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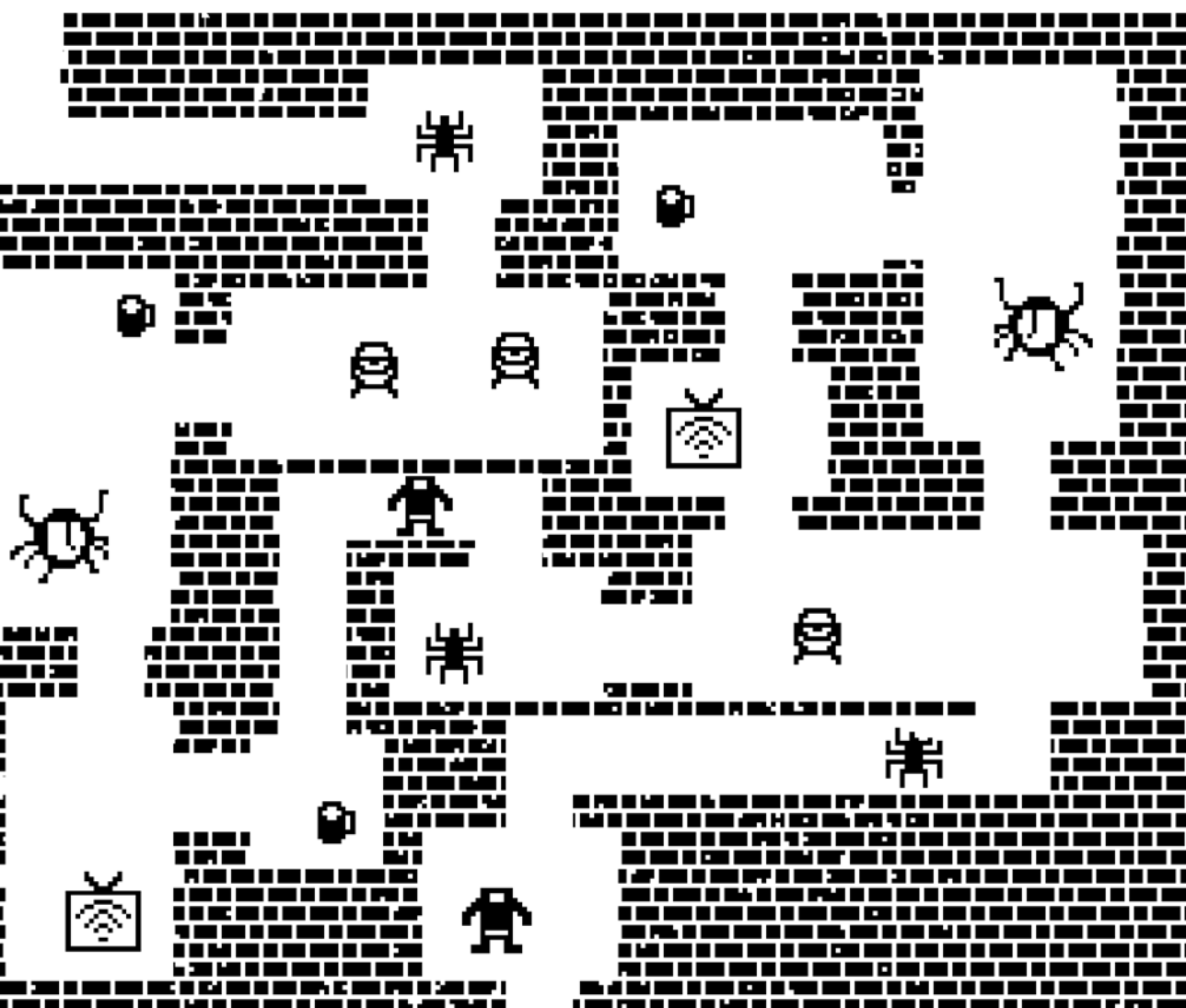
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**REVUE CANADIENNE DES  
BIBLIOTHÈQUES DE DROIT**



**VOLUME/TOME 48 (2023)  
No. 3**

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# IIII CONTENTS / SOMMAIRE

*Reckoning with Racism: Police, Judges, and the RDS Case*

Reviewed by Lori O'Connor

*The Right to Research: Historical Narratives by Refugee and Global South Researchers*

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*Art Law: Cases and Controversies*

Reviewed by Susan Barker

*Corporate Governance and the New Technology*

Reviewed by Katarina Daniels

*Executions: 700 Years of Public Punishment in London*

Reviewed by Amy Kaufman

*Law and Mental Health in Canada: Cases and Materials*

Reviewed by Melanie R. Bueckert

*The Law of Affidavits*

Reviewed by Laura Lemmens

*Online Instruction: A Practical Guide for Librarians*

Reviewed by Gillian Eguaras

*Practicing Social Justice in Libraries*

Reviewed by Alisa Lazear

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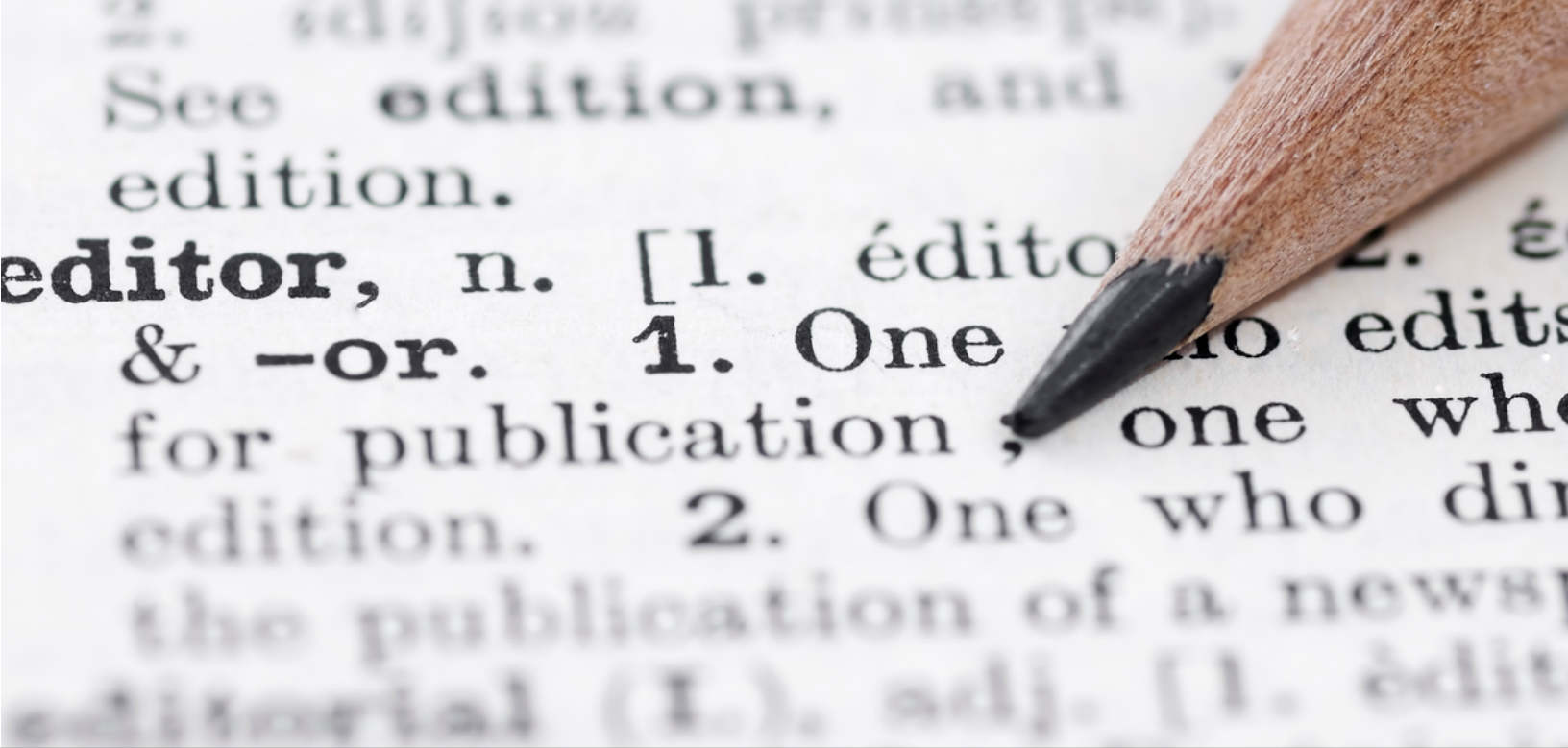
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## III From the Editor / De la rédactrice

Happy fall! After a harsh summer with so much of the country on fire, it's a relief to feel the chill in the air and see leaves scattered on the ground.

This issue's feature article is "Artificial Intelligence and Intellectual Property: AI-Driven Drug Discovery and the Challenges It Poses to the Canadian Patent System" by Emily Groper, an articling student at Goodmans LLP in Toronto. Like Bradley Budden's article ([CLLR 47:1](#)) on who owns the copyright to AI-generated art, Groper's tackles the question of who owns patents to AI-designed drugs. The question of who owns the rights to AI-generated works is no doubt going to be asked more and more in other fields in the coming years.

As legal information professionals, we've often discussed how new AI tools have the potential to put us out of work. Those in creative fields, from visual artists to writers to background actors, have been voicing their concerns about AI as well, as it threatens their livelihoods and conflicts with copyright. AI is infiltrating every aspect of our lives, it seems—including here, as the subject is woven throughout this issue. Unfortunately, it doesn't look like its use is going anywhere. Hopefully we'll learn to use it as a *tool*, like the pharma companies described in Groper's article, instead of a replacement for human creativity and imagination (see, for example, [a recent episode of South Park](#) written by co-creator Trey Parker and ChatGPT).

For generative AI programs to create new works, they must be fed existing intellectual property. This has led to some writers suing AI developers for using their work without their permission to train language models. My fingers are crossed

that these lawsuits, as well as the now-resolved WGA and still ongoing SAG-AFTRA strikes, will put the brakes on AI's use and keep art in human hands, where it belongs, before it becomes soulless and mechanical.

**EDITOR**  
**NIKKI TANNER**

Bon automne! Après un été difficile où plusieurs régions du pays ont été ravagées par des incendies, c'est un réconfort de sentir l'air froid et de voir les feuilles éparpillées sur le sol.

L'article de fond de ce numéro s'intitule « Artificial Intelligence and Intellectual Property: AI-Driven Drug Discovery and the Challenges It Poses to the Canadian Patent System. » Il a été rédigé par Emily Groper, stagiaire chez Goodmans LLP à Toronto. À l'instar de l'article de Bradley Budden ([RCBD 47:1](#)) portant sur la question de savoir qui détient le droit d'auteur sur les œuvres d'art créées par l'IA, l'article de Groper aborde la question de savoir qui détient les brevets sur les médicaments conçus par l'IA. Dans les années à venir, cette question risque d'être de plus en plus souvent posée dans d'autres domaines.

À titre de professionnels de l'information juridique, nous avons souvent discuté de la façon dont les nouveaux outils d'IA risquaient de nous mettre au chômage. Les personnes travaillant dans le secteur de la création, notamment les artistes visuels, les écrivains et les acteurs, ont également fait part de leurs préoccupations à l'égard de l'IA, qui menace

*Continued on page 7*



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

All over the world, steps are being taken to create guidelines and regulations on how artificial intelligence will be used in all sectors. It's not surprising that this issue's feature article discusses the "intellectual property and patent challenges in AI-driven drug discovery." As we continue to embrace, understand, and work with artificial intelligence, this is a good time to establish our own guidelines as law librarians. The CALL/ACBD board has approved the creation of the Artificial Intelligence Standards Working Group under the Vendor Liaison Committee. We look forward to the many recommendations and initiatives of the group.

During the spring and summer, I had the opportunity to attend conferences and annual meetings of our sister associations. I must confess that it turned out to be more travelling than I anticipated in 2023, which means that I've caught up with what I missed during the pandemic. Attending and participating in professional development activities is one major highlight annually. Not only do I enjoy networking and meeting people, but I always set out to learn something new. After the CALL/ACBD conference in June, I travelled to Belfast, Northern Ireland, to participate in the 53rd annual conference of the British and Irish Association of Law Libraries (BIALL). This was my first trip to that jurisdiction, but not my first BIALL conference. I enjoyed the warmth and hospitality of colleagues and learned a few historical facts. I toured the Linen Hall Library, the oldest library in Belfast. In July, I travelled to Boston to attend the 2023 annual meeting and conference of the American Association of Law Libraries. The exhibit hall, as usual, was busy with vendors demonstrating the latest resources and gadgets.

Fall is typically the beginning of new chapters at work and in

our personal lives. Whether you're returning to work after the summer holidays, starting a new role, or even moving to a newly renovated space, I wish you a happy autumn!

**PRESIDENT  
YEMISI DINA**

Des mesures sont prises partout dans le monde afin d'élaborer des lignes directrices et des réglementations pour encadrer l'usage de l'intelligence artificielle dans tous les secteurs. Il n'est donc pas surprenant que l'article de fond de ce numéro aborde les défis liés à la propriété intellectuelle et les brevets dans la découverte de médicaments grâce à l'IA. À mesure que nous continuons de prôner, de comprendre et de travailler avec l'intelligence artificielle, le moment est bien choisi pour établir nos propres lignes directrices en tant que bibliothécaires juridiques. Le Conseil exécutif de l'ACBD/CALL a approuvé la création d'un nouveau Groupe de travail sur les normes en matière d'intelligence artificielle, qui relève du Comité de liaison avec les éditeurs. Nous sommes impatients de travailler sur les recommandations et les initiatives de ce groupe.

Au cours du printemps et de l'été derniers, j'ai eu l'occasion d'assister à plusieurs congrès et assemblées annuelles de nos associations sœurs. Je dois avouer que les déplacements ont été plus nombreux que prévu en 2023, si bien que j'ai rattrapé ce que j'avais manqué pendant la pandémie. Assister et participer à des activités de perfectionnement professionnel chaque année représente pour moi un moment fort. Outre le fait que je prends plaisir à nouer des contacts et rencontrer des gens, je cherche constamment à apprendre quelque chose de nouveau.

Après le congrès de l'ACBD/CALL en juin, je me suis rendue à Belfast, en Irlande du Nord, pour participer au 53e congrès annuel de la British and Irish Association of Law Libraries (BIALL). Il s'agissait de mon premier voyage dans ce pays, mais non de mon premier congrès de la BIALL. J'ai été séduite par l'accueil chaleureux de mes collègues et j'ai appris quelques faits historiques. J'ai eu l'occasion de visiter la Linen Hall Library, qui est la plus vieille bibliothèque de Belfast. En juillet, je me suis rendue à Boston pour assister au congrès et à l'assemblée annuelle 2023 de l'American Association of Law Libraries. Comme chaque année, le salon des exposants était rempli d'éditeurs qui présentaient les dernières ressources et les nouveaux gadgets.

L'automne marque souvent le début de nouveaux chapitres au travail et dans nos vies personnelles. Que vous repreniez le travail après les vacances estivales, que vous entamiez une nouvelle fonction ou que vous déménagiez dans un espace nouvellement rénové, je vous souhaite à toutes et à tous un merveilleux automne!

**LA PRÉSIDENTE  
YEMISI DINA**

*Continued from page 5*

leur gagne-pain et va à l'encontre des droits d'auteur. L'IA s'infiltré dans tous les aspects de notre vie, semble-t-il, y compris ici, puisque le sujet est abordé dans l'ensemble de ce numéro. Malheureusement, son utilisation n'est pas près de disparaître. Espérons que nous apprendrons à l'utiliser comme un outil, à l'instar des sociétés pharmaceutiques décrites dans l'article de Groper, et non comme un substitut à la créativité et à l'imagination de l'être humain (voir, par exemple, [un épisode récent de South Park](#) écrit par le créateur Trey Parker et ChatGPT).

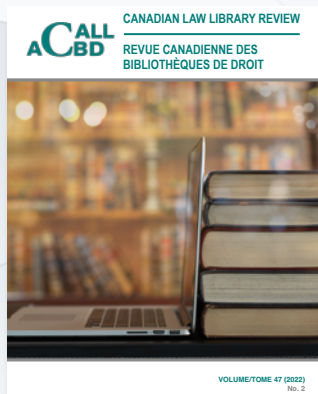
Pour que les programmes de l'IA générative puissent créer de nouvelles œuvres, ils doivent être alimentés par la propriété intellectuelle existante. C'est pourquoi des écrivains ont poursuivi en justice des développeurs d'IA pour avoir utilisé leurs œuvres sans leur autorisation afin de former des modèles linguistiques. Je croise les doigts pour que ces procès, ainsi que la grève de la WGA, qui est désormais réglée, et la grève du SAG-AFTRA, qui est toujours en cours, mettent un frein à l'usage de l'IA et maintiennent l'art entre les mains de l'humain, là où il doit être, avant qu'il ne devienne mécanique et sans âme.

**RÉDACTRICE  
NIKKI TANNER**



Volume 30 (2005)  
Volume 31 (2006)  
Volume 32 (2007)

Volume 33 (2008)  
Volume 34 (2009)  
Volume 35 (2010)



Volume 36 (2011)  
Volume 37 (2012)  
Volume 38 (2013)

Volume 39 (2014)  
Volume 40 (2015)  
Volume 41 (2016)



Volume 42 (2017)  
Volume 43 (2018)  
Volume 44 (2019)

Volume 45 (2020)  
Volume 46 (2021)  
Volume 47 (2022)



## III Perspectives

### Introducing CLLR's New Column: "Perspectives"

The *Canadian Law Library Review* is accepting article proposals for a new column, "Perspectives." We are looking for short articles on any topic of potential interest to *CLLR* readers, such as legal research, the role of librarians and library staff, management and leadership, technology, the use of social media, collection development, customer service, and knowledge management. Articles should be between 1000–2500 words in length and can take a variety of forms, including:

- practical or experiential papers describing a process or project, including best practices and/or lessons learned;
- comments/editorial opinion pieces on timely and significant topics;
- descriptions of a research methodology or technique;
- a case comment or analysis of a new statute or amendment;
- interviews with leading individuals and innovators in fields affecting legal information professionals; or
- short, research-based content.

If you have an idea for the column, please contact [cllr.perspectives@callacbd.ca](mailto:cllr.perspectives@callacbd.ca) (before writing) to discuss the format and topic of your proposed article. Anyone is welcome to submit, regardless of CALL/ACBD membership status.

We look forward to hearing your ideas!

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La *Revue canadienne des bibliothèques de droit* accepte les propositions d'articles pour sa nouvelle rubrique intitulée « Perspectives ». Nous recherchons de courts articles sur

tout sujet susceptible d'intéresser les lectrices et lecteurs de la *RCBD*; par exemple, la recherche juridique, le rôle des bibliothécaires et du personnel des bibliothèques, la gestion et le leadership, la technologie, l'utilisation des médias sociaux, le développement des collections, le service à la clientèle et la gestion du savoir.


Les articles doivent compter entre 1 000 et 2 500 mots et peuvent prendre les diverses formes suivantes :

- un article d'intérêt pratique ou expérimental décrivant un processus ou un projet, notamment les meilleures pratiques ou les leçons tirées;
- un commentaire ou un article d'opinion sur un sujet d'actualité et d'importance;
- une description d'une méthodologie ou d'une technique de recherche;
- un commentaire ou une analyse de cas portant sur une nouvelle loi ou un amendement;
- un entretien avec une grande personnalité innovante dans un domaine touchant les professionnels de l'information juridique;
- un bref rapport axé sur la recherche.

Si vous avez une idée pour cette rubrique, veuillez écrire à [cllr.perspectives@callacbd.ca](mailto:cllr.perspectives@callacbd.ca) (avant de commencer la rédaction) afin de discuter du format et du sujet de l'article que vous proposez. Tous les membres de l'ACBD/CALL sont invités à proposer un article, quelle que soit votre catégorie d'adhésion.

Nous attendons avec impatience vos idées!





