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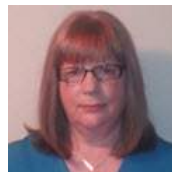
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III From the Editor / De la rédactrice

One of my goals as I transition out of the *Canadian Law Library Review* editorship is to leave it in the capable hands of the next generation of law librarians. To this end, I am happy to introduce another new member of the editorial team, Kate Laukys. Kate is our new Local and Regional Updates editor. Kate is a 2016 MLIS graduate from Western who has a long-standing interest in law libraries and law librarianship. I want to thank Rosalie Fox for stepping in to edit the Local and Regional Updates column while we were looking for a permanent editor.

There are additional changes coming to the editorial board, which are still in the planning stages, but we will keep you informed as they occur. This is a perfect opportunity for members who are interested in participating to join the board or contribute in other ways by submitting articles or ideas for our consideration.

The last change that I want to talk about is the *Canadian Law Library Review's* move to becoming an open access journal (by which we mean freely available to everyone). We decided to make this shift to heighten the journal's profile, to give non-members an opportunity to see what we do as an organization and perhaps attract more membership, and to attract feature article submissions, especially those from authors who are required to publish in open access journals. We will become open access in January 2018. Members will continue to receive the e-blast from National Office when we

publish the journal with links to ISSUU and the PDF version on CALL's website.

We have many changes coming up in future issues, but I most certainly do not want to give short shrift to the current issue. One of the values of librarianship is the right to access information, and an important role we play is to provide information to those who need it, whatever their circumstances. One challenging aspect of law librarianship that I have never considered before is the role of law librarians in prisons in Canada. The Canadian Federation of Library Associations highlights the importance of prison libraries, not just for recreational reading and education but also to ensure that prison inmates have access to the law:

Prison libraries play a fundamental role in guaranteeing rights, not only by providing inmates with access to information about their legal rights as incarcerated persons, but also by providing the tools necessary to exercise these rights.¹

Both of the feature articles in this issue focus on libraries and librarians in Canadian correctional institutions. Ilana Newman's article "The Role of the Librarian in Canadian Correctional Libraries" reviews the scholarly literature that discusses provision of library services to prison inmates with a focus on access to legal materials. Joel Gladstone's "Prison Law Libraries: from US's *Bounds* to Canada's *Biever*"

¹Prison Libraries Network: The Right to Read, online: Canadian Federation of Library Associations <<http://cfla-fcab.ca/en/guidelines-and-position-papers/prison-libraries-network-the-right-to-read-position-statement/>>.

looks at case law in the US and Canada that has influenced access to legal resources in the prison environment. Both articles made me stop and reflect on how I take access to information for granted and how important it is that others, whether incarcerated or not, have the same rights. I believe that we as librarians have an obligation and a responsibility to ensure that access to legal information is available to all.

I wish you all a delightful holiday season and all the very best for 2018.

**EDITOR
SUSAN BARKER**



Tandis que je me retire graduellement de mes fonctions de rédactrice en chef de la *Revue canadienne des bibliothèques de droit*, je compte bien les laisser entre les mains compétentes de la prochaine génération de bibliothécaires de droit. Je suis donc heureuse de vous présenter une autre nouvelle membre de l'équipe de rédaction : Kate Laukys. Kate est notre nouvelle rédactrice des Mises à jour locales et régionales. Elle a obtenu sa maîtrise en bibliothéconomie et en science de l'information à l'Université de Western Ontario en 2016 et s'intéresse depuis très longtemps aux bibliothèques de droit et à la bibliothéconomie juridique. J'en profite pour remercier Rosalie Fox, qui s'est occupée de rédiger la section des Mises à jour locales et régionales pendant que nous cherchions un rédacteur permanent.

D'autres changements sont en voie de se produire au sein du comité de rédaction. Nous en sommes encore au stade de la planification, mais nous vous tiendrons informés au fur et à mesure qu'ils se concrétiseront. Pour les membres qui souhaitent participer, c'est l'occasion parfaite de vous joindre au comité ou de contribuer d'une autre manière en nous soumettant des articles ou des idées à étudier.

Le dernier changement dont je veux vous parler, c'est que la *Revue canadienne des bibliothèques de droit* est sur le point de devenir une revue à accès libre (c'est à dire accessible à tous gratuitement). Nous avons décidé d'effectuer ce changement pour donner davantage de visibilité à la revue, pour donner aux non membres la possibilité de voir ce que nous accomplissons en tant qu'organisation et peut être ainsi attirer de nouveaux membres et, enfin, pour inciter la

soumission d'articles de fond, surtout de la part d'auteurs qui sont tenus de publier dans des revues à accès libre. L'accès libre entrera en vigueur en janvier 2018. Les membres continueront de recevoir le courriel du bureau national annonçant la publication de la revue et comportant les liens vers ISSUU et vers la version en PDF sur le site Web de l'ACBD.

Certes, de nombreux changements s'en viennent pour les prochains numéros, mais loin de moi l'idée de laisser pour compte celui-ci. L'une des valeurs prônées dans le domaine de la bibliothéconomie, c'est le droit à l'information, et nous accomplissons un rôle important en fournissant l'information à ceux qui en ont besoin, peu importe les circonstances dans lesquelles ils se trouvent. Je ne me suis toutefois jamais penchée sur l'un des aspects difficiles de la bibliothéconomie de droit, à savoir le rôle que jouent les bibliothécaires de droit dans les prisons du Canada. La Fédération canadienne des associations de bibliothèques souligne l'importance des bibliothèques dans les prisons, non seulement pour la lecture à des fins récréatives et éducatives, mais aussi pour que les détenus aient accès à du contenu juridique :

Les bibliothèques de prison jouent un rôle fondamental dans la protection des droits, non seulement en donnant accès aux personnes détenues à l'information au sujet de leurs droits en tant que détenus, mais aussi en leur fournissant les outils nécessaires à l'exercice de ces droits¹.

Les deux articles de fond du présent numéro sont axés sur les bibliothèques et les bibliothécaires dans les établissements correctionnels canadiens. Dans « The Role of the Librarian in Canadian Correctional Libraries », Ilana Newman passe en revue la littérature savante traitant de la prestation de services de bibliothèque aux détenus, surtout sous l'angle de l'accès au matériel juridique. Joel Gladstone, quant à lui, explore la jurisprudence canadienne et américaine ayant influencé l'accès aux ressources juridiques en milieu carcéral dans « Prison Law Libraries: from US's *Bounds* to Canada's *Biever* ». À la lecture de ces deux articles, je me suis rendu compte à quel point je tenais pour acquis l'accès à l'information et à quel point il est important que les autres, qu'ils soient incarcérés ou non, aient les mêmes droits. J'estime que nous, les bibliothécaires, avons non seulement l'obligation, mais aussi la responsabilité de faire en sorte que tout le monde ait accès à l'information juridique.

Je vous souhaite un magnifique temps des Fêtes, et je vous offre mes meilleurs vœux pour 2018.

**RÉDACTRICE
SUSAN BARKER**



¹ Fédération canadienne des associations de bibliothèques, « Réseau des bibliothèques de prison : le droit de lire ». Sur Internet : <<http://cfla-fcab.ca/fr/lignes-directrices-et-exposes-de-position/reseau-des-bibliotheques-de-prison-le-droit-de-lire/>>.



III President's Message / Le mot de la présidente

By Ann Marie Melvie

I recently returned home from a three-week vacation in Greece. What a wonderful place! My friends and I spent time on the islands of Rhodes, Samos, Mykonos, and Santorini. We also travelled to Kusadasi, Turkey, and visited the ancient site of Ephesus. We toured the Peloponnese and spent time in Athens. It was the trip of a lifetime!

While there, I had an opportunity to visit the ruins of two ancient libraries. The first was the Library of Celsus in the ancient city of Ephesus, Turkey. Ephesus was an ancient Greek city, built in the 10th century BC. Situated at the end of a road made of marble, the ruins of the ancient city's library consist of a two-storey façade and one interior room. Construction began in AD 110 and was completed 25 years later. Named in honour of the Roman governor of Asia Minor at the time (in fact, his tomb is underneath the library), in its heyday the collection contained more than 12,000 scrolls in the niches on its walls. There was an additional wall around the building to protect the scrolls from moisture. It was a functioning library until AD 400, when it was destroyed by fire. Here's a picture of me in front of



(Library of Celsus, Turkey)

the library. It certainly isn't my glamour pic, but this is me when I travel!

I also visited Hadrian's Library in Athens, built by the Roman Emperor Hadrian. It was constructed between AD 132 and 134 and was the largest library in the city. It housed important literary works, as well as legal and administrative documents. It also housed the official state archives. It was described by a Greek traveller and geographer of the time as a "building with 100 columns of Phrygian marble, with halls with painted ceilings, alabaster walls, and niches with statues in which books were kept." I can only imagine how beautiful it was!

Documents, in the form of papyrus scrolls, were kept in wooden cupboards set in niches in the walls. The library also contained a garden and works of art, as well as lecture halls. It hosted various schools of philosophy and was a place where people gathered to hear lectures and discuss intellectual matters. It was a magnificent building, built to impress the people of Athens, a task it surely accomplished.



(Hadrian's Library, Athens)

I must admit that I was awestruck when I visited

the remains of these amazing libraries. Even though I've known that libraries have been around since ancient times, seeing the actual buildings and walking the same steps that people walked many hundreds of years earlier made it all feel much more real to me. It struck me that libraries and librarians/information professionals have been around in one capacity or another for more than two thousand years!

I couldn't help but wonder what a typical day was like for the "custodian of the scrolls" in these libraries. Would their work-day resemble mine in any way? I would imagine that the primary mission of information professionals from ancient times is much the same as ours—and that is to provide people with the information they need.

A custodian of the scrolls in ancient times wouldn't even be able to dream about what libraries have become and how information is made available to people in our modern world.

I wonder what people 2000 years from now will think when they look at our modern-day libraries and collections. Will they think we made the right decisions in relation to preserving our collections? Will they be amazed at what we had and wish they had it too? Food for thought.

J'ai récemment passé trois semaines de vacances en Grèce. Quel merveilleux pays! Mes amies et moi avons séjourné dans plusieurs îles, dont Rhodes, Samos, Mykonos et Santorin. Nous nous sommes également rendues à Kusadasi, en Turquie, pour visiter la cité antique d'Éphèse puis nous avons visité le Péloponnèse et passé quelques jours Athènes. Ce fut le voyage d'une vie!

Au cours de ce voyage, j'ai eu l'occasion de visiter les ruines de deux bibliothèques de l'Antiquité. Le premier site visité a été la bibliothèque de Celsus à Éphèse, en Turquie. Éphèse est une ancienne ville grecque construite au X^e siècle av. J.-C. Les ruines se situent à l'extrémité d'une route en marbre, et le bâtiment est composé d'une façade de deux étages et d'une pièce intérieure. La construction a commencé en l'an 110 apr. J.-C. et s'est terminée 25 ans plus tard. Nommée en l'honneur du gouverneur romain d'Asie Mineure à cette époque (en fait, son tombeau se trouve sous les ruines), la bibliothèque contenait, à ses beaux jours, une collection de plus de 12 000 parchemins conservés dans les niches murales. Un mur additionnel avait été construit autour du bâtiment afin de protéger les parchemins contre l'humidité. La bibliothèque a été fonctionnelle jusqu'à ce qu'elle soit détruite par un incendie en l'an 400. Voici une photo de moi devant la bibliothèque. Évidemment, ce n'est pas une photo glamour, mais c'est moi quand je voyage!



(Bibliothèque de Celsus en Turquie)

J'ai également visité

la bibliothèque d'Hadrien, située à Athènes, qui a été construite par l'empereur romain Hadrien. Sa construction a commencé vers 132 ou 134 et il s'agissait de la plus grande bibliothèque de la ville. D'importants ouvrages littéraires, des documents juridiques et administratifs et des archives officielles de l'État y étaient conservés. Un voyageur et géographe de cette époque l'a décrite comme « un bâtiment comptant 100 colonnes de marbre phrygien, des salles avec des plafonds ornés de fresques, des murs en albâtre et des niches contenant des statues dans lesquelles étaient rangés les livres ». Je ne peux que m'imaginer la beauté de ces lieux!

Les documents, sous la forme de rouleaux de papyrus, étaient conservés dans des placards en bois encastrés dans les murs. La bibliothèque comprenait un jardin, des objets d'art ainsi que des amphithéâtres. Elle abritait également plusieurs écoles de philosophie, et les gens s'y rassemblaient pour entendre des exposés et discuter de questions d'ordre intellectuel. Cet édifice grandiose avait été construit pour impressionner le peuple athénien – un objectif qui a certainement été atteint.



(Bibliothèque d'Hadrien à Athènes)

Je dois admettre que j'ai été ébahie en visitant ces merveilleuses bibliothèques. Même si je savais que les bibliothèques existaient depuis l'Antiquité, le fait

de voir les véritables bâtiments et de fouler les mêmes sentiers empruntés par des personnes il y a plusieurs centaines d'années m'a procuré un sentiment plus réel. Je me suis rendu compte que les bibliothèques ainsi que les bibliothécaires et les professionnels de l'information existent d'une façon ou d'une autre depuis plus de deux mille ans!

Je n'ai pas pu m'empêcher de me demander comment pouvait se dérouler une journée typique de « gardiens de parchemins » dans ces bibliothèques. Leurs journées de travail ressemblaient-elles aux miennes de quelque façon? J'imagine que la mission première des professionnels de l'information de l'Antiquité était semblable à la nôtre, qui est de fournir aux gens les informations dont ils ont besoin.

Je ne crois pas qu'un gardien de parchemins de cette époque aurait pu imaginer ce que sont devenues les bibliothèques d'aujourd'hui et la façon dont l'information est mise à la disposition de la population dans le monde actuel.

Je me demande ce que les gens penseront dans 2000 ans lorsqu'ils regarderont les bibliothèques et les collections de notre monde contemporain. Penseront-ils que nous avons pris les bonnes décisions quant à la conservation de nos collections? Seront-ils impressionnés par ce que nous avons? Et souhaiteront-ils avoir la même chose? Il y a là matière à réflexion.



III The Role of the Librarian in Canadian Correctional Libraries*

By Ilana Newman**

ABSTRACT

This paper discusses and critiques the scholarly and professional literature on the role of the librarian and the library in Canadian correctional facilities. A review of the literature found a dearth of recent and rigorous scholarly investigation into the subject and a concerning lack of interest outside of the librarian profession. The paper concludes that more regular study of libraries and librarianship in the corrections context is critical to the maintenance of inmates' rights and the preservation of the integrity of the office of the prison librarian.

SOMMAIRE

Cet article discute et critique la littérature savante et professionnelle sur le rôle du bibliothécaire et de la bibliothèque dans les établissements correctionnels canadiens. Une revue de la littérature démontre une pénurie de recherches érudites récentes et rigoureuses sur le sujet et un manque d'intérêt relatif en dehors de la profession de bibliothécaire. Le document conclut qu'une étude menée plus régulièrement sur les bibliothèques et la bibliothéconomie dans le contexte des services correctionnels est essentielle au maintien des droits des détenus et à la préservation de l'intégrité du bureau du bibliothécaire de la prison.

Introduction

There has been very little study of the position of the civilian librarian in correctional facilities in Canada. Some scholarly and other literature (e.g., trade publications and textbooks) is available to the interested reader, and while this material forms a crucial basis for further research on the subject, there is a dearth of scholarly literature specifically on prison librarianship in Canadian correctional facilities.¹ In fact, most of the literature available focusses on the work of prison administrators and librarians in the United States. This article provides an overview of the landscape of extant salient literature on prison and jail librarianship in North America with a special focus on Canada, discusses the history of Canadian correctional facility libraries, and considers possible avenues for future research and writing on librarianship in Canadian jails and prisons.

A brief history of penitentiaries and corrections facilities in Canada will provide useful background. The first prison in Canada was the Kingston Penitentiary, built in Upper Canada in 1835. Kingston Penitentiary operated as a provincial facility until the 1867 passage of the *British North America Act*, which established the division of responsibilities for justice between the provinces and the federal government.² The following year, the passage of the *Penitentiary Act*

* © Ilana Newman, 2017

** Ilana Newman is a recent graduate of the University of Toronto iSchool (class of 2017), where she studied library science and knowledge and information management. She currently works as a librarian at Blake, Cassels & Graydon LLP.

¹ Ann Curry et al, "Canadian Federal Prison Libraries: A National Survey" (2003) 35:3 Journal of Librarianship and Information Science 141 at 143.

² "Penitentiaries in Canada" (20 October 2014), online: Correctional Service of Canada <<http://www.csc-scc.gc.ca/about-us/006-1006-eng.shtml>>.

brought Kingston Penitentiary under federal authority, together with two prisons in Atlantic Canada (located in New Brunswick and Nova Scotia, respectively).³ During these early years, rhetoric surrounding crime and punishment in North America was notably severe: an 1824 report by the first Warden of the Maine State Prison enjoined prison administrators to construct prisons such that “even their aspect might be terrible, and appear like ... dark and comfortless abodes of guilt and wretchedness,” places that should “be favoured with so much light from the firmament as to enable him to read from the New Testament” and no more.⁴ Lest the reader convince themselves that conditions in Canada were kinder during this period, the Correctional Service of Canada’s own statement belies this idea:

All [federal penitentiaries constructed in the late 19th and early 20th centuries] were maximum-security institutions, administered by a strict regime—productive labour during the day, solitary confinement during leisure time. A rule of silence was enforced at all times. Parole did not exist, although inmates could have three days a month remitted from their sentence for good conduct.⁵

Ann Curry writes that some early prisoners, particularly those in the Kingston Penitentiary, were occasionally permitted to study more than the New Testament; the first chair of that prison’s Board of Inspectors, John Macaulay, donated part of his own personal library to the prison for the use of the inmates. Ten years later, Governor General Metcalfe made a donation as well, this time including non-religious books. Still, it was only in 1869 that some prisoners were allowed oil lamps rather than simply the “light of the firmament” to read by.⁶ Presumably they spent the intervening years struggling to read in dim lighting, and then only until the sun set. The first prison library collections and services were minimal, to say the least, and their purpose was purely to reform the criminal by means of confinement, punishment, and entertainment restricted to religious texts.

Between the days of these first prisons and now, considerable research and activism have illustrated the degree to which opinions differ as to the most effective ways to administer prisons, and as to whether the object of the same ought to be punishment and reform or rehabilitation. Models of restorative versus retributive justice have been the subject of considerable and continuing debate, and, perhaps more than any other institution within the prison, the library is the locus of these contests. Given that the librarian’s role in the prison (which will be further elaborated below) is to act simultaneously as gatekeeper to information, provider of access to information, and legal recourse, the prison librarian is uniquely positioned to facilitate—or to frustrate—

justice for inmates.

Today, in Canada, all federal penitentiaries are administered by Correctional Service Canada (CSC), a federal agency under the government’s Public Safety Portfolio. The CSC today manages roughly 13,208 inmates in 57 federal correctional institutions across the country.⁷ Federal correctional institutions house those prisoners who have been given a sentence of two years or more. Canada has a high rate of incarceration relative to other Western nations (though lower than the United States’ rate); Indigenous and other members of racialized groups are overrepresented in the prison population⁸ due to a number of social determinants, including prejudiced policing.⁹

Legal Requirements

The *Corrections and Conditional Release Act* governs a great deal of prison life and administration, but contains no specific guidelines as to the provision of library services to inmates.¹⁰ It does, however, require that the prisons provide “a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.”¹¹ This requirement is further elaborated in *Commissioner’s Directive 720 (Education Programs and Services for Offenders)*, which states that a prison library must ensure that its collections are comparable to equivalent public libraries in the community, that the needs of minority language inmates are met, and that the library makes available historical and current copies of legal, regulatory, and official reference materials.¹²

Such materials include:

- a) *Canadian Charter of Rights and Freedoms*
- b) *Corrections and Conditional Release Act and Regulations*
- c) *International Transfer of Offenders Act*
- d) *Criminal Code of Canada*
- e) *Canadian Human Rights Act*
- f) *Access to Information Act*
- g) *Privacy Act*
- h) *Official Languages Act*
- i) *Standard Operating Practices*
- j) *Commissioner’s Directives*
- k) *National Parole Board Policy Manual*; and
- l) *Info Source*

Inmates benefit from the same protections in law as the rest of the populace; this includes their rights to privacy and access to information. The federal *Privacy Act* ensures the rights of every individual to access information about themselves held by federal agencies,¹³ and the parallel

³ *Supra* note 1 at 141.

