

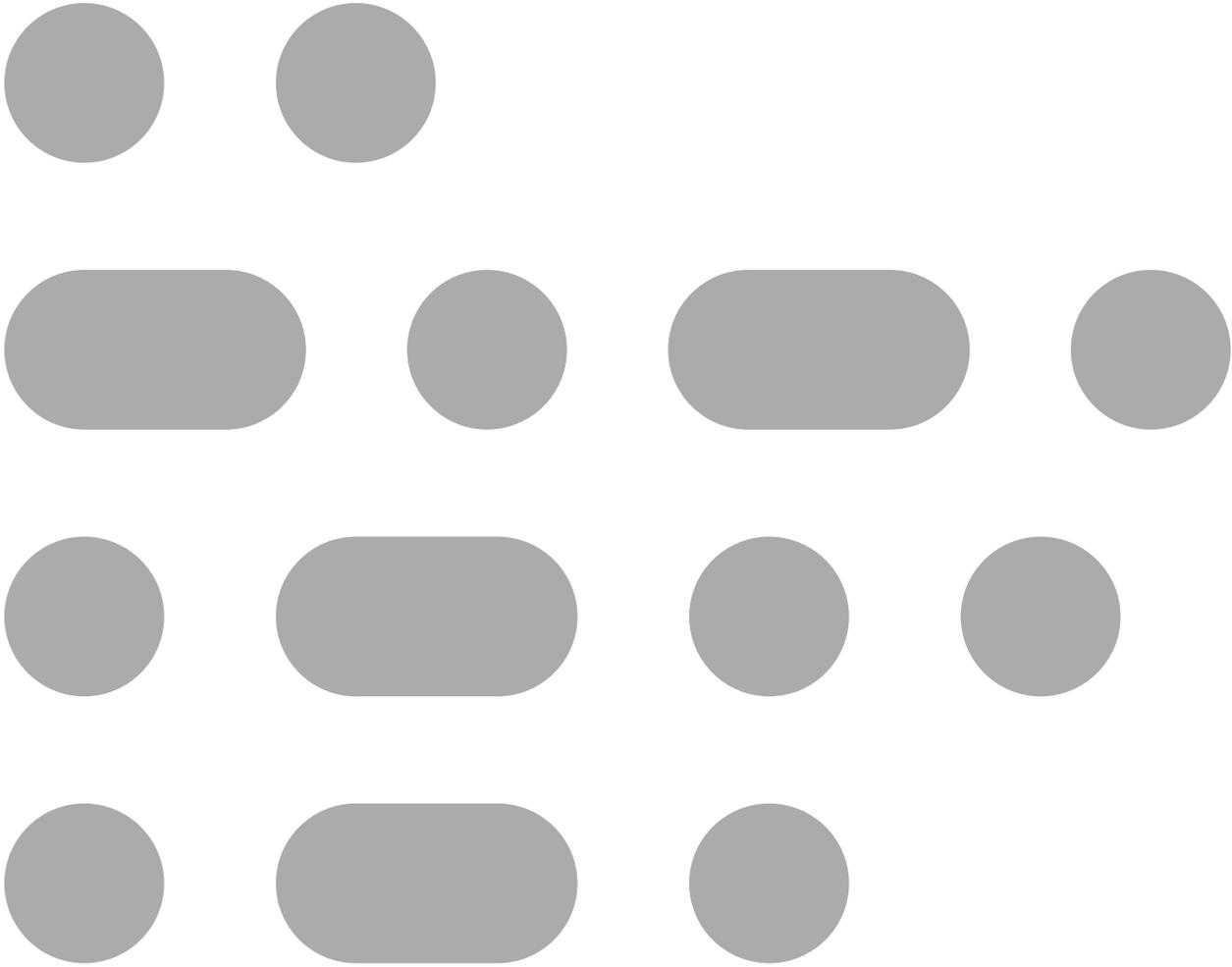
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CANADIAN LAW LIBRARY REVIEW

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**VOLUME/TOME 44 (2019)
No. 2**



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editor, n. [1. éditeur 2.
& -or. 1. One who edits
for publication; one who
edition. 2. One who directs
the publication of a newspaper
editorial (1.), adj. [1. éditorial

III From the Editor / De la rédactrice

Before I talk about the current issue, I'd like to take a moment to thank Ann Marie Melvie for her service as CALL/ACBD president. I started as associate editor with *CLLR* around the time Ann Marie took office, so having another newbie on board helped with my imposter syndrome—even though my fellow newbie was a veteran in the field! When you're new, it's nice to have someone else around asking questions, too. Thanks for your service—and support—Ann!

This issue's feature is a little different. Rather than an article, we're bringing you an excerpt from Stephen G. McKenna's book *Grace & Wisdom*, a biography of his grandfather, former Chief Justice Patrick Kerwin. The chapter focusses on Justice Kerwin's time in Ontario's High Court of Justice, starting in 1932. It covers Justice Kerwin's appointment to the bench and some of the notable cases he presided over. I hope you enjoy the read.

Also in this issue is Stef Alexandru's report on Public Companies: Financing, Governance and Compliance, a program she attended last year at Simon Fraser University. If you work in a law firm or corporate environment, or just want to expand your business knowledge, then you might want to pay close attention to Stef's report!

I never would have heard about the Public Companies program if Stef hadn't written about it; in fact, I rarely hear about conferences or programs for our community, other than ones put on by our association, unless they're reported in *CLLR*. Have you been to a conference or completed a course that you found informative and want to spread the word? Write about it and send it my way. If you found it worthwhile, no doubt your colleagues will, too.

And now for the latest in our ever-changing lineup: Jonathan Leroux has joined us as the new Local and Regional Updates/SIG Updates editor. If your local law library community or CALL/ACBD special interest group has news to share, send it his way. Welcome, Jonathan!

This issue also marks Sarah Vahabi's last time as our advertising manager. Thanks, Sarah! It's not always easy tracking down sponsors for a niche publication—I speak from experience from a previous position—so we really appreciate all of your hard work over the past year. Starting next issue, Eric Wang and Julia Brewster will form an advertising management team, and we're happy to have them both. Welcome aboard, Eric and Julia!

If you'd like to be involved with *CLLR*, keep an eye out for calls for volunteers on the CALL-L listserv; or, feel free to send me an email to let me know you're interested, and I can keep you in mind for future openings.

Contrary to my last letter, I won't be making it to our conference in Edmonton this year. While I'm sorry to miss both the sessions and the sights to be seen in Edmonton, I'll mostly miss connecting with colleagues from across the country and beyond, especially the friends I made at the New Law Librarians' Institute last year. In Ann Marie's final president's message, she notes how important our association is and reflects fondly on the connections she's made because of it. I second that, and I look forward to seeing you all next year in Hamilton.

EDITOR
NIKKI TANNER

Avant de parler du contenu de ce numéro, je voudrais prendre un moment pour remercier Ann Marie Melvie pour ses accomplissements en tant que présidente de CALL/ACBD. J'ai commencé à travailler comme rédactrice adjointe chez *CLLR* à l'époque où Ann Marie a pris ses fonctions. Avoir un autre « débutant » à bord m'a aidé dans mon syndrome d'imposteur, même si ma compatriote était une vétérante! Quand vous êtes nouveau, c'est bien d'avoir quelqu'un d'autre qui pose des questions. Merci pour votre travail et votre soutien, Ann!

L'article de fond de ce numéro est un peu différent. Plutôt qu'un article, nous vous proposons un extrait de l'ouvrage de Stephen G. McKenna, *Grace & Wisdom*, soit la biographie de son grand-père, l'ancien juge en chef Patrick Kerwin. Le chapitre porte sur le mandat du juge Kerwin à la Haute Cour de justice de l'Ontario, à partir de 1932. Il couvre la nomination du juge Kerwin à la magistrature et certaines des remarquables décisions qu'il a présidées. J'espère que vous apprécierez la lecture.

Ce numéro contient également le rapport de Stef Alexandru sur « Public Companies: Financing, Governance and Compliance », un programme auquel elle a participé l'an dernier à l'Université Simon Fraser. Si vous travaillez dans un cabinet d'avocats ou dans une entreprise, ou si vous souhaitez simplement élargir vos connaissances en affaires, vous voudrez peut-être accorder une attention particulière au rapport de Stef!

Je n'aurais jamais entendu parler de ce programme si Stef n'avait pas écrit à ce sujet ; en fait, j'entends rarement parler de conférences ou de programmes pertinents pour notre communauté, autres que celles organisées par notre association, à moins qu'elles ne soient rapportées dans *CLLR*. Avez-vous déjà assisté à une conférence ou suivi un cours que vous avez trouvé informatif et que vous souhaitez faire passer le mot? Écrivez à ce sujet et envoyez-moi l'information. Si vous l'avez trouvé intéressant, cela pourrait intéresser vos collègues aussi sans aucun doute.

Et maintenant, les dernières nouvelles de notre équipe en constante évolution: Jonathan Leroux nous a rejoints en tant que nouvel éditeur des « Mises à jour locales et régionales / Mises à jour GIS ». Si votre communauté locale de bibliothèques de droit ou votre groupe d'intérêt spécial CALL/ACBD a des nouvelles à partager, envoyez-les-lui. Bienvenue, Jonathan!

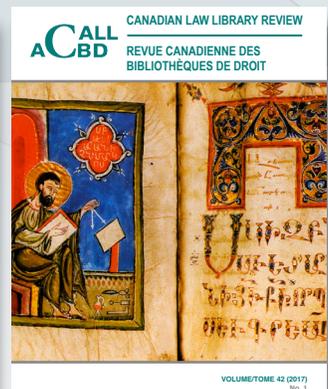
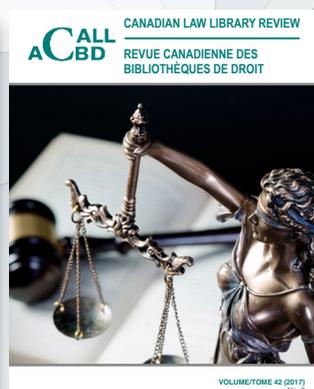
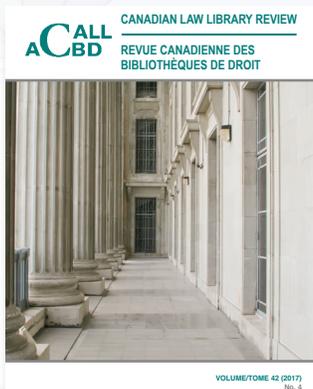
Ce numéro marque également la dernière fois que Sarah Vahabi occupe le poste de responsable de la publicité. Merci Sarah! Il n'est pas toujours facile de trouver des commanditaires pour une publication de niche – j'en parle par expérience – nous apprécions donc tout le travail que vous avez accompli au cours de la dernière année. À partir du prochain numéro, Eric Wang et Julia Brewster formeront une équipe de gestion de la publicité, et nous sommes heureux de les avoir tous les deux. Bienvenue à bord, Eric et Julia!

Si vous souhaitez vous impliquer dans *CLLR*, surveillez les appels pour des volontaires sur la liste de diffusion électronique CALL-L; ou, n'hésitez pas à m'envoyer un courriel pour me faire savoir que vous êtes intéressés, et je peux garder votre nom en mémoire pour de futures ouvertures.

Contrairement à ce que j'ai mentionné dans ma dernière lettre, je ne participerai pas à notre conférence à Edmonton cette année. Bien que je regrette de manquer les sessions et les sites à voir à Edmonton, je vais surtout manquer les rencontres avec des collègues de tout le pays et d'ailleurs, en particulier avec les amis que j'ai rencontrés au « New Law Librarians' Institute » l'année dernière. Dans le dernier message de la présidente, elle souligne l'importance de notre association et réfléchit avec tendresse aux liens qu'elle a tissés grâce à elle. J'appuie cette proposition et j'ai hâte de vous voir l'année prochaine à Hamilton.

RÉDACTRICE EN CHEF
NIKKI TANNER

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III President's Message / Le mot de la présidente

It's hard to believe that this is my last president's message for *CLLR*! My term ends in May, at the close of our annual meeting and conference in Edmonton. I have thoroughly enjoyed my time as president. It has been an honour and a privilege to serve our association in this way. Shortly after you read this, Shaunna Mireau will be our new president. We will be in good hands!

In preparing this message, I've reflected on some of our association's accomplishments over the past two years. We formed a brand new Diversity, Inclusion, and Decolonization Committee. We passed a resolution at our 2018 AGM supporting the recommendations presented in the Calls to Action in the Truth and Reconciliation Commission's report. Together with the Toronto Association of Law Libraries, we've embarked on a salary survey, which will be available soon. We moved on to a new association management company. We've appeared twice in front of the House of Commons' Standing Committee on Industry, Science, and Technology, sharing our expertise as it reviews the *Copyright Act*. We've appeared as an intervenor in front of the Supreme Court of Canada to address section 12 of the *Copyright Act*. Our committees and special interest groups continue their good work, our webinars are amazing, and the 2018 New Law Librarians' Institute and 2017 and 2018 conferences were great successes!

As I think back, I'm also feeling a bit nostalgic, not only because I am moving on from this position, but also because I know that a few long-time CALL/ACBD members are retiring. John Sadler, Margo Jeske, Louise Hamel, Pat Henry, and Gail Brown are retiring this year, and each of these fine people has given a lot to our association. I know I will miss them and their

valuable input. You likely have your own list of CALL/ACBD friends moving into this new phase of their lives. Make sure you let them know how important they are!

We've made great strides, and I'm looking forward to the future of our association. It is filled with possibilities, although some come cloaked in the form of a challenge. Associations as a whole are struggling with declining memberships, and we are no different. Our Membership Development Committee and Redstone, our new association management company, are fully aware of this issue. Together with XYZ University, a US-based research and consulting company, Redstone recently brought a valuable workshop to Toronto called "The Future of Membership." Sooin Kim, incoming executive board secretary, attended on our behalf.

It's important in the weeks and months ahead to determine the root cause of our membership decline. As noted above, some of our long-time members are retiring, which naturally brings our numbers down. We know, however, that their jobs are still there and new people will take their place. So that doesn't seem to be the root cause. We might think that new graduates aren't joining our association, but that doesn't seem to be the case, either, since we've been able to attract a good number of new professionals who are very engaged with CALL/ACBD.

