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No. 4**

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

III From the Editor / De la rédactrice

Although it may seem to outsiders that law librarianship requires a very narrow set of skills, we all know that our profession does, in fact, require a wide range of expertise, from general librarian skills like cataloguing and management, to a detailed knowledge of resources and tools for researching various aspects of law. Both of this issue's feature articles are valuable guides to areas of research that might at first glance seem tangential to law librarianship but are, in fact, crucial to our understanding of the environment in which we work and the needs of our patrons.

We will start our journey with Melanie Bueckert's *A Roadmap for Statutory Interpretation (Part Two) – Arriving at your Destination*. This article, along with Part One (published in volume 40, no 3), describes the principles of statutory interpretation to which our courts adhere. We, as librarians, may not necessarily think we need to understand the mechanics of statutory interpretation as most of us do not deal directly with judges and the courts, but our patrons often do. It is important for us to be aware of these principles in order to help our lawyers and students be better prepared for court. I recently went to hear Justice John Laskin of the Ontario Court of Appeal speak to the first-year law students about good legal writing. He discussed what judges like to see in a good factum and specifically mentioned how useful it is for judges to be given information which enables them to "... understand the legislative scheme, how it works, [and] the **rationale for the statutory provisions in question**."¹ Melanie's article is a great tool, not only to inform your own

research strategies, but also to share with your summer and articling students.

Moving onward, another area where we librarians might need a roadmap is crown copyright. Fortunately we have Luanne Freund and Elissa How's article, *The Quagmire of Crown Copyright: Implications for Reuse of Government Information*, to guide our way. Although knowing about crown copyright might also seem to be removed from our day-to-day lives as law librarians, all information professionals need to be aware of the various copyright regimes. We may encounter crown copyright in our teaching and training any time we are using government content, whether we are using screen shots of government websites or referring to legislation in our research guides. When supporting copyright in academia or looking at material that might be included in client brochures, we may need to consider the requirements of crown copyright. The former blanket approval of the use of government material for non-commercial purposes has disappeared, leaving researchers to navigate the appropriately named quagmire of crown copyright within the context of evolving Open Government initiatives. This article highlights some of the firewamps we might encounter on our way.

This issue welcomes Julianne Grant, our new US correspondent. Julianne is the Reference Librarian/Foreign & International Research Specialist at the Law Library, Loyola University Chicago School of Law. The column,

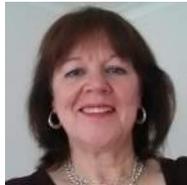
¹ Laskin, John L, Forget the Wind-Up and Make the Pitch: Some Suggestions for Writing More Persuasive Factums. Online: Court of Appeal for Ontario <<http://www.ontariocourts.ca/coa/en/ps/speeches/forget.htm>>.

which has been renamed *The US Legal Landscape: News From Across the Border*, as Julienne describes it, moves “beyond the walls of law libraries to law schools, firms, US law itself, and other legal-related miscellany.” The inaugural column talks about the recent AALL Conference, trends in US law schools, and developing events in US law. Please join me in welcoming Julienne aboard.

I also want to say farewell to one of our UK correspondents, Pete Smith. This is his last column after many years of keeping us up-to-date with the UK legal scene, all while working on his LLM thesis on legal education – a very impressive feat. Congratulations, Pete, and thank you so much.

And finally, I would like to take this opportunity to wish our readers all the best for the upcoming holidays and to wish everyone a healthy, happy, and harmonious 2016.

**EDITOR
SUSAN BARKER**



Bien qu’il puisse sembler aux étrangers à la profession que la bibliothéconomie de droit exige un ensemble très minime de compétences, nous savons tous que notre profession exige en fait une vaste expertise allant des compétences générales de libraire, comme le catalogage et la gestion, à la connaissance spécialisée des ressources et des outils requis pour examiner certains aspects du droit. Les deux articles vedettes de ce numéro représentent des guides précieux pour les domaines de recherche qui, à première vue, peuvent sembler tangentiels pour la bibliothéconomie de droit, mais qui, en fait, sont essentiels à la connaissance de l’environnement dans lequel nous évoluons et des besoins de nos usagers.

Nous entamerons notre voyage en abordant l’article *A Roadmap for Statutory Interpretation (Part Two) – Arriving at your Destination*, rédigé par Mélanie Bueckert. Cet article, ainsi que sa première partie (publié dans le numéro 3, volume 40), décrit les principes de l’interprétation législative auxquels nos tribunaux adhèrent. À titre de bibliothécaires, nous ne pensons pas nécessairement que nous devons comprendre les mécanismes de l’interprétation législative, puisque la majorité d’entre nous ne traite pas directement avec les juges et les tribunaux. Toutefois, nos usagers le font. Il importe que nous connaissions ces principes afin d’aider nos avocats et nos étudiants à mieux se préparer à plaider au tribunal. Je suis récemment allé entendre le juge John Laskin, de la Cour d’appel de l’Ontario, qui

s’adressait à des étudiants de première année de droit au sujet de la rédaction juridique correcte. Il a indiqué ce que les juges aiment voir dans un bon mémoire et a particulièrement mentionné à quel point il est utile que les juges se voient présenter une information qui leur permet de « ... comprendre le régime législatif, son fonctionnement [et] la justification des dispositions législatives en question. » L’article de Mélanie est un excellent outil qui permet non seulement d’orienter vos propres stratégies de recherche, mais également d’échanger avec vos étudiants d’été et vos stagiaires en droit.

Voyons maintenant un autre domaine pour lequel nous, les bibliothécaires, pourrions avoir besoin d’un plan : le droit d’auteur de la Couronne. Heureusement, nous pouvons compter sur l’article de Luanne Freund et Elissa How intitulé *The Quagmire of Crown Copyright: Implications for Reuse of Government Information*, pour nous guider. Bien que le fait d’être informés du droit d’auteur de la Couronne puisse également s’éloigner de notre quotidien de bibliothécaire de droit, tous les professionnels de l’information doivent connaître les divers régimes de droit d’auteur. Nous pouvons aborder le droit d’auteur de la Couronne en cours d’apprentissage et de formation chaque fois que nous utilisons du contenu gouvernemental, qu’il s’agisse de captures d’écran provenant des sites Web du gouvernement ou de renvois à la législation dans nos guides de recherche. Lorsque nous protégeons le droit d’auteur dans le milieu universitaire ou cherchons de la documentation pouvant se trouver dans des brochures de client, il se peut que nous devions tenir compte des exigences liées au droit d’auteur de la Couronne. L’ancienne approbation généralisée liée à l’utilisation des documents gouvernementaux à des fins non commerciales n’existe plus, ce qui fait que les chercheurs doivent naviguer dans le brouillard bien nommé du droit d’auteur de la Couronne, dans le contexte des initiatives en évolution du gouvernement ouvert. Cet article met en évidence les marécages que nous pouvons rencontrer sur notre chemin.

Dans ce numéro, nous souhaitons la bienvenue à Julienne Grant, notre nouvelle correspondante américaine. Julienne est bibliothécaire de référence et spécialiste de la recherche étrangère et internationale à la bibliothèque de droit du Chicago School of Law de la Loyola University. La chronique, qui a été réintitulée *The US Legal Landscape: News From Across the Border*, comme le décrit Julienne, nous transporte « au-delà des murs des bibliothèques de droit, c.-à-d. dans les écoles de droit, les entreprises, le droit américain en soi et divers autres aspects juridiques ». La rubrique inaugurale traite de la récente conférence de l’AALL, des tendances observées dans les écoles de droit américaines et des nouveautés dans le domaine du droit américain. Joignez-vous à moi pour souhaiter la bienvenue à Julienne.

En outre, je tiens à dire adieu à un de nos correspondants britanniques, Pete Smith, qui a rédigé sa dernière rubrique.

¹ Laskin, John L, *Forget the Wind-Up and Make the Pitch: Some Suggestions for Writing More Persuasive Facts*. En ligne : Cour d’appel de l’Ontario <<http://www.ontariocourts.ca/coa/en/ps/speeches/forget.htm>>.

Pete a collaboré avec nous pendant de nombreuses années pour nous informer de la scène juridique britannique, tout en rédigeant sa thèse de maîtrise en droit sur l'éducation juridique – un exploit très impressionnant. Félicitations Pete et merci beaucoup.

Enfin, je tiens à saisir l'occasion qui se présente pour souhaiter à nos lecteurs mes meilleurs vœux de la période des Fêtes, qui approche, et une année 2016 remplie de santé, de bonheur et d'harmonie.

**RÉDACTRICE
SUSAN BARKER**



Call for Submissions

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

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

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

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

L'Association ne peut rémunérer les auteurs et auteures pour leurs contributions, mais ils ou elles recevront un exemplaire de leur article dès parution. L'Association canadienne des bibliothèques de droit n'assume aucune responsabilité pour les opinions exprimées par les collaborateurs et collaboratrices ou par les annonceurs dans les publications qui émanent de l'Association. Les opinions éditoriales ne reflètent pas nécessairement la position officielle de l'Association.

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III President's Message / Le mot de la présidente

Recently a friend asked me to meet with a woman who had started her career as a special librarian but later had moved into a related field within her organization. She is now no longer with that organization – after twenty-five years! – and looking for new work.

She regretfully told me: "I locked myself away far too long and neglected my networks." This surprised me. Here is a very dynamic professional who has a fairly high profile (I had met her early on in my own career); she had worked hard and over time served in progressive roles at the same firm, successfully adapting to thrive. She was excellent at networking for her role, connecting with vendors and others within her firm as needed for the job. And yet, here she was, starting from scratch, building her professional network over again.