⁴ Brenda Vogel, *Down for the Count: A Prison Library Handbook* (Metuchen, NJ: The Scarecrow Press, 1995) [Vogel, “Down for the Count”].

⁵ *Supra* note 2.

⁶ *Supra* note 1 at 141.

⁷ Catherine Ings & Jennifer Joslin, “Correctional Service of Canada Prison Libraries from 1980 to 2010” (2011) 59:3 *Library Trends* 386.

⁸ *Supra* note 1 at 142.

⁹ Melissa Gorelick, “Discrimination of Aboriginals on Native Lands in Canada” (September 2007), online: UN Chronicle <un Chronicle.org/article/discrimination-aboriginals-native-lands-canada>.

¹⁰ *Corrections and Conditional Release Act*, SC 1992, c 20.

¹¹ *Ibid* at s 76.

¹² *Commissioner’s Directive 720: Education Programs and Services for Inmates* (15 May 2017), online: Correctional Service Canada, <www.cscsc.gc.ca/politiques-et-lois/720-cd-eng.shtml>.

¹³ *Privacy Act*, RSC 1985, c P-21.

corresponding provincial legislation (e.g., the *Ontario Freedom of Information and Protection of Privacy Act*, which provides for individuals' right to access information) provides similar rights.¹⁴ These rights, along with the right of every inmate to legal support, form part of the basis for the prison library's reason for existence.

In the United States, prisons are required to provide either legal reference services or access to a legal collection. *Bounds v Smith*¹⁶ was a landmark case that affirmed the rights of American prisoners to access the courts:

"We hold, therefore, that the fundamental right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."¹⁷

The "or" is a critical distinction here: prisons can choose whether to provide legal assistance or access to law libraries. The latter option generally proved to be the more cost-effective and simpler one. Prison librarians or library staff may be untrained in legal research but will use the various collection development guidelines from the American Association of Law Librarians and others to assist them in providing service. Unfortunately, *Bounds v Smith* was limited by a subsequent case (*Lewis v Casey*), which cast doubt on the precedent it presented.¹⁸

The Literature

The extant literature on prison libraries and prison librarianship is extensive. However, little of it focusses on prison libraries in the Canadian context. Ann Curry's 2003 *Canadian Federal Prison Libraries: A National Survey* and Catherine Ings and Jennifer Joslin's *Correctional Service of Canada Prison Libraries from 1980 to 2010* are virtually the only two scholarly articles on the subject. These two are extremely useful and relatively exhaustive, but given that they are only two articles in a field where more data and increased analysis are critical, such a dearth is concerning.

Even so, a wealth of writing on prison libraries and librarianship in other jurisdictions, mainly the United States, presents itself readily. Brenda Vogel's 1995 book *Down for the Count: A Prison Library Handbook*¹⁹ is perhaps one of the most foundational texts in this field, an accessible and instructive manual for the prospective prison librarian. While it is primarily a handbook, it is also not uncritical of the worlds of both libraries and corrections, although it stops short of criticizing the "prison-industrial complex" (a framework of

analysis wherein the prison system is said to exist purely or largely for the purpose of its continued existence and profit).²⁰ In this, Vogel is no radical. She is, and asks readers to be, realistic about the idea of making a difference in the lives of inmate patrons and in the field of corrections. *Down for the Count* is, however, very much a product of its time—Vogel devotes significant discussion to arguments on the relative merits of having a networked computer system or using an automated catalogue and circulation system.²¹ Perhaps in light of this, she later published *The Prison Library Primer: A Program for the Twenty-First Century*.²² *Down for the Count* takes as its thesis the idea that the librarian's ultimate duty and foremost role in the penitentiary is that of facilitating inmates' access to information²³ and understands that in the corrections context, this necessarily includes legal reference assistance. However, this aspect of the job is given less treatment in *Down for the Count* than might be expected, or warranted.

In *Libraries Inside: A Practical Guide for Prison Libraries*, also published in 1995, editors Rhea Joyce Rubin and Daniel S Suvak²⁴ devote an eight-page chapter to providing legal reference services and materials, with the remainder of the book focussed on the other aspects of running a prison library (both professional and inmate staffing, organizational culture, budgeting, management, collection development, etc.). The chapter on legal reference services and materials is relatively superficial and specific to the United States. It references the landmark case of *Bounds v Smith*, as well as several ancillary cases from the state trial courts that have established some precedent for the provision of legal services, but the reach of these cases is uncertain. The author of this chapter cites the American Association of Law Librarians and the American Library Association's respective guidelines for prison library collection development and administration.²⁵

Sheila Clark and Erica MacCreaigh's *Library Services to the Incarcerated: Applying the Public Library Model in Correctional Facility Libraries*²⁶ is a highly accessible textbook-type manual for prospective prison and jail librarians in the United States. The authors' tone throughout is notable for its light and breezy character, perhaps in an attempt to demystify the job and make it less intimidating. As the book's title suggests, Clark and MacCreaigh are proponents of the public library model, and much of the book consists of guidance on its application to this specific environment. The authors do, however, take a critical look at certain aspects of the prison librarian's role that differ markedly from that of the average public librarian, even as the librarian maintains the dual role of information gatekeeper and information access facilitator.²⁷ They understand that the user community is likely

¹⁴ *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31.

¹⁵ *Commissioner's Directive 084: Inmates' Access to Legal Assistance and the Police* (28 March 2002), online: Correctional Services Canada <www.csc-scc.gc.ca/politiques-et-lois/084-cd-eng.shtml>.

¹⁶ *Bounds v Smith*, 430 US 817 (1977).

¹⁷ Brenda Vogel, *The Prison Library Primer: A Program for the Twenty-First Century* (Lanham, MD: The Scarecrow Press, 2009) at 60 [Vogel, "Primer"].

¹⁸ *Ibid* at 64.

¹⁹ Vogel, "Down for the Count", *supra* note 4.

²⁰ Eric Schlosser, "The Prison-Industrial Complex" (December 1998), online: The Atlantic <www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669/>.

²¹ Vogel, "Down for the Count", *supra* note 4.

²² Vogel, "Primer", *supra* note 20.

²³ See Chapter 12: A Mirror of Reality: The Generation Gap, the Information Gap, and the Prison Librarian in Vogel, "Down for the Count", *supra* note 4.

²⁴ Rhea Joyce Rubin & Daniel S Suvak, eds, *Libraries Inside: A Practical Guide for Prison Librarians* (Jefferson, NC: McFarland & Company, 1995).

²⁵ Jay Ihrig, "Providing Legal Access", Rhea Joyce Rubin & Daniel S Suvak, eds, *Libraries Inside: A Practical Guide for Prison Librarians* (Jefferson, NC: McFarland, 1995) at 195.

²⁶ Sheila Clark & Erica MacCreaigh, *Library Services to the Incarcerated: Applying the Public Library Model in Correctional Facility Libraries* (Westport, CT: Libraries Unlimited, 2006).

²⁷ *Ibid* at 51.

to have specific needs: in a women's prison, for example, the librarian might need to cultivate an understanding of family law, as female prisoners are more likely on average to be (or to have been) the primary caregiver for children or other dependents and may require subject-specific reference assistance in this area.²⁸

While Clark and MacCreaigh's book is focussed largely on providing guidance for the many diverse aspects of the prison or jail librarian's work that has little or nothing to do with the law (e.g., the quotidian tasks associated with running any sort of circulating library), they do also discuss ethical issues that are likely to appear in this context; for example, drawing the line between providing legal reference assistance and providing legal counsel. This distinction is important as they are not lawyers, and for librarians to provide legal interpretation or advice could constitute practicing law without a licence, a criminal offence in the United States. However, as elaborated above, providing legal reference services, or at least access to legal material, is a matter of law in the US. As such, Clark and MacCreaigh underscore the importance of prison librarians familiarizing themselves with the basics of legal research²⁹ and delineate the core texts and resources that should be made available to the user community.³⁰

Vogel's *Prison Library Primer* is a much-needed update to her aforementioned 1995 book. Much denser and packed with more policy information than its predecessor, it is a valuable resource for the librarian who is interested in more than the simple administration of a prison library. Chapter 5, "A Prisoner's Locus Sanctum: The Law Library," is of particular interest. While here too Vogel gives a detailed account of *Bounds v Smith* and *Lewis v Casey*, she also locates them within a contemporary context, elaborates their respective effects on the practice of legal reference in the prison library, and discusses their effect on US prison administration policy.

Vogel has no illusions about the powers that be in the landscape of American jails and prisons and understands that there are sometimes very real and determined efforts to frustrate the rights of inmates (particularly with respect to their right to access to the courts). To this end, Vogel provides a laundry list of steps a librarian can take, working within the system, to protect the library and thus protect inmates' rights and privileges. As well, she encourages prison librarians to develop their legal reference and research skills such that their management of legal collections and provision of legal

reference is at a level that is truly helpful to the patron and stays true to the philosophical purpose of the prison law library. Finally, Vogel includes as chapter six a reprint of an article by Evan R Seamone.³²

Planning a Legal Reference Library for a Correctional Institution by Olga B Wise and J MacGregor Smith³³, published in 1976, is unique among the books surveyed for this article. While it is rather light on text, it includes at least a dozen and a half diagrams, floor plans, and sundry illustrations. It makes for an interesting look at the spatial arrangements considered ideal in 1976, but its commentary on legal materials and related issues is minimal. The authors do, however, mention two cases other than *Bounds v Smith*; they write that *Johnson v Avery*³⁴ and *Younger v Gilmore*³⁵ are critical in that they establish an inmate's right of access to legal materials as an extension of their right to access to the courts.³⁶

Finally, a special issue of the journal *Library Trends* on prison librarianship was published in 2011.³⁷ It includes articles on prison libraries and librarianship in Spain, UK, Poland, USA, Japan, Italy, Germany, France, and the aforementioned Ings and Joslin article on Canada. As a full discussion of each of these articles is beyond the scope of this review, only a discussion of the Ings and Joslin article will follow. However, it is important to mention that study of prison librarianship around the world is in fact occurring and interest in it is very much present, as evinced by this special issue.

In *Correctional Service of Canada Prison Libraries from 1980 to 2010*, Ings and Joslin give an overview of the last thirty years of prison librarianship in Canada, including a very valuable discussion of the role of the CSC in managing Canadian prison libraries. The CSC commissioned two investigations of prison libraries in the 1980s, culminating in the *Nason Report* (1981) and the *Peat Marwick Report* (1984). Each of these reports revealed a dispiriting picture of the state of prison libraries in Canada: a near total lack of national policy and standard operating methods, a dearth of trained professional librarians and library technicians, insufficient financial resources, and inadequate facilities. Subsequent studies found few of the recommendations made by the *Nason* and *Peat Marwick* reports have been implemented, and little in the way of further study and publications on prison libraries in Canada after 1989,³⁸ excepting Ann Curry et al's 2003 survey and article of Canadian federal prison libraries.³⁹

²⁸ *Ibid* at 65.

²⁹ *Ibid* at 192.

³⁰ *Ibid* at 135.

³¹ Evan R Seamone, "Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America's Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries" (2006) 24:1 Yale L & Pol'y Rev 91, reprinted in Vogel Primer, *supra* note 20.

³² Vogel Primer, *ibid* at 81.

³³ Olga B Wise & J MacGregor Smith, National Clearinghouse for Criminal Justice Planning and Architecture, *Planning a Legal Reference Library for a Correctional Institution* (Champaign, IL: University of Illinois Press, 1976) [Wise].

³⁴ *Johnson v Avery*, 393 US 483 (1969).

³⁵ *Younger v Gilmore*, 404 US 15 (1971).

³⁶ Wise, *supra* note 33 at 4.

³⁷ *Library Trends*, 59(3).

³⁸ Catherine Ings & Jennifer Joslin, "Correctional Service of Canada Prison Libraries from 1980 to 2010" (2011) 59:3 *Library Trends* 386.

³⁹ *Supra* note 1 at 141.

⁴⁰ ASCLA Ad Hoc Subcommittee on Library Standards for Adult Correctional Institutions, *Library Standards for Adult Correctional Facilities* (Chicago: ALA, 1992).

Policy Statements and Guidelines from North American Professional Associations

There is no shortage of guiding documents published by various organizational bodies, from correctional services institutions to professional librarians' associations in Canada and the United States. The American Library Association (ALA) in particular has been a crucial resource for this sort of information; the Association of Specialized and Cooperative Library Agencies, a division of the ALA, published *Library Standards for Adult Correctional Institutions* in 1992.⁴⁰ This document includes information about inmates' right of access and how to ensure it, as well as administration, staffing, budgeting, collections development, and reference services guidance. As a document published by a major professional association, it can be a valuable resource in the pocket of the prison librarian who finds themselves up against an obfuscatory prison administration, which may not appreciate the importance of library programming. The ALA has also published a similar document, *Library Standards for Juvenile Correctional Institutions*, specific to the needs of those environments.⁴¹ The ALA also maintains a bibliography of print resources on the subject of library services to the incarcerated on WorldCat⁴² and an extensive list of assorted resources on the subject on their website.⁴³

The International Federation of Library Associations and Institutions (IFLA) has likewise published standards, including *Guidelines for Library Services to Prisoners*.⁴⁴ This document has been translated from English into eight different languages, including French, German, Spanish, Russian, Chinese, Arabic, Norwegian, and Turkish. The *Guidelines* are designed to establish internationally applicable standards of practice and also to serve as a "statement of principle," in an effort to ensure that prisoners have the right to learn, read, and access information. The IFLA Law Libraries Working Group has also published a "Statement on Government Provision of Public Legal Information in the Digital Age,"⁴⁵ which is likely to be applicable to those librarians working in countries such as the United States and Canada where prisons are legally mandated to provide some means of access to legal information. The question of publicly and digitally available legal information might be seen as a moot point for those prisoners without internet access, but the push for increasing the availability of public digital legal information can assist these inmates' librarians, not to mention their families and friends, to provide them with badly needed resources.

Before the Canadian Library Association (CLA) dissolved in June 2016, it published a number of important documents pertaining to prisoners' access to information and the provision of legal materials to prisoners. In conjunction

with the Canadian Association of Law Libraries (CALL-ACBD), the CLA published "A Position Statement on the Fundamental Right of People who are Incarcerated to Read, Learn and Access Information" in 2014.⁴⁶ While quite brief, this document creates an important ethical statement on which prison librarians can rely if and when prisoners' access to legal and other material becomes threatened. After its dissolution, the CLA's functions were absorbed by the Ontario Library Association and the Canadian Federation of Library Associations, respectively.⁴⁷ These organizations have since also published valuable resources for prison libraries and librarians. The CFLA's position statement on prisoners' right to read ("Prison Libraries Network: The Right to Read") reiterates the ALA's and the CLA's earlier statements regarding prisoners' right to access information and legal reference services, communicating the heightened importance of intellectual freedom even behind bars, and stressing that Canadians do not lose the rights and freedoms guaranteed them by the *Canadian Charter of Rights and Freedoms*, even while incarcerated. The statement goes further, to articulate one of the elephants in the room when it comes to Canadian policy: the continuing effects of colonialism and racism on First Nations, Métis, and Inuit Canadians:⁴⁸

Canadian prisons must acknowledge their key role within a social and political system of ongoing colonialism. Indigenous peoples make up a percentage of the incarcerated population far higher than their proportion of Canada's general population—and the numbers of Indigenous peoples who are incarcerated continues to grow. Within this context, and at the request of Indigenous inmates, prison libraries have a responsibility to provide access to resources on Indigenous histories, cultures and languages, to books by Indigenous authors, and to materials about the impacts—and related healing processes—of colonialism.

While it is relatively frequent to find, in discourses on incarceration, writing that speaks to the unavoidable truth that visible minorities, especially Indigenous people, are overrepresented in the prison systems of North America, it is less common to see colonialism and racism explicitly named as systemic forces in Canadian culture and the provision of services to incarcerated Indigenous Canadians placed within the context of truth and reconciliation.⁴⁹ This is an important aspect of prison librarians' work, as a disproportionate segment of their user community is likely to be Indigenous and may require specialized legal reference assistance. As such, librarians and prison administrations must be made aware of legal issues likely to be of special interest to these patrons.

⁴¹ ASCLA Ad Hoc Subcommittee on Library Standards for Juvenile Correctional Institutions, *Library Standards for Juvenile Correctional Facilities* (Chicago: ALA, 1999).

⁴² ALA HQ Library, "Library Services to the Incarcerated" (24 May 2014), online: WorldCat <www.worldcat.org/profiles/ALAHQLibrary/lists/3015038>.

⁴³ "Prison Libraries" (16 September 2014), online: ALA <<http://www.ala.org/tools/atoz/prison-libraries>>.

⁴⁴ Vibeke Lehmann & Joanne Locke, *Guidelines for Library Services to Prisoners* (The Hague: IFLA Headquarters, 2005).

⁴⁵ "IFLA Statement on Government Provision of Public Legal Information in the Digital Age (2016)" (15 December 2016), online: IFLA <<https://www.ifla.org/publications/node/11064?og=86>>.

⁴⁶ "Position Statement on the Fundamental Right of People who are Incarcerated to Read, Learn and Access Information" (September 2014), online: CLA & CALL-ACBD <cla.ca/wp-content/uploads/CLA_CALL_statement_prison_libraries_14Sept2014_Final2.pdf>.

⁴⁷ "Update on the Dissolution of the Canadian Library" (24 June 2016), online: CLA <librarianship.ca/news/cla-dissolution-update-3/>.

⁴⁸ "Prison Libraries Network: The Right to Read" (January 2016), online: CFLA-FCAB <cfla-fcab.ca/en/programs/guidelines-and-position-papers/prisonlibraries-network-the-right-to-read-position-statement/>.

⁴⁹ Krista Nerland, "TRC@1: The Canadian Criminal Justice System Remains an Obstacle to Reconciliation" (2 June 2016), online: Olthuis Kleer Townshend LLP <oktlaw.com/trc1-canadian-criminal-justice-system-remains-obstacle-reconciliation/>.

Conclusion

This article has, unfortunately, scarcely scratched the surface of issues in the Canadian prison system specific to librarians. Issues of race, ethnicity, class, and all attendant issues of literacy and access permeate prison librarianship, and much of the literature (particularly as seen in Brenda Vogel's later work) appreciates this. However, it is clear that a great deal of the literature is invested in aspects of prison librarianship that have to do with the application of general library management techniques and associated issues and is less focussed on ethical questions and the provision of legal reference support to user communities who are badly in need of access to resources and reference services. Most critically, a paltry amount of scholarly work has been published on prison and jail libraries in Canada, and there are limits to the extent to which we can apply American research to the Canadian context. Our legal infrastructure, government, and policy landscape all differ from those in the United States, and we must be willing to engage in further

research to improve the services that can be made available to incarcerated Canadians. It is my hope that this article has impressed upon the reader the urgency of this work, and that it will inspire librarians to investigate further the topic of legal reference in Canadian prison libraries. Avenues for further research might include analyses of institutional practices regarding what is allowed to be sent to inmates from outside, issues of access to funding for legal research and reference assistance, and discussions of organizational culture as it pertains to prison administration and staff, where perennial blockades to change are located. Further research following the *Nason* and *Peat Marwick* reports could encourage improvement in Canadian correctional libraries, particularly if coupled with grassroots activism from outside the academy and the corrections field. This is an area where, for real transformation to occur, multiple sectors and stakeholders must be willing, and allowed, to work together.

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III Prison Law Libraries: From US's *Bounds* to Canada's *Biever**

By Joel Gladstone**

ABSTRACT

*This article examines prison law libraries in North America over the last 50 years, starting with a survey of US case law, scholarship, current Canadian policy and legislation, and an in-depth review of two key cases, one American, *Bounds v Smith*, and the more recent Canadian *R v Biever*. The article explores the impact of those cases on the provision of legal resources in prison libraries, the politicization of those resources, and the effect that technology, specifically online resources, are having on the issue. More fundamentally, these cases raise questions about what is meaningful access to legal resources for those in prison and what a prison law library could and should be.*

SOMMAIRE

*Cet article examine les bibliothèques de droit se trouvant en milieu carcéral en Amérique du Nord au cours des 50 dernières années, en commençant par une étude de la jurisprudence américaine, des bourses d'études, des politiques et des lois canadiennes actuelles et d'un examen approfondi de deux décisions clés, une américaine, *Bounds v Smith* et une canadienne, *R v Biever*. L'article explore l'impact de ces deux décisions sur la fourniture de*

ressources juridiques dans les bibliothèques pénitentiaires, la politisation de ces ressources et l'effet de la technologie, en particulier des ressources en ligne, sur la question. Plus fondamentalement, ces décisions soulèvent des questions sur ce qu'est un accès significatif aux ressources juridiques pour les détenus et sur ce qu'une bibliothèque de droit carcéral pourrait et devrait être.

