



By the KING,

A P R O C L A M A T I O N .

GEORGE R.



HEREAS We have taken into Our Royal Consideration the extensive and valuable Acquisitions in *America*, secured to Our Crown by the late Definitive Treaty of Peace, concluded at *Paris* the Tenth Day of *February* last; and being desirous, that all Our loving Subjects, as well of Our Kingdoms as of Our Colonies in *America*, may avail themselves, with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation; We have thought fit, with the Advice of Our Privy Council, to issue this Our Royal Proclamation, hereby to publish and declare to all Our loving Subjects, that We have, with the Advice of Our said Privy Council, granted Our Letters Patent, under Our Great Seal of *Great Britain*, to erect within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the Names of *Quebec*, *East Florida*, *West Florida*, and *Grenada*, and limited and bounded as follows; *viz.*

First. The Government of *Quebec*, bounded on the *Labrador* Coast by the River *St. John*, and from thence by a Line drawn from the Head of that River through the Lake *St. John* to the South End of the Lake *nigh Pifin*; from whence the said Line crossing the River *St. Lawrence* and the Lake *Champlain* in Forty five Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River *St. Lawrence*, from those which fall into the Sea; and also along the North Coast of the *Bay des Chaleurs*, and the Coast of the Gulf of *St. Lawrence* to Cape *Rafertis*, and from thence crossing the Mouth of the River *St. Lawrence* by the West End of the Island of *Anticosti*, terminates at the aforesaid River of *St. John*.

Secondly. The Government of *East Florida*, bounded to the Westward by the Gulf of *Mexico*, and the *Apalachicola* River; to the Northward, by a Line drawn from that Part of the said River where the *Chatahoochee* and *Flint* Rivers meet, to the Source of *St. Mary's* River, and by the Course of the said River to the *Atlantic* Ocean; and to the Eastward and Southward, by the *Atlantic* Ocean, and the Gulf of *Florida*, including all Islands within Six Leagues of the Sea Coast.

Thirdly. The Government of *West Florida*, bounded to the Southward by the Gulf of *Mexico*, including all Islands within Six Leagues of the Coast from the River *Apalachicola* to Lake *Pontchartrain*; to the Westward by the said Lake, the Lake *Mauripis*, and the River *Mississippi*; to the Northward, by a Line drawn due East from that Part of the River *Mississippi* which lies in thirty one Degree North Latitude, to the River *Apalachicola* or *Chatahoochee*; and to the Eastward by the said River.

Fourthly. The Government of *Grenada*, comprehending the Island of that Name, together with the *Grenadines*, and the Islands of *Dominica*, *St. Vincent*, and *Tobago*.

And, to the End that the open and free Fishery of Our Subjects may be extended to and carried on upon the Coast of *Labrador* and the adjacent Islands, We have thought fit, with the Advice of Our said Privy Council, to put all that Coast, from the River *St. John*'s to *Hudson's* Straights, together with the Islands of *Anticosti* and *Madelaine*, and all other smaller Islands lying upon the said Coast, under the Care and Inspection of Our Governor of *Newfoundland*.

We have also, with the Advice of Our Privy Council, thought fit to annex the Islands of *St. John's*, and Cape *Breton* or *Île Royale*, with the lesser Islands adjacent thereto, to Our Government of *Nova Scotia*.

We have also, with the Advice of Our Privy Council aforesaid, annexed to Our Province of *Georgia* all the Lands lying between the Rivers *Altamaha* and *St. Mary's*.

And whereas it will greatly contribute to the speedy settling Our said new Governments, that Our loving Subjects should be informed of Our paternal Care for the Security of the Liberties and Properties of those who are and shall become Inhabitants thereof; We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under Our Great Seal of *Great Britain*, by which the said Governments are constituted, given express Power and Direction to Our Governors of Our said Colonies respectively, that so soon after the Arrival of the Members of Our Council, summoned and called General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in *America*, which are under Our immediate Government; and We have also given Power to the said Governors, with the Consent of Our said Councils, and the Representatives of the People, so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Publick Peace, Welfare, and Good Government of Our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of *England*, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons inhabiting in, or resorting to Our said Colonies, may confide in Our Royal Protection for the Enjoyment of the Benefits of the Laws of Our Realm of *England*; for which Purpose, We have given Power under Our Great Seal to the Governors of Our said Colonies respectively, to erect and constitute, with the Advice of Our said Councils respectively, Courts of Judicature and Publick Justice, within Our said Colo-

And whereas We are desirous, upon all Occasions, to testify Our Royal Sense and Approbation of the Conduct and Bravery of the Officers and Soldiers of Our Armies, and to reward the same, We do hereby command and empower Our Governors of Our said Three New Colonies, and all other Our Governors of Our several Provinces on the Continent of *North America*, to grant, without Fee or Reward, to such Reduced Officers as have served in *North America* during the late War, and to such Private Soldiers as have been or shall be disbanded in *America*, and are usually residing there, and shall personally apply for the same, the following Quantities of Lands, subject at the Expiration of Ten Years to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; *viz.*

To every Person having the Rank of a Field Officer, Five thousand Acres.—To every Captain, Three thousand Acres.—To every Subaltern or Officer, Two thousand Acres.—To every Non-Commission Officer, Two hundred Acres.—To every Private Man, Fifty Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all Our said Colonies upon the Continent of *North America*, to grant the like Quantities of Land, and upon the same Conditions, to such Reduced Officers of Our Navy, of like Rank, as served on Board Our Ships of War in *North America* at the Times of the Reduction of *Louisbourg* and *Quebec* in the late War, and who shall personally apply to Our respective Governors for such Grants.

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of *Indians*, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds; We do therefore, with the Advice of Our Privy Council, declare it to be Our Royal Will and Pleasure, that no Governor or Commander in Chief in any of Our Colonies of *Quebec*, *East Florida*, or *West Florida*, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also, that no Governor or Commander in Chief in any of Our other Colonies or Plantations in *America*, do presume, for the present, and until Our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the *Atlantic* Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to, or purchased by Us as aforesaid, are reserved to the said *Indians*, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under Our Sovereignty, Protection, and Dominion, for the Use of the said *Indians*, all the Lands and Territories not included within the Limits of Our said Three New Governments, or within the Limits of the Territory granted to the *Hudson's Bay* Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West, as aforesaid; and We do hereby strictly forbid, on Pain of Our Displeasure, all Our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without Our especial Leave and Licence for that Purpose first obtained.

And We do further strictly enjoin and require all Persons whatever, who have either willfully or inadvertently feasted themselves upon any Lands within the Countries above described, or upon any other Lands, which, not having been ceded to, or purchased by Us, are still reserved to the said *Indians* as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in the purchasing Lands of the *Indians*, to the great Prejudice of Our Interests, and to the great Dissatisfaction of the said *Indians*; in order therefore to prevent such Irregularities for the future, and to the End that the *Indians* may be convinced of Our Justice, and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of Our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said *Indians* of any Lands reserved to the said *Indians*, within those Parts of Our Colonies where We have thought proper to allow Settlement; but that if, at any Time, any of the said *Indians* should be inclined to dispose of the said Lands, the same shall be purchased only for Us, in Our Name, at some Publick Meeting or Assembly of the said *Indians* to be held for that Purpose by the Governor or Commander in Chief of Our Colonies respectively, within which they shall lie; and in case they shall lie within the Limits of any Proprietary Government, they shall be purchased only for the Use and in the Name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose: And We do, by the Advice of Our Privy Council, declare and enjoin, that the Trade with the said *Indians* shall be free and open to all Our Subjects whatever; provided that every Person, who may incline to trade with the said *Indians*, do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively, where such Person shall reside; and also give Security to observe such Regulations as We shall at any Time think fit, by Ourselves or by Our Commissioners to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade; and We do hereby



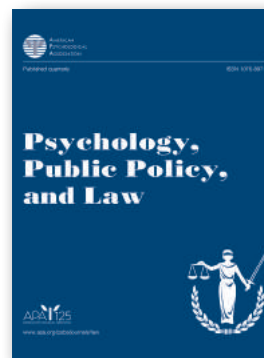
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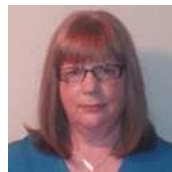
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& -or. 1. One who
for publication; one wh
edition. 2. One who d
the publication of a new
editorial (1.), adj. [1. édi

III From the Editor / De la rédactrice

As my tenure as editor of the *CLLR* is winding down, I have been reflecting on passing the baton onto the younger generation. I have heard a lot of discussion about the millennial generation, and some of what I have heard has been quite uncomplimentary, but I work with this generation daily and haven't seen any proof that these stereotypes are true. At the conference this year in Ottawa, I met a number of new professionals and was impressed by their professionalism, intelligence, dedication, and drive. I can only see that the *CLLR* will be in very good hands in the future.

As part of that transition, it is with real pleasure that I welcome two new members of the editorial board. First, Hannah Saunders has come on board as our advertising manager. Hannah is a recent graduate of the University of Toronto's iSchool and is currently a researcher at Miller Thompson LLP's library. She was one of the stars of my and John Bolan's Legal Literature and Librarianship class, and she has been back to speak to subsequent classes about her experience as a law librarian. Our second new recruit is Nikki Tanner, our new associate editor who will take over as editor next May. Nikki is well qualified to become editor (likely much more than I was when I took over). She has a master's degree in English, was a copy editor for the *Dalhousie Journal of Interdisciplinary Management*, and then the editor of *VoxMeDAL*, the Dalhousie Medical Alumni Association's magazine. She is currently the reference/instruction librarian at the University of New Brunswick's Gerard V. La Forest Law Library.

Speaking of the younger generation, all of the feature articles in this issue were written by student authors.

Sara Klein's article "Ethics and Law Librarianship: Current Issues and Progressive Horizons" is a call to action for all law librarians. From my own experience, it seems that when I talk to other law librarians about ethics in law librarianship we do so within the limited focus of not being seen as providing legal advice, thus guarding our own backs and reputations. Even looking more broadly, the discussion usually focusses on the passive; as Sara describes it, our duty to "do no harm." Sara's prescription is more outward looking, as she identifies our "positive duty to ethics" and provides some suggestions as to how law librarians can embrace that positive duty to "social responsibility, access, and diversity."

Diversity plays a role in this issue's other feature article. As we are becoming more aware of Indigenous law and culture and its relationship with the current Canadian legal system, it is important to know and understand what the sources of Aboriginal law are and where to find them. Jessica Stuart's "Aboriginal Rights and Treaty Research in Canada" is an excellent introduction to this subject. In this article we learn about the legal tests for the admission of Aboriginal evidence, much of which is not included in the written record: oral histories, ceremonial records, and expert evidence, for example. And then we learn where to find them. I do believe this article will become a standard resource for any law librarian researching Aboriginal rights and treaties.

By the time you receive this issue, summer will be drawing to a close. I always think of September as the beginning of the year (I still get the urge to go out and buy new school supplies), and so in that spirit I wish you a fruitful and prosperous fall.

**EDITOR
SUSAN BARKER**



Alors que mon mandat de rédactrice en chef de la *Revue canadienne des bibliothèques de droit* (RCBD) tire à sa fin, j'ai eu l'occasion de réfléchir au passage de flambeau à la nouvelle génération. Bien que j'aie entendu beaucoup de choses sur les milléniaux, dont certaines ne sont pas forcément flatteuses, je travaille tous les jours avec les jeunes de cette génération et je ne vois aucune preuve de ces stéréotypes. Dans le cadre du congrès annuel à Ottawa, j'ai rencontré plusieurs nouveaux professionnels et j'ai été impressionnée par leur professionnalisme, leur intelligence, leur rigueur et leur dynamisme. Je ne peux que constater que la RCBD sera entre de très bonnes mains pour les années à venir.

Dans le cadre de cette transition, c'est avec grand plaisir que j'accueille deux nouveaux membres au sein du comité de rédaction. Notre première recrue est Hannah Saunders, qui agira à titre de directrice de la publicité. Hannah est une jeune diplômée de l'iSchool de l'Université de Toronto et occupe actuellement un poste de chercheuse à la bibliothèque du cabinet d'avocats Miller Thompson LLP. Elle est reconnue comme l'une des meilleures étudiantes du cours sur la littérature juridique et la bibliothéconomie que John Bolan et moi enseignons, et revient souvent en classe pour parler aux étudiants de son expérience à titre de bibliothécaire de droit. Notre deuxième recrue est Nikki Tanner, nouvelle rédactrice adjointe qui assumera les fonctions de rédactrice en chef en mai prochain. Nikki est hautement qualifiée pour occuper ce poste (probablement plus que je ne l'étais quand je suis entrée en fonction). Elle est titulaire d'une maîtrise en anglais, elle a été réviseure pour *la revue Dalhousie Journal of Interdisciplinary Management* et rédactrice en chef de *VoxMeDAL*, le magazine de l'Association des diplômés en

médecine de l'Université Dalhousie. Elle travaille comme bibliothécaire de référence à la bibliothèque de droit Gérard V. La Forest de l'Université du Nouveau-Brunswick.

En parlant de cette génération, tous les articles présentés dans ce numéro ont été rédigés par des étudiants.

L'article de Sara Klein, "Ethics and Law Librarianship: Current Issues and Progressive Horizons", est un appel à l'action adressé à tous les bibliothécaires de droit. D'après mon expérience personnelle, il semble que lorsque je parle d'éthique en bibliothéconomie avec d'autres bibliothécaires de droit, nous nous limitons à ne pas être perçus comme fournissant des conseils juridiques; ainsi, nous veillons à nos intérêts et protégeons notre réputation. Même dans une vision plus large, la discussion est habituellement passive; comme le souligne Sara, nous avons l'obligation de « ne pas causer de tort ». Sa solution est plutôt orientée vers l'extérieur en précisant notre « obligation positive à l'égard de l'éthique ». En outre, elle fait quelques suggestions afin que les bibliothécaires de droit puissent souscrire à cette obligation positive envers la « responsabilité sociale, l'accès et la diversité ».

La diversité joue un rôle dans un autre article de fond de ce numéro. Puisque nous prenons de plus en plus conscience du droit et de la culture des Autochtones et de leur relation avec le système juridique actuel au Canada, il est important de connaître et de comprendre les sources du droit autochtone et de savoir où les trouver. L'article de Jessica Stuart, "Aboriginal Rights and Treaty Research in Canada", constitue une excellente introduction aux droits ancestraux et aux droits issus de traités du Canada. Nous apprenons des choses sur les critères juridiques pour permettre l'admission d'éléments de preuve, dont une bonne partie n'apparaît pas dans les documents écrits, comme les récits oraux, les enregistrements d'événements cérémonieux et les témoignages d'expert. Ensuite, nous découvrons des pistes pour les trouver. Je crois que cet article deviendra une ressource inévitable pour tout bibliothécaire de droit devant effectuer une recherche sur les traités et les droits des Autochtones.

Au moment où ouvrirez ce numéro, l'été tirera à sa fin. Comme le mois de septembre est synonyme de début d'année pour moi (j'éprouve toujours cette envie d'acheter des fournitures scolaires), c'est dans cet esprit que je vous souhaite un automne fructueux et prospère!

**RÉDACTRICE
SUSAN BARKER**





III President's Message / Le mot de la présidente

As I sat down to prepare my first President's Message for the *Canadian Law Library Review*, I must admit I felt an acute case of "imposter syndrome" coming on. It reminded me of when I first started my career as a law librarian, when I spent most days just waiting for people to figure out that I really wasn't qualified for the position!

As an example, I've been a member of CALL/ACBD for many years and during this time, I've read many messages from CALL/ACBD presidents. Each of them had something thought-provoking and helpful to say. What could I possibly say to inspire you and get you thinking?

Haven't heard of imposter syndrome? You may not be familiar with the term, even if you're all too familiar with the feeling. Imposter syndrome is suffered to varying degrees by many people. We believe that we are inadequate and a failure, despite evidence to the contrary. We wonder what gives us the right to be in the position we find ourselves in.

Imposter syndrome can happen to new librarians or experienced professionals. You can flip between feeling reasonably confident to feeling like a complete fraud, sometimes within the same hour!

As an experienced law librarian, I am keenly aware of this feeling every year at the beginning of June when our new students begin their articles here at the Court. Here they are, fresh out of law school. What on earth can I tell them that will be of any assistance to them at all? And because ours is an evolving profession, sometimes the imposter syndrome tells me that I am just not keeping up!

If you suffer from imposter syndrome, know that you are not alone. Reach out to your peers and ask them how they handle the problem. The CALL/ACBD New Professionals Special Interest Group recently had a good discussion on imposter syndrome on their listserv. They shared with each other some great ways to deal with the problem.

Take a look at CALL/ACBD's educational offerings. If you are a newer law librarian, or if you are an experienced law librarian wishing to brush up your skills, consider enrolling in the New Law Librarians' Institute. It is traditionally held every two years. The next Institute will be held June 19-22, 2018, in Calgary, Alberta.

Check out the CALL/ACBD webinar archives available on our Association's website. As I write this message, there are 27 webinars available for purchase at a very reasonable price! Watch for emails from the Webinar Committee announcing future webinars. They are a wonderful way to learn and stay on top of developments in our profession.

Plan to attend our annual conference next May in Halifax and attend as many educational sessions as possible. Consider attending the annual conferences of our sister associations: AALL, BIALL, SLA, and IALL.

Read as much as you can about the syndrome, and learn about different ways to cope. You're already on the right path as a reader of the *Canadian Law Library Review*. It contains all kinds of information pertinent to your job as a legal informational professional.

While these resources can help alleviate imposter syndrome and help you to feel confident in your capabilities, know, too, that having a bit of imposter syndrome isn't a bad thing. It keeps you humble. It also encourages you to keep learning, no matter what stage you are at in your career.

I hope this message has given you food for thought. If it hasn't been a full meal, perhaps it has been a nice little snack. And maybe you won't realize that I'm feeling a little over my head!

**PRESIDENT
ANN MARIE MELVIE**



Au moment de m'asseoir pour préparer mon premier « Message de la présidente » pour la *Revue canadienne des bibliothèques de droit*, je dois vous avouer ressentir un cas aigu de « syndrome de l'imposteur ». Cela me rappelle mes débuts à titre de bibliothécaire de droit, où je passais beaucoup de temps à m'inquiéter que l'on découvre que je n'étais pas vraiment qualifiée pour ce poste!

Par exemple, je suis membre de l'ACBD/CALL depuis de nombreuses années et j'ai eu l'occasion de lire bon nombre de messages rédigés par les président(e)s de l'association. Chacun de ces messages suscitait la réflexion et était utile. Alors, qu'est-ce que je pourrais bien vous dire pour vous inspirer et vous faire réfléchir?

Le syndrome de l'imposteur ne vous dit rien? Il est possible que vous ne connaissiez pas cette expression, mais que le sentiment vous soit très familier. Les gens peuvent souffrir de ce syndrome à divers degrés. On se croit sans envergure et incompetent, malgré les preuves suggérant tout le contraire. On se demande de quel droit je me trouve dans la position actuelle.

Le syndrome de l'imposteur peut survenir chez les nouveaux bibliothécaires comme chez les professionnels chevronnés. Parfois, en moins d'une heure, on peut passer d'un sentiment de confiance raisonnable à un sentiment de duperie!

En tant que bibliothécaire de droit expérimentée, je comprends très bien ce sentiment au début juin lorsque les nouveaux stagiaires, fraîchement sortis de la faculté de droit, arrivent à la Cour où je travaille. Comment et en quoi puis-je leur être utile? Et, parce que notre profession évolue constamment, le sentiment d'imposture me dit parfois que je ne suis pas à l'affût des nouveautés!

Si vous souffrez du syndrome de l'imposteur, sachez que vous n'êtes pas seul. Parlez-en à vos collègues et demandez-leur comment ils gèrent ce problème. Dernièrement, le Groupe d'intérêt spécial des nouveaux professionnels de l'ACBD/CALL a tenu une excellente discussion à propos du syndrome de l'imposteur sur la liste de discussion électronique. Les participants ont partagé des moyens efficaces pour remédier à ce problème.

Découvrez les possibilités de formation offertes par l'ACBD/CALL. Si vous débutez dans le domaine ou si vous avez de l'expérience et souhaitez perfectionner vos compétences, songez à vous inscrire à l'Institut pour les nouveaux bibliothécaires de droit. Cet événement se tient normalement tous les deux ans, et le prochain est prévu du 19 au 22 juin 2018 à Calgary, en Alberta.

Consultez les archives des webinaires offerts par l'ACBD/CALL sur le site Web de l'association. En rédigeant ce texte, j'ai constaté qu'il y avait 27 webinaires offerts à un prix très avantageux! Surveillez les courriels acheminés par le Comité des webinaires à propos des webinaires à venir. Ces séminaires en ligne sont un excellent moyen d'apprendre de nouvelles choses et de rester au fait des nouveautés dans notre profession.

Planifiez de participer à notre congrès annuel en mai, qui aura lieu à Halifax, et d'assister au plus grand nombre possible de séances de formation. Vous pourriez également envisager de participer aux congrès annuels de nos associations sœurs : AALL, BIALL, SLA et IALL.

Lisez tout ce que vous pouvez sur le syndrome, et découvrez différentes façons de gérer les situations. Vous êtes déjà sur la bonne voie en lisant la *Revue canadienne des bibliothèques de droit*, qui renferme une multitude de renseignements pertinents à votre travail de professionnel de l'information juridique.

Bien que ces ressources puissent vous aider à atténuer le syndrome de l'imposteur et à avoir confiance en vos capacités, sachez aussi qu'avoir un faible sentiment d'imposture n'est pas une mauvaise chose puisque cela vous permet de rester humble. De plus, cela vous encourage à continuer d'apprendre, peu importe l'étape où vous en êtes dans votre carrière.

J'espère que vous avez trouvé matière à réflexion dans ce message. Même si l'information n'est pas complète, vous avez peut-être découvert quelques pistes. Et, peut-être, vous ne vous rendrez pas compte que je me sens un peu dépassée!

**PRÉSIDENTE
ANN MARIE MELVIE**





III Ethics and Law Librarianship: Current Issues and Progressive Horizons*

By Sara Klein**

ABSTRACT

Instead of a negative duty to behave ethically as law librarians (i.e. “Do No Harm”), I argue here that we have a positive duty to ethics. There is still a political imbalance in legal communities, and we must actively fight against injustice occurring there. Included are suggestions on how law librarians and law libraries can create positive-duty-oriented policies to benefit patrons.