Her situation is very similar to that of one of my dear friends, a project manager in the packaged goods sector. She spent her whole adult working life with one large company, periodically switching products and focussing all effort on her daily work. She made no connections in the larger industry outside her company, made no effort to network, and did not participate in any sort of professional association. When for her company shifted strategies two years ago and no longer needed her services after more than twenty-five years, she suddenly found herself looking for work (gosh, this is sounding familiar!). The career coaches the company provided her with subsequently spent a lot of time teaching her how to reach outside the company and build a network. It took her a good year to build up that professional network to the point where she could use it to find a new position.

You see where I'm going with this: it doesn't matter how secure your work is, it is always a good idea to network and meet people inside and outside your industry.

In our October 14th webinar, *Job Search Skills: Employer Panel*, we heard from Joan Rataic-Lang, Executive Director/Library Director, Toronto Lawyers Association; Fiona McPherson, Director, Information Services, at Justice Canada in Ottawa; Kristin Hodges, Director, Library and Research Services, for the British Columbia Ministry of Justice; and Kim Nayyer, Associate University Librarian, Law, at the University of Victoria, about how they do hiring and what they look for in employees. The importance of a professional network was especially apparent when Fiona emphasized that receiving resumes for casual positions from people she has not heard of – "never works for me because I have no way of knowing who you are. I have to know someone who knows you and will recommend you." We may wish that our hard work speaks for itself, but that is not how opportunities come to us. Opportunities come to us through our network.

Networking is not always easy. We are all so busy, and networking does not come naturally to many of us. Me included! Fiona also talked about hearing of positions and becoming known to hiring managers and directors, especially with respect to casual appointments in the Federal Government. She suggested meeting people at conferences or association committees, volunteering for events, and linking to people you meet on LinkedIn or Twitter (or whatever social network they frequent).

I've had to make great effort to overcome my innate quietness and shyness to build my network. Ways to leapfrog past the awkward small talk stage of networking include getting involved on a committee or project, asking a colleague about her work, or asking the person sitting beside you at a talk what his best take-away was. Most people hate small talk, so jumping straight to discussing the content at conference works very well. The *Harvard Business Review* recently published a great article called "How Introverts Can Make the Most of Conferences" <<https://hbr.org/2015/10/how-introverts-can-make-the-most-of-conferences>>(October 9, 2015 by Rousemaniere) that has some other great tips. Another favourite trick of mine is to play host, even if I did not organize the event, making others feel welcome and helping them find their way around. Other ways to build a network include contacting individuals to find out how they are using software or an online service, asking for a tour of their library or facility, or extending an offer to meet for coffee. "Would you be willing to share with me ..." is a great opening phrase.

Over time I have become more comfortable going to educational and networking events not directly related to my work where I can learn about a new topic or group, and meet one or two new people, often one of the organizers or the speaker. When building your network, don't forget to ask those you meet for introductions to others that you should meet who have similar interests. These introductions take away the "cold calling" aspect of networking as your new acquaintances (future friends?) recommend you to some of their friends.

In my role as CALL/ACBD president, I worry about our association giving all of us enough opportunity to connect: to get to know one another, to share what we know, and to build new and worthwhile knowledge. How can we build on the great work of our Conference Program Committees, Professional Development Committee, Webinar Committee, Membership Development Committee, and so many others to give us a chance to better develop this community?

I would love to hear from you: by email, through social media or through CALL-L. Let's start talking about this. We are so geographically spread out, I would love to find ways to bring us closer together and allow us to extend our networks. Let's turn our sights outwards to the larger legal community and the greater world to connect and have an impact. Enough with eating lunch every day at our desks and avoiding human contact! I know you want more from your professional life.

**PRESIDENT
CONNIE CROSBY**



Récemment, un ami m'a demandé de rencontrer une femme qui a commencé sa carrière comme bibliothécaire spécialisée, mais qui a ultérieurement travaillé dans un domaine connexe au sein de son organisme. Elle ne travaille

plus pour cet organisme maintenant – après 25 ans! – et cherche un nouveau travail.

Voici ce qu'elle m'a dit, à regret : « Je me suis enfermée pendant trop longtemps et j'ai négligé mes réseaux. » Cette phrase m'a surprise. Il s'agit d'une professionnelle très dynamique qui a un profil très intéressant (je l'ai rencontrée au début de ma propre carrière). Elle a travaillé dur et au fil du temps, a assumé des rôles progressifs au sein de la même entreprise, réussissant à s'adapter afin de se démarquer. Elle était excellente dans le réseautage associé à son rôle et entrait en contact avec des fournisseurs et d'autres intervenants de son entreprise, selon les besoins de l'emploi. Et pourtant, elle était là, partant de zéro et constituant à nouveau son réseau professionnel.

Sa situation est très semblable à celle d'une de mes proches amies, une chargée de projets dans le secteur des produits emballés. Celle-ci a passé toute sa vie professionnelle d'adulte au sein d'une grande entreprise, changeant périodiquement de produits et concentrant tous ses efforts sur son travail quotidien. Elle n'a établi aucun contact avec l'industrie générale hors de son entreprise, n'a fait aucun effort pour réseauter et n'a fait partie d'aucune association professionnelle, d'aucune façon. Lorsque son entreprise a modifié ses stratégies il y a deux ans et lui a indiqué que ses services n'étaient plus requis, après plus de 25 ans, cette femme s'est soudainement retrouvée en recherche d'emploi (bon sang, cela semble si familier!). Les accompagnateurs en gestion de carrière que l'entreprise lui ont assigné ont par la suite passé beaucoup de temps à lui apprendre comment établir des contacts hors de l'entreprise et constituer un réseau. Il a fallu une bonne année à mon amie pour constituer un réseau professionnel suffisant pour lui permettre de trouver un nouveau poste.

Vous voyez où je veux en venir : même si votre emploi est « garanti », il est toujours mieux de réseauter et de rencontrer des gens œuvrant au sein et hors de votre industrie.

Lors de notre webinaire du 14 octobre, intitulé *Job Search Skills: Employer Panel*, nous avons entendu les personnes suivantes : Joan RataicLang, directrice exécutive/directrice de bibliothèque à la Toronto Lawyers Association; Fiona McPherson, directrice des Services d'information à Justice Canada, à Ottawa; Kristin Hodges, directrice des Services de bibliothèque et de recherche au ministère de la Justice de la Colombie Britannique; et Kim Nayer, bibliothécaire universitaire associée en droit de l'Université de Victoria. Ces personnes ont parlé de leur façon d'embaucher et de ce qu'elles recherchent chez les employés. L'importance d'un réseau professionnelle était particulièrement apparent lorsque Fiona a mis l'accent sur la réception de curriculum vitae de personnes dont elle n'a jamais entendu parler – « ne travaille jamais pour moi, parce que je n'ai aucun moyen de savoir qui vous êtes. Je dois connaître une personne qui vous connaît et qui vous recommandera. » Nous pouvons souhaiter que notre travail acharné parle de lui-même, mais ce n'est pas de cette façon que les possibilités s'offrent à nous. Les possibilités se présentent à nous grâce à notre réseau.

Le réseautage n'est pas une activité toujours facile. Nous sommes tous très occupés et pour un grand nombre d'entre nous, le réseautage n'est pas une chose qui vient naturellement. Je fais partie de ce groupe! Fiona a également parlé de s'informer des postes et de se faire connaître auprès des gestionnaires et des directeurs d'embauche, particulièrement dans le cas des nominations à un poste occasionnel au sein du gouvernement fédéral. Elle a proposé de rencontrer des gens à des conférences ou au sein de comités d'association, de faire du bénévolat pendant certains événements et d'établir des liens avec les personnes rencontrées par le truchement de LinkedIn ou de Twitter (ou de n'importe quel réseau social auquel elles sont abonnées).

J'ai dû fournir des efforts énormes pour surmonter ma discrétion et ma timidité innées lorsque j'ai constitué mon réseau. Il existe des façons de progresser par bonds au-delà de l'étape du bavardage du réseautage, comme siéger à un comité ou participer à un projet, poser des questions à une collègue au sujet de son travail ou demander à la personne assise à côté de vous, dans une discussion, quel est le meilleur plat à emporter qu'il a mangé. La majorité des gens détestent bavarder; c'est pourquoi il est très efficace d'aborder directement le contenu présenté pendant une conférence. Le *Harvard Business Review* a récemment publié un excellent article intitulé « How Introverts Can Make the Most of Conferences » <<https://hbr.org/2015/10/how-introverts-can-make-the-most-of-conferences>> (le 9 octobre 2015, par Rousemaniere) qui donne d'autres conseils très intéressants. Un autre de mes trucs préférés est d'agir comme hôtesse, même si je n'organise pas l'événement en question, pour faire en sorte que les autres se sentent bienvenus et pour les aider à s'orienter pendant l'événement. Il existe d'autres façons de constituer un réseau, comme communiquer avec les gens pour savoir comment ils utilisent leur logiciel ou un service en ligne, demander de visiter leur bibliothèque ou leur établissement ou les inviter à prendre un café. La phrase « Seriez-vous disposé à échanger avec moi à propos de...? » est excellente pour commencer.

Au fil du temps, je me suis sentie moins gênée de participer à des événements de formation et de réseautage qui ne sont pas directement associés à mon travail, au cours desquels je peux m'informer d'un nouveau sujet ou d'un nouveau groupe et rencontrer une ou deux nouvelles personnes, et souvent un des organisateurs ou le conférencier. Lorsque vous constituez votre réseau, n'oubliez pas de demander aux gens que vous rencontrez de vous présenter à d'autres personnes que vous devez rencontrer et qui ont des intérêts semblables aux vôtres. Ces présentations éliminent l'aspect « appel à froid » du réseautage, car vos nouvelles connaissances (amis futurs?) vous recommandent à certains de leurs amis.

À titre de présidente de l'ACBD/CALL, je me préoccupe du fait que notre association doit nous donner à tous suffisamment de possibilités d'établir des contacts, c.-à-d. apprendre à se connaître, partager nos connaissances et acquérir des connaissances nouvelles et valables.