Introduction

With the recent release and exoneration of so-called jailhouse lawyer Derrick Hamilton and his advocacy for wrongfully convicted African-American prisoners, I had hoped to focus this paper on similar developments in Canada, particularly as they relate to Indigenous peoples and access to prison law library resources.¹ As it turns out, the extent of scholarship and research on the area of prison law libraries appears to be small in general and virtually non-existent in Canada. From the broad perspective of librarianship, and law librarianship more specifically, the history and treatment of prison law libraries has been fascinating, if not cautionary.

Prison law libraries became a political and legal football in the United States, starting in the 1960s, as a result of a number of court decisions, most notably *Bounds v Smith*² and then later

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¹ Jennifer Gonnerman, "Home Free", *The New Yorker* (20 June 2017), online: <www.newyorker.com/magazine/2016/06/20/derrick-hamilton-jailhouse-lawyer>.

² *Bounds v Smith*, 97 S Ct 1491 (1977).

Lewis v Casey,³ where prison law libraries became judicially linked to the constitutional rights of prisoners to access the courts. The constitutional basis for those developments has similar grounding in Canada, as does the unreliable state of access to legal resources within Canadian prisons, notwithstanding official policies that suggest otherwise. With Alberta Court of Queen's Bench's decision in *R v Biever*,⁴ it is possible that prison law libraries and legal resources could start to become similarly politicized and judicially treated in Canada.

Survey of US Context: Policy, Legislation, and Case Law from *Bounds* to *Casey*

In the United States, there is a constitutional right of access to the courts, which also includes a provision of assistance in the preparation and filing of legal documents.⁵ In 1977, a group of North Carolina prisoners sued for access to legal research facilities (*Bounds*). The judge found for the prisoners. This was affirmed up through the US Supreme Court. The Federal Court indicated a preference for the provision of legal services, rather than for a law library, but left that decision up to individual states.⁶ The implementation of the requirements of the *Bounds* case resulted in a discussion (through the courts) of what access to the courts means and of what the minimum provision of a prison law library might consist.⁷ Following *Bounds* and for the next twenty years or so, states "used" prison law libraries as a means of fulfilling the requirement of assisting prisoners with access to the courts. This was a more cost-effective solution than expanding legal aid and giving prisoners more regular access to legal aid lawyers. A number of articles were published during that time outlining what resources a prison law library should contain and how to assist inmates with their use.

One of the effects of *Bounds* was a perception that it caused an increase in jailhouse lawyers and excessive prisoner litigation.⁸ Among other things, this led to the passage of the *Prison Law Reform Act*, which was in force when the US Supreme Court ruled in *Lewis v Casey*, a class action case brought by 22 prisoners alleging the State of Arizona was depriving them of their rights of access to the courts. Justice Scalia, writing for the US Supreme Court, redefined the concept of right to access the courts to instances only where the inmate can demonstrate "actual injury from the lack of

access."⁹ States interpreted *Lewis* as reversing the burden of proof when enforcing prisoners' rights in correctional institutions away from them and back to the prisoner. This resulted in up to half of the existing prison law libraries in the United States being abandoned.¹⁰ The State of Arizona immediately closed all its prison law libraries following *Lewis*.¹¹ Many states also immediately began either cutting back on or eliminating their prison law libraries,¹² even though *US Federal Standards for Prisons and Jails* recommend that prisoners have access to a law library with useful and relevant legal materials and, should they need assistance, the prison should have staff members who could assist with the access and use of those materials (not necessarily a librarian). Those standards also include electronic access.¹³

By 2006, more than half of the US state prison library systems had moved to electronic databases.¹⁴ Electronic resources were perceived to be easier to maintain than physical collections and potentially less expensive. Commercial providers like Westlaw and LexisNexis compete for this market.¹⁵ However, given the precarious nature of state budgets and the subscription-based model of electronic commercial legal resources, it also puts access at greater risk than a physical library would, a commonly faced issue by most types of libraries. There are also issues of technical competence and capacity faced by both prison staff and inmates alike.¹⁶ Moreover, states' fiscal priorities appear to drive their relationship with these commercial providers, making customer service secondary to cost.¹⁷ Some inmates have sued over their prisons' decision to move from print to electronic resources because of a lack of skill or knowledge in how to use these tools.¹⁸ In 2009, Google Scholar added a complete suite of legal commentary and opinions (journal articles, case law, etc.).¹⁹ Kelmor conducted a statistical analysis of the results from inmate requests at a particular institution where she worked, comparing the results from Google Scholar and a customized version of Westlaw configured for prisons called Westlaw Correctional, and she concluded: "Both paid major legal databases and Google Scholar are less effective in the jail environment than carefully selected print treatises and practice aids."²⁰

Review of Scholarship

There are three aspects to the scholarship on this topic since the decision in *Bounds*. One is the question of how prison

³ *Casey v Lewis*, 116 S Ct 2174 (1996).

⁴ *R v Biever*, 2015 ABQB 301, [2015] 10 WWR 680.

⁵ Suzanna Conrad, *Prison Librarianship Policy and Practice* (Jefferson, NC: McFarland & Company, 2017) at 30.

⁶ Arturo A Flores, "Bounds and Reality: Lawbooks Alone Do Not a Lawyer Make" (1984) 77:2 Law Libr J 275 at 282.

⁷ Conrad, *supra* note 5, at 77.

⁸ *Ibid* at 78–9.

⁹ Karen Westwood, "Meaningful Access to the Courts and Law Libraries: Where Are We Now" (1998) 90:2 Law Libr J 193 at 194–5.

¹⁰ Conrad, *supra* note 5 at 57.

¹¹ *Ibid* at 79.

¹² Leonard Kniffel, "Iowa May Close Prison Law Libraries" (1999) 30:4 American Libraries 18; Joseph L Gerken, "Does *Lewis v Casey* Spell the End to Court-ordered Improvement of Prison Law Libraries?" (2003) 95:4 Law Libr J 491.

¹³ Conrad, *supra* note 5, at 30.

¹⁴ Camilla Tubbs, "Electronic Research in State Prisons" (2006) 25:1 LegRef ServQ 13 at 19; Conrad, *supra* note 5 at 79.

¹⁵ Tubbs, *supra* note 14 at 20.

¹⁶ *Ibid* at 27–28.

¹⁷ Jonathan Abel, "Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries" (2012–2013) 101 Geo L J 1191 at 1213–4.

¹⁸ *Ibid* at 1212.

¹⁹ Kimberli Kelmor, "Inmate Legal Information Requests Analysis: Empirical Data to Inform Library Purchases in Correctional Institutions" (2016) 35:2 LegRef Serv Q 135 at 136.

²⁰ *Ibid* at 145.

law libraries came to be seen as instrumental in fulfilling the constitutional right of access to the courts; second is the sufficiency or capacity of prison law libraries to deliver that access; third is the actual challenge of being a prison librarian, legal or otherwise, and how to balance prisoners' rights to access legal materials with the restrictions of the corrections system in general, the specific context of each prisoner and prison, and the professional obligation of the librarian to avoid giving (or appearing to give) legal advice.

Conrad notes the paucity of scholarship on the issue of prison librarianship itself, not just prison law librarianship; the situation is more pronounced in Canada. She conducted a survey of US prison librarians; however, it is not statistically reliable because of discrepancies from state to state.²¹ Curry et al conducted a survey of Canadian prison libraries in 2003.²² Because the definition of "meaningful access" was never fully explained in *Bounds*, it was left to law librarians and others to read and track evolving case law, which clarified and defined it on a case-by-case basis, from state to state.²³ Kelmor provides statistical evidence that scholarship and research on prison law libraries surged after *Bounds* and again after *Lewis*,²⁴ but otherwise has remained an under-researched area of law librarianship in both the United States and Canada.

It was not always the case that prison law libraries were seen as key instruments in satisfying the constitutional right of access to the courts. Abel provides a lengthy history of the development of the prison law library in the United States and asserts that its primary function was related to issues of education and rehabilitation, and not as an instrument of access to the courts. In a thorough review of cases involving prisoners' access to the courts in the years before *Bounds*, Abel suggests there are no references to libraries or books, even though many prisons were providing those kinds of materials. The function of the law library as a vehicle for access was imposed and co-opted by states to satisfy this court-ordered need, even while recognizing that a law library was not an effective tool for providing access:²⁵ "What is important to see is how prisons used the principle as an excuse—as a principled reason to justify the provision of patently useless libraries."²⁶

What this development left unaddressed were the issues involved with using a law library or legal resources,²⁷ and the related issues of illiteracy, both functional and legal, including English as a first language (and French in Canada), and whether or how a law library, however well funded and maintained, actually provides access to the courts.²⁸

As Westwood notes: "In reviewing cases that have been decided since *Lewis*, it seems the question has changed from 'Is the law library service good enough to meet the *Bounds* standard?' to 'Is any law library service so bad as to not meet the *Lewis* standard?'"²⁹ Mongelli published an article aimed at addressing the functional illiteracy of prisoners when using a law library. It is intended to be a course that would equip prisoners; it is also addressed to prison librarians/law librarians as an encouragement to advocate for prisoners. He hoped to address what he perceived to be an underlying assumption that any efforts to petition the court are effectively an effort to mire the court in frivolous or pointless actions, and that because a prisoner is in jail (i.e., has been charged and/or found guilty) the probability of success and/or the need to take their claims seriously is fundamentally flawed or undermined by their (supposed) guilt. Thus, the stigma of being a prisoner affects the efforts by people like Mongelli to properly equip and address the constitutional right of American prisoners to have meaningful access to the courts.³⁰ As several authors have noted, how is an inmate able to learn what a frivolous action might be without access to the very legal resources that would help describe and define it?

Abel points out that after *Bounds*, inmate advocates started to be critical of prison law libraries as an impediment to proper access to the courts,³¹ advocating the need for legal assistance to complement the law library, in effect vocalizing the deficiencies in these arrangements as articulated by Justice Scalia in his judgment. In his decision qualifying the right to access, Scalia underscores the point that libraries alone are not sufficient and that legal counsel represents more meaningful access³²—that if access is constitutionally demanded, then a prison library is not actually sufficient to fulfill that right. Moreover, prisoners in the US historically have not been "effective" users of law libraries, when effectiveness is measured in terms of successful petitions to the courts or even successful engagement with the courts.³³

Canadian Context: Policy and Legislation

Although there is a scarcity of scholarship or analysis on prison law libraries in Canada, there are a number of official documents and policies that give some idea of the context in this country. The *Corrections Service of Canada Commissioner's Policy Directive* states the following regarding inmates' access to legal assistance: "To ensure respect for the rights of inmates by providing them with reasonable access to legal counsel and the courts, as well as to appropriate legal and regulatory documents,

²¹ Conrad, *supra* note 5, at 1, 42–43, 96, 119.

²² Ann Curry et al, "Canadian federal prison libraries" (2003) 35:3 *Journal of Librarianship and Information Science* 141 at 146.

²³ Westwood, *supra* note 9 at 194–5.

²⁴ Kelmor, *supra* note 19 at 137–8.

²⁵ Abel, *supra* note 17 at 1191.

²⁶ *Ibid* at 1206.

²⁷ Flores, *supra* note 6 at 275.

²⁸ Conrad, *supra* note 5 at 78.

²⁹ Westwood, *supra* note 9 at 196.

³⁰ William D Mongelli, "De-Mystifying Legal Research for Prisoners" (1994) 86:2 *Law Libr J* 277.

³¹ Abel, *supra* note 17 at 1198.

³² *Ibid* at 1199.

³³ Flores, *supra* note 6 at 279.

and to ensure the right of access by inmates to the police in a secure and confidential manner.”³⁴ And section 19 states: “Institutional Heads shall ensure that inmates have reasonable access to services for photocopying of legal materials.”³⁵ And Correctional Service Canada states the following on its website, on the page outlining its “Education Programs and Services for Offenders”:

The Institutional Head will ensure that the library provides services and computerized resources which are comparable to those in the community libraries, while taking into consideration both the needs of the correctional environment and the limitations of the physical space available. ...The institutional librarian will ensure that the institution’s library has available historical and current copies of legal, regulatory and official reference materials as listed below.

That list includes access to a number of statutes, including the *Charter*, annotated versions of the *Criminal Code*, and a number of other related and relevant statutory and regulatory documents.

Further searches within all other policy documents, commissioner’s directives, regulations, and statutes related to Correctional Service Canada give no further insight or assurance regarding the steady and reliable provision of library services in general or access to legal documents or online services. There is a general reference that the program manager of a facility is in charge of overseeing the library, but no mention of librarians or information expertise. An example of a provincial policy document, in Ontario, the *Inmate Information Guide for Adult Institutions*, outlines the general right of inmates to read and to access the prison library, *if there is one*, and that “[i]f you are representing yourself, the institution can assist you with telephone, fax or mail access to the courts and parties such as the Crown so that you can serve and file court materials.”³⁷

The *Department of Justice Canada Policy on Legal Assistance* also makes general statements about the availability of publicly funded legal aid and services programs, but allows that the specifics of the programs vary from province to province.³⁸ In 2002, it published a *Study of the Legal Services Provided to Penitentiary Inmates by Legal Aid Plans and Clinics in Canada*. This was a survey of legal services available to federal prison inmates. The study asserts that “[l]egal orientation sessions for new inmates, toll-free legal advice services, and well-maintained law libraries in correctional institutions can provide a cost-effective supplement (or even an alternative) to legal aid.”³⁹ However,

it does concede that “[t]here is a lack of information/legal materials for inmates ... [and] that law library resources, especially books, are often in a state of disrepair or are missing altogether.”⁴⁰ Interestingly, the authors of the study do not appear to have included interviews with any librarians, prison-based or otherwise. It also appears there has been no follow-up to that study by the Department of Justice Canada since 2002. By suggesting that the law library can be an alternative to legal aid, the study makes the same association made by US states following *Bounds*, that access to the courts can be meaningfully facilitated simply through the provision of some form of law library.

Curry provides one of the very few Canadian articles on prison libraries, although not specifically on legal materials or law librarianship. However, she does note that although the aforementioned Directive instructs all prisons to make “reasonable efforts” to provide inmates with access to legal and regulatory documents, her survey results indicated, in 2003, that “legal statutes are included in only 62 per cent of Canadian library collections, but in all of the maximum security libraries.”⁴¹

R v Biever and Other Canadian Case Law

The recently decided case of *R v Biever* suggests the contradictory environment in Canada between stated policy and budgetary reality regarding access to legal assistance and resources is creating a situation where a *Bounds*-like conundrum could develop here; that is, judicial identification of prison law libraries and resources as a sufficient form of access to the courts (despite both scholarship and the US Supreme Court questioning that notion) and a slow, case-by-case development of Canadian judicial opinion shaping policy.

In the case of *Biever*, Justice Graesser outlines the right of inmates to access the courts, links the concept of access to both legal aid and law libraries (or at least the materials and resources of a law library, including electronic ones), and specifies a number of conditions before the application for access might be granted, including: the necessity for the seriousness of the claimant, that is, that the petition is not frivolous; that the lack of access will produce a potentially substantial harm to the prisoner; that the inmate’s decision to decline legal representation is reasonable; and that their capacity to utilize the materials is demonstrated. Justice Graesser points out that the maximum security prison where *Biever* is held has no physical library whatsoever, and prisoners have no access to the internet.⁴² He goes on to note:

³⁴ *Commissioner’s Directive 084: Inmates’ Access to Legal Assistance and the Police* (28 March 2002), online: Correctional Service Canada <www.csc-scc.gc.ca/acts-and-regulations/084-cd-eng.shtml>.

³⁵ *Ibid* at s 19.

³⁶ *Commissioner’s Directive 720: Education Programs and Services for Offenders, Institutional Libraries* (4 October 2007), online: Correctional Service Canada <www.csc-scc.gc.ca/acts-and-regulations/720-cd-eng.shtml#institutional>.

³⁷ “Inmate Information Guide for Adult Institutions” (September 2015), online: Ontario Ministry of Community Safety & Correctional Services <www.mcscs.jus.gov.on.ca/english/corr_serv/PoliciesandGuidelines/CS_Inmate_guide.html>.

³⁸ “Department of Justice Canada Policy on Legal Assistance” (13 March 2017), online: Department of Justice Canada <www.justice.gc.ca/eng/contact/comm4.html>.

³⁹ “Study of the Legal Services Provided to Penitentiary Inmates by Legal Aid Plans and Clinics in Canada” (4 October 2002), online: Department of Justice Canada <www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr03_la10-rr03_aj10/rr03_la10.pdf > at 4.

⁴⁰ *Ibid* at 24–5.

⁴¹ Ann Curry et al, “Canadian Federal Prison Libraries” (2003) 35:3 *Journal of Librarianship and Information Science* 141 at 146.

Mr. Biever submitted that but for Google searches done for him using Wikipedia, he would not have been able to gain an understanding of habeas corpus or other legal issues affecting him such as severance. He acknowledged that submissions he had made without access to legal materials were “poor in quality” and he had been led to advancing poor arguments. He contrasts his previous applications with his current severance application, which he considers to be well put together.⁴³

The judge also reviews the US case law, discussed earlier, and considers the concepts of self-representation and a prisoner’s right to choose it.

I reject the notion that self-represented litigants should only be able to access legal materials if they demonstrate that their case is complex or involves novel points of law. That suggestion trivializes the necessity for knowledge of current legal procedures and practices and up-to-date knowledge of the law in many areas to properly prepare for a reasonable defence in a criminal case.⁴⁴

The judge grounds the basis of his decision in the same constitutional terms referenced in *Bounds*, that is, in this case, the Canadian constitutional right provided in section 7: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”⁴⁵ He also notes the discrepancies in the resources that federal inmates can access across the country as a point of fairness; for example, in British Columbia and Quebec, prisoners appear to have access to computers, whereas Biever, imprisoned in Alberta, did not. Having chosen to self-represent, Biever asserts that he has a legitimate right to fully understand the laws and case history related to the charges being brought against him, and yet the resources are not reliably available to him: “Mr. Biever testified at the hearing concerning his frustration at not being given access to legal materials.”⁴⁶

While the judge allows that some of the books available at the prison where Biever is held have some value (e.g., *Martin’s Criminal Code*, *Black’s Law Dictionary*), he asserts that access to the internet is of critical importance in giving prisoners access to legal resources:

I am hard pressed to see, however, how adequate access can be provided without some Internet access. The CanLII website provides access to all Canadian statutes and regulations, and to virtually

all recent Canadian reported decisions. Access is more timely than as provided in the case reports themselves, as courts (at least the courts in Alberta) provide their decisions to CanLII immediately on release. CanLII is now the formal public source for Alberta Court of Queen’s Bench and Alberta Court of Appeal judgments.⁴⁷

The judge concludes:

Thus I conclude that Mr. Biever has satisfied the heavy onus on him that he will be unable to adequately prepare for the severance application scheduled for early June, 2015 and the subsequent *Charter* applications scheduled for later that month, unless he has greater access to legal resources than he presently does. Equally importantly, he will be unable to properly prepare for trial if he is limited to the materials presently available to him.⁴⁸

It should be noted that Justice Gaesser limits his finding to *Biever* and, to date, the case itself has not been judicially followed, applied, or distinguished by other courts or otherwise commented upon. In its submission, the Crown did offer cases where similar applications were denied (*R v Jordan*, for example).⁴⁹

Implications, Conclusions, and Suggestions for Further Research

Over the years, American law librarians have echoed the inadequacy of law libraries as an effective and meaningful response to *Bounds* and the constitutional right of meaningful access to the courts for prisoners: “Law librarians, perhaps more than anyone else, should realize the short-sightedness of relying on prison law libraries as a means of providing ‘meaningful access to the courts.’”⁵⁰ Law librarians must walk a tightrope between providing legal information access and providing legal advice.⁵¹ The prison law library inevitably occupies a liminal space between librarianship and legal aid, precisely because prisoners are unique and vulnerable in their need for legal advice and aid, and so the library—correctly or not—becomes an extension of the legal aid service rather than of librarianship. With the well-known underfunding of legal aid in both Canada and the United States, prison law libraries and, lately, electronic access to legal resources, have become an attractive “solution” to satisfying the constitutional rights of prisoners.