SOMMAIRE

Au lieu d'une obligation négative de se comporter de façon éthique en tant que bibliothécaires de droit (c'est-à-dire « Do No Harm »), je soutiens ici que nous avons une obligation positive envers l'éthique. Il y a toujours un déséquilibre politique dans les communautés juridiques et nous devons lutter activement contre les injustices qui s'y produisent. Sont inclus des suggestions sur la façon dont les bibliothécaires de droit et les bibliothèques de droit peuvent créer des politiques axées sur les obligations positives envers les bénéficiaires.

Introduction: A Different Kind of Ethics

Despite the stereotypes of librarians as mere clerks, our interaction with the public regarding sometimes sensitive information requires us to perform our jobs with tact and sound morals. That means we must ask ourselves if what we are doing is best for the profession, the library, and our patrons at all times. But this, of course, has always been true. As law librarians, we have always held a noble stance on our profession: dealing with sensitive information, a wide variety of patrons, and trading in information that actually helps people in often tough situations. Traditional views on the moral and ethical duties of law librarians often sound like this: “True civilization is measured by the extent of obedience to the unenforceable.”¹ The traditional view is that we operate “within the realm of honor and propriety.”² It is no longer sufficient to adhere to an ethic that merely requires we do no harm. Arguably, law librarian ethics are beyond this now, especially operating within the current legal system—we must be aware of our positive duties, those that require us to act as opposed to merely remaining neutral. There is no room for propriety in a system that systemically hurts people. While I do dream of law librarian activists as being

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¹ Giuliano Chicco, moderator, “Ethics and Law Librarianship: A Panel Discussion” (Edited transcript of a program presented at the 82nd Annual Meeting of the American Association of Law Libraries, Reno, NV, 19 June 1989), (1991) 83 L Library J 1 at 1.

² *Ibid* at 2.

strong advocates for the disadvantaged within the system, I also recognize our lack of power to change things outside the library. But we must recognize that our ethics should be positive—we need to be ethically pro-active and practice active beneficence. Librarians are known to be caring and social justice oriented, so how do we operate with that in mind within the generally conservative legal system?

The American Library Association lists access, democracy, diversity, and social responsibility among its core values;³ the American Association of Law Libraries lists addressing diversity, access to legal information for non-lawyers, and understanding the social and political contexts within which the legal system exists as core competencies for law librarians.⁴ Simply “celebrating” diversity is no longer enough in a system that consistently shuts out minority groups. I argue that law librarians, especially academic law librarians, are not living up to the ethical duty we have to support and foster the proliferation and actualization of the more progressive of these values and would like to argue for a more affirmative view of our core values.

The Usual (Ethical) Suspects

There are some familiar topics that often arise when discussing ethical issues facing law libraries and law librarians: freedom of information, copyright and fair use, patron information privacy, and the restriction on giving legal advice. These are, of course, important topics, but they are already at the forefront of policies and profession performance, as opposed to more progressive ethical initiatives.

As law librarians, especially academic law librarians, we are torn between our commitment to freedom of information and the allegiance to the market-driven process through which legal information is distributed. “On the one hand, the ideals of the profession celebrate the value of wide public access to legal information ... On the other hand, most law librarians work for organizations that benefit from the current regime of control over the legal marketplace.”⁵ But, I would argue that we must view this existence in a marketplace as being informed by the other values we hold. To help with decision making, specific training led by librarians on the duality of freedom of information and copyright/fair use issues would be useful, especially if presented through a social justice lens. “[T]he ALA Code does not explain how an LIS professional should interpret a provision in day-to-day practice. Second, the Code does not describe how to proceed when two values conflict as in the case of the value of respect for intellectual property and the value of ensuring access to information.”⁶ Canadian codes of ethics or values statements for librarians

tend to suffer from internal conflicts; for example, the Library and Archives Canada, Code of Conduct: Values, and Ethics embraces both providing “decision makers with all the information ... they need” as well as strict protection of personal and official privacy.⁷ Similarly, the original 1976 Canadian Library Association Code of Ethics lists both intellectual freedom and privacy as values without guidance as to how to balance those values.⁸ I would argue, in fact, that we can, as academic librarians, view this from the point of view of improving the future of the profession. Do we want to continue reinforcing marketplace ideals? Do we want to reinforce those ideals to law students?

There is no doubt that privacy of a patron’s personal information will be a growing issue for law librarians, especially since things we value (access to information) are in direct conflict in this area. An initiating occurrence that shook the patron/librarian trust was the Library Awareness Program, an agenda enacted by the FBI in the 1980s to collect names and reading habits of patrons.⁹ Vestiges of this program remain today in the USA PATRIOT Act, despite the protestations of librarians. While the infamous section 215 of the act has had its sunset, subpoena requests and National Security Letters can still be applied to libraries, for example. Libraries certainly regularly review their policies in adhering to government requests while maintaining patron privacy and enhancing the privacy of such items as “sign-in sheets, interlibrary loan and reserve records, and unattended staff terminals.”¹⁰ While some loopholes have been closed (for example, libraries are now exempt from being called “internet providers” under the law),¹¹ if current surveillance and security trends continue, we will have to make changes in the future. Because of these trends, some have argued that “[h]igh standards of professional conduct ... are therefore more important than ever.”¹² The effect this has had in Canada has been a recall of things previously stored in the US. For example, the Internet Archive, a resource often used by librarians, is producing a copy of the entirety of its collection on Canada-housed servers.¹³ It is important that we continue embracing our patrons as worth protecting in light of these movements.

In terms of providing patrons with legal advice, we currently deal with this via a hard drawn line. Like many things, it’s an ethical trade off. We are refusing to help people who need help, even if there are some bad eggs in there who would hold us to our words. The reasoning for this is understandable: the risk to ourselves if we give incorrect information is certainly a serious one. Additionally, practicing law is, of course, illegal if done without a licence; it would be unethical to perform duties for which we have not been trained, and it would also

³ American Library Association, *Core Values of Librarianship*, online: <<http://www.ala.org/advocacy/intfreedom/statementspols/corevalues>>.

⁴ American Association of Law Libraries, *Competencies of Law Librarianship*, online: <<http://www.aallnet.org/mm/Leadership-Governance/policies/PublicPolicies/competencies.html>>.

⁵ Luis M Acosta, “Reforming the Legal Profession: Implications for Law Librarianship” (2002) 94:1 L Library J at 128.

⁶ Rebecca R Pressman, “Fair Use: Law, Ethics and Librarians” in Amy L Besnoy, ed, *Ethics and Integrity in Libraries* (New York: Routledge, 2009) 85 at 96.

⁷ See Library and Archives Canada, “Code of Conduct: Values and Ethics”, Sections 2.1, 1 and 3.1, online: <<http://www.bac-lac.gc.ca/eng/about-us/Pages/code-conduct-value-ethics.aspx#h>>.

⁸ Canadian Library Association “Code of Ethics” Annual General Meeting, June, 1976, online: <<http://cla.ca/wp-content/uploads/Code-of-Ethics-June-1976.pdf>>.

⁹ Chris Matz, “Libraries and the USA PATRIOT Act: Values in Conflict” in Amy L Besnoy, ed, *Ethics and Integrity in Libraries* (New York: Routledge, 2009) 67 at 69.

¹⁰ *Ibid* at 73.

¹¹ *Ibid* at 74.

¹² *Ibid* at 81.

¹³ Brewster Kahle, “Help Us Keep the Archive Free, Accessible, and Reader Private” (29 November 2016), *Internet Archive Blogs* (blog), online: <<https://blog.archive.org/2016/11/29/help-us-keep-the-archive-free-accessible-and-private/>>.

possibly be harmful to the patrons themselves. But if we look at this from the point of view of, for example, the destitute library patron who cannot afford a lawyer, are we not failing to meet other duties such as embracing diversity and social responsibility? As of now:

[w]e are fully and threateningly proscribed from more clearly defining a term or explaining the complexities of some esoteric ordinance, statute, or case. This, we are told, is because we have not been initiated into the subtleties that only credentialed members of the bar can fully understand and so we may mislead or harm a naïve patron. And this could lead to a lawsuit. Then why are exceptions not made for who work in academic libraries? Why would a signed disclaimer from a desperate person not cover the aforementioned contingency?¹⁴

Like the suggestion here of a signed disclaimer, there are a myriad of ways that we could, in fact, have a situation where we could provide legal advice to those in need. Certainly, a progressive opinion exists that would cause significant ethics changes for law librarians in the future: that “freeing librarians from the specter of being charged with the ‘unauthorized practice of law’ for sharing legal information would enable librarians to provide legal information to consumers more efficiently than in the current system, in which legal information generally must be filtered through attorneys before it reaches end users.”¹⁵ While this is a truly progressive opinion, and would be a huge boon for access to justice, I’m not willing to go this far just yet. Allowing law librarians to give cursory legal advice in libraries would, I believe, possibly require stricter regulation on training and further efforts on behalf of perhaps professional associations to insulate the profession from harm. Giving librarians freedom to assess situations in which they may give advice is a goal that we should work toward, despite the burdens it would impose.

The Current Political Atmosphere

The Law Society of Canada’s response to the Canadian Bar Association report and recommendations on “Racial Equality in the Legal Profession” gives us a very clear picture of the systemic discrimination that exists in the legal system. Although we have moved away from regulated bigotry (i.e. requiring Aboriginal Canadians to give up their status in order to enter law school),¹⁶ minority groups remain abysmally underrepresented in the legal community, both private and public—the report goes as far as to say that the system is “effectively segregated.”¹⁷ Also noted,

specifically regarding law schools, is that there is “a strong resistance within the legal community to what are seen as special measures. There is a presumption that the difference in criteria is actually a lowering of objective standards.”¹⁸ I believe it is here that librarians can have a significant effect on students from marginalized groups—while this particular LSUC report has a list of recommendations for the Society¹⁹ to address this racism, including possible changes to law school policies, it does not address law libraries directly.

The more recent Ornstein Report,²⁰ from 2010, paints a similar picture. While things are improving, in 2006 women still made up only 38 per cent of all lawyers in Ontario; the percentage of Aboriginal lawyers in Canada remained unchanged at 0.6 per cent between 1981 and 2001, only increasing to 1.0 per cent by 2006; and only 11.5 per cent of Ontario lawyers in 2006 were a visible minority. The profession remains overwhelmingly white and male.²¹ In addition, these minority groups earn less money than their white male counterparts, a gap that saw a closure between 1970 and 1995 but little improvement since.²²

Unfortunately, “[l]aw librarians as a group ... have some stake in the status quo, albeit a comparatively modest one.”²³ It is difficult, as it is for anyone working within a repressive system, to operate to change that system. We risk our jobs and professional reputations as the sore thumb that sticks out in a traditionally conservative atmosphere. I would like to argue that we, in some small way, can make a difference in that system. For example, when teaching our legal research classes to first-year law students:

Traditional legal education neglects vulnerable populations by creating an environment in which those communities are rendered invisible. Traditional legal education also marginalizes legal research, often submerging it in first-year legal writing courses ... Linking a skills-based course like legal research to public interest issues creates a learning environment that is more personally and culturally relevant to a broad range of students. It helps prepare students for working with diverse client populations, and strengthens the connection between what the students are studying and the humane purposes of a legal education.²⁴

Ethical Issues Facing Law Librarians as Educators

It has been said that “[t]here is more to the job of an instruction librarian than just being the plagiarism police.”²⁵ Those on the academic side of the profession will certainly identify

¹⁴ Robert Hauptman, *Ethics and Librarianship* (London: McFarland & Company, Inc, 2002) at 74.

¹⁵ *Supra* note 5 at 129.

¹⁶ Charles Smith, “Response to the CBA Report ‘Racial Equality in the Legal Profession’”, *Law Society of Upper Canada Reports* (2000) at 3 [unpublished, available online at <<http://www.lsuc.on.ca/media/cbareponse.PDF>>].

¹⁷ *Ibid.* at 7.

¹⁸ *Ibid.*

¹⁹ *Ibid.* at 13.

²⁰ Michael Ornstein, “Racialization and Gender of Lawyers in Ontario”, *Law Society of Upper Canada Reports* (2010) at i, online: <http://www.lsuc.on.ca/media/convapril10_ornstein.pdf>.

²¹ *Ibid.*

²² *Ibid.* at ii.

²³ *Supra* note 5 at 129.

²⁴ Sarah Valentine, “Leveraging Legal Research” in Society of American Law Teachers and Golden Gate University School of Law, eds, *Vulnerable Populations and Transformative Law Teaching: A Critical Reader* (Durham, NC: Carolina Academic Press, 2011) 141 at 145.

²⁵ Michelle Leigh Jacobs, “Ethics and Ethical Challenges in Library Instruction” in Amy L Besnoy, ed, *Ethics and Integrity in Libraries* (New York: Routledge, 2009) 201 at 206.

with this: law librarians are special because they are often assigned the role of educator, formally or informally. We often end up being advisors on papers, citation gurus, confidantes during stressful times, or a sage, a wise oracle, and trusted teacher. It is this designation that I believe elevates the necessity that we have sound morals and behave ethically, above and beyond what is codified: we interact with young people at the beginnings of their careers and have the duty to support them to the best of our abilities. We are entrusted, just as much as other law professors are, with speaking about the profession of law in a particular way that will have significant influence on future practitioners. The law librarian and law library can have an effect on students that reflects the values of social responsibility and diversity. For example,

Because the learning goals [in a legal research class] are not tied to particular cases, a first-year legal research class can reflect the diversity of client populations far easier than other first-year courses. When restructured around a social justice framework, legal research can provide a much-needed link between the first-year of law school and upper level clinics or public interest practice. Reorganized thusly, the class can magnify any social justice content in other first-year courses and provide exposure to the research skills critical for public interest work before and after graduation.²⁶

Academic law libraries can also craft policies apart from curricula decisions that can support these values. Law school is expensive, and there is a lot more we can do as academic law librarians to recognize this fact and ensure that we go beyond mere equality of opportunity when planning policies and programs for the library. There are students who cannot afford textbooks, home internet access,²⁷ or laptops while simultaneously paying for law school; these students are more likely to work during school, risking lower grades and mental health concerns. In the US, this often runs down racial lines as well.²⁸ Both private and public law libraries need to take these people into special account when determining policies around opening hours, reserve loan times, or technology loans. Library policies

about, for example, short term loans could be tailored to situations where lower-income students would be able to apply for extended loan periods. Of course, we would also have to maintain concern for the privacy of these students in crafting these policies. In addition, we could put pressure on publishers to improve and expand their online presences, even at a cost. The fact that the legal information and services world still runs significantly on paper makes it inaccessible to rurally-located or disabled patrons, and this runs counter to the goal of increasing access to legal information.

Conclusion

Law librarians often go above and beyond the call of duty in reference and research for patrons, working very hard at creating passageways through which information can be ferreted, as well as donning the mantle of inspirational educator during legal research class. The job is never easy, but it can be extremely rewarding. The so-called “informal curriculum”²⁹ that law librarians can espouse is something that should reflect our values as librarians: we need to be committed to social responsibility, access, and diversity. In summary, here are my suggestions on what law librarians and law libraries can do to pivot towards a more fulsome fulfillment of our ethical duties: recognizing that those duties should be viewed as positive rights; choosing to prioritize the duty to our patrons of freedom of information over market forces; accepting the risk of prioritizing patron privacy; rethinking our restrictions on giving legal advice in order to reify our commitment to access to justice; supporting marginalized student populations through actual policy changes, such as extended hours or more lenient return policies for at-risk students; and adopting changes to LRW curricula to provide room to explore social justice issues pertinent to the profession, something often not done otherwise. More generally, we need to go beyond thinking about equality in the law library and actually enact policies and curricula that make headway into the serious problems of inequality the legal profession faces. Fulfilling our commitment to social justice oriented values requires us to plan policies and programs with those values in mind.



²⁶ *Supra* note 24 at 147.

²⁷ Canada, Statistics Canada, *Canadian Internet Use Survey, 2012*, online: <<http://www.statcan.gc.ca/daily-quotidien/131126/dq131126d-eng.htm>>.

²⁸ Mary Ann Bell, “Access and Race or Ethnicity” in Carol Simpson, ed, *Ethics in School Librarianship: A Reader* (Worthington, OH: Linworth Publishing, Inc, 2003) 27 at 27.

²⁹ Judith Welch Wegner, “Legal Education in the Future” in Timothy L Coggins, ed, *The National Conference on Legal Information Issues: Selected Essays AALL Publications Series No. 51* (Littleton, CO: Fred B Rothman & Co, 1996) 250 at 55.



By the KING,

A P R O C L A M A T I O N.

GEORGE R.



HEREAS We have taken into Our Royal Consideration the extensive and valuable Acquisitions in *America*, secured to Our Crown by the late Definitive Treaty of Peace, concluded at *Paris* the Tenth Day of *February* last; and being desirous, that all Our loving Subjects, as well of Our Kingdoms as of Our Colonies in *America*, may avail themselves, with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation; We have thought fit, with the Advice of Our Privy Council, to issue this Our Royal Proclamation, hereby to publish and declare to all Our loving Subjects, that We have, with the Advice of Our said Privy Council, granted Our Letters Patent under Our Great Seal of *Great Britain*, to erect within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, titled and called by the Names of *Quebec*, *East Florida*, *West Florida*, and *Grenada*, and limited and bounded as follows; *viz.*

And whereas We are desirous, upon all Occasions, to testify Our Royal Sense and Approbation of the Conduct and Bravery of the Officers and Soldiers of Our Armies, and to reward the same, We do hereby command and empower Our Governors of Our said Three New Colonies, and all other Our Governors of Our several Provinces on the Continent of *North America*, to grant, without Fee or Reward, to such Reduced Officers as have served in *North America* during the late War, and to such Private Soldiers as have been or shall be disbanded in *America*, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject at the Expiration of Ten Years to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; *viz.*

To every Person having the Rank of a Field Officer, Five thousand Acres.—To every Captain, Three thousand Acres.—To every Subaltern or *viz.* Two thousand Acres.—To every Non-Commission Officer, Two hundred Acres.—To every Private Man, fifty Acres.

We do like, authorize and require the Governors and Commanders in Chief of all Our said Colonies

III Aboriginal Rights & Treaty Research in Canada*

By Jessica Stuart**

ABSTRACT

The Indigenous peoples of Canada have increasingly been recognized as possessing inherent rights to land and to practices that pre-date European contact. The need to reconcile Aboriginal claims with the Canadian legal system has led to special considerations of sources of Indigenous law and culture, as well as to unique interpretative principles for treaty claims. In addition, the establishment of rights and treaty claims requires a consideration of written documents, oral histories, and other sources by researchers, lawyers, and judges. Law librarians and archivists that collect, research, or provide access to sources involved in rights and treaty claims should be aware of the unique principles and considerations that establish the legal relevance and use of those sources.

This paper will first explore the legal status of Aboriginal claims in Canada, as well as the standards for establishing Aboriginal claims developed by the Supreme Court of Canada (SCC). It will then explore the sources of law and evidence accepted in these claims, particularly in light of the inherent pre-colonial rights of Indigenous peoples, the goal of reconciliation, and the need to balance Aboriginal and non-Aboriginal perspectives, legal systems, and understandings.

SOMMAIRE

Les peuples autochtones du Canada ont de plus en plus été reconnus comme possédant des droits inhérents à la terre et ayant des pratiques qui précèdent les premiers contacts européens. La nécessité de concilier les revendications des peuples autochtones avec le système juridique canadien a conduit à des considérations particulières sur les sources du droit et de la culture autochtones, ainsi qu'à des principes d'interprétation uniques quant aux revendications de traités. De plus, l'établissement de droits et de revendications de traités nécessite l'examen de documents écrits, d'histoires orales et d'autres sources par des chercheurs, des avocats et des juges. Les bibliothécaires de droit et les archivistes qui acquièrent, utilisent ou fournissent l'accès aux sources impliquées dans les droits et les revendications de traités doivent être conscients des principes et des considérations uniques qui établissent la pertinence juridique et l'utilisation de ces ressources.

Cet article explorera d'abord le statut juridique des revendications autochtones au Canada, ainsi que les normes d'établissement des revendications autochtones élaborées par la Cour suprême du Canada (CSC). Il explorera ensuite les sources du droit et les preuves acceptées dans ces revendications, notamment à la lumière des droits précoloniaux inhérents des peuples autochtones, de la réconciliation et de la nécessité d'équilibrer les perspectives, les systèmes juridiques ainsi que les interprétations autochtones et non autochtones.

The Status of Aboriginal and Treaty Rights in Canada

Aboriginal rights refer to rights that are not covered by a treaty, including Aboriginal title to land, as well as the right to use land to participate in certain activities or practices in the absence of title.¹ The source of Aboriginal title was originally considered to be the *Royal Proclamation of 1763*, which recognized Aboriginal interests in lands that had not been ceded to the Crown.² As it was considered to have a statutory basis, the right to Aboriginal title could be unilaterally changed or extinguished by the government. A typical case in this regard is *St. Catherine's Milling and Lumber Company v The Queen*, which found that Aboriginal title originated in the Proclamation, existed only in relation to the Crown's underlying title, and could be extinguished by the Crown.³

Similarly, rights negotiated by treaties between Indigenous peoples and the Crown, including rights to land and practices, have not always been respected. At one point, an Aboriginal treaty was considered a mere promise or agreement, rather than a legally enforceable instrument that conferred rights.⁴ In *R v Sylbooy*, the Indigenous peoples of Nova Scotia were considered to be incompetent to enter treaties at all due to their status at the time as "uncivilized people or savages [whose] rights of sovereignty even of ownership were never recognized."⁵ In several cases, this reasoning led to a finding that a treaty right could be extinguished unilaterally by legislation.⁶

The reconceptualization of the status of Indigenous peoples and their rights and treaty claims was evident by the 1960s and 1970s. *R v White and Bob* recognized that Indigenous peoples have rights distinct from traditional sources of Canadian law,⁷ and established a broad interpretation of treaties that respected different cultural understandings.⁸ In *Calder v British Columbia (AG)*, the judges recognized an inherent right to title stemming from Indigenous peoples' occupation and concepts of ownership rather than from any statute or treaty.⁹ Similarly, in *Guerin v R*, title was found to derive from "the Indians' historic occupation and possession of their tribal lands."¹⁰

These themes have been expanded by the SCC since the introduction of s 35(1) of the *Constitution Act, 1982*, which states that: "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."¹¹ This section has been interpreted as constitutionalizing Aboriginal and treaty rights, as well as providing a legal recognition of Aboriginal culture.¹² Its purpose is "directed towards the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown."¹³ This reconciliation is said to require an equal consideration of Aboriginal and non-Aboriginal perspectives.¹⁴

Aboriginal rights have also been labelled as *sui generis*, or unique, meaning in this context that they can only be understood through a combined understanding of the common law and Aboriginal legal systems and perspectives.¹⁵ Treaties have also been described as *sui generis* documents that represent a fusion of both international law and pre-existing Aboriginal legal systems.¹⁶ The understandings of both parties to the treaty must be taken into consideration in interpretation.¹⁷ Another important concept that describes the status of Indigenous peoples in relation to the state is the honour of the Crown. This principle has been described as a requirement that the Crown act honourably and fairly with respect to the interests of Aboriginal peoples in all cases in order to achieve the reconciliatory purpose of s 35.¹⁸

Legal Tests for Establishing Aboriginal Rights

This section briefly surveys the legal tests developed for the establishment of Aboriginal rights. These tests, which are based on the principles outlined above, form the parameters for the later discussion of the sources of evidence and law relevant to Aboriginal claims research.