# III Artificial Intelligence and Intellectual Property: AI-Driven Drug Discovery and the Challenges It Poses to the Canadian Patent System

By Emily Groper\*

## ABSTRACT

*Artificial Intelligence is emerging as a general-purpose technology with widespread applications. In particular, AI-driven drug discovery is becoming increasingly prevalent as high costs and attrition rates associated with developing new drugs pose significant challenges to the biotech and pharmaceutical industries. Brand-name pharma companies have adopted machine learning platforms for target identification and lead molecule development to aid in novel drug design. The rapid development of these AI-based solutions, however, raises fundamental intellectual property questions and may require a re-evaluation of Canada's current patent system. This paper outlines the challenges associated with inventorship and patentability in AI-driven drug discovery and, in doing so, investigates whether Canadian patent law should be reformed to accommodate this rapidly emerging technology.*

## SOMMAIRE

*L'intelligence artificielle est en train de devenir une technologie à usage général dont les applications sont très répandues.*

*En particulier, la découverte de médicaments pilotée par l'IA prend de plus en plus d'importance, car les coûts élevés et les taux d'attrition associés à la mise au point de nouveaux médicaments posent des défis importants aux industries biotechnologiques et pharmaceutiques. Les entreprises pharmaceutiques de marque ont adopté des plateformes d'apprentissage automatique pour l'identification de cibles et le développement de molécules principales afin de faciliter la conception de nouveaux médicaments. Le développement rapide de ces solutions basées sur l'IA soulève toutefois des questions fondamentales en matière de propriété intellectuelle et pourrait nécessiter une réévaluation du système de brevets actuel du Canada. Le présent document décrit les défis associés aux droits d'invention et à la brevetabilité dans la découverte de médicaments par l'IA et, ce faisant, examine si le droit canadien des brevets devrait être réformé pour tenir compte de cette technologie en plein essor.*

## Introduction

“Artificial intelligence” (AI) is a notoriously difficult term to define.<sup>1</sup> Although many definitions exist, most adopt the concept of creating “machines capable of behavior

\* Emily Groper is an articling student at Goodmans LLP in Toronto, Ontario. She received a Juris Doctor degree from the University of Toronto in 2023 and a Master of Science degree (Analytical Chemistry) from Queen's University in 2020. Groper wrote this article as part of the Directed Research Program under the supervision of Professor Anthony Niblett.

<sup>1</sup> Benjamin Alarie, Anthony Niblett & Albert H Yoon, “How Artificial Intelligence Will Affect the Practice of Law” (2018) 68:1 UTLJ 106 at 115.

we would regard as intelligent if exhibited by humans.”<sup>2</sup> Machines that can “sense, reason and think like people” are gaining traction, and the practice of combining computer science and robust datasets to enable efficient problem-solving is already in widespread use.<sup>3</sup> Machine learning (ML) platforms, for instance, “enabl[e] computers to learn to optimize certain tasks without the benefit of explicit rules-based programming.”<sup>4</sup> ML has contributed to significant advancements in data science by employing algorithms capable of processing significant amounts of seemingly unstructured data and recognizing patterns within datasets.<sup>5</sup> As a result, these platforms can uncover critical insights beyond what skilled experts could reasonably achieve on their own. The ability to maximize predictive accuracy is especially useful in the pharmaceutical sector, which often requires large data mining projects.

The pharmaceutical industry largely consists of brand-name and generic pharmaceutical (sometimes shortened to “pharma”) companies. The former are responsible for driving innovation and manufacturing novel (patented) high-impact drugs, while the latter generics enhance market competition and accessibility by developing drugs that are chemically identical to the original branded drug.<sup>6</sup> AI primarily finds its place as an application for brand-name companies, which are susceptible to high barriers to entry, significant research and development (R&D) costs, and high attrition rates. To overcome these challenges, innovators have embraced a drastic increase in data digitalization over the last few years.<sup>7</sup> AI today affects all stages of drug development, from drug discovery to managing supply chains and clinical trials. ML is a particularly useful tool in developing novel drugs given that it can handle large volumes of data with enhanced automation. The result is an “era of quicker, cheaper and more-effective drug discovery,”<sup>8</sup> which increases the availability of life-saving pharmaceuticals. A prime example is Pfizer’s partnership with IBM to employ an ML system called IBM Watson to power its search for immuno-oncology drugs.<sup>9</sup> Similarly,

Sanofi has contracted to use U.K. start-up Exscientia’s AI platform to identify metabolic-disease therapies.<sup>10</sup> Although once considered an exotic development, AI now exists at the core of the pharmaceutical business, and most sizeable biopharma players have comparable collaborations or internal programs.<sup>11</sup>

Patents play a particularly crucial role in encouraging advancements in the pharmaceutical industry. The primary reason is that the process of developing novel drugs and bringing them to market is lengthy, costly, and high-risk.<sup>12</sup> For innovator companies to be incentivized to continue to invest in drug development efforts, an expectation that they will recoup costs and make a profit must be present. The central justification for patent protection under Canadian intellectual property (IP) law is the “patent bargain”: namely, that a patent provides the inventor with a market monopoly for a limited time in return for public disclosure, which promotes innovation and social benefits.<sup>13</sup> To the extent that AI is central to contemporary brand-name R&D processes, it is imperative that Canadian IP law allows for and mitigates uncertainty regarding the patentability of AI systems and the inventions they generate (within appropriate legislative limits). Otherwise, our patent system could significantly hinder pharmaceutical innovation—a key determinant of economic and public health progress<sup>14</sup>—and effectively undermine the policy mandate for providing patent protection in the first place.

This paper provides an overview of the drug discovery process and AI applications currently in use within the pharmaceutical industry. Specifically, it describes two momentous ML platforms that have been implemented to aid in novel drug design within the target identification and lead molecule development stages. The paper then investigates various patent challenges associated with inventorship and patentability that are raised by these AI-based solutions. Finally, we examine whether Canadian patent law should

<sup>2</sup> Jerry Kaplan, *Artificial Intelligence: What Everyone Needs to Know* (New York: Oxford University Press, 2016) at 1.

<sup>3</sup> Nic Fleming, “How Artificial Intelligence is Changing Drug Discovery” (2018) 557:7706 *Nature* S55 at S56.

<sup>4</sup> Alarie et al, *supra* note 1 at 115.

<sup>5</sup> Kit-Kay Mak & Mallikarjuna Rao Pichika, “Artificial Intelligence in Drug Development: Present Status and Future Prospects” (2019) 24:3 *Drug Discovery Today* 773 at 774.

<sup>6</sup> Notably, generic drugs cost significantly less because they circumvent the high research and development costs of producing novel compounds.

<sup>7</sup> Debleena Paul et al, “Artificial Intelligence in Drug Discovery and Development” (2021) 26:1 *Drug Discovery Today* 80 at 80.

<sup>8</sup> Fleming, *supra* note 3 at 555.

<sup>9</sup> Pfizer, Press Release, “IBM and Pfizer to Accelerate Immuno-oncology Research with Watson for Drug Discovery” (1 December 2016), online: <[pfizer.com/news/press-release/press-release-detail/ibm\\_and\\_pfizer\\_to\\_accelerate\\_immuno\\_oncology\\_research\\_with\\_watson\\_for\\_drug\\_discovery](https://www.pfizer.com/news/press-release/press-release-detail/ibm_and_pfizer_to_accelerate_immuno_oncology_research_with_watson_for_drug_discovery)>.

<sup>10</sup> Sanofi, Press Release, “Exscientia and Sanofi Establish Strategic Research Collaboration to Develop AI-Driven Pipeline of Precision-Engineered Medicines” (7 January 2022), online: <[sanofi.com/en/media-room/press-releases/2022/2022-01-07-06-00-00-2362917](https://www.sanofi.com/en/media-room/press-releases/2022/2022-01-07-06-00-00-2362917)>.

<sup>11</sup> See e.g. Roche subsidiary Genentech that uses an AI system from American GNS Healthcare to help drive the company’s search for cancer treatments (see Genentech, “Harnessing the Power of AI” (7 January 2022), online: <[gene.com/stories/harnessing-the-power-of-ai](https://www.genentech.com/stories/harnessing-the-power-of-ai)>; see also Orion Biotechnology’s strategic R&D collaboration with biotech company Peptilogics to enable AI-driven drug discovery against undrugged GPCR target in immuno-oncology (see Orion Biotechnology, Press Release, “Orion Biotechnology and Peptilogics Enter Strategic Research Collaboration to Enable AI-Driven Drug Discovery Against Undrugged GPCR Target” (12 July 2022), online: *Global Newswire* <[globenewswire.com/en/news-release/2022/07/12/2478364/0/en/Orion-Biotechnology-and-Peptilogics-Enter-Strategic-Research-Collaboration-to-Enable-AI-Driven-Drug-Discovery-Against-Undrugged-GPCR-Target.html](https://www.globenewswire.com/en/news-release/2022/07/12/2478364/0/en/Orion-Biotechnology-and-Peptilogics-Enter-Strategic-Research-Collaboration-to-Enable-AI-Driven-Drug-Discovery-Against-Undrugged-GPCR-Target.html)>)).

<sup>12</sup> Henry G Grabowski, Joseph A DiMasi & Genia Long, “The Roles of Patents and Research and Development Incentives in Biopharmaceutical Innovation” (2015) 34:2 *Health Affairs* 302.

<sup>13</sup> *Apotex Inc v Wellcome Foundation Ltd*, 2002 SCC 77 [Apotex 2002].

<sup>14</sup> Frank R Lichtenberg & Suchin Virabhak, “Pharmaceutical-Embodied Technical Progress, Longevity, and Quality of Life: Drugs as ‘Equipment For Your Health’” (2007) 28:4/5 *Managerial & Decision Economics* 371.

be reformed to accommodate AI-driven drug discovery and, if so, what policy or legislative changes are best suited to accommodate continued developments in AI.

## AI-Driven Drug Discovery

### Overview: The Drug Discovery Process

The first step in drug development is target identification. A biological target refers to the active site of the biomolecule (often a protein or gene) within the patient's body to which a drug will bind, thereby producing the desired therapeutic effect. The idea is that modulating the target will result in modulation of the immune system's response to the disease.<sup>15</sup> Target identification is initially accomplished using scientific literature and public databases,<sup>16</sup> whereas validating a potential target requires physiologically relevant *ex vivo* or *in vivo* methods.<sup>17</sup> A "hit" compound, which "shows activity against a given biological target," is then found by screening chemical libraries and/or naturally isolated materials (e.g., plants, bacteria, and fungi).<sup>18</sup>

The next step is to identify a "lead" molecule that shows promising potential as a new drug for a specific disease.<sup>19</sup> Lead molecule development is achieved by systematically modifying hit compounds to improve their activity and selectivity toward specific targets, while reducing toxicity and other unwanted effects. Once the lead compound is found, its chemical structure is used as a starting point for chemical modifications to discover compounds with maximal therapeutic benefit and safety.<sup>20</sup> Typically, these modifications are done by highly experienced chemists through a variety of complex chemical reactions and synthesis techniques.

The imminent challenge for brand-name pharma companies is that the chemical space comprises more than 10<sup>60</sup> molecules,<sup>21</sup> which means there are endless possibilities for developing new compounds. As such, the process of

discovering and developing a pharmaceutical can take over a decade and costs US\$2.8 billion on average.<sup>22</sup> Even then, most R&D costs are effectively lost because nine out of ten therapeutic molecules fail clinical trials or the regulatory approval process.<sup>23</sup> Drug discovery is therefore complex, lengthy, costly, and entrenched with a high degree of uncertainty regarding whether a specific drug will succeed. These are significant obstacles that stand in the way of pharmaceutical innovators investing in and successfully introducing life-changing drugs to the Canadian market.

### AI Applications in Drug Discovery

AI has become a versatile tool in all stages of pharmaceutical production given that it can help discover new compounds with therapeutic potential,<sup>24</sup> uncover or repurpose drugs with higher potency,<sup>25</sup> assist in decision making by managing and exploiting the clinical data generated,<sup>26</sup> and even help determine the right therapy for a specific patient.<sup>27</sup> ML is particularly useful in drug discovery because it can pinpoint effective biological targets and identify lead compounds for expedited optimization of novel drug designs.<sup>28</sup> It is worth noting that there are two main types of ML: supervised and unsupervised learning. Supervised methods are used to develop training models capable of predicting future outputs for new inputs, whereas unsupervised methods are employed to identify hidden patterns and cluster input data in meaningful ways.<sup>29</sup> In effect, both mitigate inefficiencies and uncertainties that arise in conventional drug development methods by minimizing human error in the R&D process.<sup>30</sup> The following sections outline two specific applications of ML in drug discovery to date.

#### (i) Target Identification

Understanding the composition of biomolecules as well as their function and role in the disease is crucial to identifying

<sup>15</sup> Jessica Vamathevan et al, "Applications of Machine Learning in Drug Discovery and Development" (2019) 18 *Nature Reviews Drug Discovery* 463 at 466.

<sup>16</sup> Many important reference datasets (e.g., from clinical trials) have been released and are leveraged to identify new targets (both as a source of reference and/or to develop new findings). Some examples of prominent databases include dbSNP, dbVar, COSMIC, 1000 Genomes Project, GEO, and more.

<sup>17</sup> Vamathevan et al, *supra* note 15.

<sup>18</sup> Mak, *supra* note 5 at 774.

<sup>19</sup> *Ibid.*

<sup>20</sup> Tian Zhu et al, "Hit Identification and Optimization in Virtual Screening: Practical Recommendations Based on a Critical Literature Analysis" (2013) 56:17 *J Medicinal Chemistry* 6560; Amy C Anderson, "Structure-Based Functional Design of Drugs: from Target to Lead Compound" in Virginia Espina & Lance A Liotta, eds, *Molecular Profiling: Methods and Protocols* (New York: Humana Press, 2012) 359.

<sup>21</sup> Paul et al, *supra* note 7 at 82.

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

<sup>23</sup> Fleming, *supra* note 3 at S55.

<sup>24</sup> Włodzisław Duch, Karthikeyan Swaminathan & Jarosław Meller, "Artificial Intelligence Approaches for Rational Drug Design and Discovery" (2007) 13:14 *Current Pharmaceutical Design* 1497.

<sup>25</sup> Mak, *supra* note 5 at 774.

<sup>26</sup> Agata Blasiak, Jeffrey Khong & Theodore Kee, "CURATE.AI: Optimizing Personalized Medicine with Artificial Intelligence" (2020) 25:2 *SLAS Technology* 95.

<sup>27</sup> Paul et al, *supra* note 7 at 81.

<sup>28</sup> Mak, *supra* note 5 at 776; Matthew A Sellwood et al, "Artificial Intelligence in Drug Discovery" (2018) 10:17 *Future Medicinal Chemistry* 2025.

<sup>29</sup> Mohamed Alloghani et al, "A Systematic Review on Supervised and Unsupervised Machine Learning Algorithms for Data Science" in Michael W Berry, Azlinah Mohamed & Bee Wah Yap, eds, *Supervised and Unsupervised Learning for Data Science* (Cham, CH: Springer, 2019) 3 at 4.

<sup>30</sup> Mak, *supra* note 5 at 776; G Seddon et al, "Drug Design for Ever, from Hype to Hope" (2012) 26:1 *J Computer-Aided Molecular Design* 137.

a target that will produce the desired therapeutic response. ML can be used to quickly assess this information, which is stored in large and multi-dimensional databases, providing critical insights about the causal connections between targets and the disease.<sup>31</sup> A prime example is IBM Watson, a ML software adopted by Pfizer to identify new targets in their immuno-oncology and amyotrophic lateral sclerosis (ALS) research. IBM Watson constitutes “supervised learning” because the predictive model is developed based on known input and output data relationships.<sup>32</sup> More specifically, algorithms inspired by the human brain (otherwise known as artificial neural networks) are used to adapt and learn from significant amounts of experimental data.<sup>33</sup> This is referred to as deep learning (DL), whereby algorithms learn by example and train themselves over time. The artificial neural networks perform a task repeatedly and gradually to improve the accuracy of the outcome through progressive learning.<sup>34</sup> Promising targets are eventually identified by a computed confidence score, which was found in one study to be correct 71 per cent of the time.<sup>35</sup> For example, IBM Watson has identified five new RNA-binding proteins linked to pathogenesis of ALS.<sup>36</sup>

### (ii) Lead Molecule Development

The chosen target is then used to catalogue compounds that show promise as new pharmaceuticals, which has traditionally required extensive experimental testing. A specific application of AI in lead molecule development is Exscientia’s ML platform, which is responsible for the world’s first AI-designed drug to enter Phase I testing.<sup>37</sup> Exscientia now has three AI-designed drug candidates in human clinical trials: DSP-1181 as a treatment for obsessive-compulsive disorder,<sup>38</sup> EXS21546 as an immuno-oncology treatment,<sup>39</sup> and DSP-0038 for treating Alzheimer’s disease psychosis.<sup>40</sup> All three small molecules were designed using the company’s supervised learning platform, capable of purely *in silico* (computer- or software-based) lead molecule optimization. The company employs supervised learning to “[assess] large numbers of hypothetical molecules and converg[e] on a more limited number of potentially active molecules.”<sup>41</sup>

According to the company’s patent for its molecular design method, the invention “involves evolutionary algorithms that generate successive populations of molecules and perform evaluations to identify molecules having or predicted to have the desired characteristics.”<sup>42</sup> By prioritizing compounds that are more likely to successfully target a given disease, Exscientia’s AI technology effectively reduces attrition rates and R&D costs by drastically reducing the number of synthesized compounds that must be chemically tested *in vitro* or *in vivo*.

## IP Challenges: Implications of AI-Driven Drug Discovery on Canadian Patent Law

How do AI technologies, like those belonging to IBM and Exscientia, challenge various elements of the Canadian patent system? Is our patent regime and associated policy framework capable of responding to advancements in AI-driven drug discovery? The following demonstrates that AI-related inventions, including both AI systems themselves (e.g., IBM Watson) and AI-generated inventions (e.g., Exscientia’s AI-designed drug candidates) have in fact frustrated the current legal frameworks for inventorship and patentability. While AI is having an incredible impact on drug development, it has challenged the very foundations on which Canadian patent law was built.

### Inventorship

#### (i) Current Legal Framework

In Canada, patents confer the “exclusive right, privilege and liberty of making, constructing and using the invention and selling it to others to be used.”<sup>43</sup> A 20-year monopoly<sup>44</sup> is granted to the genuine inventor who is first to file the application, but what if the inventor is an AI? Although the question of whether patent rights can be assigned to non-human entities has not been legally contested in Canada, many jurisdictions have answered in the negative and have maintained an anthropocentric approach to inventorship. The England and Wales Court of Appeal (EWCA), for instance,

<sup>31</sup> Vamathevan et al, *supra* note 15 at 466.

<sup>32</sup> “IBM Watson Health is Now Merative” (last visited 11 August 2023), online: IBM <[web.archive.org/web/20230811083758/https://www.ibm.com/watson-health/merative-divestiture](https://web.archive.org/web/20230811083758/https://www.ibm.com/watson-health/merative-divestiture)>.

<sup>33</sup> June-Goo Lee et al, “Deep Learning in Medical Imaging: General Overview” (2017) 18:4 Korean J Radiology 570; Ben T Grys et al, “Machine Learning and Computer Vision Approaches for Phenotypic Profiling” (2017) 216:1 J Cell Biology 65.

<sup>34</sup> Lee, *supra* note 33 at 573.

<sup>35</sup> James Wang, “How Much Artificial Intelligence Does IBM Watson Have?” (12 July 2017), online: ARK Invest <[ark-invest.com/articles/analyst-research/ibm-watson](https://ark-invest.com/articles/analyst-research/ibm-watson)>; see also Jennifer Chu-Carroll et al, “Finding Needles in the Haystack: Search and Candidate Generation” (2012) 56:3.4 IBM J Research & Development 6:1.

<sup>36</sup> Nadine Bakker et al, “Artificial Intelligence in Neurodegenerative Disease Research: Use of IBM Watson to Identify Additional RNA-Binding Proteins Altered in Amyotrophic Lateral Sclerosis” (2018) 135:2 Acta Neuropathologica 227.

<sup>37</sup> Calum Chace, “First Wholly AI-Developed Drug Enters Phase 1 Trials” (25 February 2022), online: Forbes <[forbes.com/sites/calumchace/2022/02/25/first-wholly-ai-developed-drug-enters-phase-1-trials](https://forbes.com/sites/calumchace/2022/02/25/first-wholly-ai-developed-drug-enters-phase-1-trials)>.

<sup>38</sup> “2,6-disubstituted pyridine derivative,” US Patent No 10800755B2 (24 March 2020).

<sup>39</sup> “Pyrazolopyrimidine Compounds as Adenosine Receptor Antagonists,” WO Patent No 2019233994A1, PCT Patent No PCT/EP2019/064450 (4 June 2019).

<sup>40</sup> “Condensed lactam derivative,” US Patent No 10745401B2 (10 February 2020).

<sup>41</sup> “Design of molecules,” US Patent No 20200013486A1 (12 August 2019) at para 11.

<sup>42</sup> *Ibid* at para 14.

<sup>43</sup> *Patent Act*, RSC 1985, c P-4, s 42.

<sup>44</sup> *Ibid*, s 44.

recently dismissed an appeal from a decision affirming the rejection of a patent application that listed a DL-based system as inventor.<sup>45</sup> The EWCA interpreted section 7(3) of the U.K. *Patents Act 1977*<sup>46</sup> to mean that an inventor, who must be the “actual deviser” of the invention, constitutes a natural person. In examining the same patent application, the U.S. Court of Appeals for the Federal Circuit held that “only a natural person can be an inventor, so AI cannot be.”<sup>47</sup> These findings are significant given that Canadian patent law is modeled closely on American and English jurisprudence.