Following *Bounds*, there was a fair amount of commentary and scholarship in the United States, which tailed off after *Lewis*. One of the unfortunate outcomes of that silence is a

⁴² *Biever*, *supra* note 4 at paras 22–23.

⁴³ *Ibid* at para 32.

⁴⁴ *Ibid* at para 9.

⁴⁵ *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 7.

⁴⁶ *Biever*, *supra* note 4 at para 15.

⁴⁷ *Ibid* at para 92.

⁴⁸ *Ibid* at para 119.

⁴⁹ *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631.

⁵⁰ Flores, *supra* note 6 at 285–6.

⁵¹ Edith McCormick, “Prison Librarian Fired in Reprisal for Giving Access to Law Library” (1995) 26:1 *American Libraries* 10.

relative lack of scholarship or consideration of the impact of electronic resources and its effect on access and functional literacy in accessing legal resources. On the CALL/ACBD website, there is a prison library listserv that was created in 2007, with a link for librarians, but it is targeted to US-based prison librarians, and it does not appear to have stimulated any new scholarship or activity in Canada to date.⁵² A survey

of current prison law libraries and librarians in Canada would be a useful first step in improving this situation. It will be interesting to see if the decision in *Biever* has any significant implications for Canadian prison law libraries, inmates, and their advocates in the years ahead, and what kind of political reaction that might spark.

⁵² Janet M Moss, "Part I: Governance, Structure, and Administration" (2013) 38:2 Can L Libr Rev 74 at 80.

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III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***Behind the Walls: Inmates and Correctional Officers on the State of Canadian Prisons.* By Michael Weinrath. Vancouver: UBC Press, 2016. 328 p. Includes appendix, notes, bibliographic references, and index. ISBN 978-0-7748-3355-4 (softcover) \$34.95.**

There have been many changes in Canadian prisons in the past 25 years—some good, and some bad. There is more overcrowding, a rise in inmate assaults, more sophisticated programs, and an increase in female correctional officers (COs), to name just a few of the many subjects covered in *Behind the Walls: Inmates and Correctional Officers on the State of Canadian Prisons*. Michael Weinrath, a professor of criminal justice and director of the Justice Research Institute at the University of Winnipeg, who also spent 14 years working in corrections, examines these changes by interviewing those who experienced them first hand: inmates and COs.

Using a combination of research and interviews with inmates and COs of four Western Canadian prisons, *Behind the Walls* covers many aspects of prison life in its 10 chapters, including the individual roles of inmates and COs, the difficulties of transitioning into custody (for first-time offenders) or their jobs (for new COs), as well as the unwritten codes that both groups had been expected to follow in the past but are no longer adhered to. Relationships between inmates and COs are also examined, including racism, cultural insensitivity toward Aboriginal spiritual practices, and the use of illegal and excessive force.

As mentioned above, the number of female COs has increased, and the relationships between them and male

inmates and male COs are discussed. Interestingly, the women interviewed felt more threatened by male COs than by inmates, as inmates were more likely to treat them as mother figures while male COs saw them as a threat to their masculine roles.

To properly document the changes, Weinrath provides a brief history of Canadian prisons, and American and British prisons are introduced to show the differences between the systems. Also included is a chapter on Weinrath's research methodology and explanations of the frame and legitimacy theories he applied to his research. Prison programming and the rise of prison gangs are also featured, and a concluding chapter completes the work.

Behind the Walls is written in an academic yet accessible style, and the interviews are naturally in a casual, conversational tone. Each chapter contains multiple in-text citations and footnotes, and charts and graphs are provided with applicable data when necessary. Weinrath's interview questions are included in the appendix, followed by notes, a glossary, references, and an index.

Where *Behind the Walls* shines is with the inclusion of the interviews with inmates and COs. Rather than just paraphrasing their words, transcripts of the conversations are included. Reading the inmates' and COs' actual words—expletives and all—makes their experiences more real and adds to the book's authority. When you read the inmates' words, you can feel the pain they experience when talking about their children growing up without them, or the shame of being unable to help their partners pay the rent, for example.

Due to the particular needs of his study, Weinrath mostly interviewed older offenders and COs who had a history with the prisons, either through multiple or life sentences or a long tenure working at the prison. While this can be seen as a limitation in some respects, these demographics are necessary to document the changes that took place over the years examined.

The inmates and COs interviewed were from four male prisons in western Canada; thus, 100 per cent of the inmates interviewed were male. I would like to have seen interviews with female prisoners to see their perspectives on life in women's prisons; however, I understand that that doesn't necessarily fit into the scope of this particular text. Weinrath does point out in chapter 1 that women's prisons have different issues and highlights some improvements that have been made over the years, but I would have liked to have seen more. Perhaps the topic warrants its own text; a similar book on female prisoners and COs in women's prisons would make an excellent companion to *Behind the Walls*.

But all in all, *Behind the Walls* is an intriguing, thought-provoking, and sometimes disturbing book detailing life in Canadian prisons, told by those who experienced it. While it may not be useful in a law society or firm library, law students will no doubt find Weinrath's expertise valuable for their research; therefore, it would make a worthy addition to any academic law library.

REVIEWED BY
NIKKI TANNER

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***Climate Justice and Disaster Law*. By Rosemary Lyster. Cambridge: Cambridge University Press, 2016. 406 p. Includes bibliographic references and index. ISBN 978-1-10722-9 (hardcover) \$125.00.**

Climate Justice and Disaster Law is a comprehensive account of the legal state of climate change as it was at the time of publication. Rosemary Lyster is a professor of climate and environmental law at the University of Sydney, as well as the director of the law school's Australian Centre for Climate and Environmental Law. Her extensive experience in the field of environmental law as well as her many publications on the subject make Lyster an authority on the issue of climate justice and disaster law.

The stated goal of the book is to acknowledge the importance of understanding and accepting climate change as a human-influenced phenomenon that requires international and domestic legal framing. Lyster brings a new approach to fighting climate change and mitigating losses caused by manmade disasters, as well as establishing a climate justice and disaster law framework based on a Capabilities Approach. The author makes the case that there is a need for all countries to mitigate greenhouse gas emissions; to engage in climate change adaptation and disaster risk reduction; to have in place adequate disaster response,

rehabilitation, and recovery processes; and to establish and facilitate public and private institutions for compensating victims. She argues for the establishment of a fossil fuel-funded Climate Disaster Response Fund to compensate the victims in developing countries most vulnerable to climate change and supports her position by first reviewing the compensation mechanisms already in place and proving, through many examples and case studies from around the world, their inadequacy to compensate victims of climate change disasters.

The strength and value of this publication stems from its research. The book reviews important international standards and negotiations, such as the *United Nations Framework Convention on Climate Change 1992*, the *Kyoto Protocol (UN)*, *Rio Declaration (UN)*, and *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (UN)*. The detailed review, as well as the context in which these standards were adopted, explains the way climate change is perceived internationally and serves to justify why a legal framework based on a capabilities approach could be an answer to the problem. The use of case studies from around the world provides possible solutions to climate change, such as Vietnam's *Law on Natural Disaster and Prevention Control*. Case studies also show where there is much room for improvement, as in the account of the devastating effects of the Thailand floods and the government's inability to compensate the victims. The quality of the research, paired with Lyster's persuasive argument, makes this book a compelling authority on the law and policy surrounding climate change.

Climate Justice and Disaster Law is a timely publication on a subject that commands more and more attention at the international level. The reader must, however, keep in mind that the book was published in January 2016, prior to the *Paris Agreement* and before the United States' withdrawal from it. For lawyers, scholars, and those interested in the legal environment surrounding climate change, this book will offer a compelling view of climate justice and disaster law.

REVIEWED BY
CORINA SURCEL

Centre for Equitable Library Access (CELA)

***Criminalising Contagion: Legal and Ethical Challenges of Disease Transmission and the Criminal Law*. Editors Catherine Stanton and Hannah Quirk. Cambridge: Cambridge University Press, 2016. 241p. Includes list of contributors, essays, and index. ISBN 978-1-107-09182-5 (hardcover) \$114.95.**

Criminalising Contagion: Legal and Ethical Challenges of Disease Transmission and the Criminal Law is a collection of essays in the Cambridge series on bioethics and law. The editors, Catherine Stanton and Hannah Quirk, have brought together work from a refreshingly wide range of disciplines and jurisdictions and have made a compelling argument in their introductory remarks for why the diversity of approaches is necessary.

Canadian practitioners and scholars will be particularly interested in Erik Mykhalovskiy's "Making Science Count: Significant Risk, HIV Non-disclosure and Science-Based

Criminal Law Reform: A Reflexive Analysis,” and Alana Klein’s “Feminism and the Criminalisation of HIV Non-disclosure,” both of which focus on the HIV non-disclosure debate in the context of Canadian law, advocacy, policy, and philosophical discussion.

Another contribution, Aslak Syse’s “Criminal Law and Contagious Diseases – A Nordic Perspective,” reflects on the experience of chairing a Norwegian Law Commission charged with considering the effectiveness of penal sanctions in combatting HIV infections. Ceri Evans, senior sexual health advisor, has another refreshing and useful contribution in “The Impact of Criminalising Disease Transmission on the Healthcare Profession-Patient Relationship,” in which she brings practical experience to the discussion. Leslie E Wolf provides an excellent and readable overview in her “Criminal HIV Exposure Statutes and Public Health in the United States,” and Karl Laird considers related British case law in his “Criminalizing Contagion – Questioning the Paradigm.” Also noteworthy, Michael Hanne offers a wide-ranging consideration of the role and effect of the language in “Crime and Disease: Contagion by Metaphor.”

While the primary focus of this volume is on legal, social, and public health concerns arising out of our response to HIV, there are a few notable considerations of different historical and rhetorical matters. I was particularly struck by Kerri A Inglis’s “Leprosy and the Law: the ‘Criminalization’ of Hansen’s Disease in Hawai’i, 1865-1969.” Her historical account invites the reader to consider that the legal regime created to respond to a particular set of health concerns can seem—with the benefit of hindsight—to be more informed by racial concerns of the day and to have imposed a cure far worse than the disease.

Criminalizing Contagion is a wide-ranging collection of essays that considers legal and ethical issues in a variety of jurisdictional, historical, sociological, rhetorical, and experiential analytical frameworks. The volume would be an excellent addition to a university library. It would also assist any practitioner or policy-maker involved in consideration of issues relating to and arising out of the non-disclosure of HIV or, indeed, any of the many intersections between law and contagion.

REVIEWED BY
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Lawyer
Guelph, ON

***Examination of Witnesses in Criminal Cases.* By Earl J Levy. 7th ed. Toronto: Carswell, 2016. cxxvi, 782 p. Includes bibliographic references and index. ISBN 978-0-7798-7245-9 (hardcover) \$220.00.**

The newest edition of *Examination of Witnesses in Criminal Cases* maintains its status as a key text on the topic. Author Earl J Levy, a national leader in the area of criminal law, has worked with the Criminal Lawyers’ Association, taught criminal law courses at various Canadian law schools, and has over 50 years experience as a litigator. The book, now

in its seventh edition, contains necessary updates, and improvements have been made to both format and content while maintaining a similar, logical overview as in previous editions.

Levy, over the course of 782 pages, offers his readers practical advice on dealing with issues that present themselves to counsel during examination, cross-examination, and re-examination. The content is covered in a systemic manner, containing both a thorough analysis of the law and suggestions for practical application of techniques. The author provides sample dialogue(s), specific legislation, and complex case studies broken down to display the varying perspectives of all those involved in the process of examination at all levels of the Canadian court system. The book covers not only techniques for interviewing and questioning, but also the types of witnesses that may be examined, the varying personalities witnesses may present, and the different approaches and issues that may be associated with each.

A few minor changes have been made to the organization and formatting. The previously visually overwhelming presentation of chapters, sections, and subsections has been reduced to single line headers that correspond better with the simplified table of contents. Several chapters have been rearranged, renamed, or have had content divided between other chapters. Of note, the categories of witnesses have been combined with the chapter on cross-examination techniques, and the chapter covering courtroom manner has centred on how to connect with a jury. Several other chapters have been rearranged, but the continued inclusion of cartoons provides the reader with the lighter side of what can sometimes be a heavy subject.

The most significant change to Levy’s text is the addition of a new chapter, *The Age of Information and Defence Implication*. Although the chapter includes discussions of case law, how technology has forced significant changes to specific legislation, and how electronic evidence may potentially be accessed and used, there are notable gaps. For example, the analysis focusses primarily on electronic devices such as computers and social media solely as Facebook; all other forms of social media are excluded. There are also no samples of dialogue from the examination of witnesses. However, there is in-depth coverage of search warrants relating to electronic devices, and attention is called to the fact that this area of law will continue to develop at an accelerated pace.

Both experienced practitioners and first-year law students would be well served by consulting Levy’s work. The language and organization, combined with the depth of content, makes it accessible to a wide-ranging audience. Levy simplifies the law through the avoidance of legalese, making the text accessible even to those without a legal education. In the introduction, Levy cites one of his major accomplishments through an example of a fraud trial that occurred in Ontario: “...the trial judge, after acquitting the unrepresented accused complimented him on his questioning skills and asked him how that came about. The accused responded that his ability to defend himself was a result of reading this book” (p cxxvi). Evidently, this text is not just for those who are or aspire

to be a legal professional, but for those with a general (or significant) interest in the subject.

Overall, *Examination of Witnesses in Criminal Cases* has established itself as a key text in the areas of criminal law, criminal procedure, and evidence. This text is valuable to a wide-ranging audience and will, no doubt, remain a key work on law library shelves across Canada.

REVIEWED BY
HANNAH STEEVES

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***The Fall of the Priests and the Rise of the Lawyers.* By Philip Wood. Oxford: Hart Publishing, 2016. xi, 272 p. Includes maps and photographs. ISBN 978-1509905546 (hardcover) \$31.25.**

The Fall of the Priests and the Rise of the Lawyers is the latest book by Philip R Wood. Unlike many of his other 18 works that focus on international and comparative financial law, this volume is more difficult to categorize. It is at once a work of history, philosophy, religion, and law. As the title suggests, Wood chronicles what he sees as the decline of religious institutions as societal leaders in moral and legal spheres and their replacement by legal codes and experts.

Wood has had a distinguished career. He is a renowned expert in international and comparative financial law. He is special global counsel at Allen & Overy in London, a visiting professor in international financial law at the University of Oxford, the Yorke distinguished visiting fellow at the University of Cambridge, and a visiting professor at Queen Mary College, University of London. While *The Fall of the Priests and the Rise of the Lawyers* is a departure from Wood's subject expertise, he confesses in the preface that the idea for this book had been percolating in his mind for over a decade.

The book unfolds over the course of 19 well-organized chapters. Wood uses his first chapter, "The Questions," to reveal his thesis: "The law is the one universal secular religion which practically everybody believes in. The question is whether the law can step into the gap left by fading religions and whether the law can carry forward the flame" (p 3). Wood continues his introduction in chapter 2, "Purpose of Morality and Law," and chapter 3, "Past and Future." In these introductory chapters, the structure of the book is laid out in detail.

After introducing his thesis, Wood moves on to provide an historical overview of both religion and law. In chapters 4 through 10, Wood moves from a general historical overview to specific subsets of religion and law. These middle chapters act as a second introduction, necessary for the following section of the work, which focusses on Wood's arguments and proving his thesis.

Chapters 10 to 14 concentrate on Wood's analysis and touch on topics such as secularization, the decline of religions, and the rise of law. In the next three chapters, Wood analyzes

other possibilities, such as the possible rule of economists rather than lawyers (chapter 15), problems with the law (chapter 16), and scientific progress (chapter 17). The book concludes with chapter 18, where the author sets out a seven-point proposal for the future survival and happiness of the human race. Finally, the closing chapter, "A Billion Years from Now," acts as a short epilogue, wherein Wood asks what is in store for the human race.

The Fall of the Priests and the Rise of the Lawyers is well structured. The chapters flow nicely throughout the work. Wood describes both of his subjects thoroughly in the first half of the book, in order to have readers understand the analysis set forth in the second half. He also segues deftly between chapters and subjects. For example, in chapter 11 Wood refers to ideas presented in both chapters 4 and 8 in order to provide further analysis. These types of references are prevalent throughout the book.

The book also includes many full-colour visual aids to help illustrate Wood's ideas. For example, in chapter 4, "What is Religion?", Wood includes a map of the world with colour-coding to indicate the predominant religious affiliation of each country (p 32). The map is used to illustrate the international nature of the world's most dominant religions. Another highlight is the many references to historic and contemporary philosophers, religious leaders, scientists, and legal experts, including Newton, Plato, John Locke, Tom Bingham, and Martin Luther.

Wood peppers his narrative with morsels from legal experts and renowned philosophers, and he includes illuminating tables and beautiful reproductions of artwork. However, two elements that he neglects to include are an index and bibliography. Without these tools, it is very difficult to rediscover points of interest after reading. Furthermore, many of Wood's citations are incomplete, making it difficult for the reader to find the cited resources. For example, on page 181, Wood refers to statistics in *The Statesman's Yearbook* from 2015 and *The Economist* from 16 January 2003 to prove low religious observance, but neglects to give full citations. Overall, these negative points do not take away from the content or enjoyment of the book, but they do deter readers from using it as a research tool or for further study.

The book is well organized and clearly written. Wood is thorough in describing each of his topics, yet also succinct. At 272 pages, the work manages to provide an overview for the development, rise, and fall of the major world religions, as well as the development and rise of law and its many areas. *The Fall of the Priests and the Rise of the Lawyers* would be of interest to anyone with a curiosity for knowledge of the history of either law or religion; a lack of legal or religious expertise is not a barrier to enjoyment.

REVIEWED BY
ALLISON HARRISON

Reference Librarian
Library, Supreme Court of Canada

The Law of the Written Word: A Legal Guide for Writers in

Canada. By Douglas R Mah & Jason JJ Bodnar. Toronto: Thomson Reuters, 2013. 591 p. ISSN/Product Number: 978-0-7798-5556-8 (softcover) \$112.00.

Writers' guides to the law, books on understanding copyright law, manuals on conducting legal research—there's no shortage of books offering guidance to writers as they navigate the world of law. What makes Mah and Bodnar's *The Law of the Written Word* distinctive is its comprehensiveness and Canadian focus.

Inspired by a "law for writers" course the authors co-taught, *The Law of the Written Word* is, in essence, a textbook complete with a list of learning objectives at each chapter's beginning and a list of review questions at each chapter's end. The text is scattered with exercises and includes two final exams.

The first few chapters of the book explain the Canadian legal system and provide an overview of both civil and criminal procedure. These chapters offer the non-legally trained reader a basic understanding of Canadian law, the relevance of which is easily justified by the content of later chapters. Legal research (and the acquisition of court documents sometimes required for legal research) is facilitated if the writer-researcher understands the procedures of court and the types of documentation associated with those procedures. The distribution of legislative powers between Parliament and the provinces becomes relevant when discussing copyright law that falls within Parliament's legislative powers, and the *Charter of Rights and Freedoms* is pertinent to discussions about defamation and hatred.

The title, *The Law of the Written Word*, implies a focus on laws that govern the written word—and, consequently, writers. But recognizing that writers may also engage with the law for purposes of developing legal personalities, drawing story inspiration from a legal case, or framing a legal concept, Mah and Bodnar spend a chapter outlining the rudiments of legal research. They address how to access and read case law, how to make sense of legal citations, and how to distinguish questions of fact from questions of law.

Shifting toward a focus on laws that affect writers, Mah and Bodnar explain the legal differences between the freelance writer and the employee-writer before launching into discussions of contract law and copyright law—laws that play out differently depending on the writer's status as a freelance writer or employed writer.

Further legal issues of defamation, confidentiality and privacy, publication bans and contempt, obscenity, and hate literature are explored. The Canadian legal context for these "freedom of speech" issues is elucidated. Mah and Bodnar provide a framework in which to understand these issues, relying on real judicial cases as food for thought.

Moving away from law into the realm of ethics, the text concludes with a chapter on the professional responsibility of writers posing questions regarding the purpose of writing and the ethical obligations of the writer to society. The reader

is left to consider and establish their own ethical framework.