Our membership numbers matter. Not only for our bottom line, but also because the only way we can speak with authority on matters of importance to us is to have the membership numbers behind us. Whether we are dealing with publishers or making statements on copyright issues, there is authority in numbers.

I've always known how important belonging to CALL/ACBD has been to my work as an information professional, but my work on the executive board has solidified this understanding. I would be doing a disservice to myself and to my employer if I did not belong. In our ever-changing profession, we need to keep up with changes in technology, take advantage of every learning opportunity, and be part of a professional network that can help us both formally and informally.

Give a law library colleague the gift of knowledge and belonging—take them for coffee, tell them about CALL/ACBD, and invite them to join us.

Thanks to everyone who has helped me during my time at the helm of our fine association!



**PRESIDENT
ANN MARIE MELVIE**

Il est difficile de croire que c'est le dernier message que j'écris pour le *CLLR* en tant que présidente! Mon mandat se termine en mai, à la clôture de notre assemblée annuelle et de notre conférence à Edmonton. J'ai vraiment apprécié mon mandat en tant que présidente. Ce fut un honneur et un privilège de servir notre association de cette manière. Shaunna Mireau sera notre nouvelle présidente peu de temps après. Nous serons entre de bonnes mains!

En préparant ce texte, j'ai réfléchi à certaines des réalisations accomplies par notre association au cours des deux dernières années. Nous avons formé un tout nouveau comité sur la diversité, l'inclusion et la décolonisation. Lors de notre AGA de 2018, nous avons adopté une résolution appuyant les recommandations présentées dans les appels à l'action du rapport de la Commission de vérité et réconciliation. En collaboration avec « Toronto Association of Law Libraries », nous avons lancé un sondage sur les salaires, qui sera bientôt disponible. Nous sommes passés à une nouvelle société de gestion d'association. Nous avons comparu deux fois devant le Comité permanent de l'industrie, des sciences et de la technologie de la Chambre des communes pour partager notre expertise lors de l'examen de la Loi sur le droit d'auteur. Nous avons comparu devant la Cour suprême du Canada à titre d'intervenant pour traiter de l'article 12 de la Loi sur le droit d'auteur. Nos comités et groupes d'intérêts poursuivent leur excellent travail, nos webinaires sont extraordinaires et le « New Law Librarians' Institute » tenu en 2018 ainsi que les conférences 2017 et 2018 ont été de grands succès!

En y repensant, je suis aussi un peu nostalgique, non seulement parce que je quitte ce poste, mais aussi parce que je sais que quelques membres de longue date du CALL/ACBD prennent leur retraite. John Sadler, Margo Jeske, Louise Hamel, Pat Henry et Gail Brown prennent leur retraite cette année et chacune de ces personnes a beaucoup donné à notre association. Je sais qu'ils

me manqueront ainsi que leur précieuse contribution. Vous avez probablement votre propre liste d'amis de CALL/ACBD entrant dans cette nouvelle phase de leur vie. Assurez-vous de leur dire à quel point ils sont importants!

Nous avons fait de grands progrès et je suis impatiente de voir ce que l'avenir réserve à notre association. Il est rempli de possibilités, même si certaines se présentent sous la forme d'un défi. Les associations dans leur ensemble luttent contre le déclin des adhésions, et nous ne sommes pas différents. Notre comité de recrutement des membres et Redstone, notre nouvelle société de gestion d'associations, sont parfaitement au courant de ce problème. En collaboration avec XYZ University, une société américaine de recherche et de conseil, Redstone a récemment organisé à Toronto un atelier précieux appelé « The Future of Membership ». Sooin Kim, nouvelle secrétaire du conseil de direction, a assisté à notre réunion.

Dans les semaines et les mois à venir, il est important de déterminer la cause fondamentale du déclin de nos effectifs. Comme indiqué ci-dessus, certains de nos membres de longue date prennent leur retraite, ce qui réduit naturellement notre nombre. Nous savons cependant que leurs emplois sont toujours là et que de nouvelles personnes prendront leur place. Cela ne semble donc pas être la cause première. Nous pourrions penser que les nouveaux diplômés ne rejoignent pas notre association, mais cela ne semble pas être le cas non plus, car nous avons pu attirer un bon nombre de nouveaux professionnels qui sont très impliqués dans CALL/ACBD.

Le nombre de membres importe beaucoup. Non seulement pour nos résultats financiers, mais aussi parce que la seule façon de parler avec autorité des questions qui nous importent est d'avoir un bon nombre de membres derrière nous. Qu'il s'agisse de relations avec les éditeurs ou de déclarations sur des questions de droit d'auteur, les chiffres font autorité.

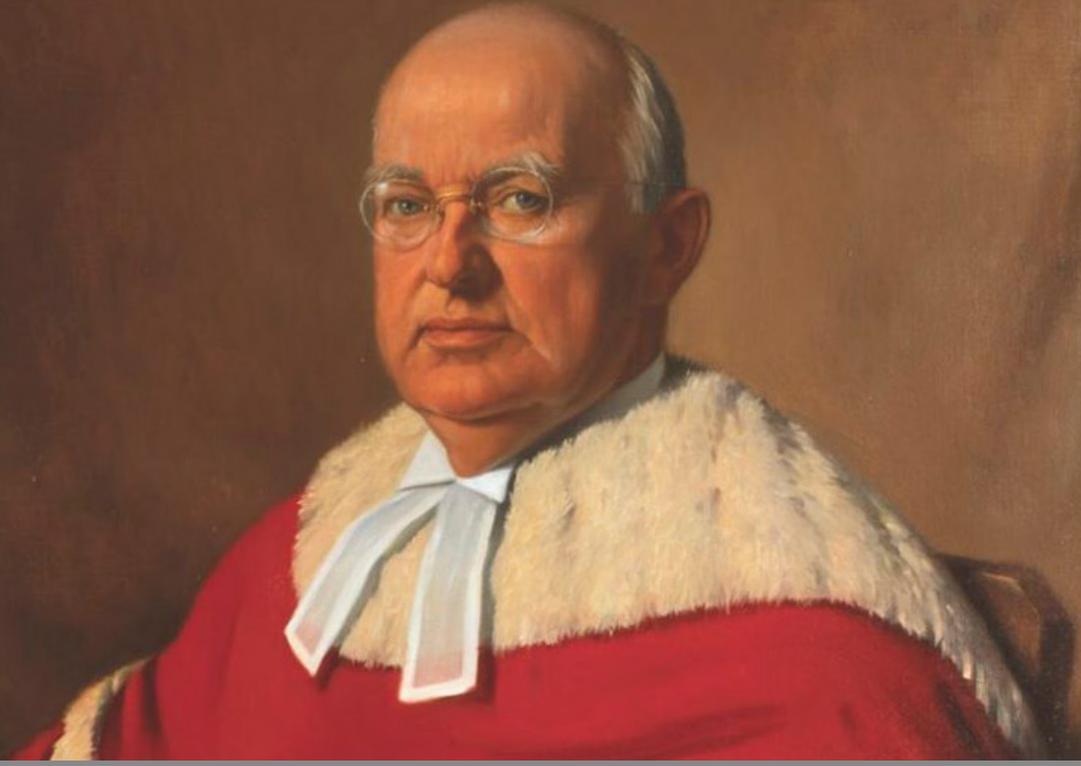
J'ai toujours su à quel point l'appartenance à CALL/ACBD était importante pour mon travail de professionnel de l'information, mais mon travail au sein du conseil d'administration a renforcé cette compréhension. Je me ferais du mal à moi-même et à mon employeur si je n'y appartenais pas. Dans notre profession en constante évolution, nous devons suivre l'évolution de la technologie, tirer parti de chaque opportunité d'apprentissage et faire partie d'un réseau professionnel capable de nous aider de manière formelle et informelle.

Donnez à un collègue de la bibliothèque de droit le cadeau de la connaissance et de l'appartenance – allez prendre un café et parlez-leur de CALL/ACBD et invitez-les à nous rejoindre.

Merci à tous ceux qui m'ont aidé durant mon mandat à la tête de notre belle association!



**PRÉSIDENTE
ANN MARIE MELVIE**



III Excerpt from *Grace & Wisdom*: “Chapter 6: The Ontario Court”

By Stephen G. McKenna¹

ABSTRACT

In Grace & Wisdom,² a biography of Hon. Patrick Kerwin, a chief justice of Canada, author Stephen McKenna looks at his grandfather's early years and examines his career, cases, family, and social life. The following chapter, provided exclusively to CALL/ACBD, covers a piece of Hon. Justice Kerwin's inaugural judicial role as a judge on the High Court of Justice of Ontario.

SOMMAIRE

Dans Grace & Wisdom, une biographie de l'hon. Patrick Kerwin, juge en chef du Canada, l'auteur Stephen McKenna jette un regard sur les premières années professionnelles de son grand-père et examine sa carrière, ses décisions, sa famille et sa vie sociale. Le chapitre suivant, fourni exclusivement à CALL/ACBD, couvre une partie du premier rôle judiciaire du juge Kerwin en tant que juge à la Haute Cour de justice de l'Ontario.

THE ONTARIO COURT TORONTO

In 1932 Patrick Kerwin was acting as the special Crown Prosecutor for the province during the fall session of the Ontario Superior Court in Hamilton, Ontario, when he received a telephone call at noon on September 27 that changed his and his family's lives. Patrick had just arrived in Hamilton the day before and was preparing for several criminal cases to be convened that afternoon when this important call notified him of his appointment as a Judge on the High Court of Justice of Ontario.

At the age of forty-two, just one month shy of his forty-third birthday, Patrick was the youngest person yet named to the Ontario bench. For twenty-one years prior, he had been practising law in Guelph and was the senior partner in the firm of Guthrie & Kerwin. The other partner on the nameplate of the firm was the Honourable Hugh Guthrie, then the Dominion Minister of Justice in the Bennett government. This relationship caused some unfavourable comments speculating about undue favouritism, as the Minister was chiefly responsible for the appointment. However, an editorial in the *Border Cities Star* newspaper (later to become the *Windsor Star*) at the time noted “...these comments came from those who did not know Patrick's ability and certainly

¹ Stephen McKenna is an author, musician, and producer living in Ottawa, Ontario. His numerous interests include the arts, research, and travel. Having contributed numerous media articles about his grandfather, McKenna continues to tell the story of Chief Justice Patrick Kerwin, a man who dedicated much of his life to the service of all Canadians. For more information, visit chiefjusticekerwin.ca or contact the author at contact@chiefjusticekerwin.ca.

² Stephen G McKenna, *Grace & Wisdom* (Ottawa, Ont: Petra Books, 2017).

“ Students of law must be taught not merely what the professor knows, but they must be trained to think for themselves. ”

—Chief Justice Patrick Kerwin at the University of New Brunswick upon receiving an Honorary Doctor of Laws Degree, Fall Convocation, Saint John, 1954

they will be silenced wherever he appears on circuit” (*Border Cities Star*, Windsor, Sep. 1932, 3).

Patrick, upon hearing of his appointment to the Ontario Courts, was quoted as saying,

Of course I cannot continue in this capacity [as special prosecutor] since my appointment and its ratification by the Governor General has been made public today. I will commence my duties at this afternoon’s court as usual, but another Crown representative will be sent here this afternoon by Hon. W.H. Price, the attorney-general (Unnamed newspaper article, 1933, Georgina Kerwin’s collection).

The call appointing Patrick was not entirely out of the blue as one must apply to become a Judge in the Ontario courts. Patrick must have completed the required paperwork a while before, perhaps at the suggestion of his law partner.

Upon receiving his letter from the Privy Council Office, Patrick wrote to Prime Minister Bennett on September 29, 1932, confirming that he had received the letter appointing him as Judge of the High Court of Justice for Ontario.

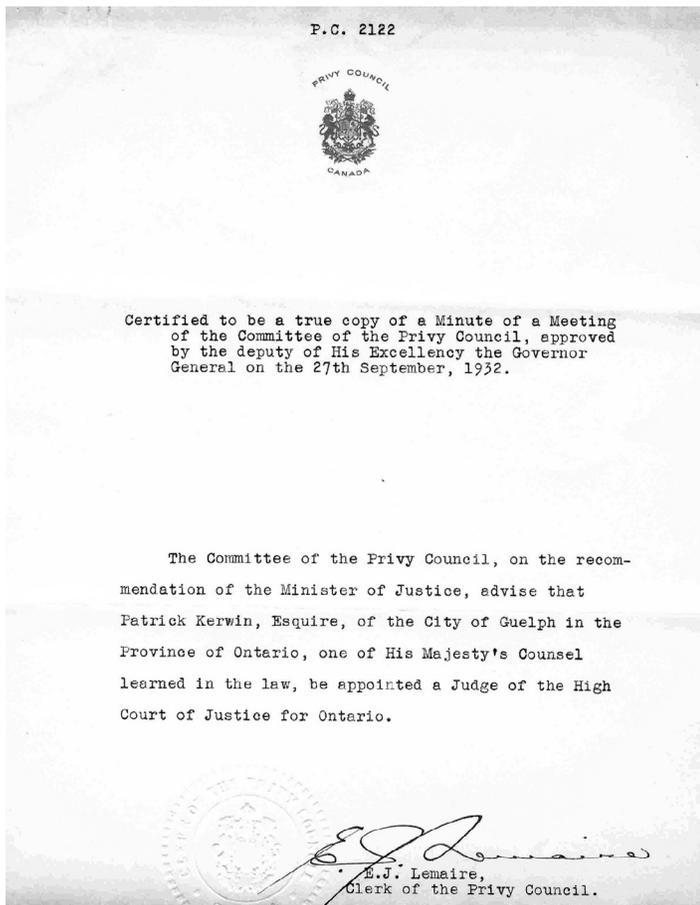
Patrick Grandcourt Kerwin was sworn in on October 14, 1932 as a judge of the High Court Division of the Supreme Court of Ontario at Osgoode Hall in Toronto, in one of the courtrooms where he had sat as a student while attending classes just over twenty years before.