Comment pouvons-nous miser sur l'excellent travail de nos comités du programme de la conférence, de notre comité de perfectionnement professionnel, de notre comité sur les webinaires, de notre comité de perfectionnement des membres et de tant d'autres comités pour nous donner la chance de faire progresser cette communauté?

Je souhaiterais connaître votre opinion par courriel ou par le truchement des médias sociaux ou de la CALL-L. Commençons à aborder ce sujet. Puisque nous sommes si dispersés sur le plan géographique, je souhaiterais trouver des moyens de nous rapprocher, afin que nous puissions étendre nos réseaux. Tournons notre regard vers l'extérieur, vers la grande communauté du droit et vers le monde, afin d'établir des contacts et d'avoir un impact sur les autres. Nous en avons assez de déjeuner chaque jour devant notre bureau et d'éviter le contact humain! Je sais que vous attendez davantage de votre vie professionnelle. peuvent enrichir la vie professionnelle d'autres personnes. Vous pourriez également avoir des idées sur d'autres façons de mobiliser vos collègues.

À mesure que vous apprenez, je vous demande de ne pas oublier le reste d'entre nous et de nous laisser plutôt cheminer avec vous. Entraidons-nous afin de nous écarter du chemin et sauter dans le train et utilisons cette association pour nous entraider.

**PRÉSIDENTE
CONNIE CROSBY**





III The Quagmire of Crown Copyright: Implications for Reuse of Government Information*

By Luanne Freund & Elissa How**

Abstract

This overview of Crown copyright and licensing of federal government information highlights some of the complexities and contradictions that have arisen in recent years. The federal Open Government initiative holds promise, but has not substantially increased the rights of the public to access and use government content. The lack of clarity with respect to these rights poses challenges to information professionals.

Cette vue d'ensemble du droit d'auteur de la Couronne et de l'octroi de licences pour l'information gouvernementale fédérale met en lumière certaines des complexités et des contradictions qui ont surgi au cours des dernières années. L'initiative fédérale du Gouvernement ouvert est prometteuse, mais elle n'a pas augmenté sensiblement les droits du public à accéder et à utiliser l'information gouvernementale. Le manque de clarté en ce qui concerne ces droits pose des défis aux professionnels de l'information.

An overwhelming longing to rest and remain at peace by Bilbo's side in Rivendell filled all his heart. At last with an effort he spoke, and wondered to hear his own words, as if some other will was using his small voice.

*'I will take the Ring,' he said, 'though I do not know the way.'*¹

At first glance, a reference to the *Lord of the Rings* might seem an unlikely opening for a paper about Crown copyright; however, the experience many Canadians have with navigating Crown copyright clearly echoes Frodo Baggins' conundrum: a willingness to do what's right but little concrete guidance on how to reach that elusive goal. Crown copyright, a special case of intellectual property rights in which the Crown holds the rights to materials created by government employees, sets up an obvious conflict with current notions of Open Government, and with democracy more generally, by placing restrictions on the reuse of government materials. In the Canadian context, this conflict is clearly expressed in the retention of archaic Crown copyright legislation in juxtaposition with increasingly open approaches to licensing government information and data. This situation is made more confusing by the recent decentralization of responsibilities and procedures for Crown copyright clearance and the differential treatment of different kinds of materials: publications, web content, data, etc. For librarians coping with the dramatic changes

* © Luanne Freund and Elissa How 2015.

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¹ JRR Tolkien, *The Fellowship of the Ring* (New York: Ballantine Books, 1965) at 354.

in the ways in which government information is produced and disseminated and seeking ways to ensure long term access to this content, the issue of rights and permissions can, indeed, look like a quagmire.

Crown Copyright Law in Canada

Even a primer on Crown copyright quickly turns into a tangle of murky paths. Some form of Crown copyright is typical of Commonwealth countries, in contrast to the situation in the United States where copyright protection is not available for any work prepared by employees of the U.S. Government acting as part of their official duties.² In Canada, the basis for Crown copyright is found in section 12 of the *Copyright Act*, which states:

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.³

The section is strongly worded and open to broad interpretation. Absent an agreement to the contrary, it extends protection for any work prepared or published by anyone under the direction or control of "Her Majesty or any government department." Indeed, it appears that this provision is so broadly worded that it extends to freelance work carried out by independent authors that has been commissioned by the government.⁴ If true, this sets aside the first author rights normally accorded by copyright law.⁵ The meaning of "Crown" in this context is also somewhat unclear. The legislation does not define the entities within the federal government to which it applies, does not indicate whether or not it applies to provincial and territorial governments (most of which claim some form of Crown copyright) and does not clarify whether it has the potential to extend to municipal governments, Crown-related branches of the government such as schools or specific agencies, or to provincial Crown corporations and other comparable organizations.⁶

Digging a bit deeper into the meaning of section 12 reveals more complexity. The opening phrase "Without prejudice to any rights or privileges of the Crown" references the royal prerogative – in this case a perpetual monopoly to publish certain types of materials, which traces as far back as 17th century England.⁷ The reference has been the subject of considerable academic discussion but recent judicial and administrative interpretations have confirmed that it is the legacy of Canada's imperial ties, harking back to section 18 of the United Kingdom's *Imperial Copyright Act of 1911*,⁸ legislation that was significantly amended in the UK in 1988.⁹ According to the Federal Court of Appeal this phrase is intended to "preserve the Crown's rights and privileges of the same general nature as copyright that may not fall within the meaning of the rest of this provision."¹⁰ More specifically, this "includes the right to print and publish statutes, court decisions, and the authorized versions of the Bible, among other things."¹¹ These rights over an unarticulated set of materials exist apart from the 50 year period established for copyright, and so would seem to be unlimited. However, the legislation gives no clear indication of when these prerogative powers might be invoked, what exact "other things" they cover, and whether they are in fact perpetual.¹² Thus, not only does the *Copyright Act* itself raise questions about the applicability of Crown copyright in a modern democratic context, in which the rights of the public would normally be considered to be paramount, but, absent the kinds of parliamentary guidance seen in other commonwealth countries,¹³ it is impossible to determine the scope, nature or recipients of the rights it affords.

Historical Justifications and Calls for Re-examination

The fact that both the royal prerogative and statutory roots of Crown copyright originated at a time far removed from our digital reality has not gone unnoticed by scholars and librarians alike. For example, Elizabeth Judge has examined the traditional justifications for Crown copyright, most specifically the need to maintain accuracy, integrity, and control of government information; the issue of generating revenue for the Crown; and the suggestion that Crown copyright acts as an incentive to publish. However, she rejects the validity of these justifications, suggesting that the same benefits can better be achieved by other means.¹⁴ Similarly,

² 17 USC § § 101, 105 (2012)

³ *Copyright Act*, RSC 1985, c C-42 [Copyright Act]

⁴ David Vaver, "Copyright & The State in Canada and the U.S." (1996) 10 IPJ 187 at 191.

⁵ Elizabeth F Judge, "Crown Copyright and Copyright Reform in Canada" in Michael Geist, ed, *In The Public Interest: The Future of Canadian Copyright Law* (Toronto: Irwin Law, 2005) 550 at 556; *Copyright Act*, supra note 3, s 13(1).

⁶ *Ibid* at 557.

⁷ Barry Torno, *Crown Copyright in Canada: a Legacy of Confusion* (Ottawa: Consumer and Corporate Affairs Canada, 1981).

⁸ *Collective Administration in relation to rights under section 3, 15, 18, and 21 (Re) Copyright Act, subsection 70.15(1) File: Reprographic Reproduction, 2005 to 2014 Statement of Royalties to be Collected by Access Copyright for the Reprographic Reproduction, in Canada, of Works in its Repertoire (Provincial and Territorial Governments 2005 to 2014)* (15 March 2012) at para 42, online: Copyright Board of Canada

⁹ *Ibid*.

¹⁰ *Manitoba v Canadian Copyright Licensing Agency (Access Copyright)*, 2013 FCA 91 at para 34, 444 NR 202.

¹¹ *Ibid* at para 15.

¹² Vaver, supra note 4 at 190.

¹³ Elizabeth Judge, "Crown Copyright and the Reuse of Government Information," in Peggy Garvin, ed, *Government Information Management in the 21st Century: International Perspectives* (Surrey: Ashgate Publishing Limited, 2011) 211 at 216-219.

¹⁴ Elizabeth F Judge, "Enabling Access and Reuse of Public Sector Information in Canada: Crown Commons Licenses, Copyright, and Public Sector Information," in Michael Geist, ed, *From Radical Extremism to Balanced Copyright: Canadian Copyright Law and the Digital Agenda* (Toronto: Irwin Law, 2010) 598 at 608.

Crown Copyright Clearance and Licensing

David Vaver's article on the subject expresses the view that the concern for accuracy and the need to control is clearly antiquated: "[t]hese fears may have been realistic at a time when the state tried to enforce morality through blasphemy and sedition laws, but they are not so now."¹⁵ The argument that the government needs to generate revenue from Crown copyright is dismissed by Judge, whose comments align with the more proactive goals of open government: "it should be emphatically stressed that public sector information belongs to the public, is already publicly funded, and hence should be publicly accessible."¹⁶ Finally, she soundly argues against the suggestion that Crown copyright increases the amount of public sector information by providing an incentive to publish, describing that scenario as "wholly unlikely"¹⁷ given all the other incentives (and obligations) for the creation of such information. In short, while Crown copyright might once have been justified, it has been more recently argued that it no longer is in the public's best interest and should either be revoked or "clarified and narrowed in its scope."¹⁸

The need to remove, or at least overhaul, Crown copyright in Canada has been the subject of public debate as well. In 2011, for example, the Standing Committee on Canadian Heritage entertained submissions by both Dr. Michael Geist of the University of Ottawa and Ian Wilson, former Chief Librarian and Archivist of Canada, calling for "the removal of Crown copyright."¹⁹ Furthermore, in their brief submitted to the Legislative Committee on Bill C-32, the Canadian Association of Law Libraries also recommended that "The Federal government should repeal provisions in the statute relating to Crown copyright."²⁰

Nonetheless, despite such calls for its re-examination, the recent round of copyright amendments has come and gone and Crown copyright and the enshrinement of royal prerogative remains firmly in place. Indeed, case law as recent as 2014 indicates that the federal government is open to the option of pursuing Crown copyright infringement,²¹ serving as a reminder that public rights over this content are limited and subject to the perceived needs and interests of government departments and agencies. Librarians seeking to make this content more widely available and assist patrons in understanding permissions may rightly feel that they are operating in the shadow of a mountain.

