't really do much systematic research or consultation with colleagues on this project. In fact, I reviewed more literature on library moves to write this article than I did when planning and executing my move! There were specific situations in which I asked around for advice (e.g. sources of library shelving), but overall, I approached and executed the project according to my own plan which turned out to closely match the "Walter Way" of moving a library.[2]

I think the overall move was substantially easier for me because of two factors: 1) I was reusing my shelving and didn't have to worry about taking linear measurements of my collection and matching it to new shelving, and 2) an experienced moving company basically took care of the actual moving process of my library. I am thankful that my first library moving was relatively smooth save for a few hiccups, but I still learned a lot from the experience. If there is one piece of advice I would impart to other information professionals who find themselves having to move a library, it would be to inquire at the earliest opportunity about the new library design and if at all possible, provide input and be involved in the design and moving process. You will know your collection and the needs of your library space the best, and it's important to bring these issues to the attention of the moving committee, management, or the moving company so they can be properly addressed. And if you do need some advice about moving a library, particularly if you're a solo librarian, don't hesitate to reach out to your network of colleagues because they are more than willing to share tips and link you to resources. There is also a tonne of existing literature out there on library moves so you won't find yourself searching in vain for advice and suggestions. Finally, have confidence in yourself and your process because even if you run into problems or surprises during the move, in the end, it will add to your knowledge and experience going forward.

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[2] Walter Nelson, "Getting a Move on: Some Thoughts on Moving a Library Collection" (2010) 18:6 Searcher 8 (Library Literature & Information Science Full-Text).

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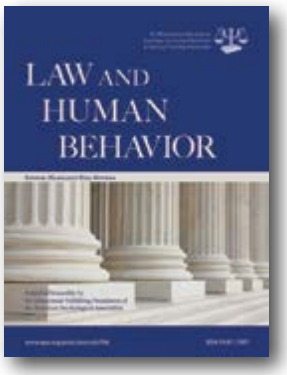

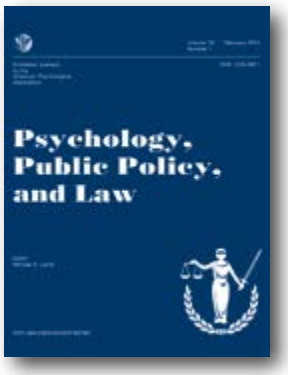

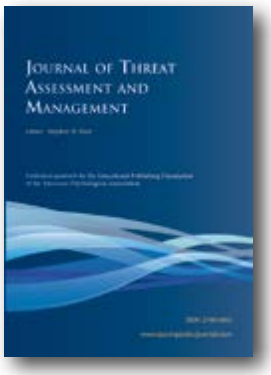

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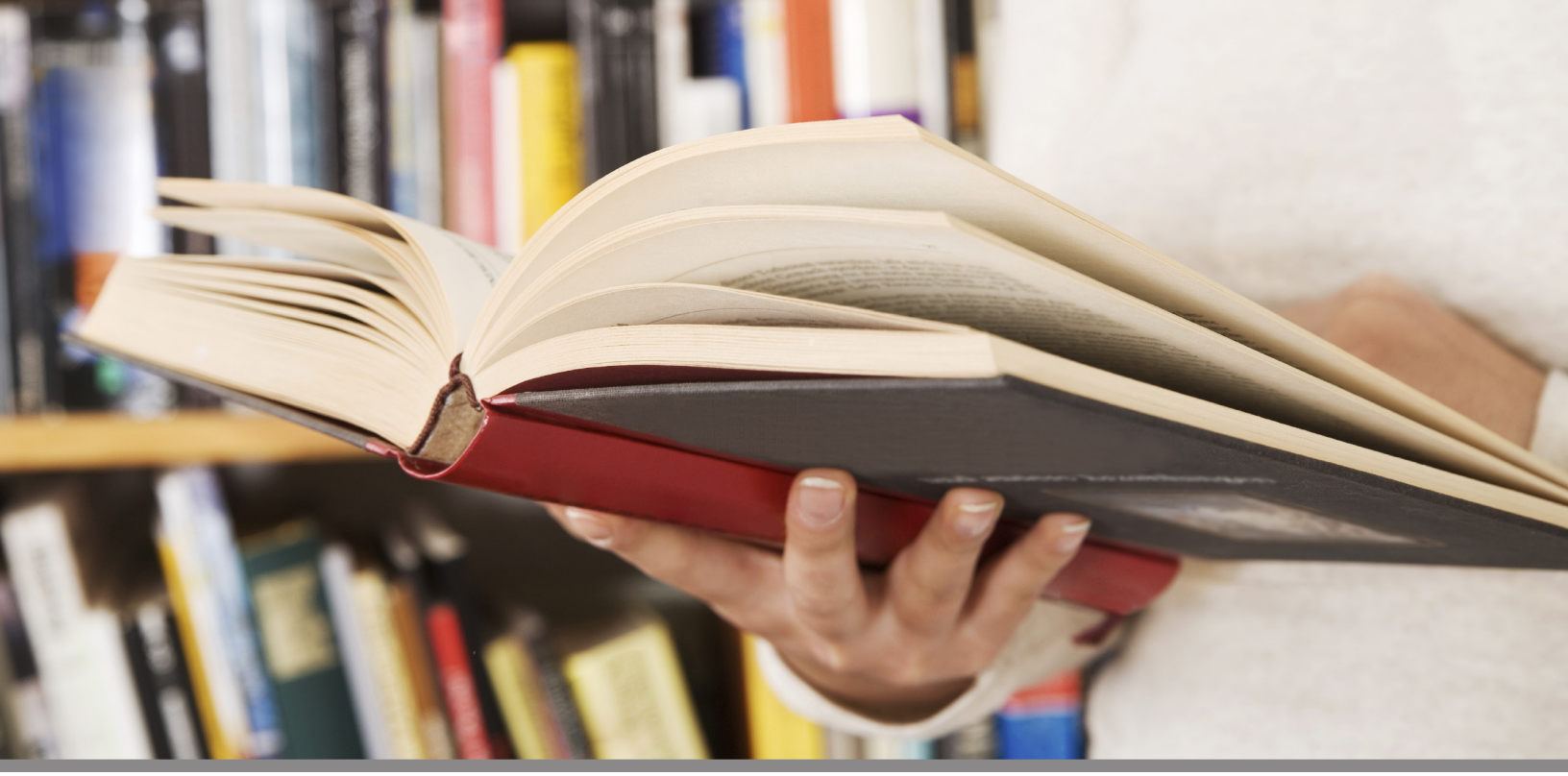

III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

Beyond Magna Carta: A Constitution for the United Kingdom. **By Andrew Blick. Oxford and Portland OR: Hart Publishing, 2015. x, 303p. Includes notes and index. ISBN 978-1-84946-309-6 (hardcover) $US 43.00.**

What was I expecting when I began to read Beyond Magna Carta? Probably a fairly dry book about an ancient document central to a unique, democratic system of government, and of incidental interest to Canadians. I was wrong. This book is so much more, and corrects many misperceptions about the Magna Carta. What is more, it is neither dry nor mired in ancient history. Reading this book provides insight into current political and constitutional issues in the United Kingdom and their striking parallels in current Canadian political and constitutional debates.

Beyond Magna Carta was written by Dr. Andrew Blick, who, in addition to his posts at King's College London and Cambridge University, has been research fellow to a parliamentary inquiry into the possibility of introducing a written constitution for the United Kingdom (2010-2015). He has also been advisor to the All-Party Parliamentary Group on Reform, Decentralisation and Devolution. Blick encapsulates his book as follows:

> This book argues that, by taking Magna Carta as our cue, we can use the past to assist us in understanding how we came to be where we are, and the way forward. Problems the UK faces at present are part of a process that stretches back to the 1950s and the beginnings of the full post-imperial era. The hunt for clues to potential solutions can begin far earlier still, in the sixth or seventh centuries. Rather than imprisoning us, the past can offer release. (p 4)

Beyond Magna Carta is primarily organized chronologically, especially Part I which sets out the path of written constitutional documents and the forces that shaped them from Anglo-Saxon times, through a unified England, the Interregnum, to the United Kingdom and to the beginning of the twentieth century. Part II examines the "turmoil" of the past half century that is causing "radical constitutional transformation" in the United Kingdom, and Part III considers the merits of a "written" constitution and the issues that need to be addressed to achieve that end. The United Kingdom's constitution includes many written documents, but by "written constitution," Blick means a single document, or connected series of documents, that are expressly created to be a constitution (p 19).

Blick sets out just enough of the history of England and the United Kingdom to make his points clearly and succinctly and to support his arguments cogently throughout the balance of the book. He provides insight into the causes of various past and present constitutional events and the nature of the responses to and consequences of those events. When Blick discusses contentious issues, he presents a balanced perspective.

The book is relevant to Canadians because it addresses issues arising from governing a multinational state with differing traditions, and discusses devolution of portions of the state. It also examines the concept of parliamentary sovereignty and its relationship to the role of the judiciary,

considers judicial appointments, bi-cameral legislatures, and the relevance and effectiveness of a first-past-the-post electoral system in the current age. Of additional importance to Canadians is the matter of the ease (or difficulty) of amending a constitution, written or otherwise. These issues are all current topics in Canadian discourse and the book provides insight into them while explaining how the United Kingdom has arrived at its current situation.

In addition to being well-written, *Beyond Magna Carta* has a detailed and helpful table of contents and index for easy navigation. Also helpful are the short summaries at the end of each chapter. There is no bibliography, but sources, both primary and secondary, are cited fully throughout in footnotes.

I recommend this book to all with an interest in British and Canadian history, political science or constitutional law. While scholarly, it is easily read, with enough background for those who may be unfamiliar with the United Kingdom's history to follow the development of Blick's arguments. It would be a valuable addition to larger public libraries as well as to academic ones. Blick's next book, *The Codes of the Constitution,* will be published by Hart in May 2016, and I look forward to reading it.

REVIEWED BY
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***Chinese Comfort Women: Testimonies from Imperial Japan's Sex Slaves* (Oxford Oral History Series). By Peipei Qiu (Author), Su Zhiliang (Contributor), Chen Lifei (Contributor). Vancouver: UBCPress, 2014, 280 p. Includes Notes, Bibliography and Index. ISBN: 9780774825443 (hardcover) $90. I ISBN: 9780774825450 (softcover) $32.95.**

Chinese Comfort Women by Vassar College professor Peipei Qiu and two China-based co-authors, Su Zhiliang and Chen Lifei, contains the brave testimonies of twelve Chinese women forced into prostitution in the 1930-40s. These women were only a few amongst the numerous "comfort women" (an English translation of the Japanese euphemism *ianfu*) who were forced to serve as sex slaves during the nearly fifteen years of Japanese military occupation of China. While we are more aware of the use of the Korean women as sex slaves by the Japanese Imperial Amy during WWII, this is the first English language monograph recording the memories of Chinese comfort women. Before this text, the only autobiographical books that were widely read were *50 Years of Silence* (1994) by Jan Ruff-O'Herne (Indonesia), and *Comfort Women: Slave of Destiny* (1996) by Maria Rosa Henson, a Filipina.

Although WWII took place from 1939 to 1945, for the Chinese the war was known as the Second Sino-Japanese War or the Asia-Pacific War and it lasted from 1931 to 1945. On the heels of its military conquests, the Japanese government coerced tens, perhaps hundreds, of thousands of women and girls from across Asia into a brutal system of sexual slavery.

The book's structure is comprised of three parts. The first is historical context, explaining how Chinese women and girls became comfort women. The second part includes narratives from interviews with surviving women that were conducted over a ten-year period. The final part of the book describes the postwar experience of survivors and the attempts to obtain justice for those who were victimized by the Japanese military.

Although tempered somewhat by the academic approach, the first-hand accounts present a very intimate and painfully realistic look into traumatic sexual abuse experienced by the Chinese comfort women. It makes for compelling albeit harrowing reading. It is impossible not to empathize with the women and their determination to see that their stories are never forgotten.

Especially heartbreaking to read is the second part of the monograph which highlights the brutality of Japanese troops. These accounts are shocking and sickening. The atrocities committed against the comfort women were of the worst kind imaginable, surpassing any fictional description of torture used to extract information. The difference between these two scenarios, of course, is that the systematic mistreatment of Chinese comfort women was done solely for the off-duty 'fun' or 'entertainment' of soldiers.