In *Van der Peet*, the test was stated as follows: "in order to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right."¹⁹ The factors considered in *Van der Peet* included, amongst others, the perspectives of Aboriginal peoples, the centrality of the practice to the group's pre-contact society, the continuity of

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¹ *R v Adams*, [1996] 3 SCR 101 at para 30, 138 DLR (4th) 657; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at paras 2, 138, 159, 66 BCLR (3d) 285 [*Delgamuukw*].

² RSC 1985, App II, No 1 [*Proclamation*].

³ [1888] UKPC 70, 14 AC 46.

⁴ *Attorney-General of Ontario v Attorney-General of Canada: Re Indian Claims*, [1897] AC 199, 66 LJPC 11.

⁵ [1928], [1929] 1 DLR 307 at para 22, 50 CCC 389 (NS Co Ct).

⁶ See e.g. *Sikyee v R*, [1964] 2 CCC 325, 43 DLR (2d) 150 (NWT CA), aff'd [1964] SCR 642, 50 DLR (2d) 80.

⁷ [1964], 50 DLR (2d) 613 at para 78, 52 WWR 193 [*White and Bob*].

⁸ *Ibid* at paras 120, 125.

⁹ [1973] SCR 313, 34 DLR (3d) 145 [*Calder*].

¹⁰ [1984] 2 SCR 335 at para 82, 59 BCLR 301.

¹¹ *Constitution Act, 1982*, s 35(1), being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹² Thomas Isaac, *Aboriginal Law: Commentary and Analysis* (Saskatoon: Purich, 2012) at 18-24; Right Honourable Beverley McLachlin, "Aboriginal Peoples and Reconciliation" (2003) 9:2 *Canterbury L Rev* 240 at 244.

¹³ *R v Van der Peet*, [1996] 2 SCR 507 at para 31, 23 BCLR (3d) 1 [*Van der Peet*].

¹⁴ *Ibid* at paras 49-50.

¹⁵ *Delgamuukw*, *supra* note 1 at paras 112-15.

¹⁶ *R v Simon*, [1985] 2 SCR 387 at paras 21-33, 71 NSR (2d) 15; *R v Sioui*, [1990] 1 SCR 1025, 70 DLR (4th) 427.

¹⁷ *Marshall v Canada*, [1999] 3 SCR 456 at para 78, 177 DLR (4th) 513 [*Marshall*].

¹⁸ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 16-20, [2004] 3 SCR 511.

¹⁹ *Supra* note 13 at para 46.

the practice to the present day, the specificity of the practice to the particular community, and the social organization and culture of the Aboriginal people.²⁰

A test applicable to claims to Aboriginal title in particular was developed in *Delgamuukw*.²¹ In order for title to be established, the following three elements must be satisfied: “(i) the land must have been occupied prior to sovereignty, (ii) if present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation, and (iii) at sovereignty, that occupation must have been exclusive.”²² Both the physical possession of land according to common law, as well as the understanding of land occupancy emerging from Aboriginal customary law must be taken into account given the *sui generis* nature of Aboriginal title.²³ Similarly, the conception of exclusivity must give equal weight to understandings of entitlement developed within Aboriginal legal systems and treaty-making.²⁴

Treaty Interpretation

Aboriginal treaties are interpreted in a unique way given their *sui generis* status. They are to be given a liberal interpretation, with ambiguities resolved in favour of the Indigenous peoples.²⁵ They must be interpreted “in the sense that they would naturally have been understood by the Indians at the time of the signing,” considering cultural and linguistic differences.²⁶ Evidence extrinsic to the written terms of the treaty, including evidence of the historical and cultural context as well as any oral agreements, may be considered, even where the written terms appear unambiguous.²⁷ This reflects the fact that the written terms of the treaty were not typically accessible to the Aboriginal groups they purported to represent, such that the written terms privilege the European colonists’ understandings of the agreement.²⁸ As with the tests for Aboriginal rights claims, the interpretive principles applicable to treaties define the types of sources that will be relevant to claims research.

The Standard for Aboriginal Evidence

The SCC has recognized that the integration of Aboriginal evidence from the pre-contact period during which Indigenous peoples lacked written records requires a deviation from the traditional rules of evidence. In *Van der Peet*, Lamer CJC stated that evidence will not be rejected if falling below the civil standard that would otherwise be applied,²⁹ nor

is it necessary to reject evidence from the post-contact era that suggests a pre-contact origin.³⁰ In *Delgamuukw*, Lamer CJC drew a connection between the *sui generis* nature of Aboriginal rights and the need to adapt the laws of evidence to give equal consideration to the perspective of Aboriginal peoples and to meet the goal of reconciliation between cultures.³¹ To hold otherwise would be to privilege “Eurocentric traditions of gathering and passing on historical facts and evidence.”³²

The pronouncements by the SCC about the kinds of sources required to establish Aboriginal claims, as well as the unique standard for the admissibility of evidence should alert legal researchers, librarians, and archivists to consider a broader range of material than would otherwise be required for a typical legal case. The search for evidence about the Aboriginal past makes a variety of documentary and non-documentary historical evidence particularly relevant. In addition, the search for the Aboriginal perspective imports a potential legal significance to Aboriginal oral histories, customary laws, and diplomatic practices.

The Documented Historical Record

Archives and other repositories of historical documents contain the primary written sources used to establish Aboriginal history and rights. While the legal admissibility of any given piece of evidence is a matter for lawyers and judges, it is also important that legal researchers, librarians, and archivists be aware of the range, relevance, and meaning of the sources for which they provide access or seek to access themselves. While it’s not possible to enumerate all of the written sources relevant to claims research, the sample of sources below alone should alert researchers, librarians, and archivists to the diversity of material that may be considered relevant to the historically focussed inquiry involved in establishing claims.

Treaties are the most obvious relevant written documents to support Aboriginal claims. Treaties are formal declarations of the relationships between the Crown and Indigenous peoples that vary significantly in their terms according to the historical context of their signing.³³ They may have been signed pre- or post-Confederation and are sometimes, but not always, numbered.³⁴ While the originals of many treaties are held in government archives, contemporaneous copies may be held by Aboriginal groups and many have since been made available online.³⁵

²⁰ *Ibid* at paras 48-75.

²¹ *Supra* note 1.

²² *Ibid* at para 143.

²³ *Ibid* at paras 147-48.

²⁴ *Ibid* at paras 156-57.

²⁵ *R v Badger*, [1996] 1 SCR 771 at para 52, 181 AR 321 [*Badger*]; *Marshall*, *supra* note 17 at para 14.

²⁶ *Badger*, *supra* note 25 at para 52.

²⁷ *Marshall*, *supra* note 17 at paras 9-14.

²⁸ *Badger*, *supra* note 25 at para 52; *Marshall*, *supra* note 17 at para 14.

²⁹ *Supra* note 13 at para 68.

³⁰ *Ibid* at para 62.

³¹ *Supra* note 1 at paras 81-82.

³² *Mitchell v Minister of National Revenue*, 2001 SCC 33 at para 34, [2001] 1 SCR 911 [*Mitchell*].

³³ Isaac, *supra* note 12 at 122.

³⁴ *Ibid* at 154.

³⁵ See e.g. Indigenous and Northern Affairs Canada, “Treaty Texts”, online: <<https://www.aadnc-aandc.gc.ca/eng/1370373165583/1370373202340>>.

Correspondence, journal entries, and papers from colonial officials have been used to elaborate the extrinsic context and meaning of treaties as understood by the Crown, as well as the relationships between the Crown and Aboriginal groups. Archivists and legal researchers have played a significant role in piecing together and contextualizing diverse sources of information. The contribution of archivists to “collecting, organizing, preserving, contextualizing, and disseminating significant records” related to Aboriginal rights has been labelled as a significant contribution of the profession to social justice.³⁶ As an example, William Ireland, the Provincial Archivist for British Columbia from 1940 to 1974, helped gather and establish the provenance and meaning of various colonial documents in both White and Bob and Calder, including instructions, permissions, and reports that legitimized and clarified Aboriginal claims of treaty protection.³⁷

The British Colonial Office Papers, as well as the French Colonial Records, are important sources for investigating early colonial policy and the status of pieces of land.³⁸ Records from Governors, Lieutenant Governors, Executive Councils, Indian Superintendents, and other early government actors are dispersed across federal and provincial archives throughout Canada.³⁹ These contain both policy statements regarding Crown-Aboriginal relationships, as well as extrinsic evidence regarding the meaning and interpretation of particular treaties as they were originally negotiated and understood.⁴⁰ The Ontario Crown Lands Papers, as well as municipal records, have also been identified as providing a wealth of disparate sources relevant to Aboriginal lands claims.⁴¹

The records of the Department of Indian Affairs (DIA) include descriptions of the resources, lifestyles, and practices of Aboriginal tribes, correspondence between government officials, as well as records of early proceedings with Aboriginal tribes, which include discussions of land use.⁴² The Department of the Interior also kept records about land settlement and allotment that may be useful for some claims.⁴³ Census data about Indigenous peoples, collected for a time by the DIA, may provide information about the linguistic and territorial continuity with pre-contact peoples over time.⁴⁴ However, it has been noted that these records are highly inaccurate given the context of the distrust of census-takers by some Aboriginal peoples, the existence

of nomadic lifestyles, the misleading racial categorizations used, and the assimilative legal policies regarding status.⁴⁵ Non-governmental records by non-Aboriginal actors may also provide context for Aboriginal history. For some regions, the records of the Hudson’s Bay Company, originally a fur-trading business that had a semi-governmental authority over large parts of Canada, are particularly useful. These include “account books, daily journals, correspondence books, and a wide variety of other company documents ... rich sources of information about local environments and the livelihoods Aboriginal peoples derived from them.”⁴⁶ Some fur traders also reported information about Aboriginal political institutions, social groupings, and systems of land ownership.⁴⁷ Similarly, missionary and church records sometimes documented Aboriginal community life.⁴⁸ The records and accounts of early explorers, including Sir Francis Drake and Captain George Vancouver, have been used to investigate the extent of British control over Western Canada.⁴⁹ Anthropological records are also used extensively by legal researchers involved in claims cases.⁵⁰

While writing is often associated with the European tradition, Indigenous peoples have produced or been recorded in written documents since the contact period. Records from earlier periods are less common, but are critical sources for Aboriginal practices and understandings of their relationship with the Crown. By the early 1700s, the Mi’kmaq of Nova Scotia expressed their sovereignty in letters and delegations to the colonial government.⁵¹ After Confederation, some Aboriginal groups continued to produce petitions and declarations of right, some of which were entered into Hansard.⁵² Note-taking practices were quickly adopted by Indigenous peoples. As an example, notes produced during Treaty 3 negotiations in 1873 show significant differences in treaty terms as noted by the Aboriginal parties and as written in the text of the treaty.⁵³

Oral Histories

One of the clearest deviations from the traditional laws of evidence in Aboriginal rights claims has been the use of oral histories. In *Delgamuukw*, Lamer CJC found that oral histories presented two challenges to the traditional rules of evidence.⁵⁴ First, oral histories may combine history, legend, and morality in a narrative that is more about conveying

³⁶ Anne Lindsay, “Archives and Justice: Willard Ireland’s Contribution to the Changing Legal Framework of Aboriginal Rights in Canada, 1963-1973” (2011) 71 *Archivaria* 35 at 36.

³⁷ *Ibid.*

³⁸ James Morrison, “Archives and Native Claims” (1979) 9 *Archivaria* 15 at 26.

³⁹ *Ibid.* at 26-28.

⁴⁰ *Ibid.*

⁴¹ *Ibid.* at 27.

⁴² *Ibid.* at 23-24.

⁴³ *Ibid.* at 25.

⁴⁴ Lindsay, *supra* note 36.

⁴⁵ Michelle Hamilton, “‘Anyone Not on the List Might as Well be Dead’: Aboriginal Peoples and the Censuses of Canada, 1851-1916” (2007) 18:1 *J Can Historical Assoc* 57.

⁴⁶ Arthur J Ray, *Telling it to the Judge: Taking Native History to Court* (Montreal: McGill-Queen’s University Press, 2011) at 6 [Ray, *Telling it to the Judge*].

⁴⁷ *Ibid.* at 22-27.

⁴⁸ Morrison, *supra* note 38 at 28-29.

⁴⁹ Lindsay, *supra* note 36 at 56.

⁵⁰ Bruce Granville Miller, *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts* (Vancouver: UBC Press, 2011).

⁵¹ J Bruce McKinnon, “Aboriginal Title – After Marshall and Bernard: Part I” (2007) 65:4 *Advocate* 513 at 516.

⁵² *Ibid.*

⁵³ Sheldon Kirk Krosowski, *Mediating the Numbered Treaties: Eyewitness Accounts of Treaties Between the Crown and Indigenous Peoples, 1871-1876* (PhD Thesis, University of Regina, 2011) at 139-41 [unpublished].

⁵⁴ *Supra* note 1 at para 86.

subjective experience and identity than about establishing objective truth.⁵⁵ Second, out-of-court statements would not be generally admissible according to the rules of hearsay.⁵⁶ Despite these challenges, Lamer CJC found that oral histories may be given the same weight as other historical evidence, as they are critical to the Aboriginal perspective and may be the only evidence available about the pre-contact past.⁵⁷ Similarly, in Mitchell, it was found that “[o]ral histories reflect the distinctive perspectives and cultures of the communities from which they originate and should not be discounted simply because they do not conform to the expectations of the non-aboriginal perspective.”⁵⁸

Two types of oral history evidence were discussed in *Delgamuukw* as being relevant to the establishment of Aboriginal claims. The first involved formal recitals of history and legend that are passed down over generations.⁵⁹ The second involved “recollections of Aboriginal life” that consisted of “the personal knowledge of the witnesses and declarations of witnesses’ ancestors.”⁶⁰ Other types of oral histories, including folktales, hero myths, family histories, and war stories, may lie somewhere in between the formal and the personal.⁶¹ A broad view of oral history may include songs, rituals, and associated artifacts like totems, weavings, and pottery.⁶² Oral histories have also been connected to accepted standards of behaviour and institutions that have been passed down over generations orally and through practice.⁶³

It is critical for legal researchers attempting to access oral histories to understand the context of Aboriginal oral history traditions. In particular, the history may emerge as part of a shared, collective memory that is told piece by piece by different members of the community, rather than the recollection of any one individual.⁶⁴ Milward has emphasized that an understanding of the “strict protocols” used by Aboriginal societies to preserve their oral histories may enhance the court’s view of their evidential value, especially in comparison with written sources, which are subject to their own ambiguities and misinterpretations.⁶⁵ One challenge for researchers involved in claims may be the hereditary and privacy rights sometimes attached to oral histories and the reluctance of Indigenous peoples to share them, particularly to opposing counsel during pre-trial discovery.⁶⁶ This indicates a need for cultural sensitivity for researchers and

custodians seeking to access or preserve oral histories.

Researchers and custodians of recorded oral histories that may be relevant to legal claims should also be aware of the content of these histories. As suggested in *Delgamuukw*, oral histories may contain information about pre-contact occupation and practices, as well as their continuity over time, for the purposes of establishing Aboriginal rights, including title. For instance, oral histories, including origin stories, often recount landmarks related to traditional territory, which may be reinforced by systems of “land imprinting,” such as totems.⁶⁷

In addition, oral histories may constitute extrinsic evidence about Aboriginal understandings of treaties, including oral agreements reached.⁶⁸ Oral histories are typically grounded in an understanding of Aboriginal legal and political systems,⁶⁹ which is a strength of these sources in elucidating the Aboriginal understanding of treaty-making. The information that can be drawn from these sources includes the selection of chiefs and representatives, their capacity to enter treaties under Aboriginal systems of laws, as well as their often reciprocal and democratic political relationship to the Aboriginal community.⁷⁰ The protocol used for allowing others to enter and use land, including pre-existing treaty-making processes may also be represented.⁷¹

Recollections about the process of making a specific treaty, as well as the promises agreed upon by the parties, may also be passed down through oral histories. Oral evidence is critical in this regard as Indigenous peoples may have tended to view the written treaty as only one element of an overall negotiation process that also incorporated oral promises and the “spirit and intent of the agreement.”⁷² In one particular case in which the Aboriginal understanding of a treaty differed from its written terms, Venne was able to produce a detailed description of the treaty using Aboriginal oral histories alone and without reference to the written text.⁷³ The detail of these recollections illustrates the strength of the Aboriginal oral history tradition and its potential to balance treaty interpretation in the modern legal system.

In addition to capturing understandings about treaty-making, this information clearly provides a great deal of information about Aboriginal legal systems. As the Indigenous peoples

⁵⁵ *Ibid* at paras 85-86.

⁵⁶ *Ibid* at para 86.

⁵⁷ *Ibid* at paras 84-87.

⁵⁸ *Supra* note 32 at para 34.

⁵⁹ *Supra* note 1 at paras 93-98.

⁶⁰ *Ibid* at para 99.

⁶¹ David Milward, “Doubting What the Elders Have to Say: A Critical Examination of Canadian Judicial Treatment of Aboriginal Oral History Evidence” (2010) 14:4 E&P 287 at 296-97.

⁶² Hope M. Babcock, “[This] I Know From My Grandfather”: The Battle for Admissibility of Indigenous Oral History as Proof of Tribal Land Claims” (2012-2013) 37:1 Am Indian L Rev 19 at 32.

⁶³ Miller, *supra* note 50 at 32.

⁶⁴ Sharon Venne, “Understanding Treaty 6: An Indigenous Perspective” in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: UBC Press, 1997) 173 at 176-77.

⁶⁵ Milward, *supra* note 61 at 288, 296.

⁶⁶ Arthur J Ray, “Native History on Trial: Confessions of an Expert Witness” (2003) 84:2 Can Historical Rev 253 at 261 [Ray, “Native History”].

⁶⁷ Babcock, *supra* note 62 at 34.

⁶⁸ Venne, *supra* note 64 at 173.

⁶⁹ *Ibid* at 177.

⁷⁰ *Ibid* at 177-80.

⁷¹ *Ibid* at 184.

⁷² Leonard I Rotman, “Taking Aim at the Canons of Treaty Interpretation in Canadian Aboriginal Rights Jurisprudence” (1997) 46 UNBLJ 11 at 20-22.

⁷³ Venne, *supra* note 64 at 192-202.

did not use writing prior to contact, political institutions and customs were passed down through practice and oral transmission. As discussed, the legal systems of Indigenous peoples have been given particular significance by the SCC as the source of their right to land title. While this information should be sought by researchers and recognized for its potential legal significance, McNeil has criticized the SCC for relying more heavily on the common law conception of occupation than on Aboriginal legal understandings of ownership.⁷⁴

The acknowledged importance of oral histories, as well as the recognition of archivists' participation in creating the historical record, has led to a call to reconsider appraisal practices.⁷⁵ Frogner has argued that the history of Aboriginal peoples has largely been told through the written records of a colonial settler society, and that archival practice should adjust to more inclusively represent and empower Aboriginal peoples through participatory processes that embrace oral histories and customary laws.⁷⁶ Meanwhile, the growth of formal and informal band or tribal archives reflects self-determination in regards to representation and the historical record.⁷⁷

Aboriginal Diplomatic Practices

The participation of parties to a treaty in ceremonial practices may elucidate Aboriginal understandings of the treaty and thus be significant to its interpretation. Some have in fact argued that "those who seek to understand Indian treaties must become aware of the significance of First Nations spiritual traditions, beliefs, and ceremonies underlying the treaty-making process."⁷⁸ It is not possible to survey all of the ceremonial practices of the diverse Indigenous peoples of Canada, but some examples may serve to illustrate the insight provided by this evidence. One prominent instance is the smoking of pipes as part of the treaty-signing process as establishing intent to enter a treaty. According to Venne, this practice represented the solemnity of the occasion, as well as the honourable nature of the parties' dealings, and "would signify to the creator the intention of the parties to keep the terms of the agreement in a strong and binding manner."⁷⁹

The use of wampum belts by certain groups to recognize and record treaties may be a source for Aboriginal understandings of treaty relationships. Treaties involving a two-row wampum belt, initiated in the colonial context between the Haudenosaunee and the Dutch and continued in relations between the Haudenosaunee and the English,

have been interpreted as representing two parallel paths, in which the self-government of each party is preserved and respected.⁸⁰

A related concept, the covenant chain, was used to describe Aboriginal-Crown relations and certain treaties enacted. The covenant chain was interpreted by both Indigenous peoples and early English accounts as representing a partnership of peoples rather than a relationship of subjection.⁸¹ In the Aboriginal understanding, this partnership would lapse unless continually renewed through "nation-to-nation councils" that included detailed diplomatic procedures and the exchange of presents.⁸² Walters has argued that the legal status of the relationship for the Aboriginal participants was expressed through this "brightening" process, rather than the text of any treaty.⁸³

Some have attributed declarations of sovereignty over Aboriginal peoples in treaties to confusion generated by Aboriginal diplomatic practices. According to Walters, "aboriginal nations adhered to customary rules of diplomatic protocol designed to achieve reconciliation through an oral, rhetorical form that was respectful, dignified, polite and metaphorical."⁸⁴ Acknowledgements of the Crown by Aboriginal peoples may have been misinterpreted as subjection due to "European assumptions about sovereignty, statehood, subjection and allegiance."⁸⁵ Again, ceremonial practices can act as a source to elucidate the understandings of parties to written treaties.