While Crown copyright remains firmly in place, rights to reproduce and otherwise use government content are controlled through licensing policies and procedures. Through a series of alternately encouraging and frustrating developments in recent years, it has become both easier and more difficult to obtain such permissions. In the case of legal information, the *Reproduction of Federal Law Order*²² established the public's right to reproduce federal government legal information for non-commercial purposes, provided that the reproduction is accurate and the duplicates do not claim official status. In December 2010, in a move that was greeted with enthusiasm, the Government of Canada extended a similar right to all its works and published the following notification on the Crown Copyright and Licensing service website:

Permission to reproduce Government of Canada works, in part or in whole, and by any means, for personal or public non-commercial purposes, or for cost-recovery purposes, is not required, unless otherwise specified in the material you wish to reproduce.²³

At that time, Crown Copyright and Licensing was handled centrally for all government departments through Publishing and Depository Services. Services provided included: assisting and advising departments on copyright issues, granting or refusing permissions, arranging and granting commercial rights, and maintaining records of requests.²⁴ Given the already close working relationship between Publishing and Depository Services and Canadian libraries, this was a workable system for information professionals, further streamlined through the blanket non-commercial use licence.

However cutbacks in the 2012 Budget prompted substantial reductions in the responsibilities of Publications and Depository Services, including shifting Crown copyright clearance responsibility to the individual departments that produce the materials. As a result, the blanket notification shown above was removed from the website and the Crown Copyright and Licensing currently simply lists contact information for each department, either a webpage or an email address.²⁵ So, for any set of materials originating in

¹⁵ Vaver, *supra* note 4 at 559.

¹⁶ Judge, "Enabling Access", *supra* note 14 at 610

¹⁷ *Ibid*, *supra* note 14.

¹⁸ Judge, "Crown Copyright and Copyright Reform", *supra* note 5 at 554.

¹⁹ House of Commons, Standing Committee on Canadian Heritage, *Emerging and Digital Media: Opportunities and Challenges* (Ottawa: House of Commons, 2011) at 29.

²⁰ Letter to "The Honourable Gordon Brown" from "Canadian Association of Law Libraries /Association canadienne des bibliothèques de droit" (31 January 2011).

²¹ *Attorney General of Canada v Rundle*, 2014 ONSC 2136, 119 CPR (4th) 225. In this case, the Superior Court in Ontario found an individual guilty of breach of copyright for compiling sample tests after speaking with former students who had written the bilingual "Public Service Commission" language skills tests.

²² *Reproduction of Federal Law Order*, PC 1996-1995, (1997) C Gaz II, 444.

²³ Michael Geist, "Government of Canada Quietly Changes Its Approach to Crown Copyright" (25 November 2013), Michael Geist (blog), online: <www.michaelgeist.ca/2013/11/crown-copyright-change/>. The notification as it appeared in November 2013 can be seen on the Internet Archive, online: <<https://web.archive.org/web/20131120022952/http://www.publications.gc.ca/site/eng/ccl/aboutCrownCopyright.html>>

²⁴ Treasury Board of Canada Secretariat, *Communications Policy of the Government of Canada: Procedures for the Administration and Licensing of Crown Copyright*, Rescinded [2013-06-01], online: <www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=27183§ion=HTML>.

²⁵ Government of Canada, *Crown Copyright and Licensing*, online: <publications.gc.ca/site/eng/ccl/index.html>

one or more departments, separate processes may need to be followed to clear or request permissions, which greatly increases the burden on the requester and the likelihood of variable practices and delays.

While it seems that a standard version of the policy of default permission for non-commercial use is in place across many departments, as evidenced by a standard version of the policy that appears on the Terms and Conditions pages of their websites, the blanket statement of this policy no longer appears on the Crown copyright website, nor can it be found in any of the guiding policy documents.²⁶ Further, a cursory examination of departmental policies linked from the Crown Copyright and Licensing webpage reveals some substantial differences. For example, Industry Canada applies the standard policy dating back to 2010, which does not require permission for non-commercial or cost recovery purposes, conditional upon due diligence to ensure accuracy, attribution, and indication that the work is a reproduction.²⁷ In contrast, the Department of National Defence does not require permission for non-commercial use or when the expected revenue is less than \$10,000, and cites vague and restrictive conditions that harken back to older policies:

NOTE: Use is never allowed when the use of a reproduction would: be in an undignified context; be considered unfair, misleading or inaccurate (e.g. suggest an endorsement by DND/CAF); be used in a context that may prejudice or harm a third party; or be considered inappropriate by the author department or agency.²⁸

As it would be extremely difficult for the user to determine what might be “undignified” or “considered inappropriate” by this department, this uncertainty leads to an apparently permissive licence being possibly quite restrictive.

The irony of this situation is that all of these developments are taking place in the context of a major federal initiative on Open Government, which aims to “foster greater openness and accountability” and situates “Open Information” as one of the three pillars of the program.²⁹ The newly revised *Action Plan on Open Government for 2014-2016* outlines many positive developments and commitments; however, it also introduces another layer of complexity for those seeking to understand the rights of the public with respect to government information. One of the major achievements

claimed by the initiative is the Open Government Licence:

In 2013, the Government of Canada issued a new open government licence for all levels of government in order to remove barriers to the reuse of published government data and information regardless of origin. This licence has been adopted not only by the Government of Canada, but also by several provincial governments and municipalities across the country.³⁰

Subject to certain conditions, the Open Government Licence 2.0 gives the user freedom to “Copy, modify, publish, translate, adapt, distribute or otherwise use the Information in any medium, mode or format for any lawful purpose.”³¹ As such, it is much more permissive than the standard non-commercial licence applied to government works, and the naive reader could be forgiven for assuming that the Open Government Licence is a game-changer for reuse of government content. However, at the federal level to date, this licence is applied primarily to the data sets and publications offered through the Open Data and Open Information Portals.³² While this is a start, it also leads us deeper into the woods in some cases. For example, which licence applies to content found both in the Open Information Portal and on a departmental website? The Open Government initiative continues to evolve, with the most recent important development being the Open Government Directive issued on October 9, 2014 by the Treasury Board of Canada Secretariat. This Directive requires, among other things, that Information Managers in Departments are responsible for: “maximizing the release of Government of Canada open data (structured data) and open information (unstructured documents and multi-media assets) under an open and unrestrictive licence.”³³ The potential benefits of this directive to the Canadian public are substantial, as it is designed to promote an “open by default” culture within the federal government and would seemingly result in more materials being made available. However, it can be difficult to reconcile this Directive with the potential negative effects of other initiatives, such as the requirement to “Reduce Redundant, Outdated and Trivial Content” from Government of Canada websites,³⁴ which may result in the loss of substantial amounts of content. Further, it does not affect the status quo of Crown copyright with respect to these materials. In the absence of legislation that establishes the rights of the public to this content and the associated responsibilities of the government, these rights exist at the

²⁶ The disappearance of this licence was the subject of a blog post by Michael Geist and a Twitter response from Minister Tony Clement, head of the Treasury Board, indicating that the licence was still valid and would be reposted. However, the notice does not seem to have resurfaced anywhere. Michael Geist, “Government of Canada Quietly Changes Its Approach to Crown Copyright” (25 November 2013), Michael Geist (blog) online: <www.michaelgeist.ca/2013/11/crown-copyright-change>; Tony Clement, “The Crown Copyright non-com policy still remains in effect for all depts. I'm posting a notice to that effect. Thx.” (30 Nov 2013 at 10:21am), online: Twitter <twitter.com/TonyclementCPC/status/406805087068385280>.

²⁷ Industry Canada, *Terms and Conditions*, online: <www.ic.gc.ca/eic/site/icgc.nsf/eng/07414.html>.

²⁸ National Defence and the Canadian Armed Forces, *Terms and Conditions*, online: <www.forces.gc.ca/en/terms-conditions.page?#ownership>.

²⁹ Government of Canada, *Canada's Action Plan on Open Government*, online: <www.open.canada.ca/en/canadas-action-plan-open-government>.

³⁰ Government of Canada, *Canada's Action Plan on Open Government*, online: <www.open.canada.ca/en/content/canadas-action-plan-open-government-2014-16>.

³¹ Government of Canada, *Open Government Licence – Canada*, online: <www.open.canada.ca/en/open-government-licence-canada>.

³² Government of Canada, *Open Government Portal*, online: <www.open.canada.ca>.

³³ Treasury Board of Canada Secretariat, *Directive on Open Government*, online: <www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=28108>.

³⁴ Treasury Board of Canada Secretariat, *Reduce Redundant, Outdated and Trivial Content*, online: <www.tbs-sct.gc.ca/ws-nw/wu-fe/rot-rid/index-eng.asp>.

whim of the Crown and are subject to revision or revocation as policies and initiatives change.