With the rise of the redress movement in Asia in the early 1990s, this issue received worldwide attention. Since then, survivors have taken legal action against the Japanese government in seeking compensation. Unfortunately, as a consequence of Japan's continued denial of government and military involvement in the sexual slavery system, bringing suit has proven to be largely unsuccessful. As time passes, fewer witnesses to these atrocities remain alive. This cruel miscarriage of justice perpetuates the suffering of past crimes on the part of the victims and their families.

Chinese Comfort Women is significant on several fronts. It provides the first English-language testimony from twelve ordinary, yet resilient, Chinese women about their personal experiences. Socially shunned and personally shamed, these stories were suppressed in communist China for many years after the war. The physical, social, economic, and emotional harm suffered by the comfort women is still being felt today.

The authors ask a fundamental question: why has justice been denied to these women, both in China and in Japan? Revisiting this difficult but necessary subject allows readers to better understand how and why women were bought, sold, and tortured – in effect, treated as commodities – at the hands of both Chinese and Japanese oppressors.

This well-researched account should appeal to readers with an interest in military history or wartime gender studies.

Sexual exploitation and women's rights are global problems no less relevant today than they were in the 20th century. *Chinese Comfort Women* applies an historical perspective to these important issues, along with exemplary scholarship and humanitarian activism. Academic readers will find detailed notes, bibliography and index underpinning the arduous search for historical truth. It should be required reading in any modern East Asian history or gender studies curriculum.

REVIEWED BY
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Employment Equity in Canada: The Legacy of the Abella Report. **Edited by Carol Agocs. Toronto: University of Toronto Press, 2014. 335 p. ISBN 978-1-4426-1562-5 (paper) $34.95**

The Abella Royal Commission on Equality in Employment was struck in 1983 at a very different time in Canadian Society. The resulting *Equality in Employment: A Royal Commission Report* referred to as the "*Abella Report*" and the federal *Employment Equity Act* are the focus of this publication. The book grew out of a conference held in 2009 commemorating the twenty-fifth anniversary of the release of the Abella Report. The editor, Carol Agocs, professor emerita in the Department of Political Science at Western University, wrote the Introduction to the book providing context for the papers that follow.

The collection is sweeping in its scope, reflecting on the history and influence of the *Abella Report* some thirty years after its release. The authors include legal scholars and practitioners with a wealth of experience in this field. Together, they bring to life the past, present and future challenges of employment equity in a comprehensive and engaging fashion.

The articles also offer perspective on the American experience, the *United Nations Convention on Persons with Disabilities,* unionized employees, and vulnerable workers. For example, the paper by Gerald Hunt, David Rayside and Donn Short entitled "The Equity Landscape for Sexual Minorities in Canada" provides insight into sexual orientation and gender identity through the employment equity agenda lens. In addition, the paper by Brian Burkett "Employment Equity: The Next Thirty Years" offers an overview of the current status of employment equity legislation and a view of the potential impact of workplace structures and norms on the advancement of employment equity. The best manner in which to support and move forward employment equity in the future are explored by Burkett.

The Foreward, penned by Justice Rosalie Silberman Abella, reflects on the intensity of the process undertaken by the Commission including personal comments on the challenges she experienced, such as spending a whole month trying to define what equality meant for the first chapter of her Report. This is a welcome personal touch. The Foreword helps bring to life the Report reflecting on the implementation of the equality provisions of the Charter of Rights and Freedoms which came into effect in 1985. Justice Abella discusses the challenge she faced with a lack of a body of Canadian jurisprudence addressing employment equity and the freedom this provided her to give voice to what she had heard in her consultations.

This collection is a compelling read, and a very fitting way to recognize the importance of the Abella Report. It will appeal to scholars and those engaged in this field as well as those addressing related policy issues. It should also assist practitioners in gaining a better understanding of the context of the current employment equity paradigm in Canada.

REVIEWED BY
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Miller Thomson LLP

Every Cyclist's Guide to Canadian Law. **By Craig Forcese and Nicole LaViolette. Toronto: Irwin Law Inc., 2014. 218 pages. ISBN 978-1-55221-384-1 (paperback) $28.00. ISBN 978-1-55221-385-8. (e-book) $28.00.**

With increasing gridlock and more drivers and cyclists sharing the road across the country, *Every Cyclist's Guide to Canadian Law* is a no-nonsense guide covering the basics of cycling law for everyone who occupies space on the road. The authors, Craig Forcese and Nicole LaViolette, are professors at the Faculty of Law, University of Ottawa. Both are avid riders who draw from their personal experience of recreational and competitive riding to provide examples illustrating cycling legislation across Canada.

A full list of applicable statutes and regulations appears at the start of the book. The book, itself, is organized into seven chapters. Topics covered include what one would expect based on the book's title: riding your bicycle, falling off your bicycle, losing your bicycling, and, for the more serious cyclists, running your bicycle club, and racing your bicycle. The book is about cycling law and as such, does not cover how to buy a bike (though safety standards of bikes are touched upon), how to use the gears on a bike or the type of diet one should be on if one was training for a bike race.

Even though it is a guide written by lawyers, there are no assumptions that one must be a lawyer to understand the legalese as it's written in plain English. For those unfamiliar with the Canadian legal system, the foundation is set with an introduction to the Canadian constitutional system, touching on the difference between common law and civil law, and the Canadian court system, making this book ideal for citizens and travelers to this country who wish to educate themselves on the cycling rules should they consider riding in Canada. The structure is consistent throughout the text: each chapter has a handy section neatly summarizing key points to serve as a quick guide on that topic and to refresh the reader's memory if referred to at a later date. There is

also a conclusion followed by a thoroughly-researched end notes section which cites case law and articles to illustrate the chapter's points.

The guide is useful in that illustrations are included (pp 27-28 – cycling road signs and markings) along with a concordance table (pp 56-57 – provincial and territorial laws governing conduct at the scene of an accident). However, it would have been a stronger text in this reader's view to have additional concordance tables to make it even easier for readers to find information quickly (e.g. whether helmets, bells, lights, and reflectors are mandatory in the province they wish to cycle in). As it stands, there are a smattering of references to different provinces or territories under the various topics with a slight leaning towards Ontario legislation (e.g. p 30 – passing a streetcar or a bus) likely due to the knowledge of the authors' home province. Further work is then required on the reader's part to follow up on the end notes and look up the laws in other jurisdictions.

The book isn't all serious; however, as the authors often poke fun at the laws or even at themselves. As an example, they mock Ontario's bell/horn requirement, saying "...neither of us can think of any purpose to be served by a device that may require us to adjust our grip in a manner that shifts our hand from brake to bell/horn (or in Ontario, "gong"), in a faintly pathetic effort to tinkle at a city bus" (p 18). When it comes to the unpleasantness of losing a bike to theft, the authors scoff at how valuable all parts of the bike are except for the bell. Nicole LaViolette, for example, "had just about every possible part stolen from her not-so-fancy commuter bike over the last few decades: wheels, seats, lights, bar extensions (but they always leave the bell that she would gladly give up)" (p 103). And the silliness shines through in a section on riding naked (p 32).

The authors tend to go overboard with citations, and it almost seems as if they try a little too hard to dig up examples to fit into the main body of the text. Chapter 7 (Racing Your Bicycle) is supported with 181 footnotes, almost four times the number of pages (47) in the chapter!

Given that there doesn't appear to be a comparable text on the market on this subject matter, this is a guide that would be a useful reference for lawyers, training coaches, club directors, sporting event planners, and the general cyclist interested in keeping abreast of the law as it may apply to himself. The book is a good starting point to familiarize oneself with the laws of cycling, but someone who is serious about riding in different provinces, will be required to do some further investigation. Avid cyclists will be pleased to hear that a portion of the sale of each book goes to Share the Road Cycling Coalition, an Ontario based provincial cycling advocacy organization.

REVIEWED BY
FRANCES WONG
Manager, Library & Information Services
Borden Ladner Gervais LLP, Toronto

***The Evolution and Equilibrium of Copyright in the Digital Age.* Susy Frankel, Daniel Gervais, eds. Cambridge: Cambridge University Press, 2014. 325 p. Includes bibliographic references and index. ISBN 978-1-107-06256-6 (hardcover) $137.95.**

Published as part of the Cambridge Intellectual Property and Information Law series, *The Evolution and Equilibrium of Copyright in the Digital Age* is a collection of articles that tackle the implications of one of biggest issues that has faced copyright in the last 20 years, namely, the rise of digital media and the internet. The book explores the ways in which digital media has turned assumptions and conventional wisdom about intellectual property on its head, and what can and is being done about it.

Although there was an underground community of computer-savvy hackers and pirates in the 1990s, the limits of knowledge and technology meant that piracy was limited to the dark recesses of the internet. Then, in 1999, Napster dropped. It is hardly an exaggeration to say that as far as copyright is concerned, nothing was ever really the same. Napster brought industrial-scale copyright infringement to the masses, and although it was eventually shut down, the damage was already done. Though the music industry made some very heavy-handed attempts to sue their way back to the status quo, advances in technology made the "whack-a-mole" approach very expensive, impractical, and ultimately futile. This story is excellently chronicled in a recent book called *How Music Got Free: The End of an Industry, the Turn of the Century*, *and the Patient Zero of Piracy* (2015), which actually works very well as a companion to the book under discussion.

The Evolution and Equilibrium of Copyright in the Digital Age essentially sifts through the ashes of old ideas and looks into the digital future. The book is divided into four parts. The first looks at the central players – authors, owners, intermediaries, and users – and assesses their evolving roles. As technology advances, so do the players' roles, making the assignment of responsibility and liability a contentious issue. The second part, dealing with new enforcement regimes, is a logical extension from the first. The third section deals with the squaring of older legal frameworks and the challenge of applying them to these new technologies. This is particularly interesting in the context of the simmering issue of technological neutrality in assessing compensation and liability, with the Supreme Court recently leaving the door ajar for revisiting this issue in *CBC v SODRAC*, 2015 SCC 57.

Finally, the fourth section deals with collective management solutions. To me, this was in many respects the most interesting section, as I personally feel that this is likely to be the way forward, along with the growth of fair dealing and open access. Services such as Spotify and Netflix have demonstrated that it is possible to reconcile digital consumption of music and movies with the law (even if in the case of the latter, there is the grey area of bypassing

regional restrictions through VPNs and IP blockers). While there are still plenty of users – particularly younger ones – who see no need to pay for copyrighted material, Spotify and Netflix have (apparently) managed to hit the sweet spot of legality, convenience, and price necessary to draw users into a paid model.

Being an edited collection, there are some works that are possibly more interesting and pertinent to the needs of individual readers (although digital distribution has made copyright an increasingly international concern – as the Trans-Pacific Partnership Treaty's IP provisions demonstrate – there are some works that have a fairly specific national focus), but it holds together remarkably well as a whole. As interesting as I find the overall subject, it is obviously something that speaks to a relatively niche audience, so it cannot be recommended for all libraries. If you are in a firm that has a strong IP practice or an academic law library, it comes highly recommended. For other libraries, it is probably less essential.

REVIEWED BY
STEPHEN SPONG
Copyright Services Librarian
Centennial College

***International Law: Chiefly as Interpreted and Applied in Canada.* General editors: Hugh M. Kindred, Phillip M. Saunders, & Robert J. Currie. 8th ed. Toronto: Emond Montgomery Publications, 2014. lxv, 869 p. Includes bibliographical references. ISBN 978-1-55239-609-4. (bound) $117.00.**

As a legal research instructor, I have increasingly put more emphasis on researching international law in my teaching, particularly since international law in Canadian courts is more important than ever in today's globalized world. Not surprisingly, then, the eighth edition of the *International law: Chiefly as Interpreted and Applied in Canada* immediately went on my reading list.

The first edition of this book was published in 1965 and much has changed over the past 50 years. The eighth edition has been thoroughly reviewed and revised in its organization and presentation. This classic textbook is authored by a group of Canadian law school faculty experts, and has been and continues to be primarily intended for law students or anyone who is studying international law for the first time.

The book can be divided into two main parts. The first part, comprising chapters 1 to 5, sets forth the institutions, principles, and processes of international law through detailed examination of sources of international law, international legal participants, national application of international law in Canada, and state jurisdiction and responsibility.
Part II examines the contents of major areas in international law, including international criminal law, international humanitarian law, international human rights law, the law of the sea, international environmental law, and the law limiting the use of force. These six areas are currently the most popular subjects in public international law. For each of these areas, the authors outline the basic structure of the law and provide in-depth analysis of relevant cases and/or treaties.

International humanitarian law is a newly added chapter in this edition; the other chapters have been expanded and updated from the previous edition. Since the book is primarily intended as a textbook for teaching, there are many examples and case excerpts provided throughout the book. Questions and notes are added for each topic as learning tools for students.