Expert Evidence

The range and complexity of the relevant sources discussed reinforces the extensive use of expert evidence in Aboriginal claims cases. For legal researchers and librarians, this means that a main focus may be the secondary source material produced by experts that synthesizes and interprets other sources. Experts may include, amongst others, historians that describe the context of Aboriginal-Crown relations and treaties, ethnohistorians that study pre-contact Aboriginal societies, anthropologists that focus on practices and beliefs, and linguists that study language transmission and change.⁸⁶

This evidence can be quite extensive. The trial court for *Delgamuukw*, for instance, sat for 374 days, with most of its time devoted to hearing evidence from experts in genealogy, linguistics, archaeology, anthropology, and geography.⁸⁷ Ray,

⁷⁴ Kent McNeil, "The Meaning of Aboriginal Title" in Asch, *supra* note 64 at 135.

⁷⁵ Raymond O Frogner, "Lord, Save Us from the *Et Cetera* of the Notary": Archival Appraisal, Local Custom, and Colonial Law" (2015) 79 *Archivaria* 121.

⁷⁶ *Ibid.*

⁷⁷ Miller, *supra* note 50 at 68.

⁷⁸ H. Cardinal & W. Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is That Our People Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000) at 1.

⁷⁹ Venne, *supra* note 64 at 188.

⁸⁰ Mark D Walters, "Brightening the Covenant Chain: Aboriginal Treaty Meanings in Law and History after Marshall" (2001) 24 *Dal LJ* 75 at 80-82.

⁸¹ *Ibid.* at 83.

⁸² *Ibid.*

⁸³ *Ibid.* at 88.

⁸⁴ *Ibid.* at 103.

⁸⁵ *Ibid.*

⁸⁶ Ronald Niezen, "Culture and the Judiciary: The Meaning of the Culture Concept as a Source of Aboriginal Rights in Canada" (2003) 18:2 *CJLS* 1 at 12.

⁸⁷ *Ibid.* at 13; *Delgamuukw v British Columbia*, [1991] 3 *WWR* 97, 79 *DLR* (4th) 185.

an historical expert himself, has related how court cases have become “protracted battles of phalanxes of opposing historical experts bearing myriad documents and espousing conflicting historical interpretations and theories about the nature of pre- and post-contact Aboriginal cultures.”⁸⁸

Non-documentary historical sources are also used as evidence by experts on pre-contact Aboriginal occupation and practices. Archeological evidence may assist in determining the occupation and movement of peoples, as well as the exploitation of resources and other uses of land.⁸⁹ Commonalities in language, religion, and socio-political organization may be useful in establishing the existence of an overarching Aboriginal group.⁹⁰ In addition, some have argued that the existence of Aboriginal place names for locations in an area is evidence for a title claim, although courts have not conclusively accepted this.⁹¹

Some have argued that the court’s search for historical fact is not ideally suited to disciplines subject to academic debate, evidentiary gaps, and tentative conclusions.⁹² Niezen has stated that the court’s discomfort with uncertainty has led to “an unwarranted emphasis on particulars” relating to technology and practice rather than opinions regarding identity and culture.⁹³ One remedy for this issue may be found

in the increasing reliance on Indigenous peoples themselves as “non-professional ‘experts’” on their own culture, such as through the use of oral histories.⁹⁴ This also corresponds with the idea that Indigenous peoples should have their own voice in the courtroom, rather than have their perspectives mediated through experts, who should play a supportive role at the most.⁹⁵

Conclusion

The constitutional developments and broader societal shift towards reconciliation and recognition have shaped the legal tests used to establish claims and interpret treaties. In turn, these principles inform the sources of law and evidence relevant to legal research on claims issues. The nature of these claims requires a broad consideration of common law and Aboriginal legal sources, as well as historical and cultural evidence. Most significantly, the recognition of the pre-existing Aboriginal claim to the territory of Canada has led to the assertion of an Aboriginal voice in negotiating its ongoing relationship with the government. Customary laws, oral histories, and ceremonial practices can no longer be ignored by a traditionally Eurocentric legal system in establishing Aboriginal rights.

⁸⁸ Ray, *Telling it to the Judge*, *supra* note 46 at 11-12.

⁸⁹ McKinnon, *supra* note 51 at 520-21.

⁹⁰ *Ibid* at 515.

⁹¹ *Ibid* at 516-17.

⁹² Niezen, *supra* note 86; Eric H. Reiter, “Fact, Narrative, and the Judicial Uses of History: *Delgamuukw and Beyond*” (2010) 8:1 *Indigenous LJ* 55.

⁹³ Niezen, *supra* note 86 at 14.

⁹⁴ *Ibid* at 14-15; Miller, *supra* note 50 at 91.

⁹⁵ Ray, “Native History,” *supra* note 66 at 257.



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III Remarks by Shaunna Mireau on Receiving the Dennis Marshall Award*

The following is the text of the speech that Dennis Marshall Award recipient Shaunna Mireau gave at the 2017 conference in Ottawa. I asked Shaunna if I could include her words in the Canadian Law Library Review as what she had to say particularly resonated with me; it echoed a conversation that I had had with a young librarian that very day. This young librarian described herself as being just a librarian and I thought then how insidious the word “just” is. We are not just librarians. We are librarians! To quote my favourite professor, Joe Janes, “Librarianship is the profession that makes all the other professions better.” Thanks, Shaunna, for articulating those ideas in such a thoughtful way. [Susan]

Le texte ci-dessous provient du discours prononcé par Shaunna Mireau, lauréate du Prix Dennis Marshall, au congrès 2017 à Ottawa. J’ai demandé à Shaunna de pouvoir inclure ses propos dans la Revue canadienne des bibliothèques de droit puisque le sujet qu’elle a abordé m’a particulièrement interpellée; en fait, ses propos reprenaient une conversation tenue avec une jeune bibliothécaire ce jour-là. Cette jeune femme s’était décrit comme juste une bibliothécaire, et je me suis mise à penser à la nature insidieuse du mot « juste ». Nous ne sommes pas juste des bibliothécaires. Nous sommes des bibliothécaires! Laissez-moi vous citer Joe Janes, mon professeur préféré : « La profession de bibliothécaire permet aux autres professions de s’améliorer. » Merci d’avoir partagé ces idées de manière réfléchie, Shaunna. [Susan]

I am truly humbled to receive this award.

Like every milestone and treasured moment, news about receiving this award sparked a great deal of reflection.

Reflection about the words “excellence” and “law librarianship” (especially when correlated with me personally) made me also reflect on other words that I have sometimes used.

I am not speaking of the curse words when a project has gone sideways or technology is not performing.

Or words like “really” and “seriously” that sometimes pop into the brain or out of the mouth with trusted CALL-leagues when thinking about organizational decisions that are first questioned, then coped with.

Rather words like “only” and “just.”

I am *just* a library technician.

I am *only* a law librarian.

Dangerous thoughts.

It is just a budget cut. It is only that AI is a necessary tool, and the money has to come from somewhere. It is only that

lawyer X has a passion for KM / legal research / legal tech. It is just the word “information” that IT scooped.

Dangerous words, “only” and “just.”

I hope that I was selected for this award because, even though my inside voice whispers “only” and “just,” and sometimes I even rashly say it, I try to live my career proudly. I like to think that I am far too stubborn to let “only” and “just” get in the way of what I know is right and important and what I want.

I want every business challenge facing the legal vertical to have a law librarian (or 20) as an element to answering that challenge. I work, plot and scheme, and align and manoeuvre to make non-law-librarians think words like “of course we should” and “obviously” when the suggestion of having a law librarian work on a team is made.

I look around the room, and I see legal problem solvers. I see excellent law librarians. I see leaders. I see change agents. I see giants. I am so proud to be one of you.

Thank you to LexisNexis for sponsoring this award in honour of Denis Marshall. I understand he was a giant. Thank you CALL/ACBD for honouring me with this award.

Je suis vraiment touchée de recevoir ce prix.

Lorsque j’ai appris que j’allais recevoir le prix, de nombreuses choses me sont passées par la tête comme chaque fois que je franchis une étape cruciale ou que je vis un moment précieux.

Une réflexion sur les mots « excellence » et « bibliothécaire de droit » (notamment en ce qui me concerne) m’a également fait penser à d’autres mots que j’utilise parfois.

Je ne parle pas ici de jurons lâchés lorsqu’un projet dérape ou que la technologie ne fonctionne pas. Ni de mots comme « vraiment » et « sérieusement » qui surgissent dans le cerveau ou sortent de la bouche lors d’échanges avec des collègues de confiance de l’association au sujet de décisions organisationnelles, qui sont d’abord remises en question puis acceptées.

Je parle plutôt de mots comme « seulement » et « juste » :

Je suis juste une bibliotechnicienne.

Je suis seulement une bibliothécaire de droit.

Ces mots sont dangereux.

C’est juste une compression budgétaire. C’est seulement parce que l’intelligence artificielle est un outil indispensable, et que l’argent doit venir de quelque part. C’est seulement parce que l’avocat X a une passion pour la gestion du savoir, la recherche juridique ou les outils juridiques. C’est juste le mot « information » que la TI a capté.

Des mots dangereux : « seulement » et « juste ».

J’espère avoir été sélectionnée pour ce prix parce que j’essaie de mener ma carrière avec fierté, même si ma voix intérieure murmure « seulement » et « juste » ou que ces mots sortent parfois spontanément. Je considère que je suis beaucoup trop têtue pour laisser les mots « seulement » et « juste » m’empêcher de faire ce qui est bien et important, et ce que je veux.

Je veux que chaque défi d’affaires auquel fait face le domaine juridique comprenne un(e) bibliothécaire de droit (ou 20) comme effectif pour relever ce défi. Je travaille, je planifie et je gère, j’aligne et je manoeuvre dans le but que les personnes autres que les bibliothécaires de droit pensent aux paroles comme « bien sûr, nous devons » et « évidemment » lorsqu’on leur propose d’inclure un(e) bibliothécaire de droit dans une équipe de travail.

En jetant un coup d’œil autour de la salle, je vois des solutionneurs de problèmes juridiques. Je vois d’excellents bibliothécaires de droit. Je vois des leaders. Je vois des agents de changement. Je vois des géants. Je suis extrêmement fière de faire partie de votre communauté!

Merci à LexisNexis qui commandite ce prix en l’honneur de Denis Marshall. J’ai compris qu’il était un géant. Je remercie l’ACBD/CALL pour l’honneur qu’elle me fait en m’octroyant ce prix.





III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***The Abridged Wigmore on Alcohol.* By James G. Wigmore. Toronto, Ontario: Irwin Law Inc., 2015. 269 pages. Includes text, bibliographic references, and multiple indices. ISBN 978-1-55221-416-9 (soft cover); ISBN 978-1-55221-417-6 (e-book) \$49.95.**

I opened up this book thinking it would be more useful than interesting and closed it thinking it was more interesting than useful. There is not a lot of text in this book. A moderately generous count would have about 40 pages of text in a 269-page volume. The majority of the book is indices and lists of studies relevant to the topics. Although I appreciate all the references and did enjoy following up on some of the articles, I would have preferred a bit more exposition.

From the lawyer's point of view, this is the kind of book you read through (it doesn't take very long), you learn a few new things, and then hopefully you pick it up again when you read through a file and your attention is drawn to an issue you remember seeing something about in this book.

I should make clear my own bias, which may explain why I felt the book wasn't hugely useful to me other than as a base resource. When I get interested in alcohol issues, 95 per cent of the time it is because I am defending a criminal case involving alcohol. I am usually looking for ways to show that there is a reasonable doubt about a client's intoxication. After one read through the book I certainly didn't say to myself, "Self, this book gave me a lot of juicy stuff to use on my next trial."

The problem may be that, in terms of alcohol, intoxication, and the criminal process, science isn't all that helpful in finding a reasonable doubt. I shudder at that thought, but that is the impression the book left with me. I suppose this could mean it should be required reading for all assistant crown attorneys.

On the other hand, the book takes a reader down some interesting paths. I learned things I didn't already know (but perhaps should have). For example, alcohol distributes through total body water and not just blood (I didn't know that; I always assumed the alcohol was just in the blood), so given that total body water is about 40 litres and blood is just five litres, transfusion (or presumably blood loss) will not have a significant effect on blood alcohol concentration (p 21).

This kind of information is (a) interesting and (b) adds to your knowledge base when related issues arise in practice. Both of those are good things.

However, as in every book of this type, it is important not to accept statements blindly and to check the source before relying on comments that appear to support a particular position. For example, as I was reading through *Wigmore on Alcohol*, I found this information: "Physical signs of alcohol consumption include the odour of an alcoholic beverage, which decreases after a meal and increases with a greater BAC (blood alcohol concentration)" (p 79).

I read that as saying that the stronger the smell of alcohol, the higher the BAC. Police officers, in their testimony, often refer to a “strong odour of alcohol” as an indicium of extreme intoxication. My understanding, however, is that it was not so much the BAC that determined alcohol odour but rather recent alcohol consumption and the type of alcohol.

Two studies were cited and I looked up both. One was only available with payment (but the abstract was available) and the second was available online. Given that neither study considered recency as far as I could tell, I am not convinced Wigmore’s statement in the text is fully supported. Further, once alcohol was actually detected, guesses as to the degree of BAC were no better than random in the study involving experienced police officers.

This overstatement (in my opinion) of the meaning of the articles doesn’t detract from the fact that I would have never heard of the articles without Wigmore, nor would I have heard of the other 709 scientific articles on alcohol-related topics found in this book. There are lists of articles after each subsection of each chapter, usually a page or two of articles for every couple of paragraphs of text. At the back of the book there is a list of abbreviations, a master list of articles by authors’ names, and a list of journals the articles appear in.

Some of the articles will be difficult to obtain, perhaps (for free, anyway), but they are identified and, if important enough, should be easily located.

All in all, I will happily keep this book on my shelf. I will undoubtedly pull it out from time to time to get guidance on some alcohol-related point. At \$49.95 it is certainly very reasonably priced—if you get one point that helps you on one case, it is a very good investment. However, I do think the book would have been improved by more text. Doubling the text would only add about 40 pages or so, and that doesn’t seem difficult. Perhaps the second edition will be a bit longer which, for me, would make it better.

REVIEWED BY

JOHN K. LEFURGEY

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Accusation: Creating Criminals. Edited by George Pavlich and Matthew P. Unger. Vancouver, BC: University of British Columbia Press, 2016. vii, 206 p. Includes bibliographic references and index. ISBN 978-07748-3374-5 (hardcover) \$95.00. ISBN 978-0-7748-3375-2 (paperback) \$29.95. ISBN 978-0-7748-3376-9 (pdf). ISBN 978-0-7748-3376-2 (epub). ISBN 978-0-7748-3378-3 9 (mobi).

This collection of seven essays, edited by George Pavlich, Canadian Research Chair in Social Theory, Culture and Law at the University of Alberta, and Matthew Unger, a professor of sociology and anthropology at Concordia University, is a theoretical and philosophical exploration of criminal accusation organized around three themes: “Framing Accusation: Logic, Ritual, and Grammar,” “Genealogies, Colonial Legalities, and Criminal Accusations,” and “Criminal Accusation as Discourse: Subjectivization, Truth, Ethics.”

In the introduction, the editors observe the need for more study of how accusation is “a vital entryway into criminal justice” (p 2) and survey ways to question and describe criminal justice that will feel markedly different to those of us used to doctrinal legal studies. The editors pose interesting questions, such as, “Could we, for instance, imagine a politics of recognition that allows for accusations against unequal and crimenogenic social structures rather than individual subjects?” (p 3).

Part 1, “Framing Accusation: Logic, Ritual, and Grammar,” provides some interesting foundation and context, such as “Apparatuses of Criminal Accusation,” in which George Pavlich discusses three paradigms through which criminal accusation can operate: “(i) in the name of the sovereign, (ii) against images of abnormal criminality, or (iii) as ways to manage insecure populations” (p 22). Part 3, “Criminal Accusation as Discourse: Subjectivization, Truth, Ethics,” contains three essays that discuss accusation with reference to Kafka’s *Amerika*, Hannah Arendt’s *Eichmann in Jerusalem*, and Albert Camus’s *The Fall*, respectively. But it was the two essays in Part 2, “Genealogies, Colonial Legalities, and Criminal Accusations,” that I found most compelling, as these essays combined legal theory and critique with colonial legal history, which I will discuss in more detail below.

While the story of the *Komagata Maru’s* voyage and Canada’s treatment of its passengers may be relatively well known, in “Criminal Accusation as Colonial Rule: The Case of Gurdit Singh (1859-1954),” author Renisa Mawani focusses on the person who chartered the ship, Gurdit Singh, and the accusations against him, using an essay by Jacques Derrida as the foundation for his analysis. Mawani continues to follow Singh after the ship’s voyage and the Budge Budge Massacre for the seven years he evaded the British until, in what Mawani calls “a deliberate and calculated act of defiance,” (p 79) he surrendered to the colonial authorities. Singh faced accusations that Mawani characterizes as “less to do with the law that Singh had breached ... than they did with the threat he represented to India and the British Empire” (pp 79 & 82). Mawani’s essay showcases his painstaking historical research and provides insight into the legal tools used to respond to resistance in colonial India. Mawani observes that “[remembering] Gurdit Singh recuperates an extraordinary man of law, a significant figure in Canadian, Indian, and imperial history, [and] a key force in struggles for Indian independence” (p 95). This essay has done just that.

The second essay in this part, Keally McBride’s “Codification and the Colonies: Who’s Accusing Whom?,” expands on the theme of how the British used legal mechanisms to maintain and expand colonial power. McBride situates Jamaica’s 1865 Morant Bay Rebellion in Pavlich’s “power focused on the sovereign” paradigm and demonstrates how it led to “new practices of criminal accusation in the colonies” (p 100). McBride argues that the creation of colonial criminal codes imposed a particular bargain, specifically in India: “Colonial subjects would be rendered automatically suspect by the legal codes that separated Indo and European populations into different procedures; in exchange, they would experience a less violent colonial rule” (p 107). McBride also gives a fascinating overview of how the British treated indigenous legal traditions and differentiated legal status based on how each territory had entered the empire.

This is a nuanced examination of codification of criminal law in the colonies: there may have been some benefits, but ultimately codification is a “subterfuge, because it focuses exclusively on procedures rather than outcomes, traditions, or genuine complexities” (p 125).

This essay collection from UBC Press, with its clever, simple cover of a large red A, asks us to consider what accusation really means, and how it can be used as a weapon. There are times when the writing can be dense, perhaps because it is meant to address an audience already familiar with many criminological, political, and philosophical theories and discourses. Most of the essays are clearly intended for a specialist audience. However, Part 2 also holds something for those of us not steeped in those areas, as it contains fascinating legal history and analysis of criminal justice for colonial subjects in British colonies.

REVIEWED BY
AMY KAUFMAN
Head Law Librarian
Queen's University

Brand Management in Canadian Law, 4th ed. By John S. McKeown. Toronto: Thomson Reuters, 2016. 450 p. ISBN: 978-0-7798-7254-1 (softcover) \$166.00.

John McKeown, counsel at Goldman Sloan Nash & Haber LLP in Toronto is the author of *Brand Management in Canadian Law*, now in its 4th edition, as well as the author of the leading authoritative text on copyright, *Fox on Canadian Law of Copyright and Industrial Design*. As Chairman of the Canadian Bar Association Trademarks Committee and Vice-Chair of the American Bar Association International Trademark Treaties and Laws Committee, John is a trusted authority on legal issues and actions relating to branding.

Brand Management in Canadian Law is an overview of the legal components that make up a brand. The chapters focus on choosing a brand name; a brand's presence on the internet; registering, protecting, and managing the brand name; trademark registration; and copyright issues as they relate to branding, protecting product design, shape, and advertising.

The new edition contains important updates on the *Trade-marks Act*, the new Canada Anti-Spam Legislation, and the *Combating Counterfeit Products Act* since the 2010 3rd edition. The 4th edition also informs readers on important updates in relation to branding on the internet such as domain names, social media, and dispute resolution processes.

Legal counsel in this field should be well aware of new rules and regulations regarding trademark registration, electronic communications, and counterfeiting, and the overview offered by the text on these issues is sufficient enough that practitioners should, at least, be aware of those issues. However, I did find the sections to be fairly brief, and practitioners would probably require additional information in order to counsel their clients. The book is, therefore, more of an introduction rather than an in-depth analysis,

and would be more suitable for someone like a law student or a junior lawyer who is interested in this field of law and has little knowledge on the subject. For someone with more experience and/or education, or someone who has a need for detailed explanations on more complex issues, the book is less likely to supply the substantial information required.

As the average consumer, bombarded by brands every day, I found this book to be an interesting read. I appreciated learning how much thought, research, and work can go into choosing a suitable brand name. The commentary focussing on legislation was a little dry and required greater concentration. In order to aid the reader's comprehension, real-world brand examples are given, which I appreciated very much. However, since branding has a lot to do with how trademarks, packaging, and advertising are perceived by the consumer's eye, I would have liked to see some visual aids, of which there were none.

All in all, I think this book would be a suitable addition to a law library. The book is a useful introduction for those who need a general overview of the concepts regarding brand management in Canadian law.

REVIEWED BY
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The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854. By Jeffrey L. McNairn. Toronto: University of Toronto Press, 2016. xi, 460 p. Includes references and index. ISBN: 978-1-4426-3898-3 (paper cover) \$42.95.

The author, a faculty member in the Department of History at Queen's University, offers an interesting study of the emergence of public opinion as a palpable force in the political life of Upper Canada during the period outlined. McNairn charts the evolution of the establishment of deliberative democracy in the constitutional, social, political, and intellectual affairs of the jurisdiction that became Ontario. He places considerable emphasis on the operations of the press as an engine of this transformation in process and shares the voices that spoke, often eloquently, through the multitude of newspapers extant during this period.