Conclusion

In summary, the co-existence of Crown copyright legislation and Open Government licensing and policy initiatives has resulted in a somewhat confusing mix of approaches. Apparently, we are back in a static permission-based scenario, akin to that of the Access to Information regime,³⁵ whereby Canadians must once again attempt to determine who exactly to approach about obtaining copyright permission regarding public service information in advance of using it. It does not seem too great a stretch to suspect that this uncertainty will have a chilling effect, with some Canadians choosing to avoid using government information rather than risk incorrectly deciphering its allowable use. After all, not every citizen would be willing to follow Frodo into the Mines of Moria! An even greater concern arises for

the many information professionals undertaking projects designed to collect, digitize, download or disseminate government information in some form or another to ensure that this content is not lost in the rush to dismantle print collections and de-clutter web pages. Such projects require substantial time and resources and the lack of clarity as to rights, permissions and procedures acts as a disincentive and unnecessarily increases costs. Given the enormous potential of the Open Government movement, it would be very encouraging to see some of the existing complexities and limitations on the reuse of government content removed. In the meantime, we can only try to follow the crude maps we have at hand.

³⁵ House of Commons, Standing Committee on Access to Information, Privacy and Ethics, *Minutes of Proceedings and Evidence*, submissions of Suzanne Legault, (16 November 2010) at 5 (Chair: Shawn Murphy) online: <<http://www.parl.gc.ca/Content/HOC/Committee/403/ETHI/Evidence/EV4783697/ETHIEV31-E.PDF>>

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III A Roadmap for Statutory Interpretation (Part Two) – Arriving at your Destination*

By Melanie R. Bueckert**

Abstract

While everyone might agree on the general approach to statutory interpretation in Canada, it is harder to find a step-by-step process for undertaking statutory interpretation research. In a previous article, the author provided a guide for locating applicable legislation. This article walks through the final stages of statutory interpretation research and it endeavours to provide a straightforward explanation of key statutory interpretation principles.

Alors que tous peuvent s'entendre sur l'approche générale de l'interprétation des lois au Canada, il est plus difficile de trouver un processus étape par étape permettant d'entreprendre des recherches sur l'interprétation des lois. Dans un précédent article, l'auteur a fourni un guide pour localiser la législation applicable. Cet article nous guide à travers les étapes finales de la recherche sur l'interprétation des lois et il cherche à fournir une explication simple des principes clés reliés à l'interprétation législative.

As explained in my previous article on this subject, a simple process for conducting statutory interpretation research in Canada is hard to find.¹ To this end, I proposed the following roadmap for statutory interpretation research:

1. Determine the relevant facts
2. Find the applicable legislation
3. Analyze the legislation in the context of the relevant facts
4. Identify the problem type
5. Apply the appropriate statutory interpretation principles

While my previous article focused on the second stage of this framework, this article will discuss and elaborate upon the final two steps in this statutory interpretation process.

Identifying the Problem Type

While the facts giving rise to each statutory interpretation research problem are unique, often the type of problem involved falls into one of a handful of categories. They include:

- Disputed meaning
- Drafting error
- Over-inclusivity
- Under-inclusivity
- Overlap of provisions
- Retroactive/retrospective application

* © Melanie R. Bueckert 2015

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¹ Melanie R Bueckert, "A Roadmap for Statutory Interpretation (Part One)" (2015) 40:3 CLLR 10 at 10.

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By identifying the problem type, you can zero-in on the applicable statutory interpretation principles. This article addresses disputed meaning, over-inclusive text, under-inclusive text and retroactivity/retrospectivity. Drafting error and overlapping provisions are relatively self-explanatory.²

Disputed Meaning

Often, the meaning of a statute is clear – it can only mean one thing. However, there are situations where the meaning of a legislative text is disputed; it is unclear what the text means in relation to a particular set of facts. This kind of situation arises when the statute’s wording is ambiguous. Ambiguity may arise from the word itself (semantic ambiguity), from the provision’s structure (syntactic ambiguity), vagueness (use of a general term or a relative term that requires something else to give it meaning) or the use of an obscure term.

Over-Inclusivity

Over-inclusivity might be considered a subset of the disputed meaning category. Over-inclusivity arises when the ordinary meaning of the text applies more broadly than the legislature intended and therefore should be ‘read down’.³ The main issue in such cases is whether there is a legitimate basis for reading down otherwise unambiguous statutory language.

Under-Inclusivity

Under-inclusivity is (not surprisingly) the opposite of over-inclusivity. Under-inclusive text is usually identified by a gap in the legislative scheme. The ordinary meaning of the words is too narrow to accomplish the legislature’s intent; matters that should have been within the scope of the legislation have been left out. The issue in such cases is whether the court can be persuaded to fill the gap by supplementing the limited legislative text.

Retroactivity/Retroactivity

Sometimes there are problems with how a given statute should apply over time (that is, its temporal application).⁴ A statute may attempt to interfere with vested or accrued rights,⁵ or apply retroactively. The challenge for courts in such cases is to determine whether such an application was intended by the legislature and, if so, whether it is permissible in the circumstances.

Generally speaking, new legislation is only applied to future events. It may come into force immediately, but only change the future effect of any ongoing situations. Existing rights

are preserved by ‘grandfathering’, permitting the former law (common law or legislation) to continue to apply to a past or existing situation despite the coming into force of the new legislation.

Courts may be somewhat more cautious approaching situations where new legislation is applied so as to change the future effect(s) of a past or ongoing situation by interfering with an existing interest or expectation. The term ‘retrospective’ describes new legislation applied so as to change the future effect of a past situation.

Retroactivity is eyed with even greater suspicion by the courts. With respect to statutes, retroactivity refers to new legislation applied so as to change the past legal effect of a past situation. Because people will have ordered their affairs in reliance on the old law, it is very difficult for legislatures to enact retroactive statutes that will survive court scrutiny.

The Modern Approach to Statutory Interpretation in Canada

The Supreme Court of Canada has made its approach to statutory interpretation clear: “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”.⁶ Professor Stéphane Beaulac has broken down this modern approach into three pillars: (1) text; (2) context; and (3) purpose, which all assist with determining a statute’s meaning.⁷



Figure 1 – Three pillars of statutory interpretation

I like to think of Beaulac’s formula as a guide for using Sullivan’s text. It provides a methodical approach for stepping systematically through a statutory interpretation research problem, ensuring you don’t miss any relevant principles or issues.⁸

² See Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 373 and 338, respectively.

³ As Sullivan explains, *ibid*, at §7.10, “reading down refers to narrowing the scope of a legislative provision”.

⁴ *Ibid*, at ch 24.

⁵ As Sullivan notes, *ibid*, at §25.143, “[t]he issue of when an interest or expectation achieves the status of a vested or accrued right was addressed by the Supreme Court of Canada in *Dikranian v. Quebec (Attorney General)* [[2005] 3 SCR 530].”

⁶ See, for example, *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559 at para 26 and *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21, adopting E A Driedger, *Construction of Statutes*, 2d ed (Markham: Butterworths, 1983) at 87.

⁷ See generally, Stéphane Beaulac, *Handbook on Statutory Interpretation: General Methodology, Canadian Charter and International Law* (Markham: LexisNexis, 2008).

⁸ See also Moira McCarney et al, *The Comprehensive Guide to Legal Research, Writing & Analysis* (Toronto: Emond Montgomery Publications, 2013), vol 1 at 10:13.

Step 1: The Text

Read the text of the provision carefully, in both official languages. Note its structure and organization. Remember that federal legislation is drafted simultaneously in French and English – one is not a translation of the other. Consider any relevant definitions in the act, related acts or the *Interpretation Act*. Be sure to note whether any such definitions are exhaustive or merely inclusive.

Courts will generally prefer the ordinary, common meaning of the language used in the statute to a more strained or narrow interpretation. There is a presumption against the addition or suppression of words. It is presumed that the legislature does not speak in vain. There is also a presumption against redundancy.

Step 2: The Context

In my opinion, Prof. Beaulac's approach to statutory context is best envisioned as an array of overlapping, concentric circles:

Immediate Internal Context

The first thing to consider is the statute's immediate internal context. At this point, you encounter two of the Latin phrases most lawyers still understand.⁹ First, there is the phrase *noscitur a sociis*, which simply means that a word is known by its associates.¹⁰ You look to the words used around your word to better understand its meaning. Second, there is the phrase *ejusdem generis*, which indicates that a generic term or expression that follows an enumeration of specific items ought to be limited to matters of the same kind or nature as those enumerated.¹¹ In order for this Latin maxim to apply, there must be (1) an enumeration of terms; (2) followed by a generic or general term; and (3) a common denominator or element that may be applied to both the specific and general terms.

Extended Internal Context

The extended internal context of the statute refers to the scheme and structure of the act as a whole. Examine the provision at issue in light of the statute as a whole so as to avoid internal inconsistencies. Look at titles, subtitles, headings, preambles and schedules. However, marginal notes, those handy little headings inserted before each provision, should not be relied upon.¹² Here, the prevailing principle is uniformity of expression. It is presumed that drafters try as much as possible to express the same idea using the same terminology. Thus, the same words should be given the same meaning, while different words should be given different meanings.

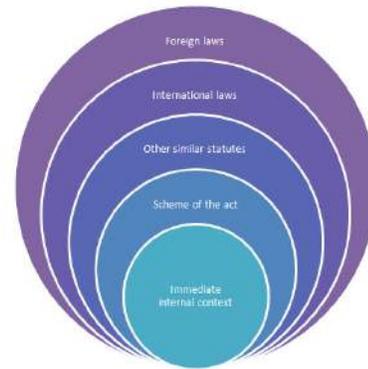


Figure 2 – Statutory context

When comparing a specific provision to the rest of the act, logical arguments may sometimes be employed. For instance, there is argumentation by analogy; *a pari* arguments suggest that similar things ought to be treated similarly, while *a fortiori* arguments focus on a similar underlying rationale. Both of these arguments tend to expand the meaning of a given statutory provision. Conversely, *a contrario* arguments, such as *expressio unius est exclusio alterius* (explicit mention of one thing precludes all other things), narrow the meaning of the disputed provision.¹³

Extended External Context

The extended external context refers to other similar statutes. Clearly, similar statutes in the same jurisdiction are more persuasive than similar statutes in other Canadian jurisdictions. At least with respect to statutes from the same jurisdiction, the same presumption of coherence applies. It is assumed that all statutes passed in a given jurisdiction were intended to operate together harmoniously. So, look first to statutes from the same jurisdiction, then expand your search beyond that (if necessary).