At \$112, the primary market for *The Law of the Written Word* will likely be students required to purchase the text for a course, and the text is certainly written to support a course. The professional Canadian writer who hopes to fill his bookshelves will have no problem finding books focussed on legal research and writing, copyright, freelance writing, and the purpose of writing and the duty of the writer. But the new professional writer willing to pay the price will find these topics within this single volume and covered in digestible detail.

REVIEWED BY
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The Lawyer's Guide to the Forensic Sciences. Edited by Caitlin Pakosh. Toronto: Irwin Law, 2016. xviii, 969 p. Includes glossary, illustrations and index. ISBN 978-1-552221-412-1 (paperback) \$115.00; ISBN 978-1-55221-413-8 (eBook) \$115.00.

The Lawyer's Guide to the Forensic Sciences, edited by Caitlin Pakosh, case management counsel at Innocence Canada, is an ambitious work that introduces readers to the key forensic sciences used in Canadian courts. Written by scientists and forensic crime scene specialists, the book includes chapters dedicated to well-known areas of forensic science evidence such as fingerprint and bloodstain pattern analysis, as well as digital evidence, memory in criminal trials, probability, and statistics. Indeed, most of the content is devoted to introducing and explaining the science itself. As noted by the editor in the book's preface, "I wanted this guide to be a science book for lawyers, written by experts, with just enough legal context to provide lawyers with ideas on why knowledge in that area might be important to their cases" (p xlii).

The work includes a summary and detailed table of contents, a large number of coloured illustrations and tables, a glossary, a section on contributors, a table of cases, and an index. Of the book's 23 chapters, the first five look at the role of forensic science in the criminal justice system, including the role of experts and their testimony, presenting scientific evidence in the courtroom, and critically examining inquiries and reports. Chapters 6 to 23, then, focus on different forensic science disciplines, such as blood stain pattern analysis, digital evidence, fingerprint analysis, and forensic anthropology, biology, and entomology.

Most chapters include a short section entitled "Legal Context" that follows the introduction and discussion of each scientific discipline and is usually written by a different contributor. For example, in chapter 9, "Firearms and Ballistics," Liam Hendrikse, a registered expert with the International Criminal Court and the County of Los Angeles Superior Court, provides an overview of the forensic science of ballistics and firearms identification, including a discussion of terminology, residue patterns, and the role of the firearms expert in criminal cases. He also reviews key considerations for counsel such as "important factors to consider when

reviewing gunshot damage and additional crime-scene related evidence” (p 243). Caitlin Pakosh supplements this chapter with a 10-page examination of the legal context for this type of forensic science evidence at the end of the chapter that includes discussion of the relevant Canadian legislation and case law.

This book is unique in its focus on providing lawyers with an overview of multiple forensic science disciplines. Related texts include *DNA: A Practical Guide* by David S Rose and Lisa Goos, *Weapons Offences Manual* by Justice Peter J Harris and Justice Miriam H Bloomenfeld, and *Breathalyzer Law in Canada: The Prosecution and Defence of Drinking and Driving Offences* by RM McLeod, QC, Judge JD Takach, and Murray D Segal. Although each of these books includes analysis of forensic science evidence, their focus is narrower and includes greater emphasis on legal considerations. For example, James Wigmore co-authored a chapter entitled “Forensic Toxicology – Alcohol and Drugs” in *The Lawyer’s Guide to the Forensic Sciences* and also co-authored a number of chapters in *Breathalyzer Law in Canada: The Prosecution and Defence of Drinking and Driving Offences*. Both texts cover similar information on alcohol toxicology, but *The Lawyer’s Guide* also discusses drug toxicology, including history, methodology, and screening devices; broadly looks at the types of cases that involve forensic toxicology evidence; and discusses the role of the forensic toxicologist in criminal cases.

The Lawyer’s Guide to the Forensic Sciences provides a useful, accessible, and comprehensive introduction to the forensic sciences and their use in Canadian courts. This book is recommended for law students, criminal lawyers, and more generally to people interested in the forensic sciences and the law.

REVIEWED BY
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***Legal Insanity and the Brain: Science, Law and European Courts.* Eds, Sofia Moratti & Dennis Patterson. Oxford: Hart Publishing, 2016. 336 pages. ISBN 9781509902323 (PDF eBook) £44.99; 9781509902330 (ePub eBook) £44.99; 9781849467919 (Hardback) £45.00.**

Legal Insanity and the Brain is a comparative, interdisciplinary compilation that examines the tension between the law and the mind sciences regarding the criminal defence of insanity. Editors Sofia Moratti and Dennis Patterson have published extensively in legal theory and the intersection of law and neuroscience. The contributors offer insight into the role of neuroscientific evidence in criminal processes from the perspective of various international legal systems.

This collection offers a critical analysis on the history and current state of criminal insanity law, providing references to relevant judicial decisions, legislation, and neuroscientific

research. The contributors suggest various avenues for reform, emphasizing the consideration of human rights conventions, the rights of persons with disabilities, and the potential stigmatization and vulnerability of the defendants. The authors also discuss the complexities of criminal sentencing and placement of individuals found “criminally insane” in the context of broader legal aims like fairness, justice, and security.

The contributors weigh in a number of jurisdictions and topics. To begin, neuroscientists Cole Korponay and Michael Koenigs provide an accessible overview of neuroimaging and discuss its limitations in a courtroom context. In particular, the authors caution that there is insufficient knowledge to support definitive judgments about the relationship between brain abnormalities and criminal behaviour.

Next, Katrien Hanouille and Frank Verbruggen discuss the current Belgian criminal law provisions as well as recent potential reforms surrounding the insanity defence, offering examples of the limited use of neuroscientific evidence in criminal cases. Rafael Encinas de Muñagorri and Claire Saas follow, presenting an analysis of bioethics legislation in France, which regulates the use of brain scans as evidence in criminal proceedings.

Barbara Bottalico and Amedeo Santosuosso outline the relationship between law and psychiatry in Italy on the subject of legal insanity. The authors review recent cases, post-sentencing effects, and care facilities.

Gerben Meynen comes next with an analysis of the current neurolaw debate in the Netherlands, highlighting the unique existence of five grades of criminal responsibility and the lack of a statutory standard of insanity. Tova Bennet and Susanna Radovic cover Sweden with their examination of the exceptional approach to legal insanity where, in the absence of an insanity clause, offenders with a “severe mental disorder” are sentenced to compulsory psychiatric care rather than imprisonment.

Lisa Claydon and Paul Catley follow with their discussion of the abolition of the insanity verdict in the United Kingdom and the ongoing struggle to find balance between legal rules and scientific study. Finally, Stephen J Morse argues for an enduring insanity defense as a moral necessity, contending that the arguments for its abolition are conceptually and judicially lacking.

The rapidly shifting landscape of neuroscience offers many opportunities and challenges to the criminal law. Developments in neuroscience have implications in several areas of criminal law, including burdens and standards of proof, the admission of evidence, and the assessment of criminal responsibility. Insights from neuroscientific study could encourage reform of criminal responsibility in many jurisdictions. However, contributors caution overreliance on neuroscience in criminal proceedings and reform given the many limitations of the field.

Legal Insanity and the Brain would be most useful for comparative legal scholars and judges. It would also be useful for those with an academic interest in the interdisciplinary study of criminal law and neuroscience.

REVIEWED BY
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***Mediation: A Comprehensive Guide to Effective Client Advocacy.* By Martha E Simmons. Toronto: Emond Publishing, 2017. 256 p. ISBN: 9781772550412 (softcover) \$110.00; 9781772550436 (digital) \$93.50.**

Mediation is regarded as a dispute resolution process with enormous potential to resolve issues in a manner that, comparable to traditional litigation, is cost-effective and time and resource efficient. Depending on the jurisdiction and the specific circumstances, mediation may even be mandated under rules of civil procedure. While the advocate may have a general conceptual understanding of the process as an alternative to traditional litigation, there are a number of nuances that need to be understood and considered strategically in order for the process of mediation to function effectively as an alternative avenue of dispute resolution. Mediation is not simply an informal alternative to courtroom litigation. As a practitioner, one must consider how best to advocate for one's client, and this can involve a rather complex and nuanced assessment of the dispute itself, the relationship between the parties involved, the stage of discovery, and the dispute resolution processes that are available or required. Simmons presents a thorough guide to mediation for the practitioner that details different types of mediation, strategic considerations for the practitioner on when and if mediation is advisable, practical tips on how to prepare oneself and one's client for the process, and considerations on selecting a mediator.

The book begins by laying the groundwork with an overview of mediation, negotiation, and advice on educating one's client on mediation. The subsequent chapters focus on preliminary matters such as the process and subtleties behind selecting a mediator, which includes considerations and discussion of style, process, and the more practical considerations that are then summarized in a checklist-style resource. Preparation by the lawyer and preparation of the client are also given significant attention. Both chapters provide insight in approaching the preparation process both strategically and practically.

Specific references are made to those *Rules of Professional Conduct* that come into play in the context of advising and engaging in mediation or other forms of alternative dispute resolution and settlement. Simmons provides citations to the applicable rules in each context and for each Canadian jurisdiction in a succinct and easily referenced format. These references are included in the chapter on ethics and professional responsibility in mediation.

Further chapters examine in detail the process of effective advocacy, barriers to settlement and how these might be overcome, and drafting and enforcing the settlement agreement. A final chapter looks in particular detail at addressing more complex advocacy issues in the context of mediation by providing advice on dealing with self-represented parties and highlighting particular considerations that come into play where there are multiple parties involved or accommodation is needed for parties with disabilities.

The prose style, though somewhat terse, is accessible and would be a suitable initial resource for the new professional or client in understanding the purpose and procedure associated with mediation.

The book functions well as a guide in that in addition to the author's own commentary, Simmons provides a wealth of additional resources. A series of practical checklists, risk analysis tools, extensive lists of further resources, and several sample documents (e.g., mediation briefs, letters, settlement agreement templates) are provided for the reader to explore the subject in greater depth. What is lacking, though, and would have made this volume a more effective teaching guide, is the inclusion of case studies and analysis to complement the explanatory text and additional resources. The sample documents, where they are provided, do not include any further annotation to guide the reader; for instance, two sample mediation briefs are included, each employing significantly different formats and styles but (aside from a brief fact scenario) without commentary from the author as to whether one style might be preferred over the other in a particular context. The fact scenario is not carried through or referenced in later chapters to illustrate other elements of mediation (e.g., reaching and resolving an impasse, settlement agreements, etc.), which seems like a missed opportunity.

A "Notes from the Field" section appears in each chapter containing brief commentary from a number of highly qualified and experienced professional mediators from across Canada. These sections provide insight from the mediator's perspective and generally are framed as cautionary examples of what the advocate should avoid. These warnings of how one might avoid aggravating the mediator would benefit from including constructive examples of how one might make the process run smoothly and effectively.

This is a comprehensive reference tool, and while it may lack examples in the form of practical case studies that clearly illustrate the practical application of the analysis, it nonetheless serves as a useful compilation of resources to assist the practitioner new to the process of mediation. It also provides a better understanding of the process and the role of the legal professional in serving their client.

REVIEWED BY
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Religious Freedom and Communities. By Dwight Newman. Toronto, ON: LexisNexis, 2016. xxxv, 328 p. Includes detailed table of contents and a table of cases. ISBN 9780433490548 (paperback) \$110.00.

In this volume, Professor Newman has collected and edited a series of essays by an impressive array of academics that explore the meaning and scope of religious freedom in Canada under the *Canadian Charter of Rights and Freedoms*, with a particular emphasis on questions relating to “the community and institutional aspects of religious freedom” (p vii). The essays progress from our earlier understanding of religious freedoms as being individual rights to the current questions about the parameters of collective religious rights and the rights of communities, and even whether those rights may be extended to corporations and other institutions. Defining the nature and scope of religious freedom in Canada and elsewhere is not a straightforward proposition, and efforts to do so have given rise to a number of complex issues explored in the essays in this book.

There is, understandably, some overlap in content among the essays in parts I to VI of the book, but each essay addresses issues from a different perspective. For example, Elizabeth Clark examines how international law specifically includes the collective aspect of freedom of religion in the United Nations’ *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, a treaty to which Canada is a party. Dr. Kent Donlevy, Kevin Feehan, and Peter Bowal examine the *Loyola High School v Quebec (Attorney General)* (2015) case, and several essays analyze the numerous issues arising from the judgments that have been rendered to date in the Trinity Western litigation. The authors parse the majority, concurring, and dissenting judgments written in the Trinity Western cases to compare and contrast the very different perspectives taken by individual judges on the same bench.

The essays in the first six parts of the book centre their discussions around a core set of Canadian cases largely dealing with education as an important aspect of religious freedom, and part VII analyzes Indigenous religious freedom in the context of the Ktunaxa Nation’s objection to the development of the Jumbo Valley (Qat’muk) in British Columbia. At first glance, this shift in focus seems incongruous, but it serves to highlight how Canadian courts have treated Indigenous religious claims more restrictively than other claims, especially where property rights are at issue. Professor Newman’s essay on the implications of the Ktunaxa case, which is the first Indigenous religious freedom case to be argued before the Supreme Court of Canada under section 2(a) of the *Charter*, explains the complexities of this case and why its issues are not only important for Indigenous communities but for religious freedom jurisprudence in Canada generally.

This collection of essays is important for several reasons. It exposes the nuances and consequences of different ways of viewing religious freedom in Canada and of resolving competing equality interests. It analyzes important matters currently before the Supreme Court, and highlights the difficult issues the Court will have to address. These essays

will be valuable for *Charter* researchers and those interested in religious rights in Canada. The arguments in the essays are clearly set out and are extensively footnoted. I expected a broader review of religious freedoms and communities, given the book’s title, but the Canadian focus centred on education and Indigenous rights provides ample food for thought. *Religious Freedom and Communities* would be an excellent addition to academic social sciences and humanities libraries, law libraries, and large public libraries.

REVIEWED BY
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Bennett Jones

The State and the Body: Legal Regulation of Bodily Autonomy. By Elizabeth Wicks. Portland, OR: Hart Publishing, 2016. ix, 179 p. Includes table of contents, bibliography, footnotes, and index. ISBN 9781849467797 (hardcover) \$120.

In *The State and the Body: Legal Regulation of Bodily Autonomy*, Elizabeth Wicks argues against excessive state intervention in the decisions adults make about their bodies. Wicks, a professor of human rights law at the University of Leicester, draws heavily on traditional liberal philosophy, especially John Stewart Mill’s harm principle, as well as more recent feminist thought. She uses these theories to craft her own lens for examining legal practice in the United Kingdom, with occasional mention of other jurisdictions.

The two opening chapters provide the analytical framework for the rest of the book. Wicks briefly synthesizes relevant philosophy, including ideas drawn from Kant, Descartes, and Mills. The first chapter is a skillful explanation of the concept of bodily autonomy. Autonomy requires an individual to have both agency and liberty. This is true in both liberal philosophy and English law, particularly medical law. Yet Wicks moves beyond traditional western philosophy, which she notes prioritizes a rational, almost disembodied, mind over the body. She acknowledges feminist critiques that prioritize the physical body and relational experiences. Wicks draws from these ideas as well, but notes their limits. Ultimately, she describes the importance of the embodied self, emphasizing an individual’s specific physical experience as crucial to their decision-making.

In the second chapter, Wicks traces European concepts of private and public—in law, philosophy, and history. She notes the appearance of privacy in the *Universal Declaration of Human Rights* and other human rights treaties, and analyzes the public-private distinction in light of feminist, and more general human-rights, critiques. Ultimately, Wicks concludes that there are very few “legitimate justifications for state intervention into private bodily choices,” and argues for “an expanded concept of privacy in relation to the body provided, crucially, that it is based upon robust interpretations of privacy, autonomy and embodiment” (p 34).

Her analytical framework established, the remaining five chapters outline areas where the state tries to regulate the body. These five chapters are: “Reproductive Choices,” “Choices about Dying,” “Sexual Autonomy,” “Bodily

Modification,” and “Selling the Body.” Readers wanting a critical summary of a specific legal topic could read any of these chapters in isolation. The book is not practice-focussed, but these overviews provide commentary on leading cases and UK legislation that deal with the five central issues.

Wicks points out limitations, inconsistencies, and gaps in existing law. Her central focus is the United Kingdom, with occasional explanation of its relationship to the European Convention on Human Rights, and the European Court of Human Rights (ECtHR). She also examines cases from other European countries, when they have been appealed to the ECtHR.

There is very little treatment of the Canadian context, although she does describe a Supreme Court of Canada’s decision relating to sex workers (*Attorney General v Bedford*, 2013 SCC 72) and signals her approval of the court’s findings that some legal restrictions upon prostitution are unconstitutional because they increase risks of harm to the individual workers. Wick suggests that legislators in the United Kingdom should look to this approach. Her conclusion to this section reflects her overarching philosophy on state regulation of the body: when “all parties are consenting adults, we should be free to have sex with whom we wish, and for whatever reason we

choose, whether for love, for lust, or for money” (p 140).

Wicks is transparent about her own attitudes toward each topic. This is clear from the opening chapters and reinforced throughout the text. In any context where it would be relevant, I recommend this book for the clear and succinct syntheses of philosophical and legal issues.

This book would be a valuable edition for any university’s law library. There is no table of cases, but cases are included in the bibliography by style of cause. Full citations are in the relevant footnotes.

Academic libraries serving political science, gender studies, philosophy, or medical ethics departments should also purchase this title. Practice-orientated law libraries could also purchase this book for lawyers wanting a brief overview of any of the five areas that Wick examines.

REVIEWED BY
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III Bibliographic Notes / Chronique bibliographique

By Susan Jones

Arianne Hartsell-Gundy, Kim Duckett & Aaron Welborn, “#ThankALibrarian: An Engagement Project to Make Library Support More Visible” (December 2016) 77:11 College & Research Libraries News 537. Available online: <crln.acrl.org/index.php/crlnews/article/view/9583/10954> (accessed 8 July 2017).

This article describes an interesting campaign designed to engage an academic community and bring attention to the work and support of library staff. The authors are from Duke University Libraries in Durham, North Carolina, and they begin their article with a brief description of the #ThankALibrarian campaign. They then go into detail about the campaign team, the team’s five key goals, the planning involved in the project, and the impact of the #ThankALibrarian campaign. The authors close their article with a few suggestions for anyone who might want to undertake a similar project.

During the week-long campaign, library staff spread out across campus and invited students, staff, faculty, and campus visitors to compose a message of thanks to staff at Duke University Libraries. Participants were then photographed holding a whiteboard with their message, and the photos were shared on Duke University Libraries’ Facebook, Instagram, and Twitter channels.

The #ThankALibrarian campaign was a team effort between Duke University Libraries’ director of communications and the communications team in the research and instructional services department. The team had five key goals for the campaign. First, they wanted to bring attention to the work of staff at Duke University Libraries. Second, they wanted

to bring attention to how staff help and support the libraries’ users. Third, they wanted to celebrate National Library Week (a national observance sponsored by the American Library Association each April to celebrate libraries and librarians and to promote the support and use of all types of libraries). Fourth, they wanted to increase engagement with their users on social media. Finally, they wanted library staff to feel valued and appreciated.

The team put a lot of effort into planning the campaign. Although the campaign was meant to create opportunities for simple and quick engagement with the libraries’ users, there were myriad details to sort out in advance. To guide their planning, the team created a document setting out the timelines, roles, supplies, and other details involved in launching the campaign. With the planning document in hand, the team sought the permission of administration to proceed with the project. Once administration was on board, it then considered how to secure the permission of participants to share their photos on social media channels. The team decided to tape a disclaimer to the back of each whiteboard advising participants that by having their photo taken, they were agreeing to let Duke University Libraries share their photo online.

During the planning phase, the team carefully considered the locations of the #ThankALibrarian photo-taking stations. High-traffic areas on campus were chosen, including bus stops, outside the student centre, the library coffee shop, and in front of the libraries. With these locations in mind, it also considered which time of day presented the best

opportunity for interacting with the campus community. The team chose a variety of times, but generally avoided early mornings and focussed on the points during the day when students would be changing classes.

As part of the planning process, the team also thought about how to encourage the campus community to participate in the campaign. One way they promoted participation was ensuring the photo-taking stations on campus were highly visible to passersby. To that end, large, colourful posters about National Library Week and the #ThankALibrarian campaign were displayed at every station, and staff volunteers wore library-branded t-shirts. The team also created library-inspired buttons with clever slogans (e.g., “Music Librarians Know the Score”) to give away.