Interestingly, the Canadian *Patent Act* does not define an “inventor,” and our courts have not yet had to answer whether AI can be listed as an inventor on a patent application. While the question arguably remains open, the Supreme Court of Canada (SCC) has inferred that an “inventor” generally relates to “the person or persons who conceived of” the invention,<sup>48</sup> the ultimate inquiry being “who is responsible for the inventive concept?”<sup>49</sup> This person does not need to be wholly responsible for the invention, but they must have made a new, inventive, and useful contribution.<sup>50</sup> The Federal Court has interpreted the SCC holding to mean that “[i]n Canada, the language of the jurisprudence assumes that an ‘inventor’ is a natural person”<sup>51</sup>; if this is the case, then software-related entities would be excluded from holding patent rights in Canada. Although neither case dealt specifically with whether AI can be an inventor, the underlying tone of Canadian jurisprudence is largely consistent with the reasons underlying the denial in the U.K. and U.S. of AI-listed patent applications.

### (ii) Implications of AI-Driven Drug Discovery

IBM Watson and Exscientia’s ML platform both use a series of neural networks to “think” like humans and ultimately create novel inventions. Patent challenges with inventorship are especially acute for AI-generated drugs, for which there is minimal if any human involvement prior to chemical synthesis. While human intervention is ultimately required to obtain regulatory approval through clinical trials, the invention was arguably “conceived by” the ML algorithm. By identifying

the chemical structure of the therapeutic compound, the AI platform and not the “natural person” makes the inventive contribution. Put another way, Exscientia (or perhaps more accurately, its employees listed on the relevant patent)<sup>52</sup> may “not be considered the true and first inventor [since] the idea of it did not originate in his own mind.”<sup>53</sup> A true inventor “must not have borrowed [the idea] from anyone else,”<sup>54</sup> presumably even software-related technologies.

The overall state of the jurisprudence suggests that AI, however autonomous it may be, cannot legally patent an invention. If the AI-made invention is created without *any* human contribution, then strict application of the anthropocentric approach would result in “inventions without an inventor.”<sup>55</sup> Today, Exscientia’s ML platform is presumably not capable of fully autonomous invention since it cannot both formulate the problem (i.e., what human disease should we cure?) and provide the solution (i.e., the chemical compound for treating that disease).<sup>56</sup> The patented molecule can thus be viewed as an “AI-made [invention] with the human involved in the process being the inventor-in-law.”<sup>57</sup>

If AI cannot qualify as an inventor, the alternative may be to recognize the individual who wrote the algorithm, or the person who first realized that the algorithm created a novel product. Alternatively, the law may ascribe patent rights to the first person who “sets the conception or discovery into a practical shape”<sup>58</sup> by chemically synthesizing the AI-designed drug. As illustrated below, each possibility raises a significant issue for AI inventive systems: if the humans behind them are not responsible for the inventive step, then they are not legitimate inventors under Canadian law.<sup>59</sup> Claiming otherwise inherently undermines the patent bargain, which is frequently cited in Canadian jurisprudence as a central justification for patent protection.<sup>60</sup> Namely, the inventor acquires a limited monopoly in return for public disclosure of the pharmaceutical, which promotes innovation and public health benefits.

(a) Assigning patent rights to the individual(s) who first “recognized” the AI-generated invention would create

<sup>45</sup> *Thaler v Comptroller General of Patents Trade Marks And Designs*, [2021] EWCA Civ 1374, aff’g [2020] EWHC 2412 (Pat) (Ch D).

<sup>46</sup> *Patents Act 1977* (UK), s 7(3).

<sup>47</sup> *Thaler v Vidal*, 43 F (4th) 1207 (Fed Cir 2022) at 1213.

<sup>48</sup> *Apotex 2002*, *supra* note 13 at para 96.

<sup>49</sup> *Ibid.*

<sup>50</sup> Dino P Clarizio, Neal Armstrong & Roger T Hughes, *Hughes and Woodley on Patents*, 2nd ed (Markham: LexisNexis Canada, 2005) (loose-leaf updated June 2023, issue 94), ch 101 at 114.

<sup>51</sup> *Sarnoff Corp v Canada (Attorney General)*, 2008 FC 712 at para 9.

<sup>52</sup> See e.g. “Design of molecules,” US Patent No 20200013486A1 (12 August 2019).

<sup>53</sup> Robert Frost, *Treatise on the Law and Practice Relating to Letters Patent for Inventions*, 4th ed (London: Stevens and Haynes, 1912) at 15, cited in *Arctic Cat Inc v Bombardier Recreational Products Inc*, 2016 FC 1047 at para 329, aff’d 2018 FCA 125.

<sup>54</sup> *Gerrard Wire Tying Machines Company, Ltd of Canada v Cary Manufacturing Co*, [1926] Ex CR 170 at 180, [1926] 3 DLR 374 [*Gerrard Wire*].

<sup>55</sup> Tim W Dornis, “Artificial Intelligence and Innovation: The End of Patent Law As We Know It” (2020) 23:1 Yale JL & Technology 97 at 117.

<sup>56</sup> *Ibid* at 118

<sup>57</sup> *Ibid.*

<sup>58</sup> *Apotex v Wellcome Foundation* (2000), [2001] 1 FC 495 at para 30, 195 DLR (4th) 641 (CA).

<sup>59</sup> Shlomit Yanisky-Ravid & Regina Jin, “Summoning a New Artificial Intelligence Patent Model: In the Age of Crisis” (2021) Mich State L Rev 811 at 841.

<sup>60</sup> See e.g. *Apotex 2002*, *supra* note 13 at paras 2, 37.

practical upheaval and undermine the foundation of Canadian patent policy. First, this option may generate significant dispute given the size and complexity of brand-name corporate structures. For instance, the first person to recognize a patentable product might be an intern at the company or even a visitor in someone's home.<sup>61</sup> Many individuals might also concurrently recognize a result if access to the AI system is widespread.<sup>62</sup> Second, ascribing the limited monopoly to such an individual would effectively “decoupl[e] invention and right ownership,” and thus bypasses the principle that monopolies should only be granted to deserving actors,<sup>63</sup> i.e., those responsible for creating “inventive solutions to practical problems.”<sup>64</sup>

(b) Recognizing the individual(s) who first created the algorithm is equally problematic for AI-generated inventions and is increasingly controversial where AI evolves independently. First, writing codes and providing data to construct Exscientia's AI system does not constitute the inventive step (i.e., discovery of the new therapeutic drug). Second, both the Exscientia and IBM technologies have the potential to improve generation after generation. The DL framework includes neural networks that “learn from training data by altering the strength of connections between artificial neurons,”<sup>65</sup> and eventually, the “umbilical cord between the inventor-in-fact (i.e., the AI application) and its creator or creators (i.e., programmers, developers, or users) will be severed.”<sup>66</sup> The process of conception (determinative for inventorship under Canadian law) has then moved beyond the human domain,<sup>67</sup> at which point the AI-designed drug can no longer be directly attributed to the creator of the algorithm.

(c) What about recognizing the individual that first gives the AI-designed drug a practical shape? Canadian jurisprudence makes clear that to qualify as an inventor, “his or her ingenuity [must be] applied to the original inventive concept and not just verification.”<sup>68</sup> With respect to AI-designed drugs, the relevant conception is that of

the drug's chemical structure. The individual who first synthesizes the drug engages in the “mere verification ... of previous predictions.”<sup>69</sup> Furthermore, given that composition-of-matter patents seem to offer stronger patent protection (as opposed to method-of-use and formulation patents),<sup>70</sup> brand-name pharma companies are more likely to patent drug candidates in early stages of conception, before human contribution has validated the therapeutic potential and safety for approval.

### Patentability

The application of AI to support human inventiveness also introduces new challenges for patentability (or validity in litigation). To elicit patent protection, an invention must be “any *new* and *useful* art, process, machine, manufacture or composition of matter” or any improvement thereof.<sup>71</sup> Section 28.3 of the *Patent Act* further necessitates that the invention be *non-obvious*. Notably, these patentability requirements are measured against the knowledge of the ordinary person skilled in the art or science to which the patent pertains (the “POSITA”).<sup>72</sup> The case studies identified in this section demonstrate that AI continues to evolve beyond a mere tool or instrument. IBM Watson increases the capacity to search prior art and expands the number of obvious solutions, whereas Exscientia's AI technology eliminates the need for chemical experimentation to create novel drug designs. By designing drugs that would otherwise be unattainable, ML and DL systems progressively extend beyond the human inventor's “memory, cognition, and intellect.”<sup>73</sup> To the extent that these technologies alter the hypothetical POSITA, they “inevitably recalibrate the threshold for patentability, and accordingly, change the preconditions of inventing.”<sup>74</sup>

#### (i) Non-Obviousness

Canadian courts have applied a relatively low standard for non-obviousness, whereby a mere scintilla of invention is sufficient to support the validity of a patent.<sup>75</sup> Inventiveness is assessed according to what the POSITA could have known and would have been able to invent at the claim date. Although

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<sup>61</sup> Ryan Abbott, “I Think, Therefore I Invent: Creative Computers and the Future of Patent Law” (2016) 57:4 Boston College L Rev 1079 at 1103–1104 [“I Think, Therefore I Invent”].

<sup>62</sup> *Ibid.*

<sup>63</sup> Dornis, *supra* note 55 at 124.

<sup>64</sup> *Apotex 2002*, *supra* note 13 at para 37.

<sup>65</sup> Edd Gent, “Artificial Intelligence is Evolving All by Itself” (13 April 2020), online: *Science* <[science.org/content/article/artificial-intelligence-evolving-all-itself](https://www.science.org/content/article/artificial-intelligence-evolving-all-itself)>.

<sup>66</sup> Dornis, *supra* note 55 at 113.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Drexan Energy Systems Inc v Canada (Commissioner of Patents)*, 2014 FC 887 at para 26; see also *Gerrard Wire*, *supra* note 54 at para 32; *Apotex 2002*, *supra* note 13 at para 99.

<sup>69</sup> *May & Baker Ltd & Ciba Ltd's Letters Patent, Re* (1948), 65 RPC 255 at 281.

<sup>70</sup> Jan Berger et al, “How Drug Life-Cycle Management Patent Strategies May Impact Formulary Management” (2016) 22:16 AJMC (Supp) S487 at S489.

<sup>71</sup> *Patent Act*, *supra* note 43, s 2 [emphasis added].

<sup>72</sup> *Ibid.*, s 28.3

<sup>73</sup> Dornis, *supra* note 55 at 104.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Diversified Products Corp v Tye-Sil Corp*, [1991] FCJ No 124, 35 CPR (3d) 350.

the POSITA's skill and common knowledge expands with the advent of technology, this has been doctrinally unproblematic as long as the "human actor contributes the 'creative spark.'<sup>76</sup> AI platforms belonging to IBM and Exscientia, however, increase the inventive step far beyond what the POSITA would be ordinarily capable of. With IBM Watson, it is possible to read through entire literature databases, recall all data related to a particular field, and make connections across large archives of information from various disciplines. This inevitably increases the number of predictable solutions known to the POSITA. Exscientia's ML platform bypasses the "extent, nature and amount of effort [normally] required to achieve the invention"<sup>77</sup> by drastically reducing the experimentation necessary to discover a novel therapeutic compound. The algorithm may "[reach] the invention quickly, easily, directly and relatively inexpensively"—a fact that would typically suggest an obviousness finding.<sup>78</sup> Thus, the "obviously to try" test, based on predictability and reasonable expectation of success, is much easier to meet in light of AI-driven drug discovery. In both cases, what would be non-obvious to a human POSITA may be obvious to AI. The fact that AI is common practice in drug discovery suggests that the POSITA is now a person equipped with an AI system.<sup>79</sup>

In addition to altering the hypothetical POSITA, these case studies highlight two additional issues: an inability to determine average AI capacities at a given moment, and the non-transparency of AI-related inventions. To reject a patent application, patent examiners bear the burden of proof for obviousness.<sup>80</sup> Once a patent has been issued, the courts will presume its validity unless there is evidence to the contrary.<sup>81</sup> Where examiners employ the current low threshold for inventiveness and are unaware of (or are unable to determine) the capacity of AI, they are more likely to grant the relevant patent. Similarly, courts are less likely to accept rebuttal of the validity presumption where there is insufficient evidence as to the impact of AI-assistance. Information regarding AI technologies is often inaccessible and opaque given their commercial value and trade secret-like handling. This introduces practical obstacles for examiners and courts in determining the inventive concept of the claim and identifying what differences, if any, exist between the prior art and the inventive concept. Further complication arises from the possibility that an examiner would not accept or a court would not engage an IBM engineer (as one of few possible experts on IBM Watson) to testify on non-obviousness issues. At any rate, the complexity and ambiguity that inherently attaches to evolutionary algorithms may result in more patent grants and fewer patent invalidations.

## (ii) Novelty

For an invention to be new, the subject matter must not have been previously used or disclosed in a manner that it became available to the public (in that there was no legal impediment for people to avail themselves of the information). If not novel, the invention is said to have been "anticipated" by the prior art. The SCC sets out the following two-part test for anticipation, which must be found in a single piece of prior art: (i) the POSITA would understand the prior art to cover the same subject matter as the patent to the extent that infringement would occur if the subject matter were performed (prior disclosure), and (ii) the prior art would enable the POSITA to work the claimed invention (enablement).<sup>82</sup> With the assistance of AI, however, the skilled person will be able to search infinitely more information in a fraction of the time, which increases their likelihood of being able to overcome anticipation requirements, resulting in a greater number of patents. On the other hand, as these technologies are put in the hands of patent examiners, this could mean a considerable expansion in the scope of prior art, making prior disclosure and enablement more likely and rendering it more difficult to obtain or enforce a patent.

## (iii) Utility

The invention must be useful in that it does something practical, and while it need not disclose a special advantage, it must perform the function that the patent claims it does.<sup>83</sup> Utility is a less challenging standard to meet than the first two requirements, since "the mere fact that an invention has been 'made by AI' or 'supported by AI' does not alter its practical utility."<sup>84</sup> However, the unexplainable features of an AI system may raise doubts as to how it achieves the claimed solution. If it is not sufficiently clear what elements lead to the desired effect, then the process may be irreproducible by a POSITA and the patent claim invalid for lack of utility.<sup>85</sup> While the fact that an invention is conceived by AI is generally unproblematic, the advent of AI-designed drugs raises interesting questions. The relevant time for establishing utility is on the application date, where at minimum the applicant must "soundly predict" how their invention will be useful when developed as a product.<sup>86</sup> If Exscientia has not conducted any experimental testing to verify the AI-generated drug's efficacy in treating a disease, can they still patent it? Assuming the algorithm provides, and the patent discloses, a factual basis for the prediction and an articulable and "sound" line of reasoning, the Canadian

<sup>76</sup> Dornis, *supra* note 55 at 111.

<sup>77</sup> *Apotex Inc v Sanofi-Synthelabo Canada Inc*, 2008 SCC 61 at para 69 [*Apotex* 2008].

<sup>78</sup> *Ibid* at para 71.

<sup>79</sup> Yanisky-Ravid, *supra* note 59 at 834.

<sup>80</sup> Dornis, *supra* note 55 at 131.

<sup>81</sup> *Patent Act*, *supra* note 43, s 43(2).

<sup>82</sup> *Apotex* 2008, *supra* note 77

<sup>83</sup> *Apotex* 2002, *supra* note 13.

<sup>84</sup> Dornis, *supra* note 55 at 125.

<sup>85</sup> *Noranda Mines v Minerals Separation Corp* (1949), [1950] SCR 36, [1947] Ex CR 306.

<sup>86</sup> *Apotex* 2002, *supra* note 13.

answer seems to be yes.<sup>87</sup> Who determines whether the algorithm is robust and accurate in making predictions? What information is sufficient to demonstrate that the drug will actually accomplish what the patent claims it will? These are questions that will become increasingly problematic as AI-driven drug discovery continues to gain momentum.

## A Response: Adapting Canadian Patent Law

Canadian patent law should be reformed to accommodate AI-driven drug discovery. This paper has outlined that the drug discovery process is complex, lengthy, costly, and entrenched with a high degree of risk.<sup>88</sup> Strong patent protection is therefore critical for recouping investments and incentivizing brand-name pharma to engage in further innovation. Further, this paper has illustrated that current patent doctrine is unable to adequately respond to both autonomous AI inventions and the supportive use of AI systems. The overarching concern is that this uncertainty creates weaker patent incentives that translate to decreased investment, industry stagnancy, and fewer life-changing drugs introduced to the Canadian market. If our patent system is deemed inadequate, innovators might choose to protect their AI-related inventions as trade secrets rather than publicly disclosing their IP. This would result in “inventive solutions to practical problems [no longer being] coaxed into the public domain,”<sup>89</sup> thereby frustrating the Canadian patent system’s purpose to “promote innovation, economic growth and well-being.”<sup>90</sup> Reform should be implemented if only to establish legal certainty regarding AI-related inventions.

### *Inventorship*

AI technologies are becoming increasingly autonomous, meaning that more inventions may be created without human contribution. Should Canadian patent law recognize AI-listed inventors? Opponents argue that the “current patent law regime is capable of accommodating AI-generated inventions by attributing inventorship to a person who intellectually dominated over the inventive process.”<sup>91</sup> Since modern technology requires some human involvement in the inventing of AI systems, they claim that “there is no need

to implement any changes to patent law.”<sup>92</sup> It is true that AI is currently incapable of determining questions for R&D as well as formulating its own solutions. Moreover, “minor contributions to the inventive concept can be sufficient to make someone [an inventor].”<sup>93</sup> However, this ingenuity must be “applied to the original inventive concept.”<sup>94</sup> Exscientia’s ML platform, though created by natural persons, is itself capable of achieving the inventive step through *in silico* creation of novel drug designs. Opponents may respond that such instances are rare and legal restructuring for the exception would unnecessarily destabilize the patent system—a system wholly grounded in anthropocentric interpretations. Should the fact that AI is (at least for now) only occasionally inventive mean that Canadian patent law should not adapt? As AI applications continue to evolve, it is imperative that patent systems can respond and yield logical outcomes.

Unlike in the U.S. and U.K., Canadian courts have not yet explicitly rejected AI inventorship, and the legislation leaves open the possibility. If Canada follows its common law neighbours in maintaining an anthropocentric approach, two significant consequences arise. First, individuals would acquire patent rights for an invention that they had little or no part in conceiving. Canadian jurisprudence makes clear that “only the inventor is entitled, by virtue of the patent and as a matter of law, to the full enjoyment of the monopoly conferred.”<sup>95</sup> The result would be deterioration of the policy-based rationale for providing patent protection and a rise in undeserving monopoly grants. In addition to an honest desire to “get it right” when naming inventors, there are also legal consequences for improper designations of inventorship in many jurisdictions, including potential patent invalidation.<sup>96</sup> Second, denying patent applications that list AI inventors could have a serious economic impact on the Canadian pharma industry. Doing so would disincentivize further advancement in drug discovery, meaning decreased efficiency in R&D and thus greater likelihood of treatments being unavailable to the public. If Canadian IP policy decisions are “driven by the desire to attract, rather than deter, investment into AI research and development in Canada,”<sup>97</sup> then at the very least “it is important that appropriate policies are put in place to deal with AI-generated works.”<sup>98</sup>

<sup>87</sup> *Ibid.*

<sup>88</sup> Institute of Medicine, *Improving and Accelerating Therapeutic Development for Nervous System Disorders: Workshop Summary* (Washington, DC: National Academies Press, 2014), online (pdf): <[nap.nationalacademies.org/catalog/18494/improving-and-accelerating-therapeutic-development-for-nervous-system-disorders-workshop](http://nap.nationalacademies.org/catalog/18494/improving-and-accelerating-therapeutic-development-for-nervous-system-disorders-workshop)>.

<sup>89</sup> *Apotex 2002*, *supra* note 13 at para 37

<sup>90</sup> David Yi, “AI Inventorship on the Horizon: Part 2” (October 2021), online (blog): *Norton Rose Fulbright* <[nortonrosefulbright.com/en/knowledge/publications/5a6fce4c/ai-inventorship-on-the-horizon-part-2](http://nortonrosefulbright.com/en/knowledge/publications/5a6fce4c/ai-inventorship-on-the-horizon-part-2)>.

<sup>91</sup> Hayleigh Boshier et al, “WIPO Impact of Artificial Intelligence on IP Policy Response from Brunel University London, Law School & Centre for Artificial Intelligence” (2020) at 7, online (pdf): *WIPO* <[wipo.int/export/sites/www/about-ip/en/artificial\\_intelligence/call\\_for\\_comments/pdf/org\\_brunel.pdf](http://wipo.int/export/sites/www/about-ip/en/artificial_intelligence/call_for_comments/pdf/org_brunel.pdf)>.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Drexan Energy Systems Inc v Canada (Commissioner of Patents)*, 2014 FC 887 at para 26.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Monsanto Canada Inc v Schmeiser*, 2004 SCC 34 at para 43 [emphasis omitted].