International laws and conventions can sometimes be helpful in discerning the meaning to be ascribed to a particular statutory provision. Sometimes lawyers invoke the presumption of conformity with international law. Usually the weight assigned to the international law will depend on whether Canada is a signatory to it. International laws or agreements which Canada has not signed are obviously not very persuasive.

Occasionally, in situations without Canadian precedents, you may have to look to similar statutes passed by other countries. This is an exercise in comparative law, and is the least persuasive of all the concentric circles identified above.

⁹ For further discussion of Latin interpretation maxims, see Sullivan, *supra* note 2 at §8.53-8.57.

¹⁰ See, for example, *Opitz v Wrzesnewskyj*, 2012 SCC 55, [2012] 3 SCR 76 at para 40.

¹¹ See, for example, *Consolidated Fastfrate Inc. v Western Canada Council of Teamsters*, 2009 SCC 53, [2009] 3 SCR 407 at paras 42-43.

¹² *Interpretation Act*, RSC 1985, c I-21, s 14. Note that such provisions may vary from jurisdiction to jurisdiction.

¹³ See, for example, *Yugraneft Corp. v Rexx Management Corp.*, 2010 SCC 19, [2010] 1 SCR 649 at para 39.

Conflict Avoidance

An interpretation of a statute that avoids conflicts between statutes is always preferred. The first step is to look at the potentially conflicting laws and determine if they expressly resolve the conflict. If not, priority should be given to a specific law over a general law. Precedence is also generally given to the more recent enactment.¹⁴

Step 3: Purpose

The purpose of the act should assist in ascertaining its meaning. Consider both the goal pursued by the specific provision, as well as the object of the statute as a whole. Statutory purpose can be useful for correcting a material drafting error, dissipating uncertainties regarding legislative meaning (vagueness/ambiguity), and limiting or broadening the meaning or scope of a legislative norm. The federal *Interpretation Act* confirms that “[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”¹⁵

Pragmatism

When interpreting a statute, it is always important to

consider the problem pragmatically, focusing on the real-life effects of the legislation. Courts will naturally seek to avoid interpretations that lead to absurd results or effects. The nature of the statute (remedial, penal, taxation, expropriation) may also be a relevant consideration at this stage, though the modern approach to statutory interpretation has reduced the importance of this consideration over time.¹⁶

History

Historical legislative research can assist with shedding light on the text, context and purpose of a statute.¹⁷ Normally, this research focuses on previous versions of the statute, and its parliamentary history. As discussed in my previous article, the second reading of the statute and its committee hearings are the best sources of helpful historical legislative information for statutory interpretation research.

Arriving at Your Destination

With this basic but structured approach to statutory interpretation in hand, I hope you will find the leading texts on statutory interpretation less impenetrable and more helpful. Once you have a handle on the type of problem you are researching, you can appropriately focus on the text, context and purpose of the statute to arrive at a defensible conclusion.

¹⁴ This is known as the doctrine of ‘tacit repeal’, the idea being that the later enactment tacitly repealed the prior one.

¹⁵ *Interpretation Act*, RSC 1985, c I-21, s 12.

¹⁶ See, for example, *United Taxi Drivers’ Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19, [2004] 1 SCR 485 at paras 6-8.

¹⁷ See, for example, *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53, [2011] 3 SCR 471 at para 43.

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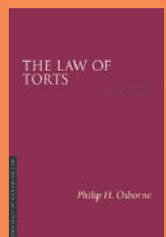
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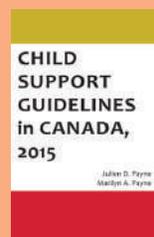
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III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***Civil Justice, Privatization, and Democracy.* By Trevor C.W. Farrow. Toronto: University of Toronto Press, 2014. Xv, 400 p. Includes bibliography and index. ISBN 9781442645783 (cloth) \$80.00.**

Farrow, a professor at Osgoode Hall Law School, calls upon John Milton and Jeremy Bentham in the opening paragraphs of his examination of the creeping privatization of Canada's civil justice system. Milton and Bentham both sought to build principled limitations on powerful actors and both saw the crucial role that public discussion and public justice have in creating balanced outcomes between competing rights, even private rights.

Farrow draws clear connections between the principles and values that provide a basis for our system of governance and the daily work of civil justice dispute resolution. The rule of law and the legitimacy of decision making are maintained by regular public accounting, and the place where that happens most viscerally for Canadians is in the civil courts, where injuries (to body, mind, family, and money) as well as remedies are considered.

Professor Farrow recalls a formative experience he had as a practicing lawyer where an arbitration resulted in a miscarriage that harmed not only one of the parties, *but the public as well*. The fact that the arbitration was private compounded the harm as the public was never informed of the outcome of the arbitration, meaning an unknown number of individuals did not have the opportunity to seek redress. This incident was the catalyst for Farrow's 20 years of work on the topic of civil justice reform. As he explains: "[f]rom that

point on, I became increasingly concerned about the state of our justice system, which is actively pushing for more, not less, privatization of civil dispute resolution" (xi).

In seven chapters, Farrow describes and analyzes the current privatization movement occurring in Canada. Chapter 1 outlines the "procedural landscapes," both private and public, in which civil disputes are contested. The public court system and its role in our democracy are discussed in further detail in Chapter 2. Chapters 3 and 4 look at privatization in the public court system as well as in administrative and non-court regimes. Chapter 5 clarifies the interests that are driving the privatization movement in government, the judiciary and legal profession, the clients seeking civil remedies, and the academy. Next Farrow provides a critique of the privatization movement. He raises concerns about the effects of privatization in chapter 6 and responds to the assertions of proponents of more privatization, particularly the important, if overstated, argument that the private civil justice is more efficient and accessible.

Throughout, Professor Farrow acknowledges the challenges that the public courts face and never argues that there is no role for private resolutions in our civil justice system. Rather he asserts that the correct balance should be found, and that the very important role that public justice plays in a healthy society not be jeopardized. To this end, he argues that the central object of the systems we employ to obtain civil justice should be *justice*, not efficiency.

Farrow's concentration on the dangers of our little-examined slide into privatized adjudication, and his trenchant focus

on the practical opportunities for halting this trend, prevent him from expanding the scope of the work to include some of the more radical research on access to justice, of which he is clearly aware. Empirical studies using sociological approaches open a whole world of possibilities for innovative ways of handling life troubles that have a legal dimension. For example, the Public Health Law model focuses on legal services delivered with the priority of repairing public and individual legal 'health.' Certainly, with the amount of empirical data and legal conceptual superstructure available to us, it is safe to assume that almost every individual circumstance has a place somewhere in an overall decision tree that optimizes outcomes, even if not all problems can be repaired entirely.

Farrow's book addresses a need in the Canadian literature for a work providing professionals and the general reading public with a clear statement of the issues in this important but still subterranean debate about the role of private justice. Farrow's book sources all the positions with extensive notes and a 53-page select bibliography. For librarians wishing to make sure their collection is adequate to represent this topic, Professor Farrow's work will be an excellent guide for the foreseeable future.

REVIEWED BY
MICHAEL LINES

Learning and Research Librarian
Diana M. Priestly Law Library
University of Victoria

***Game-Day Gangsters: Crime and Deviance in Canadian Football.* By Curtis Fogel. Edmonton: Athabasca University Press, 2013. xi, 145 p. Includes list of interviews, bibliography and index ISBN 9781927356531 (paperback) \$24.95. ISBN 9781927356548 (pdf) Free.**

Although a relatively slim book, *Game-Day Gangsters* offers a rare and valuable analysis into the much-misunderstood and under-theorized world of deviance on the sporting field. Curtis Fogel, an Assistant Professor of Criminology in the Department of Interdisciplinary Studies at Lakehead University, focuses on football at the college, university and professional levels in Canada, with occasional references to ice hockey. The material is drawn from the author's numerous interviews with those who participated in the sport at all three levels as players, coaches or other administrators. Fogel analyzes issues of informed consent to harm, violence in general and outside of the rules, hazing including degrading acts, the ingestion of performance enhancing drugs, and group-dynamics such as closing ranks when suggested infractions are investigated. In the final chapter, he discusses eight of the most popular legal and institutional solutions for addressing these issues. His discussion of the various elements of deviance is interesting and supported by academic studies. The work is ground-breaking on occasion, and yet written in a manner that will be inviting to younger readers, notably at the senior secondary levels. In a future edition, the author might wish to include references

to such American books as Johnny Sample's "Confessions of a Dirty Football Player," or Jim Dent's "The Junction Boys: How 10 Days in Hell with Bear Bryant Forged a Champion Team," in order to emphasize the negative socialization that many football players are subject to, but his study is nonetheless timely and eye-opening. The lessons put forward are of general application to many situations of interest and will be useful to students of criminology, criminal law, policing, probation and sociology.

REVIEWED BY
GILLES RENAUD
Ontario Court of Justice

***Guns across America: Reconciling Gun Rules and Rights.* By Robert J Spitzer. New York: Oxford University Press, 2015. x, 254 p. ISBN 978-0-1902-2858-3 (softcover) \$24.95.**

Guns across America provides a fascinating look into the world of gun politics, gun laws and gun practices in the United States. Robert Spitzer is a Distinguished Service Professor and Chair of the Department of Political Science at CUNY Cortland. He is an expert on gun policy, having written numerous books and articles on the topic.

Over the past several decades, American states have seen a gradual relaxing of gun regulations. Proponents of these new, laxer laws argue that they are restoring to American citizens their full historical right to bear arms. In this book, Robert Spitzer aims to set the record straight by showing that American gun rights have always been tied to strict gun regulations.