In addition to the main volume, there is also a Documentary Supplement volume, which is much smaller in size and contains major multilateral treaties on the subject. Even though all these treaties are electronically available, the supplement volume makes it easier for students to refer to these treaties. Moreover, a searchable online index is available so that students can efficiently locate relevant sections in the book by keyword searching. These student-friendly design features are great additions.

International law: Chiefly as Interpreted and Applied in Canada is one of the best textbooks that I have come across on this subject that specifically focuses on Canada as a jurisdiction. I recommend it to law students who are learning public international law or who are looking for supplement materials on related topics. It is also a great reference book for further study or research on this topic, as each chapter offers comprehensive lists of references of related legal documents and secondary sources. I would also highly recommend this book for my librarian colleagues who wish to expand their knowledge on public international law.

REVIEWED BY
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Osgoode Hall Law School Library
York University

***The Law Emprynted and Englysshed: The Printing Press as an Agent of Change in Law and Legal Culture 1475-1642.* By David J. Harvey. Oxford and Portland: Hart Publishing, 2015. xviii, 308p. Includes a table of cases, appendices, bibliography and index. ISBN 978-1-84946-668-4 (hardcover) $112USD.**

This book has fascinating parallels with the legal profession's present-day adaptation from working with print to working with digital materials, and with finding new ways of practicing the law. In the period covered here, the legal profession was reliant on manuscripts for the teaching of students and the practice of law. The arrival of the printing press offered

a new way of working, but it took more than two hundred years before the law was entirely divorced from its use of manuscripts.

The numbered sections in this book cover different aspects of the impact of the printing press. A section on regulation explains how the State intervened to control the way the printing press was used: it regulated content and decreeed what could and could not be printed by requiring a license to print any book. It managed the industry in order to control how printers carried out their trade, for example, by the granting of the monopoly to the Royal Printer for the publication of all law materials. Yet another section examines how lawyers were educated and trained at the time and how the printed word affected these methods.

Three sections cover the printing of the law and include the development of law texts such as yearbooks of case law reports, collections of statutes and collections of commentaries. Some of the highlights include how Richard Tottel came to be granted exclusive ownership of the printing patent for law books and the new style of law reporting produced in Plowden's *Commentaries*, which provided an accurate report of the deliberations and decisions of courts. Other highlights include the writings of Sir Edward Coke – treatises on the laws of England and his reports of judgments from cases both in which he had participated and of which he had heard and the beginnings of a focus on the text itself as the source of law.

Law libraries at the end of the 1400s were either the personal manuscript collections of lawyers themselves or the accumulation of manuscript donations at the Inns of Court, and included bound copies of personal notebooks. These collections were small since law at the time was also conveyed orally. By the mid-sixteenth century, print had become more important and mixed with the oral and manuscript traditions; however it did not supplant manuscripts entirely until the eighteenth century. This was in part because lawyers could keep professional control over the production and dissemination of information by limiting to individuals to whom they circulated their manuscripts.

There are other publications about this topic (more commonly journal articles), as laid out in the book's bibliography, but this work extensively covers how the printing press influenced and assisted changes in the law and its development. The author is a District Court Judge from New Zealand and a part-time lecturer in the Faculty of Law at the University of Auckland. The book originated as a doctoral dissertation, and despite the interesting jacket image of an early printing press and the use of old English in the title, the layout is dense-looking and the small font retains a strong dissertational feel. This could put off some potential readers.
Nonetheless, the book strength's include copious footnotes, an extensive bibliography of primary and secondary sources

and a combined index of names, titles and subjects. The table of contents is highly structured and there are two appendices. The book is recommended for legal historians and large academic law libraries.

REVIEWED BY
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***The Law of Fraud and the Forensic Investigator.* By David Debenham. 4th ed. Toronto: Carswell, 2014. cxlv, 1471 p. Includes bibliographic references and index. ISBN: 978-0-7798-6418-8 (softcover) $135.**

The Law of Fraud and the Forensic Investigator is described as "the most comprehensive book on fraud, the law and investigation ever published" and there seems little reason to doubt it. At 1471 pages,[1] this is an extensive introduction to the law of fraud for the forensic investigator.

Author David Debenham is a lawyer, a management and forensic accountant, and a certified fraud specialist. He emphasizes that anyone investigating fraud needs to know about the relevant law, and, as a consequence, the book discusses a number of different areas of law. In addition to criminal law, Debenham covers banking law, bankruptcy and insolvency, contract law, securities law, and the *Charter*.

The book begins with an overview of the many types of fraud. Debenham notes that, like obscenity, courts are reluctant to define fraud but "know it when they see it" (p 3). He explains to readers why they should be wary of alleging fraud, and reminds them that even if you can prove fraud, it may not provide the victim with a cost-effective remedy.

After a discussion of fraud and where it fits into the legal system, the book then breaks down the investigation of fraud into a number of different areas. Chapters deal with pre-judgment remedies, using the litigation process as part of the investigation, damages (which includes a brief overview of contract law), tracing and fraudulent transfers, post-judgment remedies for fraud, fraud and the examination in aid of execution, expert witnesses and their testimony, criminal fraud, privilege, public investigations, the rules of evidence, working with the client, defending fraud claims, forensic investigation as science, and the investigator's professional obligations and liabilities.

Debenham writes about standards for a forensic investigation, noting that it "has to sustain the rigours of a court proceeding" (p 278). In the chapter on "The Forensic Investigation as Science," he includes a list of strategies that investigators can utilize so they are less likely to be biased or reach an erroneous conclusion (pp 1324-26). The book concludes with an illustration of how to investigate (or not) a civil fraud case using, as its example, a case in which an insurance company alleged arson.

Debenham uses a number of examples, both real and fictional, to illustrate the points he is making, including such well-known cases as those of Bernie Madoff and Conrad Black. There is extensive discussion of relevant cases in which he asks what the investigator, lawyers and parties did right (or wrong). For example, he offers an example of a situation where the credibility of two witnesses was evaluated and why one was found more believable than the other (pp 284-289).

Given the book's length and the sheer breadth of its coverage, it could be a challenge for someone new to the subject to know where to look. It is a pity, therefore, that the index is so poor. It appears to be, essentially, an alphabetized version of the table of contents. As a result, you have to know which chapter deals with a specific subject in order to find it. For example, the preface mentions that information on computer crimes and forensics was added to this edition, but there is no index entry for "computers." If you want to find out about computers in forensic investigations, you need to look under the heading "litigation process as part of investigation" where you will find "hard drives, product of."

Despite this flaw, this book is a useful resource for the forensic investigation of fraud. Particularly helpful are the checklists, forms and precedents (such as sample orders, injunctions, statements of claim, and a retainer letter).

Although it is intended for forensic investigators, it would be of benefit to anyone dealing with fraud investigations that are likely to go to trial. For those readers who are new to the subject, the book's introduction provides a good overview by itself.

REVIEWED BY
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DLA Piper (Canada) LLP

***No Accident: Eliminating Injury and Death on Canadian Roads.* By Neil Arason. Waterloo: Wilfrid Laurier University Press, 2014, 360 p. ISBN13: 978-1-55458-963-0 (softcover) $22.49.**

Civil litigators, criminal defence lawyers, police departments, insurance companies and advocacy groups dedicated to assisting consumers will all profit immensely from this extremely well-researched and written text on the science (and psychological art) associated with safe passage on our roads. On the one hand, Arason is a very experienced researcher dedicated to uncovering and testing the literature associated with safe travel, be it by motor vehicle, bicycle or

[1] Admittedly the book could have been three pages shorter, since the text on pages 345-348 is a duplicate of the text appearing on pages 338-341.

on foot. Accordingly, his detailed analysis of the merits and flaws of the science will provide the Bench and Bar with an easily understood roadmap setting out the path to assessing whether a certain event, typically tragic, was the product of negligent design, poor construction or some other reason other than the ubiquitous human error. By way of limited example, he devotes many pages at different stages of his analysis to the automobile manufacturing industry and its ingrained refusal to consider the need to protect potential victims of collisions who are outside of the vehicle. Arason then points to the existing engineering-based responses to these needless deaths and injuries and the next step is for the litigators to consult the required experts prior to drafting their statement of claims, likely in respect to class-action suits.

Leaving aside the science, Arason also devotes a great deal of his expertise to interpreting and identifying the psychology associated with avoidable injury and death on the roads. For example, time and again, he debunks the myth that the slow moving car is a hazard; time and again, he provides the reader with precious insights into how best to envisage the role of the citizen within this critical element of our daily life. After all, we require transportation to sustain our economy while our leisure activity is dependent on the road systems. That being said, since we pay for both the roads and the motor vehicles, we have to begin to view the entire industry as subservient to our needs as opposed to being subservient to it. In this respect, municipal law advocates will reap many lessons on the optimum way of designing streets, both from the perspective of safety and enjoyment of life.

No Accident seeks to address a wide audience, and not just the readers of the *Canadian Law Library Review,* and thus many pages and many discussions will address subjects that are only tangentially "legal" in nature, from a superficial level. But since lawyers are retained each day to represent injured motorists, cyclists and pedestrians, and since consumer advocates are tirelessly advancing arguments in our federal and provincial parliaments touching upon disparate subjects such as the size of multi-wheel transport vehicles and the need for bike paths close to city centres, to name but a few, there will always be a need for a blueprint for success in persuading others. There are many texts on advocacy but there are too few books on the "meat" of advocacy, such as safety on the roads. This text is not easy to read, but it offers the legal profession some tools with which to build arguments in this broad area of everyday life.

REVIEWED BY
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On the Outside: From Lengthy Imprisonment to Lasting Freedom. **By Melissa Munn and Chris Bruckert. Vancouver: UBC Press, 2014. 240p. Includes illustrations, bibliographic references and index. ISBN 978-0-7748-2536-8 (bound); ISBN 978-0-7748-2537-5 (pbk.) $29.85 CAD.**

In their book "On the Outside," authors Melissa Munn and Chris Bruckert present the process of post-carceral reintegration as essentially a struggle for normalcy. While each case is unique, the thread which weaves together the personal narratives of each of the men interviewed for this book is the desire to be average – to blend into the social fabric of society, and be otherwise unremarkable. In the introduction, the authors explain that while the public perception may be 'once a criminal, always a criminal', the reality is that the rate of reoffending for men who have served very long federal sentences, is exceptionally low. In this book they "aim to tell a different story by recounting the success and resettlement of those who have previously been criminalized."

While the book is rooted, to an extent, in criminological theory and evidence, it is mostly based on the personal narratives of twenty men who have gone through the unending process of community reintegration following long federal sentences. The authors argue, convincingly, that an understanding of the challenges and barriers faced by their subjects post-incarceration must begin with looking at their experience in the prison environment. They highlight what seems to be an inherent contradiction in the incarceration-community reintegration nexus, where the men are expected to learn to make better decisions and develop social networks in a setting which is social isolating and limits the opportunities for making choices. They explain that the scars which are left by the long periods of incarceration experienced by their subjects can be likened to that of veterans, with symptoms suggestive of post-traumatic stress disorder.

The authors trace the journey of their subjects from incarceration to their struggle for release – "finding a way to the street" – to what is most often community supervision in a half-way house. From there, the men seek to navigate a vastly changed world from the one that they had previously experienced, as they renegotiate and reimagine their new identities. Many of the challenges that they face are practical and immediate, such as securing housing and employment, while others are more abstract, such as stigma and learning "a new set of interactional styles and techniques that are often quite different from those they used prior to their incarceration." The authors explain that many of the men experience discomfort in engaging in basic social interactions as they "no longer know the language and lack a certain taken-for-granted cultural cachet."

In a sense, the form of this book is its message. While there is some evidence about best practices for success in reintegration, the key conclusion of this book may be that incarceration, release, and reintegration are highly personal and individualised experiences. Each of the men they interviewed negotiated his interaction with the justice system in a different way, and each employed his own strategies and resources during incarceration and upon release to the community. This conclusion has profound implications both for effective corrections policy, and for how we, as a society, understand and perceive individuals who have been in conflict with the law.

This book is highly recommended for academics, professionals of the criminal justice system, and others who are interested in challenging their assumptions about so called 'hardened criminals'. While the book does delve, at times, into abstract theory, the personal narratives make it highly readable for any audience. Both popular media and academic literature, tend to focus almost exclusively on stories and risk factors of individuals who commit crimes or who reoffend. The strength of this book is in drawing attention to the substantial group of individuals who commit some crime and then desist from criminality, becoming 'normal' members of the community, where, in fact, "success is the norm – recidivism the exception."