<sup>96</sup> Jenene Roberts, “AI Tools and IP Rights: Inside the Fight to Have Software Programs Legally Recognized as Inventors” (14 March 2022), online (blog): *Lexpert* <[lexpert.ca/legal-insights/ai-tools-and-ip-rights-inside-the-fight-to-have-software-programs-legally-recognized-as-inventors/361730](http://lexpert.ca/legal-insights/ai-tools-and-ip-rights-inside-the-fight-to-have-software-programs-legally-recognized-as-inventors/361730)>.

<sup>97</sup> Nathaniel Lipkus et al, “Time to Talk about Ownership of AI-Generated Intellectual Property Assets” (13 December 2021), online (blog): *Osler* <[osler.com/en/resources/regulations/2021/time-to-talk-about-ownership-of-ai-generated-intellectual-property-assets](http://osler.com/en/resources/regulations/2021/time-to-talk-about-ownership-of-ai-generated-intellectual-property-assets)>.

<sup>98</sup> Ryan Abbott, “The Artificial Inventor Project” (December 2019), online: *WIPO Magazine* <[wipo.int/wipo\\_magazine/en/2019/06/article\\_0002.html](http://wipo.int/wipo_magazine/en/2019/06/article_0002.html)> [Abbott, “Artificial Inventor Project”].



## Patentability

AI-driven drug discovery raises another important question regarding whether the patentability framework should be amended. The current obviousness and novelty tests are “deeply rooted in the assessment of human capabilities,” including their motivation to pursue certain solutions, restricted by their ability to analyze limited amounts of information, and the predictability and expectation of success.<sup>99</sup> The increasing prevalence of AI means that the anthropocentric approach misguides the patentability assessment. Without relevant changes for evaluating inventions like those of IBM and Exscientia, “human capabilities are essentially judged against AI capabilities.”<sup>100</sup> Exscientia’s ML platform significantly expands the range of therapeutic compounds that can be discovered without undue effort or experimentation. That is, novel drug designs are the result of massive computational power and rapid *in silico* trial and error that requires little to no human involvement. Continuing to measure patentability against the hypothetical (human) POSITA effectively lowers the already low standard for obviousness, rendering most AI-related inventions non-obvious. IBM Watson, on the other hand, increases the POSITA’s ability to search prior art, thereby ensuring that any inventive outputs comply with anticipatory requirements. These case studies suggest that the anthropocentric approach is not only outdated (given that drug discovery is now rarely accomplished without inventive AI applications) but also may result in increased error at the examination stage.

If the doctrinal standards for obviousness and novelty do not adjust, we may see an avalanche of new and operational AI-based pharmaceutical patents. While this would encourage brand-name companies to engage in socially beneficial innovation, it may also unduly hinder generics’ ability to compete, thus creating unwarranted monopoly prices and restricted access to life-saving pharmaceuticals. A greater number of patents makes it more difficult for generic companies to navigate R&D and create affordable drugs without being sued for infringement. Similarly, many patents will preclude inventors from using the patented technology or fail to sufficiently describe the effective component, making it impossible to clearly identify the core of the invention. Strict and expansive patent rights may therefore curtail and even decrease innovation by (i) reducing competition through

the threat of costly litigation and (ii) restricting follow-on innovation by allowing more small drug molecules to be “owned,” thereby stifling the diffusion of knowledge.

## Recommended Modifications

In considering what legal or policy changes should be implemented to respond to advancements in AI-driven drug discovery, decision makers must simultaneously balance the interests of private and public parties. On the one hand, the fundamental objective of the Canadian patent system is to encourage investment, considering the immense risk that brand-name pharma companies incur in drug R&D. On the other hand, expansive patent protection over AI-related inventions may significantly limit access to the process of innovation, thereby concentrating return from and availability to important drugs. What Exscientia and IBM have shown is that it is not too early to consider these questions. The impact of AI on science and technology may “still [be] unfolding at a rapid rate,”<sup>101</sup> but the longer Canadian law waits to address these changes, the wider the gap and the more difficult it may be to implement corrective frameworks that yield logical outcomes.

### (i) Inventorship

Although American and English jurisdictions have rejected AI inventorship, several others have acknowledged the possibility and are worth investigating as possible models. South Africa, for instance, recently granted an AI-listed patent, but its process differs in that it has no substantive examination system.<sup>102</sup> In Australia, the Federal Court of Appeal held that an AI system can be an inventor but not an applicant or owner of the patent.<sup>103</sup> This decision addresses perhaps the most convincing argument in support of the U.K. and U.S. position: that AI cannot own or control a patent due to a lack of legal personality. This view unnecessarily conflates ownership and inventorship. Notably, the Australian patent system closely resembles that in Canada wherein “inventor” is not explicitly defined. Moreover, the explicit object of the Australian *Patents Act* is similarly to “provide a patent system ... that promotes economic wellbeing through technological innovation and the transfer and dissemination of technology.”<sup>104</sup> The court considered it consistent with this purpose to construe the term “inventor” irrespective of whether the innovation is made by a human or not.<sup>105</sup>

<sup>99</sup> Boshier et al, *supra* note 91 at 8.

<sup>100</sup> *Ibid* at 9.

<sup>101</sup> WIPO Secretariat, *Draft Issues Paper on Intellectual Property Policy and Artificial Intelligence*, WIPO Doc WIPO/IP/AI/2/GE/20/1 (13 December 2019), online: WIPO <[wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=470053](http://wipo.int/meetings/en/doc_details.jsp?doc_id=470053)> at 4.

<sup>102</sup> See Meshandren Naidoo & Christian E Mammen, “Guest Post: DABUS Gains Traction: South Africa Becomes First Country to Recognize AI-Invented Patent” (4 August 2021), online (blog): *Patently-O* <[patentlyo.com/patent/2021/08/traction-recognize-invented.html](http://patentlyo.com/patent/2021/08/traction-recognize-invented.html)> (in July 2021, the South African Companies and Intellectual Properties Commission (CIPC) granted a patent listing the inventor as DABUS (a DL-based AI system): “[A]ll that is required in a formal examination (also known as a registration-based system) is for the application forms and fees to be in order with the specification documents attached. If these affairs are in order, the patent will summarily be granted by the CIPC”).

<sup>103</sup> *Thaler v Commissioner of Patents*, [2021] FCA 879 (Austl) [Thaler]. Note: *Thaler* has since been overturned, though the reasons in the 2021 decision remain pertinent to this discussion: *Commissioner of Patents v Thaler*, [2022] FCAFC 62 (Austl), leave to appeal to HCA refused, *Thaler v Commissioner of Patents*, [2022] HCATrans 199 (Austl).

<sup>104</sup> *Patents Act 1990* (Cth), 1990/83, s 2A. See also *Thaler*, *supra* note 103 at para 122; see also *Harvard College v Canada (Commissioner of Patents)*, 2002 SCC 76 at para 18.

<sup>105</sup> *Thaler*, *supra* note 103 at paras 125–128.

While the preclusion of AI ownership makes legal sense (since software-related entities cannot be held responsible under the law, vindicate rights, or practically benefit from compensatory damages), rejecting AI inventorship is similarly inconsistent with Canadian patent policy. Denying AI patent applications or allowing such patents “only by permitting humans who have discovered the work of creative machines to be inventors” produces inefficiencies and logical difficulties.<sup>106</sup> Acknowledging AI inventorship “simply recognizes the reality” and “avoids uncertainty” even for semi-autonomous ML systems.<sup>107</sup>

To bring the law in line with the policy, Canada could follow Australia’s lead in distinguishing between ownership and inventorship. If Canada decides to recognize AI inventors, further questions must be addressed, including whether specific legal provisions need to be introduced to govern ownership or if control should flow from any related private arrangements, such as corporate policy.<sup>108</sup> While legal provisions related to AI may provide certainty, they are largely unnecessary since the distinction already exists in the Canadian patent system. For one, inventorship cannot be modified by a party agreement and is determined on a factual basis.<sup>109</sup> In contrast, ownership can be adjusted as is commonly done in employment contracts, which may stipulate that any inventions created during the employee’s course of employment belong to the employer.<sup>110</sup> Under section 49 of the *Patent Act*, patent owners can also transfer or license their rights to others,<sup>111</sup> but there is no mechanism for transferring inventorship title. According to the Australian Federal Court, the need for patent assignment could be circumvented by allowing the human creator of an AI system to own its output by virtue of their ownership of the AI system itself (e.g., Exscientia’s copyright in the ML algorithm’s source code).<sup>112</sup> However, as discussed above, it cannot be assumed that the programmer or developer’s creative input will always apply to the AI-generated invention. Rather, “once an AI application has started to evolve away from its initial conception, the umbilical cord to its creators has been severed.”<sup>113</sup> Although the creator of the AI system has allowed for AI inventiveness, this contribution resembles the provision of raw materials to construct the apparatus, which is not in itself inventive.<sup>114</sup>

The debate in copyright law is already one step ahead wherein legal literature coins AI-generated creations as “emergent works.”<sup>115</sup> The term expresses that the output of an AI system may be copyrightable where the creative process is a “self-contained evolution, non-foreseeable, and uncontrolled by human actors.”<sup>116</sup> Similarly, patent law could recognize “emergent inventions.” From this perspective, proponents argue that it is the AI user who should be considered the optimal rights owner for AI-generated inventions.<sup>117</sup> This would make sense in the pharmaceutical sector where the development of AI is often achieved by specialized tech companies. These specialists market and licence their AI applications to brand-name pharma companies, such as Sanofi. In effect, the inventive output of AI platforms (the novel drug design) is controlled by buyers or licensees who operate outside the AI industry. Put another way, the pharmaceutical compound is considered part of Sanofi’s portfolio (as the end user) rather than Exscientia’s (as the AI-innovating entity). Thus, the conception of emergent inventions occurs beyond the control of the AI developer.<sup>118</sup> If patent rights over the AI-designed drug were assigned to the AI programmer/developer, considerable transactional costs would arise in the form of negotiations, contract drafting, supervision, and enforcement.<sup>119</sup> It is also possible that the pharmaceutical company would attempt to conceal the AI-designed drugs to secure profit from their use of the AI platform (e.g., by protecting them as trade secrets to avoid public disclosure requirements). For these reasons, ownership rights should accrue to the entity that has the legal right and actual capacity to use the AI system.

#### (ii) Patentability

Given that AI has significantly raised the skill and knowledge belonging to the POSITA, the hypothetical standard used to assess non-obviousness should be raised to reflect the contemporary inventor and the inventive technology typically used in AI-driven drug discovery.<sup>120</sup> Opponents may argue that raising the POSITA standard would significantly disadvantage players that do not make use of IBM Watson or Exscientia-type platforms. While this is true, AI now exists at the core of the pharmaceutical business, and most sizeable

<sup>106</sup> Abbott, “I Think, Therefore I Invent”, *supra* note 61 at 1103–1104.

<sup>107</sup> Thaler, *supra* note 103 at paras 126, 129, 131.

<sup>108</sup> Abbott, “Artificial Inventor Project”, *supra* note 98 at 3.

<sup>109</sup> *Corlac Inc v Weatherford Canada Inc*, 2011 FCA 228 at para 104.

<sup>110</sup> *Comstock Canada v Electec Ltd* (1991), 38 CPR (3d) 29 (FCTD), 1991 CarswellNat 207.

<sup>111</sup> *Patent Act*, *supra* note 43, s 49.

<sup>112</sup> Thaler, *supra* note 103 at paras 189ff.

<sup>113</sup> Dornis, *supra* note 55 at 154.

<sup>114</sup> *Ibid.*

<sup>115</sup> See e.g. Bruce E Boyden, “Emergent Works” (2016) 39:3 Colum J L & Arts 377 at 379 (“works of apparently creative expression that arise from the operation of a program but cannot be traced directly to a human source”). See also Tim W Dornis, “Artificial Creativity: Emergent Works and the Void in Current Copyright Doctrine” (2020) 22 Yale JL & Tech 1 at 9–10.

<sup>116</sup> Boyden, *supra* note 115.

<sup>117</sup> W Michael Schuster, “Artificial Intelligence and Patent Ownership” (2018) 75:4 Wash & Lee L Rev 1945.

<sup>118</sup> Dornis, *supra* note 55 at 157.

<sup>119</sup> *Ibid.*

<sup>120</sup> Erica Fraser, “Computers as Inventors – Legal and Policy Implications of Artificial Intelligence on Patent Law” (2016) 13:3 SCRIPTed 305 at 320.

pharma players have comparable collaborations or internal programs. Continuing to apply the existing lower standard would thus “reward ignorance of the state of the art” and also produce more unwarranted patent monopolies that effectively impede valuable innovation.<sup>121</sup> For the inventive step to achieve its legal purpose, “it must take into account all of the tools available to an inventor, not simply personal knowledge and skill.”<sup>122</sup> Otherwise, an invention that may seem *prima facie* inventive may in fact be the obvious (and therefore non-patentable) output of a computer programmed to generate inventions “like hot water from a kettle.”<sup>123</sup> A potential new standard would be “a skilled person using an ordinary AI tool in the art” of the patent, whereby an “ordinary AI tool” constitutes an AI system that has been disclosed in the prior art.<sup>124</sup> This standard would aid examiners and courts in understanding “the complexity of the AI algorithm, the versatility of the AI system, and the complication of the problem in the pending patent application” or impugned patent.<sup>125</sup>

A second recommendation would be to implement the use of AI in patent examination.<sup>126</sup> IBM Watson and similar ML platforms allow for expedited and accurate review of more prior art than has traditionally been considered possible. In doing so, they significantly reduce costs of acquiring new information. This raises crucial issues regarding the scope of prior art, especially where such capabilities are only available to the inventor rather than the examiner. Providing the Canadian Intellectual Property Office (CIPO) with AI tools would not only even the playing field but also increase efficiency and accelerate the examination process. By more accurately reviewing the scope of prior art, AI in patent examination could also help mitigate human error in conducting patentability assessments. In turn, this would reduce the number of undeserving monopoly grants that are provided in the Canadian pharmaceutical industry, facilitating follow-on invention and reasonable access to drug treatments. Legal idealists would further require that the patent examiner have an identical perspective to that of the POSITA, given that the latter is the gold standard in evaluating patentability.<sup>127</sup> In practice, however, it is not practical to have examiners equally versed in all areas of AI-driven drug discovery. Providing AI tools to the CIPO would at least help examiners perform their responsibilities in line with the POSITA benchmark.<sup>128</sup>

The above section on adapting Canadian patent law has also highlighted the non-transparent nature of complex AI-related inventions, which imposes practical issues in assessing inventiveness (non-obviousness), enablement (novelty), and utility requirements. To address these concerns, a patent depository requirement like that for microorganisms<sup>129</sup> could be implemented for AI. For patents relating to microorganisms, section 93(1) of the *Patent Rules*<sup>130</sup> requires a deposit of biological material as part of the specification when assessing sufficiency of disclosure. The reason is that for these inventions “it is usually impossible to clearly and sufficiently describe the structure or component of the matters such as bacteria, yeast, fungi, or viruses.”<sup>131</sup> A similar inexplicability problem arises for AI-related inventions, which could be mitigated by requiring applicants to submit key components of the AI system, including codes, data, and output results to the CIPO.<sup>132</sup>

## Conclusion

As AI continues to advance in drug discovery, Canadian patent law and the assumptions on which it was developed become more unstable. While policymakers must be careful not to turn the entire system on its head,<sup>133</sup> Exscientia and IBM’s AI drug discovery tools illustrate an urgent need to re-evaluate Canada’s patent framework. The creation of AI-designed drugs presents challenges with respect to inventorship, rendering the conventional anthropocentric approach the antithesis of patent policy. Denying applications that list AI inventors is not only inconsistent with the relevant jurisprudence, but it may also frustrate the patent system’s purpose of promoting innovation and investment and could result in serious economic consequences and restricted access to efficacious drugs developed by *in silico* inventors. To address these concerns, policymakers and the judiciary should recognize a legitimate distinction between inventorship and ownership rights. In the pharmaceutical sector, where AI developers license their systems to brand-name innovators, patent rights should be assigned to the entity that has the legal capacity to use the AI system.

IBM Watson and Exscientia also raise several challenges with respect to patentability. By increasing the capacity

*Continued on page 28*

<sup>121</sup> Robert Plotkin, *The Genie in the Machine: How Computer-Automated Inventing is Revolutionizing Law and Business* (Stanford: Stanford University Press, 2009) at 102, 111.

<sup>122</sup> *Ibid* at 107, 110.

<sup>123</sup> *Ibid* at 160.

<sup>124</sup> Yanisky-Ravid, *supra* note 59 at 848.

<sup>125</sup> *Ibid*.

<sup>126</sup> *Ibid* at 851.

<sup>127</sup> *Ibid* at 852. See also *Standard Oil Co v Am Cyanamid Co*, 774 F2d 448 at 453 (Fed Cir 1985).

<sup>128</sup> Yanisky-Ravid, *supra* note 59 at 852.

<sup>129</sup> See *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, 28 April 1977, 1861 UNTS 31699 (entered in force 19 August 1980).

<sup>130</sup> *Patent Rules*, SOR/2019-251, s 93(1).

<sup>131</sup> Yanisky-Ravid, *supra* note 59 at 853.

<sup>132</sup> *Ibid* at 854.

<sup>133</sup> Dornis, *supra* note 55 at 158.



## III Reviews / Recensions

Edited by Dominique Garingan, Julie Lavigne, and Leanne Notenboom

***Art Law: Cases and Controversies.* By Paul Bain. Toronto: LexisNexis Canada, 2022. xxii, 362 p. Includes illustrations, table of cases, and index. ISBN 9780433509653 (softcover) \$170.00.**

As author Paul Bain writes in his introduction to *Art Law: Cases and Controversies*, the last time a new book on Canadian art law was published was 1980. At the time, Aaron Milrad and Ella Agnew's *The Art World: Law Business and Practice in Canada* identified the "photocopy machine" as the next big threat to copyright protection. How the art world has changed! Forty years after the publication of Milrad and Agnew's book, the law has—in addition to the classic legal issues of copyright and moral rights—newer matters like NFTs (non-fungible tokens), rapidly advancing technology, social media, and changing social mores to contend with. Looking at this assortment of issues, it is clear that art law is not one cohesive body but is woven through several areas of law, including intellectual property, taxation, copyright, fraud, and censorship, as well as being a reflection of the current social environment. This text provides a modern look at these issues and how they affect artists, collectors, and cultural institutions.

The author is a lawyer who specializes in entertainment, media, and intellectual property law, and is also active in the visual arts community, having served on the boards of several arts organizations and galleries. Eleven other experts, comprised of experienced practitioners and academics, each with a particular knowledge and enthusiasm for the subject, have also contributed chapters. Each contributor's biography also mentions their own favourite work of art.

Despite this text being entitled *Art Law: Cases and Controversies*, its scope is limited to the visual arts—painting, sculpture, and photography—and does not include issues specific to the performing or literary arts. The text focuses on the Canadian and American experience, although there are some references to British and European perspectives for history, context, and comparison.

Each chapter begins with a vignette from popular culture or a leading case that draws the reader into that chapter's topic. These include the question of who owns the copyright in a photograph of Eddie Van Halen's guitar, whether the Eaton Centre had the right to install Christmas ribbons on Michael Snow's Canada geese installation (called *Flight Stop*), and whether Naruto, the "selfie" macaque, has the right to copyright in his own image. Banksy's failed attempts to copyright his work and Gustav Klimt's stolen *Portrait of Adele Bloch-Bauer I* also make an appearance. These examples and their accompanying images are very effective in illustrating, both figuratively and literally, the unique legal issues being discussed, creating a narrative thread that makes the text engaging, accessible, entertaining, and, to some extent, gossipy. However, this does not mean the text is frivolous. On the contrary, historical context, case law, and legislation provide a serious, practical, and academic examination of the issues at hand.

The text begins with a clear and comprehensive overview of the two traditional aspects of art law in Canada and the United States. The first is copyright. In the Canadian chapter, Bain traces the history of copyright, from its origins in 18th century England to the modern-day *Copyright Act*, and looks at how to establish copyright, how it is protected, and

how it has been applied by Canadian courts. The American chapter follows the same pattern, including the history of the protection of copyright in the U.S. Constitution and the current *Digital Millennium Copyright Act*. Of particular interest to academic librarians are the sections on fair dealing and fair use that appear in each respective chapter.

The second traditional aspect is the concept of moral rights. Moral rights enable artists to preserve the “unique expression of [their] work” (p. 37), meaning that works of art cannot be distorted, modified, or mutilated (p. 35) without the permission of the artist. The artist retains their moral rights even after the sale of a work, which is why Michael Snow was successful in getting the festive ribbons removed from *Flight Stop* at the Eaton Centre.