The swearing-in ceremony was performed in the presence of eleven members of Ontario’s highest Court, including Sir William Mulock, Chief Justice of Ontario (who presided) and Chief Justice Latchford of the Appellate Court. Edmund Harley, senior registrar of the Supreme Court, read the commission under the great seal of Canada, appointing the new justice. Mr. Justice Kerwin then took successively the oath of allegiance and the oath of office. After being formally welcomed by W. N. Tilley, K.C., Treasurer of the Law Society, Patrick responded,

I realize the honour and dignity are great. I also realize that the duties and obligations are great. I hope to fulfill them properly, and in doing so I shall require the collaboration of members of the bench and bar. I hope the same consideration will be shown to me as those previously sworn into this high office (Unnamed newspaper article, 1933, Georgina Kerwin’s collection).

The ceremony concluded and the members of the bench came forward to congratulate the newest justice and shake his hand.

In Guelph, Patrick’s appointment to the Ontario bench necessitated naming replacements as City Solicitor for Guelph and as County Solicitor for Wellington County, both positions he had occupied for some time. Additionally, Patrick’s elevation to the bench created an opening on the Ontario Parole Board to which Patrick had only been appointed earlier in 1932.



Letter from the Privy Council of Canada. Library and Archives Canada, 1932, Microfilm Reel M-1081:234.

The Supreme Court of Ontario is not one court but a collection of several divisions dealing with a variety of types of law. These courts exercised both civil and criminal jurisdiction through its two branches, the Court of Appeal and the High Court of Justice. The 1924 Act which established it provided that the Supreme Court of Ontario should consist of nineteen judges to be appointed as provided by *The British North America Act*, that is, by the Governor General (in effect the Federal Government) (Margaret Banks, "Evolution of the Ontario Courts 1788-1981", Vol. II, in *Essays in the History of Canadian Law* (1983), 494).

The High Court of Justice was the superior court centrally based in Toronto. The justices traveled each spring and autumn throughout Ontario's many counties and districts to hear criminal and civil cases at sittings known as the Assizes. The Court had jurisdiction over all summary and indictable offences and types of law including, but not limited to: murder, manslaughter, treason, fraud, and theft. It was a court of both Equity and Common Law and was the highest trial court in Ontario for all criminal and civil matters. The High Court of Justice of Ontario has since gone through various incarnations and now that workload is part of the Superior Court of Justice of Ontario. The Superior Court of Justice continues as the Court of record with jurisdiction in all civil and criminal matters. Its seat is at historic Osgoode Hall in Toronto, and the court has sessions in fifty-one cities across the province.

Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings and trials unfold in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. We have what is known as an adversarial system of justice — legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts (Canadian Judicial Council, "The Role of the Judge", <http://www.cscj.ca/judges/the-role-of-the-judge/>. Accessed Dec. 2017).

MONDT TRIAL

In November 1932, Patrick travelled to Barrie, Ontario, to preside over a manslaughter trial of some note. This case involved a famous wrestler and promoter, Joe 'Toots' Mondt.

In the summer of 1932, Mondt, and his brother, Ralph Mondt ... were driving on Highway 24 just east of Collingwood, [in] a 16-cylinder Cadillac sports car ... [He] collided with a car driven by J. Edward Burnie of Toronto. Burnie's passenger, 21-year-old Theresa Luccioni, was killed instantly. [The coroner concluded] that Mondt had been driving too quickly [and he was charged with manslaughter].

Mondt ... was represented by prominent Toronto lawyer, D. Lally McCarthy, later the Treasurer of the Law Society of Upper Canada and the son of one of the founders of the law firm that evolved into McCarthy Tétrault, now one of Canada's largest (Unnamed newspaper article, 1932, Georgina Kerwin's collection).

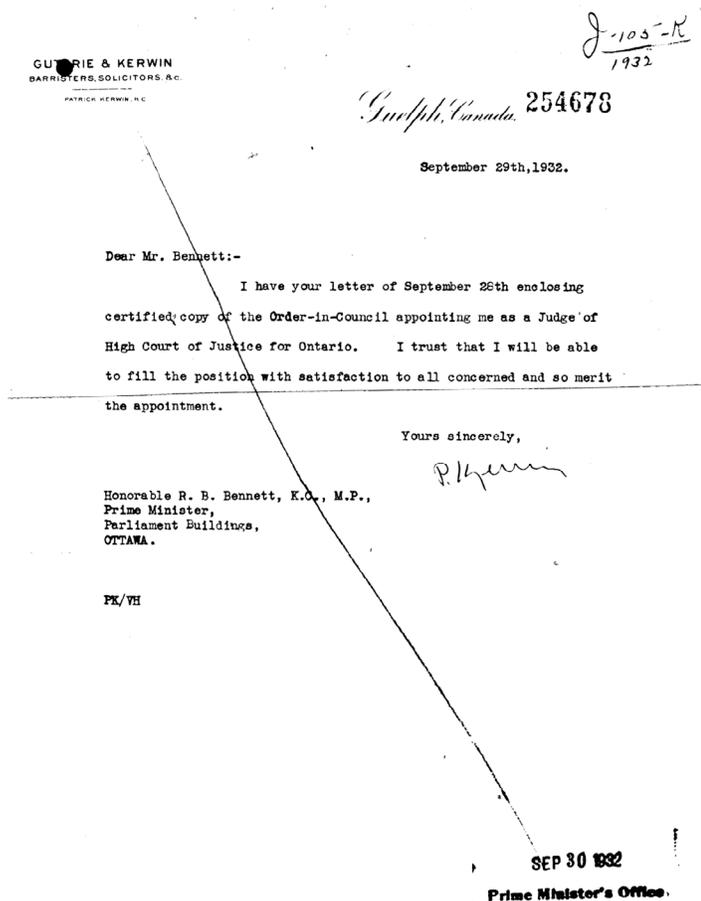
Mondt testified that he was only driving at 35 to 40 miles an hour and that it was Burnie who swerved over the line and into his car. The jury was not impressed. The initial charge of manslaughter was dismissed but the jury found Mondt guilty of criminal negligence after deliberating for four hours.

In the end, Mondt was sentenced to one year in the Ontario reformatory (a prison for adults) at Guelph. According to local newspapers at the time, the Judge, Patrick Kerwin, had suggested an acquittal in his charge to the jury.

McCarthy immediately filed an appeal and Mondt ended up only spending one night in jail, later to be released on \$20,000 bail (approximately \$300,000 plus in today's dollars). The appeal was heard and the Court of Appeal ruled in Mondt's favour after which he faced a barrage of civil suits.

LAROCQUE & LAVICTOIRE TRIALS

In December of that same year, the new Ontario Justice Kerwin travelled to L'Orignal, Ontario, where he presided over a murder trial. Two men were accused of killing a young helper named Bergeron on their farm on whose life they had arranged and placed insurance. The accused were William J. Larocque, age 57, a married farmer, and Emmanuel Lavictoire, age 51, a married gardener. The story indicated



Letter to Bennett. Library and Archives Canada, 1932, Microfilm Reel M-1081:234.

that these two had partnered up to murder people for life insurance. In January 1932 they stabbed Leo Bergeron in Larocque's barn with pitchforks. They then released a horse to make it look like Bergeron got trampled. Later, a bloody pitchfork handle was found by the police in the rafters of the barn. It is also thought this pair murdered another man, Athanase Lamarche, in 1930. The accused were found guilty of Bergeron's murder (*Ottawa Journal*, Dec. 16, 1932, 16).

In his charge to the Jury, Justice Kerwin (transcript of evidence denoting him as 'His Lordship') began with:

Gentlemen of the Jury, the accused are charged with having murdered Leo Bergeron on March 18th, 1932. That is a serious charge. The trial that has been progressing here in L'Orignal, for some eight days, is serious and of great importance to the accused, and of great importance to all of the inhabitants of these United Counties. You have listened with a great deal of patience to all the evidence that, in a case of this kind, had necessarily to be introduced. All of it, of course, has not the same weight; all of it has not the same bearing, but the Crown considers, from its point of view of present evidence in connection with the charge against the accused, that all of it should be presented for your consideration (Supreme Court of Ontario Official Court Report, p.1109, Library and Archives Canada RG-13, vol. 1584 (1, 2, 3), file CC390; 1932).

The Jury came back after deliberating for a few hours with a verdict of guilty. It was at this time that Justice Kerwin sentenced both accused to hang.

The *Ottawa Journal* wrote,

It was Mr. Justice Kerwin's first time to preside over a murder case in an Assize court since his recent appointment to the Bench and he was visibly affected as he passed the double death sentence at the conclusion of the lengthy trial (*Ottawa Journal*, Dec. 16, 1932, 5).

In a letter dated December 23, 1932, Justice Kerwin forwarded a letter to the Secretary of State with the Jury's recommendation for mercy in both cases. From there the recommendation would be presented to the Privy Council by the Governor General for consideration. On March 11, 1933, the Governor General wrote that he was, "unable to order any interference with the sentence of the court" (Library and Archives Canada, RG13, vol.1578, 442). The sentence was to stand.

According to Patrick's eldest child, Isobel, having to sentence Larocque and Lavictoire to death weighed heavily upon her father. She said they had spoken about it in his study at home and she felt it troubled her father a great deal. On the other hand, Patrick's second son, George, a young teenager at the time, asked his father how he could do this — hang these men. Patrick listened to his son's anguish in dealing with this matter and calmly replied, "I did not hang them, George; the law did."

BEYAK & HOFF TRIALS

In 1933, Ontario Justice Kerwin presided over two murder trials in the town of Sandwich, now part of the city of Windsor, Ontario. The Crown Counsel (prosecutor) was Sir

Alfred Morine, K.C., assisted by his son, A. Neville Morine. The first of the two trials Patrick presided over was that of Mr. Peter Melvin Beyak (aka Buick), who was employed as a machinist. Mr. Beyak was accused of killing his common-law wife, Jessie Nehbereski, after striking her with a meat cleaver during a quarrel. The second trial was that of Mr. Jacob Hoff, a Windsor fish peddler accused of killing his wife, Katie, with a revolver (*Detroit News*, Oct. 1933).

In describing the trial of Mr. Beyak, in an undated newspaper clipping kept by Patrick's wife taken from *The Detroit Free Press*, the reporter described the judge in the following manner:

Not a detail escaped the attention of the pleasant-faced judge. His soft, musical voice betrays his Celtic origins. With his silk gown and starched collar and white tie he might have passed for a bishop in another setting. He spoke easily and fluently and his desire to be fair, to see that the accused man had every opportunity to present his case always was in evidence. "Don't lead the witness", he cautioned the prosecutor several times ("Swift Justice Dooms Slayer", *The Detroit Free Press*, Georgina Kerwin's collection).

Another American newspaper reporter, Sherman R. Miller, was quite surprised how a Canadian court proceeded and made several observations:

The first thing that is impressed upon the American spectator is isolation of the prisoner. He is placed in a box, about six feet by three feet, and must sit on a bench directly facing the judge. He sits upright, in full view of the jury, with his back to the audience, and facing the backs of his attorneys. It seems strange ... not to see him sprawling on the counsel table, squirming around to grin at friends and mumbling behind his hand into the ear of his lawyer.

The barristers, attired in their black gowns and white wing collars, carry with them the dignity of their proud positions. They do not glare across the table at each other or pound their fists or wave their arms about wildly. In fact, they do not shout at all. Neither do they question the decisions of the judge, or ask him to adjourn while they look up citations to thrust at him.

And, as for the judge, his actions are nothing short of astonishing. He sits quietly, facing the person who is addressing him. He listens intently and does not seem to be afflicted with any nervous condition which would make him leave the bench to take a stroll about the court or cause him to change his position in the chair every five minutes.

And further, he answers the lawyers in the same courteous tone with which they address him. It is very disappointing to find that no one seems to be mad at anyone else.

Furthermore he seems to be astonishingly expert at his business. An attorney gets halfway through a question, which might be a leading one. "Just a moment please, Mr. Crown Attorney," interrupts the judge in a quiet tone. "I think that perhaps you are attempting to establish a question the answer to which might be misconstrued

by the jury. Please refrain from continuing that line of questioning.”

“Very good, My Lord,” the attorney answers in the same tone.

And the judge, he only seems, wonder of wonders, to be interested in having the jury return a fair and unbiased verdict.

“Murder,” he says, “under our law simply means to cause the death of a person. The onus is on the Crown to prove this. Whatever has happened, you must remember that the woman is dead, and that this man is responsible for her death. Do not be swayed by sympathy for the defendant, but balance such sympathy with sympathy for the country and for your fellow man. You must decide merely whether the defendant was through some action deprived of his self-control. If this is true, find a verdict of manslaughter. If you decided otherwise in your deliberations, the verdict must be murder.”

That’s all. The jury goes out. Another case is started. The jury comes in two hours and half later.

“Guilty of manslaughter,” is the verdict.

It is after 6 o’clock. Everybody goes home. The day’s work is over. As one American at the trial said as he turned to leave, “These trials in Canada aren’t any fun, but good lord, they certainly don’t fool around, do they?” The bailiff at the door overhears the remark and scratches his head. He is probably still trying to figure out what the visiting American meant (Sherman R. Miller, “An American Sees Our Courts”, Georgina Kerwin’s collection).

This visiting newspaper reporter from the United States was struck not only with the civility of the court in Ontario but also wondered why there were no lawyers “yelling at each other, strutting like roosters” to prove a point (Sherman R. Miller, “An American Sees Our Courts”, Georgina Kerwin’s collection).

Based on the evidence brought forward, which included the police report, fingerprints, photos, statement of the accused and a coroner’s inquest, Peter Beyak was found guilty and, according to the law of the land, was sentenced to death by the presiding judge with no recommendation for mercy. The execution took place on December 6, 1933.

In the second case tried that same week in Sandwich, Ontario, Jacob Hoff had pleaded not guilty of shooting his wife even though he declared he shot her because she had admitted misconduct with a roomer who lived in their home. Hoff was almost blind from the effect of the shot which he fired into his own head after shooting his wife. In the end, this prisoner was found guilty of manslaughter and sentenced to life imprisonment.