The team also planned how participants’ photos would be taken and shared online. Staff volunteers at each #ThankALibrarian station took the photos themselves using their own smartphones. The photos were then emailed to Duke University Libraries’ communications department where the photos were collected, edited, and uploaded to the libraries’ social media channels twice a day.

During the planning phase, the team also considered how best to recruit volunteers and facilitate their participation in the campaign. A call was made for volunteers at a staff meeting and through a message posted to one of the libraries’ internal listservs. In the end, the volunteer roster included librarians, staff, and library student assistants from a number of different departments. To facilitate scheduling, an online spreadsheet was created so volunteers could easily choose their own shifts and preferred locations. The volunteers also listed their mobile phone numbers on the spreadsheet so the team could contact them while on location. Before the campaign got underway, all volunteers received a package of essential tools to use during their shifts that included a script, a checklist, and other needed supplies. One component of the kit that proved to be very helpful was a list of prompts to help participants compose their messages of thanks. The team also held a pre-campaign practice meeting so volunteers could share advice for taking and sending photos and tips for approaching potential participants. During the campaign, the team used email to convey information about progress and to share tips that volunteers picked up during their shifts.

The impact of the campaign was overwhelmingly positive. Prior to the campaign, the team hoped to capture 100 #ThankALibrarian messages, so they were very pleased when almost 300 students, staff, faculty, and visitors participated in the project. There were even a couple of “celebrity” participants, including American journalist Cokie Roberts, who was speaking on campus that week, and Duke University’s president, Richard Brodhead.

The campaign had an impact on social media, too. During the campaign, traffic on Duke University Libraries’ Facebook page increased by 8,656 per cent when compared to a

typical week. The campaign also resulted in new followers to all of Duke University Libraries’ social media channels, as well as 260 new subscribers to its Libraries News and Events email list. The campaign received a big boost when a short video about the project was posted by the Office of News and Communications to Duke University’s homepage and shared on its own social media accounts. This exposure garnered thousands of additional views, likes, shares, and reactions.

The campaign also had an impact on library staff. The team made a presentation about the campaign to staff that included a viewing of the #ThankALibrarian video and a selection of the photo-messages posted to social media. Staff felt valued and appreciated, and the team achieved one of its stated goals.

The authors close their article with a few suggestions for anyone who might want to undertake a similar project. First, the authors stress the value of brainstorming and experimentation. The #ThankALibrarian campaign wouldn’t have come about were it not for a brainstorming session about how to increase the visibility of librarians’ work. There was also no guarantee that the campaign would take off, but the team was willing to experiment and the risk paid off. The authors also stress the importance of planning when taking on this type of project. The success of the campaign was due in large part to the advance planning by the team. Finally, the authors recommend reaching out to your organization’s communications experts. At Duke University, the Office of News and Communications was happy to share well-produced social media content on the university’s top-level channels, and its efforts extended the reach of the campaign and provided a lot of exposure.

The success of the #ThankALibrarian campaign was encouraging to all involved, and the team is considering similar projects for the future, although perhaps with different themes. The #ThankALibrarian campaign was a relatively simple project to execute with a significant impact on the community, and for these reasons the authors encourage other libraries to consider doing the same.

Abby Clobridge, “The Ins and Outs of Open Licenses” (March/April 2017) 41:2 Online Searcher 62.

If, like the title of this article suggests, you want to understand the basic ins and outs of open licenses, then look no further. If you’re questioning why you would want to know anything about them, then the author wants you to know that open licenses play an important role in what she calls today’s open knowledge ecosystem. In fact, she asserts that open licenses are the foundation of this ecosystem in which people and organizations can easily create and produce their own content. Author and knowledge management consultant Abby Clobridge begins her article by providing definitions for

“license” and “open license,” and then compares material published with and without an open license. She goes on to discuss the different types of open licenses available, how content producers can start using open licenses, how content consumers can reuse content published with an open license, and best practices for providing attribution for the content that consumers have reused.

The definitions of “license” and “open license” in the article are from the Open Definition project (opendefinition.org): “A license is a document that specifies what can and cannot be done with a work (whether sound, text, image, or multimedia). It grants permissions and states restrictions. Broadly speaking, an open license is one which grants permissions to access, re-use and distribute a work with few or no restrictions” (p 62).

To further help readers understand the concept of open licenses, the author compares content published with and without an open license. Books, articles, websites, and other content published without an open license are protected by copyright. Such material likely includes a statement such as, “Copyright 2017, all rights reserved,” which means the author, creator, or producer retains all rights to that work and it can’t be replicated, distributed, or repurposed for any unauthorized use. Seems simple enough, but the author notes that in exchange for the publication of their content, authors are typically required to transfer their copyright to the publisher. In comparison, content published with an open license gives others permission to reuse that content. How they can reuse that content, however, depends on the type of open license attached to the content.

The first types of open licenses date back to 1989 and were designed for software. Beyond software, Creative Commons licenses have been used for images and text since 2002, and their use has only grown over the years. By the end of 2015, there were over one billion Creative Commons licensed works. What makes Creative Commons licenses so useful are the number and variety available, although that’s also what can make them seem so confusing. Three commonly used types of Creative Commons licenses are Attribution, Attribution-NoDerivs, and Attribution-NonCommercial.

Attribution is the most generous Creative Commons license available and allows others to “distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation” (p 64). It’s the license that’s recommended to promote the widest distribution and use of the licensed content. Attribution-NoDerivs permits “redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you” (p 64). Attribution-NonCommercial allows others to “remix, tweak, and build upon your work non-commercially, and although their new works must acknowledge you and be non-commercial, they don’t have to license their derivative works on the same terms” (p 64). For brief descriptions of the other types of Creative Commons licenses available, see

the helpful table included in the author’s article or consult the Creative Commons website.

According to the author, it’s easy to start using open licenses. For content creators, the process is particularly easy if they choose to use a Creative Commons license. The first step is to go to the Creative Commons website’s “Choose a license tool” (creativecommons.org/share-your-work). After responding to a few questions, the tool selects the most appropriate license for the content creator’s needs. The tool also produces an image and text associated with the selected license. At this point, the content creator can include some additional information (e.g., title of work, URL, creator’s name) that the tool will include in the aforementioned text associated with the license. Although optional, including this additional information promotes accurate attribution. The final step is to copy and paste the license image and text onto the published content. The process for selecting a Creative Commons license is the same whether the content creator is the author of a blog, a photographer posting his work online, or an organization that self-publishes its reports. Creative Commons also works with various platforms, including Flickr, Wikipedia, YouTube, and Vimeo, to make it easy for content creators to license their work. For example, when uploading photos to Flickr, creators have the option of selecting a Creative Commons license to attach to their work.

When it comes to reusing content subject to an open license, the process is also easy. There are, however, a few points for content consumers to keep in mind. For one thing, while content subject to an open license may be reused without getting the prior permission of the creator, some licenses require that attribution be provided. Content consumers should also be aware that some licenses require that the license be identified when reusing the content to which it’s attached. In addition to identifying the license, content consumers may be required to state or link to the terms of the license. Note, too, that licenses permitting modification of the original work may require the modifications to be licensed in the same way as the original content. Finally, it’s important for content consumers to understand that even when there’s no legal requirement to provide attribution, it’s a good idea to do so anyway. Some platforms facilitate the process of reusing content. For example, Flickr makes it easy for content consumers to reuse the open content on its platform by allowing them to search or browse for content based on the different types of Creative Commons licenses.

As already noted above, it’s a good idea to adopt the practice of providing attribution even when it’s not explicitly required. For this reason, the author offers content consumers a few tips on providing attribution. Although there’s no prescribed standard, the attribution for licensed material should always include the following: the name of the creator, whether that’s the name of an individual person, organization, pseudonym, or username; title of the work; type of license attached to the content; URL, if available; and copyright notice, if available. The last element—copyright notice—may seem at odds with

an open license, but not so according to the author. This is particularly true for self-published materials. The author uses the example of the organization that publishes its own white paper. In that case, the organization may wish to retain the copyright, but at the same time allow others to copy, distribute, display, or otherwise use the work for non-commercial purposes.

In closing her article, the author reminds readers that open licenses are an essential tool in today's open knowledge ecosystem. The digital environment in which we live makes it easy to create, share, and work with content, and licenses serve an important role in making it clear how to use and share that content.

Julia Graves Krishnaswami, "Strategies for Seeing the Big Picture in Legal Research" (Fall 2016) 25:1 Perspectives: Teaching Legal Research and Writing 15. Available online: <info.legalsolutions.thomsonreuters.com/pdf/perspec/2016-fall/2016-fall-3.pdf> (accessed 8 July 2017).

Julie Graves Krishnaswami is the associate law librarian for research instruction and lecturer in legal research at Yale Law School in New Haven, Connecticut. Every year, she begins her Advanced Legal Research class by sharing ten strategies for seeing the big picture in legal research. These are practical strategies that students can apply to any research problem as they develop their legal research and critical thinking skills. These strategies can also be carried over and applied to research problems that students encounter in their other classes and in their post-law school careers.

The author's first strategy is to *pay attention to terminology*. Students engaged in the study of law quickly learn that it's an area that comes with its own vocabulary. For that reason, it's important to take the time to find the right words at the very start of the research process. Using the right words to describe an issue, concept, or problem can lead students to the right authorities.

The second strategy is to *understand your learning style*. The author believes it's important for students to understand their learning style because legal research is, in the end, all about learning. She encourages her students to try different things to discover how they learn best. For example, note-taking is very important to the research process, especially at the start of students' careers when they'll be conducting research for others and will need to respond to their questions about the sources consulted, search terms used, and anything else they may or may not have tried. Some students find that taking notes by hand works best for them, while others prefer to type them directly into a document. Still others use the folders and organizational tools in the proprietary databases to keep track of their research.

The third strategy is to *avoid reaching conclusions too quickly*. If something's not working, then try something else. The author encourages her students to reconsider their search terms, search strategies, sources, and general approach throughout the research process.

The fourth strategy is to *take advantage of the relationships and patterns in the law*. Cases consider other cases, as well as statutes, rules, and secondary sources. Taking note of these relationships and connections will lead students to additional sources and advance their research.

The fifth strategy is to *always consider the context*. When it comes to legal research, considering the context means taking into account time, money, the client's wishes, and any other limitations on the research.

The sixth strategy is to *get comfortable with uncertainty*. There's rarely a definitive endpoint in the research process. There will always be more cases to find and more cases to read, and it can be difficult to know when to stop. The author teaches her students to end their research when they believe they've consulted the best finding tools and selected the best sources. Taking good notes throughout the research process will also help students grapple with the inherent uncertainty in legal research.

The seventh strategy is to *start with what you know*. Students usually know something about the research problem at hand. It might just be a keyword or two, an awareness about the general area of law, or the name of a case or piece of legislation, but the author encourages her students to use what they've got to get started.

The eighth strategy is to realize *it's okay to start with Google or Wikipedia as long as you don't stop there . . . ever*. These sources can provide useful background information, keywords, or citations, but even so, the author warns her students not to believe everything they read from Google or Wikipedia.

The ninth strategy is to *get help sooner rather than later*. Librarians are the obvious choice for research help, but many online platforms also offer support through help screens, toll-free telephone numbers, and chat services.

The tenth and final strategy is to *just start reading and writing*. Once they start, students will develop a better understanding of the issues and will start to identify the gaps in their research.

Students may not fully appreciate the benefit of these ten strategies at the beginning of their Advanced Legal Research class, but the author returns to them again and again throughout the term. As students develop their legal research and critical thinking skills in class, they begin to apply these concepts and understand how they help in seeing the big picture in legal research.



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

By Kate Laukys

From east to west, here is a quick look at what has been happening in the law library community across the country.

Calgary Law Library Group (CLLG)

Elda Figueira retired from the City of Calgary Law Department, effective June 1, 2017. Jacquelyn DeGreeve was hired as the new librarian. We wish good luck to both in their new endeavours!

SUBMITTED BY SELENA MIRANI
CLLG Secretary

Halifax Area Law Libraries (HALL)

The Halifax Area Law Libraries (HALL) is excited that CALL 2018 will take place in Halifax next May. The Conference Planning Committee is working hard on preparations and looks forward to reviewing program submissions in the coming months. Start your plans to enjoy some east coast hospitality!

In recent years, HALL has enjoyed several of the CALL/ACBD continuing education webinars. We have found information-sharing opportunities by liaising with student groups and legal institutions. While we hope to continue these trends, HALL has agreed to meet less often in 2017-18 so that members can focus on conference planning. The September meeting will be a review of association policies and a conference update.

SUBMITTED BY ANNE VAN IDERSTINE
HALL Chair

Law Society of New Brunswick (LSNB) Law Libraries

With the release and approval by the LSNB Council of the Law Libraries Review Committee Report on November 2, 2016, the former LSNB Library system *as we knew it* is currently undergoing a structural change. The recommendations of the report are being implemented over a period of three years.

The first action item as mandated by the Report occurred in January 2017: all print was cancelled in the Regional and County libraries. This included the Law Society libraries in Saint John, Moncton, Bathurst, Campbellton, Edmundston, Miramichi, and Woodstock.

Although the format of the resources has changed in the County libraries from print to solely electronic databases on the research computers, the County libraries remain open to the membership. The County libraries have a print collection current to 2016.

Second, by 2019 the Provincial Library located in Fredericton will be the Central Library in a library system of nine electronic service points and will maintain a current print collection. The print collection has always been available to the membership and will continue to be available to the membership, province-wide.

The third action item is for the Provincial Library to provide

the Law Society libraries in the province with digital content, online legal databases, and computer hardware.

The Provincial Libraries Committee approved and adopted the revised LSNB Law Libraries Collection Development Policy, which contains the current changes to the Library system. The initial creation of this document served to bring the Law Society Libraries into compliance with the Canadian Courthouse and Law Society Library Standards, adopted by the Canadian Courthouse and Law Society Librarians in 2010.

The LSNB Provincial Libraries Committee meets 10 times per year via conference call, and we work together reviewing and evaluating legal resources and tabulating research data, which has allowed further enhancement of the technological services within the library system.

SUBMITTED BY TANYA DAVIS

Montreal Association of Law Libraries (MALL) / Association des bibliothèques de droit de Montréal (ABDM)

Lors de l'Assemblée générale en juin 2017, des changements sont survenus dans la composition du Comité exécutif. Le poste de vice-présidente est maintenant assumé par Ruth Veilleux (De Granpré Chait), le poste de secrétaire par Laurence Elemond Giguère (Blakes) et celui de la trésorière par Isabelle Lizotte (Centre d'accès à l'information juridique). Josée Viel (Stikeman Elliott) occupe désormais le poste de présidente et Sophie Lecoq celui de présidente sortante (Chambre des Notaires du Québec).

La programmation 2017-2018 a été présentée aux membres lors de cette assemblée. Elle se déroulera comme suit pour l'automne 2017: le 14 septembre, le lunch de la Rentrée au restaurant St-Hubert; le 20 octobre une conférence sur la sécurité informatique, présentée par Daniel Marcotte directeur de la sécurité informatique chez Stikeman Elliott. Suivi d'une autre conférence le 17 novembre, sur la Liquidation des successions par Me Lucie Bédard. Nous concluons l'année 2017 avec notre souper annuel du temps des Fêtes au restaurant Hambar.

SUBMITTED BY JOSÉE VIEL
MALL President / Présidente de l'ABDM

National Capital Association of Law Librarians (NCALL)

A new NCALL executive was elected at our annual general meeting in June 2017, with Emily Benton (University of Ottawa) changing roles from treasurer to president. Joining Emily on the executive are Christina-Anne Boyle (Courts Administration Service) as treasurer and Allison Harrison (Supreme Court of Canada) as secretary. The new executive members would like to thank the outgoing executive (Caroline Hyslop, Paul Taylor-Sussex, and Emily Benton) for their hard work and dedication to the association for the past two years.

The new executive is hard at work planning sessions for Fall 2017, including a panel on training offered by member libraries to legal professionals for September, and a session on government information for October. This year also marks the 35th anniversary of NCALL, which will be celebrated at our annual holiday luncheon in December.

SUBMITTED BY ALLISON HARRISON
National Capital Association of Law Librarians, Secretary

Ontario Courthouse Libraries Association (OCLA)

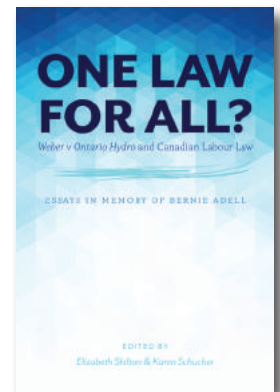
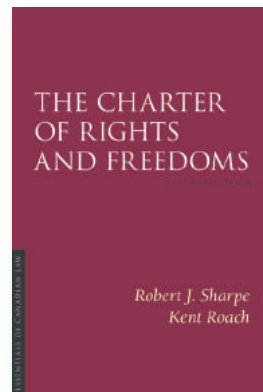
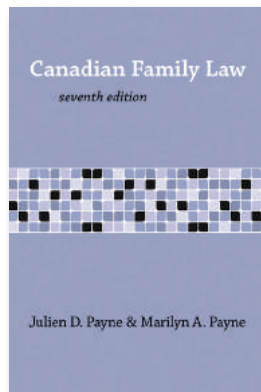
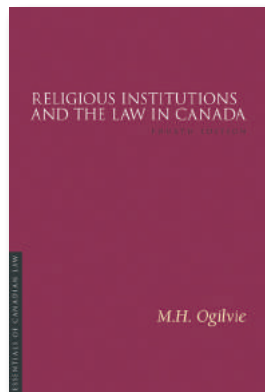
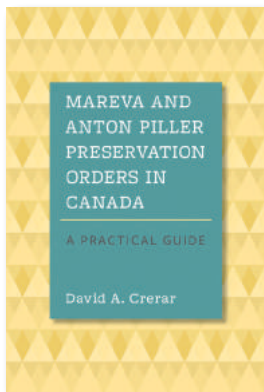
We are pleased to welcome three new members to our Association. Carolyn Alsup is the new librarian at the Elgin Law Association. She has previously worked at the Woodstock Public Library and is three courses away from completing her MLIS at San Jose State University. Andre Blake is the new librarian at Halton County Law Association. He is a graduate of the Library and Information Technician program at Seneca College, as well as the Travel & Tourism program, and has experience in records management. Stormont, Dundas and Glengarry Law Association has recently hired a new library assistant, Denise Lortie. She comes with extensive experience as a support staff person in the Ontario court system.

Congratulations to Karen Cooper (formerly Kennett), Library Technician, who has been scooped by the Hamilton Law Association. She brings loads of experience from her previous position at Halton County Law Association. We also have a couple of maternity leaves to celebrate! Amanda Ward-Pereira is expecting her second child and Brenda Carbone will again return to the Algoma District Law Association to provide library service, along with Mary Ann Potoczny, until September 4, 2018. At the Peel Law Association, Maida de Vera is expecting her second child next month and her maternity leave will be covered by Arielle Vaca, who has recently graduated from Seneca's Library and Information Technician program. We said goodbye to Kristen Clement at the Hamilton Law Association, as she has moved on to a research librarian position at the Library of Parliament. Who wouldn't want to work in such a magnificent library!

Also, we mourned the loss of a wonderful member of our association this summer, Vicki Westaway. She passed away on Monday, July 3, 2017, after a courageous fight with cancer at the age of 51. She worked for many years as the fabulous law librarian for the Elgin Law Association.

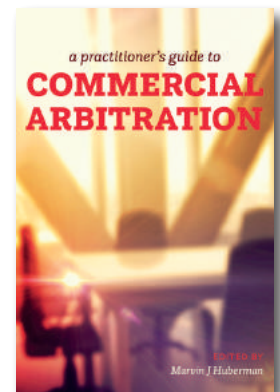
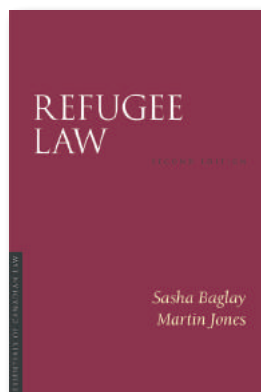
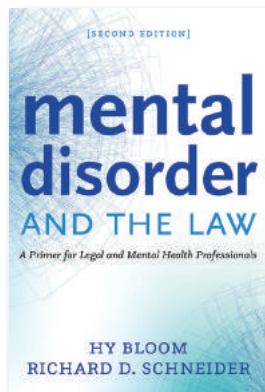
Our Association is currently in the midst of discussing a proposal that will revamp the structure of the Ontario courthouse libraries under our current entity, LibraryCo. These discussions will continue into 2018 and are expected to provide a new framework under the name "Legal Information and Resource Network (LIRN)." While the winds of change blow around us, our OCLA members continue to diligently provide excellent library services to the law association members they serve.