REVIEWED BY
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A Thirty Years' War : The Failed Public/Private Partnership that Spurred the Creation of the Toronto Transit Commission, 1891–1921. **By C. Ian Kyer (Toronto: Irwin Law, 2015). 254 p. 978-1-55221-408-4 (paperback), 978-1-55221-409-1 (ebook) $40.00.**

Civil litigators, municipal law specialists, transportation law counsel and members of the solicitors' bar interested in the psychology of negotiating contracts to the point of brinksmanship (not to mention those, like me, interested in legal history) are invited to read this 254 page gem. Although the author was chiefly interested in narrating the lengthy and acrimonious relationship as between the two parties alluded to in the title, his meticulously researched and well-written account serves to advance a quite valuable lesson for today's legal practitioners as well as those interested in the emerging area of public/private partnerships.

A Thirty Years' War is divided into nine chapters, following a thorough introduction. It is completed by a carefully crafted concluding chapter in which the author reviews the salient points he has made throughout the text. I commend in particular the many discussions of court cases, notably at the level of the Judicial Committee of the Privy Council. Young or inexperienced lawyers should gain insights into the nature of obtaining instructions on the conduct of litigation versus negotiation, particularly involving elected officials and the importance of the electoral calendar. Those readers

not having the luxury of a quiet weekend within which to read fully this elegant book might consider starting at pages 163 to 173, "Lessons Learned," as it sets out a brief but fully effective recipe for success in enterprises such as litigation. This includes advice on the need to better understand the other party, the importance of insulating decision-making from volatile political influences, and getting the "economics right." Of course, as in the case of any advocate wishing to be persuasive, the author understands the importance of enhancing his presentation with interesting information, such as the reference at page 113 to a young reporter for the Toronto Star, Ernest Hemingway.

C. Ian Kyer is rightly described as a "distinguished lawyer, historian and author," having practiced his profession for over three decades with Faskens, and having earlier earned a Doctorate in History. He is also the author (with Jerome Bickenbach) of *The Fiercest Debate: Cecil A. Wright, The Benchers and Legal Education in Ontario, 1923-1957* (Toronto: Osgoode Society for Canadian Legal History, 1987) and of *Lawyers, Families, and Business: The Shaping of a Bay Street Law Firm, Faskens 1863-1963* (Toronto: Osgoode Society for Canadian Legal History, 2013).

The study of an historical legal subject, when ably undertaken as in this case, serves contemporary needs and draws much needed light on present-day controversies. *A Thirty Years' War* may be enjoyed on many levels, but will prove valuable for advocates and for those who wish to avoid litigation.

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To Right Historical Wrongs: Race, Gender, and Sentencing in Canada. **By Carmela Murdocca. Vancouver: UBC Press,2013. 280 p. Includes bibliography and index. ISBN 978-0-7748-2497-2 (hardcover) $95.00. 978-0-7748-2498-9 (paperback) $32.95.**

To Right Historical Wrongs is an indictment of the Canadian government's attempts to address over-incarceration rates and to redress historical wrongs to Aboriginal people via the sentencing process. The author, an associate professor of sociology at York University, bases her analysis on government documents, case law, reports by Aboriginal organizations, and extensive reference to academic literature.

The book is divided into four chapters. The first two chapters, *Culture and Reparative Justice and From Incarceration to Restoration,* describe how the criminal justice system oversimplifies and misapplies stereotypical notions of Aboriginal 'tradition' to alternative sentencing, using the Hollow Water project, a community healing circle, to illustrate the argument. Murdocca then takes on the politics of section 718 of the *Criminal Code,* which lays out the purpose and principles of sentencing. She argues that alternative sentencing methods are based on Western values such as 'punishment as retribution' and end up continuing the system of colonialism that attempts to manage Aboriginal populations. This section also discusses the ways in which 'culturally-sensitive' sentencing too often fails to protect women in Aboriginal communities.

In Chapter 3, *Her Aboriginal Connections,* the author examines the *Gladue* case, the first time the Supreme Court of Canada had a chance to address section 718 sentencing principles for Aboriginal people. She points out the stereotypes and myths evident in the Court's discussions of Aboriginal identity, and argues that focusing on individual and cultural characteristics rather than taking a broader view of the societal and historical context only gives power to stereotypes of Aboriginal people as a group being particularly vulnerable to criminality. Incarceration rates of Aboriginal people post-Gladue, she points out, have continued to rise dramatically.

Racial Injustice and Righting Historical Wrongs, the fourth chapter of the book, considers the case of *R v Hamilton.* In *Hamilton,* Justice Hill considers history and systemic discrimination based on race and gender in the sentencing of two black women, and notes the need for society to take responsibility for its role in creating the conditions that contribute to the commission of an offence. Murdocca takes a detailed look at the arguments presented on appeal by the Crown and intervenors. The decision was ultimately overturned by the Ontario Court of Appeal, with a declaration that sentencing proceedings are "not the forum in which to right perceived societal wrongs."

Having criticized every aspect of the government's failed attempts to redress the problem of overincarceration of racial minorities, Murdocca concludes on a hopeful note with a look at encouraging trends in recent case law, such as the 2012 Supreme Court decision in *R v Ipelee* which affirms that the *Gladue* approach should be applied even to serious or violent crimes.

Murdocca's work is thorough, detailed, and well-researched. The writing is occasionally meandering and often repetitive, and the author makes a handful of assertions without backing them up, or only explaining her point much later on. The book nevertheless presents a comprehensive and important examination of the intent and interpretation of section 718, and of the many ways in which it falls short of its objective.

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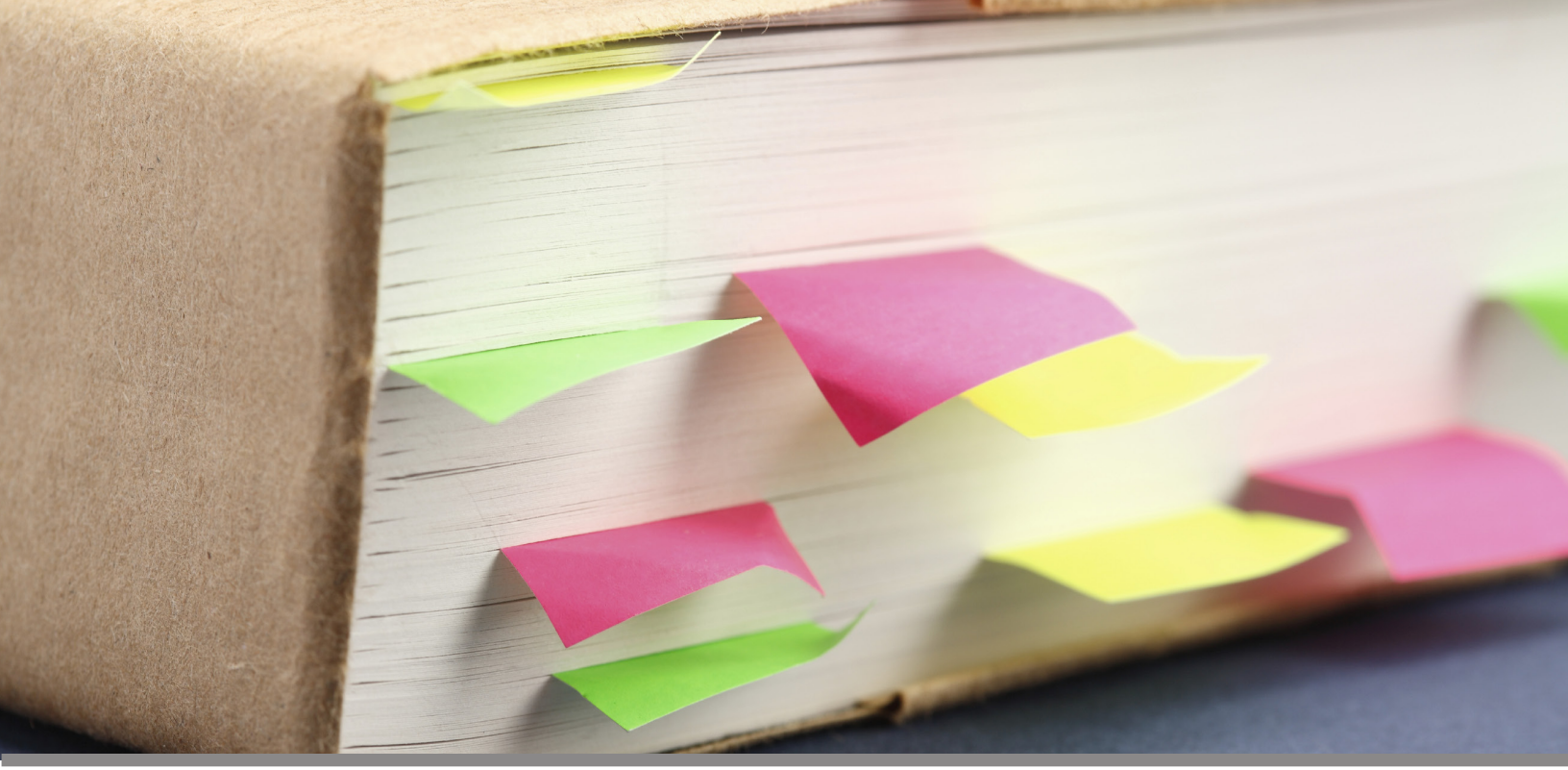

IIII Bibliographic Notes / Chronique bibliographique

By Susan Jones

Elizabeth Outler, "Mapping the Achieved Values of Legal Reference Books onto the Digital Future" (2015) 34:3 Legal Reference Services Quarterly 177-195.

With the development of the World Wide Web, legal information is more readily available than ever before, but according to the author of this article, it's also much less findable. The author is Elizabeth Outler, Associate Director and Head of Public Services at the Frederic G. Levin College of Law at the University of Florida in Gainesville, and she writes about the loss of print-based legal research tools at a time when law libraries are discarding print resources in favour of online-only access to information. In the article, the author discusses the achieved values of print-based tools to the legal research process, how print has influenced our way of thinking and understanding, and the problems presented by print- and Web-based culture in translating tools from print to digital. She concludes her discussion by offering some cautionary words when it comes to retaining traditional, print-based finding tools and by offering some advice to librarians about the role they can play during the transition to a digital-only environment.

It seems more and more law libraries are divesting themselves of their print collections, and it's not just the small libraries with limited space and resources. Even Harvard Law School Library ceased collecting all but one print reporter a few years ago, along with legal encyclopedias and most other secondary legal materials. Instead, Harvard relies on what it refers to in its collection development policy as "stable" online resources, like Lexis, Westlaw, and HeinOnline. Many law librarians have determined that scant collection development dollars would be wasted on print resources when everything is, or soon will be, available online. What this assumption doesn't take into consideration, though, is that the so-called online equivalent of a print resource is, in many cases, not equivalent at all. There are gaps and unaddressed needs in exchanging print reference tools for online substitutes, and for this reason, it's important to identify and retain what makes them so useful and valuable. In other words, it's important to preserve the achieved values of print-based finding tools to the legal research process. To help explain what she means by "achieved values," the author turns to metaphor, describing the amount of information facing legal researchers as a vast and complicated wilderness. To navigate that vast wilderness with any confidence, researchers need maps and guides. At one time, publishers and law librarians devoted considerable time and effort to the development of those navigational maps and guides – things like bibliographies, research guides, tables of contents, indexes, digests, annotations, subject headings, and citators.

So why are these tools – these navigational maps and guides – so valuable to the legal research process? The author offers two reasons. The first is that *they visibly organize information in a way that not only helps legal researchers find what they need, but to understand what they find.* As an example, the author points to West's headnote and key number system used in its case digest service. It was developed at a time when more and more case law was being published and lawyers were having difficulty wading through the abundance of cases to find what they needed. West's key number system served as a map to lawyers to help them find their

way through the wilderness of reported case law. Another example of how finding tools lend some visible organization to a massive amount of information is the Congressional Information Service's (CIS) comprehensive indexing and abstracting of federal legislative documents. To illustrate the real strength of the CIS Index, the author points to the five pages of items listed under the heading of "statistical data" in the 2012 index and notes how difficult it is to construct an online search query for such information and to be certain that a comprehensive set of search results is achieved. The CIS Index is the only place where statistical information found in congressional documents is grouped together in an organized, thorough manner. West's key number system is used online in Westlaw, and the CIS's indexing terms are available in an online tool, as well, but researchers have to be aware of their existence, understand how to use these tools, and understand their strengths in order for them to be of any use. Prior to online legal research, indexes and digests were the only way to access information, so lawyers, researchers, and librarians were ever-aware of their value as research tools and the organized, subject-based structure they provided to information. That structure, though, is often invisible in the online environment.