Woven throughout each chapter is an awareness of the current social considerations that affect art and art law. Chapter 12, “Censorship and the Visual Arts,” provides a comprehensive overview of censorship in Canada, including state censorship on the grounds of obscenity, child pornography, and hate speech, as well as curatorial censorship, which occurs when art organizations attempt to manage public outrage and political sensitivities with a form of pre-emptive self-censorship by withdrawing potentially controversial pieces of art from display. Curatorial censorship is a specific response to the way in which obscenity charges were used as a weapon in the culture wars of the 1980s and '90s. As the author notes, “artists, particularly those from historically-marginalized communities—LGBT, people of colour, and/or women” (p. 293) were disproportionately challenged on the grounds of obscenity.

Chapter 11, “’Tis Mine and I Will Have It ... Provenance and Restitution Under Quebec Civil Law,” looks at how, according to Québec’s civil law, the ownership of a work of art vests in the possessor after a certain period of time, even if that work of art is stolen property. This model of ownership contrasts with the common law, where the rights of the original owner are favoured and is particularly problematic when looking at “cultural objects stolen from First Nations, family heirlooms confiscated during World War II, and historical treasures from cultural institutions” (p. 276).

Chapter 13, “Resale Payment Rights for Artists,” proposes that legislation be enacted to ensure that artists receive payment whenever a work is resold. As a justification for this proposed legislation, the author uses the example of several female artists whose work was undervalued for most of their lifetimes. One of the artists in question, Carmen Herrera, had her first solo exhibit at the age of 101, vastly increasing the value of her work, and yet has “no legally enforceable right to a share in resale proceeds when current owners resell [her] works” (p. 307) at a much higher price than that of the original purchase. The author notes that female artists and artists of colour were often dismissed by critics and galleries in their early careers and that resale payment rights would address some of these inequities.

Further chapters examine trademarks (including NFTs), taxation of cultural property, art fraud, the restitution of Nazi-looted art, and particular legal issues around photography that include privacy, ownership of images, and the male gaze and exploitation of women.

*Art Law: Cases and Controversies* is accessible to a broad audience. Its writing makes it a valuable resource for artists, collectors, and art institutions looking to understand their rights and responsibilities. Legal practitioners will benefit from the real-world aspects of this examination of art law, and academics will benefit from the additional social and cultural commentary.

REVIEWED BY  
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***Corporate Governance and the New Technology.* By Alberto Salazar. Toronto: LexisNexis, 2022. ix, 205 p. Includes bibliographic references and index. ISBN 9780433525226 (softcover) \$120.00.**

In *Corporate Governance and the New Technology*, author Alberto Salazar seeks to start a global discussion on the duties of loyalty and care of directors and officers in the context of new technology. The book comprises three chapters. Chapter 1, “Directors’ Duties, the New Technology, and Data Governance,” is Salazar’s contribution to the topic; Chapter 2, “Legislation and Cases,” is a selection of legislation and case law from around the world relevant to this area; and Chapter 3, “Some Academic Articles,” features a selection of “academic” articles on the subject, some of which have been excerpted.

Given the proliferation of new technology, I had high expectations of this book. Unfortunately, only a fraction of the book—in particular, the parts that highlighted Salazar’s expertise in corporate governance—lived up to those expectations.

The first problem with this book stems from its title, *Corporate Governance and the New Technology*. Using the definite article “the” begs for a definition: what is included in Salazar’s definition of “the new technology”? We do not find out. Salazar throws out several buzzwords, including artificial intelligence, algorithms, blockchain, and smart contracts—some of which are not particularly new—but defines none of these. He also does not really explain the value of these tools, which would help the reader better understand why their applications, or misapplications, could or should result in a director’s liability, for example. Explaining how the technology helps corporations or creates risk for them from a technical viewpoint would make his arguments and conclusions about the legal implications more compelling and understandable.

The book also seems poorly edited. Aside from a few grammatical errors, the content seems disorganized. For example, in Section 1.04, entitled “Duty of Loyalty, the New Technology, and Data Governance,” Salazar introduces the concept of AI directors. This is evidently a new concept, one that essentially merges the two concepts identified in the title. Consequently, I expected the concept of AI director to be developed in its own section. Unfortunately, it only gets a small paragraph at this point. The concept comes back in Section 1.07, “The Pitfalls of Directors’ Duties and New Technology,” where Salazar discusses AI director liability.

Here, he reintroduces the concept of the AI director, as if it had not been previously discussed. The splitting of this discussion into two sections resulted in little development at either point. I found this to be a missed opportunity for Salazar to highlight his expertise relating to this new topic.

Finally, only a small part of the book has original content. The extracts of legislation and jurisprudence in Chapter 2 might be helpful if the book was being used as a law school textbook but will likely be out of date before a practicing lawyer consults it.

Two comments apply to the articles at the end. First, I would not necessarily label them all as being academic. One is an Ernst and Young publication and another a law firm flash. Second, except for the Picciau and Petrin articles, I found this section superfluous or only tangentially relevant. The main points of the articles could have either been integrated into Salazar's main text or simply added to the list of suggested readings.

On a more positive note, Salazar effectively keeps the text relevant to a global audience. He incorporates examples of jurisprudence, legislation, and AI-related initiatives from across the globe. Moreover, the book is incredibly well researched, with a substantial list of secondary sources.

This book could be a helpful read for corporate lawyers, whether in-house or law firm. It could also be a useful read for law students, academics, and policymakers interested in corporate governance. In particular, sections 1.06–1.08 (relating to directors' duty of care and the governance of the new technology and data) should be required reading for all directors and officers and anyone interested in those roles. I can also see this book serving as the textbook for a course on corporate governance trends or a similar subject. However, in light of the problems I have identified, if budgetary constraints are an issue, one could pass on buying this title and wait for one with more valuable content.

REVIEWED BY

**KATARINA DANIELS**

*Lawyer, Library Services Lead  
Davies, Ward, Phillips & Vineberg*

***Executions: 700 Years of Public Punishment in London.* Edited by Jackie Keily. London: Philip Wilson, 2022. 144 p. Includes illustrations and index. ISBN 9781781301081 (softcover) \$26.99.**

The death penalty may seem distant for many of us, with its last use in Canada in 1962 and abolition in 1976 (although full abolition only came in 1998 when it was also removed for the military). However, it was a real part of our country's justice system for more than a hundred years, with 710 people executed by the state between 1859 and 1962. As a British colony, Canada inherited that punishment as part of its legal system, and the book *Executions: 700 Years of Public Punishment in London* gives us insight into its history.

This richly illustrated book accompanies a recent exhibition at the Museum of London. Written by museum curators, it examines the history of public executions in Britain's most populous city through documents and objects. It goes

beyond the macabre, though this is a necessary part of the examination, given its grim subject. It considers the people involved: the condemned, the executioners, the judges, and the public themselves, for, as the authors note, these were highly choreographed spectacles meant to convey important messages to the crowds about what happens to rule-breakers and to demonstrate “the power of the Crown, Church and state over the life and death of its citizens” (p. 7).

This book describes that state machinery, starting with the crimes that could lead to death. There were over two hundred capital offences by the 18th century, all listed in an appendix to the *Black Act 1723*—also known as the “Bloody Code”—and included things like importing counterfeit coins, robbing rabbit warrens, and destroying a fence.

The chapter on trials at the Old Bailey might hold particular interest for law libraries. We learn about how an 18th-century criminal trial unfolded—often with the person alleging the crime acting as prosecutor and the defendant representing themselves. Particularly striking is the system's speed: the trial often only lasted a few hours, and, along with sentencing and the execution itself, the proceedings could be complete within a matter of days. It likely helped that juries “could be kept without food, water or heat” if they were taking too long to render a verdict (p. 50).

The authors go beyond the recorded laws to remind us of the reality of the system: there were so many people convicted under the Bloody Code that “the justice system depended on reprieves to reduce the number of executions to a manageable level” (p. 49). Who received those reprieves? Who were more likely to be convicted and executed? These are the sorts of questions this book delves into, giving us a picture of how the justice system—and its society—really operated.

Pictures of coins smoothed and then engraved by condemned prisoners for their loved ones bring a poignant, human touch. Contemporaneous illustrations of the crowds at the executions, along with the broadsides purporting to be the text of the prisoners' dying speeches—which were hawked by vendors at the executions and then sold up and down the country in the following days—are just some of the surviving documentary evidence of the spectacle and robust economy of these “hanging days” (p. 7).

This is grim history. But, given its prominence in the history of criminal law in Britain, and so by extension in Canada's inherited justice system, the public execution should be remembered with all its injustices and excess. The final chapter, “Ending the Spectacle,” gives us a succinct explanation of what led to the end of public executions in Britain in 1868. One factor was a reduction in the number of capital crimes. Another was the rise of penal colonies. A final factor cited is the rise of a new morality: though rather than a moral concern about state executions per se, it was believed that the public aspect of executions “brutalised society” (p. 135). Abolition would not occur for another hundred years. Executions in Great Britain were mostly abolished in the 1960s and 1970s, with complete abolition not occurring until 1998, when it was removed for treason.

*Executions: 700 Years of Public Punishment in London* is not meant to be an academic treatise. Rather, this excellent book summarizes over 700 years of history in an accessible and interesting format, full of illustrations of many documents and objects from historical collections that give it an immediacy and human scale. Resisting the temptation to dwell on the salacious or macabre, it is an essential introduction to both the legal and social history of public executions.

REVIEWED BY  
**AMY KAUFMAN**  
Head Law Librarian  
Queen's University

***Law and Mental Health in Canada: Cases and Materials.* Edited by Anita Szigeti & Ruby Dhand. Toronto: LexisNexis Canada, 2022. xxix, 552 p. Includes table of cases, table of statutes, and index. ISBN 9780433525165 (softcover) \$135.00.**

*Law and Mental Health in Canada: Cases and Materials* is a law school casebook that addresses many aspects of mental health law in Canada, from civil mental health law to mental disorders in criminal justice matters. This comprehensive text provides practical guidance for lawyers practicing mental health law, covering many related topics. The text includes an entire chapter devoted to advocacy tools, trauma-informed lawyering, empathy, and increasing access to justice, as well as a separate section on practice issues for lawyers regarding fitness to stand trial.

Overall, the text focuses heavily on Ontario law, although there are some references to other jurisdictions, such as British Columbia, Alberta, and Manitoba. The civil mental health law chapters address topics such as civil commitment, consent to treatment, guardianship and powers of attorney, and personal health information protection. The criminal justice chapters address mental disorder, fitness to stand trial, not criminally responsible verdicts, review boards, dangerous and long-term offender proceedings, and specialized courts and mental health considerations in bail and sentencing. There is also a separate chapter devoted to Indigenous peoples and mental health law, and information regarding coroner's inquests in Ontario is also included.

The contributing authors are knowledgeable and experienced in this area, having written other similar works that are quoted extensively in this text. While it is understandable (and, indeed, expected) that authors would draw on their related prior works, the numerous repetitive citations to those works risk overpowering the substantive discussions. There are many pages that are half footnotes, and excerpts from related prior works also feature extensively throughout. With respect to formatting, the use of short forms like *ibid* and *supra* could have cut down the volume of footnotes drastically, allowing the main text to enjoy more prominence.

As expected for a work of this nature, the text features a variety of case excerpts. Many of the cases cited are quite recent, including the Supreme Court's decision in *R v Zora*, 2020 SCC 14 and the Ontario case *R v Fabbro*, 2021 ONCA 494, and they are all helpfully identified in the table of cases at the end of the book. Unfortunately, the formatting of the

case extracts is not uniform throughout the volume, and in some instances it appears that trial-level decisions were preferred over appellate cases; for example, on page 421, *R v Bohemier*, 2002 MBQB 198 and *R v Pearce*, 2016 MBQB 14 are cited, but *R v Friesen*, 2016 MBCA 50 is not.

Personally, two of my favourite parts of this book are the ladder graphic on page 352 that explains the "laddered approach" to bail and the chart that identifies the specialized mental health courts across Canada, which begins on page 375. Notes and questions for reflection feature prominently throughout the text, and each chapter begins with a helpful table of contents.

With respect to published works on the topic of law and mental health in Canada, Justice Richard D. Schneider has published many books on mental health law with Irwin Law. However, none of those texts are law school casebooks such as this one. Carswell's main mental health text is the *Mental Disorder in Canadian Criminal Law* looseleaf service authored by Justice Joan Barrett and Justice Riun Shandler. As such, this text fills a gap in the existing literature, targeting students and junior lawyers.

*Law and Mental Health in Canada: Cases and Materials* will undoubtedly be helpful for those teaching and taking courses related to mental health law, as well as lawyers beginning to practice in this area. Recent cases, like *R v Patchinose*, 2023 MBCA 58, remind us that issues relating to mental health can arise in many different areas of law, and lawyers need to be alert in identifying them for the benefit of their clients.

REVIEWED BY  
**MELANIE R. BUECKERT**  
Legal Research Counsel  
Manitoba Court of Appeal

***The Law of Affidavits.* By John Douglas Shields. Toronto: LexisNexis Canada, 2023. 255 p. Includes bibliographic references, table of cases, and index. ISBN 9780433525004 (softcover) \$140.00.**

*The Law of Affidavits* is the first and only text dedicated to evidence and the drafting of affidavits. Shields uses his experience as a long-time litigator to review the creative process of drafting affidavits based on British Columbia's rules of procedure and evidentiary laws. The expectation is that the rules regarding affidavits are similar in all Canadian jurisdictions. Shields emphasizes the importance of evidence and the use of affidavits, as most disputes do not go to trial.

Shields has law degrees in both common and civil law from McGill University, has worked at a boutique law firm in British Columbia, and has taught several continuing legal education courses. Shields has also written or co-written several works related to civil chambers, small claims practice, and affidavits, and has appeared before several levels of court in multiple Canadian jurisdictions.

Shields's primary message is that the affiant needs to have the knowledge and authority to swear or affirm the facts related to the case, and all attached exhibits must be

correctly identified. As Shields continuously emphasizes the importance of facts throughout the text, readers may recognize his final comment as he quotes Dan Aykroyd's portrayal of Joe Friday in the 1987 film version of *Dragnet*: "Just the facts, ma'am."

Two key subjects of focus are admissibility and exhibits. The text practically and methodically outlines the process of drafting a proper and valid affidavit with exhibits. It includes an introduction to affidavits, formalities, obligations of counsel, withdrawal or amendment, general admissibility, and inadmissibility. Other topics include the role of the Court; affidavits sworn by lawyers and legal staff; language issues, including translation; striking out an affidavit; cross-examination; family and criminal law affidavit considerations; exhibits; self-represented litigants' affidavits; costs; and practical resources.

*The Law of Affidavits* discusses and provides many case law citations and includes some bibliographic references. Serving a comprehensive purpose, it similarly discusses formatting an affidavit, requirements for an affiant and the jurat, swearing or affirming affidavits, what statements of evidence can be made in an affidavit, and whether an affidavit may be withdrawn or amended. In addition, it contains practical lists of what to include in drafting an affidavit. One of the last chapters details several checklists that can be employed in the creation of a proper affidavit.

The analysis of the admissibility of evidence encompasses nearly half the text. Shields examines admissibility in general, as well as hearsay, inadmissible language, embellishment, propaganda, typographical errors, jurisdictional swearing issues, non-prejudicial error by counsel, use of wording, scandalous or offensive language that might be allowed, plus other possibilities that may or may not be allowed.

The topic of exhibits comprises the second largest discussion in the title, including what constitutes an exhibit, as well as how exhibits are to be indicated, marked, and included or otherwise made available.

This text is the only resource on this topic suitable for the practitioner, either novice or senior. Administrative staff may also use it as a resource in preparing an affidavit based on counsel's instructions. The text contains no footnotes; however, cases are referenced throughout. The table of cases does not include case citations, only the style of cause and the page number indicating where the case is referenced in the book.

*The Law of Affidavits* is a valuable text for the subject area, and it would be a welcome addition to any civil procedure or practice collection. Its plain language and straightforward organization would assist a wide range of readers, from staff to articling students to senior counsel. Librarians, novice lawyers, and more practiced lawyers will appreciate this text as a must-have for any practice dealing with the preparation of affidavits.

REVIEWED BY  
**LAURA LEMMENS**  
*Retired Librarian*  
Edmonton, Alberta

***Online Instruction: A Practical Guide for Librarians.* By Emily Mroczek. Lanham: Rowman & Littlefield, 2022. xix, 137 p. Includes bibliographical references and index. ISBN 9781538157671 (softcover) US\$65.00; ISBN 9781538157688 (eBook) US\$61.50**

*Online Instruction: A Practical Guide for Librarians* is an easy-to-read manual on how to facilitate online learning initiatives. Using lessons learned from the pandemic, this 11-chapter handbook discusses various aspects of online education. Each chapter is similarly structured, commencing with a series of important questions, which are discussed in detail, and ending with a summary.

The text begins by exploring various themes related to the history and goals of online learning by examining the pedagogy of the way teachers think. It then discusses creating policies and accessible operational details when conducting virtual programs; for example, technical suggestions on how to navigate the internal workings of popular platforms and digital resources. The concluding chapter provides a general overview with the intention that all readers will feel at ease before guiding any type of online training.

As a practical guide, the reader is encouraged to explore and focus on the specific information needed that is applicable to one's virtual library setting. This guide is formatted so readers may skip ahead to any chapter that answers their current concerns without having to read the entire text from start to finish.

*Online Instruction* is recommended for libraries launching or enhancing their online programs, as it "is encompassing for a broad spectrum of librarians, with areas that may be of more benefit to specific specialty areas" (p. xviii). As a children's librarian, Mroczek suggests "to consult specific resources about online instruction, design, and school librarianship for detailed parameters" (p. 41). Legal information professionals may want to peruse other in-depth training publications and resources about online instruction, as they may find that certain parts of this guide do not apply to their library needs.

Chapters 9 and 10 focus mostly on historical American copyright laws, with a brief mention of disability and accessibility laws. Even though Creative Commons (p. 107) and open educational resources (p. 108) are briefly referenced, information professionals are reminded to investigate and pursue further research into their local laws when developing online instructional programs. As Mroczek writes, "Laws and permissions are constantly changing, and as a librarian, it is your responsibility to interpret and comply with copyright laws" (p. 126). As a result, it is the duty of Canadian legal information professionals to research and comply with the laws of their jurisdiction.

Overall, *Online Instruction: A Practical Guide for Librarians* is an introductory overview of how to implement online learning initiatives. The definitions, ideas, and tool suggestions may



be useful to readers who have little experience or expertise with online learning. While the text is a reminder of the evolving technological tools available, it may not meet the needs of Canadian legal information professionals.

REVIEWED BY  
**GILLIAN EGUARAS**  
*Research Librarian*  
*McMillan LLP*

***Practicing Social Justice in Libraries*. Edited by Alyssa Brissett & Diana Moronta. Routledge, 2023. 155 p. Includes illustrations, bibliographic references, and index. ISBN 9780367764913 (hardcover) US\$136.00; ISBN 9780367764906 (softcover) US\$34.36; ISBN 9781003167174 (eBook) US\$34.36.**

Dedicated to “people who lift as they climb,” *Practicing Social Justice in Libraries*, edited by academic librarians Alyssa Brissett and Diana Moronta, highlights the complex and vital role libraries can play in advancing social justice. Over the course of 11 chapters of insightful essays and case studies written by a diverse group of librarians with unique perspectives and experiences, the book explores practical ways information professionals can be catalysts for positive change at their institutions.

As a librarian of Eastern European descent currently working on the Lenape (Lenapehoking) homelands, the influence of my identity shapes my perspective on *Practicing Social Justice in Libraries*. Mindful of this context, this book serves as a powerful call to action. Rather than something meant to be read once and then shelved, it actively inspires and demonstrates how to implement its valuable lessons and strategies into daily practice.

The enlightening accounts laid out in this book all touch on social justice issues involving diversity, equity, and inclusion. For example, in the first chapter, “Black Librarianship in the Times of Racial Unrest: An Ethnographic Study from Three Black Voices,” three Black librarians share their experiences working in predominantly white institutions amid social justice uprisings. A common thread among the three was the significance they placed on writing as both a means to spark discussion and a source of catharsis. The challenges and opportunities of anti-racist and anti-oppressive work are also discussed in two subsequent chapters, “Community-Building, Empowering Voices, and Brave Spaces Through LIS Professional Conferences” and “Bringing Diverse Library Exhibitions and Events to Life,” where the authors discuss inequalities in program planning and offer strategies for creating more welcoming spaces. Some of these discussions uncover uncomfortable or surprising truths, like the striking statistics from the American Library Association showing the slow growth in the racial diversity of librarianship, and all highlight the need for us as library professionals to continually confront our institutional structures and the potential barriers they uphold (p. 15).