SUBMITTED BY HELEN HEEREMA
OCLA Chair



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Vancouver Association of Law Libraries (VALL)

Looking ahead to 2017/2018, we have a new executive in place with Sarah Richmond (past president), Susannah Tredwell (vice president), Angela Ho (treasurer), Lesley Dobin (membership), Julie Wettstein and Danielle Brosseau (programs), Stef Alexandru and Emily Nickerson (*VALL Review* editors), and Joni Sherman (webmaster). We are looking to redesign our website, welcome at least one new Lifetime member, and continue the excellent programming we have enjoyed in the past.

SUBMITTED BY TERESA GLEAVE

President, Vancouver Association of Law Libraries

SIG Updates

Legal Research and Writing (LRW) SIG

The LRW SIG held its annual meeting bright and early on Monday, May 8 during the 2017 CALL/ACBD Conference. George Tsiakos (University of British Columbia) stepped down as chair and SIG members elected two new co-chairs: Nikki Tanner (University of New Brunswick) and Hannah Steeves (Dalhousie). The chairs plan to continue developing the Instructional Resources Bank, which is available via the members section of the CALL/ACBD website. To that end, the chairs are collecting LRW syllabi and/or assignments that instructors would be willing to share with their colleagues, with the goal of providing LRW SIG members with teaching resources they can adapt for their classes. Also in development is a message board where instructors can discuss their classes or teaching methods outside of the listserv. Nikki and Hannah welcome any questions, comments, or concerns from SIG members, and look forward to the next two years!

SUBMITTED BY NIKKI TANNER AND HANNAH STEEVES

Co-chairs, LRW SIG



III News from Further Afield / Nouvelles de l'étranger

Notes from the UK London Calling

By Jackie Fishleigh

Hi folks!

O Canada: the Downton Abbey Connection

First and foremost, congratulations on 150 years of Canada. I had no idea you were so young!!

Were you aware that there is a connection with Highclere Castle, aka: Downton Abbey? Well... recently, while Lady Carnarvon, the modern-day lady of the house, was researching who had visited the castle at weekends, she found evidence in the visitors' book that a certain John Macdonald had spent many nights at the castle and ate in the dining room.

The records showed that he was in fact Canada's first prime minister, Sir John A Macdonald, and that he met with a group of men there in December 1866. This was seven months before Canada became a country, and the object of the exercise was to discuss, debate, and draft much of the Canadian Constitution.

Among the group was Lord Carnarvon, the minister in charge of British colonies.

"Lord Carnarvon didn't wish to see Canada submerged into the US," Lady Carnarvon explained in an interview with CTV News in the castle's library. "This is where it happened."¹

In fact, according to Lady Carnarvon, Macdonald enjoyed socializing a bit too much, and Lord Carnarvon had to order his butler to cut back on refilling the future prime minister's drinks!

In the interview she goes on to say: "For me, the show [Downton Abbey] is amazing. It's given us a marketing platform. But something like this matters enormously to me. To think that all these extraordinary men were here, pioneers, so brave, trying to create a constitution, trying to create a new country."

Speaking of famous locations, and on a trivial note (I love a bit of trivia!), we once held the BIALL conference disco in the very room where ABBA won the Eurovision song contest way back in 1974. The place was Brighton. The song was, of course, "Waterloo." I'm not sure if you know of Eurovision. It is huge in Australia!

The Duke of Edinburgh Turns 96

Over here, our 96-year-old Duke of Edinburgh took his final royal bow after completing his 22,219th engagement.

¹Graham Slaughter, "Downton Abbey Castle May Have Been Backdrop for Canadian History" *CTVNews* (15 February 2017), online: <www.ctvnews.ca/world/downton-abbey-castle-may-have-been-backdrop-for-canadian-history-1.3287735>.

The Royal Marines band played “For He’s A Jolly Good Fellow” in a low-key tribute.

Known for his outspoken, tactless comments over the years and as someone who “wasn’t good in the mornings” (just as well, he didn’t need to work then!), those who know him describe him as a top bloke with a lively sense of humour. OK, they didn’t use the word “bloke.”

Stop Press:

I spotted the Duke doing *another* engagement on the TV last night! He was opening the new Queensferry Crossing in Scotland, now the UK’s tallest bridge. So he is still tagging along with the monarch. There was a mini-fuss when Nicola Sturgeon, Scottish First Minister, touched or almost touched the Queen’s elbow. This is contrary to royal etiquette, apparently. Who knew?

50 Years Since Homosexuality was Decriminalised in the UK

Another important anniversary. This subject always makes me think of the ordeal of the code-breaking genius Alan Turing.

In 1952, Turing was prosecuted for “gross indecency” with a 19-year-old man. As an alternative to prison, which would have disrupted his scientific work, he was ordered to receive treatment with oestrogen injections; i.e., castration with chemicals. In 1954, 16 days before his 42nd birthday, Turing died from cyanide poisoning. An inquest ruled that his death was suicide. His brilliant mind had been distorted by the chemicals, and he could not cope with the impact this had on his work. In 2009, following an internet campaign, then Prime Minister Gordon Brown made an official public apology on behalf of the government for “the appalling way” Turing had been treated. And in 2013 he was granted a posthumous pardon by the Queen.

Thank goodness those days are behind us. Alan Turing was a genius who invented computers. If he had been left alone who knows what more he could have achieved.

All Hail to Lady Hale!

Lady Hale has been appointed as new president of the Supreme Court. She has a strong track record of championing a properly diverse judiciary. In *The Law Society Gazette*, Joshua Rozenberg opines that Lady Hale:

has little more than two years to make her mark as president of the Supreme Court. How can we expect her to shape the law, particularly in her specialism of family work?

A purist might accuse me of asking the wrong question: judges are appointed to decide cases on the facts and law, not to make policy decisions. But Hale accepts that judges may “legitimately differ” when resolving legal problems.

“We like to think that we are not predictable in the way in which we will decide the hard cases where the outcome is not clear,” she said in a lecture last month. But, as she frankly admitted, “it matters who the judge is.”²

World Para Athletics and World Athletics Championships Held in London This Summer

It was great to be in what was the Olympic Stadium back in 2012. This venue is now home to West Ham Football club but is also converted for big athletic events when it is known as The London Stadium. I was at both the Para Athletics and twice at the World Athletics.

The IAAF World Champs were a huge success—the best attendance ever. The same went for the IPC World Para Athletics. The attendance for the latter was more than for all the other previous championships combined, which is staggering if you think about! We had seats near the track. A very excited woman asked if she could move nearer because her son was competing. The son turned out to be the amazing Brent Lakatos. He’s Canadian—you probably know that! His father roared him on from behind us in a very distinctive and booming voice.

As for GB medals, we saw two silvers and a gold on the Saturday night. The gold was the first ever for GB in the World men’s sprint relays. The atmosphere was electric. Memories to treasure. But it was never meant to be all about the hosts: we saw incredible performances from the best of the best from all over the globe. Being there and cheering them all on was really special.

Employment Tribunal Fees Declared Unlawful Under Both EU Law and Domestic Law

This was the unanimous decision of the Supreme Court. It was held that the hefty fees introduced in 2013 by the coalition government denied the principle of access to justice. Dave Prentis, the General Secretary of Unison, the UK’s largest trade union, said: “The government is not above the law, but when ministers introduced fees they were disregarding laws many centuries old, and showing little concern for employees seeking justice following illegal treatment at work.”³

The government must now refund around £32m to claimants who have paid fees.

Solicitors Journal Bites the Dust

²Joshua Rozenberg, “All in the Family”, *The Law Society Gazette* (4 September 2017), online: <directories.lawgazette.co.uk/analysis/comment-and-opinion/all-in-the-family/5062706.fullarticle>.

³Laura Hughes, “Government’s Employment Tribunal Fees are ‘illegal’, Supreme Court Rules”, *The Telegraph* [UK] (26 July 2017), online: <telegraph.co.uk/news/2017/07/26/governments-employment-tribunal-fees-illegal-supreme-court-rules/>.

The world's longest-running legal journal has just shut. It was started in 1857.

I would have thought that a voice for solicitors in a changing world was still needed, today more than ever in fact. I liked the tone adopted and the commitment to access to justice. Personally, I found *Solicitors Journal* a very useful and well put together publication. It was particularly strong on education, training, regulation, and people issues.

I contacted the deputy editor, John Van der Luit-Drummond, whom I once met at a networking event, to express my disappointment at the decision, and he replied that:

The team is very sad not to be working on SJ anymore but the outpouring of support from the profession has been so appreciated.

Hopefully, wherever the team end up next, we can take a little of bit of SJ with us and bring it to our new publications.

Brexit Talks: Florence Speech

Current PM Theresa May travelled to Italy a week ago last Friday to make a major speech. The press claimed this was “to break the deadlock in Brexit negotiations.”⁴ That was illuminating in itself as I wasn't aware that the talks had in fact broken down.

The eagerly awaited result seemed to me like a very high-level overview speech, which could and should have been made straight after the referendum result in June last year—and overlong at that. What the EU chiefs actually wanted was a practical and clear statement of what we, the UK, ourselves actually want. The problem is that we are still deeply divided on the issue. Many of us are also angry and frustrated. In my view, it was a huge mistake to plough on with such a massive change based on a four per cent majority for Leave, especially given that all the campaign leaders resigned immediately afterwards and no plans of any kind had been made by anybody, including our Civil Service for the next steps. Astounding, isn't it?

The main upshot of the speech is that “transitional provisions,” if agreed by the EU, will delay Brexit for two years so we can avoid the “cliff-edge” scenario that was keeping business leaders awake at night.

The address did also contain some warm words for our former colleagues in the EU, so warm in fact that to my admittedly biased mind it would make sense to stay and influence the EU from *inside*. Maybe some hope for us remainers, then... the EU is the only show in town for countries seeking security and economic success on this continent. Unless someone

can show us a viable alternative! And quickly.

Meanwhile, Jeremy Corbyn, leader of our main opposition party (i.e., Labour) gave an extremely well received speech at his party conference in Brighton on how he would do things differently if and when elected. The main thrust is that Labour will govern *For the Many and Not the Few!* Those who self-identify as The Few are viewing the prospect of what they regard as a sort of Communist revolution lite with mounting horror! I don't think JC is as red as they think.

Stop Press:

The Conservative Party conference has now started in Manchester with “wounded antelope” Theresa May supposedly at the helm. Her chancellor, Philip “Spreadsheet” Hammond, has just admitted that: “the Cabinet is split over how Brexit should happen.”⁵

Meanwhile, Foreign Secretary Boris Johnson is the party members' top choice for replacement leader, which may explain why he is constantly making bizarre interventions and living up to his reputation as a loose cannon and buffoon!

Never a dull moment here, I can tell you!

Lucky Escape for our Wildy's Bookshop Account Manager

Jason Crimp was in Dominica at the Eastern Caribbean Bar Association Conference when hurricane Maria hit. He spent several days in hiding at his hotel with two colleagues and a 30-strong party of American scuba divers. There was much looting and disarray outside. The island was cut off from the world and the airport shut. In the end, he was evacuated by an RAF Chinook helicopter. I had a brief chat with him last week. He is grateful to be home safe and getting back into normal UK life. We have all been donating to the Red Cross appeal. My late father was legacy officer at the Red Cross, and I think they do an excellent job in these situations.

Invictus Games: Awesome Job, Toronto!

It feels like autumn (fall) over here now. It has even started to get dark disturbingly early on bad weather days. Brightening our evenings, we have TV coverage of the wounded veterans' sports event now being held in sunny Toronto! The whole annual event was started in London by Prince Harry, who was himself in the military and has a great empathy for all those who received life-changing injuries, often through stepping on unexploded devices. He has been joined by what looks like half of Toronto including his actress girlfriend, Meghan Markle. I must admit to being curious about this most promising of relationships, and in an effort to find out more, my partner Rob and I have been watching a box set of the legal drama *Suits*. Although we are led to believe it is set in

⁴Peter Foster, “Europe Could Demand €50bn from Britain to Break Deadlock in Brexit Negotiations, Senior Diplomats Warn”, *The Telegraph* [UK] (23 September 2017), online: <telegraph.co.uk/news/2017/09/23/europe-could-demand-50bn-britain-break-deadlock-brexit-negotiations/>.

⁵Peter Walker & Jessica Elgot, “Cabinet is Split over how Brexit Should Happen, Hammond Admits”, *The Guardian* (2 October 2017), online: <www.theguardian.com/politics/2017/oct/02/cabinet-is-split-over-how-brexit-should-happen-hammond-admits>.

NYC, I understand that Toronto is the place where it is filmed and where MM lives. Her on-screen character, Rachel Zane, seems prickly and, dare I say it, high maintenance. She has done well to have her own office! This is unheard of for paralegals in London. In a recent interview for *British Vogue*, MM is quoted as saying in a feature about her relationship with Prince Harry: “Personally, I love a great love story.”⁶

Well, so do I, and I suspect many of you, too! Fingers crossed it all works out for them.

Until next time...

JACKIE

Letter from Australia

By Margaret Hutchison

Greetings from the country that, if it wasn't as close to the South Pole as it is, would be regarded as being dangerously unstable. There are two issues in the headlines at the moment: we are having a postal survey on same-sex marriage, and what feels like half of the members of Parliament are being referred to the High Court, acting as Court of Disputed Returns, for breaching the Constitution over their citizenship. At times, it's been like “10 green bottles hanging on the wall”—who's next to fall?

Firstly, marriage law in Australia, unlike Canada, is solely a federal matter; the states have no authority in this area at all. However, same-sex unions are treated as de facto unions under Australian federal law, though each Australian state and territory is entitled to create their own laws with respect to same-sex relationship registers and same-sex partnership schemes. Civil unions and domestic partnerships are available to same-sex couples in most states and territories.

In December 2013, the Australian Capital Territory (ACT) passed legislation that briefly legalised same-sex marriage within the territory, prompting the Federal Government to launch a constitutional challenge in the High Court. The High Court struck down the ACT legislation on the basis that the law was inconsistent with federal legislation, which defines marriage as between a man and a woman. The current government proposed to hold a plebiscite on same-sex marriage in 2017, though this was rejected twice by the Senate. A nationwide voluntary survey by postal mail on same-sex marriage organised by the Australian Bureau of Statistics was to be held between the months of September–November 2017. This also was just challenged in the High Court on the grounds that:

the government had unlawfully financed the postal survey through a special funding [appropriations] pool, which sets aside money specifically for matters

that are “urgent” and “unforeseen.”

Opponents had told the High Court that [the government] had not met those criteria, in part because Coalition ministers had been publicly discussing “alternative measures” as early as March to deliver on the promise of a public vote.

They also argued the Australian Bureau of Statistics did not have the authority to collect the kind of information requested of it, and the postal vote did not fall under the “ordinary annual services of government.”

However, [the Solicitor-General] argued that, while a compulsory plebiscite had previously been canvassed, a voluntary vote conducted by [the Australian Bureau of Statistics] had not been decided by cabinet until last month—and therefore had not been foreseen.

He said there was an urgent need for the government to deliver on its policy, and rejected claims that the money should have been appropriated through a vote in Parliament.¹

The High Court building in Canberra is undergoing refurbishments to the air-conditioning system, and full court hearings have been held interstate since June. This hearing was in Melbourne with queues out in the street to sit in the courtroom and overflow courtroom during the hearings.

The Court found unanimously for the government to order the postal survey to go ahead with reasons to be handed down later. The survey papers had already been printed and television advertising about the survey was airing during the hearings. An interesting sidelight was that an extra 90,000 people were added to the electoral roll from the time the postal survey was announced to the cut-off date to amend the electoral rolls. While voting is compulsory in Australia, it's up to the individual to apply to be added to the electoral roll.

So that's one crisis over. The next matters that are holding up the business of government are the section 44, or dual citizenship, cases, or what Bloomberg has called “[the world's most ridiculous constitutional crisis](#).”

Section 44 of the Australian Constitution states:

44 Disqualification

Any person who:

(i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or

(ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a

⁶Scarlett Conlon, “We’re a Couple. We’re in Love”: Meghan Opens Up”, *[British] Vogue* (5 September 2017), online: <vogue.co.uk/gallery/meghan-markle-interview-about-prince-harry-relationship>.

¹Michael Koziol, “High Court Gives the Green Light to Turnbull Government’s Same-Sex Marriage Survey”, *The Sydney Morning Herald* (September 7, 2017), online <smh.com.au/federal-politics/political-news/high-court-gives-the-green-light-to-turnbull-governments-samesex-marriage-survey-20170906-gybqm8.html>.

State by imprisonment for one year or longer; or
(iii) is an undischarged bankrupt or insolvent; or
(iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or
(v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty five persons; shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Section 44(iv) has caught up members and senators before. Earlier this year, the election of Senator Bob Day from South Australia was declared invalid as he had an indirect pecuniary interest in a building lease for his electoral office. However, this latest mess about dual citizenship is beyond precedent in its sheer scale.

It started when a barrister interested in the Constitution did some initial digging on Greens senator Scott Ludlam. The then Senator Ludlam had been born in New Zealand and left when he was eight years old. He had thought he lost his New Zealand citizenship when he was naturalised as an Australian citizen in his mid-teens; however, he had to actively renounce it, which he had not done. Senator Ludlam resigned from the Senate immediately.

The shock of Scott Ludlam's dual citizenship prompted his fellow co-deputy leader of the Greens, Senator Larissa Waters, to similarly discover that she held Canadian citizenship and resign four days later. Waters was born to Australian parents who were briefly living in Canada and returned with them to Australia while still a baby. She had previously believed that she was solely an Australian citizen, and that if she had wished to gain Canadian citizenship she would have needed to take active steps before age 21. However, she discovered she had in fact always held dual citizenship since birth.

Senator Matthew Canavan, a Liberal National party minister, resigned from Cabinet over doubts as to his eligibility to be a member of the Parliament after discovering that he was considered by the Italian authorities to be a citizen of Italy. Canavan's mother had registered him as an Italian resident abroad with the Italian consulate in Brisbane in 2006, when he was 25 years old. Canavan stated he was unaware of this until his mother was prompted to inform him following news of the resignation of two Greens senators holding dual citizenship.

Then more digging found that deputy prime minister and National Party leader Barnaby Joyce was another dual New Zealand-Australian citizen through his father who was born in New Zealand. There were a lot of jokes about "Baaa-naby" and sheep at the time.

Then Senator Malcolm Roberts from the One Nation Party was found to have been a dual British-Australian citizen, inherited through his father, at the time of his election, and he had

not relinquished it until much later than he originally said he did. After that, another National Party Senator, Fiona Nash, was also found to have dual British-Australian citizenship through her father. Finally, Senator Nick Xenophon of the Nick Xenophon Party referred himself to the High Court as his father is from Cyprus, which was a British colony until 1960. The senator confirmed he had received advice from the UK Home Office that his father's background makes him a British overseas citizen by descent.

Of course, it's all very political as the Liberal and National Party Coalition government has a one-seat majority in the House of Representatives, and it would make holding onto government easier if the senators from the smaller parties such as the Greens, One Nation, and the Nick Xenophon Party were removed.

Eventually there will probably be a referendum to sort out the dual citizenship clause of section 44. The last Australian census in 2016 found that nearly half (49 per cent) of Australians had either been born overseas (first-generation Australian) or one or both parents had been born overseas (second-generation Australian). So there would be grounds for change, but I can see the more right-wing parties having a great time with the campaign. Referenda in Australia are notoriously difficult, as for any referendum questions to succeed, there has to be a majority of votes and also in a majority of states and territories, and Australians are very conservative about changing their constitution.

Now after all that, to go back to my last letter, the Referendum Council on Constitutional Recognition delivered its [final report](#) on 30 June 2017. The Referendum Council made a single recommendation for constitutional change: that the Constitution should provide for a representative body that gives Aboriginal and Torres Strait Islander peoples a voice to the federal Parliament, and the right to be consulted on policies that affect them. The Council also made one extra-constitutional recommendation: for a unifying declaration of recognition, articulating Australia's shared history, heritage, and aspirations, to be enacted by legislation and passed by Parliaments across Australia. This has been drowned in the media's attention by the government's problems with same-sex marriage and dual citizenship issues.