The second reason that print-based legal research tools are so valuable to the legal research process is that *they make visible the links and connections between things.* To illustrate this point, the author refers to what she calls wayfinder tools. Examples of wayfinder tools are citation and annotation services because they clearly show the links and connections between and among cases, legislation, and secondary sources. The way we move from one citation or annotation to another in these wayfinder tools is not unlike the way we navigate through the World Wide Web, jumping from one link to the next, so it's no surprise that these tools have made the transition from the printed page to the digital universe reasonably well. Not all print-based tools, though, have made such a smooth transition.

The human brain acquired particular ways of thinking and understanding throughout the development of print culture and it's these ways of thinking and understanding that make the transition from print to digital so difficult, and perhaps impossible. The author makes reference to research that suggests the brain understands print as a physical landscape with landmarks to help with learning and memory. The same can't be said for understanding text on a screen, however, where it can be difficult, and in some cases impossible, to map out a path through the online text with the digital-equivalent of landmarks like hand-drawn arrows, strategically-placed sticky notes, and other types of annotations. It seems necessary, then, to find a way to translate the print-based maps and wayfinders onto the digital environment so they can continue to help researchers understand how legal information is organized and appreciate its links and connections with other things. This is a difficult task, though, because the features of Web-based information seem to work against the achieved values of print-based tools.

To explain why the features of Web-based information work against the achieved values of print-based tools, the author spends some time discussing the *disaggregation* and *disintermediation* of Web-based information. Full-text searching of the World Wide Web is powerful and convenient, requires little skill, and gives the researcher a sense of control over the online universe of information. Is it any wonder, then, that full-text searching has become the most popular means of conducting research? Full-text searching appears to *aggregate or bring together* documents that are similar and on point, but what it's actually doing is something quite different. With full-text searching, the links and connections among the search results is unknown. In fact, the only sure connection is that all the results contain some instance of the researcher's search terms. Sure, one or two of the results may prove to be useful, but are there better documents out there to find? Full-text searching is really just a fishing expedition, but its simplicity and convenience leads many users to believe it's all that's needed. A scary thought, really, especially when it comes to legal research. Just imagine looking for all of the statutes and regulations applicable to a particular set of circumstances and ending your search with only those results from a full-text search of the World Wide Web. Much of the legal research process depends on finding the links and connections among things and this is much more difficult to do, much more time consuming, with full-text searching when the only certain connection is the presence of the researcher's search terms. On the other hand, the aforementioned wayfinders, like citators and annotators, make these links and connections very clear.

Online searching not only disaggregates information, it also causes *disintermediation.* Disintermediation just refers to the elimination of an intermediary, which in the context of the research process, could be a librarian or a research tool. With full-text searching, the scope of the available information is unknown and researchers often aren't aware of what they don't know. Full-text searching works best when researchers know exactly what they need to find, but when they don't, it's important for them to set aside their own biases and tendencies and to think broadly about the scope of their research problem. In reality, that's difficult to do, which is why research tools that lend some organization and structure to information (e.g., the key number scheme used in West's digesting service or the CIS Index) are so useful. When using classification schemes, indexes, and other tools that provide some organization to the law, researchers are much more aware of what they don't know. It gives them some understanding, a picture if you will, of the universe they need to contend with when looking for relevant information. Digital information, on the other hand, is often hidden from our awareness. To illustrate this point, the author describes a *New Yorker* cartoon of two men sitting at the beach. In the caption below the cartoon, one of the men says, "I got tired of *Moby Dick* taunting me from my bookshelf, so I put it on my Kindle and I haven't thought of it since."

The author concludes her article by stating that what's needed in the transition from a print-based to a Web-based culture is the application of the achieved values of print-

based tools to digital information, and the way to realize this goal is by revealing the indexing and classification systems beneath the surface of online information. By revealing the architecture beneath the information, some context can be provided to researchers as they navigate the wilderness of legal information. Practically-speaking, she doesn't know how or when this can be accomplished, and for that reason, she cautions against abandoning the creation of the print-based, purpose-built finding tools of legal research. Now is the time for librarians to be championing the preservation and maintenance of print-based finding tools, not discarding them. Furthermore, with the explosion of information being made available electronically, law librarians have increasingly assumed the role of teachers and trainers, but the author stresses that librarians must continue to play a role in the organization of information and metadata during the shift from a print-based environment to a digital-only one. The creation of these tools – what the author calls bibliography, for lack of a better word – have traditionally been the practice and province of librarianship, and it's time it was revived in her opinion. There's still a vital role for the special finding tools of legal research, the likes of which have no equal in the digital environment, that provide researchers with the organization and context needed to carry out their tasks, confident in the knowledge that they've done so in a thorough and comprehensive manner.

Maggie Farrell, "Leadership Reflections: Playing Nicely With Others" (2014) 54:6 Journal of Library Administration 501-510.

Leadership Reflections is a regular column appearing in the Journal of Library Administration and in this particular issue, column editor Maggie Farrell, Dean of Libraries at the University of Wyoming in Laramie, discusses the skills leaders need in order to work with a variety of personalities and individuals to create and maintain a positive work environment. Some people can work with diverse personalities with apparent effortlessness, but for many, it's a more difficult task, especially with people whose personalities and work styles are so different from their own. According to the author, the key to playing nicely with others is to focus on individuals' strengths and contributions rather than their personalities, and to set the standard of performance and professionalism that leaders expect from their employees and colleagues. In this article, the author explains why it's important for leaders to identify the cause and reason why they or others may dislike someone. She then goes on to discuss how to determine the best course of action when someone is disliked, and concludes with strategies for dealing with difficult people.

It's the responsibility of leaders to identify the underlying cause of the dislike of an employee – is it someone they personally dislike or is the person in question a difficult employee or colleague? This identification is important for many reasons. For one thing, the fact that an employee is disliked may have legal implications for the organization. The author illustrates this point by contrasting someone's annoying, but ultimately harmless jokes versus someone's offensive jokes that may be creating a hostile work environment. Another reason to identify the cause of any dislike is because it may be a sign of a larger organizational problem that needs to be addressed. Widespread dislike could indicate that an organization values personality, rather than performance and establishes workflows and processes based on individuals' behaviour, rather than the skill set or responsibilities of the position. It's also important to identify the cause of any dislike because such feelings may result in uncivilized and unprofessional behaviour among employees. Such behaviour can create a negative impression of the organization among outsiders who witness that conduct. The author refers to a study that suggests the negative impression created by an incident of incivility isn't limited to the people involved, but extends to the organization as a whole. Finally, it's important for leaders to identify the root cause of dislike because of its negative impact on staff morale, its impact on staff's ability to communicate with each other, and its tendency to divide employees, all of which contributes to the development of a dysfunctional work environment. Needless to say, leaders who ignore feelings of dislike and fail to deal with the underlying problem, can expect significant consequences for their team and the organization.

Once the cause of the dislike is identified, leaders must take the time to understand why someone is disliked. Is it because they're a poor performer? Are they a great performer, but rude and discourteous to others? Or is it just a personality mismatch? It's important to separate dislike based on behaviour that impacts the work of the organization from behaviour that's merely annoying. Determining the reason why someone may be disliked can be difficult to pinpoint, but doing so will help leaders determine the best and most appropriate course of action. When assessing a situation, leaders should try to step back and view it as an outsider, almost as if they're watching a play or a movie. From that vantage point, try to determine if the person in question is using their skills or imparting some knowledge or expertise in the situation. If so, then consider whether the offending behaviour arises from the person's work style or the way in which he or she communicates with others. Also consider whether the person in question repeatedly displays the offending conduct, perhaps suggesting a pattern of behaviour. It's also important to consider who's offended by the behaviour, and to that end, leaders may need to tactfully consult others in the organization.

In trying to understand why someone is disliked and how to deal with the situation, leaders must consider the role of the person within the organization. Although everyone in the organization, regardless of their position, is deserving of respect and civility, identifying the person's role will lay out the options for leaders in how to deal with the offending behaviour. If, for example, the person in question is their own boss or supervisor, then leaders may need to alter their work style or behaviour in order to meet the expectations and preferences of the people to whom they report. If the person in question, though, is their employee, then leaders may

need to clearly outline their own expectations on conduct and behaviour. If the offending conduct comes from a peer or colleague, then perhaps those involved need to mutually agree on how they're going to proceed and work together in order to advance the organization's goals.

The author offers several strategies for working with difficult people. When it comes to dealing with employees, focus on their performance, not their personalities, unless the latter impacts the former. If personality does impact performance, then the author advises leaders to focus on the issue, rather than the person. For example, consider the employee that may be disliked for a loud and distracting gum-chewing habit. If that employee works in the stacks shelving books, then the gum chewing may be annoying, but likely has little impact on his or her ability to carry out the task. If, however, the employee works at the reference desk, patrons may react negatively to the loud gum chewing. In that case, asking the employee to refrain from chewing gum at the desk because of the negative service impression it creates is appropriate. Again, when addressing the problem, leaders should focus on how the offending behaviour affects job performance. In doing so, leaders avoid the impression that they're picking on the person.

A particular challenge within service organizations, like libraries, are employees who are highly productive, but also competitive and aggressive. Leaders may decide that a high-achieving, effective employee has minimal impact on the performance of the team as a whole, so despite anyone else's dislike of the person, his or her performance is nevertheless acceptable. That decision requires some tricky balancing, but by focusing on job performance and establishing standards of conduct and behaviour, leaders minimize the ill will that may arise in these circumstances. Establishing standards of behaviour and conduct help employees understand what's expected of them when working with others. Leaders, too, must model the behaviour they expect of their employees, be consistent in articulating their expectations, and deal in a timely manner with any employee who fails to meet those expectations .. The annual review process is a good opportunity to outline expectations and standards of conduct and to monitor conduct, but leaders must be sure to communicate expectations and address issues throughout the course of the year.

If incivility and dislike is more pervasive and widespread throughout the team or organization, then a different approach may be required. In that case, leaders can offer opportunities for employees to build their skills in listening, conflict resolution, negotiation, dealing with difficult people, and stress management. Leaders can also look to their organization's human relations experts in dealing with individual and team problems. These experts are a valuable resource with experience in dealing with workplace conflict. They can serve as a neutral, third party in assessing a situation, counsel individuals in dealing with difficult colleagues, help co-workers negotiate a strategy for working together, determine if behaviour is performance-related or merely annoying, and assist leaders in developing a formal course of action when behaviour is unacceptable.

Another strategy for dealing with difficult people is to minimize contact with the person in question. This isn't always possible and leaders can't completely avoid a person they dislike by changing work flows or work processes. It may be a solution, though, in other situations, such as when serving on a committee. In that case, another person, someone not affected by the offending behaviour or conduct, could be appointed to serve on the committee instead. If leaders see that others are not affected by a person that they personally dislike or find annoying, then it's worthwhile taking the time to observe, determine, and learn how to deal with the offending conduct. Above all, leaders must uphold professional standards of conduct at all times and control their reactions to those they may dislike.

Another strategy for dealing with difficult people is to explore different styles of communication to find one that works with the person in question. The author illustrates this point by sharing her experience in working with a mathematician at her organization. She found success by toning down her extroverted, think-out-loud style of communication and adopting a more logical, numbers-based approach. By adjusting her style of communication to more closely match that of the mathematician, she found their conversations more focused and more effective, and it generally improved their overall working relationship.

In working with colleagues and peers they dislike, the author encourages leaders to take advantage of opportunities to speak informally with them about common areas of interest and to practice their listening skills in those interactions. It's not necessary to be friends with the people they find annoying, nor is it necessary to socialize with them outside of work, but the tone should always be friendly in the workplace. Developing a rapport with those they may not care for will go a long way toward facilitating better communication and building a better working relationship.

Unfortunately, there are situations when all strategies for working with difficult people seem to fail. In some cases, leaders may be able to wait it out if they foresee a change in circumstances on the horizon. Perhaps the person is likely to change positions in the not-too-distant future or retirement is nearing. In other cases, moving to a different department may be an option. In circumstances that are untenable, though, leaders should consider the real cost of continuing to work with the individual in question. Working with someone that's disliked can be exhausting, stressful, and mentally taxing, and in extreme circumstances, it may be necessary to consider leaving the position.