As I prepare to assist in updating the social justice guide at my library, the chapter “LibGuides for Social Justice: Limitations and Opportunities” was of particular interest. Here, the author urges librarians to reflect on how library

guides can be a tool for action rather than simply a resource that ends after creation. Emphasizing collaboration, critical pedagogy, and mindful outreach, this chapter presents a series of questions and two case studies that can be used as a starting point for anyone looking to make their library guides more impactful.

While most of the contributors work in U.S. academic institutions, the Indigenous librarians working at the X̱wi7̱wa Library in Vancouver have contributed “Weaving the Longhouse ‘Four Rs’ in LibGuides: Indigenous Teachings in Library Practice.” In this chapter, the authors discuss the incorporation of their worldview into their professional practices, emphasizing the interconnectedness of the two. They also discuss how library guides can be viewed as living resources on broader social justice issues and a way to help advocate for change in indigenizing cultural heritage institutions.

*Practicing Social Justice in Libraries* further discusses community outreach, professional development, inclusive spaces, self-care practices, and meaningful partnerships in its remaining chapters. High in practical strategies and real-world examples, with some discussion of theory, this book holds true to its purpose, offering valuable tools and resources to help foster change and infuse social justice into everyday librarianship practice.

With a list of references provided at the end of each chapter, the book equips readers with many other sources for further exploration. It inspires a deeper commitment to professional growth and the pursuit of social justice.

Overall, *Practicing Social Justice in Libraries* is an insightful and practical read that should be on the radar of anyone seeking to enhance their professional knowledge and promote social justice. By recognizing the potential of libraries, we can truly lift as we climb, effecting positive change not only within our communities but in society at large.

REVIEWED BY  
**ALISA LAZEAR**  
*Reference and Data Services Librarian*  
*New York University School of Law*

***Reckoning with Racism: Police, Judges, and the RDS Case*. By Constance Backhouse. UBC Press: Vancouver, 2022. 289 p. Includes chronology, bibliographic notes, illustrations, and index. ISBN 9780774868228 (hardcover) \$75.00; ISBN 9780774868273 (softcover) \$27.95; ISBN 9780774868297 (ePUB) \$27.95; ISBN 9780774868280 (PDF) \$27.95.**

*Reckoning with Racism* is a compulsively readable, fascinating book that intertwines questions concerning reasonable apprehension of bias with how a judge’s rulings should be informed by the life experience of the accused in the context of one Canadian criminal court decision.

The book opens with the trial of RDS, identified as Rodney Small, who was 16 years old at the time of the offence. His identity was protected by the *Youth Criminal Justice Act*, and the author, law professor Constance Backhouse, notes that RDS has waived the publication ban on his name.

In 1992, Rodney Small came upon his cousin being arrested in Halifax. He stopped, and as a result was arrested for obstructing a peace officer, assaulting a peace officer with the intent to interfere with the arrest, and assaulting a peace officer. The only witnesses were the police officer and Small. At trial, Judge Corrine Sparks, at that time the only Black judge in Nova Scotia, found that, based on her experience as a Black woman, police overreact when dealing with non-white groups, and she proceeded to acquit RDS. The case made its way through the Nova Scotia Supreme Court and the Nova Scotia Court of Appeal before, finally, it was heard by the Supreme Court of Canada in 1997.

Backhouse provides biographical details for all the parties involved: the arresting officer; Small; the defense lawyer, Rocky Jones; the prosecutor, Rick Miller; and the trial judge, Judge Corrine Sparks. She also profiles the other parties as they appear in the narrative, including all the appellate judges in Nova Scotia. Situating the circumstances of the offence within the racial history of Nova Scotia, particularly regarding policing and the law, Backhouse details both the erasure of African Nova Scotian communities and the lack of awareness of implicit bias within the legal and policing community.

The book details the original trial decision, the Nova Scotia Supreme Court appeal decision, the Nova Scotia Court of Appeal decision, and the Supreme Court of Canada decision. Backhouse also spends one chapter discussing the impact of gender and how society and the justice system treated Judge Sparks herself, an important consideration given the intersectionality of her gender and race.

Ultimately, the Supreme Court of Canada upheld Judge Sparks's acquittal of RDS. The court's decision helped reinforce that all justice system participants come before the court with their own implicit biases, and that the white male worldview is not necessarily the default—nor should it be. Backhouse's analysis of the decision helps shed light on the debates over whether participants in the criminal justice system may draw upon their own life experiences and, if so, how.

As an alumna of both the Indigenous Blacks & Mi'kmaq Initiative and the Dalhousie Legal Aid Clinic, I was delighted to see so many prominent members of that community cited throughout the book. Backhouse is conscious of her privilege as a white academic and is careful to use the words and voices of the members of the African Nova Scotian community to tell their stories.

*Reckoning with Racism* ends with a brief update on each of the participants and concludes with a discussion of how this case has and will continue to influence the "racelessness" of the Canadian legal system. I highly recommended this book to everyone working in criminal law and those working with racialized communities, and especially those in Nova Scotia. It will also resonate with fans of true crime, community building, and anti-racist activism.

REVIEWED BY  
**LORI O'CONNOR**  
*Public Prosecutions*  
*Melfort, SK*

***The Right to Research: Historical Narratives by Refugee and Global South Researchers.* Edited by Kate Reed & Marcia C Schenck. Montreal & Kingston: McGill-Queen's University Press, 2023. xvi, 257 p. Includes bibliographic references, photographs, and index. Part of McGill-Queen's *Refugee and Forced Migration Studies* series. ISBN 9780228014546 (hardcover) \$120.00; ISBN 9780228014553 (softcover) \$34.95**

This collection of nine essays is a result of the Global History Dialogues (GHD) Project undertaken by Princeton University's Global History Lab. Instructors from partner universities taught oral history research methods to refugee and migrant student-researchers, all of whom were either from or currently living in countries in the Middle East and Africa, as well as France. The student-researchers then carried out their research in 2019 and 2020. This book, the 10th in the McGill-Queen's *Refugee and Forced Migration Studies* series, highlights their unique work and perspectives as refugee historians.

*The Right to Research* begins with an introduction by the editors that contextualizes the essay chapters contributed by the student-researchers. Each chapter is designed to stand on its own, beginning with a letter to the reader and ending with notes and bibliographic references. The letters explain each researcher's positionality, rationale, and methodology. Some chapters also incorporate photographs to complement the research.

The nine essay chapters differ in scope and topic, but they are grouped into three main parts. The first part, *Critical Perspectives on Refugee and Migrant Experiences*, includes essays about the educational infrastructure in Kenya's Kakuma Refugee Camp (Teferra), Eastern African women migrants' experiences in Yemen (Omar), and the impact of colonization and displacement on Burundian drummers (Emerusenge).

The second part, *Continuity and Change in Displacement*, addresses the shifts in cultural practices and stereotypes of the Burundian Twa peoples (Ndiritiro), how African hip-hop creates a unique space for political resistance (Hirwa), and the history of local photojournalism in the Kurdistan region of Iraq (Taha).

Finally, the third part, *Constructing and Deconstructing Social Identities*, discusses traditional medicine in Rwanda and its relationship to Western medicine (Maniraguha), Syrian women's lived experiences over the last 30 years (Alkhateeb), and how migration has shaped the Rwandan Intore dance (Iribagiza).

The final chapter was jointly written by the co-editors and the contributors. In this conclusion, the group reflects on their experiences of becoming researchers and their own personal growth. They also highlight the challenges that shaped their research, including "lack of access to libraries, databases, archives, internet, travel grants (in many cases, even the possibility of legal travel), and more" (p. 241).

Due to the variety of topics, the book would be a welcome addition to academic libraries that collect materials for

migration and refugee studies, history, and anthropology programs. With the authors' consideration of gendered experiences and the GHD Project's broader aim of inclusion, the book could complement equity and gender studies collections. Given the project's approach to knowledge creation and its discussion of how the researchers' work was shaped by the lack of access to information resources, this book could also be relevant to critical information studies research.

Although refugee and migration stories typically evoke notions of the law and legal status of peoples, this book does not discuss any legislation or specific legal frameworks at length. Instead, the focus is on the lived experiences of migrants and refugees, as researched and documented from within their own communities.

For migration law texts with more in-depth coverage of the law, two other titles from the same series stand out: *The Criminalization of Migration: Context and Consequences*, edited by Idil Atak and James C. Simeon (2018), and *Voluntary and Forced Migration in Latin America: Law and Policy Reforms*, edited by Natalia Caicedo Camacho and Luisa Feline Freier (2022). Despite this, migration and refugee law scholars could find inspiration in *The Right to Research* to embark on similar space-making projects.

These challenges are just some of what make research by refugees, migrants, and other displaced persons so difficult, alongside research by those in developing countries. Oral history projects about refugees and displaced people themselves are not new. As an example, *Behind the Wire* is a project documenting the stories of people who experienced immigration detention after seeking asylum in Australia. These stories were published in an award-winning book, *They Cannot Take the Sky: Stories from Detention*, edited by Michael Green et al (Sydney: Allen & Unwin, 2017). Some *Behind the Wire* interviewees had experienced detention, so they shared similar lived experiences with their participants; however, the GHD Project was able to take this idea of research by those with the lived experience even further. Their student-researchers had ownership of the whole research process, from choosing a topic to conducting the research to publishing the results.

The GHD Project attempts to answer the question of "who counts as a historian or researcher?" by making space for historically marginalized voices and scholarship by refugees. Thus, the book provides an important perspective on how more equity, diversity, and inclusion can be achieved in academic research. However, the authors caution readers to not treat the GHD Project as a template: "[we] do not position this project as a model for others to follow ... we continue to disagree among ourselves about what collaborative forms of history teaching, research, writing and publication can and should be, and we invite readers to participate in those disagreements with us" (p. 244). Despite this, the book ends with the hope that more projects like this will flourish.

REVIEWED BY  
ALEXANDRA KWAN

*Digital Services & Reference Librarian  
Bora Laskin Law Library, University of Toronto*

***The Social Future of Academic Libraries.* By Tim Schlak, Sheila Corral & Paul Bracke. London: Facet, 2022. 360 p. Includes online glossary, bibliography, and index. ISBN 9781783304714 (softcover) US\$85.00.**

*The Social Future of Academic Libraries* focuses on the relationships and networks among academic libraries and their institutions and how we can embrace change to ensure the relevance of libraries in the 21st century. This book is particularly timely, with life at academic libraries returning to a more "normal" situation after the pandemic.

The authors argue that the social changes universities and colleges worldwide are experimenting with require a revisiting of the mission and purpose of libraries in higher education. The pandemic brought a speedy advance toward digital work and collaboration, and libraries, in general, ought to take advantage of this and reorient their focus from managing collections and spaces to growing their networks and connections in order to engage with a broader campus community.

The book comprises two parts. Part 1: Contexts and Concepts offers the rationale behind the need for libraries to form new alliances and networks of practice with faculty. It discusses the shift from a collection-centric library to an engagement-centric library, where librarians' roles and services are revamped to the workflow of their institutions, and institutional networks point to new forms of inter-institutional collaboration. It delves into the shift from "owned collections" to "collective collections." Social networks shape academic life and help develop strategies for integration and engagement between libraries and their institutions.

The concept of social capital is likewise explored in the first part of the book. This term is used in the context of an intrinsic human characteristic that relates to people's natural preferences. It is through this perspective that academic libraries can identify and prioritize actions.

Part 2: Theory Into Practice offers diverse case studies about the value, social future, and function of academic libraries. From presenting a conceptual framework for information to the description and implementation of non-traditional library services, these chapters can serve as an inspiration for new services that can transform libraries' connections with their communities in positive ways.

Different chapters are devoted to the onboarding and offboarding of librarians to minimize the loss of organizational knowledge. These emphasize the vital role of academic outreach librarians and the benefits of social networks, visibility, and impact they bring to an institution. The book also highlights the social role of academic libraries in their communities and the community engagement that can be established between different types of libraries. Finally, the book discusses the need for meaningful connections that can support successful fundraising for academic libraries and the adoption of design-oriented practices in libraries to enhance their value for the community.

*The Social Future of Academic Libraries* is aimed at academic libraries in the U.K. and the U.S. However, most

of the concepts, theories, and practices can be successfully applied to academic libraries worldwide. The book may not be applicable for law firm or courthouse libraries. With many figures, tables, and text boxes, the book features many helpful additions that assist with understanding complex ideas. The book also includes complementary downloadable resources from websites, as well as two “biblio-glossaries” with definitions of concepts and bibliographic references that will be useful to readers.

REVIEWED BY  
**SONIA SMITH**

*Law Librarian  
Nahum Gelber Law Library  
McGill University*

*Continued from page 19*

to search prior art and eliminating the need for chemical experimentation, these innovations alter the hypothetical POSITA and inevitably recalibrate the threshold for obviousness and novelty requirements. If the standard remains unchanged, this will mean increased error in examination and validity assessments and an avalanche of unwarranted monopoly grants, in effect hindering follow-on innovation and reducing competition from generic pharmaceutical companies. Therefore, the POSITA must be reinterpreted in such a way that considers the fact that the ordinarily skilled worker in drug discovery is now equipped with an AI system. Moreover, the complexity and non-transparency of AI-related inventions imposes practical obstacles for judges and examiners in assessing non-obviousness, enablement, and utility. A solution may be to provide CIPO with AI tools to evaluate patent applications and/or impose a depository requirement similar to that for microorganisms.

# CALL/ACBD Research Grant

The Committee to Promote Research and CALL/ACBD invite members to apply for the CALL/ACBD Research Grant. The application deadline is February 28, 2024.

The CALL/ACBD Research Grant was established in 1996 to provide members with financial assistance to carry out research in areas of interest to members and to the association. Please refer to our Committee page for a copy of the application form and to view our collection of past research projects.

The Committee is excited to receive proposals and we encourage members to apply or to contact us to discuss a project you are interested in. Members who previously applied but were not awarded funding are welcome to reapply.

Co-Chairs, CALL/ACBD Committee to Promote Research:

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## III Bibliographic Notes / Chronique bibliographique

By Kate McCandless

**Susan Boyle et al, “The Lawyering Toolkit: A Supportive Tool to Close the Legal Literacy Gap Between Learners and Practice Professionals – A Proof-of-Concept Report” (2023) 23:2 Legal Information Management 81, online: Cambridge University Press <[doi.org/10.1017/S1472669623000221](https://doi.org/10.1017/S1472669623000221)>.**

The concept of the Lawyering Toolkit was born during a conversation between academic and legal practice librarians in the British and Irish Association of Law Librarians (BIALL) Irish Group when “[l]egal practice librarians commented that they were seeing learning gaps with the trainees, such as knowledge of the structure and finding of legal information, or they reverted to low effort seeking methods” (p. 81). Consequently, the authors set to build a toolkit based on a “learner-centred scaffolded approach” that transitions knowledge from academe into legal practice.

The toolkit serves as a launchpad for just-in-time learning, enabling users to engage in self-directed training; however, it is important to note that it is not meant to replace the expertise of a law librarian (p. 82). While the toolkit is grounded in Irish legal information, the concept can be expanded to other jurisdictions. The authors have devised several “learner pathways” that include starter skills, top notch skills, and employability skills, as well as “skills pathways” such as tip features, ethics, learning checks, and feedback boxes (p. 81–82). These allow the material to be catered to different users and learning types.

While the kit is still in the proof-of-concept stage, it can serve as a point of inspiration for library teams in other jurisdictions. Gathering resources to help law students transition to

lawyers can be essential for bolstering research skills and knowledge of the justice system. It can also support users with on-demand learning in the early stages of their careers.

**Jennifer Dixon & Janet Kearney, “FCIL Research for Beginners: Top Tips for Getting Started with Confidence” (July/August 2023) 27:6 AALL Spectrum 23, online: AALL <[aallnet.org/spectrum\\_issue](https://aallnet.org/spectrum_issue)>.**

Legal information professionals may be asked to investigate foreign, comparative, and international law (FCIL) from time to time. While this may seem like an impossible task due to a dearth of materials, language barriers, and lack of understanding of foreign justice structures, authors Dixon and Kearney offer some suggestions on approaching this research.

- *Utilize Free Research Guides.* There are several available online, and many universities with law schools will have guides on how to research within their jurisdiction. [GloboLex](#), a free resource from NYU’s Hauser Global Law School Program, organizes their foreign law guides by jurisdiction and provides comparative guides on both subject matter and jurisdictional coverage. The UN’s Dag Hammarskjöld Library also has [research guides](#) that can be useful when researching UN documents.
- *Learn from the Expertise of Fellow Librarians.* Leverage your community listservs and forums as they are a “sure-fire way to receive numerous suggestions and offers of help from experienced librarians” (p. 24). Don’t be afraid to contact folks at foreign law schools

or courts, as they “may be responsive and willing to help” (p. 24).

- *Explore Secondary Sources.* These resources provide valuable background information and often include “comparative material that allows the researcher to compare concepts across jurisdictions” (p. 24). Two useful finding aids available in HeinOnline are AALL’s *Index to Foreign Legal Periodicals* and *Multinational Sources Compared*, the latter of which “is particularly useful for finding niche tools buried in databases you may already have as each entry includes the publisher and format” (p. 24).
- *Test the Limits of Existing Subscriptions.* You may have access to documents in existing subscriptions to services like Westlaw, Lexis, Bloomberg, and HeinOnline. Poke around!
- *Don’t Be Lost in Translation.* Although Google Translate will not “provide an accurate enough translation to help you interpret the law for court, it is usually good enough to help you find the source” (p. 25). I personally have used Google Translate when researching fair trade decisions from the EU and South Korea, and its rough translation helped us determine if a document was useful to the matter and if an official translation would be valuable.

The authors emphasize the importance of managing student or attorney expectations when it comes to specific types of research requests: “While primary law and secondary sources are often obtainable, other searches, such as foreign docket searches, may be far more challenging or even impossible, depending on the jurisdiction and its legal infrastructure” (p. 25). This is on top of the potential costs of retrieving copies of such documents. However, don’t let the unfamiliar intimidate you! FCIL research can be approached with confidence when armed with this arsenal of tips and tools.

**Garima Karia, “When Words Can Do Justice: Assessing the Novel Relationship Between Legislative Drafting and Access to Administrative Justice in Yukon and Canada” (2023) 28 Appeal 148, online: [CanLII <canlii.ca/t/7n28b>](https://canlii.ca/t/7n28b).**

In this article, author Garima Karia asks the reader to consider the power of definitions in legislation and case law, as “we rarely consider where they came from, how they were determined, and the effect they have on our lives” (p. 150). Legislative definitions are not just terms that we all agree on—they “may also serve as vehicles for accessing justice” (p. 150). Proper definitions provide guidance to decision makers and are often the first place to turn when “exercising their ‘filling in’ powers” (p. 152).

Karia examines Yukon’s *Human Rights Act* and the definition of “systemic discrimination,” which reads: “Any conduct that results in discrimination is discrimination” (RSY 2002, c 116, s 12, cited on p. 151). But what does that mean? Karia argues that definitions need to be clear, accessible, and reflective of the lives that are impacted under a given statute. When definitions are clear and concise, all players

within the justice system can “easily identify whether their situations align with the definition, thus alleviating some of the obscurity” that may be present (p. 153). Without these clear terms, “courts and tribunals reach inconsistent outcomes (and ... haphazard definitions), which directly impinges on the predictability inherent to the rule of law,” and ultimately can prevent a claimant from seeking recourse (p. 154).

The Government of Yukon solicited public feedback regarding “systemic discrimination,” but chose to ignore that input and make no amendments to the definition, rendering the public consultation effectively meaningless. Karia argues that “‘user friendly’ definitions are best produced by those who would or will access them” (p. 155) and that public participation in legislation allows for greater engagement to justice in general.

The author would like to see definitions amended *now*. As we are more aware of the effects of racism, stereotyping, and systemic discrimination as a society, there will likely be “an increase of systemic discrimination-related cases before courts and tribunals” (p. 159). These decision makers need to be able to weigh facts and substantiate human rights claims, but this cannot be done with vague definitions.

Currently, Manitoba’s *Human Rights Code* has the most fulsome definition of systemic discrimination. There is also guidance in *Canadian National Railway Co (CN) v Canada (Canadian Human Rights Commission)*, which many courts and decision makers have come to rely on. In that decision, Justice Abella wrote:

Discrimination ... means practices or attitudes that have, whether by design or impact, have the effect of limiting an individual’s or a group’s right to the opportunities generally available because of attributed rather than actual characteristics [...]

It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone’s potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

That is why it is important to look at the results of a system” (p. 162, emphasis in original).