The *Border Cities Star* said of the judge in these trials:

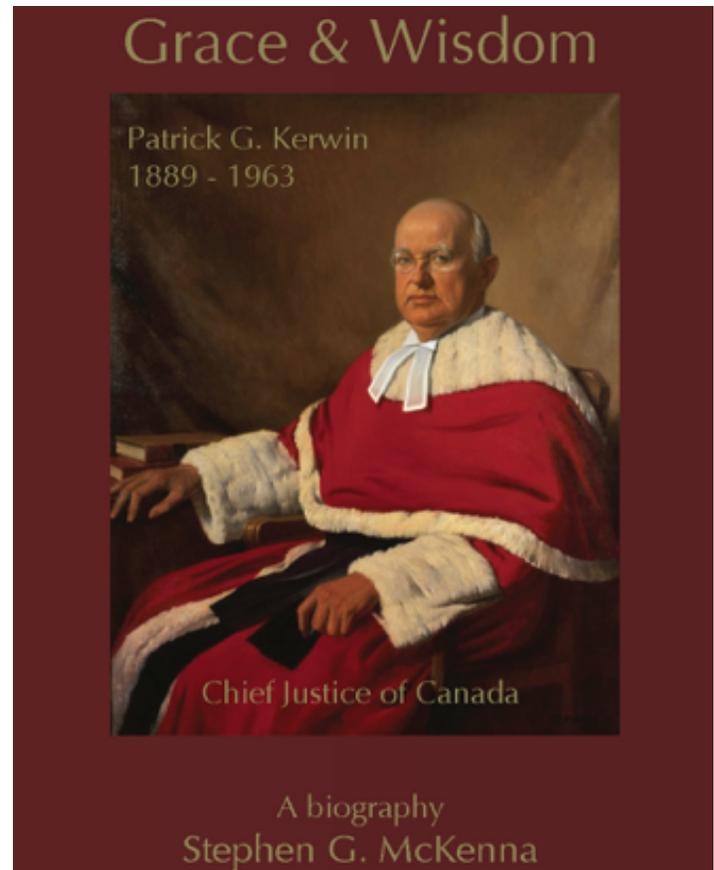
The courtesy, fairness and expeditiousness with which Mr. Justice Kerwin has been handling the Supreme Court docket on his first visit to Sandwich has made a deep impression on the Bar and the Press of the *Border Cities*.

It is particularly noticeable that while His Lordship is never ruffled, he conducts his court with firmness, not hesitating to set down a barrister who oversteps the rules of evidence, as some are prone to do, and yet always taking such action in a way that makes any hard feeling impossible. The *Border Cities* and Essex County will always be glad to welcome Mr. Justice Kerwin (*Border Cities Star*, Georgina Kerwin’s collection).

Working in Toronto and travelling across the province, Patrick found himself dealing with numerous types of law in the cases he heard: estates, trusts, wills, criminal offences, divorces, alimony judgments, foreclosures, liability, intellectual property, negligence, and much more. Some of the cities in which he heard cases were: Stratford, Sandwich, Kitchener, Hamilton, Guelph, Sarnia, Toronto, Ottawa, Cornwall, Welland, London, Sault Ste. Marie, Haileybury, Orillia, and many more.

In hearing a case in Toronto involving a disputed will, Roy Kellock was the lawyer representing the executors. Kellock was later to become Justice Kerwin’s colleague on the Supreme Court of Canada. Another interesting trial was in Sarnia where the lawyer for the defendants was N. L. LeSueur, the son of the man for whom Patrick worked as a young man. Regrettably for N.L. LeSueur, the case did not go the way he would have preferred.

Fortunately for Justice Kerwin, he heard many cases in Weekly Court in Toronto during his time on the Bench in Ontario. This meant he could go home after a long day’s work and spend time with his family rather than at a hotel in another community. ■



Front cover painting: portrait of Patrick Kerwin by Kenneth Forbes; photograph by Philippe Landreville; with permission of the Supreme Court of Canada.



III Reviews / Recensions

Edited by Kim Clarke and Elizabeth Bruton

***The Canadian Law of Obligations: Private Law for the 21st Century and Beyond.* By Margaret I. Hall. Toronto: LexisNexis, 2018. 383 p. Includes table of cases. ISBN 978-0-433-49823-0 (soft cover) \$120.00.**

This book is a collection of 12 papers presented at a 2017 conference at the University of British Columbia. The conference title was a little different from the book title—“The Canadian Law of Obligations: Innovations, Innovators and the Next 20 Years”—but both titles are apt.

Firstly, and by way of overview, this is a good collection of papers.

As a practitioner, one thing that drives me batty about academic writing is that it is often bad writing. Academics who write for other academics are a tedious bunch (witness much of the writing on critical legal thinking and jurisprudence). I do not have that complaint about this collection. The writers appear to be writing in the hope of being read by lawyers and judges, as well as by other academics. It is not the sort of writing that requires the same sentence to be read three or four times to determine what the author is trying to say, only to realize that the author lost track, too. The authors have points to make and want to communicate those points.

It is sometimes difficult to find an overarching theme in a collection of articles, but I thought I had discerned one in the article co-written by the book’s editor, Margaret Hall. In “Systemic Wrongdoing, Public Authority Liability, and the Explanatory Function of Tort Doctrine: Two Case Studies,”

Hall and co-writer Aliya Chouinard talk about “strong poets” (p 73), a concept they borrowed from Richard Rorty. Strong poets are writers, lawyers, and judges who have sufficient imagination to see and articulate different ways of understanding social relations in the world: “To be a strong poet, Rorty advises, ‘[o]ne should stop worrying about whether what one believes is well grounded and start worrying about whether one has been imaginative enough to think up interesting alternatives to one’s present beliefs’” (p 73). In my words, don’t be satisfied with what the law is, but instead shape the law to shape the world.

I thought I could use this description for the whole book, but I am not certain I can. I think it could certainly be a theme for Parts 1 and 2, *The Private Law Response to Public Wrongs: Public Authority Liability and Affirmative Duties and Liability for Omission*, but I am not sure it would adequately define the second half of the book. The second half is a bit more individualistic in terms of topics, with chapters on causation in contract and tort, good faith, and privacy injunctions, among other issues. It’s all interesting, and Hall might tell me it is all interrelated, but I’m not sure I see that.

Not surprising for a series of papers presented in 2017–18, the articles may no longer be current. As I was revising this review, a Court of Appeal decision from British Columbia came across my desk, [Wu v Vancouver \(City\), 2019 BCCA 23](#), dealing with breach of statutory duty versus private law duty of care as it relates to municipal law. The Court held, in part, that public law duties cannot be converted into private ones, there is no nominate tort of breach of statutory

duty, and there is no duty of care imposed on officials to act in accordance with authorizing statutes. This is actually relevant to several of the articles, including Lewis Klar's article "The Proximity Hurdle in Negligence Actions Against Public Authorities," Bruce Feldthusen's article "Ten Reasons to Reject Unique Public Duties of Care in Negligence," and even Hall and Chouinard's article.

Similarly, in another "taken from the headlines" theme, Alistair Price's article "Negligence Liability for Police Omissions: A Golden Mean" compares various jurisdictions and the question of whether a police officer would be entitled, from the perspective of tort law, to stand aside and do nothing to prevent a crime or terrible event from occurring (p 133 *et seq*). This is reminiscent of a December 20, 2018 decision of the Ontario Court of Appeal, [R v Upjohn, 2018 ONCA 1059](#), which held that a police officer who learns a suicide is about to take place but does nothing to stop it has not committed a breach of trust. The two concepts are not precisely on all fours but do have a connection.

Overall, this is an excellent book for tort practitioners who want to explore where their practice can go, or tort scholars teaching upper-year, or even introductory, torts courses who want their students to read and analyze well-written articles about current tort ideas and concepts.

REVIEWED BY

JOHN K. LEFURGEY

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***Destroying the Caroline: The Frontier Raid That Reshaped the Right to War.* By Craig Forcese. Toronto: Irwin Law, 2018. 369 p. Includes illustrations, map, bibliographical references, and an index. ISBN-13: 978-1-55221-478-7, ISBN-10: 1552214788 (softcover) \$36.95.**

On the night of December 29, 1837, a small group of British soldiers and Canadian militia crossed the Niagara River to American territory and sank a U.S.-flagged vessel, the SS Caroline, killing one American. The Caroline transported American supplies and arms to insurgents tied to the 1837 rebellion in Upper Canada.

Border tensions ran high for years following this event. The U.S. saw the raid as an unprovoked attack against a neutral state. The British and Canadians justified the action as necessary to deal with security threats. War between the United States and Great Britain seemed a possibility. In the end, diplomatic efforts by U.S. Secretary of State Daniel Webster and a new British envoy to the United States, Lord Ashburton (Alexander Baring), produced an agreement known as the Webster-Ashburton Treaty. Cordial relations were restored by essentially "agreeing to disagree" on the facts surrounding the Caroline incident. Nevertheless, the incident became a precedent in international law for a nation-state's "inherent right to self-defence."

Craig Forcese's *Destroying the Caroline: The Frontier Raid That Reshaped the Right to War* is a well-researched analysis of this little-known event. The book is noteworthy as it helps us understand the implications of a seemingly minor raid balanced against other border confrontations between Britain and a then-young United States. The author also provides an historical perspective on today's political and legal realities concerning similar incidents. In so doing, he elucidates how an obscure border conflict redefined the right to war and is considered today as a *modus operandi* regarding *anticipatory* self-defense. It provides a legal underpinning for military interventions in conflicts such as the civil war in Syria.

After 180 years, this flashpoint on the Niagara frontier continues to influence political leaders contemplating military action against another state. The right to defend a country against foreign aggressors is a global problem no less relevant today than it was in the 19th century. The Caroline affair has become a litmus test in international law for the "right to war." Daniel Webster's statement on behalf of the United States, with Lord Ashburton's assent, that a state must show "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation" (p 104) is often cited when a state uses force in response to "imminent" threats.

Destroying the Caroline is a thorough historical and legal discussion of an important precedent in modern international law. Forcese's work shows that state-level interpretations of the concept of self-defence have evolved over time, but in the end, the goals remain the same. The latter part of the book highlights contemporary debates about pre-emption, imminence, unwilling or unable standards, and the personalities involved.

The book should appeal to students, teachers, practitioners, and decision-makers. Academic readers will find detailed notes, a bibliography, an index, and a useful appendix detailing a "Chain of Citations and Misunderstandings about the Caroline's Core Facts."

REVIEWED BY

DONATA KRAKOWSKI-WHITE

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***Law and the Whirligig of Time.* By Stephen Sedley. Oxford: Hart Publishing, 2018. xii, 286 p. Includes bibliographical references and index. ISBN 978-1-5099-1709-9 (hardcover) \$46.00.**

Sir Stephen Sedley's collection of lectures, book reviews, and other miscellanea, mostly related to the law, has been collected over the past 10 years. The title is a quotation from the character Feste in Shakespeare's *Twelfth Night*—"the whirligig of time brings in his revenges"—with the author's unifying thread throughout the book being that time brings about change.

The lectures, book reviews, and miscellanea are divided into four areas: *History*, *Law and Rights*, *People*, and *Occasional Pieces*, ready to be dipped into as the mood takes one. In the opening History lecture, “Human Rights and the Whirligig of Time,” Sedley shows that throughout history, particularly British history, human rights have never been measured against an absolute standard. Human rights, he believes, are predicated on time and place, on societal consensus. One example he uses is the slave trade, once deemed acceptable in Europe until countries learned to recognize slaves as human beings with human rights. Children, servants, women, and those without property were also not privy to rights until British society recognized that the capacity to reason is a human trait assigned to all people. Sedley points out that children are still not given a right to religion, since they continue to be treated as extensions of their parents.

Sedley captured my interest with a piece entitled “The Supreme Court,” an op-ed he wrote for the *Financial Times*. Not only had I visited the court in London, I also work in Canada’s Supreme Court. Sedley’s view is that the establishment in 2009 of the U.K. Supreme Court was to ensure greater judicial independence for Britain’s highest court. However, he cites missed opportunities for improvement, such as appointing senior academics to the Court and changing the format of judgements to that used by the European Court of Human Rights (which happens to be the format used by the Supreme Court of Canada).

Under *Law and Rights*, Sedley includes a review of the book *Anonymous Speech* by Eric Barendt. In it, he discusses anonymity and the right to lie, particularly the history of anonymity in journalism. Fewer print media sources remain anonymous these days, he writes, but a cause of greater concern for anonymity is the rise of the internet. In this section, Sedley also covers topics such as Brexit, the right to die, the British Constitution, the compensation culture, and judicial misconduct in an erudite, engaging, and entertaining style.

Under *People*, Sedley reviews the biography of Lord Mansfield, as well as Bob Dylan’s first two London concerts in 1964 and 1965. Sedley’s inclusion of his own scholarly research makes the Mansfield book review read more like an engaging essay, while his interest in Bob Dylan stems from his having played an impromptu session with Dylan in the Troubadour folk club at Earl’s Court!

The final section, *Occasional Pieces*, includes the author’s amusing notes from his first cases as a still wet-behind-the-ears personal injury lawyer.

Sedley has had a distinguished career as a QC and a judge on various courts. He has a long list of appointments and offices to his name and is known for a number of notable judicial opinions. Sedley has been a regular lecturer over his career, and he wrote most of this book, his third collection, after he retired in 2011 from his position as Lord Justice of Appeal for England and Wales. He is currently a visiting professor of law at Oxford University.

Most of the chapter headings in the table of contents are self-explanatory. The book provides footnotes and a combined index of names, titles, and subjects.

I would recommend this book to libraries that collect current British law and those seeking an intellectually stimulating take on British legal affairs.

REVIEWED BY
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***Mistake in Contracting*. By Bruce MacDougall. Toronto: LexisNexis, 2018. xlii, 517 p. Includes table of cases and index. ISBN 978-0-433-47303-9 (hardcover) \$170.00.**

This text completes what LexisNexis is marketing as their “Truth in Contracting” trilogy. The first two books in the series were *Estoppel* (second edition published in 2019) and *Misrepresentation* (2016), all written by Bruce MacDougall, a professor at the University of British Columbia. MacDougall is a prolific LexisNexis author and has written *Introduction to Contracts* (third edition published in 2016), *Canadian Personal Property Security Law*, as well as related *Halsbury’s* titles. Whereas “mistake” only fills one chapter of MacDougall’s introductory contract law text, it now enjoys a standalone volume where the issues can be fleshed out in greater detail.

I became acquainted with MacDougall’s writings on contract law when I taught the contract law course at the University of Manitoba’s Faculty of Law in 2014. His writing style is very straightforward and accessible, and he has a knack for breaking difficult and complex topics down into manageable and easier-to-understand parts. I love his *Introduction to Contracts* text (particularly for use with law students), and I was pleased to find that he has managed to apply his writing style to this complex area of contract law, although this text appears to be geared toward a more knowledgeable audience. The text is user friendly in a number of ways, including the use of individually numbered paragraphs and the inclusion of a table of cases and index. There is also a detailed and well-organized table of contents.