Leaders must also look in the mirror when they find themselves dealing with someone they dislike. In assessing any situation, it's important for leaders to consider if the problem rests with them and not the other person. When the problem does rest with them, leaders must reflect upon their own behaviour and conduct to see how they might change the dynamic. It's especially important for leaders to

be aware of their own "hot buttons" because difficult people seem particularly apt at zeroing in on those areas that will elicit strong reactions.

There are great benefits for leaders in working with diverse groups of people, and taking into account the different experiences and points of view of others in the workplace is important in making the decisions that build a great organization. But with so many different experiences, viewpoints, work styles, and personalities, disagreement is natural, perhaps inevitable, as are feelings of dislike. Leaders may not be able to control their feelings about others, but they can control the way they choose to interact with them, and to that end, leaders must model the behaviour they expect of those around them and set the standard for respectful, professional conduct in the workplace.

Ellen Q. Jaquette, "Good Posting Practices: Social Media Posting Tips for Law Library Accounts" (February 2015) 19:4 AALL Spectrum 16. Available online: <http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-19/No-4/pr.pdf***> (accessed 4 January 2016).***

If you're responsible for administering a social media account at your library, then you know how much writing, planning, and scheduling is involved. It's a time-consuming task, to say the least. In this short article, author Ellen Q. Jaquette, Emerging Technologies Librarian at the University of Minnesota Law Library in Minneapolis, offers social media administrators a few best practices to make the best use of their time in promoting the services and resources of their libraries via Facebook and Twitter.

The author's first tip is to be aware of your social media platform's algorithms. Algorithms are important because they impact how status updates or posts are displayed to readers. Most social media platforms display posts in simple chronological order, but others, like Facebook, take a different approach. The "top stories" appearing in readers' Facebook news feeds are selected according to an algorithm that gives preference to posts with high levels of social engagement (i.e., lots of likes and comments) and that contain certain content (i.e., images, as well as links to other pages). Given Facebook's algorithmic display of status updates, the author advises social media administrators to add an image or link to their posts to increase the chance that it will appear in their readers' news feeds. Another way to boost the visibility of your library's status updates is by including content based on Facebook's "trending topics" or Twitter's "trends." Both platforms favour status updates with that type of information, thereby increasing the chance they'll be seen by readers.

Interestingly, Facebook's algorithm demotes status updates that request readers to like, comment, and share the post. For that reason, the author advises against explicitly making any such requests of readers. Of course, social media administrators can take steps *offline* to encourage their readers to like, comment, and share their status updates. Encouraging this kind of social engagement, along with paying attention to the content of status updates, will go a long way to increasing the visibility of social media posts.

As with so many things, including social media, timing is everything. The author refers to research suggesting that the best time to post status updates on Facebook, in order to reach and engage readers, is between 1 p.m. and 4 p.m. on weekdays. For Twitter, the most opportune time is between 1 p.m. and 3 p.m., Monday through Thursday. Even with these ideal posting times, the author recommends social media administrators post the same information, worded differently each time, throughout the day in order to reach as many readers as possible. To make this task a bit easier, the author suggests using social media management software to schedule the timing of posts.

The author's final bit of advice is to understand your users. The above-noted tips are fairly generic and it's important for social media administrators to take into consideration the users of their own law libraries. So try these tips, but make sure to examine your social media platform's analytics to determine what worked, what didn't, and proceed accordingly in order to maximize the reach of your social media postings. And check out the additional resources included in the author's article to help social media administrators stay up-to-date with changes to Facebook's news feed algorithm <https://blog.bufferapp.com/facebook-news-feed-algorithm> and the best times to post status updates< http://blog.hubspot.com/marketing/best-times-post-pin-tweet-social-media-infographic>.

Deadlines / Dates de tombée

Issue	Articles	Advertisement Reservation / Réservation de publicité	Publication Date / Date de publication
no. 1	December 15/15 decembre	December 15/15 decembre	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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IIII News from Further Afield / Nouvelles de l'étranger

Notes from the UK

London Calling!

By Jackie Fishleigh*

Hi Folks!

As Shakespeare might have said:

To BREXIT (leave the European Union) or not to BREXIT? - that is the question

I'm going to devote all my space here to our upcoming vote, given that it is a huge deal for both the UK and the EU…

Only 4 Months To Go…

Things have moved on since my last column: we now have a date for the referendum. The date, **Thursday 23rd June,** was announced once our Prime Minister, David Cameron had renegotiated Britain's relationship with the EU after a marathon 2 days of talks. These concessions were described by the "OUT" camp (those who want to leave the EU) as a question of the PM asking for very little and getting even less, or as a success according to the "IN" camp, who want to remain.

In my view the outcome was "good enough," I hope, to keep us in the EU. Migrants to the UK will no longer be entitled to benefits as soon as they arrive which should be a definite crowd-pleaser. This so called "something for nothing" culture was a major sticking point. In addition the UK will never be penalised for not having the Euro as its currency nor will we ever be part of a European super-state, etc.

Shortly afterwards the Tory (conservative) Cabinet were allowed to attach themselves to whichever cause they believed in. It was a pretty even split with half in and half out. The Home Secretary, Theresa May was a notable "INner." The PM must have felt rather pleased until…the Mayor of London, the flamboyant Boris Johnson declared himself unofficial leader of the "OUTers". As a university friend of Cameron's, his dramatic decision came as a shock to everyone. Another long-standing old friend and ally of Cameron's, Michael Gove, is also a key figure in favour of leaving.

It's Anybody's Guess What Will Happen.

Well, I really, honestly don't know how the referendum will go. If anyone (politicians, pundits, journalist, royal family, ordinary citizen) claims they do know, then DO NOT believe them!! There is no way on earth they could know how a country of our size (65 million) will vote. I would guess that between 35-40% of the population are undecided, confused, unsure, don't have enough information or don't want the responsibility of voting. Some may not bother to vote or will

vote randomly. Others like me are definitely IN, i.e. want to stay, including David Cameron, half his Cabinet, the official opposition i.e. Labour Party, leaders of large business community etc. However there are plenty who never wanted us to be in the EU in the first place, or feel it has morphed from a trading block into a would-be super-state, characterised by wasteful bureaucracy. Others link it to **migration,** another huge, contentious issue. While it has little to do with the EU itself, the crisis has captured the headlines for weeks on end with distressing images of the mass movement of dishevelled humanity, usually being held back behind high fences or arriving on small boats in the Greek islands.

You'd think Big Data Analysis might have a role here and since I spent yesterday evening at Big Bang Data, the UK's first major exhibition exploring the big data explosion, I do wonder. However the data tsunami didn't appear to help at all when we last had an election; predictions based on misleading opinion polls of a hung parliament or Labour victory were completely wrong. Also given the truckloads of data we must have at our disposal on our health service, I am embarrassed to say that we have a long running junior doctors' strike here over "weekend working," which yesterday led, once again, to thousands of operations being cancelled, and an elderly woman lying on the ground for over an hour with a broken nose in freezing conditions after having a fall.

The bookies (betting agents) heavily favour a vote to remain, and referendums tend to support the status quo, so if there weren't so many fence-sitters I might be tempted to venture that we will stay in, but I just can't be sure! if the vote is to stay, as I an enthusiastic INner (I speak French and German, having studied in Munich for a year) I will wrap myself in an EU flag, sing the "Ode to Joy" (the European National anthem) and drink German beer and French champagne all day. If we leave I have threatened to eat my nice red passport with European Union on the cover…

Will we all have to be issued with passports without European Union emblazoned on the top of the cover, or stickers to put over that bit, or a maroon coloured felt tipped pen… whichever is cheaper given the cuts? Or maybe we will just get some financial help towards buying a pen.

The Rule of the Thirds

My calculations are that 1/3 want IN, 1/3 want OUT and the other 1/3 don't know, or care, or understand. This last group will be the battle ground and will seal our fate.

The further south one goes down the British Isles the more people want OUT of the EU. The Scottish are the most enthusiastic Europeans it seems and may want another referendum on their independence if they vote to stay in and the English want to leave. Oh dear, oh dear…it's been an exhausting couple of years for my identity! I see myself as English, British and European. It would be nice to keep it that way. Hopefully nothing will change!

Legal Status of the Referendum Result – IN, OUT, Shake It All About!

A fascinating article by Adrian Mason in the *Solicitors Journal* (8 March 2016) states that even if the will of the people is to leave the EU, this would not automatically trigger an application to Brussels under article 50 of the *Lisbon Treaty.* Article 50(1) states that:

> "any member state may decide to withdraw from the EU in accordance with its own constitutional requirements. "

Parliament would therefore have to vote on whether to make the necessary application to the EU. In theory the result could be ignored by the MPs while other options were investigated such as tabling amendments or even setting up further negotiations before a final decision is made, delaying the application assuming one is even made!

Even if we do set the wheels in motion to leave the EU this would also be a long and complicated process because under article 218(3) of the *Treaty of the Functioning of the European Union*, any agreement reached is subject to the qualified majority of the European council with the consent of the European Parliament.

Existing Treaties between the UK and the EU will continue for at least 2 years after notification. An extension could potentially put off any decision until after the next general election.

A future government could potentially vote to make an application under article 50(5) to re-join the EU.

Conclusion

So some turbulent times here in the UK. It is uncharacteristically unstable in the rest of Europe too, with a disturbing rise in the number of right wing parties. (Mind you at least we don't have Mr. Trump for a neighbour !)

Until next time!

JACKIE

Letter from Australia

By Margaret Hutchison**

Greetings from Australia,

It's now March and having survived a spell of weather that broke records for the number of consecutive days over 30 degrees in March, I fear the heat has gone to our politicians' heads. Also as it has been summer, nothing much has happened of note except for speculation about a possible

double dissolution of the federal Parliament and subsequent election.

Under normal circumstances, the next election will be for the House of Representatives and half the Senate and held sometime between early August and late November 2016However, with the balance of power in the Senate being held by a motley group of independents and minor parties (some very minor), the government is rumoured to be looking at a double dissolution election to remove these senators. It has also passed legislation reforming the election process for the Senate to prevent these miniscule minor parties being elected in the first place.

A double dissolution under Section 57 of the Constitution involves the dissolution of the House and the entire Senate. The election that follows, involves the election of 12 Senators for each state, the four Territory Senators and the whole of the House. The legislative "trigger" for this kind of election is the rejection of a piece of legislation blocked twice by the Senate with more than three months between the two blockages. Legislation like this already exists. The topic of this legislation is not particularly significant, but the real problem is in the timing. A double dissolution cannot be granted if there is less than 6 months until the expiration of the term of the House of Representatives. As the House first sat on 12 November 2013 after the last election, if there is to be a double dissolution election, the dissolution must take place by 11 May (6 months before 12 November) for an election in the following weeks.

The Federal Budget is due to be announced on 10 May. If the double dissolution is arranged and proclaimed by 11 May 2016, the parliament must sit after this date and pass an interim supply bill for the first few months of the 2016-17 financial year so that governing may continue and people still are paid their pensions and child support, and public servants receive their salaries.

Also, as only half the Senate generally is elected at one time in a "normal" election, there are problems as to which of the Senators will have to be re-elected in 3 years rather than the full 6 year term. Further, their terms are backdated to 1 July of the year of the election, so if the election is before 1 July, there will have to be another election in 2 years' time to bring the House of Representatives and half Senate elections back in line. It's all rather complicated.

Another problem is that Australians are deeply suspicious of elections brought forward for political convenience and are inclined to vote against the government for interrupting their Saturday plans by dragging them to the nearest school or hospital to vote, school fundraising sausage sizzles or cake stalls notwithstanding. Also, if it is to be a long (7 to 10 weeks) campaign to avoid backdating Senate terms the electorate will not be happy as Australians hate long campaigns and are very glad and relieved for the 3 day blackout before the election. And there are dates like school holidays and the major football finals to take into account when going to the polls. I feel so sorry for the Americans at present given the length of their election campaigns.

Senate Electoral Reforms

Another reason for the possible double dissolution election is to reform the way Senators are elected. In Australia, the Senate ballot paper is divided into two sections with a black line across the paper. Voters have a choice of two methods when voting for Senators; 'above the line' and 'below the line'.

A voter may vote for a political party or group by putting the number '1' in one box only above the black line. By casting a vote 'above the line' this way in the 2013 election, voters allowed the order of their preference to be determined by the party or group they voted for. Their preferences were distributed according to a complex series of preference deals, about which most voters were unaware or did not understand. This led to the election of candidates from a number of unknown small parties, such as the Motorists Party or Australian Sports Party with such as percentages of 0.5% of the total primary vote.