This work takes its cue from the debates generated around certain constitutional questions of this pre-Confederation era. As a colony, Upper Canada was pulled in several directions when it came to constitutional matters. The conservative (i.e., Tory) allegiance to all things British, including mixed monarchy principles, was strong at one end of the spectrum while republican ideals (imbibed from proximity to the American influence on the border) were positioned at the other end. Politicians, reformers, and citizens were increasingly engaged in a determined debate over how Upper Canada would address the fundamental constitutional questions at hand and those anticipated in the future.

McNairn's research is a study in the history of public opinion

and its impact on deliberative democracy in one jurisdiction. The text carries Library of Congress classification numbers (FC 3071.2 and F 1058) that clearly place it in the historical context. However, there are several elements that may be of relevance to the law library user in so far as it pertains to the legislative process and how legislators increasingly needed to comprehend, and connect with, the public interest. The close relationship between public opinion and mechanics of constitutional change is both fascinating and pivotal to an understanding of how Upper Canada developed its governmental institutions.

So, while this text is not devoted to conventional legal topics and deals more with the historical traction of deliberative demography and representative government, there are some fundamental observations that anyone studying (or practicing) the law needs to hold constantly in their minds. McNairn, quoting Dr. Robert Douglas Hamilton writing in 1832 under the pseudonym of Guy Pollock, notes: “authority is not proof, and assertions are not arguments.” This, combined with other cogent observations throughout the work offer valuable points to ponder. We have seen that the quality and reliability of public opinion, and the capacity to reason on civic matters, has fallen on hard times, most alarmingly south of the 49th parallel. Accordingly, McNairn’s optimism about the record of achievement in these areas during the period under review must not permit us to be complacent.

The law is front and centre in this work in the treatment of the topic of primogeniture. This is an interesting discussion that seems worlds removed from our contemporary mindset. However, it is always salutary to trace the development of these types of legal transitions. The gradual, but ineluctable, sea change in human affairs becomes codified through legislative enactments. For example, public opinion has been slowly, but profoundly, recast on topics like abortion, assisted dying, capital punishment, marijuana use, and prostitution. This book takes one example of change in public opinion and offers a detailed sketch of the process by which minds were changed.

Intellectually, the author owes a debt to the writings of Jürgen Habermas, especially his critical examination of the public sphere. It is important to consider the magnitude of the transformation occurring during the late eighteenth and early nineteenth centuries with regard to political, and by extension legislative, matters. Increasingly, “the people” were being appealed to for support and substance in matters of public interest. The Enlightenment opened a window on the broader engagement of individuals in all manner of social, political, and intellectual endeavours. The printing press created the platform upon which ideas and information could be more widely distributed. Accordingly, a phase of historical development that the British constitutional author Walter Bagehot called “the Age of Discussion” was reached that would prioritize public deliberation as a potent means for change. Governments could no longer function effectively without engaging public support. This work traces one path followed by politicians, publishers, and people in Upper Canada toward the expression of deliberative democracy.

To conclude, this historical study offers some useful insights on the growth and evolution of public opinion in one jurisdiction during a period of rapid and irreversible change.

The capacity of people to freely and fully debate matters of public interest came to a point of crisis in Upper Canada in the mid-1840s. For those interested in the precise details of constitutional theory in early Canadian history, this book will be a valuable acquisition.

REVIEWED BY
PAUL F. MCKENNA

President, Public Safety Innovation, Inc.

***Debating Hate Crime: Language, Legislatures and the Law in Canada.* By Allyson M. Lunny. Vancouver: UBC Press, 2017. viii, 237p. Includes bibliographic references and an index. ISBN 978-0-7748-2959-5 (hardcover) \$95.00.**

Given the observable rise of anti-Semitism and Islamophobia, Allyson Lunny’s latest book is a timely one. Unlike treatises that seek to identify hate crimes and suggest how they can be reduced and/or prosecuted, Lunny’s book is unique. She discusses how laws to prevent hate crimes have been debated in the Parliament of Canada for over 50 years, and explores the language used by witnesses for and against their inclusion. In essence, she deals with the *language* of the debate on hate crime, not hate crime per se.

Her book is divided into five chapters. The first chapter deals with the emergence of hate crime laws after the Holocaust in World War II. Here, Lunny focusses on the rise of anti-Semitism from before and after World War II. Faced with this growing scourge, the government established a commission to study the reality of hate and to suggest recommendations. The commission not only decided that government action was necessary but also pointed out that hate could not be measured by statistics alone. Instead, one had to give weight to the psychological damage it could do to the victim.

When the debate moved to Parliament, a bill was proposed that would classify certain types of hate law. Some witnesses before the Senate committee, such as the Canadian Jewish Congress, argued in favour of this. Others feared that hate crime laws would lead to an erosion of free speech. Still others, including some senators, used language that came close to being anti-Semitic in their denunciation of the bill that was, nonetheless, ultimately passed.

The first chapter is representative of how the others in the book are organized. Lunny first discusses the historical context for a specific type of hate crime or inclusion of an anti-discrimination phrase, such as sexual orientation. The debates in Parliament are then explored, as is the issue from multiple points of view. In chapter two, for example, in which the author discusses the inclusion of sexual orientation in hate crime laws, we see that supporters of the inclusion were sometimes portrayed as victims of violent attacks. Those who opposed the inclusion, in contrast, argued that gays and lesbians were a special interest group driven by a specific agenda, and that the claim of victimhood should be dismissed.

One of the interesting aspects of Lunny’s book is the recounting of speeches made by various witnesses, particularly those who were opposed to the various pieces of legislation. In

opposing Bill C-250, which would protect sexual orientation under the *Canadian Human Rights Act*, one witness claimed that the bill would not only prohibit thought, but would require individuals to think certain thoughts. Another claimed that the inclusion would result in the Bible being labelled as hate literature. For today's reader, some of these claims appear so nonsensical that one could almost label them "alternative facts." Lunny argues that in many cases (but not all), those who opposed legislation based their argument on claims that seem quite irrational, rather than the fear of losing their freedom of speech.

Another interesting illumination is the discussion over the reversal of a policy by the Canadian Jewish Congress, now the Centre for Israel and Jewish Affairs. They were one of the driving forces for the inclusion of section 13 of the *Canadian Human Rights Act*, which outlawed hate speech over the telephone. In recent years, however, they have come out in favour of its repeal. They have done this in concert with several conservative Christian groups. Lunny says that these organizations make strange bedfellows, as many conservative Christian groups have been quite anti-Semitic over the years, and yet they have now allied themselves with a Jewish group.

This book is indeed a fascinating read and an insight into how attitudes toward the language of hate crime laws have evolved over the years. It is certainly a timely book for a scholarly debate on the language of hate crime laws and would be a particularly important acquisition in a law school library, for professors and students.

REVIEWED BY
DANIEL PERLIN

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***Is Killing People Right?: More Great Cases That Shaped the Legal World.* Allan C. Hutchinson. New York: Cambridge University Press, 2016. 164p. Includes figures, bibliographic references and index. ISBN 978-1-107-56088-8 (paperback) \$29.25.**

Following up on Professor Hutchinson's *Is Eating People Wrong?* (2010), this equally compelling volume is a delightful retelling of cases that have shaped our law. The book contains eight common law cases spanning the globe, from the United Kingdom, Australia, and the United States. Regardless of the geographical jurisdiction of the cases, Professor Hutchinson compares and contrasts the Canadian interpretation of those legal precedents, allowing the reader to gain a clearer picture of the issues and various possible outcomes the courts could, and have, made that inevitably shape a nation's personality.

The introduction is an essay on whether or not the law is making progress or merely changing. The author paints a clear picture by using examples and ideas that illustrate either side of the argument, and then refreshingly stepping in with his own opinion, taking the reader out of the theoretical realm of possibilities. Unlike many of our interpretive, stick-to-the-facts legal texts, the author does not hesitate to offer his own opinion along the way, anchoring the legal principles

with his own moral code. This makes the relatively short work a pleasure to read for audience members unfamiliar with the intricate issues of specific legal principles.

Professor Hutchinson demystifies legal principles the way that Mary Poppins tidies a room—effortlessly. Although core Latin terms such as *stare decisis* and *res judicata*—often having entire volumes dedicated to their comprehension—do appear, instead of focussing on legal translation, the author instead focusses on an unfortunate boy who loved Liverpool football, an immigrant family who builds a successful business only to lose it despite protecting themselves from personal liability, or a group of consenting adults who have their sex lives publicly destroyed as the courts bumble along in trying to find justice and meaning. It is a text about law, but the humanity in the stories is always in the foreground.

This compendium includes diverse topics: one of the earliest right-to-die cases from the United Kingdom, the formation of civil responsibility and reasonable foreseeability, and a concise and fascinating look at the defining American judicial review case from 1803.

There are, of course, other collections of case law; for example, Robert Megarry's *Miscellany at Law*, which is intended as a light "diversion for lawyers" yet requires a solid understanding of legal principles and courtroom procedure to comprehend the wit. *Is Killing People Right?*, like its predecessor, *Is Eating People Wrong?*, introduces the law and highlights our recent history of law-making in a tangible way. Its topic is specific enough to spark personal interest, as many of the issues can be found in our local news sources, and yet broad enough to encompass a wide spectrum of the law. The subject matter is also unique and an enjoyable read for those wanting to learn about our law without suffering because of a lack of understanding of legalese.

REVIEWED BY
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***Law for Social Workers, 5th ed.* By Rachel Birnbaum and Janet E. Mosher. Toronto: Thompson Reuters, 2016. 439 p. Includes chapter selected readings, reference, cases cited, index. ISBN 978-0-7798-7315-9 (softcover) \$120.00.**

This book focusses on the intersection of social work and law in Canada. Although many chapters concentrate on Ontario's laws—for example, Ontario's *Child and Family Services Act*, *Family Law Act*, and *Children's Law Reform Act*—the authors also discuss legislation from other provinces as well as Federal legislation such as the *Divorce Act*, *Criminal Code of Canada*, and the *Canadian Charter of Rights and Freedoms*.

The book is divided into five parts: Part I, *Fundamentals*; Part II, *The Legal Regulation of Families*; Part III, *Criminal Law*; Part IV, *Selected Topics in "Social Law"*; and Part V, *Legal and Regulatory Issues for Social Workers*.

The book begins with a series of chapters that describe the judicial process, the structure of the court system, and the litigation process. How the practice of social work fits within a legal framework is also covered with a description of the tension between these two.

The chapters on family and criminal law are the most expansive. However, other areas of the law including (but not limited to) mental health law, poverty law, human rights law, and immigration law are explored.

The book is easily accessible to the reader, providing a wealth of information about the fundamentals of law and the legal process itself. It offers a great synopsis and overall picture of the legislative framework.

Social workers within a legal context can often find the legal process and legislation in which they operate overwhelming and difficult to understand. After reading this book, a social worker should have a better grasp of the law, which in essence demystifies the legal framework that governs their area of employment.

Articling students and young lawyers beginning the practice of law would benefit from the chapters within, particularly those on family or criminal law. For young lawyers, it serves as a reminder of the content covered in law school and a primer for the more practical aspects of law, in addition to helping them understand the role of a social worker in various settings, which they are sure to encounter in their practice. I highly recommend this book to social workers, law students, articling students, and young lawyers as a reference for practical knowledge of a social worker's role within various legal contexts.

**REVIEWED BY
TRACY PYBUS**
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***The Law of Adjournments: A Manual on Postponement.* By Jeffery Wilson and Laura Cardiff. Toronto: LexisNexis Canada, 2016. ix, 157p. Includes bibliographic references and index. ISBN 978-0-433-47790-7 (softcover) \$95.00.**

Requests for adjournment are one of the most common types of motions, and courts have a broad discretion in adjudicating these requests as part of their inherent power to control their own process. The general principle is that the interests of justice must govern the decision to grant or refuse an adjournment, and the application of this principle requires the court to balance the interests of the parties against the interests of the administration of justice. For example, an adjournment may be granted despite the fact that the party seeking the adjournment has been at fault in some way, such as failing to prepare or failing to seek counsel in a timely manner. If the court would otherwise not be able to effectively make a final determination in the matter, an adjournment may be necessary to ensure a full and fair hearing.

Previously, the law relating to adjournment requests was

covered by a few paragraphs or pages in civil procedure texts. This new contribution to Canadian legal literature expands upon the general principles outlined in those texts to provide a comprehensive review of the full body of adjournment case law. The numerous cases summarized here illustrate the facts and considerations that lead to different results in what appear to be similar situations.

The five chapters in this short text are well organized and there is a detailed table of contents and index. The first chapter provides a general overview of the types of adjournments that can be granted and the general principles relating to adjournments. In the second chapter, the authors discuss possible reasons for adjournment requests, such as retaining counsel, illness, obtaining further evidence, securing the attendance of witnesses, settlement discussions, and adjournments pending appeal. Chapter three outlines special considerations that apply in professional disciplinary hearings, child custody cases, child protection hearings, appeals, and motions. The fourth chapter gives practical advice and tips for those seeking adjournments, including timing, proper procedure, use of evidence, and steps to take if the request is denied. The final chapter deals with costs of adjournment requests.

The vast case coverage includes decisions from the Yukon Territory to Newfoundland and Labrador. Requests for adjournment made by individual litigants due to personal circumstances make up the majority of cases covered in the book, especially individuals involved in criminal, family/child welfare, and professional discipline cases.

The Law of Adjournments would be a useful addition to the libraries of organizations that have significant litigation practices, particularly those with family, criminal, child welfare, and professional disciplinary practices. With its readable style and user-friendly format, this book would also be a helpful resource to those self-represented parties who comprise a large segment of those seeking adjournments. Libraries that support self-represented litigants, such as public, courthouse, and academic libraries, should also consider adding it to their collection.

**REVIEWED BY
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***The Law of Contempt in Canada. 2nd ed.* By Jeffrey Miller. Toronto: Thomson Reuters, 2016. xli, 294 p. Includes bibliographic references and index. ISBN 978-0-7798-6788-2 (hardcover) \$213.00.**

Jeffrey Miller's second edition of *The Law of Contempt in Canada* builds on the first edition with a doubling of content from his 1997 text. The book is engaging and thorough. It is also one of the few resources with a Canadian perspective published on this topic, and it is the most authoritative on the subject.

The author provides an historical introduction and overview

of contempt law, as well as Constitutional, jurisdictional, and procedural considerations. He also covers issues like disobedience of the court process and court orders and discusses the *sub judice* or “publication contempt” rule, the offence of scandalizing the court, as well as contempt of other bodies and offices. The book also includes lists and an explanation of the defences that can be invoked with respect to contempt and penalties that can be incurred. Finally, he discusses different aspects of the appeals process. Each chapter is organized logically proceeding from a general overview defining basic concepts to an in-depth analysis of the topic. The book’s focus is on Canadian law but is sprinkled liberally with references to case law and legislation from the United Kingdom with a few references to the United States, Australia, and New Zealand.

While the basics are covered for novice practitioners, the more seasoned lawyer will find a concentrated analysis of specific issues in contempt. Also included is an historical discussion, which is a wonderful (and for this reviewer, vocabulary enhancing) read with references to UK cases from 1631 and earlier.

Additional resources and supplements are available through Miller’s website, via Thomson Reuters. It provides access to chapter six, “Disobedience of Court Process and Procedures,” along with various updates, including a supplement dated October 28, 2016 with discussion of the SCC decision *Morassee v Nadeau-Dubois*, plus updates to the two appendices on alleged contempt of a Rabbinical

Court and cautionary scandalizing prosecutions. The author anticipates posting regular updates to case law and secondary literature as well as supplements to his website <www.jeffreymiller.ca>.

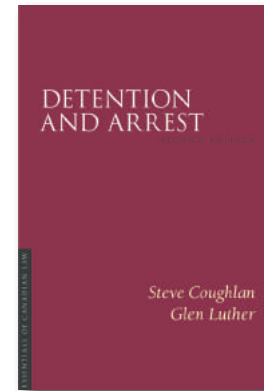
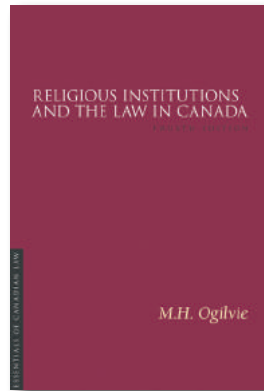
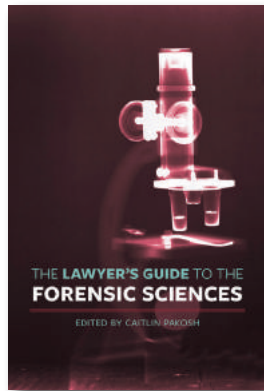
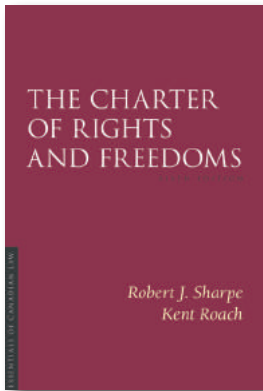
There is, of course, tremendous value in having access to these author-supplied updates. Jeffrey Miller has a considerable history as a literary reviewer, consultant, speaker, lawyer, and writer of law books, legal history, and literature. Mr. Miller has written nine books in total, and is also a French-English translator. He has been an adjunct professor and lecturer on law and literature. His experiences and skill in writing shine in this volume.

The text is one of the few resources on this topic suitable for the novice or senior practitioner in the area of the law of contempt. The volume includes a table of contents, a table of cases, abbreviations particular to this book, footnotes, defences to contempt, a penalties-sentencing digest, and an index.

Miller’s book was a pleasure to read and review. *The Law of Contempt in Canada* is a must-have for any library serving lawyers practicing in the area. The book is easy to read and provides the most entertaining and plain language discussion of contempt of law concepts. Librarians and novice and more practiced lawyers will appreciate this edition.

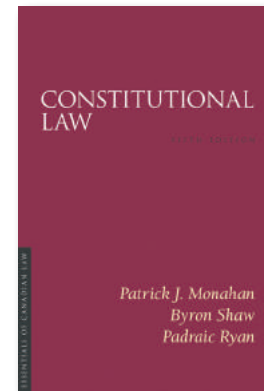
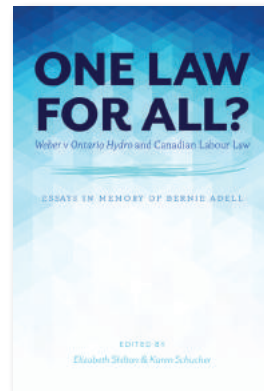
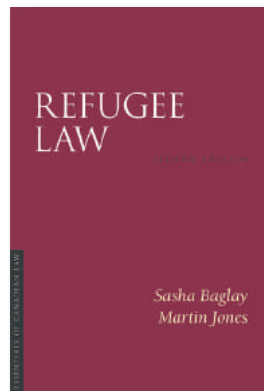
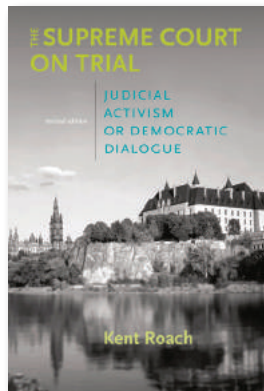
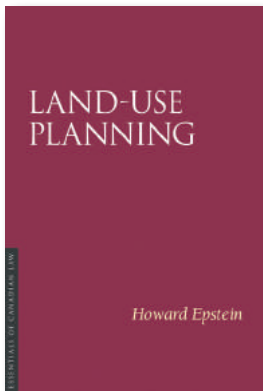
**REVIEWED BY
LAURA LEMMENS**

*Acting Head, Library and Open Information
Alberta Government Library*



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Macdonell, Sheard and Hull on Probate Practice. 5th ed. By Ian M. Hull and Suzana Popovic-Montag. Toronto: Thomson Reuters, 2016. 800 p. Includes table of cases, table of statutes, rules of civil procedure (selected portions and forms), and index. ISBN/ISSN/Product Number: 978-0-7798-5935-1 (hardcover) \$361.00.

Macdonell, Sheard and Hull on Probate Practice is a comprehensive volume offering practical guidance, including a full set of statutory forms and precedents. This updated and expanded volume provides an exhaustive and in-depth analysis of over 1500 Canadian and United Kingdom court decisions covering the key issues affecting contentious and non-contentious estate practice, and has been cited often by the courts in every province, as well as by the Supreme Court of Canada.

Virtually every aspect of estates law is covered, from the most basic issues to highly complex problems. Coverage includes: applications for probate, administration, administration with the will annexed, administration *de bonis non* situations, multiple wills, administration by litigation administrator, and alterations in grants. Also covered are orders for assistance, notice of objection to accounts, formal proof of testamentary instrument, proof of lost or destroyed will, revocation of wills, practice on appeals and costs, who may be appointed executor under the *Uniform Trustee Act*, and the manner of appointing an executor grant of probate or administration.

The final chapters address conflict of laws, including alleged invalidity, choosing the convenient forum, ancillary grants in conflict of laws situations, nominating an Ontario nominee estate trustee, contentious proceedings involving notices of objections (caveats), motions and applications for directions, trial by jury, disputes over lost or missing wills, revocation of certificate, and effect of revocation. There is also a separate and detailed chapter on executors' and solicitors' costs.

Legislation and rules governing practice in estates, along with fee information, are included for reference. Written in a user-friendly format with a detailed index and helpful subheadings, *Macdonell, Sheard and Hull on Probate Practice* is accessible not only to seasoned practitioners and courts but the lay reader as well.

**REVIEWED BY
PHILTON MOORE**

*Barrister, Solicitor & Notary Public
Moores, Law & Dispute Resolution Practice*

Misfeasance in a Public Office. By Erika Chamberlain. Toronto: Thomson Reuters, 2016. 240 p. ISBN: 978-0-7798-7052-3 (softcover) \$112.00.

Misfeasance in a Public Office is a great introduction to and discussion of the elements of a tort that is not well known and has been developing in the past 15-20 years. The research is backed up with case law references and details, and the writing style is engaging and makes reading a pleasure. It is not often that a reader can describe a legal text as enjoyable and easy to pick up, but this book is certainly deserving of that description. Western University Faculty of Law professor Erika Chamberlain provides an expert analysis on the topic

which is conveyed in an interesting and effective manner.

Chamberlain discusses misfeasance, an action that has languished as the general law of negligence took a paramount role in the courts of the common law countries around the world in the twentieth century. It occurred to me that the title could have also been *What to do about Rogue Public Decisions in the 21st Century*.