Although many cases have cited this definition, it is still important to have it concretized in legislation, as “decisively entrenching a definition should still be the ultimate goal, as it ensures consistency and predictability: two cornerstones of access to justice and the rule of law” (p. 164). We see the effects of this in the Yukon. The Yukon Panel of Adjudicators has “interpreted the provision inconsistently” and “since 1990, the term ‘systemic discrimination’ has only appeared in four Panel decisions” without much consideration of the term (p. 165). This should ring alarm bells.

With a concrete definition, “we may observe legal empowerment in action as well as an increase in access to justice system in which one can put a legislative name to an experience and seek recourse, even if success is not

guaranteed” (p. 167). Moreover, claimants and decision makers will have more predictable jurisprudence available to them. We often look to our most populated provinces to lead the way in legislation and jurisprudence, but perhaps “this case study illustrates that the nation can learn something from its Northern territories” (p. 170).

**Damien A Riehl, “Standardizing Legal Data to Extract Insights” (May/June 2023) 27:5 AALL Spectrum 21, online: AALL <aallnet.org/spectrum\_issue>.**

SALI (Standards Advancement for the Legal Industry) is “a non-profit that provides a framework to standardize legal data to improve legal business management” (p. 21). SALI’s Legal Matter Specification Standard (LMSS) “includes over 10,000 tags that enable users to extract legal insights” (p. 21–22). This standard is used by legal publishers and vendors, such as Thomson Reuters, Lexis, Bloomberg, Litera, InTapp, NetDocuments, iManage, and almost every other legal vendor that is involved in information management. As so many vendors have adopted the standard, the data is thus interoperable, and users can leverage the data across multiple products and systems (p. 22, 24).

Firms and other legal service providers can leverage these tags to bring together business and legal practice. The LMSS can help answer questions such as “Which lawyer has experience in this particular [Area of Law]?” The brackets stand in for the SALI code, which would denote personal injury, real estate, or IP, for example (p. 22). According to the authors, “[n]early every piece of legal work product can be mined for value. That value can be quantified using SALI tags” (p. 23).

SALI tags can be applied at the matter level (area of law, industry, location, etc.), document level (types, included components, etc.), or even regarding tasks (settlement conference, oral arguments, etc.) and in timekeeping (p. 22–23). Lawyers (and administrators) can then analyze prior dockets and identify how long a certain task or stage in a matter may take (for example, drafting an initial separation agreement without children in the marriage may take X number of hours, while drafting one where there are children in the marriage may take Y number of hours). This can increase accuracy in billing, standardizing fees, and providing accurate estimates for time to complete tasks.

When you apply SALI tags, “you can obtain insights to questions like, ‘Show me all our patent litigation matters where we represented computer and high-tech clients who were defendants’” (p. 24). These keywords all correspond to SALI fields, and thus you can run a query using the SALI tags to surface those matters of interest. Notably, SALI separates “area of law” from “service,” resulting in a more streamlined hierarchical schema. This also allows users to search for a particular service across multiple areas of law or industries (p. 25).

SALI allows for multiple “parents” that more accurately reflect “the legal world, and legal concepts—and how they work.” As a result, you don’t need to choose the correct tag to surface information (p. 25). For example, if you searched for “negligence claims,” you would retrieve “negligent

misrepresentation,” and if you searched for “defamation claims” you would also retrieve “negligent misrepresentation.” With SALI, “[a]ll roads lead to the right answer” (p. 25), and that answer is leverageable for larger insights regarding key business indicators and practice trends.

You can explore SALI and the LMSS more at [sali.org](https://sali.org).

**Teresa Scassa, “Regulating AI in Canada: A Critical Look at the Proposed Artificial Intelligence and Data Act” (2023) 101:1 Canadian Bar Review 1, online: *CanLII* <[canlii.ca/t/7n4ch](https://canlii.ca/t/7n4ch)>.**

Bill C-27, *The Digital Charter Implementation Act*, passed first reading in the House of Commons on June 16, 2022. As I’m writing this, C-27 is being considered by the Standing Committee on Industry and Technology. The bill comprises several acts, including the *Artificial Intelligence and Data Act (AIDA)* (see more at [parl.ca/LegisInfo/en/bill/44-1/C-27](https://parl.ca/LegisInfo/en/bill/44-1/C-27)). In this article, author Teresa Scassa examines the bill, its shortcomings, and potential implications.

The proposed *AIDA* had not been the subject of prior public consultation or discussion. It “sets out a series of obligations relating to 1) the use of anonymized data in AI systems, 2) the design, development and making available for use of AI systems generally, and 3) the design, development and making available for use of high-impact AI systems” (p. 4). There is an issue, however, as “‘high impact’ is not defined” in the act (p. 4).

The *AIDA* is grounded in the concepts of “agile regulation” and “risk regulation.” Agile regulation “favours soft law in the form of non-binding guidance, standards and codes of practice” (p. 7). The bill states that “*an agile regulatory framework is necessary* to facilitate compliance with rules by, and promote innovation within, those organizations” (Bill C-27, Preamble, cited on p. 6, emphasis in original), but Scassa argues that the government’s approach of leaving “core terms and obligations” to the regulations and providing no clear oversight or regulatory body means that the bill does not meet the ideal of an agile regulatory framework (p. 7). Because “so much is left to be defined or set out in regulations, with both the Minister and Governor-in-Council having regulation-making powers” (p. 7), Scassa is concerned that the *AIDA* is not agile at all, and “with so much left to regulations there is a risk that the legislation—or key parts of it—will never take effect” (p. 13).

Risk regulation “proposes that regulators ‘should focus their efforts on the most serious risks they face in achieving their objectives’” (p. 14, citing Robert Baldwin & Julia Black, “Driving Priorities in Risk-based Regulation: What’s the Problem?” (2016) 43:4 *JL & Soc’y* 565 at 565). AI is “well-suited” to this concept of regulation, as the technology is complex, still developing, and partly inscrutable (p. 14), and therefore is a prime candidate for “anticipating and mitigating potential harms” (p. 15). But with an evolving technology, it may be difficult to identify potential harms and what is a “faulty” product. Again, as so much of the bill is to be defined, identifying and mitigating these harms may be impossible. Further, Scassa identifies that there must be some accepted level of harm, as “risk suggests

that it is something that, although we try to prevent it, is an anticipated outcome” (p. 17).

Scassa notes that “[h]arm and bias are identified as risks but are framed in terms of individual and quantifiable harm,” and these risks ignore the potential for “collective harms and systemic discrimination” that may be a better path for identifying bias (p. 18). She also points out that “the federal government’s own [Directive on Automated Decision Making] (another example of risk regulation) does a better job of addressing collective harms than does the *AIDA*” (p. 18). If one can prove they have suffered a harm, then there is the potential to trigger consequences, which can be as extreme as Administrative Monetary Penalties or prosecution (p. 20).

There are also issues with the scope of the bill. AI can and will touch a multitude of industries. The *AIDA* “may conflict or overlap with norms or rules in other legislation such as data protection laws” in these sectors (p. 21). Particularly of note are the clauses regarding anonymized data and personal data. These two terms are distinct and separate and may result in governance overlaps and gaps. Further, as the *AIDA* only applies to “high impact” AI, “the nature and extent of governance of anonymized data is both uncertain and likely to be incomplete” (p. 23). The act does not follow the “substantially similar” schema we have seen with *PIPEDA* and other privacy statutes, which may further these overlaps and gaps. AI organizations may therefore have to comply with both federal and provincial legislation (p. 26). But, as Scassa notes, “by focusing—for general application purposes—on the status of the supplier rather than the customer, governance under the *AIDA* may oddly be more inclusive than the *PIPEDA* has been in the past” (p. 26). Finally, the *AIDA* does not apply to the government itself. Should the government develop an in-house AI technology, it would not be subject to the *AIDA* (p. 28). This is also striking when taken in the context of the entire bill.

As the bill is still before the legislature, it is likely we will see some changes to its contents. We should also hope that more consultation will emerge as it moves through the legislative process. Scassa’s thorough review highlights key points that may have been forgotten or ignored in the drafting process. Readers will have to await Scassa’s final verdict on the statute once it receives royal assent.

**Olivia R Smith Schlinck, “OK, Zoomer: Teaching Legal Research to Gen Z” (2023) 115:2 Law Library Journal 269, online: [AALL <aallnet.org/lj\\_issue>](http://aallnet.org/lj_issue).**

Each new wave of law students brings new challenges for trainers to adapt to their learning styles. In the past few decades, there have been many articles written about millennials and how to best teach “the first generation of ‘digital natives’” (p. 271). Author Olivia R. Smith Schlinck argues that “[i]t is time to do the same for Gen Z students” (p. 271). The author notes that Gen Z students are incredibly pragmatic and truly want a practical and applicable education that will take them into the “real world” beyond university (p. 275).

While Gen Z students are adept at navigating the digital world, they may lack skills in critical thinking and analysis and “may struggle to understand that a large *quantity* of information

does not necessarily equate to *quality* information” (p. 278–79, emphasis in original). Gen Z, or “Zoomers,” tend to be wary of experts and want to see their professors and instructors more as “guides rather than authorities” (p. 286). They also see their education “as a service they pay for and should therefore have some control over (in terms of what they are taught, when they are taught, and how they are treated)” (p. 287). Meaningful feedback is also incredibly important to these students.

The largest difference between Zoomers and millennials is how they collaborate and learn in group scenarios. Zoomers prefer to learn at their own pace, take time to reflect on materials, and then discuss and collaborate with peers (p. 290). Collaboration must also be a value-add in their learning for it to be taken seriously (p. 291).

Smith Schlinck provides concrete tips for working with this generation of students:

- *Explain How Each Skill, Topic, or Resource Will Be Used in Legal Practice.* “Before teaching *how* to research in a particular area, explain *why* students are learning that research skill” (p. 294, emphasis in original).
- *Use Short, Prerecorded Lectures to Flip Your Classroom.* “The modern flipped classroom involves students watching prerecorded lectures on a topic before coming to class” (p. 294–95). Prerecorded lectures offer flexibility and provide more control to students, but these recordings must be high quality, focused, and short to be effective.
- *Rethink Group Work.* Consider keeping group work ungraded to keep the focus on practice rather than the assessment. Also consider providing time to work alone first before having groups come together. “This method, commonly referred to as ‘pair and share,’ can facilitate conversation and ‘increase Gen Z students’ comfort level for working together” (p. 296).
- *Incorporate Low-Stakes Writing Assignments to Practice Communicating Research Findings.* Junior associates are usually summarizing research findings rather than writing formal briefs. Zoomers also don’t like writing emails, so consider asking students to draft emails that are easy and quick to read to help them practice communicating their findings to senior lawyers.
- *Give Regular Individual Feedback.* Live critique, without grades involved, may be the better way to provide feedback, as it takes the pressure away, reduces stress associated with negative feedback, and “makes for an ‘active and personal’ learning experience in which each student learns *why* something is or is not correct and how to improve in the future, not simply *if* the answer is right” (p. 298, emphasis in original).
- *Connect Class to the Causes Gen Z Cares About by Partnering with Local Legal Organizations.* Consider leveraging your community connections and



undertake legal research for local organizations. This experiential learning helps connect “legal research skills to the issues Gen Z cares most about” (p. 299) and thus will keep students engaged and invested in their coursework.

- *Embrace Google.* Understand that Gen Z students are going to use Google, so rather than discourage its use, help them become “more critical Googlers” (p. 299). Many students “may see research instruction as a waste of time” because “a client can Google the law. It is lawyers’ specialized research knowledge and skill that make them professionals (and pay their bills—remember, Zoomers are pragmatic)” (p. 300).
- *Teach Research Process, Not Database Mechanics.* Strategy should always be highlighted over database functions. These tools are designed to be explored by the user. Instead, focus on teaching the “format and layout of legal information” so lawyers can become “technologically resilient” graduates—lawyers who can ‘use existing technology successfully’ and ‘approach new technology thoughtfully with an open

mind” (p. 301). Teach them the skills they can adapt over time.

- *Intentionally Teach Critical Legal Research.* Critical Legal Research Theory (CLR) “encourages the deconstruction and questioning of the arrangement and accessibility of legal information” (p. 302). For example, professors should focus on the algorithms used by commercial databases, like Westlaw and Lexis, which “are different from the search algorithms they are already comfortable with (Google)” (p. 303). Students should know that, since the algorithms are different, “search results may not appear in a logical order. With this insight, students will think more critically about the results they select in their searches” (p. 303).
- *Make It Clear That You Care.* “[B]e sure that your students know that your ‘ultimate goal is to see them succeed in law school and have successful career’—and *tell them* as much instead of assuming they already know” (p. 305, emphasis in original).

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

By Erin Clupp

Here's a quick look at what's been happening in the law library community across the country.

### Ontario Courthouse Libraries Association (OCLA)

Along with the rest of the country, Ontario courthouse libraries have been seeking out initiatives to improve every Canadian's access to justice. Justice Canada is guided in its efforts to [promote access to justice](#) by the United Nations' 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs), whose overarching principle is to "leave no one behind." As part of this endeavour, the Library Information Resource Network (LiRN) has introduced a standard suite of electronic resources to all Ontario courthouse libraries that includes products from LexisNexis, Thomson Reuters, and vLex. The feedback has been positive, and we are proud to have consistency throughout the province so members can access these resources, regardless of their location.

The list of new resources is by no means exhaustive. Ontario courthouses also enjoy subscriptions to HeinOnline, and the Law Society of Ontario provides us with AccessCLE, their database for continuing professional development materials from 2004 to today.

If we do not have what our members are looking for electronically, we make up for it in print. With 47 libraries to choose from, we are confident that we have all the bases covered. Is the book you're looking for at an Ontario law

association 200 kilometres away? Don't fret—we also have an interlibrary loan system. A friendly reminder to all you Ontario-folk: be mindful of the requests, if any, made by the home library.

With courthouses spread out over such a vast province, working together is paramount in providing access to justice to all Ontarians.

**SUBMITTED BY  
NICOLE STRANDHOLM**  
*Secretary, OCLA Executive Committee*

### Courthouse Libraries B.C. (CLBC)

As we cruise into the second half of 2023, CLBC is working harder than ever to support our public and legal clients with the information and assistance they need. We are working on a multitude of projects, large and small, to better engage with our clients and the broader community. Now 30 branches strong in locations across the province, we have lots on the go and are proud to report some highlights and updates.

*Better Together: Legal Training Partnerships*

CLBC is a regular provider of free [training and professional development](#) opportunities for lawyers. We have wonderful

partners who help us share knowledge and build stronger connections in the legal community. Some of our partners include Rise Women's Legal Centre, the Criminal Defence Advocacy Society, and the Indigenous Legal Community Clinic. In September, we presented "Trauma-Informed Lawyer" with author Helgi Maki. Maki discussed her book *Trauma-Informed Law: A Primer for Lawyer Resilience and Healing* and offered trauma-informed tools to help lawyers in their practice.

*Staff Professional Development: Also Better Together!*

In October, CLBC hosted our first in-person staff professional development days in four years since the pandemic shifted us online. Some of the topics covered were safety and de-escalation skills-building, outreach, and collection development. Our "Learning Days" are hosted by our Vancouver branch with attendance from staff from our locations around the province.

*Law Matters*

[LawMatters](#) continues to offer training to public libraries around B.C. with the goal of increasing legal reference skills and local access to legal information. This spring we delivered training to Northern B.C. libraries at the Beyond Hope Conference in Prince George, and we are planning training for Lower Mainland libraries and the Vancouver Island Regional Library.

*Look Ma, No Fees!*

As of June 2023, CLBC moved to a no-fee model for services. As part of our commitment to reducing barriers to

legal information for everyone in B.C., most of our services, including document delivery, are free. We do charge small fees for photocopying, printing (\$.25/page), and scanning (\$1/page) at our larger branches, and clients who are able to do so are invited to make a tax-deductible donation.

**SUBMITTED BY**  
**LISA WINKELAAR**  
*Librarian, Kamloops Branch*  
*Courthouse Libraries B.C.*

### **Private Law Libraries Special Interest Group (PLL SIG)**

Marnie Bailey (Fasken) and Carolyn Petrie (Norton Rose Fulbright Canada) will both remain as co-chairs of the PLL SIG for the 2023/24 year.

Planning for the year is well underway. The PLL SIG held a joint session with the Academic SIG on October 25, 2023, where our respective groups shared information about AI and the student experience: what's being taught at law school? What are students seeing or using in firms? Where can we work together to support each other as we navigate these new legal tech tools?

We're looking forward to seeing everyone throughout the upcoming year!

**SUBMITTED BY**  
**CAROLYN PETRIE & MARNIE BAILEY**  
*PLL SIG Co-Chairs*



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

### London Calling: Notes from the U.K.

By Jackie Fishleigh

*Former Library and Information Manager (Retired), Payne Hicks Beach, London, U.K.*

Hi, folks!

#### Venue for Commonwealth Games 2026 in Limbo and the Future of the “Friendly Games” in Crisis

In July, Daniel Andrews, premier of the state of Victoria, Australia, made the decision that the region would be pulling out of hosting the Commonwealth Games in 2026, apparently due to budget blowouts and spiralling costs. Less than a month later, Joseph Schow, Minister of Tourism and Sport in Alberta, Canada, announced its government's withdrawal of support for its bid to host the 2030 Games. He explained that the estimated bill of £1.5 billion was a burden “[too high for the province to bear](#).” This was particularly sad, as the athletic contest that became the Commonwealth Games was first held in Hamilton, Ontario, in 1930.

By contrast, U.K. Sports Minister Stuart Andrew [stated in January](#) that “Birmingham 2022 was tremendously successful in boosting the local economy and bringing people together” and a new report “shows that new jobs and investments are just the beginning of the story, with the Games paving the way for future events in the region.”

The Birmingham 2022 Commonwealth Games contributed at least £870 million to the U.K. economy, according to an interim study. [Paul Blanchard](#), Chief Executive Officer of the Commonwealth Games England, stated that “[t]he Games was delivered within a budget of £778 million,” which was

[split 75/25](#) between central government and Birmingham City Council, “and the U.K. government has announced that it will invest over £60 million of unspent contingency funding from this core budget in the West Midlands to further enhance the legacy of the Games.”

According to a [report](#) by the U.K.'s Department for Digital, Culture, Media and Sport (DCMS), the Birmingham Games were the best attended in its history, with more than 1.5 million tickets sold. BBC Sport's videos were [streamed 57.1 million times](#), more than six times the number during the previous Games. As the report's [executive summary states](#), “From the moment the iconic ‘Raging Bull’ stormed into the Alexander Stadium on opening night, to the final notes from the legendary Ozzy Osborne as the curtain fell, these incredible Games have captured the imagination of the city, region and audiences across the globe.”

Having attended an evening of athletics there myself, I completely agree with these sentiments. The atmosphere was electric in the City Centre. The famous mechanical bull has now found a home in New Street station shopping centre.

I really hope that a host city can still be found for the 2026 Games. If it stayed in the U.K., that would be convenient for me, especially if the venue was London!

#### Birmingham City Council Declares Itself Bankrupt

In early September, Birmingham City Council, the largest local authority in the U.K., issued a [section 114 notice](#). This is a legislative tool used in England and Wales to signal that a council does not have the resources to balance its budget.

According to [The Guardian on the 5th September](#), although it

is described as “effective bankruptcy,” there is no procedure in law for a U.K. local authority to actually become bankrupt, and none ever has. However, it requires councillors to discuss the implications within 21 days, and it sends a powerful signal to central government that an authority is in dire financial straits. All new spending must stop immediately, with the exception of statutory services, including safeguarding vulnerable people. Existing commitments and contracts continue to be honoured.

Birmingham has become the [seventh council since 2020](#) to have issued a section 114 notice. While the cause might appear to be hosting the Commonwealth Games, Birmingham blames its position largely on a £760 million bill for equal pay claims, along with problems installing a new IT system and government cuts over the past decade.

### ***Birmingham City Council v Abdulla and Others***

In this landmark [2012 employment case](#), the Supreme Court ruled that 174 women who worked for Birmingham City Council could proceed with their equal pay claims against their former employer in the civil courts, after the six-month time limit for bringing a claim in an employment tribunal had expired. This gave the workers, including cooks, cleaners, and care staff, six years to submit their claims.

According to [Sarah Ozanne](#), an employment specialist at CMS Cameron McKenna, “[t]his is a significant development in current equal pay laws, and leaves employers open to the threat of claims long after the employment relationship has ended.”

### **Traffic Pollution Controversy: Ultra Low Emission Zone (ULEZ) Expansion to Outer London**

On the 29th August, London became the [world’s largest low-emission zone](#). This anti-pollution, electric vehicle charging zone now covers the area where we live near Sutton in Surrey and is proving hugely contentious. There is anti-ULEZ graffiti in the village, and some of the camera equipment connected with ULEZ has been vandalised.

ULEZ now includes 32 London boroughs. Drivers of cars that don’t meet the minimum emission standards will have to pay £12.50 a day. Eighty-five to 90 per cent of vehicles do comply, and there is a scrappage scheme, but it only pays £2,000, and not everyone is eligible. Small businesses, carers, elderly drivers, and many others have been negatively impacted by ULEZ. This has generated a huge amount of anger.