The book has two parts. The first part is devoted to “issues that unite or transcend the different doctrines” (§A-001) that make up mistake in contract law. It helpfully contains a chapter on mistake’s relationship with other doctrines, providing useful context for the content of this work in the broader scheme of contract law generally. Note that the first part of the book comprises 175 pages. The second part of the book “examines various contexts and doctrines of mistake” (§B-001). It is divided into five chapters, but as MacDougall explains, “there are in fact two broad groupings: what might be called mistake inside the contract itself and mistake in the background to the contract” (§B-001). The remaining 300-plus pages are devoted to issues such as *non est factum*, mistake as to terms, rectification, mistaken assumptions, and mistake in identity. In addition to addressing a number of thorny theoretical issues surrounding mistake in contracting, the author also regularly addresses practical issues, such as

evidentiary and procedural matters (pp 125 and 392 *et seq*). It should be understood, however, that this text is geared toward common-law jurisdictions and does not contain a discussion of civil law on this subject. As indicated in the preface, the law in this book is current to mid-December 2017.

I am not aware of any other Canadian texts that deal with this issue to this extent. While leading contract law texts address mistake, their authors simply do not have the space to address the law with this level of detail. For instance, Stephen M. Waddams devotes about 100 pages of his approximately 775-page text to issues related to mistake.¹ Instead, this text is along the lines of the English texts *Misrepresentation, Mistake and Non-Disclosure* by John Cartwright and *Rectification: The Modern Law and Practice Governing Claims for Rectification for Mistake* by David Hodge.²

Libraries looking to expand their contract law holdings, including academic law libraries, should consider purchasing this book, as well as libraries serving lawyers involved in commercial litigation and resolving contractual disputes. Libraries with one or both of the first two books in this series in their collections should complete the set with *Mistake in Contracting* to provide their patrons with complete access to a detailed explanation and critique of the law in this area.

REVIEWED BY
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Manitoba Court of Appeal

***Public Inquiries in Canada: Law and Practice.* By Ronda F. Bessner & Susan Lightstone. Toronto: Thomson Reuters, 2017. xxx, 646 p. Includes table of cases, bibliographical references, and index. ISBN 9780779880720 (softcover) \$144.00.**

Since Confederation, public inquiries have played a significant role in Canadian society, as they acknowledge as well as facilitate in-depth investigation into a particular topic of great importance. Given their substantial directives and varied participants, public inquiries are usually complex and often emotionally charged. Generally, public inquiries can be investigative and make findings of fact (for example, the Westray Mine Public Inquiry) or they can research and propose policies (for example, the Royal Commission on the Status of Women in Canada). Some inquiries can be both investigative and institute policy inquiries, such as the Commission on the Blood Service in Canada.

Public Inquiries in Canada: Law and Practice aims to serve as a guide to conducting and participating in a public inquiry from beginning to end, regardless of the inquiry's mandate. The book's authors, Ronda Bessner and Susan Lightstone, have extensive experience in supporting and serving the public and public inquiries, as well as educating students, lawyers, and judges.

The chapters organize each stage of a public inquiry chronologically, starting with a chapter on the history of public inquiries and the different types that exist. The final chapter discusses measures that can be taken to assess the effectiveness of public inquiries. The in-between chapters provide details about other issues that anyone involved in a public inquiry should be aware of, from rules of evidence to document management.

Each step in an inquiry is accompanied by a mix of thorough legal analysis, practical checklists, and forms. Fortright personal reflections from professionals who have worked on inquiries, including judges, lawyers, and journalists, are included. National in scope with relevant cases and legislation covering all provinces and territories, this book could be used for inquiries in any Canadian jurisdiction.

While Bessner or Lightstone write the majority of the chapters, the book also features chapters by other professionals with in-depth experience in and knowledge of public inquiries. For example, the Honourable Denise Bellamy wrote Chapter 7, "How to Run a Public Inquiry," and she uses her experience leading the Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry to explain how to set up an inquiry, conduct an investigation and hearings, and write a final report. While Justice Bellamy describes substantive legal issues, such as setting the inquiry's rules of procedure and witness interviews, she also shares practical tips on creating an inquiry website and keyboard shortcuts for note taking, for example.

Throughout the book, the authors feature interviews with past participants of specific inquiries, thereby expanding the analysis to include first-hand experiences from varying points of view. This feature is particularly effective in Chapter 15, "Giving Voice": "They are *public inquiries...*" This chapter includes an interview with Lata Pada, whose husband and two daughters died in the Air India bombing. Pada, who received party standing and testified at the Air India Inquiry, describes her experiences with first advocating for a public inquiry into the bombing to her thoughts on the implementation of the inquiry's recommendations. With the help of Pada's interview, one better understands the impact that public inquiries have on the morale and daily lives of Canadian citizens and the importance of ensuring that inquiries are conducted properly and carefully.

Public Inquiries in Canada is useful for all those involved in a public inquiry, from judges and lawyers to witnesses and journalists. With its practical writing and substantive legal analysis, it would be a welcome addition to any law library.

REVIEWED BY
ALEXIA LOUMANKIS
Reference and Research Librarian
Bora Laskin Law Library
University of Toronto

¹ Stephen M Waddams, *The Law of Contracts*, 7th ed (Toronto: Carswell, 2017).

² John Cartwright, *Misrepresentation, Mistake and Non-Disclosure*, 4th ed (London: Sweet & Maxwell, 2016); David Hodge, *Rectification: The Modern Law and Practice Governing Claims for Rectification for Mistake*, 2nd ed (London: Sweet & Maxwell, 2015).

***The Right to Life in Armed Conflict.* By Ian Park. Oxford: Oxford University Press, 2018. xxvi, 239 p. Includes bibliographic references and index. ISBN 978-0-19-882138-0 (hardcover) \$105.00.**

In *The Right to Life in Armed Conflict*, author Ian Park turns the commandment “thou shalt not kill” into a positive right. The idea of a modern right to life extending into the historically lawless field of war forms a striking paradox. The book is a survey of the considerable body of case law concerning the *European Convention on Human Rights* and the UN’s *International Covenant on Civil and Political Rights*. While written from a U.K. perspective, the book is by nature international in scope and clearly has global implications.

Park thoroughly and capably examines the interaction between the aforementioned rights-based legal machinery (the book’s primary topic) and international humanitarian law, the body of law that encompasses international treaties defining war crimes. While the two areas of law diverge widely in application, substance, and procedure, Park arrives at the conclusion that they can be made to work in concert.

The lawsuits examined, for the most part, involve individual plaintiffs and state defendants. Park summarizes many rulings, speculating on how states can best meet their right to life obligations to combatants and civilians. He also has ideas about how states can meet their strategic or military objectives while complying with the two bodies of law.

Moving into the writing style, perhaps it is unfair if I single out Park’s book for a fault that is endemic to the world of academia. But even among that esteemed group, the excessive use of passive voice, qualifiers, euphemisms, and awkward sentence structures makes this dissertation-cum-book almost unreadable. Traditional, emotive terms like “enemy” and “war” are repressed in favour of less economical but more legally apt phrasing, viz. “international armed conflict.” I generally assume that all of the above rhetorical tendencies are intended to give non-scientific academic and legal texts the appearance of scientific rigor.

And Park is indeed rigorous. He defines his field with precision and covers it with care. The difficulty of writing may be inherent in the task, the legalities of mass death calling for a sanitization of language. If sterile detachment has become the accepted norm of academic and professional writing, maybe the law of armed conflict can be justified as the apotheosis of that tendency, a bloodless language for the bloodiest of legal topics.

While Park proves himself a strong and independent voice on his subject—he has many well-informed opinions about judgments—a lack of politics or any kind of subjective engagement adds a boredom factor to the writing. Park’s opinions are exclusively from a legal perspective, limited to passive endorsements or moderate criticisms of judgments, and modestly expressed (“it is submitted that...”). The law is ghettoized and cut off from the world that spawned it, the philosophical subject expelled, and the legal mind left to pick at the dry bones of its own accustomed discourse. I’m not saying that Park does not care about his topic, but

if a competent but completely uninterested legal writer attempted to cover the same ground, the result would likely be similar.

What role do these lawsuits play in international politics? Do they change the behaviour of states? Does the right to life have teeth? Political analysis of armed conflict is out of scope for this work, so these questions remain frustratingly unanswered. Rather, the author generally assumes that states will duly consider these laws in contemplation of military engagements and dutifully aim for compliance. Today’s political climate makes such an assumption seem suspect and Park’s detailed accounts of policy considerations academic.

I confess I did not read every word of this text—its lifeless prose defeated me—so I might have missed some things. But suffice it to say, the book is not a useful introduction to its own topic. It can only be endured by those who are already conversant in the basic framework of its subject and are motivated to read a fuller account of the details, or, indeed, Park’s occasional independent analysis. Of course, for those directly involved in this developing field of law, the text is indispensable. It should find its way into large academic law libraries, government libraries with National Defense users, and any law firm library with a significant international human rights practice group.

**REVIEWED BY
KEN FOX**

*Reference Librarian
Law Society of Saskatchewan Library*

***Social Media and Morality: Losing Our Self Control.* By Lisa S. Nelson. Cambridge: Cambridge University Press, 2018. 225 p. Includes bibliographic references and index. ISBN 9781107164932 (hardcover) \$114.95. ISBN 9781316616574 (softcover) \$39.95.**

Social Media and Morality is Lisa S. Nelson’s contribution to a growing body of literature exploring the consequences of our engagement with social media platforms. Nelson adopts a postphenomenological approach, which “is built on the premise that technology cannot be isolated from methods, interests, materials, and institutions influencing its constitution” and views technology not as a neutral tool, but as “a medium through which subjective perceptual experience is created and mediated” (p 7).

The first chapter draws on the history of technology and law to examine social media’s political significance. This chapter also introduces the postphenomenological view of technology as an agent of change. One example Nelson uses to illustrate this view is the Fourth Amendment’s guarantee of the right to privacy. She notes a generational shift toward “a certain resignation to surveillance and data harvesting,” and that in contemporary society, “[p]eople expect less privacy and do less to preserve it” (p 42) than previous generations did when technologies such as the telephone were the primary means of remote communication. Nelson touches upon the limits to which legal and regulatory frameworks can protect

the constitutional rights of social media users, stating:

Our increased reliance on and acceptance of social networking technologies undermine the prospects of blanket protections for privacy and anonymity ... While we like to think of ourselves as the agents in our social networking activities, reliance on third-party providers leads to a counterintuitive outcome when it comes to maintaining our privacy and anonymity in cyberspace (p 43).

The remaining five chapters probe more deeply into philosophical inquiry. Chapter 2 describes social media as a moral entity capable of altering our perception of reality:

Whether in the form of images or misrepresentations or the vilest of what our imagination might otherwise resist, social networking technologies deliver us a reality to which we react despite its factual validity. In this way, social networking technologies interweave subjects and objects in the interpretation or constitution of reality and, in doing so, mediate human perceptions, not necessarily revealing the “thing themselves”, but instead constructing our perceptions of the “real” without a direct and accessible reference for it (p 86).

Chapters 3–5 further explore how social media affects human behaviour online and offline. Chapter 3 focusses on the way humans contextualize their actions in cyberspace, while Chapter 4 examines the disruptive effect that networked time has on our behaviour and moral judgment. Social media’s “emphasis on the present or ‘specious present’—lacking in depth, divorced from the past and future, and perpetually accessible—influences our subjective understanding of time but also shapes our moral judgments” (p 137). This “specious present” prompts us to react in ways that seem reasonable in the moment we first observe social media content, but unreasonable when the real-life context of that content becomes known to us (if it ever does). Chapter 5

explores the ethics of constructing an online identity that improves upon or is radically different from our offline selves, and the impact this has on our sense of accountability and moral responsibility to other online citizens.

The final chapter uses postphenomenology to expand upon the subject of regulation discussed in Chapter 1. Nelson’s approach allows her to move beyond legal and political frameworks and turn her attention to the personal. Nelson’s aim is not to propose a definitive solution for “harmful online behavior such as cyber bullying, vigilantism, sexual harassment, threats, racism, and terrorism” (p 57), but to caution against relying on regulatory and technological solutions for changing these behaviours. In her view, individuals must first become aware of how technology manipulates them before there can be any hope of improving the larger social media experience. This call for critical reflection will resonate with librarians who provide information literacy instruction.

Social Media and Morality neatly moves the reader through various philosophical approaches to technology and the self, and Nelson draws upon widely reported social media phenomena to illustrate her points. *Social Media and Morality* is a thoughtful work that provides additional depth and dimension to similar themes covered in popular non-fiction works such as *Weapons of Math Destruction* by Cathy O’Neil and *The Attention Merchants* by Tim Wu. Scholars researching internet law and policy development should consider Nelson’s approach when considering why we have thus far failed to regulate our way to a more respectful and trustworthy social media environment.

REVIEWED BY
SALLY SAX

*Collections Librarian
(Business, Public Affairs, Legal Studies)
Carleton University*

CALL/ACBD Research Grant

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

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

Please contact

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III Bibliographic Notes / Chronique bibliographique

By Nancy Feeney

Michele DeStefano, “The Law Firm Chief Innovation Officer: Goals, Roles and Holes” (2018) University of Miami Legal Studies Research Paper No 18-39, online: SSRN <dx.doi.org/10.2139/ssrn.3282729>.

Observing the growing trend of appointing chief innovation officers (CINO) at law firms, DeStefano, a law professor at the University of Miami and founder of [LawWithoutWalls](http://LawWithoutWalls.com), sought to determine whether the appointment of such an officer is an effective way to meet the demands and expectations of clients.

Based on interviews with more than 100 general counsel, heads of innovation at law firms, and law firm partners, DeStefano’s research offers a snapshot of how firms understand innovation. She examines the role of innovation officer: what it is intended to do, what it actually does, and the gap between the two.