The book is divided into seven chapters. Chapter one deals with why there is a need for this tort in societies that are increasingly involved with government decisions and demands. It then reviews misfeasance in brief and lays out an overview of the book.

Chapter two deals with the history of misfeasance, which arose from voting and licensing decisions in England. It describes the conflict between protecting public offices and officers (many of whom may be volunteers) from unnecessary lawsuits, and at the same time ensuring that those who are subjected to bad faith decisions causing a loss have a remedy that is crafted for that kind of circumstance. Those cases "affirm that private law played an important role in promoting accountability of public officers." The chapter concludes that malice or bad faith by a decision maker is a necessary element of this tort, which also involves establishing that there was a public purpose for the decision and that damages were actually suffered by the person who was decided against.

Chapter three deals with the theoretical justifications for the existence of misfeasance—interestingly, in a later chapter, there is an indication of the English Law Commission suggesting this tort was no longer necessary, but that recommendation was never acted on. There is an abundance of cases cited and discussed from Canadian courts and other common law courts, primarily England, Australia, and New Zealand. This tort "does not require the Plaintiff to show the violation of some independent right or the breach of a duty ... it is enough that the defendant has acted in a way that is deliberately unlawful and that the Plaintiff has suffered some foreseen harm." As such, it is analogous to breach of a fiduciary duty and all that that implies.

Chapter four steps back to review the key elements of the tort and the different ways courts have focussed on them. The text explores who is a public office holder, and what claims can be pursued against municipalities and the Crown and other statutory bodies. Cases are summarized and quoted so that the reader has a good sense of the rationale for each decision. In discussing several Canadian decisions, the author concludes:

these cases suggest that even if the defendant is a public officer he or she may not necessarily be liable for misfeasance for claims related to contract formation, management of property or human resources but those instances may give rise to other private law claims (pp 100 & 101).

The book then canvasses other claims but restates that conduct that forms the foundation for a misfeasance claim

must be deliberately unlawful. The discussion indicates that unlawfulness cannot be presumed but must be clearly established. It is apparent that to succeed there must be some inside information obtained showing motive and malice. This chapter is an exhaustive catalogue of the key considerations in framing a claim based on this tort.

Chapter five reviews the broad scope of remedies available in such a claim, including economic loss, punitive damages, and aggravated damages. It reviews the basic elements of each of those types of damages and provides cases to illustrate how the courts have gone about fashioning remedies or limiting them in certain cases. The author points out that there have been a relatively small number of final judgements, so that the remedial principles and potential for misfeasance have not been fully explored.

The book concludes with chapters six and seven, which deal with the relationship of misfeasance to other areas of the law, along with its future. The discussions are wide-ranging, thoughtful, and replete with case examples.

Misfeasance in a Public Office is an excellent background read for anyone interested in considering or applying this tort. It covers all of the issues and elements in a very readable format and is required reading for any tort lawyer interested in misfeasance.

REVIEWED BY
DON KIDD

Smith Valeriote Law Firm LLP

***Principles of Boundary Law in Canada.* By Izaak de Rijcke. Guelph, ON: Four Point Learning, 2016. 544 p. Includes index. ISBN 9781927693162 (paperback) \$245.**

Principles of Boundary Law in Canada by Izaak de Rijcke is an illuminating work. It presents a challenging notion most of us, if we own a home or piece of land, may consider to be so self-evident that we scarcely give it a thought: that in order to fully understand the boundaries of our property, we need to understand what property itself is. But ideas regarding what property *is*, and how we may modify it, are not static. They have changed over time. The policy choices of various governments, for example, have placed restrictions on what we, as individuals, may do with what we regard as our own property. In most jurisdictions, we cannot—simply because we’d like to—demolish our house, add another floor or two to it, or even turn it into a store. Nor can we claim a right to a view, or to sunshine and fresh air flowing through our windows.

To bring the reader up to speed, *Principles of Boundary Law in Canada* opens with an overview of the law of property before moving on to discuss this vexed matter of boundaries. The reader quickly learns that complexities proliferate in this area of law. Boundaries, de Rijcke explains, are established through the actions of people or the Crown, or through an order of the court. They don’t come into existence merely because a there is a plan of survey, which is what many owners tend to believe.

True, the lines on a plan of survey, once they are established as legal boundaries, set out a distinction in ownership rights (i.e., how the nature and ownership of rights differ from one side of the boundary to the other), and legal sanctions exist to reinforce those rights. But where the surveys themselves are in doubt or there is some ambiguity in the grant or deed to property, intention may play a key role in determining boundaries.

For instance, older grants and deeds frequently refer to artificial monuments (e.g., a stone wall), as well as natural landmarks (e.g., a three-hundred-year-old oak tree) to establish property boundaries. Unfortunately, these may have been altered or moved or could have disappeared entirely over time. In such cases, though existing fences are often accepted as strong evidence of where lot lines should actually be, land surveyors will need to search for other confirmation in order to ascertain the intention of the grant. *Principles of Boundary Law in Canada* presents a multitude of cases and other sources that consider the types of extrinsic evidence necessary to determine intention and resolve any ambiguities that have arisen.

A variety of peculiarities in the law related to this domain are dealt with in the book, most notably, certain cases of adverse possession (sometimes referred to as “squatter’s rights”). These involve situations in which someone who is, for all intents and purposes, a trespasser upon a piece of property or even a dwelling-place can, through “exclusive, continuous, open or visible and notorious” occupation of the property in question, end up claiming title to what was formerly someone else’s.

Other related anomalies include such matters as the boundaries of easements (a legal right to cross or otherwise use someone’s land for a specified purpose), and public roads. Land registration systems, including their historic origins, are covered in depth, and the use of natural boundaries (e.g., rivers or lakes) is insightfully considered. Likewise, the question of Aboriginal title and associated boundaries are dealt with in light of the common law, current legislation, and agreements.

De Rijcke does not belabour us with mathematics for most of the book. But in the final chapter, he feels he must discuss a mathematical model that captures “the spatial extent of property rights by using co-ordinates to define a point, line or plane in virtual space” (p 413). Non-mathematicians will forgive him that, especially since he makes it appear coherent, and even comprehensible. Three useful appendixes—“The Canadian Context of Common Law for Land Surveyors,” “Overview of Land Surveying for Lawyers,” and “Boundaries and Ethics”—round out the volume.

This book was an unexpected pleasure to read. It fills a much-needed gap in Canadian publishing in that it bridges two professions: law and boundary surveying. If I may introduce a personal note: when I articulated 20 years ago in a law firm with a significant real property practice, I had to spend a great deal of time at a local land registry office. During that period, I would have relished such a book, dispelling as it does many of the seemingly impenetrable mysteries I

had to deal with. *Principles of Boundary Law in Canada* is an exceptionally well-written book, full of insights into the practical and theoretical considerations of its topic. The book is a must-have for every law firm with a real property law practice, as well as for court and academic libraries.

REVIEWED BY
NANCY MCCORMACK
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Kingston, Ontario

***Sentencing and Penal Policy in Canada: Cases, Materials, and Commentary.* By Allan S. Manson, Patrick Healy, Gary Trotter, Julian Roberts & Dale E. Ives. 3rd ed. Toronto: Emond, 2016. xxxiv, 1015 p. Includes table of cases. ISBN 978-1-55239-655-1 (hardcover) \$129.00.**

I recently attended a presentation on sentencing research where the presenter included this book in his list of “go-to” secondary sources. I was familiar with Manson’s earlier text, *The Law of Sentencing* (Toronto: Irwin Law, 2001), but I had never used this text before. Personally, I would not put it on a list with Ruby or Clewley & McDermott. While I have no doubt that it would be a very useful resource for students learning about sentencing, it is of limited relevance for criminal law practitioners. Students may, however, be frustrated by the fact that no answers are provided for the problems and questions posed throughout the text.

This text is written by the same set of illustrious authors that created the second edition, which was published in 2008. In fact, this edition is slightly shorter than the last one, even though “further reading” sections have been added for all chapters. A new chapter on the *Charter* and sentencing has been added, addressing ss 3, 7, 12 and 24(1). However, the final chapter, “Post-Appeal Sentencing Issues,” now consolidates the discussion of parole, early release, and other post-appeal issues into one chapter.

In terms of formatting, the third edition is definitely easier to read than the second edition. Two big improvements are the brief tables of contents at the beginning of each chapter, as well as the parts indicating excerpts from cases with a vertical line down the side of the page. Unfortunately, the text does not contain an index.

In terms of its case law coverage, many recent cases are quoted in the text—it is thoroughly up-to-date. There are sections of the text that may be useful to articling students and lawyers new to criminal law, such as the section on aggravating and mitigating factors in chapter three. However, most of the text features brief comments by the text authors, relying primarily on extracts from cases and articles, which serves, at the very least, as a good way to determine relevant and leading cases on specific aspects of sentencing law at a glance.

Irwin Law advises that Manson is working on a second

edition of his Essentials text on *The Law of Sentencing*, which I expect will be more helpful to practitioners than this book filled with case law excerpts. In the meantime, while this resource will be useful to students, I expect practitioners will continue to rely primarily on Ruby et al, *Sentencing*, 9th ed (Markham: LexisNexis, 2017) and Clewley, McDermott & Young’s *Sentencing: The Practitioner’s Guide* (Toronto: Carswell, loose-leaf), or perhaps Gold’s “Criminal Procedure” title in *Halsbury’s*, which addresses sentencing in Part XI.

REVIEWED BY
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Legal Research Counsel
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***U.S. Supreme Court Opinions and Their Audiences.* By Ryan C. Black, Ryan J. Owens, Justin Wedeking and Patrick C. Wohlfarth. Cambridge, UK: Cambridge University Press, 2016. 185p. Includes bibliographic references and index. ISBN: 9781107137141 (hardcover) \$126.95 (CAD).**

In these politically uncertain, divisive times, the institution of the Supreme Court of the United States stands as a bastion of independence, the ultimate defender and interpreter of the Constitution. As the non-elected, co-equal third branch of the government, the Court is perceived to operate above the vagaries of the political fray. This perception persists, despite the strong politicization of the appointment process. Nevertheless, it is important to remember that justices do have an agenda: they want their decisions to be followed. *U.S. Supreme Court Opinions and Their Audiences* posits the theory that the learned justices alter the clarity of their opinions to promote compliance with the Court’s decisions.

The authors are the first to examine systematically how justices adjust the language of their opinions to influence their audience. They believe that strategic opinion writing by the justices enhances compliance with the Court’s decisions and seeks to garner public support for the Court.

The authors measure opinion clarity by relying on textual readability: the ability of general readers to understand the text. The authors collected every Supreme Court majority opinion from 1946 to 2012 and applied 19 separate readability formulas to each decision. The third chapter of the book details extensively the types of formulas employed and the metrics analyzed. The authors prove that their measures accurately predict comprehension and expected compliance by employing a sample of undergraduates to read and rate cases of varying readability.

The authors test a wide range of hypotheses related to their main premise that Supreme Court Justices write more clearly when most concerned with the assurance of compliance. These concerns arise when the lower courts are ideologically distinct, when deciding cases dealing with government agencies with small budgets and few

resources, and when dealing with more professionalized states.¹ In all three of these instances, clearer opinions are written. The authors surmise that opinion clarity minimizes the discretion afforded to the stakeholders and make the detection of noncompliance easier. The court's legitimacy is the foundation of its support; consequently, decisions that run counter to general public opinion tend to be crafted with more clarity.

The authors believe their research and conclusions could be the foundation for further research evaluations, including how various political climates influence opinion clarity, how clarity is demonstrated in different legal systems, and what other influences affect clarity. In these politically acrimonious and conflict-ridden times, this study of the United States' Supreme Court is relevant and opportune. While the book's clear writing style should appeal to students of law and political science, large portions of the text contain extensive social science and research jargon that might require more focus by a reader not trained in the methodology. This book would be an interesting addition to an academic law library collection or that of professional or dabbling constitutional scholars; however, its usefulness to a law firm library would be minimal.

**REVIEWED BY
NANCY FEENEY**

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***Understanding Charter Damages.* By W.H. Charles. Toronto: Irwin, 2016. 184 p. Includes index and appendices. ISBN 978-1-55221-390-2 (paperback) \$55.00.**

Understanding Charter Damages by W.H. Charles is full of essential information for those studying the *Charter of Rights and Freedoms* in an academic setting as well as for those practicing law. Each chapter documents the evolution of *Charter* damages in a methodical way, allowing readers to turn quickly to the relevant parts of the book. A reader with more time can learn about damages as they evolved, while another reader, pressed for time, can locate the specific case that led to a significant change in the jurisprudence.

Throughout the book, the author has set up each chapter by telling the reader, in the introductory paragraphs, how that chapter will approach the subjects to be covered in it, thereby allowing the reader to locate relevant information quickly. The chapters are further broken down into easy to read and manageable sections with clear headings.

The book is incredibly well researched. The author cites key sources in the text and multiple sources in the footnotes. Although this results in certain pages being consumed by footnotes, the reader is never left questioning the validity of any claim made in the book.

Chapter eight, "Final Observations and Conclusions," is a well-reasoned and thought-provoking chapter. The author provides a crucial overview of the state of the law at the time of writing. He also breaks the review of charter evolution into three subsections "the frequency of use, the success rate, and the amount of damages awarded" (p 123).

The final chapter provides some qualifiers on the rest of the study, such as the author's choice to exclude cases involving "criminal proceedings in which either the claimant requested legal costs or the court awarded them" (p 125). The information provided in this final chapter would have been helpful for the reader to know at the beginning of the book, and it is suggested that any reader, whether academic or a practitioner, review this chapter before reading the rest of the book. At only six pages, it is not too time consuming but does help put the rest of the book into perspective.

Overall, *Understanding Charter Damages* is an excellent resource for summarizing the development of the law in the area of charter remedies. As well as containing a useful index, the book also has detailed appendices. A master case list makes follow-up research simple. Separate appendices break down and summarize the awards given in cases with notes on the type of awards and any significant facts. The format is easy to read, and the amount of research and supporting sources provided will save any reader hours of research time.

**REVIEWED BY
ALAN FAEORIN-CRUICH**
*Criminal defence lawyer
Guelph, Ontario*

¹The authors draw a distinction between more professionalized states (which pay their legislators well, have tangible resources, larger legislative staffs, and convene frequently) and less professionalized states (which they refer to as citizen legislatures, where average people hold office while keeping their normal full-time jobs).



III Bibliographic Notes / Chronique bibliographique

By Susan Jones

Edward Luca & Bhuvan Narayan, “Signage by Design: A Design-Thinking Approach to Library User Experience” (2016) 1:5 Weave: A Journal of Library User Experience. Available online: <<http://dx.doi.org/10.3998/weave.12535642.0001.501>> (accessed 17 April 2017).

Signage plays an important role in helping users navigate the physical landscape of a library. Carefully planned and well-thought-out signage welcomes users, instructs them how to use the space, and contributes to the creation of a user-friendly environment and an overall positive user experience. Poor signage, on the other hand, is inconsistently designed, authoritative, overloaded with information, poorly maintained, and outdated. What’s more, poor signage is often ignored by users and may contribute to their feelings of anxiety, confusion, and frustration. In this article, authors Edward Luca and Bhuvan Narayan, from Australia’s University of Technology Sydney (UTS), explain how staff at their library used a design-thinking approach to develop signage that supported their vision of the library as a collaborative and creative environment with friendly and approachable staff. The authors begin their article by describing their own institution and why they decided to redesign the signage. Next, they describe how they adapted the design-thinking process to the development of new signage for an academic library, then they explain how that approach was executed, and finally, they illustrate how the design-thinking principles were applied to the various types of signage in their library.

Staff at UTS Library found themselves in a position to redesign all of the signage when the physical space in the library was reconfigured. As noted earlier, the existing

signage didn’t support their vision of the library as a friendly, welcoming space with approachable and helpful staff. The reconfiguration of the library space, however, wasn’t the only reason for redesigning the signage. It was clear the library’s existing signage was inadequate from the number of questions staff repeatedly answered about the library’s collections, space, services, and facilities.

To develop new signage that was useful, supported their vision, and enhanced the user experience, staff decided to adopt a design-thinking approach. Put very simply, design-thinking is an approach that uses various creative methods during the process of designing or problem-solving. The authors make reference to a couple of articles on design-thinking that provide further explanation of this approach. The first one comes from Wasim A. Alhamdani, who describes design-thinking as “an inventive process of thinking backwards from people ... that leads to design a product, a service, or else is based on the conclusions of the knowledge gathered in the process” (“Teaching Cryptography Using Design Thinking Approach” (2016) 11:1 Journal of Applied Security Research 78 at p 80). Also helpful is the description by Rim Razzouk and Valerie Shute, who state that design-thinking “engages a person in opportunities to experiment, create and prototype models, gather feedback, and redesign” (“What is Design Thinking and Why is it Important?” (2012) 82:3 Review of Educational Research 330 at p 330).

The design-thinking process has been applied in various fields and industries and was adapted by the staff at UTS to suit an academic library. Their version of the design-

thinking process involved five phases, which the authors describe in some detail. The first phase of the process was *empathy*. Empathizing with users is one of the hallmarks of the design-thinking process, so to empathize with and understand their own users—which includes students, staff, faculty, and the public—the staff at UTS Library observed, shadowed, interviewed, and informally conversed with them over a period of several months. They also conducted library sweeps or timed walks through the library to gather and document information about user behaviour, including signage-related behaviour. The questions staff received at the reference desk were also tracked and showed that users asked about things that current signage in the library was meant to address. This included how to find spaces (e.g., printing room, group study rooms), services (e.g., library workshops), and resources (e.g., library collections). All of these efforts provided staff with information about the user experience that proved to be more valuable than any of the data collected in their past user surveys.

The second phase of UTS Library's design-thinking process was *definition*. The information gathered during the empathy phase was used to define the problems with existing signage and identify the service points and areas within the library in need of signage. As part of this phase, staff conducted a signage audit, which involved taking photographs of all existing signage and then evaluating and logging them in a spreadsheet that tracked each sign's type, location, text, usefulness, brand, and whether it was to be updated or removed. Staff learned some important things from the signage audit, including that many signs were reactions to temporary problems that had long since been resolved. Also, many signs had never been updated to use the library's current branding, were poorly designed, included too much information or referred to the same information, and were old, faded, and unprofessional.

The third phase of UTS Library's design-thinking process was *ideation*. Using the information collected during the signage audit, 17 of the 54 signs were immediately removed because they were now irrelevant, duplicated information found elsewhere, or the message was at odds with other signage. This was also the time when staff held several brainstorming sessions to get everyone's perspective and input on the design of the new signage. That input was used to create a template for new signs that incorporated a simple, clear typeface and complementary background colours. The template divides all signs into two parts. The top part is an attention-grabbing message in large type and the bottom part provides further detail in smaller type. To illustrate, the message in the top part of one sign reads, "I'm having some minor malfunctions," while the bottom message in smaller type is, "Sorry, you'll have to find another computer to use." At the very bottom of this sign, and all new signs, is the #utslibrary hashtag and the icons for the library's social media accounts.

The fourth phase was *prototyping*. During this phase, staff trialled a range of signs, starting with common printed signage, hanging identification signage, and finishing with

directional signage. By printing the signs themselves on standard office printers, staff could try different messages and colour combinations at relatively little cost.

The fifth and final phase of UTS Library's design-thinking process was *testing*. Because staff kept costs to a minimum in the prototyping phase, they were able to carry out the testing phase at the same time. The prototyping and testing phases ran concurrently for a two-year period during which time staff were able to get feedback from users on every iteration of the prototyped signs before settling on the final versions.

In the final part of the article, the authors discuss how the design-thinking principles were applied to the various types of signs at UTS Library. As a reminder, every sign in UTS Library was assigned a type during the signage audit in the definition phase of the design-thinking process. These sign types are defined by Aaron Schmidt and Amanda Etches in their book *Useful, Usable, Desirable: Applying User Experience Design to Your Library* (Chicago: American Library Association, 2014). Schmidt and Etches's five types of signs are directional, identification, instructional, regulatory, and informational. To this list, the staff at UTS Library added a sixth type called *fun and delightful*.

Directional signage helps users get to where they want to go. At UTS Library, directional signage serves four purposes: to help users orient themselves upon entering the library, to locate a specific area (e.g., study room, training room, quiet study area), to find a particular part of the collection (e.g., print, other media), and to locate facilities (e.g., bathrooms, computers, printers, water fountains). When installing directional signage, its placement is an important consideration. This type of signage is most useful when posted at decision points—in other words, those areas where users typically stop or hesitate as they work out where they need to go next. To identify the decision points at UTS Library, staff interviewed their users and observed and shadowed their movements throughout the building over a period of several months. With this information, staff plotted the decision points on the library's floor plans to determine the best placement for the directional signage. Another key consideration in the placement of directional signage is height. Much of the old signage at UTS Library was hung from the ceiling, far above the eye-level of users and therefore largely ignored by them. To test the overall placement of the directional signage, staff placed the prototyped signs on portable stands at the identified decision points.

The second type of signage is *identification* signage. This type of signage is best exemplified in libraries by the call number ranges that appear at the end of stacks to help users locate specific books or other classified items. Studies referenced by the authors, however, show that some students, particularly new library users, are confused by call number classification. The addition of colour-coding and the broad subjects associated with call numbers help ease that confusion and promote browsing. UTS Library staff decided to incorporate these ideas into their own identification signage for the collection. To promote browsing and discovery, broad

subjects that matched students' areas of study (rather than call number classification) were added to the signage. The input of liaison librarians was very important in this exercise as they were aware of the terms and subjects that would be most useful to UTS students. In addition to the subjects, colour-coding was added to the call number signage. Colour-coding was already used in the online catalogue to visually differentiate subject ranges, so the same scheme was applied to the signage. Another example of identification signage at UTS Library was the sign identifying "G-Row," a row of computers available for use by community members, including alumni, visitors, and independent researchers. No one could remember the meaning behind the name G-Row, and it was the only named row of computers in the library. To improve the user experience, the sign was replaced with one explaining that the computers were for the use of community members. The authors note this example to highlight the importance of questioning and evaluating the status quo when it comes to library signage.