We are told that spring is coming, and the blossom trees are out, but our famous Floriade opens soon, and with the cold winter (for two days the minimum was -8° overnight) the tulips aren't even up yet, but here's a multi-coloured prunus tree.



Until next time (when we might have some sensible government),

MARGARET

The US Legal Landscape: News from Across the Border

By Julienne E Grant

This has not been a stellar three months here in the US. Between the devastation of hurricanes Harvey and Irma, the Trump administration's decision to deck DACA (Deferred Action for Childhood Arrivals), and the online theft of millions of our citizens' personal information, I can't say we're a nation of "happy campers." I'd actually say we're presently living in an atmosphere of distress and contention at all levels—international (I never imagined I would see "The Donald" addressing the UN General Assembly), national, state, and local.

Here in Chicago, for example, [we've filed suit](#) against the Department of Justice (DOJ), contesting its new rules that predicate the distribution of federal safety grants on a city's agreement to cooperate with federal immigration agents on various matters. Chicago is a so-called "sanctuary city" for immigrants, and, thus far, the city has refused to cooperate with the DOJ's new requirements. A federal judge [granted a preliminary injunction](#) on September 15, blocking the DOJ from implementing the rules, so we will see how this plays out as the case continues to wind its way through the courts. The case certainly has national implications.

There is other news besides the Trump administration's follies and their ensuing legal repercussions. AALL held its annual meeting, SCOTUS (Supreme Court of the US) closed out its 2016-2017 term with a new Justice, and that new Justice already has a BFF on the Court. The column also reports on the surprising retirement of Judge Richard A Posner from the Seventh Circuit, and there's an update on Safe Humane Chicago's Court Case Dog Program. Read on.

American Association of Law Libraries

AALL's 110th Annual Meeting was held in Austin, Texas, from July 15-18 (yes, it was terribly hot). According to AALL, nearly 3,000 attendees, exhibitors, and speakers were on hand,¹ including a number from Canada. Bryan Stevenson, executive director of the [Equal Justice Initiative](#), was the keynote speaker, and he was terrific. AALL's 2018 Annual Meeting will convene in Baltimore, Maryland, next July. AALL has announced that it will no longer host meetings in Texas, due to "recent moves by the legislature to discriminate against LGBTQ people."²

Stepping in as AALL's president for the 2017-2018 term

is Gregory R Lambert (chief knowledge services officer, Jackson Walker LLP, Houston). Mr. Lambert recently announced AALL's stand on President Trump's plan to end the DACA program: "Many [Dreamers] are enrolled in this nation's law and library schools. As an Association, we support their right to pursue the American dream without fear of deportation."³

In other AALL news, AALL's *Law Library Journal* has a new editor—Tom Gaylord of Northwestern's Pritzker Legal Research Center.

The ABA's president for 2017-2018 is Hilarie Bass.⁴ Ms. Bass is co-president of Greenberg Traurig LLP, and she practices in Miami. Ms. Bass has a long history of ABA leadership roles, including chair of the Section of Litigation and member of the Board of Governors. Among her initiatives are the creation of a [Commission on the Future of Legal Education](#) and an Advisory Council on the Legal Rights of Homeless Youth. She also launched the [Achieving Long-Term Careers for Women in Law](#) initiative and recently introduced the new [ABA Legal Fact Check](#) website, which "is intended to be a resource for the public, including the news media, to be informed of what the law says about the issues surrounding current events."⁵

The ABA is also examining a controversial proposal to change [Standard 503](#) ("Admission Test," *ABA Standards and Rules of Procedure for Approval of Law Schools*), which permits US law schools to accept tests other than the LSAT (e.g., the GRE) if they can demonstrate the alternative test is "valid and reliable" for its assessment purposes. The proposed change would allow only the ABA to determine if an alternative test is "valid and reliable." The ABA's Section on Legal Education and Admission to the Bar held a [hearing](#) on the matter in July, and the Section's council will take up the issue again in November, according to an ABA statement.⁶ *Above the Law* reported that US law school administrators are somewhat split on whether the ABA should even be involved with this matter at all.⁷

Law School News

In its August 2017 issue, the *ABA Journal* published a lengthy article on the travails of the now defunct for-profit Charlotte School of Law (CSL).⁸ The ABA placed CSL on probation last November, and the article profiles a number of CSL graduates who have faced difficulties passing the North Carolina bar exam and finding jobs. Last year, the US Department of Education cut off federal loans to enrolled CSL students. CSL is now closed after its license to operate in North Carolina officially expired on August 10.⁹

¹ [aallnet.org/mm/Publications/enews/2017-enewsletters/e-newsletter-201707.html - 1](#) (last visited Sept 15, 2017).

² [aallnet.org/hc/NewsCallout/Discriminatory-Policies-in-Texas.html](#) (last visited Sept 15, 2017).

³ [aallnet.org/hc/NewsCallout/AALL-Responds-to-Trump-Administrations-Plan-to-Terminate-Deferred-Action-to-Chi.pdf](#) (last visited Sept 15, 2017).

⁴ See [americanbar.org/publications/youraba/2017/september-2017/meet-the-new-aba-president-.html](#) (last visited Sept 15, 2017).

⁵ [abajournal.com/news/article/aba_legal_fact_check_website_launched_to_help_public_sort_out_fact_from_fic](#) (last visited Sept 15, 2017).

⁶ [americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2017_managing_director_memo_on_s503.authcheckdam.pdf](#) (last visited Sept 15, 2017).

⁷ [abovethelaw.com/2017/07/in-the-lsat-v-gre-battle-should-the-aba-get-involved/](#) (last visited Sept 15, 2017).

⁸ [abajournal.com/magazine/article/troubled_passage_charlotte_school_law](#) (last visited Sept 15, 2017).

⁹ [nytimes.com/2017/08/15/business/dealbook/for-profit-charlotte-school-of-law-closes.html?mcubz=0](#) (last visited Sept 15, 2017).

According to Adam Liptak of the *New York Times*, Donald Trump is transforming the study of constitutional law in US law schools; he is “a one-man course in constitutional arcana.”¹⁰ In an August 14 piece, Liptak wrote, “The nation’s law professors have spent the summer revising their courses to take account of a president who generates fresh constitutional questions by the tweet. When classes start in the coming weeks, law students will be studying more than dusty doctrine. They will also be considering an array of pressing questions.”¹¹ The article includes commentary by several US law profs, including Harvard’s Laurence H Tribe, on the curriculum effect of the Trump presidency.

Bar Exam News

As reported in my last column, California’s bar passage rate continues to decline, with almost two-thirds of applicants failing the February 2017 test. On July 31, a four-hour public meeting was held at which the State Bar of California proposed lowering the passing score on the July 2017 exam from 144 to 141. The State Bar’s Committee on Bar Examiners accepted public comment on the matter until August 25 and, according to *Law360*, was to submit a final recommendation to the Board of Trustees, which would consider it at its September meeting.¹² The California Supreme Court has the final say on approving any changes to the passing score levels. Results for the California July 2017 exam are expected in November.

Above the Law reported that New Mexico bar takers seem to have finally “gotten the hang” of the UBE (Uniform Bar Exam).¹³ Test takers there had a rough time with the first administrations of the UBE, with bar passing rates falling dramatically on the February and July 2016 exams. Results of the July 2017 exam, however, indicate that the passage rate was 83 percent, “which is higher than the pass rates from recent administrations and consistent with bar exam pass rates pre-2014.”¹⁴ The standardized UBE is now offered in over [20 US states](#), and the exam results are portable among those states.

Law Firm News

Law360 released its annual “Diversity Snapshot,” which ranks firms in terms of minority attorneys on staff.¹⁵ For 600+ lawyers, Lewis Brisbois ranked first; for firms with 300-599 lawyers, it was Fenwick & West, tied with Fragomen, Del Ray; Atkinson Andelson was at the top in the 150-299 group;

and Bookoff McAndrews scored number one in the 20-149 lawyers group. Overall, however, the “Snapshot” indicates that the legal industry is still way behind in terms of diversity, with racial and ethnic minorities encompassing just over 15 percent of attorneys employed by US law firms.¹⁶ *Law360* also examined representation of both minority and female lawyers (combined) at all levels in firms. For 600+ attorneys, Littler scored first; in the 300-599 group, Crowell & Moring ranked first; in firms with 150-299 lawyers, Best Best was “best”; and Berry Appleman was at the top in firms with 20-149 attorneys.¹⁷

In other law firm news, Chicago-based Arnstein & Lehr LLP has merged with Philadelphia-based Saul Ewing LLP to create Saul Ewing Arnstein & Lehr LLP. The combined firm has about 440 attorneys in 15 offices, according to the *Chicago Daily Law Bulletin*.¹⁸

SCOTUS News

SCOTUS wrapped up its 2016-2017 term fully staffed. With the end of the term came loads of SCOTUS statistics, on everything from the percentage of dissents to those Justices deemed the “most talkative” members of the Court. According to *Law360*, there were fewer dissents during the 2016-2017 term than in years past—the number of dissents dropped 34 percent from the prior year, for example.¹⁹ *Law360* also reported that Justice Stephen Breyer emerged as the “most talkative” member of the Court during oral arguments, based on an analysis of transcript data.²⁰ Justices Sotomayor and Kagan were also quite chatty, according to the article. *Law360* also reported on the “10 Funniest Moments” of the term, which included a confused Nebraska lawyer who mixed up the loquacious Justices Sotomayor and Kagan.²¹

According to *Law360*, Perkins Coie scored best in terms of victories at SCOTUS during the 2016-2017 term, with three wins and no losses.²² Jenner & Block followed with three wins and one loss, and Mayer Brown had two victories and one loss. Jenner & Block’s Adam G Unikowsky, a former clerk to Justice Antonin Scalia, was remarkably the attorney for all of the firm’s SCOTUS wins. Even more impressive was the fact that he accomplished this in a short window of time—between March 20 and April 18, 2017.

Empirical SCOTUS reported that WilmerHale, Gibson Dunn, Jones Day, and Mayer Brown were at the top for the number of amicus briefs associated with victorious parties.²³

With Justice Gorsuch now on board, the Court again has a powerful conservative bloc of four Justices. Justice Anthony Kennedy remains in the center, and with rumors about his

¹⁰ nytimes.com/2017/08/14/us/politics/trump-constitution-law-schools.html?mcubz=3 (last visited Sept 15, 2017).

¹¹ *Ibid.*

¹² Melissa Daniels, “Calif Bar Committee Presents Proposal to Lower Pass Score,” *Law360* (31 July 2017).

¹³ abovethelaw.com/2017/09/uniform-bar-exam-finally-brings-success-for-law-grads-after-years-of-subpar-pass-rates (last visited Sept 18, 2017).

¹⁴ *Ibid.*

¹⁵ Jacqueline Bell, “The Best Firms for Minority Attorneys,” *Law360* (20 Aug 2017).

¹⁶ *Ibid.*

¹⁷ Jacqueline Bell & Cristina Violante, “The Best Law Firms for Women and Minority Attorneys,” *Law360* (28 Aug 2017).

¹⁸ Marc Karlinsky, “Arnstein Merges with Saul Ewing,” *Chi D L Bull* (5 Sept 2017) at 1.

¹⁹ Jimmy Hoover, “The Sharpest Dissents from This Supreme Court Term,” *Law360* (27 June 2017).

²⁰ Jimmy Hoover, “The Most Talkative Justice of The High Court Term,” *Law360* (28 June 2017).

²¹ Jeff Overley, “The 10 Funniest Moments of The Supreme Court Term,” *Law360* (28 June 2017).

²² Jacqueline Bell, “The Firms That Won Big at The Supreme Court,” *Law360* (26 June 2017).

²³ empiricalscotus.com/2017/06/30/scotus-success-2016 (last visited Sept 18, 2017).

imminent retirement seemingly dissipated, he can still supply the center swing vote. This year, the Court will address several blockbuster disputes, some involving important social issues and the extent of government authority. On the second day of the 2017-2018 term, October 3, the Justices are scheduled to hear an important gerrymandering case out of Wisconsin ([Gill v Whitford](#)). According to Justice Ruth Bader Ginsburg, this case is “perhaps the most important of the term.”²⁴ The Trump administration’s travel ban dispute ([Trump v International Refugee Assistance Project](#)) is scheduled for oral arguments on October 10. On the same date, the Court will address a Colorado’s baker’s refusal to prepare a wedding cake for a same-sex couple because of his religious beliefs ([Masterpiece Cake Shop v Colorado Civil Rights Commission](#)).

In other SCOTUS news, the Court’s [new electronic filing system](#) will officially be operational on November 13, 2017. According to the Court’s website, once the system is up and running, almost all filings will be freely accessible to the public. Attorneys who plan on filing at SCOTUS must register in advance to gain access to the new system.

The New Guy in Town: Justice Gorsuch and His New SCOTUS BFF

Justice Neil Gorsuch penned his first dissent in [Perry v Merit Systems Protection Board](#), which examined the appropriate venue for a former federal employee to appeal after the Merit Systems Protection Board threw out his claims for lack of jurisdiction. Justice Gorsuch, joined by Justice Thomas (his new ideological pal on the Court), opined that some of the claims should be filed with the Federal Circuit, instead of sending all of them to the federal district court, as decided by his other colleagues. According to *Law360*, Justice Gorsuch’s dissent appeared just 74 days after joining the bench, which is about half the average of his colleagues.²⁵ It is also the least amount of time any of his colleagues have taken to write their own dissent. Justice Ginsburg, however, is the only sitting Justice to pen a first dissent without a colleague joining her.

UC-Berkeley’s Erwin Chemerinsky wrote an interesting piece for the August ABA Journal that summarized Justice Gorsuch’s first term opinions. Particularly noteworthy, Chemerinsky observed, was Gorsuch’s decision to join the dissent in [Pavan v Smith](#), which involved the state of Arkansas’s refusal to place a lesbian mother’s wife’s name on her child’s birth certificate. The majority ruled with the plaintiff, but Gorsuch wrote a dissent (joined by Justices Thomas and Alito) that would have allowed Arkansas to discriminate against same-sex couples. Chemerinsky wrote,

“He [Justice Gorsuch] will be everything that conservatives dreamed of and that liberals feared. So far, he has voted with Justice Clarence Thomas 100 percent of the time.”²⁶ Chemerinsky commented that he could not think of any new Justice who so “quickly and clearly expressed his ideology.”²⁷ For another interesting read on Gorsuch’s first term, see “Gorsuch and Thomas Becoming Fast Friends at High Court” (Jimmy Hoover, *Law360*, June 27, 2017).

Judge Posner Retires: Will Pixie the Cat be the Next US President?

Perhaps the biggest news emanating from the federal courts over the past few months was the sudden and surprising retirement of Judge Richard A Posner of the US Court of Appeals for the Seventh Circuit (Chicago). Judge Posner, now 78 years old, announced his retirement on Friday, September 1, effective the following day. Judge Posner cited difficulty with his colleagues over the Seventh Circuit’s treatment of *pro se* litigants as his main reason for abruptly stepping down.²⁸

Judge Posner was appointed by Republican president Ronald Reagan in 1981, although his opinions over the years have perhaps leaned more towards a libertarian philosophy. In a 2012 interview with NPR, Posner himself admitted that he had become less conservative “since the Republican Party started becoming goofy.”²⁹ Posner’s quirky and academic style on the bench was legendary, and he developed almost a cult-like following over the years. Posner wrote more than 3,300 opinions during his career, and he has penned dozens of books. He is particularly recognized among legal scholars for promoting economic analysis of the law. His latest tome, [The Federal Judiciary: Strengths and Weaknesses](#) (Harvard UP), was published in August. Cass R Sunstein of Harvard Law School called Posner “probably the world’s most influential legal thinker over the last half-century ... If a Nobel Prize were to be given in law ... he [Posner] would be the first to receive it, solely on the basis of his academic contributions.”³⁰

Posner serves on the faculty of the University of Chicago Law School and will continue to teach there and publish. He will also purportedly assist his cat, Pixie, in a run for president in 2020. He told the *Chicago Daily Law Bulletin*, “I am optimistic that by [2020] the public will be fed up with human presidential candidates, whether named Trump or Clinton.”³¹ Perhaps Posner himself should take a stab at it.

On the Dockets: An Ump Cries Foul & Foodies Revolt

In July, a Major League Baseball (MLB) umpire filed suit in federal court against the MLB alleging racial discrimination

²⁴ [economist.com/blogs/democracyinamerica/2017/08/swing-time](#) (last visited Sept 19, 2017).

²⁵ Cristina Violante, “Reading the Tea Leaves in Gorsuch’s First Dissent,” *Law360* (June 23, 2017).

²⁶ [abajournal.com/news/article/chemerinsky_gorsuch](#) (last visited Sept 19, 2017).

²⁷ *Ibid.*

²⁸ [abajournal.com/news/article/why_did_posner_retire_he_cites_difficulty_with_his_colleagues_on_one_issue](#) (last visited Sept 19, 2017).

²⁹ *Ibid.*

³⁰ [bloomberg.com/view/articles/2017-09-03/richard-posner-leader-of-a-legal-revolution](#) (last visited Sept 19, 2017).

³¹ Patricia Manson, “Friction on bench led to Posner’s exit,” *Chi D L Bull* (Sept 6, 2017), at 6.

in MLB's umpire promotion system and post-season assignment policies. The plaintiff, Angel Hernandez, was born in Cuba, and he alleges that less qualified white umpires have been consistently chosen over him and other minorities to work at the World Series and as crew chiefs. The case was filed in the US District Court for the Southern District of Ohio (*Hernandez v The Office of the Commissioner of Baseball et al*).

A federal district court judge in Chicago threw out a class action lawsuit brought by consumers who claimed they were deceived by labels claiming a product was "100% Grated Parmesan Cheese." In *In re: 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation*, Judge Gary Feinerman concluded that the descriptions were ambiguous, rather than deceptive. Defendants included Kraft Heinz and Albertsons LLC. In another foodie dispute (*In re: Subway Footlong Sandwich Marketing and Sales Practices Litigation*), a Seventh Circuit panel threw out a settlement in a class-action lawsuit that accused Subway of selling sandwiches that didn't measure 12 inches. The settlement, the court concluded, was more about lawyers making money than changing Subway's baking methods, and characterized the settlement as a racket.³²

Legal Miscellany: New Books, the Court Case Dogs, and Courtroom Art

Attorney and prolific author John Grisham has a new legal thriller coming out this fall (October 24). Titled *The Rooster Bar*, the book focuses on three law school chums caught up in a money-making scam, which evolved because of their high levels of law school debt. Publisher is Hodder & Stoughton. Another attorney-author, James Grippando, has

won the seventh annual [Harper Lee Prize for Legal Fiction](#). Grippando, a lawyer at Boies Schiller Flexner, won the Prize for *Gone Again*, the 12th book in his series about a Miami criminal defense attorney (Jack Swyteck). Publisher is HarperCollins.

Some of you may remember my May 2016 column that mentioned Chicago's court case dogs. I'm happy to report that this initiative is still up and running, and the [Safe Humane Chicago Court Case Dog Program](#) celebrated its 1,000th saved dog in July. According to a piece in the *Chicago Tribune* on September 1, the program has almost 175 volunteers who are assisting with dogs who end up in Chicago Animal Care and Control as part of pending court cases.³³ Dogs deemed suitable for the program (about 85 percent) are provided with manners classes, dog play dates, and become involved in Safe Humane's veteran and at-risk youth programs until they are adopted.³⁴

On exhibit at the [Law Library of Congress](#) until December 30 is *Drawing Justice: The Art of Courtroom Illustration*. The exhibit showcases the Library's collection of courtroom art, beginning with the Jack Ruby trial in 1964. The artwork contained in the exhibit is available for viewing [online](#).

Conclusion

That's a wrap, as we Americans continue to grapple with what is probably the most unconventional presidency in our nation's history. Perhaps the best way to approach the whole situation is with the Brits' "Keep Calm and Carry On" motto. As always, if any readers would like to comment on any of the above, or make suggestions for additional content, please feel free to contact me at jgrant6@luc.edu.

JULIENNE

³² media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D08-25/C:16-1652;J:Sykes;aut:T;fnOp:N:2017393;S:0 at 3 (last visited Sept 19, 2017).

³³ chicagotribune.com/news/ct-abused-dogs-adopted-met-20170901-story.html (last visited Sept. 15, 2017).

³⁴ *Ibid.*

* Jackie Fishleigh, *Library and Information Manager, Payne Hicks Beach.*

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

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