In December 2020, Deputy Coroner Phillip Barlow ruled that nine-year-old asthma sufferer [Ella Adoo-Kissi-Debrah](#) had died as a direct result of air pollution. She lived in Catford, South London (near a very busy main road), and died a horrible death, effectively drowning in her own mucus. This ruling is believed to be a world first.

As a result, Sadiq Khan, the mayor of London, convened a meeting of health professionals, at which Professor Chris Whitty, Chief Medical Officer for England, declared that air pollution is “[everybody’s problem](#),” but it can be solved.

In July, five Conservative-led councils, including four outer London boroughs, tried to stop the latest expansion of the ULEZ zone, claiming the mayor of London had no legal power to expand it. The topic is now becoming a political football. Sadiq Khan, who is a Labour mayor, has said that the poorest are those that can’t afford a car and have to endure air pollution when waiting at bus stops, cycling, or on foot. He is determined to clean up London’s air for future generations. The first ULEZ was launched in central London when Boris Johnson was mayor in April 2019, and it expanded in October 2021.

### **Miscarriages of Justice**

This has been a very troubled area of our legal system for many years.

The cases of the [Guildford Four](#) and the [Birmingham Six](#) are notorious, high-profile examples of controversial convictions, which were finally declared “unsafe.”

Indeed, in “[Miscarriages of Justice: What Next?](#)”, a very detailed and well-argued comment piece in *New Law Journal* (23 September 2022), celebrated British legal scholar Michael Zander, KC, expressed some dismay that a proposed wide-ranging review of the laws governing appeals of criminal cases was likely to once again be a wasted opportunity.

His fear was that arguing over tweaking the statutory tests had been shown not to address the actual problems in the system. Instead, Professor Zander concluded that appellants whose sole ground is that the jury’s decision was against the weight of the evidence must be granted a more receptive hearing from the Court of Appeal than they have had for the past century.

The topic has come into sharp focus this summer with the egregious case of [Andrew Malkinson](#). In 2003, Malkinson, who had been living in the Netherlands as a permanent resident, returned to the U.K., where he was born and raised. He was staying in Manchester at the same time as a violent rape was committed, and the victim later picked him out at a video identity parade. The attacker was three inches shorter than Malkinson, with a hairless chest, no tattoos, and a Bolton accent, all unlike him. The victim also recalled causing a “deep scratch” on her assailant’s face, which was not present when Malkinson was arrested two weeks earlier.

In 2014, he was convicted and sentenced to life imprisonment, in the absence of any DNA evidence. Later it emerged that the main witness was a heroin user with a criminal record.

His first appeal was refused in 2006, but a year later DNA evidence from clothing worn by the victim was found to be from an unknown man. This DNA evidence could have potentially quashed his conviction at that point, since the police, the Crown Prosecution Service, and even the Criminal Cases Review Commission (CCRC) all knew it existed. Ironically, the CCRC is the very body that is responsible for exposing miscarriages of justice.

In 2016, the late investigative journalist Bob Woffinden published a book called *The Nicholas Cases: Casualties of*

*Justice*, in which he devoted a chapter to Malkinson's case. The following year, a small legal charity called [Appeal](#) picked up [the case](#). However, further applications for the case to be reviewed were refused in 2018 and 2020, despite the flaws in both the forensic and witness evidence.

Appeal managed to obtain results of their own DNA testing, which link the crime to another unknown man. The legal charity also discovered previous criminal convictions of key witnesses after a legal battle to gain access to the police file.

Finally, Malkinson was released from prison for good behaviour in 2020, but it was not until July 2023 that his conviction was overturned in the case of [Andrew Malkinson v The King](#). On 17 August 2023, the CCRC announced that it had appointed an external King's Counsel to conduct a review into its actions in relation to the case.

Malkinson said that he wants to see “[serious, profound changes](#)” to the justice system because of the review.

With very best wishes, until next time,

Jackie

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## Letter from Australia

By Margaret Hutchison

*Manager of Technical Services and Collection Development,  
High Court of Australia, Canberra, Australian Capital Territory*

First off, I'd like to thank everyone who made me so welcome at the CALL/ACBD conference in Hamilton in May. I had a very interesting time learning about the pros and cons of AI, how to plan for retirement (very relevant for next year), and the wonders of Canadian breweries.

## Aboriginal and Torres Strait Islander Voice Referendum

Back here in Australia, most of the attention is about the Yes or No campaign for the referendum for an Aboriginal and Torres Strait Islander Voice.

The referendum is to be held on 14 October as expected, although in the 24 hours after applications for a postal vote had opened, over 100,000 applications had been received, so the queue for a [democracy sausage](#) may not be as long as expected. The very day that the date of the referendum was announced, the official Yes/No case pamphlet arrived in my letterbox. It's being delivered to every household in Australia. Just in case, I brought mine into work to add to our collection, as the High Court is the Court of Disputed Returns for elections and referendums. We also have copies of the Yes/No cases for previous referendums as well.

The [booklet](#) is part of the official preparation required by the [Referendum \(Machinery Provisions\) Act 1984](#) (Cth). After the referendum bill has passed through Parliament, a majority of the MPs who voted for the referendum bill may prepare the Yes case, by way of a statement of up to 2,000 words. If any MPs have voted against the referendum bill, a majority of them may prepare the official No case, with the same word limit. This is passed to the Australian Electoral Commission,

who produces the booklet and distributes it. There is a [clear disclaimer on the Electoral Commission's website](#) that they are only the “post-box” for the referendum booklet, and they don't fact-check the Yes or No cases.

The [actual question](#) is as follows:

A Proposed Law: to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice. Do you approve this proposed alteration?

The proposed alternation will insert the following section into the Constitution:

### Chapter IX—Recognition of Aboriginal and Torres Strait Islander Peoples

#### 129 Aboriginal and Torres Strait Islander Voice

In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia:

- i. there shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
- ii. the Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
- iii. the Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.

The major political parties are split over the Voice. The Federal Opposition front bench must campaign for a No vote, but opposition back benchers can campaign for the Yes vote, which led to the shadow Attorney-General, Julian Leeser, resigning from the front bench.

The Federal Opposition leader, Peter Dutton, is not opposed to recognition of Aboriginal and Torres Strait Islanders in the Constitution; however, the Federal Liberal Party has resolved to oppose the Indigenous voice to parliament, claiming it would create a “Canberra voice” with a membership of academics. Instead, they propose symbolic recognition of Aboriginal people in the Constitution, and a framework of local and regional voices set up by parliamentary legislation.

From what I can see, no one on the Yes side has explained clearly what the next step is if the referendum succeeds, leading to the No campaign being able to say whatever they like.

On the weekend, there were rallies in favour of the Yes vote held in various state and federal capital cities with several hundred thousand people attending.

So that's about all from here. Next time I should be able to update you with more about the referendum, and perhaps something else will have happened.

## Springtime in Australia

But on the weather front, after your horrendous summer of fires, I know how you feel: a long hot summer is in the forecast for us. Spring has sprung, and I went to a garden called [Tulip Top](#) on the weekend. There is also [Floriade](#) in Canberra itself, but I prefer Tulip Top, with its blossom trees, flowering plums, peaches, and crab apples.

Until next time,

Margaret Hutchison

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## The U.S. Legal Landscape: News from Across the Border

By Sarah Reis

*Foreign & International Law Librarian, Pritzker Legal Research Center, Northwestern Pritzker School of Law, Chicago, IL*

I always start each new academic year with a mix of excitement and nerves. Summer came to an end a bit earlier than it has in the past because my law school changed its academic calendar to move up the start date of the fall semester by a week. It has been a busy first few weeks of the semester with a flurry of research presentations and a huge uptick in research requests and reference inquiries from faculty and students.

This fall semester, I will be co-teaching a class that I have not taught before called Research in Law, Business, and Technology. I primarily teach JD and international LLM students, but the students in this class are in a Master of Science in Law program, which is a law degree offered to STEM professionals that is completed either in one academic year for residential full-time students or in 2–4 years for online part-time students. Working with students who aren't planning on becoming attorneys or lawyers after they finish their program will be a new experience for me.

Throughout this 2023/24 year, I will also be completing the second (and final) year of a French language certificate program. While I lack confidence with my speaking and listening skills after one year of study, I am committed to continuing to give it my best effort.

## Law Schools

Two things have been dominating the discussion surrounding law schools: how the Supreme Court's ruling striking down affirmative action will affect law school admissions and to what extent law students should be permitted to use ChatGPT and other AI tools to assist them in their studies.

In late June, the Supreme Court issued its opinion for [Students for Fair Admissions, Inc v President and Fellows of Harvard College](#), where the 6–3 majority struck down the use of affirmative action in college admissions. This decision effectively overruled [Grutter v Bollinger \(2003\)](#) by holding that race-conscious admission programs are unlawful, which will likely have a detrimental effect on diversity at colleges and universities. In the aftermath of this decision, deans at many law schools, including the [deans of the Big](#)

[Ten law schools](#) (which includes Northwestern) posted about their disappointment with the decision and expressed their continued commitment to diversity, equity, and inclusion.

According to a [report released in May](#) examining data from LSAC, NCBE, NALP, ABA, U.S. Department of Education, and U.S. Department of Labor, women outnumbered men in applying to law schools in 2022: 56 percent of applicants were women, 42 percent were men, and 2 percent identified as another gender. However, the acceptance rate was higher for men than women—68 percent for women vs. 71 percent for men. While 78 percent of white applicants were admitted to at least one law school, the admissions rates were lower for applicants of other races and ethnicities: 67 percent of Asian applicants received at least one law school admission; 58 percent of Hispanic, Latino, or Puerto Rican applicants received at least one law school admission; and 48 percent of Black or African American applicants received at least one law school admission.

Law schools have implemented widely differing rules about whether ChatGPT and AI tools can be used by prospective applicants to assist them with their applications during the admissions process. Whereas the University of Michigan Law School's [policy](#) is that applicants are prohibited from using these tools when drafting personal statements and essays, Arizona State University Law has taken the [opposite approach](#) and permits its use.

The ABA [proposed a new standard](#) that would require law schools to adopt free speech policies as a response to protests at campus events involving controversial speakers. According to the proposal, a law school's free expression policies must “[p]rotect the rights of faculty, students, and staff to communicate ideas that may be controversial or unpopular” and “[p]roscribe disruptive conduct that hinders free expression by preventing or substantially interfering with the carrying out of law school functions or approved activities.”

## Legal Employment

It is no surprise that following the Supreme Court's decision striking down affirmative action in admissions at colleges and universities, law firms are the next target on the list. The conservatives behind these lawsuits want to undo progress toward more diverse academic environments and workplaces. In August, the president of a conservative group [sued two law firms](#) for offering fellowships intended to promote diversity in the legal profession, claiming that these fellowships constitute racial discrimination (against white people). The ABA president [issued a statement](#) in response to these efforts to dismantle diversity programs at law firms, stating, “Efforts to open the opportunities in the legal field to underrepresented groups would be significantly damaged by the loss of diversity and pipeline programs” and calling on law firms, law schools, and legal employers to commit to promoting diverse and inclusive environments.

The ABA House of Delegates [adopted a resolution](#) urging legal employers to consider factors beyond grades and class rank when making hiring decisions to increase diversity at law firms. In particular, the resolution indicates that a holistic

evaluation in the on-campus interview (OCI) process would include the consideration of factors such as legal writing and research skills, community service, participation in extracurricular activities, practical experience, personal qualities, and a candidate's background and unique experiences.

While the aftermath of the COVID-19 shutdown has resulted in more flexibility at law firms for lawyers to work remotely or on hybrid schedules, some law firms have started to impose stricter rules about in-office days. For example, starting in September, lawyers at [Skadden, Arps, Slate, Meagher & Flom](#) are required to increase their number of in-office days to four days a week (Monday through Thursday) when they were previously only required to be in the office three days a week (Tuesday through Thursday). Related to returning to the office, law firms [leased](#) 3.3 million square feet in the first half of 2023, signifying a rebound from the COVID-19 pandemic because the leasing volume is the strongest it has been in three years.

Just like law schools have had to implement policies on the use of ChatGPT and AI tools, law firms have also had to do so as well, especially after incidents involving lawyers who [filed briefs with citations to fake cases](#) as a result of relying on ChatGPT for their legal research. For example, [Michael Best & Friedrich](#) has banned lawyers and staff from using ChatGPT internally. (Relatedly, earlier this summer, I had a peculiar reference transaction on our chat feature where the patron was asking for assistance with retrieving cases and had specific case names and citations, but those citations would fall within the middle of another case that had a completely different name or were about a completely different topic. I am now convinced that they were trying to find cases made up by ChatGPT. It's a good thing this patron took steps to try to locate copies of the cases instead of just relying on those citations as being accurate!)

## SCOTUS

Exactly like a Friday news dump, the Supreme Court issued rulings on three of the most closely watched cases of the term on the last two days of June. The outcomes of these decisions were exactly what one would expect from a conservative majority court that tends to stick to ideological lines.

In those final days of June, the Supreme Court dismantled affirmative action in college admissions in [Students for Fair Admissions, Inc v President and Fellows of Harvard College](#) (June 29), dealt a blow to LGBT rights by ruling that certain businesses can refuse to provide service for same-sex weddings in the name of free speech in [303 Creative LLC v Elenis](#) (June 30), and struck down Biden's student loan forgiveness program in [Biden v Nebraska](#) (June 30).

The Supreme Court starts its new term on October 2. While they will not take on cases that raise hot-button social issues like they have in the past two years (see: abortion, LGBT rights, affirmative action), they still can cause a lot of damage to our country with their decisions. One of the most closely followed cases will likely be [Loper Bright Enterprises v Raimondo, Docket No. 22-451](#), where the Supreme Court

is revisiting [Chevron v Natural Resources Defense Council](#), which is a landmark administrative law case that set out the level of judicial deference given to administrative agencies in interpreting statutes. Another case that will likely be of interest to many is [O'Connor-Ratcliff v Garnier, Docket No. 22-324](#), which addresses whether a public official can block a citizen from their personal social media account if that public official uses the account to talk about job-related matters.

## ALA, Libraries, and Book Bans

This past summer, I attended the American Library Association's annual conference, which was held in Chicago. Although most of the programs were geared toward school and public libraries, I enjoyed hearing fresh perspectives on issues that those who work in academic libraries face as well, such as how to improve accessibility and strategies for recruiting and retaining diverse employees. Judy Blume was the keynote speaker at the opening ceremony, and she commented on the upsetting onslaught of book challenges and bans that libraries across the country face every day.

In my last column, I mentioned a few examples of proposed or enacted laws in several states seeking to restrict the types of books that school libraries can have in their collections, but now we have started to see court cases in response to these laws. In Arkansas, a federal judge [issued a preliminary injunction](#) against enforcing a law that would allow librarians to be criminally liable for making "harmful" materials available to minors. Meanwhile, in Texas, a federal judge [issued a preliminary injunction](#) blocking enforcement of a Texas law that would have required bookstores and book publishers to evaluate and rate sexual content in books sold to school libraries because "sexually explicit" material is prohibited in public school libraries.

Threats to the safety of library workers have become increasingly common as well. In September, several public libraries in Chicago suburbs and the city had to close due to receiving [bomb threats](#).

## U.S. Legal Research

The Library of Congress announced that Congress.gov now provides access to the [Bound Congressional Record dating back to 1873](#). The *Congressional Record* is the official record of the proceedings and debates of the U.S. Congress and a source commonly consulted when conducting legislative history for federal laws.

The U.S. Copyright Office has now released [over nine million digitized pages of the Copyright Historical Records Books Collection](#). This collection consists of copyright registrations for books, periodicals, and unpublished music works (including the [copyright application for Judy Blume's Are You There God? It's Me, Margaret](#)).

The National Archives and Records Administration announced that [sound recordings of the Record Group 267: Records of the Supreme Court of the United States](#) have been digitized, so users can listen to or download them from the National Archives Catalog. This record group includes



oral arguments in the Black Series (October 1955–December 1972), Red Series (December 1972–June 27, 2005), and the Gold Series (October 3, 2005–May 31, 2020).

## Copyright

The Internet Archive [appealed its loss](#) in *Hachette v Internet Archive* in the Second Circuit. The district court held that scanning and lending the books through the Internet Archive's Open Library program was not protected by fair use and was skeptical of the "controlled digital lending" concept.

Pursuant to [17 USC § 407](#), the U.S. Copyright Office requires copyright holders to deposit two copies of a printed work or, for sound recordings, two complete phonorecords for the use or disposition of the Library of Congress. The District

of Columbia Court of Appeals [ruled](#) that this requirement is not constitutional because it is "an uncompensated taking of private property under the Takings Clause."

Finally, the U.S. Copyright Office issued a [notice of inquiry](#) on copyright and artificial intelligence seeking public comments on various issues, including whether using copyrighted works to train AI models is infringing and what the scope of copyright protection for material generated using AI systems should be. (Note: Neither ChatGPT nor any other AI tools were used in the writing of this column.)

That's all for now. Until next time!

Sarah

# Call for Submissions

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

Contributions are invited from all CALL members and others in the library and legal communities. Bibliographic information on relevant publications, especially government documents and material not widely publicized, is requested. Items may be in English or French. Full length articles should be submitted to the Features Editor and book reviews to the Book Review Editor. All other items should be sent directly to the Editor. Prior to publication, all submissions are subject to review and editing by members of the Editorial Board or independent subject specialists; the final decision to publish rests with the Editorial Board. If requested, articles will undergo independent peer review. Items will be chosen on their relevance to the field of law librarianship. For copies of the Style Guide please consult the CALL website at [callacbd.ca](http://callacbd.ca).

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Tous les membres de l'ACBD ainsi que toute autre personne intéressée à la bibliothéconomie et faisant partie du monde juridique sont invités à soumettre des articles. La revue sollicite également des commentaires bibliographiques d'ouvrages de nature juridique et plus particulièrement de publications officielles et de documents peu diffusés. Les contributions peuvent être soumises en français ou en anglais. Les articles de fond doivent être envoyés à la personne responsable des recensions. Avant d'être publiés, tous les textes seront revus par des membres du Comité de rédaction ou par des spécialistes de l'extérieur. La décision finale de publier relève toutefois du Comité de rédaction. Les articles pourront, sur demande, faire l'objet d'un examen indépendant par des pairs. La priorité sera accordée aux textes se rapportant à la bibliothéconomie juridique. Pour obtenir des exemplaires du Protocole de rédaction, visitez le site web de l'ACBD au [callacbd.ca](http://callacbd.ca).

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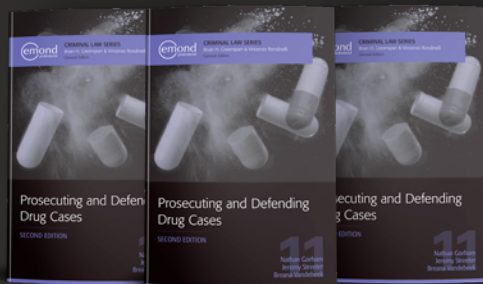
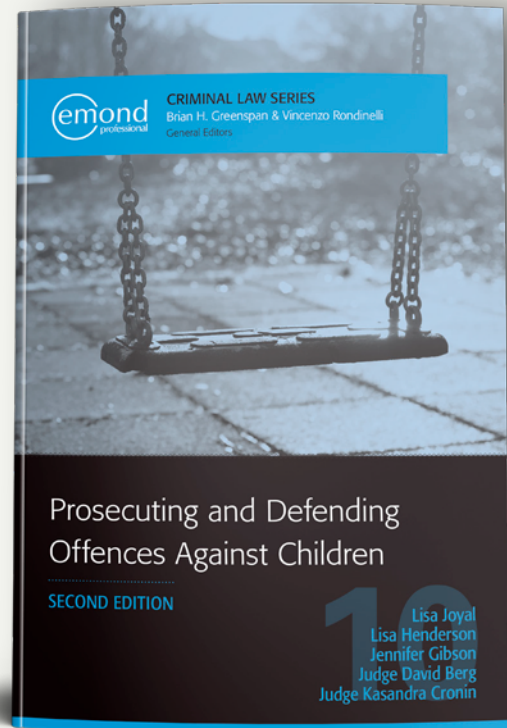
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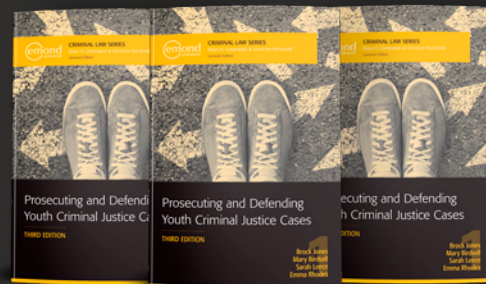
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