The third type of signage is *instructional*. This type of signage shows or explains how to use library services and facilities. Instructional signage is often poorly designed, outdated, and found in abundance on every surface. In an attempt to be helpful and to resolve problems that have been brought to their attention, staff quickly prepare a sign to explain a procedure or provide instructions. These hastily created signs, however, are usually a red flag that something isn't working. But that's not to say a professionally created, appropriately branded sign is going to solve the problem, either. Some complicated procedures are best communicated to users not through signs, but in person or in a handout or flyer. This was the case for printing and copying at UTS Library. Printing is often a complicated procedure at academic libraries and these services at UTS Library were no exception. Users asked many questions about printing and copying at the reference desk, and staff endeavoured to find out why as part of the process to revamp library signage. To get to the root of the problem, staff observed and shadowed the people using UTS Library's Print & Copy Room. There was plenty of signage explaining how to add print credits to user accounts, but the instructions and terminology used weren't consistent. And there was no signage advising users that they could also print from their own laptops and mobile devices. To address the issue, all existing signage was removed from the Print & Copy Room. Then, the page of the library's website on printing and copying was rewritten to include separate sections for printing from a library computer and printing from a laptop or mobile device. In addition, a handout was created for distribution at the reference desk explaining how to print from students' own personal devices. Finally, new signage was posted in the Print & Copy Room that provided clear and simple instructions on how to add print credits to an account, how to print, and how to copy.

The fourth type of signage is *regulatory*, the purpose of which is to ensure rules are followed and to guide user behaviour. The authors note that this is the most difficult type of signage to implement. Some believe that all regulatory signage should be removed because it's ineffective and mostly

ignored by users anyway. Still others eschew regulatory signage because it doesn't contribute to the creation of a welcoming environment and a positive experience for users. Staff at UTS Library confronted these challenges when deciding how to control the noise levels on its designated silent floor. That area was cluttered with regulatory signage displaying messages such as "no smoking," "text, not talk," "quiet environment," and "silent zone." All of that signage was removed and instead of posting new signs on every available surface, staff focussed on the three access points to the silent floor: the elevator and the front and rear stairwells. Staff prototyped and tested a number of designs, but the sign that greets users today as they arrive on the silent floor is, "PSST! This is a silent floor." The authors point out that "psst" was chosen over "shh" because it's less of a command and more of an amusing reminder. Also, silver lettering was chosen over black because it makes the message less confrontational. Finally, the authors note the new signage is, in fact, instructional rather than regulatory. The success of the new signage on the silent floor was marked by a noticeable reduction in noise levels.

The fifth type of signage is *informational* and provides users with information they need or may not even know about. One example is the signage that appears close to the group study rooms—one of the identified decision points in the library—that advises students they can book a room. Another area at UTS Library where informational signage is important is the entry foyer. One of the challenges in this area is conveying to users that the ground floor is actually level 2. There was plenty of signage in the area alerting users to this fact, but it was all hung from the ceiling and so largely overlooked. To ensure that users knew on which floor they were entering the library and to facilitate their movement through the space, large, colour-coded floor numbers were positioned at eye-level near the elevator and at the front and rear stairwells. In addition to the floor numbers, a directory was installed near the stairs in the foyer so users can direct themselves accordingly.

In addition to the five traditional types of signage, staff at UTS Library created a sixth type called *fun and delightful*. This type of signage serves no other purpose than to create a positive, creative, and welcoming environment. Staff wanted to surprise their users with humour where they might otherwise least expect it and where they might even expect censure or disapproval. One example is found in a cozy spot beneath a stairwell where a number of beanbag chairs are placed. Students could often be found sleeping there, although they were never quite sure whether it was an appropriate use of the space. As part of the process of installing new signage, staff created a sign for that area that reads, "Congratulations! You've found the best sleeping spot on campus." This sign lets students know it's acceptable to use the space for sleeping and encourages them to use it for that very purpose. Another example of the fun and delightful signage is found at the return chutes. Originally, the signage above the three chutes showed call number ranges so that users could sort their returns. Ironically, all the returns were mixed together before being checked in, so the pre-

sorting didn't serve any real purpose. To inject a bit of fun and playfulness into the user experience, the call number ranges were replaced with signs that read, "books you loved," "books you didn't," and "everything else." Not only is the new signage fun, it also makes users stop and reflect on the material they've just borrowed. If the dozens of photos posted by students on social media are any measure, staff's efforts to cultivate an image of the library as a welcoming and creative place through fun and delightful signage have been a success.

In closing their article, the authors encourage others to consider using a design-thinking approach to the development of their own signage. While the solutions presented in the article focus on the problems in an academic library, the authors assert that the basic design principles, and the focus on users and their experience, can be applied to almost any library.

Autumn Faulkner, "Teaching a New Dog Old Tricks: Supervising Veteran Staff as an Early Career Librarian" (2016) 31:1 Library Leadership & Management. Available online: <<https://journals.tdl.org/llm/index.php/llm/article/view/7206>> (accessed 17 April 2017).

There's no shortage of articles about the management skills that librarians need, but what's lacking is advice and guidance about managerial skills for *early career librarians*, specifically those who are responsible for supervising veteran staff. This was the challenge that author Autumn Faulkner faced just two years out of library school, and, in the absence of any advice in the published literature, the author offers her own words of wisdom to her peers in a similar situation.

In her second year as a cataloguing librarian at Michigan State University Libraries (MSU Libraries), the author accepted the position of Assistant Head of Cataloging and Metadata Services. In taking on that role, she became responsible for supervising five veteran copy cataloguers, all with at least 10 years of experience, and some with much more. In comparison, the author describes her own experience at the time as having moderate breadth, but not much in the way of depth. Her first two years out of library school were spent acquiring basic cataloguing skills, understanding authority work, learning the ins and outs of the integrated library system, and grappling with the concepts in Resource Description and Access (RDA). She felt like she was still learning the ropes when she took on her supervisory responsibilities. Even so, she believes that new or early career librarians can, in fact, be effective and competent managers of veteran staff. The best practices the author shares in this article are based on her own experience, and in giving this advice she hopes to provide a little support and reassurance to others in similar circumstances. In the first part of the article, the author shares her advice for *managing your team* and in the second part, her best practices for *managing yourself*.

When it comes to *managing your team*, the first thing that early career librarians should do is establish trust with staff. It's natural for staff to feel or express some trepidation when a new manager comes on board, but the author advises librarians not to take it personally. Instead, early career managers should convey to staff that they're willing to learn and are committed to supporting their work. The author offers three ways that new managers can convey this information to staff and establish trust.

One way for early career managers to establish trust with staff is to *ask questions about the workflows each person handles*. The author stresses that this is an information-gathering exercise only at this point. Now is not the time to comment on how staff carry out their work. Instead, just focus on understanding how each person's work fits into the overall operation. This is also the time to acknowledge each person's skills and experience and to convey your intention to watch and learn. These conversations not only allay the fears that staff may have about new managers, but also serve to alleviate the anxiety of new managers themselves. Taking the time to understand everyone's responsibilities and how things work enables new managers to make informed decisions and to better plan the way ahead for staff.

The second way for early career managers to establish trust with staff is to *answer questions honestly and promptly*. New managers won't have all the answers to the questions they're asked and that's okay, but it's important for them to be honest when they don't know the answer. The author advises her peers to set aside any concerns they may have about appearing incompetent and simply say, "I don't know, but I'll find out." By answering questions promptly and to the best of their abilities, early career managers demonstrate their skills and abilities to staff and show them that their questions are not only important, but taken seriously.

The third way to establish trust is to *encourage questions, suggestions, and further learning*. New managers may not know much about the approach taken by the previous manager, so it's a good idea to make it clear from the start that staff's contributions and feedback are appreciated and welcomed. An easy way to open this line of communication is by identifying undocumented workflows and asking for staff's help in committing those procedures to writing. In doing so, early career managers are not only undertaking an important task for their team, but also recognizing staff's expertise, knowledge, and experience.

In addition to establishing trust, when it comes to managing a team of experienced staff it's also important to *build confidence through change management*. It's only after establishing trust with staff that early career managers should consider implementing change. The author, however, warns against making change for change's sake. It's important to weigh the benefits of any change with the stress and anxiety that may accompany that change. As the author notes, "[s]ometimes it may be best to let certain cogs of the machine keep clinking away, even if they rattle a bit." Starting with small, productive changes will help build staff's resilience for future, potentially larger changes, and it will also build

staff's confidence in your own abilities as an early career manager. When implementing any change—big or small—good communication is key to easing the transition. Good communication means explaining to staff why the change is important and what that change means for their own work. For example, when the author wanted to encourage her staff to use new RDA terms and MARC fields, she explained how those changes would lead to better indexing in the catalogue and improve discoverability and access for patrons. It's also important to create procedures, or update existing ones, for any changes to workflows. Documentation gives staff something to refer to as they begin to implement the changes, and it's a good way to encourage their comments and feedback, too.

In the second part of her article, the author offers her best practices for *managing yourself* as the new, early career manager of veteran staff. The first area she tackles is *anxiety*. It's natural for early career managers to feel some anxiety when assuming a position for which they have a limited amount of experience, especially when it involves supervising an experienced team. The author's first recommendation for easing the panic is to *acknowledge what you bring to the table*. While new managers may not have the experience of their supervisees, their library school education, connections to the professional community, and ability to see the bigger picture of the work, the profession, and the trends are important and valuable contributions.

The author's second recommendation for reducing anxiety is to *boost your confidence through accomplishing familiar tasks*. There'll be plenty of things that new managers won't know how to do, but during those first few weeks on the job when everything seems overwhelming, the author recommends tackling the familiar tasks to give themselves a sense of accomplishment. Those tasks might be as simple as clearing their inbox or answering a tricky reference question.

The author's third tip for alleviating anxiety is to *have patience*. She advises early career managers to accept the fact that it's going to take time to learn the job and to realize that mistakes will be made along the way. At some point, it's likely that new managers will even question why they took the job in the first place, but her advice is to embrace the uncertainty!

The author's fourth tip is to *make a plan*. There's a real sense of calm that comes from putting your worries down on paper, so the author encourages new managers to identify those areas where they feel they need to improve. An important part of this exercise is to cross out any item on the list that can only be accomplished with time and experience. For the author, that was acquiring the same proficiency with, and deep understanding of, MARC and AACR2 as her staff. As for the rest of the items on the list, early career managers should make a plan to address those concerns. That plan could involve reading an article, watching a webinar, or asking a colleague or supervisor for advice.

The author's fifth tip is to *educate yourself*. If some of the concerns in the aforementioned plan represent real

shortcomings, then early career managers may want to consider formal training. In the author's case, this meant taking a 12-week course for new supervisors that provided guidance on supervising unionized staff, evaluating performance, and conducting difficult conversations.

When it comes to managing yourself, early career managers of veteran staff will also need to *develop decisiveness*. New managers may feel unqualified to make decisions for their team, and while that feeling may be understandable in the circumstances, staff will expect their questions to be answered and their problems and issues to be addressed. Again, new managers shouldn't pretend to know things they don't, so the author advises to start small and to be decisive about things they *do* know how to do: schedule a meeting, order supplies, provide information, and approve requests for leave. New managers can build their confidence with these low-level, low-risk decisions while they settle into their jobs and learn more about staff and what they need. In time, they'll be in a better position to address the higher-level decisions. Early career managers need to remember that they'll likely make mistakes along the way, and that's okay as long as they're willing to reconsider their decisions. Changing your mind from time to time doesn't mean failure or incompetence—it just means you have the best interests of your team in mind.

In addition to reducing anxiety and developing decisiveness, managing yourself also means learning how to *manage your time*. As a new manager, a larger portion of your time is going to be spent on small, but time-consuming, administrative tasks, like answering email and attending meetings. These tasks may seem unimportant, but early career managers need to change their expectations about how they spend their time. Attending to administrative tasks is an important part of the work involved in directing a team, so give those tasks the time and attention they deserve. Plus, with time and experience, new managers will learn how to carry out those tasks more quickly and efficiently, and they'll begin to seem less time-consuming.

Although it took some time to realize, the author learned that her youth and lack of experience weren't significant obstacles to managing a team of veteran copy cataloguers. By treating them with respect, acknowledging their expertise, exercising patience, and managing her own anxieties, she was able to prove herself a trustworthy and competent manager of skilled and experienced staff, and she firmly believes that other early career managers can, too.



III Local and Regional Update / Mise à jour locale et régionale

By Rosalie Fox

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

Halifax Area Law Libraries (HALL)

On June 20, members of the Halifax Area Law Libraries group attended a luncheon at the Elements restaurant to mark the beginning of summer and a hiatus from regular meetings. Sheila Cameron, the local LexisNexis representative, was the guest of honour. After 29 years with LexisNexis and its predecessor, QL Systems, Sheila retired at the end of May. The group acknowledged Sheila's exemplary customer service over almost three decades by presenting her with a bouquet of flowers.

Jennifer Haimes, Nova Scotia Barristers' Library, has stepped down as co-chair of HALL. Anne Van Iderstine, Nova Scotia Legislative Library, has stepped up to co-chair the group with Christine Eidt, Stewart McKelvey. In September, the first order of business for the group is to examine its mandate and update the protocols drafted nine years ago.

The Halifax group will be busy over the next year preparing for the CALL/ACBD conference and AGM being held at the Marriott Harbourfront Hotel May 27-30, 2018. The theme of the conference is "Build Bridges / Broaden Our Reach." Keep an eye open for more details as speakers and social venues are confirmed.

Deborah Copeman, Librarian, Nova Scotia Barristers' Library, left the Barristers' Society in May. While the Society works

on the future direction of the position, service to the lawyers and to the public is being provided by the long-service library technicians, Jennifer Haimes and Lisa Woo-Shue.

SUBMITTED BY CYNDI MURPHY
Knowledge Manager, Stewart McKelvey, Halifax

National Capital Association of Law Librarians (NCALL)

It's been a full year of activity for NCALL this year, the highlight being the CALL Conference landing in Ottawa in May. Despite some unseasonal weather (snow flurries?), the conference was a great success, and a fantastic opportunity to meet fellow law librarians from across Canada. A number of NCALL members were involved in organizing the event. NCALL also awarded bursaries to two individuals to assist them in attending the conference.

Meanwhile, we have had a busy schedule of meetings over the past year. These include sessions on religious freedom, an update on copyright, a conference roundtable, a behind-the-scenes look at the Justice Laws website, and ways to embed your library in the research process of an organization. Our Annual General Meeting was in June, and

two new members of the NCALL executive—president and secretary—were elected.

Fall 2017 marks the 35th anniversary of NCALL, so we will no doubt be organizing something special to mark the occasion.

Finally, NCALL wishes to congratulate Rosalie Fox (Supreme Court of Canada) and Karon Crummey (Courts Administration Service), who are both retiring this spring. Rosalie and Karon have been active members of Ottawa's law library community for many years, and we wish them both a happy retirement!

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

It included sessions on legislation, case law, secondary sources, costs and memo building, as well as practical exercises. Presenters were a combination of ELLA members and members of the legal profession.

ELLA's previous executive's term ended in June, and elections took place at the June AGM. Thank you to the outgoing executive for their great contributions in the last two years!

SUBMITTED BY ANA SAN MIGUEL, MA, MLIS
*Judicial Education Manager
Provincial Court of Alberta*

Calgary Law Library Group (CLLG)

Due to unexpected changes in our executive and committees, fewer events were held this year, but the Calgary Law Library Group (CLLG) did hold our annual holiday social in December 2016 as well as a "Lunch & Learn" featuring updates from the Alberta Queen's Printer in March 2017. Additionally, we partnered with the Canadian Bar Association's Alberta Branch Research Section to present a "Lunch & Learn" on updates from CanLII in April 2017.

SUBMITTED BY HELEN MOK, SECRETARY CLLG
Calgary Librarian, Parlee McLaws LLP

Edmonton Law Libraries Association (ELLA)

The Edmonton Law Libraries Association has been very busy in the last few months. In April, Angela Ashton, from Ashton Legal Solutions, presented "The Changing Practice of Law." March brought librarian Kirk MacLeod to speak about the Alberta "Open Government" initiative. The Alberta Queen's Printer gave ELLA members an update on new projects in February, and lawyers Tom O'Reilly and Shohini Bagchee explored the world of patents in January.

On June 15 and 16, ELLA presented the 15th Annual HeadStart, a legal research program for articling students.

Vancouver Association of Law Libraries (VALL)

Greetings from Vancouver! The 2016/17 programming year was a busy one for VALL. We met in October for a substantive law session on BC's new *Societies Act*. In December, we heard from Dom Bautista, of the Amici Curiae law clinic, on how law librarians can give back by volunteering to help self-represented litigants complete court forms. Members met in the new year for a tech-focused talk on DB Textworks, and then again in March for a substantive law seminar on US court structures and case law research. The final year-end event is a talk by Shannon Salter about BC's Civil Resolution Tribunal, Canada's first online tribunal for strata disputes and small claims under \$5000. We also had a social gathering on the Vancouver Art Gallery patio, and enjoyed coffee mornings at two downtown law firms.

VALL Review editors also published terrific fall 2016 and spring 2017 issues, the former focussing on library succession planning, and the latter providing a primer to legislative research across the provinces and territories.

SUBMITTED BY SARAH RICHMOND
*Library Manager/Research Lawyer
Alexander Holburn Beaudin + Lang LLP, Vancouver*



III News from Further Afield / Nouvelles de l'étranger

Notes from the UK London Calling

By Jackie Fishleigh

Hi folks!

Who'd Have Think It!

Well, what an extraordinary few months it has been on this funny little island of ours.

Last time I wrote to you, I had gradually resigned myself to the dreaded Brexit, and what I saw as the ongoing bullying by the May government.

Reader—I am feeling much happier with things overall on the politics front and general direction of travel. More of that later.

A Horrible Couple of Months

First and foremost, though, this has been an unprecedented period of horrible, tragic events brought on by three terrorist attacks—namely at a pop concert in Manchester, on London Bridge, and more recently at a mosque in Finsbury Park, in North London.

On top of that, a huge tower block in West London ignited into an inferno claiming the lives of over 80 people, with others still missing but presumed dead. Grenfell Tower burst into flames, not because of a terrorist act but, it seems, because of the use of cladding on the outside that turned out to be

combustible. This has brought into stark relief the anger, tension, and division amongst residents in the local area of Kensington, and laid bare the dangers of the authorities ignoring residents' warnings about fire safety, effectively playing with their lives by skimping on precautions. Grenfell Tower will be a symbol for years to come of the bungling incompetence of those who took the lives of so many decent people for granted. Even in the residents' time of need, the help that was officially provided to them was confused, uncoordinated, or non-existent. Fortunately the response of the fire services and the local community was hugely impressive, and this papered over many of the official cracks, but not all of them by any means. There is now an ongoing safety panic about other risky towers.

Hung Parliament

During the last few months, we have also had a snap election, which according to Theresa May was necessary to “strengthen her hand in Brexit negotiations.” Well, as you probably know, this decision, which we are told was made while on a walking holiday in Snowdonia, a spectacular mountain range in Wales, ended up being one of the most staggeringly inept and blinkered displays of miscalculation and incompetence ever seen in UK politics.

The result is that May is still PM but is clinging on by her fingernails. After three weeks of wrangling, the Democratic Unionist Party (DUP) has agreed to accept £1 billion (yes, that much!) for Northern Ireland in exchange for a commitment of its 10 MPs to vote with May's Conservative (Tory) party on “confidence and supply” matters; i.e., the really important votes that the government needs to win to survive. This

situation is highly unsatisfactory, as the British government should not be propped up by one side in Northern Ireland, thereby putting the Good Friday Agreement at risk.

Jeremy Corbyn, leader of the Labour party, which came second in the election after running an excellent campaign, says he thinks he will be PM in six months! That claim would have been absolutely laughable before the election but could quite possibly become a reality given the significant gains made by Labour in the recent election. Even so, if he were asked to form a government now he would struggle even more than the Tories have done to cobble together the numbers required. So guess what? Have a look at this timeline:

2014 Hugely divisive Scottish independence referendum

2015 General election. Conservatives unexpectedly win a majority in parliament and their coalition with the Liberal Democrats is abruptly ended after five years.

2016 Even more divisive referendum on whether to remain in or leave the European Union. David Cameron resigns, as do the leaders of the Vote Leave campaign. Theresa May unexpectedly becomes PM.

June 2017 Unexpected, frequently denied by May, and then sudden invoked election, leading to hung parliament. After three weeks, Conservative–DUP confidence and supply arrangement is finally agreed.

Autumn 2017 Another election looms??

Brenda from Bristol

One woman, who will not be happy if this occurs, is our new unofficial voice of Britain, Brenda from Bristol, whose priceless reaction when interviewed by the BBC about the announcement of this year's snap election ran as follows:

“You're *joking*. Not another one! Oh for God's sake! Honestly I can't stand this. There's too much politics going on at the moment. *Why* does she need to do it?”

Personally I am keen to have a new parliament, so I would be more than happy to vote again. I even helped crowd-fund the election campaigns of 49 left-leaning candidates from four different political parties, out of whom a total of 34 were elected. So in a way, the hung parliament and looming election is partly my fault. Sorry, Brenda.

With very best wishes.

Until next time!

JACKIE

Letter from Australia, June 2017

By Margaret Hutchison

Well, it seems a long time since the CALL Conference in Ottawa, which I attended as the Australian Law Libraries Association representative. I was very happy to meet lots of friendly Canadians, but I'm not so sure about the taste of Canadian winter that week.

While I was on leave, back in Australia there were three special anniversaries commemorated.

The oldest, and probably most local, anniversary was the 90th anniversary of the opening of the Federal Parliament House on 9 May 1927 by the then Duke of York (later King George VI). This building was originally designed as a “provisional” parliament to last for 50 years. In fact, it was used as a parliament until 1988, when the present Parliament House was opened. A few years ago, there was Old Parliament House and New Parliament House, but it was decided a few years ago that most people knew the difference between the buildings and the “New” was dropped from Parliament House. Old Parliament House is open for visits, where you can walk through the Prime Minister's Suite, press gallery, and parliamentary chambers, and also hosts a Museum of Australian Democracy.



On Saturday 27 May, Australia celebrated an historic milestone: 50 years since the 1967 Referendum that gave Aboriginal people the right to vote. This referendum was technically a vote approving the *Constitution Alteration (Aboriginals) 1967* act, which would alter sections 51(xxvi) and 127 of the Australian Constitution, having the immediate effect of including Aboriginal Australians in census counts and also empowered the Federal Parliament to legislate specifically for this racial group for their advantage and/or detriment also known as the “race power.”