CINOs are responsible for championing cultural change in order to alter the types of services provided to clients, the ways those services are delivered, and how they are implemented in terms of presentation and pricing. One of the key benefits of hiring a CINO is to make an organization more attractive to clients, who are demanding innovative solutions. Having a head of innovation brands a firm as innovative, which, in turn, may result in obtaining requests for proposals (RFP) and subsequent new business. Another benefit of establishing a CINO’s office is that it assists in developing a culture of innovation: having a CINO drives change so that innovation is mainstreamed and embedded in the practice groups. The goal of delighting clients to derive business requires their expectations to be exceeded. DeStefano believes that to accomplish this, lawyers must adopt innovation and the tenets of design thinking: solving

problems creatively, collaborating, developing empathy, and overcoming aversion to risk.

The roles of CINOs vary depending on how an organization operates, what the role is called, and who fills it. The experience and training of CINOs range from senior lawyers who are currently practicing law to outsiders with no legal training. In many cases, DeStefano discovered that the CINOs created their roles themselves. Despite these differences, the motivation for taking on the role of leading innovation is similar amongst CINOs. All were passionate about inspiring their colleagues to alter the way they practice and serve clients to meet the changing demands of the marketplace. DeStefano identifies six tasks CINOs commonly take on:

1. Curating ideas and facilitating innovation processes execution;
2. Analyzing technology available for lawyers that can be used to enhance transparency, increase access, create efficiencies, and please clients;
3. Analyzing and reconfiguring processes to enhance transparency and to create efficiencies inside the firm to improve client service;
4. Aiding in new business pitches, responses to RFPs, and panel reviews;
5. Engaging with clients to better understand their needs, develop relationships, and collaborate to provide more client-centric, effective, and efficient services; and
6. Networking with legal innovation communities across the globe.

The scope of these responsibilities is sweeping; consequently, the CINO has huge potential to shape the future of the firm and drive success both internally at the firm and externally with clients. However, DeStefano argues that CINOs are not currently fulfilling their roles to maximum potential. She describes three attributes at the law firm organizational level that work to impede the CINO: confidence, competence, and commitment.

Not all lawyers recognize the value of a CINO in assisting in business development. Additionally, many lawyers are reluctant to innovate with clients or problem solve with input from the client. They are also not confident that that client relationship will withstand risk taking. DeStefano argues that the only way law firms will be able to serve clients better is if they show more vulnerability and seek more feedback, which requires confidence.

Innovation is a process that requires a degree of training. Too frequently, law firms have jumped on the innovation bandwagon without fully understanding the implications or requirements. Absence of clarity around core goals will inevitably lead to unsatisfactory results. Firms need to have the relevant competence to identify what they want and how to achieve it.

Finally, law firms often lack commitment, in terms of both culture and compensation, which undermines the potential of CINOs. CINOs are not generally rewarded for their efforts unless they produce results, and, DeStefano concedes, the difficulty in measuring the value of innovation complicates this. Additionally, if innovation is not rewarded, it is less likely to become ingrained in the culture of the firm.

Despite these obstacles, DeStefano suggests that firms trying to innovate should support the work of CINOs, allow the CINO to interface directly with clients, and celebrate the success of innovative methods for all in the firm to see.

Robert Dale, “Law and Word Order: NLP in Legal Tech” (2018) 25:1 Natural Language Engineering 211, online: <doi.org/10.1017/S1351324918000475>.

In this article, Dale outlines how natural language processing (NLP) and artificial intelligence (AI) affect the legal profession. He identifies five discrete areas where these technologies have had dramatic impact: legal research, electronic discovery, contract review, document automation, and legal advice.

Legal research, the process of finding information needed to support legal decision-making, is generally conducted by searching through both statutes and case law to find what is relevant for some specific matter at hand. Electronic search and retrieval mechanisms employing AI technology are improving the results of the search tasks.

Electronic discovery is the process of identifying and collecting electronically stored information in response to a request in a lawsuit or investigation. The process of “technology assisted review” is increasingly being used to assist in these tasks.

Lawyers commonly review contracts and advise their clients on whether to sign or negotiate for better terms. Automated contract review systems can be used to review relatively standardized documents that are predictable in terms of the kinds of content they contain.

Legal advisors are interactive systems that produce advice tailored to the circumstances and requirements of the user based on a set of questions posed by the system. In many cases, the output is a legal document of some kind, so legal advice often amounts to document automation.

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By comparison, document automation systems typically use a fill in-the-blank template that enables the creation of a legal document tailored to specific criteria.

The legal technology companies that work in the five areas mentioned above are adopting and improving AI and NLP. The march of progress is unavoidable.

The conservatism of the legal profession has slowed the outright adoption of these technologies by lawyers and law firms; change involves risk, and lawyers are traditionally risk averse. Additionally, the legal profession has conventionally operated on billable hours, and increased efficiencies reduce what lawyers can count as billable. Nevertheless, as technology improves, legal professionals will have no choice but to adapt.

Fundamentals of Canadian Law Podcast (2017–present), online (podcast): Queen’s Law, Certificate in Law, <certificate.queenslaw.ca/podcast>.

Fundamentals of Canadian Law is a monthly podcast exploring all facets of Canadian law, from substantive law topics to legal research. Featuring the faculty and instructors who are part of Queen’s University Certificate in Law program, the episodes are generally less than 30 minutes in length.

In an early episode, “Hip-Hop Hero Versus Soda Giant,” Martin Jarvis, director of the Queen’s Business Law Clinic,

details the fundamentals of intellectual property law using the example of B. Rich, a Canadian rapper who registered a trademark for the phrase “out for a rip,” the title of one of his tracks. Several years after Rich’s song and video were released, he discovered that Coca-Cola was using the trademarked phrase on cans and bottles. Rich then released a new track and video, “Out for a Sip,” which essentially operated as a cease and desist order. Using this unique example, Jarvis explains, in a very entertaining way, the types of things one can trademark, the process of obtaining a trademark, and how the law protects such marks.

In “Be a Court Case Detective,” an episode designed for novice researchers, Mary Jo Maur, assistant professor at Queen’s University Faculty of Law, uses CanLII and encourages listeners to search along with her as she explains the court system, citations, and the essential elements of a legal decision.

In “The Most Expensive Comma in the World,” Peter Kissick, an instructor in the Undergraduate Certificate in Law program at Queen’s, uses the example of the infamous \$2.1 million comma in the contract between Rogers Communication and Bell Aliant (CRTC 2006-45 and CRTC 2007-75) to springboard into a discussion of common contract pitfalls. Kissick succinctly explains that a contract essentially creates private law between two parties, describes the necessary elements of contract formation, and offers advice on how to avoid drafting mistakes.

There’s another reference that you might not know about for research and news on Canadian employment law and internal control

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

By Jonathan Leroux

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

EDMONTON LAW LIBRARIES ASSOCIATION (ELLA)

In January and February, we were happy to welcome representatives from several organizations who provide free (or cheap) legal resources to Alberta residents. We heard from:

- Association des juristes d'expression française de l'Alberta
- Centre for Public Legal Education Alberta
- Legal Aid
- Court Assistance Program
- Edmonton Community Legal Centre
- Student Legal Services

For more information about the presentations, visit our blog at edmontonlawlibraries.ca/category/blog.

SUBMITTED BY
SUSAN FRAME
Member-at-large, ELLA

MONTREAL ASSOCIATION OF LAW LIBRARIES (MALL) / ASSOCIATION DES BIBLIOTHÈQUES DE DROIT DE MONTRÉAL (ABDM)

Le 11 décembre 2018, de nombreux membres de l'ABDM ont assisté à l'activité de Noël ayant eu lieu au Restaurant Hambar. Également, une conférence intitulé « Panorama de la justice sans papier » a été présenté le 15 janvier 2019

par Me Vincent Callipel. La prochaine conférence aura pour sujet « Comment positionner et faire rayonner son service de l'information ».

On December 11, 2018, members of MALL attended a Christmas event at Hambar. Also, Vincent Callipel presented a lecture entitled "Panorama of the Paperless Justice" on January 15, 2019. The next lecture will focus on "How to Position and Spread Your Information Service."

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

VANCOUVER ASSOCIATION OF LAW LIBRARIES (VALL)

VALL's February Brown Bag Session featured a talk by Dorothea Hendriks on "Keeping Your Cool in the Workplace." Next up will be a panel session called "Articling Student Orientation Tips and Tricks" featuring speakers from law firms and the B.C. Courthouse Library. We will wrap up the 2018–2019 year with a talk by Stephanie Hewson of West Coast Environmental Law in June.

SUBMITTED BY
SUSANNAH TREDWELL
President, Vancouver Association of Law Libraries
2018/2019



III Conference Report

Public Companies: Financing, Governance and Compliance

By Stef Alexandru*

In 2018, I received the James D. Lang Memorial Scholarship, which allowed me to complete Public Companies: Financing, Governance and Compliance, a two-day course at Simon Fraser University. The course is geared toward directors, officers, and senior managers of public companies; investor relations professionals; management consultants; lawyers; accountants; and other professionals.

The course is organized into eight subject areas, each encompassing a presentation by professionals specializing in that area along with accompanying reference materials. Participation and discussion are encouraged, and both were plentiful.

The eight sessions are:

- 1. Corporate Law and Corporate Governance:** This session outlined essentials like the election and termination of directors, the role of a director, board composition, directors' powers and functions, investor confidence rules and ethical considerations, disclosure requirements, director liability, and how directors can protect themselves.
- 2. Regulation of Capital Raising:** This session supplied a brief introduction to securities law and information on prospectuses and public offerings, private placements and exemption requirements, and hold periods.
- 3. Material Changes and Timely Disclosure:** This session discussed news releases, filing requirements, TSX Venture and TSX policies, and civil liability.

- 4. Shareholder Communications:** This session covered shareholder meetings and investor relations.
- 5. Financial Reporting:** Presented by an audit partner and a lawyer, this session covered interim and annual financial statements, management's discussion and analysis, and common deficiencies in financial reporting.
- 6. TSX Venture and TSX Filing Requirements:** Information on financings, options, acquisitions/dispositions, and some practical filing tips supplied the subject matter for this session.
- 7. Trading:** This session outlined how the markets operate.
- 8. Insider Obligations:** This session covered insider reporting and insider trading prohibition.

The long-time coordinators of the course—two prominent lawyers, one practicing securities law and the other in-house counsel at the TSX Venture Exchange—assembled an impressive lineup of speakers from the legal, accounting, and business communities, and staff from the B.C. Securities Commission and the TSX Venture Exchange, whose practical experience and perspectives made the course stronger.

This is an excellent primer for librarians working in business and corporate law. And, in "it's a small world" news, I met an attendee, the current CFO of a mining company, who, early in his career, worked in the accounting department at my firm.

Thank you to CALL's Scholarship and Awards Committee for funding my participation in this course. The knowledge I gained helps me deliver better research to my firm's lawyers and students.

* Librarian, Lawson Lundell LLP



III News from Further Afield / Nouvelles de l'étranger

Notes from the UK

London Calling

By Jackie Fishleigh*

Hi, folks!

Brexit Omnishambles Continues...

No one knows what form Brexit will take, or even when or if we will leave. This seemed astonishing a year ago but even more bizarre with just three weeks to go.

Could there be a second referendum (aka: a People's Vote)? Or would this be felt to be undemocratic? Immediate concerns are now becoming pressing: the validity of driving licences in Europe and passports with a short lifespan, and even the impact on holidaying in Europe with pets.

In terms of business, supply chains will be hit, especially in the car manufacturers sector. Shortages of some fruits and salads are predicted (basically, perishable food).

And a big question looming is how to deal with EU elections in May if we are still members.

Meanwhile, there are huge electronic posters up at transport hubs from Her Majesty's Government stating that "The UK Leaves the EU 31.3.19"! These were probably produced a while ago.

Impact on Legislation

According to the [New Law Journal](#) of the 8th March, "A delayed exit [...] seems highly probable." As of 3rd March

2019, of 600 statutory instruments (SIs) estimated to be required to bring into effect EU law domestically, 460 have been laid. These are unusually long SIs because in order to reduce the number some have been consolidated, making many of them long and complex. These have been filling up my daily alerters! They are marked "EU Exit."

So far, according to [New Law Journal](#), 218 SIs have completed the process. Controversially, 126 of the 460 SIs amend primary legislation. This is one of the most controversial elements of the [European Union \(Withdrawal\) Act 2018](#).

Meanwhile, primary legislation is also lagging behind. Bills on trade, agriculture, and fisheries are still in progress and unlikely to be completed by 29 March.

Attorney General's Legal Advice on Irish Backstop Scuppers Theresa May's Deal

Geoffrey Cox QC, the government's top legal adviser, showed himself to be a law unto himself—i.e., thoroughly independent—when his decision to reject the Prime Minister's Strasbourg agreement was questioned by veteran journalist Jon Snow¹ in the following Twitter exchange:

[Jon Snow](#): "A Lawyer contact tells me that the legal world is aware that the Attorney General said NO last night to the validity of Mrs May's 'new EU deal'... he [has] been told to go away and find a way to say YES: A cohort of lawyers has been summoned."

[Geoffrey Cox QC MP](#): "Bollocks."

¹ Whom I have actually met! Long story: I once had dinner with him and his family at his house and have seen his impressive collection of colourful ties!

This is significant, as a previous attorney general, Lord Goldsmith, changed his legal advice under pressure from PM Tony Blair in the run up to the Iraq War.

No Plan, No Vision, No Credible Leaders... How Leave Won Against the Odds

Benjamin Franklin allegedly said, “If you fail to plan, you are planning to fail!”

A recent Channel 4 documentary entitled *Brexit: The Uncivil War* shown in January and starring Oscar nominee Benedict Cumberbatch shed some light on how the Leave campaign won the 2016 referendum against the odds without any real input from actual politicians! And hence no actual policies or plan.

In the drama, the highly rated actor plays Dominic Cummings, the Vote Leave campaign chief, regarded by some as the brains behind the now notorious “£350m-a-week for the NHS” emblazoned on the side London’s iconic red buses and the baffling (to me, at any rate) and illusory “take back control” slogans. These buzzwords were the fruits of long hours conducting focus groups in parts of the U.K. where ordinary folk felt “left behind.”

At the time, Cummings was a little-known aide, but he proved himself a master of social media manipulation, focussing his effort solely on those voters who were likely to change their minds. He did not hold any particular political views, despite having worked as a chief of staff for Tory cabinet member and enthusiastic Leave supporter Michael Gove. Known for his abrasive style in Westminster, he carried this through to his role of being responsible for getting Leave over the line, even if the truth sometimes got in the way...