Voters who choose to vote below the line must number every box below the line for their vote to count. Given the size of recent ballot papers (tablecloth sized with magnifying glasses on offer) it's no wonder many people chose to vote above the line.

The government has proposed to reform the Senate electoral process by:

- by providing for partial optional preferential voting above the line, including the introduction of advice on the Senate ballot paper that voters number, in order of preference, at least six squares;
- abolishing group and individual voting tickets;
- introduce a restriction that there be a unique registered officer and deputy registered officer for a federally registered party so that one person can't register him or herself as multiple parties and then do preference deals; and
- reduce the confusion that may arise with political parties with similar names, by allowing party logos to be printed on ballot papers for both the House of Representatives and the Senate.

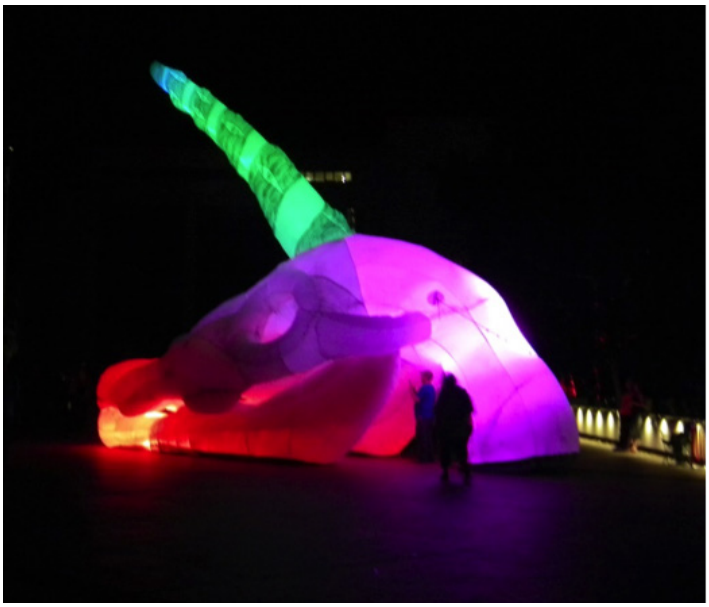
The proposed system will change voting patterns because fewer parties are likely to contest the election. This may lead to an increase in support for the existing major parties. It will also allow more room to grow for the more significant micro-parties, such as the Shooters and Fishers, Family First, Christian Democrats and the Sex Party.

Naturally, these changes are vehemently opposed by the independent senators who will all be up for re-election if there is a double dissolution and will probably find it extremely hard to be re-elected.

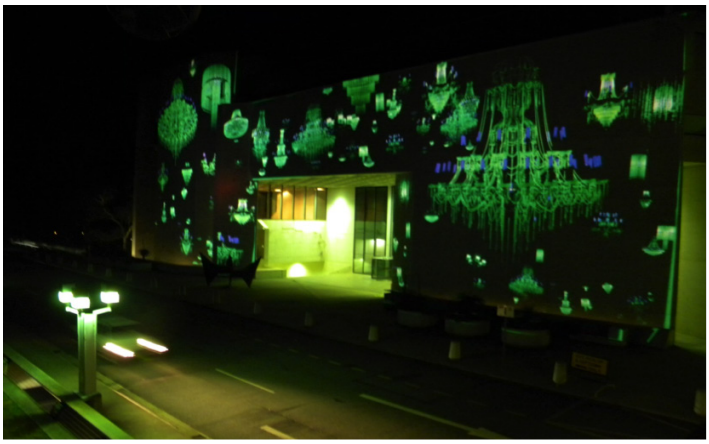
Law Reporting

In each Australian jurisdiction there is one series of authorised reports approved by the judiciary, the government and/or the official law reporting council for that jurisdiction. These have titles such as New South Wales Law Reports, Tasmanian Reports etc. These are generally published by one of the "big two" publishers, LexisNexis AU or Thomson Reuters who also publish several series of unauthorised law reports, both generalist and subject specific. Recently, the Victorian Reports, the official series of law reports from the state of Victoria has joined the Queensland Reports and New South Wales Law Reports in moving away from contracting out the production and distribution of the report series from one of the "big two" publishers and setting up their own production and distribution chain.

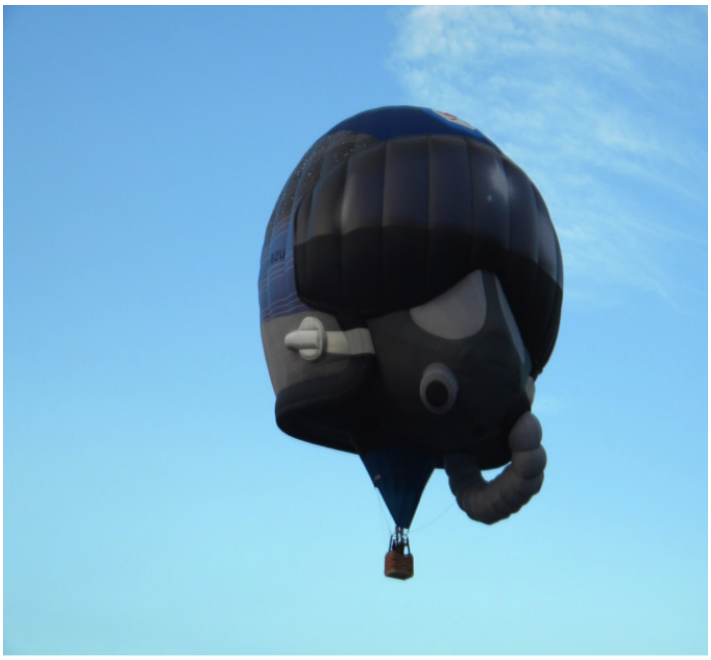
I am finishing with photos from the Enlighten Festival and Canberra Balloon Spectacular held last weekend, there was a large unicorn skull installation in front of the Court, (no I don't know why either)

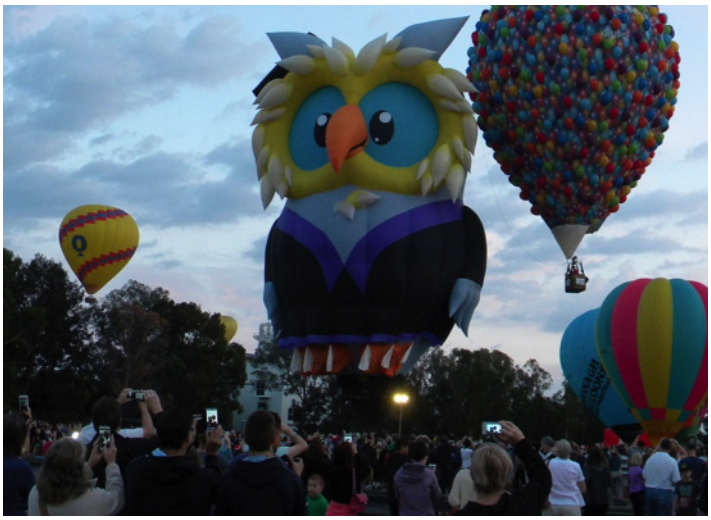


And the National Gallery had pictures of chandeliers reconfigured to emanate UV light, and decorated with specially sourced uranium glass in its contemporary space.



The next morning was the start of the Canberra Balloon Spectacular. Many Canberrans get up at dawn to come down to the launch area to see the balloons take off. There were whales, the new RAAF balloon which is a jet pilot, as well as regular balloons. The highlight balloons this year were a balloon inspired by the Disney film "Up" and Owlbert Eyenstein, an owl from Bristol, UK.





Until next time, when we all might know whether we have vote in a freezing July or a slightly more temperate month.

MARGARET

The US Legal Landscape: News from Across the Border

By Julienne Grant***

High drama. Headlines have certainly been dramatic this year and many reflect how American law and politics are inexorably intertwined. The February 13 death of Justice Antonin Scalia shocked the legal community and sparked a political battle for his replacement. With the US presidential election on the horizon, the fight for this vacant SCOTUS (Supreme Court of the United States) seat has forced candidates to weigh in on how and when to replace the most conservative member of the Court. This is an unfolding story that is being played out in every American's living room.

In other news, Apple Inc. and the Department of Justice (DOJ) are wrangling over data encrypted in an iPhone. US law schools continue to struggle with declining enrolments, and the American Bar Association (ABA) and US lawyers took a beating on a segment of CBS' "60 Minutes." There's a new book on court case dogs, and the famed SCOTUS bobbleheads are on display at the University of Minnesota Law Library. If that isn't enough, US law librarians took to the polls and demonstrated quite emphatically that they aren't eager to lose their identity.

Speaking of AALL (yes, it's still called AALL), I'm unabashedly taking this opportunity to plug the Annual Meeting, which is being held in Chicago (July 16-19). Chicago often gets a bad rap for its volatile politics (ask me about our mayor) and rough streets. Chicago, however, is a truly global city with world-class museums, fantastic restaurants, and the Chicago Cubs. I know the CALL meeting is in Vancouver (what a beautiful place), but I hope some of you will cross the border in July and join us here in the Windy City (purportedly nicknamed as such for its verbose politicians).

What's in a Name?

A lot, according to AALL members. During a month-long online vote earlier this year, the AALL membership resoundingly defeated the Executive Board's proposal to change the Association's name to the Association for Legal Information. With a voter turnout of 2,494 (59.51 percent of the total membership), 80.11 percent voted thumbs down, and 19.89 percent voted in favor.[1] According to an online exit poll, the majority of voters represented law schools (44.63 percent of respondents) and were long-time (16+ years) AALL members (46 percent of respondents).[2] Several Board members held a virtual town hall meeting on February 23 to field members' questions about the results and, suffice it to say, they got an earful. My guess is that there will be some fireworks in Chicago in July, and I'm not referring to those on Independence Day at Navy Pier.

In a similar vein, Dominican University's Graduate School of Library & Information Science (my alma mater in River Forest, Illinois) joined the crusade for a name change. According to the Winter 2016 edition of the School's newsletter, *Off the Shelf,* faculty considered "School of Information" and "School of Information Studies" as replacement names.[3] This proposal apparently stemmed from a curriculum change, as the School will no longer be focusing exclusively on graduate education and preparing librarians. Although the faculty had the final say on the matter, students, alumni, and an advisory board were given the opportunity to provide feedback. The faculty's final vote on an alternative name was held on March 16. No word on the results, as of this writing. Perhaps another US "library school" bites the dust.

Law School News & "March Madness"

A December 25, 2015 article in *The New York Times* provided a glimpse of how US law schools are scrambling to drum up business and replace lost income due to declining J.D. enrolments.[4] Much of the piece describes how law schools are tinkering with the traditional three-year J.D degree. Although the accelerated two-year program at Northwestern failed to attract enough applicants, a few other US law schools are still offering the two-year option (Brooklyn Law School, for example). Also mentioned in the *Times* article is my own institution (Loyola University Chicago), which will be introducing a weekend JD program this fall. Modelled on executive MBA programs, Loyola's program will combine on-campus classes held on alternative weekends with online coursework. As an aside, I don't think anyone is too concerned about Northwestern (now the Northwestern Pritzker School of Law); J.B. and M.K. Pritzker donated $100 million US to the school last year – the largest single donation ever to a law school.[5]

In other US law school news, several former students of the Thomas Jefferson School of Law in San Diego have sued in a California court, accusing the School of inflating its graduates' employment figures and salaries. The plaintiffs allege that they relied on those statistics in deciding whether to attend the School. One of the plaintiffs graduated in the upper tier of her class in 2008, and has yet to secure a full-time salaried job as an attorney.[6] Although a number of similar suits have been filed around the country, this is the first time a US law school has been forced to stand trial for allegedly misrepresenting its employment numbers.[7] The trial started on March 7.