Calls for Aboriginal issues to be dealt with at the Federal level had begun as early as 1910. Despite a failed attempt in an earlier referendum in 1944, there were minimal changes for Aboriginal rights until the 1960s, where the Bark Petition in 1963 and the ensuing *Milirrpum v Nabalco Pty Ltd and*

Commonwealth of Australia (Gove Land Rights Case), and Gurindji Strike highlighted the underpayment and mistreatment of Indigenous workers in the Northern Territory. From here, the overall plight of Aboriginal Australians became a fundamental political issue.

The 1967 referendum on the Aboriginal right to vote was overwhelmingly endorsed, winning 90.77 per cent of votes cast and carrying in all six states. Voters in the territories (ACT and Northern Territory) were not allowed to vote in referenda or for the Senate at this time.

The 1967 referendum acquired a symbolic meaning in relation to a period of rapid social change during the 1960s both for Aborigines and others. The real legislative and political impact of the 1967 referendum was to enable, and thereby compel, the federal government to take action in the area of Aboriginal affairs. The benefits of the 1967 referendum began to flow to Aboriginal people after 1972 with the introduction of land rights, positive discrimination in favour of Aboriginal people, and easier access to housing, loans, emergency accommodation, and tertiary education allowances. This constitutional change also meant that Aboriginal and Torres Strait Islander people were fully included in census results for the first time, beginning with the 1971 census. Previously there had only been estimations of the Aboriginal and Torres Strait Islander population in the census.

Over the years since, there have been many moves towards recognition of Aboriginal and Torres Strait Islanders in the Constitution but all have fallen short. The latest attempt has been the establishment of an “expert panel” to inquire into changing the federal constitution so that Australia’s Indigenous peoples would be recognised. The report of this panel, proposing changes to the Constitution, was presented in January 2012. On 12 March 2013, with all-party support, the Federal Parliament passed the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013, which recognised the Indigenous peoples of Australia and required establishment of a committee to advise on a suitable date for a referendum on these proposals. The process was to have been completed within two years; however, the period was extended for a further three years. This latest committee, called the Referendum Council, comprised members appointed in December 2015 jointly by the Prime Minister and Leader of the Opposition. It held regional dialogues around Australia discussing the ideas raised in its discussion paper and each dialogue elected representatives to meet at a National Indigenous Constitutional Convention at Uluru in May 2017, scheduled to coincide with the 50th anniversary of the 1967 referendum.

On 26 May 2017, the meeting issued the [Uluru Statement from the Heart](#), which rejected the idea of mere recognition in the constitution, instead calling for a representative body to be enshrined in the nation’s founding document and a process established working towards treaties and a truth and justice commission. The [Commission’s final report](#) was presented on 30 June.



On 3 June this year, it was the 25th anniversary of the [Mabo decision](#), which was rather overshadowed by the Uluru Statement. This High Court decision inserted the legal doctrine of native title into Australian law. It was a test case brought in the name of Eddie Mabo to test the recognition of the traditional rights of the Meriam people to their islands in the eastern Torres Strait. In recognising the traditional rights of the Meriam people, the Court also held that native title existed for all Indigenous people in Australia prior to Lieutenant James Cook’s instructions and the establishment of the British colony of New South Wales in 1788. This decision altered the foundation of land law in Australia.



The new doctrine of native title replaced a 17th century doctrine of *terra nullius* (no-one’s land) on which British claims to possession of Australia were based. The Mabo decision solved the problem posed by the Gove Land Rights Case in 1971, which followed the “legal fiction” of *terra nullius*. In recognising that Indigenous people in Australia had a prior title to land taken by the Crown since Cook’s declaration of possession in 1770, the Court held that this title exists today in any portion of land where it has not legally been extinguished. The next year the *Native Title Act* was passed.

Native title is the legal recognition that some Aboriginal and Torres Strait Islander peoples have rights to, and interests in, certain land because of their traditional laws and customs. The rights granted by native title are not unlimited, as other interests (such as governments, miners, pastoralists) in,

or rights to, the land are also relevant, and usually take precedence over native title. To have native title recognised under the *Native Title Act 1993*, Aboriginal and Torres Strait Islander peoples must prove that they have a continuous connection to the land in question, and that they have not done anything to break that connection (such as selling or leasing the land).

Native title can be recognised in different ways. Aboriginal and Torres Strait Islander peoples may be granted the right to live on the land; access the area for traditional purposes; visit and protect important places and sites; hunt, fish, or gather traditional food or resources on the land; or teach Aboriginal and Torres Strait Islander laws and customs on the land. In some cases, native title can include the right to own and occupy an area of land or water to the exclusion of all others.

Now after a crash course in native title and Aboriginal history, both for me and you, best wishes until next time,

MARGARET HUTCHISON

The US Legal Landscape: News From Across the Border

By Julienne E. Grant

We've survived about six months of "The Donald," and it has been a circus. The sweeping international coverage of this unconventional presidency is such that I'm not going to spend much time on it here. There are actually several websites that track President Trump's executive activity: [Track Trump](#), [The Cabinet Center for Administrative Transition](#), and the Columbia Human Rights Law Review's [Trump Human Rights Tracker](#). Take your pick.

Personally, I'm particularly upset about the Trump team's decision to roll back some of the Obama initiatives pertaining to Cuba. I was in Cuba for a week in May, and I saw firsthand what's happening on the ground there. I wrote a [blog post](#) about the experience, so I won't detail my adventure now. Suffice it to say, though, that I don't think prohibiting independent travel to Cuba is going to help anyone, most certainly not the Cubans who have been earning much-needed income through non-group US travel. I'm currently in the midst of preparing a program on Cuba for the 2017 AALL annual meeting. Originally titled "Cuban Law and Legal Research: A Snapshot During the *Deshielo*," I'm thinking that the last part of the title should perhaps be changed to "A Snapshot During the *Deshielo Congelado*" ("Frozen Thaw").

Lots of other news to report, however, besides tidbits about Trump, his administration, and Melania (wow, we've been hit with too much information about her outfits). Neil M. Gorsuch joined SCOTUS (Supreme Court of the United States), and

some of his SCOTUS colleagues have been in the news. This installment also covers the LSAT, law schools, and bar exam developments, as well as some legal miscellany, including Connecticut's new law allowing judges to assign advocates for abused animals.

LSAT News

With some US law schools now allowing applicants to submit GRE (Graduate Record Examination) scores instead of LSAT results, the Law School Admission Council (LSAC) is making some changes. According to its [website](#), LSAC has removed the limit on the number of times test takers can sit for the LSAT in a two-year period. The LSAT will also be administered six times per year, instead of quarterly, starting in mid-2018. In other news, LSAC announced it has hired Kellye Y. Testy, the former dean of the University of Washington School of Law, as its new president and CEO. Ms. Testy also served as the president of the Association of American Law Schools (AALS) in 2016. Earlier this year, LSAC announced a [joint initiative with Khan Academy](#) to offer free online LSAT prep tutorials, starting in mid-2018.

US law schools in general are seeing fewer applicants with high LSAT scores, according to a June 13 ABA Journal article.¹ LSAT scores range between 120 and 180, and 2017 saw a 4.65 per cent reduction in the number of applicants with scores between 160 and 180, and a 23 per cent drop in applicants with scores between 175 and 180. The percentage of applicants scoring in the 140 to 159 range, however, increased by 2.88 per cent, and the number of applicants scoring between 150 and 154 increased by 6.1 per cent. The article quoted Paul Caron, editor of the TaxProf Blog, who suggested that college graduates with particularly strong credentials may be shunning law school altogether for better opportunities.

Law School News

The Whittier Law School, located in Costa Mesa, California, is closing its doors. According to Bloomberg Law's Big Law Business,² the school's 1L student enrollment decreased 57 per cent between 2010 and 2016, and Whittier had a 2016 bar passage rate of just 22 per cent. The school opened in 1966 and was acquired by Whittier College (still open) in 1974. Whittier is reportedly the first fully ABA-accredited law school to shut down, and may not be the last. The same article lists other US law schools at risk of closure, including Valparaiso (Indiana), Thomas M. Cooley (Michigan), Thomas Jefferson (California), University of La Verne (California), and the Appalachian School of Law (Virginia).

Student Loan Hero recently conducted a [survey of US law schools](#) to determine those that offer graduates the best bang for their buck in terms of minimizing student loan debt.

1 Stephanie Francis Ward, "Those with good LSAT scores may be choosing to forgo law school, data indicates," ABA Journal (June 13, 2017), online: <http://www.abajournal.com/news/article/those_with_good_lsats_scores_may_be_choosing_to_forgo_law_school>.

2 Stephanie Russell-Kraft, "Whittier Law School Closing: The First of Many?," Big Law Business (April 21, 2017), online: <<https://bol.bna.com/whittier-law-school-closing-the-first-of-many/>>.

The following schools are at the top of the list for combined affordability, low debt obligations, and average starting salaries: Brigham Young (Utah), Georgia State, Rutgers (New Jersey), the University of Iowa, the University of Houston, and the University of Texas at Austin. Above the Law released its own [law school rankings](#) in May, which are outcome-based and incorporate 2016 ABA employment data. The top five on that list are Stanford, University of Chicago, Yale, Duke, and Harvard.

In earlier columns, I mentioned Loyola Chicago's new weekend JD program, which combines online classes with on-campus instruction. Loyola's program has attracted students from as far away as New Orleans, Texas, and North Carolina. This fall, Seton Hall University School of Law (New Jersey) will roll out a new weekend JD program. Weekend programs are also running at Thomas M. Cooley and the Mitchell Hamline School of Law in Minnesota. This year, Cooley will transition its program to a model similar to Loyola's.

Bar Exam News

According to a May 15 article in *Law360*,³ preliminary statistics indicate that only 34.5 per cent of test-takers who completed the February 2017 California bar exam passed. For February 2016, the passage rate was 35.7 per cent. California's overall passage rate for 2016 was 40 per cent, the lowest in 10 years. The *Wall Street Journal* also ran an article on the California bar exam, reporting on various initiatives to lower the score required to pass.⁴ An April 12 *ABA Journal* post reported that the Multistate Bar Exam (MBE) administered in February 2017 resulted in scores at the lowest level since the MBE was first administered in 1972.⁵ The same article reported that the overall bar passage rate in the US fell to 58 per cent in 2016—the lowest rate recorded in 10 years of figures provided by the National Conference of Bar Examiners.

SCOTUS Justices: Neil M. Gorsuch Joins the Cafeteria Committee & Other Excitement

After the fireworks of his evasive confirmation hearings, Neil M. Gorsuch joined the SCOTUS bench on April 17. Writing for *Law360*, Jimmy Hoover reported that Justice Gorsuch quickly jumped into the fray during his first oral argument, asking dozens of questions.⁶ His maiden written opinion was *Henson v Santander Consumer USA, Inc* (June 12, 2017), which drew media comments such as “lively” (USA Today, June 12, 2017) and “terse, plain-spoken and text-based” (*The National Law Journal*, June 12, 2017). Along with his formal duties, Justice Gorsuch will apparently be serving on the Court's cafeteria committee, taking notes during the justices' private conferences, and serving as doorman

during those same meetings.⁷ Justice Elena Kagan, who was previously the Court's junior justice, will be handing over these responsibilities to newbie Justice Gorsuch.

In other SCOTUS news, 81-year-old Justice Anthony Kennedy is reportedly contemplating retirement. Kennedy was nominated by President Ronald Reagan, and he has served on the Court for 29 years. He has been considered the “swing-vote” for a number of those years, and he sided with his liberal colleagues in SCOTUS's 2015 decision to legalize gay marriage, *Obergefell v Hodges* (an opinion that he also wrote). Notably, the *Chicago Daily Law Bulletin* reported that Kennedy appears to have a “warmer relationship with Trump and his family than was known or necessarily expected.”⁸ I mention this because it suggests that Kennedy might choose to leave the Court during the Trump presidency, thus creating another opportunity to add a conservative justice to SCOTUS.

Other SCOTUS tidbits: Justice Stephen Breyer's cell phone rang during oral argument on April 25, bringing smiles to his colleagues on the bench. The *ABA Journal* reported on a recent study that concluded that the Court's female Justices are interrupted more often than their male counterparts, and that the male justices are doing most of the interrupting.⁹ During the 2015 term, according to the study, Justice Kennedy interrupted Justice Sotomayor 15 times, and Justice Ginsburg 11 times. Speaking of Justice Ginsburg, SCOTUS' oldest member at 84, check out *Law360*'s May 22 interview with her.¹⁰ The wide-ranging discussion covered a variety of topics, including gender diversity, oral argument strategies, and the justices' collegiality.

SCOTUS Decisions

'Tis the season for SCOTUS decisions as the 2016 term nears completion. In *Sessions v Morales-Santana* (June 12, 2017), the Court ruled that section 1409(c) of the *Immigration and Nationality Act* violates the equal protection clause of the US Constitution. Section 1409(c) allowed a child born abroad to an unwed mother with US citizenship to be granted citizenship if the mother had lived in the US for the year prior to the child's birth. A five-year physical presence in the US before the child's birth was required for an unwed US citizen father to transfer citizenship to his child.

In *Matal v Tam* (June 19, 2017), an 8-0 Court held that the disparagement clause of the *Lanham Act* violates the Constitution's First Amendment right to free speech. The *Tam* case centred on an Oregon-based band's petition to trademark its name, The Slants. The US Patent and Trademark Office denied the request because it determined the name was disparaging to those of Asian descent. The Court also invalidated a North Carolina statute that

3 Sam Reisman, “Calif. Bar Exam Whips Two-Thirds of Test Takers,” *LAW360* (May 15, 2017).

4 See Sara Randazzo, “California's Tough Bar Exam, Long a Point of Pride, Faces Pushback; With passing rates near historic lows, some law schools want the state to lower the required score,” *Wall St. J. Online* (May 31, 2017).

5 Debra Cassens Weiss, “Multistate bar exam scores drop to lowest point ever; is there a link to low-end LSAT scores?,” *ABA Journal* (April 12, 2017), online: <<http://www.abajournal.com/news/article/multistate-bar-exam-scores-drop-to-lowest-point-ever-are-to-w-end-lsat-score/>>.

6 Jimmy Hoover, “Gorsuch Takes the Bench, Showing A Flair For Debate,” *LAW360* (April 17, 2017).

7 Robert Barnes, “What does the junior Supreme Court justice do? Kagan tells Gorsuch it starts in the kitchen,” *Wash. Post* (April 9, 2017), online: <https://www.washingtonpost.com/politics/courts_law/what-does-the-junior-supreme-court-justice-do-kagan-tells-gorsuch-it-starts-in-the-kitchen/2017/04/09/9297ef4c-1bbd-11e7-9887-1a5314b56a08_story.html?utm_term=.563b16e0a030->.

8 Mark Sherman, “Rumors surround Justice Kennedy's departure, but he's not talking,” *Chi. Daily L. Bull.* (May 4, 2017), at 4.

9 Debra Cassens Weiss, “Interruptions of female justices has increased with their representation on SCOTUS, study finds,” *ABA Journal* (April 6, 2017), online: <<http://www.abajournal.com/news/article/interruptions-of-female-justices-has-increased-with-their-representation-on-scotus>>.

10 Jacqueline Bell, “In Her Own Words: Law360's Ginsburg Interview,” *LAW360* (June 19, 2017).

prohibited registered sex offenders from using social media in [Packingham v North Carolina](#) (June 19, 2017).

In [Venezuela v Helmerich & Payne International](#) (May 1, 2017), the Court opined that a claim of expropriation lodged against a foreign government needs to clear strict standards in order to be heard by a US court. In an 8-0 decision, SCOTUS decided that the expropriation exception of the *Foreign Sovereign Immunities Act* permits US jurisdiction only when there is a valid claim that property has been taken in violation of international law. In [McWilliams v Dunn](#) (June 19, 2017), a 5-4 Court (Justice Gorsuch joined Justice Alito's dissent) reversed and remanded the Eleventh Circuit's decision, ruling that an indigent defendant must be granted access to a mental health expert who is independent of the prosecution. In other SCOTUS news, the Court voted to hear [Gill v Whitford](#), a significant gerrymandering case out of Wisconsin. The case will likely be heard next fall, with a decision coming in 2018.

Law Firm Revenue

The American Lawyer published its "[2017 Am Law 100](#)" list at the end of April. The biggest winners in terms of law firm revenue were: Husch Blackwell, Blank Rome, Baker Botts,

Crowell & Moring, and Nelson Mullins. Husch Blackwell, with 19 US offices, posted a 23.2 per cent increase in revenue in 2016. Biggest losers were Pepper Hamilton, Wachtell, Locke Lord, Reed Smith, and Arnold & Porter. Pepper Hamilton, headquartered in Philadelphia, saw its revenues drop by 10.6 per cent last year. Latham & Watkins ranked number one in terms of total gross revenue, followed by Kirkland & Ellis, and Baker & McKenzie.

Trump's Federal Judicial Nominees

After filling the SCOTUS vacancy, President Trump has been busy nominating candidates for the lower federal courts. According to a *Law360* article,¹¹ the number of vacancies at the beginning of his term was higher than for any other president in three decades; there were 129 total vacancies, with 50 being labelled as emergencies. A CRS Report published on April 24, 2017,¹² concluded that President Obama fared the worst of any two-term president (going back to Harry S. Truman) when it came to the percentage of confirmed judicial nominees. The report indicated that 83 per cent of Obama's 390 nominees were confirmed (compared, for example, to 97 per cent of Dwight D. Eisenhower's and 94 per cent of Truman's). Trump's nominees have been predictably conservative and are reportedly guided by a

¹¹ Michael Macagnone, "Trump Nominates 10 Judges In Move to Reshape Judiciary," *LAW360* (May 8, 2017).

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list of potential SCOTUS nominees originally compiled by the Heritage Foundation and Federalist Society.¹³ Trump has notably been selecting some former and current law professors for the federal courts, including University of Pennsylvania law professor Stephanos Bibas for the Third Circuit. The US Senate must confirm federal judicial nominations per [Article II, sec. 2](#) of the US Constitution.

Two Presidential Libraries

Interest in Thomas Jefferson has boomed recently with the popularity of Lin-Manuel Miranda's musical *Hamilton*. According to the University of Virginia (UVA) [law school site](#), staff at the Arthur J. Morris Law Library will be digitizing Jefferson's own collection of law books, which number 375. A UVA graduate student is also exploring how the collection reflects Jefferson's views on citizenship, as well as what the books reveal about legal education in the early 19th century. The scanned titles will eventually be publicly accessible on a special website. Thomas Jefferson, who was a Virginia native, founded UVA in 1819.

In other presidential library news, former US President Barack Obama has unveiled plans for his new [Presidential Center](#) to be built in Chicago's Jackson Park. The complex will include a museum, library, classrooms, and indoor/outdoor space for events. As a Chicagoan, I'm proud that the Center will be located in my hometown. The National Archives and Records Administration (NARA) [announced in early May](#) that it will digitize the unclassified records of the eight-year Obama presidency. The original paper documents and other artifacts will be stored in a NARA facility, but will be available for exhibition at the Center. Classified records will be kept in Washington, DC until they are reviewed and declassified.

Legal Miscellany: Art for Justice, Justice for Fido, and Justice à la Bob Dylan

US philanthropist and art collector Agnes Gund has started a fund to support criminal justice reform and curtail high incarceration rates. In January, Ms. Gund sold a 1962 Roy Lichtenstein painting from her collection for US \$165 million and used \$100 million of the proceeds to create the [Art for Justice Fund](#) (A4JF). According to its website, the Fund "will support innovative advocacy and interventions aimed at safely cutting the prison population in states with the highest rates of incarceration, and strength[en] the education and employment options for people leaving prison." The Ford Foundation is administering A4JF.

In Connecticut, legal advocates are now available for abused animals per a new state law. According to an article in the *Chicago Daily Law Bulletin*,¹⁴ there are currently eight approved volunteer animal advocates across the state—seven lawyers and a law professor. Animal advocates have already been appointed in five cases under "Desmond's Law," which was named for a dog that was abused by its owner. The animal advocates, if appointed by a judge, are an official party to the case, and they can perform investigative work, draft briefs, and make arguments and recommendations.

An engaging April 1 article in the *ABA Journal* explored songwriter (and recent Nobel Prize winner) Bob Dylan's influence on lawyers and judges.¹⁵ In it, law professor Philip N. Meyer shared examples of how Dylan's lyrics have infiltrated US judicial opinions, including some emanating from SCOTUS. Professor Meyer perceptively observed,

Lawyers love Dylan, I think, because his voice and his story songs speak so directly to parts of ourselves that are typically discounted in our professional lives—especially in lawyers' careful, meticulous professional language, and in our text-based grammatically correct forms of written expression. He reminds us that the creative, the musical and the intuitive are not lost inside of us in our practices.

For a sample of Dylan cites in US court opinions, see also Adam Liptak's article in the *New York Times*, "[Dylan Citings in Court](#)" (February 22, 2016).

Conclusion

Another three months of US legal developments draw to a close, highlighted by a new SCOTUS justice nominated by President Donald J. Trump. Trump's presidency thus far has certainly not been boring, and it has created a great deal of work for American lawyers. The US Constitution's obscure [emoluments clause](#) (Article I, sec. 9) has also been getting a workout as it serves as a basis for continuing litigation against the president. My apartment building's doorman is convinced that President Trump won't make it through his four-year term, due to his legal problems. Time will certainly tell, and I look forward to reporting back to you in three months. If 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.

¹² Barry J. McMillion, Cong. Research Serv., U.S. Circuit And District Court Nominations: Comparative Statistics Of Two-Term Presidencies Since 1945 (April 24, 2017), online: <<https://fas.org/sgp/crs/misc/IN10694.pdf>>.

¹³ Macagnone, *supra* note 11.

¹⁴ Pat Eaton-Robb, "Abused animals get voice in court," *Chi. Daily L. Bull.* (June 5, 2017) at 4.6.

¹⁵ Philip N. Meyer, "As most-cited songwriter, Bob Dylan brings complex poetry to court opinions," *ABA Journal* (April 1, 2017), online: <http://www.abajournal.com/magazine/article/dylan_most_cited_songwriter_legal_opinions>.

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

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