He also made a show of refusing to work with Brexit cheerleader Nigel Farage and dodgy businessman Arron Banks, who paid for the questionable advertising, while later admitting his campaign relied on their toxic anti-immigration messages.

Just one year after the referendum that turned Britain upside down, he branded it a “dumb idea” and opined that future generations might well view leaving the EU as “an error.”

The writer of the docudrama, James Graham, says he aimed to provide a rounded picture of an intriguing man seen by others variously as an “antichrist,” “pseudo-intellectual,” “genius,” and “the messiah.”

Reflecting in a [January 2017 blogpost](#), Cummings was clear that his decision to campaign on the made-up NHS bonanza—while deploying to great advantage the unscrupulous Farage approach—was the masterstroke:

Would we have won without immigration? No. *Would we have won without £350m/NHS? All our research and the close result strongly suggests No.* Would we have won by spending our time talking about trade and the Single Market? No way.

Tusk Tweets His Mind

European Council President Donald Tusk ruffled feathers with a recent [tweet](#) scoffing that there was a “special place in hell” for those who backed Brexit without a plan to deliver it.

According to the [Metro](#) tonight, 14th March will see a third evening of votes in Parliament, this time on a possible extension of Brexit. The motion currently says that if the PM’s deal with the EU is backed by the Commons, Britain will ask for a postponement lasting until June 30. If MPs reject the agreement, a longer extension is likely to be asked for.

May’s deal, already emphatically rejected twice by MPs, is due to be put before them again by Wednesday at the latest. So that’s a third bite of the cherry!

In normal circumstances, a PM will resign if their flagship policy is thrown out so decisively, but with Brexit normal rules no longer seem to apply.

The problem is that there is no consensus, really, for any of the available options; e.g., remaining, extending the exit date, a second referendum, or a general election.

Senior figures in Labour, our main opposition party, drove prominent journalist and news presenter Emily Maitlis to distraction during an interview on Tuesday after the vote. She is said to have captured the mood of the nation with her “[Brexplosion](#),” a withering side stare as they tried and failed to explain Labour’s position. “People are literally pulling their hair out tonight,” [she said](#), totally exasperated.

Labour insist on keeping their powder dry as they wait for the optimum opportunity to pounce and snatch control of the chaos. But will that moment ever come?

Questions, Questions, Questions

I spent last night at a [BIALL](#) annual charity quiz event at the Pendrel’s Oak public house just a few minutes’ walk from here. The pub is part of prominent Leave campaigner Tim Martin’s [Wetherspoons](#) empire. He printed vast quantities of beer mats with anti-EU messages on it in the run up to the referendum.

Given that practically all the law librarians I have met voted firmly to remain, this may appear to be a bizarre choice of venue! The TV was on in the background as we worked our way through a three-hour quiz, meals, and drinks. The mood appeared generally cheerful but many were dismayed and bewildered about the mess the U.K. had got itself in. A member of my quiz team declared herself to be BOB: bored of Brexit! Most people, though, were more willing to engage in conversation and just wished we could remain. During our training on EU law, we have been in a position to understand the value of the European Union and, crucially, how it works. Most ordinary citizens do not have the kind of education that we have had and are therefore less informed. That is my explanation of why we are almost all Remainers. A half-Italian colleague here said that Italians learn about the EU at school as part of their general education.

It is good to be able to talk properly to others about Brexit for the first time since the run up to the election, really.

After the referendum result was announced, Brexit quickly became a toxic, no-go area. The murder of pro-EU MP Jo Cox outside a library in broad daylight just before the referendum was so absolutely shocking that it pains me to even write about it here.

The impact has been massive, deterring people, particularly women, from speaking their minds and engaging in public events, let alone getting involved in politics. This is how things have traditionally been for many years in Northern Ireland, apparently, which I find deeply depressing but understandable.

Our first black female MP, Diane Abbott, who has been mercilessly trolled for many years, says she now lives in constant fear of being raped or murdered. What a terrible state of affairs.

30 Years since the Arrival of the Internet: For Better or Worse?

In a [letter](#) published on his [World Wide Web Foundation](#) site, Tim Berners-Lee² has acknowledged that

many people feel afraid and unsure if the web is really a force for good [...] And while the web has created opportunity, given marginalised groups a voice, and made our daily lives easier, it has also created opportunity for scammers, given a voice to those who spread hatred, and made all kinds of crime easier to commit.

The British computer scientist submitted his first [proposal](#) for an “information management system” on 12 March 1989—plans that his boss called “vague but exciting.” He actually studied physics in London with the husband of our director of management, who didn’t see any signs of impending fame in him as a student. “He was just another physicist,” apparently!

In his [letter](#), Berners-Lee identifies three major “sources of dysfunction” affecting the web: deliberate, malicious intent; system design that creates perverse incentives; and unintended negative consequences of benevolent design. The first, he said, resulted from issues like state-sponsored hacking and criminal behaviour, the second from entities like ad-based revenue models “that commercially reward clickbait and the viral spread of misinformation,” and the last produced problems such as “the outraged and polarised tone and quality of online discourse.”

On a lighter note, I attended a keynote speech by Berners-Lee at a day conference a few years back. He said he regretted introducing “://” to website addresses, which he has since found a nuisance to type!

Until next time!

With very best wishes,

Jackie

Letter from Australia

By Margaret Hutchison**

Well, it’s been an interesting few months in Australia, especially in Victoria.

As the rest of the world knew, more than Australians, in December last year Cardinal George Pell was retried and convicted of sexually abusing two choirboys in 1996 and 1997, as the original trial in April resulted in a hung jury. A blanket suppression order had been in place since April 2018 when the first trial was held. These trials were known as the “cathedral trials,” as the offences had occurred in the cathedral in Melbourne.

After his conviction, preliminary proceedings started for a second trial referred to as “the swimmers trial.” This trial was intended to deal with allegations that Cardinal Pell had indecently assaulted two boys in a swimming pool when he was a priest in Ballarat in the 1970s. Prosecutors had hoped to show that his history of abuse proved that Cardinal Pell had a tendency toward molesting children. Under Australian law, a judge may admit such evidence only if its evidentiary value outweighs the risk of prejudice to the defendant. The judge in this matter ruled that the evidence did not, so this case collapsed and the suppression order was lifted.

The Australian blanket suppression order was under a generally accepted principle that it would have been impossible for Pell to have a fair trial if the second jury was aware of the details or outcome of an earlier trial. If the second trial had proceeded as planned, there would have been a “perfect storm of potential prejudice” and publicity that would have “swamped” the second trial, in [the words of County Court Chief Judge Peter Kidd](#).

However, the “swimmers trial” did not proceed, and the suppression order was lifted, so the Australian media frenzy began. Earlier, the media, while abiding by the suppression order, had started pushing its limits. A week after the conviction, one tabloid, [The Daily Telegraph](#), published a front-page article a week later declaring “It’s the Nation’s Biggest Story” that it was not allowed to publish. The article is quoted in the [New York Times](#): “ ‘A high-profile Australian with a worldwide reputation has been convicted of an awful crime,’ The Telegraph wrote, adding, ‘but The Daily Telegraph and other Australian media are prohibited from telling you about it.’ ”

Several other outlets published editorials on their front pages denouncing the news blackout in language that avoided direct references to Cardinal Pell or the verdict, prompting Chief Judge Peter Kidd to hold an impromptu hearing in which he called for prosecutors to initiate legal proceedings against journalists for contempt of court. The director of public prosecutions sent letters to many media organisations warning them of possible contempt actions in what was described as a heavy-handed manner.

² Who, in 2012, appeared at the opening ceremony for the London Olympics tapping away at a keyboard!

Cardinal Pell was sentenced to six years' jail, with a non-parole period of three years and eight months. An appeal against his conviction has already been lodged with the Court of Appeal, which is likely to hear the appeal in June. I'm expecting the case to work its way up to the High Court eventually.

Victoria does seem to be the happening place these days: there is now a Royal Commission into the handling of police informers. This is likely to be the biggest legal scandal in Victoria's history; it stems from Melbourne's bloody gangland war and threatens to quash the convictions of notorious underworld crime figures.

Melbourne's gangland war is said to have begun in 1998 and finished about 2005. In total, more than 40 deaths are connected to the so-called gangland killings. Many of the hits took place in public. Victoria Police were so desperate and under such pressure to stop the killings that they used any means possible to obtain arrests and convictions, including using informers such as the barrister representing many underworld figures.

The name of the barrister involved, known as "Lawyer," "X," "Informer 3838," or "EF" (in the High Court case), was an open secret among legal and underworld circles. After suppression orders were lifted on 1 March, the lawyer was revealed as Nicola Gobbo. She comes from a prominent legal family; however, they have publically distanced themselves from her. Nicola Gobbo quickly built a career and a high public profile defending gangland figures during her career at the Bar. She had originally been registered as a police informer in 1995 after being arrested in 1993 for drug offences and escaping a conviction. However, by 2003 she was again "informally" talking to Victoria Police and was officially registered as Informer 3838 in 2005. From 2005 to 2009, she was defending her clients while at the same time passing information on to Victoria Police, in clear breach of client confidentiality.

After 2009, she was deregistered as an informer and in 2010 sued the Victorian government and police, claiming her handling by police was negligent and stress inducing. By this time, the underworld would have been well aware of her role as an informer. She has not practiced law since 2013.

In 2014, the Victorian Independent Broad-Based Anti-Corruption Commission held an inquiry to determine what information the police gathered from Informer 3838. The inquiry eventually found gross negligence in the police's management of Gobbo, which may have egregiously breached the administration of justice. Also at this time, identity suppression orders were put in place, but Gobbo refused to go into the witness protection program, citing her lack of confidence in the program and Victoria Police.

In 2016, Victoria Police launched a Supreme Court case to stop the director of public prosecutions from telling Gobbo's clients their cases might have been caught up in the scandal. This case and related cases have worked their way

through the legal system, all in secrecy, until they reached the High Court last year. Criminals in jail because of Gobbo's information may be able to appeal their convictions through a judicial review and possible retrial process. However, as they received reduced sentences for pleading guilty, it is possible they will receive longer sentences on a retrial instead.

The High Court's [judgment](#) has been described as "excoriating." Both Nicola Gobbo and the Victoria Police were severely criticised, and the Victorian Premier had no choice but to call a royal commission. The staffing of the Commission itself has been problematic, with very few Victorian lawyers or judges free of any possible conflict of interest. The chair of the Royal Commission is a retired Queensland judge, Margaret McMurdo, former president of that state's Court of Appeal. Also appointed was a former South Australian Police Commissioner, Malcolm Hyde, who had left the Victorian police force 30 years ago. However, he had to resign due to a potential conflict of interest, as he was a senior officer in the police when Nicola Gobbo was originally registered as an informer in 1995.

The Royal Commission's hearings have not yet started, but they promise to be the biggest show in town when they do. Nicola Gobbo has apparently entered the witness protection program, as she and her children have vanished from their home and school. A further High Court [judgment](#) recently has placed an order that

there be no publication of the real names or images of EF's children or either of them in connection with EF, or in connection with these proceedings or the subject matter of these proceedings, until publication of the final report of the Royal Commission into the Management of Police Informants and thereafter for a period of not less than 15 years.

The High Court recently handed down their judgment in the [Timber Creek matters](#). These matters were heard in the High Court's first ever circuit visit to Darwin last September. This judgment has been described as the most significant native title decision since the [Wik](#) and [Mabo](#) decisions.

The Court has for the first time laid out the calculations involved in awards of damages for non-economic loss. The Court held that assessment of cultural loss required determining the spiritual relationship that claimants have with their country, and then translating the spiritual hurt caused by the compensable acts into compensation. The assessment will vary according to the compensable act, the identity of the native titleholders, the native titleholders' connection with the land or waters by their laws and customs, and the effect of the compensable acts on that connection.

Non-Aboriginal people first explored Timber Creek in the mid-19th century:

"Between 1980 and 1996, the Northern Territory was responsible for 53 acts, on 39 lots and four roads

within the town, comprising various grants of tenure and the construction of public works that impaired or extinguished native title rights and interests.”³

The High Court [emphasised](#) that the claim was “not just about hurt feelings”⁴ and referenced specific examples, such as loss of a Kunuma boab tree and the building of a causeway across Timber Creek that damaged a Dingo Dreaming site. The Court likened this damage to that of punching holes in a painting that can never be repaired.

To quote from the High Court [judgment](#),

it’s damaged for good and we can’t tell the young fellas the full story. If they can’t see the Dreaming [it’s] hard for us older fellas to tell them the full Dreaming story they need to learn to grow up. [...] I feel ashamed, like I’ve done the wrong thing myself in not looking after the country, the sites and the Dreaming.⁵

There’s been no change in our prime minister since I last wrote, but there are a lot of cabinet ministers and back benchers jumping ship, as there’s an election due in May. The election is expected to be a disaster for the governing Liberal National coalition. Another cabinet minister announced today that he was not standing in the next election. That makes seven cabinet ministers either retiring or not standing again. Being in opposition obviously doesn’t appeal after being in government!

Can I put in a plug for the [IALL Conference](#) in Sydney in October 2019? When the purple jacarandas are flowering, Sydney is spectacular, especially from on high. The conference organisers are putting together a very interesting program and the social activities look fabulous as well. The flight from Vancouver is an overnight flight (thank you, Air Canada) and landing in Sydney in the early morning (sorry, our long haul international flights all tend to land then) can be another wonderful slight, especially if the plane comes in from the north over the [Central Business District](#).



It’s just been the [Enlighten Festival](#) here in Canberra. The photo above shows one of the images projected onto the National Library. I’m not sure what it means—there weren’t signs out this year to explain the images.

This week has been the [Canberra Balloon Spectacular](#), held as part of the Enlighten Festival. The highlight balloon this year was Beagle Maximus, a giant beagle-shaped balloon. Beagle Maximus really was gigantic, if you can compare the size of the people and the balloon. It only flew one day but was inflated and tethered yesterday morning.



This will be published just before your conference, and I hope it’s enjoyable and a great experience.