According to Spitzer, many Americans base their beliefs about gun rights on mistaken assumptions about the Second Amendment. One such assumption is that the Second Amendment gives American citizens the right to rise up against their own government should their government become tyrannical. In chapter 1 of his book, Spitzer deftly addresses this mistaken assumption by analyzing it against the writings of various political philosophers, American thinkers, and the Supreme Court of the United States. Based on his analysis, he draws the conclusion that the United States Constitution does not give its citizens a right to revolt, but rather protects its citizens by reserving the right to use force for the government.

In chapter 2, Spitzer turns to the question of gun regulation. Based on his analysis of historical gun laws, he shows that gun regulation is indeed as old as America. This chapter is particularly well-researched as he draws on a newly compiled list of nearly one thousand state gun laws, spanning the period from America's founding up to 1934. These laws show that American law makers have regulated just about every aspect of guns, including purchasing, registering, carrying, shooting, brandishing, and storing guns, and even in some cases, outright banning of guns. The full list of laws

is included as an appendix at the end of the book, a feature that will no doubt be useful to future researchers.

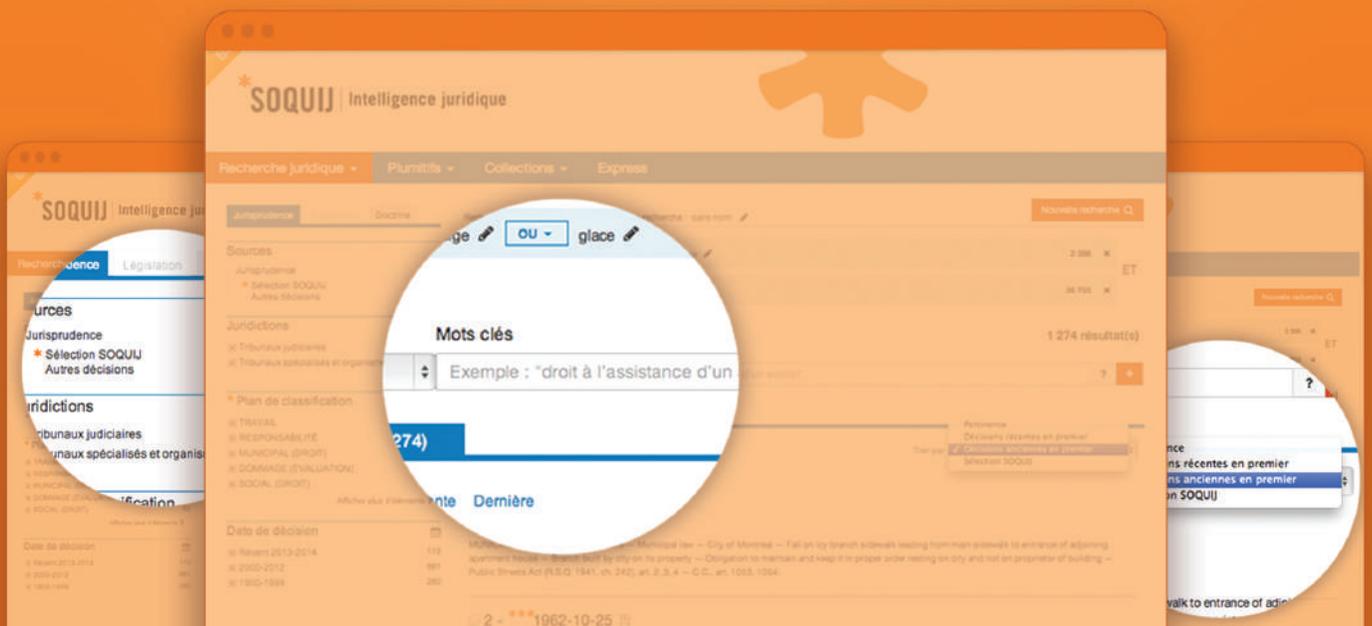
In chapter 3, Spitzer returns to the topic of the Second Amendment, this time taking aim at the commonly held belief that the Constitution gives American citizens an unlimited right to possess, own and use firearms. Drawing on his research into historical gun laws in chapter 2, as well current American case law, Spitzer argues that owning a gun in America is a right, but a limited one that is subject to reasonable regulation by the government. To drive his point across, he considers the likelihood that a theoretical constitutional challenge to an assault weapons ban (of the sort that was proposed by California Senator Diane Rothstein in 2013) would succeed. Basing his analysis of the reasoning of the Supreme Court in the landmark gun rights case of *D.C. v Heller* (2008), he concludes that a constitutional challenge could not be successful.

In chapter 4, Spitzer critically examines the stand-your-ground laws that are widespread in the United States. The stand-your-ground defense condones the use of force, even lethal force, by individuals in public places who feel threatened. While the defense has a relatively long history in the United States, in the past ten years gun lobbyists have pushed for new laws to be enacted that have greatly expanded the defense, including providing a host of immunities to individuals who claim it. Spitzer argues that these laws have greatly restricted law enforcement officers' ability to conduct proper investigations and gather evidence,

resulting in a marked decline in prosecutions. He also shows that such laws have had the opposite of their intended effect, pointing to several studies that show these laws do not deter crime and that states that have enacted them have experienced an increase in homicides.

In the final chapter of the book, Spitzer turns his attention to the state of New York, which unlike many states, has moved in the direction of tougher gun regulations. He focuses on the *Secure Ammunition and Firearms Enforcement (SAFE) Act* of 2013, which imposes tough restrictions on assault weapons and bullet magazines, and sets out to answer this question: is gun ownership and use compatible with a strict gun regulatory regime? To answer this question, Spitzer conducts an experiment: he builds his own legal AR-15 assault weapon and applies for a New York concealed carry handgun permit. Based on this experience, he concludes that New York's law are indeed feasible for gun owners to abide by. In a thought provoking conclusion, he asks the reader to consider other examples of laws, such as laws against drunk driving or smoking in public places. Few people would argue against these laws, and yet they are like gun laws in that they require individuals to give up some of their personal preferences for the sake of public safety.

Spitzer's arguments are convincing and well supported by research. Researchers interested in gun regulation will find this book to be a treasure-trove of data on American gun laws (historical and current), as well as gun statistics



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and related studies. I would also recommend this book to anyone with a passing interest in the topic given Spitzer's success in describing American gun policy and practices in an engaging and compelling way.

REVIEWED BY
LESLIE TAYLOR

Reference/Technical Services Librarian
Lederman Law Library, Queen's University

***Judging Positivism.* By Margaret Martin. Oxford: Hart Publishing, 2014. xii, 185 p. Includes bibliographical references and index. ISBN 978-1-84946-099-6 (hardcover) \$90.00.**

This book isn't for everybody. At only 180 pages *Judging Positivism* is readable and somewhat accessible for anyone interested in the intersection of legal philosophy and the everyday practice of law. However, a previous grounding in legal philosophy and a familiarity with the legal philosophers referred to would go a long way to facilitating a more critical analysis and a deeper understanding of the material.

Margaret Martin is an Associate Professor in the Faculty of Law at Western University, where she teaches legal philosophy, constitutional law and international criminal law. In the summer of 2006, she defended her PhD on "Raz's Exclusive Legal Positivism: The Tension Between Law and Morality" at the University of Cambridge and her thesis served as the basis of this book. As such, the book is a scholarly and academic work, logically organized, with every assertion carefully developed and documented.

Put simply, legal positivism is the philosophical theory that describes the separation of law and morality, or the area between what the law is and what we think it ought to be. Two leading contemporary thinkers within this tradition are H.L.A. Hart and his student Joseph Raz. Martin examines this tension between legal norms (laws) and moral authority (morals) primarily through the study of Raz. Her contention is that, in his later works, Raz moved from his original position that judges have a duty to apply the laws as they are written, to the view that judges should reason morally in their decisions. This has resulted in inconsistencies in his own account, even to the extent of his having to agree with rival theorists like Ronald Dworkin.

Along the way Martin pays a great deal of attention to the connection between philosophical theories and their application in the real world, in particular, Raz's theories and the relationship between citizens and the law. According to Martin, Raz's theory of legal positivism does not "account for the complex motivations individuals might have for complying with the law." (p130) "Raz's conception of law as a set of content-independent reasons for action is an abstraction that tells us little about how law actually works in the world." (p 133)

Throughout the book, Martin develops and defends her ideas through what amounts to a condensed survey course

on prominent mid-century legal philosophers, ranging from H.L.A. Hart in the 1960s, to Hart's critic Ronald Dworkin, to Hart's student Joseph Raz, and Raz's critic Gerald Postema. Martin's concluding chapter methodically reviews her arguments of the preceding pages, chapter by chapter, and also provides one final analysis of Raz v. Postema to seal her conclusions.

Judging Positivism is clearly intended for an academic audience and would find itself most at home in a university law library. Its in-depth examination of one discrete aspect of jurisprudential theory puts it out of reach for those without a solid pre-existing background in legal philosophy. For the uninitiated, it raises more questions than it answers. At the same time, it may be of interest to non-philosophers by showing the philosophical underpinnings that inform the practical process of judging.

The writing style is dry and formal, lightened slightly by the occasional wry comment such as "While there is no single way forward, there are certainly many dead ends." (p 6) and chapter titles such as "The Perils of Positivism." As one would expect with a scholarly work like this, the table of contents is detailed and comprehensive with each main chapter heading subdivided into its component parts. The footnotes are frequent and substantial, providing additional commentary as well as the standard citation information, and the index is sufficiently detailed and accurate. A bibliography would have been welcome as well, but of course all the references in the text can be followed up through the footnotes.