Here in the US "March Madness" generally refers to the NCAA basketball tournament, but law schools also have their own version. As it does every March, *US News & World Report* released its rankings of the US' "Best Law Schools."[8] Although law schools often criticize the methodology, I do

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[1] Keith Ann Stiverson, *Bylaws Vote Results*, AALL E-Briefing (February 11, 2016).
[2] *Ibid.*
[3] Kate Marek, "Greetings all," Off the Shelf (Winter 2016), http://gslis.dom.edu/newsletter/winter-2016-shelf-newsletter.
[4] Elizabeth Olson, "The 2-Year Law Education Fails to Take Off," N.Y.Times Dec. 25, 2015, http://www.nytimes.com/2015/12/26/business/dealbook/the-2-year-law-education-fails-to-take-off.html?_r=0.
[5] http://www.northwestern.edu/newscenter/stories/2015/10/pritzker-family-makes-unprecedented-gift-to-northwestern-law-.html.
[6] Elizabeth Olson, "Law Graduate Gets Her Day in Court, Suing Law School," N.Y. Times, March 6, 2016, http://www.nytimes.com/2016/03/07/business/dealbook/court-to-hear-suit-accusing-law-school-of-inflating-job-data.html.
[7] *Ibid.*
[8] http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools.

think that the rankings factor into students' decisions on where to apply, and in firms' hiring picks. Yale took the top spot, Harvard and Stanford tied for second, Columbia and the University of Chicago tied for fourth, New York University ranked fifth, the University of Pennsylvania sixth, and the University of California-- Berkeley, the University of Michigan, and the University of Virginia tied for eighth. Yale's number one ranking was no surprise, as it has held that coveted position for a number of years. (What was perhaps more surprising was the rumour that Prince Harry was going to attend Yale Law next fall, although Kensington Palace quickly denied it.)[9]

Justice Antonin Scalia: Then There Were Eight

Justice Antonin Scalia, SCOTUS' conservative champion for almost 30 years, died suddenly on February 13 in Texas. Appointed by President Ronald Reagan in 1986, Scalia was an ardent constitutional originalist and proponent of legal textualism. He was also a monumental presence on the Court – famous for his sparring with judicial colleagues, his combative style during oral arguments, and his biting dissents. During the weeks following his death, political pundits, law professors, and even comedians offered analyses, quips, and sometimes surprising information about the Justice himself and his judicial legacy. I found a series of online pieces on Scalia appearing in *The Atlantic* to be particularly provocative.[10]

The political tug of war for Justice Scalia's replacement began almost immediately after his death was announced. The US *Constitution* enables the President to nominate Supreme Court Justices and then appoint them with the "advice and consent" of the US Senate (Article II, Section 2, Clause 2). Senate Republicans made it clear from the get go that they would not hold hearings or vote on an Obama nominee. Undaunted and determined to fulfil his constitutional duty, President Obama nominated 63-year-old Merrick B. Garland, Chief Judge of the US Court of Appeals for the D.C. Circuit (and a Chicago native, I might add) to fill the vacancy.

Although many members of the legal community expected the President to select 49-year-old Sri Srinivasan (an Indian-born D.C. Appeals Court judge), the choice of Garland perhaps dared Senate Republicans to refuse to consider a centrist judge with a solid 19-year appellate bench record. Even if Judge Garland does not promptly get a Senate hearing and vote the *Constitution* would allow President Obama to make a "recess appointment" (Article II, Section 2, Clause 3). In this scenario, the President would appoint Judge Garland while the Senate is on recess, and Garland would serve until the end of the next Senate session. However, not even a "recess appointment" is feasible if the Senate watches the calendar and meets in "pro forma" three-day sessions.[11] Got it?

In the short-term, SCOTUS can function with eight Justices. Although the US Constitution is silent on the Court's composition, federal statute sets the Court's size at nine and specifies that it needs a quorum of six to decide a case (28 USC. §1). Procedurally, however, Justice Scalia's absence will have a tremendous impact. In the instance of a 4-4 tie (likely, given SCOTUS' now even liberal-conservative makeup), the Court in the past has chosen one of two approaches.[12] The Court can affirm the lower court's opinion without indicating its voting alignment, and without setting a national precedent. The Court also has the option of putting cases on hold for a re-argument. Even without a tie, the Court can order re-argument after the installation of a new Justice, which is not unprecedented.[13] A petitioner can also request a rehearing after the entry of a judgment per US Supreme Court Rule 44. Got it?

A number of hot-button cases not yet decided this term will undoubtedly be affected by Justice Scalia's absence. These include a major abortion case (*Whole Woman's Health v. Hellerstedt*), a public-sector unions suit (*Friedrichs v. California Teachers Association*), another challenge related to the Obamacare contraception mandate (*Zubik v. Burwell*), and an important immigration reform case (*US v. Texas*). It's anyone's guess how these decisions will ultimately come down, given the new reality of the Supreme Court.

Justice Clarence Thomas: He Speaks

In another stunning SCOTUS development, Justice Clarence Thomas broke ten years of silence during oral arguments and posed multiple questions to a DOJ attorney on February 29. The case, *Voisine v. US,* involved a 1996 federal law that precludes people convicted of domestic violence from owning guns. The sound of Thomas' booming baritone in the courtroom apparently provoked gasps among the audience, while the other Justices appeared unmoved.[14] This surprising event occurred just two weeks after the death of Justice Thomas' friend and fellow conservative on the bench. Whether Thomas' rediscovery of his own voice is related to Justice Scalia's absence is debatable; a *New York Times* piece earlier in the month had called for Thomas to end his silence.[15]

Apple v. DOJ

Apple Inc. and the DOJ are immersed in a bitter legal standoff over data in an iPhone. The DOJ wants access to encrypted data in the iPhone of one of the shooters involved in the horrific attack in San Bernardino in early December 2015. Apple has refused to comply with a February 16 federal

[9] Tom Marshall, "Kensington Palace dismisses rumour Prince Harry is to study law at Yale," Evening Standard, March 15, 2016, http://www.standard.co.uk/news/uk/kensington-palace-dismisses-rumour-prince-harry-is-to-study-law-at-yale-a3203841.html.
[10] See, e.g., Russell Berman, "Antonin Scalia's Secrets," The Atlantic, February 16, 2016, http://www.theatlantic.com/politics/archive/2016/02/antonin-scalias-secrets/463083/.
[11] Kelsey Snell, "Senate Republicans don't plan to let Obama replace Scalia over recess," Wash. Post, February 23, 2016, https://www.washingtonpost.com/news/powerpost/wp/2016/02/23/senate-republicans-dont-plan-to-let-obama-replace-scalia-over-recess/.
[12] Andrew Nolan, Cong. Research Serv., R44400, The Death Of Justice Scalia: Procedural Issues Arising On An Eight-Member Supreme Court 4 (February 25, 2016), http://www.fas.org/sgp/crs/misc/R44400.pdf.
[13] *Ibid.* at 5.
[14] Sam Hananel, "Justice Thomas asks questions, stuns crowd,' Chi. Daily L. Bull., February 29, 2016 at 3.
[15] See Adam Liptak, "It's Been 10 Years. Would Clarence Thomas Like to Add Anything?," N.Y. Times, February 1, 2016, http://www.nytimes.com/2016/02/02/us/politics/clarence-thomas-supreme-court.html?_r=0.

judge's order compelling the company to help the FBI extract the data, citing violations of its First and Fifth Amendment rights. Part of the government's argument involves the *All Writs* Act of 1789, a broad statute that was adopted during the first US Congress. The controversy has sparked a national debate on data privacy and security and prompted a House Judiciary Committee hearing : *The Encryption Tightrope: Balancing Americans' Security & Privacy* on March 1.

Cool Tools

In December 2015, the *ABA Journal* published its ninth annual "Blawg 100" and announced which ten blogs it was promoting to its "Hall of Fame." The lists are compiled by Journal staff members and are available on the ABA website.[16] New additions to the 2015 "Blawg 100" included "Art Law & More," "Balls & Strikes" (focuses on judicial politics—how timely is that?), and "Canna Law Blog" (legal support for the cannabis community). Additions to the "Hall of Fame" included "Popehat" (a holy war of sorts for free speech), "Ride the Lightning" (concentrates on cybersecurity), and "Josh Blackman's Blog" (SCOTUS and con law focus).

Another cool tool for US lawyers is the recently unveiled "Supreme Court Citation Networks." The tool essentially enables users to construct a visual map of the lines of cases that two SCOTUS decisions have in common.[17] The graphs can be saved, shared, and embedded in other websites, and the tool can also show the political leanings of cases – either liberal or conservative – as well as vote counts. The project is a collaboration between the Free Law Project (a California non-profit) and the Supreme Court Mapping Project at the University of Baltimore School of Law.

Exonerations

The University of Michigan Law School's *National Registry of Exonerations* collects information on known US exonerations since 1989. Released on February 3, the *Registry's* 2015 report revealed that the US saw a record number of exonerations last year, totaling 149 – up 10 from 2014.[18] Texas led the way with 54 exonerations, followed by New York with 17. According to the report, 58 of the exonerations resulted from the efforts of conviction integrity units (CIUs), which are divisions of prosecutorial offices that focus on identifying and correcting false convictions. Nearly 40 percent of all the 2015 exoneration cases involved individuals who had been erroneously convicted of homicides. Illinois had the most homicide exonerations with 11, followed by New York with nine, and then Alaska with four. The report also indicated that there were a record 27 exonerations for convictions based on false confessions.

"60 Minutes" & the ABA

CBS' highly esteemed investigative news program "60 Minutes" has been around since 1968 and has covered everything from olive oil fraud to Pope Francis. "60 Minutes," in fact, introduced Americans to Canadian Prime Minister Justin Trudeau in a 13-minute segment on March 6. On January 31, however, "60 Minutes" addressed the topic of money laundering and raised the ire of lawyers across America. In that segment, called "Anonymous, Inc.," the program looked at an undercover investigation that taped Manhattan lawyers interacting with a fictitious adviser to a wealthy African government official.[19] The official wanted to secretly purchase large-ticket items in the U.S, including a yacht. Although none of the recorded lawyers (one was actually ABA president at the time) agreed outright to represent the non-existent client, the investigation raised general questions about the ethical standards of lawyers. The segment also highlighted the ABA's opposition to a proposed federal law that would make the process of incorporation more transparent.[20] The ABA, of course, responded quickly in its own defense with current ABA President Paulette Brown crying foul in a statement posted on the ABA website after the broadcast.[21]

It's a "Dog-Eat-Dog" World & the SCOTUS Bobbleheads

In more mundane news, *A Ruff Road Home: The Court Case Dogs of Chicago* is a new book containing photos and stories of dogs that have been assisted by Safe Humane Chicago's Court Case Dog Program. Safe Humane Chicago is an Illinois non-profit that promotes positive relationships between people and animals. Its Court Case Dog Program (the first in the US) assists and re-homes animals that have been impounded as part of abuse investigations or that were the property of prisoners.. Chicago attorney Susan J. Russell penned the book, and Josh Feeney, a local shelter dog photographer, shot the pictures. More on the book, as well as the Court Case Dog Program, is available on Safe Humane's website.[22]

In other legal miscellany, the University of Minnesota Law Library and the Library's Riesenfeld Rare Books Research Center have assembled an exhibit called "Equal Caricature Under Law: Supreme Court Bobbleheads by *The Green Bag*." The exhibit features the complete set of 22 SCOTUS bobbleheads produced by *The Green Bag*, a quarterly US law journal known for its quirkiness. The bobbleheads are manufactured in limited runs, are not sold, and can generally only be acquired with much sought-after certificates.[23] Needless to say, the SCOTUS bobbleheads are not easy to come by; the law libraries at the University of Minnesota and Yale are purportedly the only institutions that own the full collection.[24] The exhibit runs through August 1, with a digital

[16] http://www.abajournal.com/blawg100.
[17] https://www.courtlistener.com/visualizations/scotus-mapper/.
[18] Juan A. Lozano, "Report: Record number of U.S. exonerations in 2015," Chi. Daily L. Bull., February 3, 2016, at 6. For the full report, see http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2015.pdf.
[19] http://www.cbsnews.com/news/anonymous-inc-60-minutes-steve-kroft-investigation/.
[20] *Ibid.*, Part 2.
[21] https://www.americanbar.org/news/abanews/aba-news-archives/2016/01/statement_of_abapre0.html.
[22] http://www.safehumanechicago.org/programs/court-case-dogs.
[23] http://www.greenbag.org/bobbleheads/bobbleheads.html.
[24] http://riesenfeldcenter.blogspot.com/2016/02/2016-spring-exhibit-equal-caricature.html.

version of the exhibit to follow. Will there be a Merrick B. Garland *Green Bag* bobblehead? It's too soon to tell.

Conclusion

What an array of news this quarter – ranging from a SCOTUS vacancy to a locked iPhone – never a dull moment. The SCOTUS vacancy has enormous implications for the Court itself, the forthcoming presidential election, and even the future collection of *Green Bag* bobbleheads. We'll see where we are in three months, as I attempt to again summarize what continues to be a turbulent US legal (and political) landscape. It's fascinating, no? In the meantime, I hope to see some of you in Chicago at AALL (a name that is near and dear to the hearts of US law librarians).

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.

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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.

Canadian Law Library Review is published by:

Revue canadienne des bibliothèques de droit est publiée par:

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