Until next time,

Margaret

The US Legal Landscape: News from Across the Border

By [Julienne E. Grant](#)^{***}

News flash: the longest government shutdown in U.S. history is over. Unfortunately, that doesn’t mean that the government is functional; indeed, it is still dysfunctional. Between the border wall controversy (really, a “national emergency”?), Michael Cohen’s Congressional testimony, and the failure of the Donald Trump–Kim Jong-un summit, we are fighting a losing battle. Add the layer of a huge U.S. college admissions scandal, and the average U.S. citizen (including me) remains perpetually perplexed.

This is going to be a rather short column this time around, as I am under a bit of a time crunch. As always, however, I have attempted to touch upon the news that would be of most interest (and sometimes, most humorous) to my Canadian law librarian colleagues.

AALL

AALL, in partnership with Bloomberg, is sponsoring an [Innovation Bootcamp](#) on April 25 and 26 in Chicago. The two-day conference will teach attendees how to put ideas into action and will feature an array of speakers and panelists. This year’s [annual meeting](#) will be held July 13–16 in Washington, D.C., with the theme “Capitalizing on Our Strengths.” A preconference event on July 12, [AALL Day on the Hill](#), will highlight advocacy leadership training.

³ *Northern Territory v Mr A Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples*, [2019] HCA 7 at para 6.

⁴ *Ibid* at para 154.

⁵ *Ibid* at para 180.

Law Schools

U.S. News & World Report has released its [annual list](#) of the nation's best law schools. No big surprises. Yale retained its number one ranking, Stanford remains at number two, and Harvard is still third. Big movers, [as reported by Above the Law](#), include the University of Washington, which dropped 12 spots, and Howard University, which moved up 20 places from last year.

Harvard law students continue to push for the end of mandatory arbitration agreements at the nation's top law firms. The [Pipeline Parity Project](#) has already successfully compelled Kirkland & Ellis and Sidley Austin to do away with theirs, and [the group is now targeting](#) Venable LLP. Meanwhile, Santa Clara University School of Law [announced](#) it will be the first U.S. law school to take the [ABA Well-Being Pledge](#). Indiana University's Maurer School of Law is [starting a pilot program](#) to place five 1L students who are committed to public service in judicial clerkships across the state. The for-profit Arizona Summit Law School has [dropped its lawsuit](#) against the ABA over its accreditation; the two parties settled, and the school is closing. The Florida Coastal School of Law has also [dropped its suit](#) against the ABA.

Law Firms

Jenner & Block [announced in January](#) the appointment of partner Craig C. Martin as its new chair. He is a 30-year veteran of the firm. *Law360* published its choices for 2018 firms of the year, based on practice group rankings: Gibson Dunn dominated with wins in 11 categories; Covington & Burling, King & Spalding, and Mayer Brown each had seven wins in individual group categories.⁶ Under a [settlement](#) with the Department of Justice (DOJ), Skadden Arps will pay a hefty fine of \$4.6 million for failing to register its lobbying work for the Ukrainian government. Also apparently naughty was Willkie Farr's co-chairman Gordon Caplan, who [was charged](#) in March as part of the FBI's huge college admissions fraud sting. He is now on leave.

Libraries (Law & Otherwise)

The University of Minnesota Law Library is currently featuring two exhibits: [A Legacy Preserved: The Papers of Judge Diana E. Murphy](#) and [Women in the Law: Pioneers of the Courtroom](#). The [Yale Daily News reported](#) in early February on the Lillian Goldman Law Library's resident therapy dog, Jozy, who makes monthly appearances there. According to the [article](#), Yale was the first law school in the country to have a therapy dog program. An interesting interview with the Law Librarian of Congress, Jane Sánchez, [was posted](#) on the *In Custodia Legis* blog on February 14, 2019.

Meanwhile, in Chicago, the planned [Obama Presidential Center](#) has hit a snafu of sorts. On February 19, a federal district court judge [ruled](#) that a [Protect Our Parks](#) lawsuit against the city could move forward. The [suit alleged](#) that city officials illegally transferred public park land to a private entity (the Obama Foundation). The same week, the Obama Foundation and the National Archives (NARA) signed a

[memorandum of understanding](#) related to the planned digitization of all the Obama administration's unclassified textual records.

SCOTUS: RBG Returns, Justice Roberts becomes "the Swinger" & Other Developments

After taking time off from attending SCOTUS sessions (due to a serious fall and lung cancer surgery), Justice Ruth Bader Ginsburg returned to work at the Court on February 19. This was the first time she had missed any SCOTUS oral arguments during her entire 22-year tenure there. On March 4, the AP's Mark Sherman [reported](#) that Justice Ginsburg was actually churning out opinions during her recuperation period "at a faster clip than any of her younger colleagues." By the way, RBG celebrated her 86th birthday on March 15, 2019. Reportedly, [some of her fans "planked"](#) to celebrate and honor her devotion to physical fitness.

According to some SCOTUS watchers, Chief Justice John Roberts has taken on the role of the Court's new swing vote, replacing the retired Anthony Kennedy in that regard. In a [February 8 article](#), the AP's Mark Sherman wrote that Roberts "is, by most measures, a very conservative justice, but he seems determined to keep the court from moving too far right too fast and being perceived as just another forum for partisan politics in Washington." Justice Roberts, for example, joined the liberal wing (RBG, Sotomayor, Kagan, and Breyer) in voting for a [temporary stay](#) of a Louisiana abortion law that requires abortion providers to have admitting privileges at a local hospital ([June Medical Services v Gee](#)). Erwin Chemerinsky, dean of the UC, Berkeley law school, however, stops short of characterizing Roberts as SCOTUS's new "swinger." [Chemerinsky notes](#) that, in the area of LGBT rights, Justice Roberts has been clear that he does not favor expanding rights for that community. Roberts, for example, sided with the conservative wing (Kavanaugh, Gorsuch, Thomas, and Alito), [lifting preliminary injunctions](#) against President Trump's ban on transgender people in the military.

SCOTUS has some interesting cases on its docket this spring. The issues include: whether a public access television station is a "state actor" for purposes of the First Amendment when it is operated by a private operator ([Manhattan Community Access Corp v Halleck](#)); whether a cross-shaped war memorial violates the Fourth Amendment ([American Legion v American Humanist Assoc](#)); and whether a Tennessee law requiring a two-year in-state residency before a business can receive a liquor sales license is constitutional under the Twenty-First Amendment ([Tennessee Wine & Spirits Retailers Assoc v Blair](#)).

Finally, SCOTUS currently does not have its own judicial ethics code, but that may be about to change. A throng of U.S. House representatives and Senators have introduced separate bills ([H.R. 1057](#) and [S. 393, the Supreme Court Ethics Act](#)) that, if passed, would compel SCOTUS to draft its own code of conduct. [According to Justice Kagan](#), Chief Justice Roberts is already in the process of considering a SCOTUS-specific set of ethics rules.

⁶ Sam Reisman, "The Firms That Dominated in 2018," *Law360* (13 January 2019).

Legal Miscellany: PACER, a New Conservation Law, “The Carlton Dance” & the “Knock it Off” Brief

The bill ([H.R. 1164](#)) for the *Electronic Court Records Reform Act of 2019* was introduced in the House in early February. If passed, the law would allow free access to PACER, the federal courts’ electronic dockets and records system. In other legislative news, on March 12, President Trump signed into law a sweeping conservation bill ([P.L. 116-9](#)), designating over a million acres of wilderness for environmental protection and withdrawing hundreds of thousands of acres in Montana and Washington from mineral development.

On another topic: remember Carlton Banks from *The Fresh Prince of Bel-Air*? Actor Alfonso Ribeiro, who played the goofy character, used to perform what was dubbed “[The Carlton Dance](#)” on the show. Last December, [Ribeiro sued](#) the makers of the video game Fortnite for animating his signature dance moves in the game without his permission. In January, however, the U.S. Copyright Office [denied Ribeiro’s application](#) to copyright his dance, calling it a “simple dance

routine.” Ribeiro [dropped the suit](#) in early March. Sorry, Carlton. You’re unique, but not unique enough [*Ed. Note: Especially since [he admitted](#) that he copied the dance from Bruce Springsteen’s “Dancing in the Dark” video!*].

Finally, [according to the ABA Journal](#), a federal district court judge in New York called out a Reed Smith partner for citing to *Animal House* and Tweety Bird in a brief. Judge Dabney Friedrich, a Trump appointee, asked the attorney to “knock it off” with his unorthodox filings.

Conclusion

When the Chicago River turns green, as it does every St. Patrick’s Day, we know that spring can’t be too far off. Here’s to spring and what comes with it (the positive parts, at least). If any readers would like to comment on any of the above, or make suggestions for additional content, please feel free to contact me at jgrant6@luc.edu.

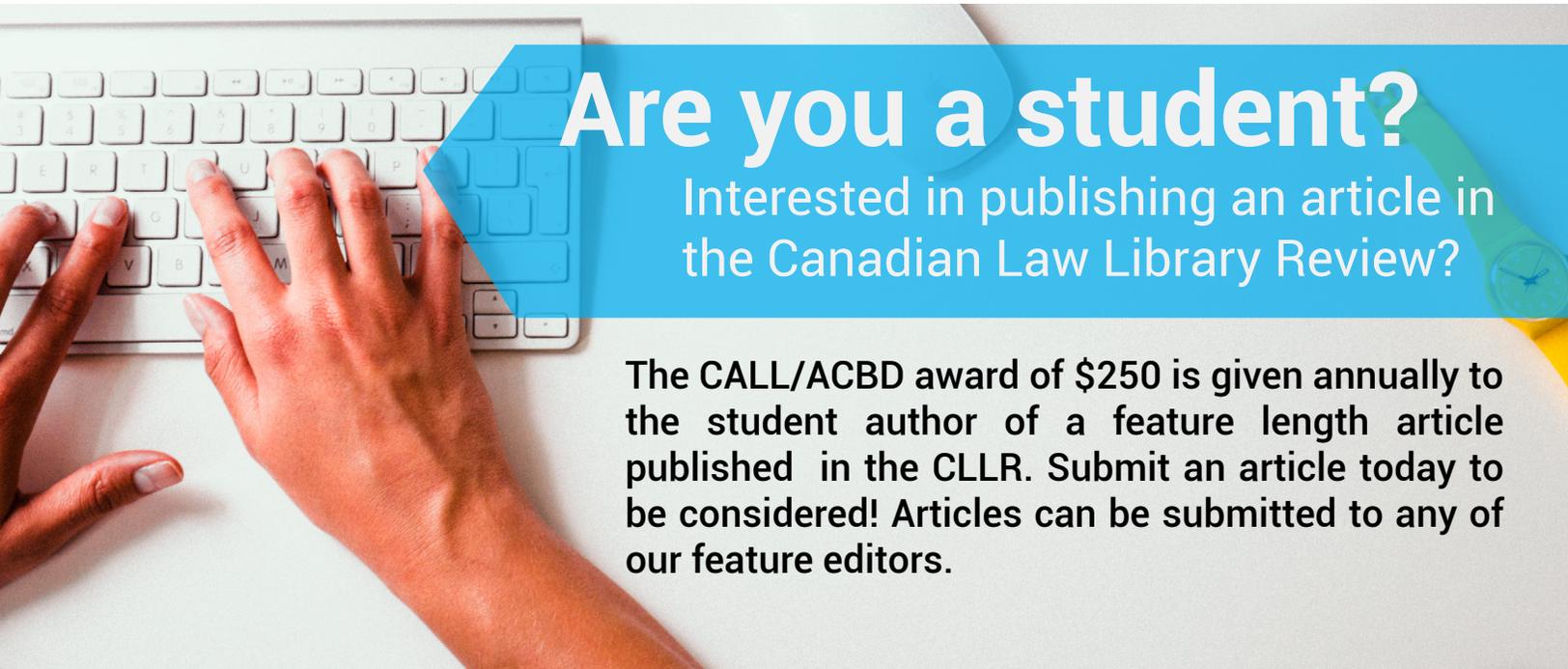
Until next time,

Julienne E. Grant

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

**Margaret Hutchison, Manager of Technical Services and Collection Development at the High Court of Australia .

***Julienne Grant, Reference Librarian/Foreign & International Research Specialist at the Law Library, Loyola University Chicago School of Law. Please note that any and all opinions are those of the authors and do not reflect those of their employers or any professional body with which they are associated.



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

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

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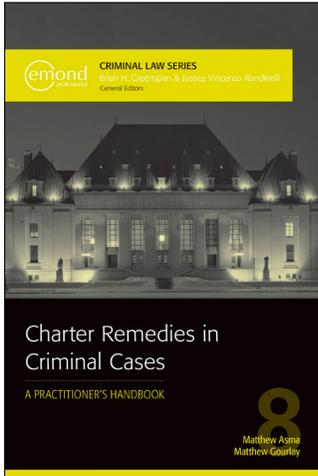
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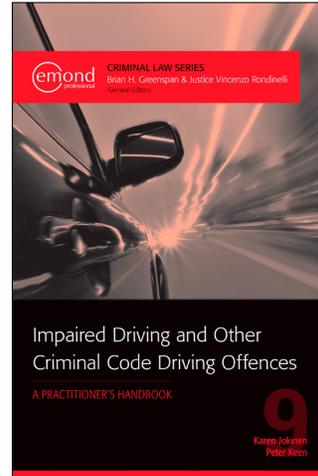
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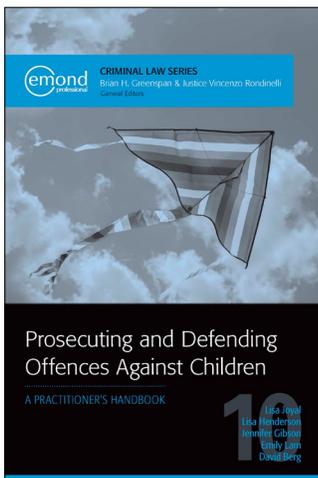
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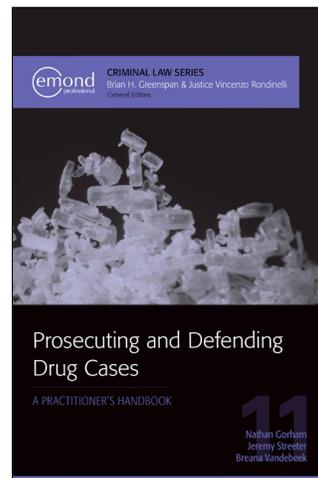
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