Martin's own considered opinion, near the end of the book, is that "the legal philosopher should keep a steady gaze on the world and work to make sense of what she sees.... A better understanding of the nature of law can provide a bit of light for those living and working in the trenches" (p 150). In the end, Martin judges Raz's positivism and finds it wanting.

REVIEWED BY
GAIL BROWN

Law Librarian
Middlesex Law Association
London, Ontario

***Judicial Decision-Making in a Globalised World: A Comparative Analysis of the Changing Practices of Western Highest Courts.* By Elaine Mak. Oxford: Hart, 2015. 290 p. Includes index, bibliography and interview questions. ISBN 9781849465540 (Hardback) £45.00, ISBN 9781782253648 (Adobe PDF ebook) £44.99.**

The origins of a book often provide a clue about the author's level of dedication and interest in a topic. Having recently completed a Masters of Law thesis, I understand the all-consuming passion for your area of study that is necessary to push forward. Elaine Mak states in the preface to *Judicial Decision-Making in a Globalised World* that the book is the final outcome of a post-doctoral project involving three years of research. This was not a side project. Her in-depth study

in this area is evident and much appreciated. While it may be trite to claim this book is a labour of love, clearly that's what it is.

Due to globalization and the availability of foreign legal sources, both the legal systems and the actors within them are increasingly interconnected. The book aims to answer why judges study legal sources which originated outside their national legal system and how they use arguments from these sources in deciding cases. Based on the trend toward increasing globalization, Mak also questions the role and working methods of the highest national courts. How do courts deal with the systematic changes affecting them? Are courts assuming methods or solutions for deciding cases from each other?

Mak reflects on these questions using a two-fold approach. First, Mak examines the constitutional framework for the development of judicial practices in the globalized legal context. Next the views and experiences of judges in the highest courts the United Kingdom, Canada, United States, France and the Netherlands are described and compared. This is accomplished through an analysis of these courts' case law along with public speeches given by and interviews conducted with judges in these courts.

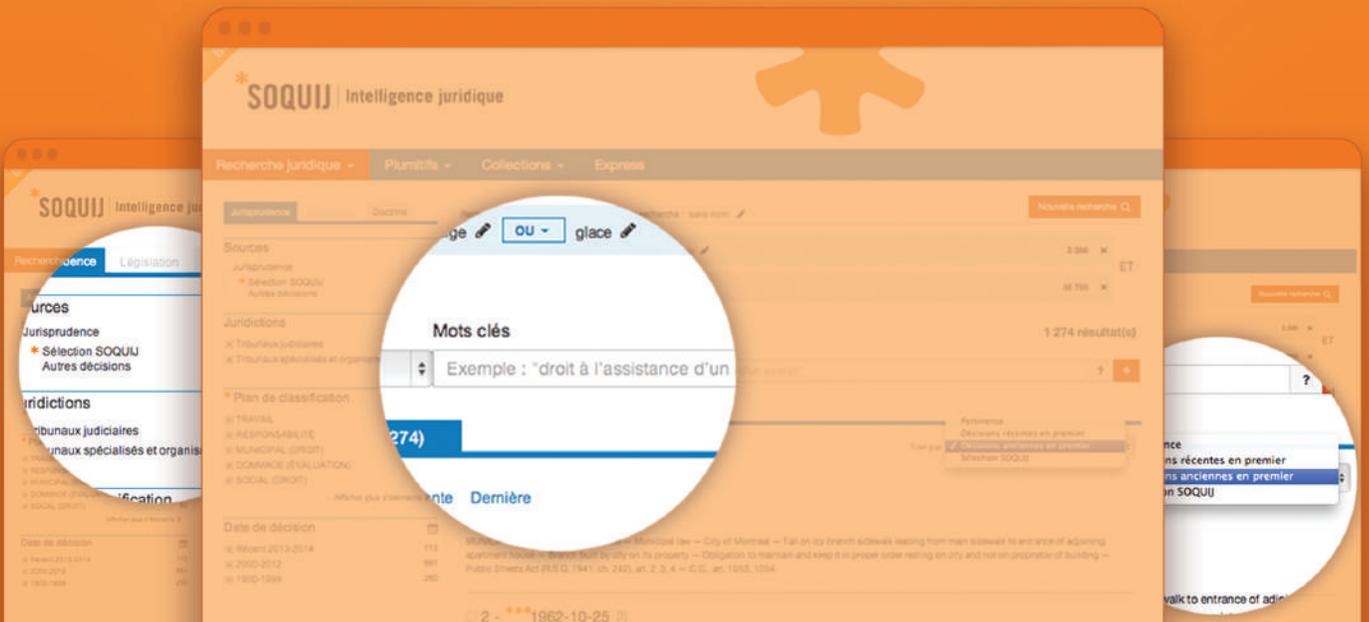
The outline of the book is as follows Chapter 1 provides a comprehensive introduction. Chapter 2 introduces a constitutional-theoretical perspective that is used to assess the globalization of judicial practices. Chapter 3 provides an

overview and history of the highest courts in the jurisdictions listed above. The purpose of this overview is to 'set the scene' for an integrated comparative analysis of the judicial approaches of each jurisdiction. The results of the empirical research are presented in Chapters 4 and 5. Chapter 4 focuses on the changes in the functioning of the courts while Chapter 5 focuses on the use of foreign law by courts. Chapter 6 applies the theoretical framework from Chapter 2 to the development of judicial globalization.

Mak succeeds in revealing the extent to which globalization has affected the functioning of the highest courts. The book makes two reasoned and well-researched claims: first, that individual judges influence the extent to which foreign law is used in their court and, second, that practices of foreign courts are converging as the transnational legal instruments and legal orders increase.

Having legal training certainly helped to understand the concepts explored in the book but is certainly not required. Mak provides an accessible comparative analysis that can and should be enjoyed by those with an interest in the influences on judicial decision-making.

REVIEWED BY
MELANIE HODGES NEUFELD,
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Law Society of Saskatchewan



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***Law Librarianship in the 21st Century.* Edited by Roy Balleste, Lisa Smith-Butler and Sonia Luna-Lamas. 2nd ed. Lanham, MD: Scarecrow Press, 2013. xix, 331 p. Includes bibliography, appendices and index. ISBN 9780810892323 (hardcover) \$102.00**

I was first attracted to this book's promising title tag "in the 21st century" and, while the book delivers some insights, there is also a bit of fizzle. Its aim is to discuss concepts and practical issues regarding law librarianship in state libraries, private firms, academic libraries and even the Law Library of Congress. The authors include the usual chorus of librarians and academics, and while some of the tunes in these chapters are sung quite well, others seem off key.

To begin, the book's spectrum of topics is almost too broad. Subject matter ranges from operations in public and technical services, physical planning, and management to the funding politics of state law libraries and the history of U.S. federal government publishing. Where possible, we get tips on navigating service innovation, service delivery realities and professional development in light of user expectations, technological choices, content and licensing changes, consortia partnerships, Internet governance, privacy and budget challenges.

The intended audience is university students with an interest in the profession who clearly desire some detail. Nonetheless, readers would have been better served by being directed to resources on how to investigate some of these topics further rather than providing detail in minutiae. No doubt a typical day of a law librarian may indeed include sanctioned raiding of user offices for overdue books (p 33), but several of the day-in-the-life law librarian profiles in this book have limited value. What is needed instead are the strategic tools to deal with an ambiguous future in which nothing – staff, clients, technology and even change management – is certain.

Some useful tips are scattered throughout various chapters on professional development – i.e., that working in reference services is not necessarily the best preparation for a management role. But one finds these nuggets buried under larger topics. The appendices are useful in that they include the 2001 American Association of Law Libraries' Core Competencies for Law Librarianship. As well, certain chapters highlight the law library standard set by the American Bar Association and American Association of Law Schools. While the standard pertains only to law school libraries as part of their law school's accreditation, in this book, the standard acts as the launch pad for key points on collection development and content licenses.

What is needed in a discussion of law librarianship in the 21st century advancement is a chapter on other information management functions in legal organizations outlining possible synergies with e-records management and knowledge management which would build on the AALL core competencies. Information on electronic records management of legal precedents and practice notes is

completely absent from the book. A valuable discussion would have been one dealing with different service models for a successful partnership between law library services and e-records management within a legal organization.

Key classification and indexing taxonomies unique to law libraries in the book are not well covered, and completely missing is a discussion of how traditional law library taxonomies can be transferable, with some adjustments, to electronic legal information architectures as well as their relationship with those used by law firms for their records. One question to ask: Is the latter thesaurus more driven by legal processes and specialized practice areas?

Also missing is information on skills advancement during a law librarian's career, including adult group training and facilitation, virtual distance training with off-site users, project management, business process analysis and negotiation skills that incorporate concepts from other disciplines. More information would also have been welcome on physical planning, design advice, basic computer ergonomic standards, and design models for multi-purpose public space including space for staff, face-to-face and virtual group meeting collaboration.

Law librarianship benefits from new ideas and business models that support changing roles and values. This book provides a sufficient overview on law libraries by functional areas as they exist now but could have benefitted from more information to help law librarians evaluate, innovate and transform the future.

**REVIEWED BY
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***Migrants and the Courts: A Century of Trial and Error?* By Geoffrey Care. Burlington, VT: Ashgate: 2013, U.S.A. 360 p. Includes tables of cases and legislation, bibliography, index, abbreviations list and b&w illustrations. ISBN: 978-1-4094-7263-6 (Hardcover) \$144.95.**

As the product of the United Kingdom's former Deputy Chief Adjudicator, Immigration Appellate Authority and the First President of the International Association of Refugee Law Judges, it is fitting that this excellent work begins with the "Assize Prayer for Judges," that requests a Supreme Being to grant onto Judges "the spirit of discernment and the spirit of love." (p v) It is followed by the signal foreword penned by Sir Stephen Sedley, formerly Lord Justice of Appeal, which includes the observation: "Immigration controls can generally be managed by prescriptive rules. Asylum depends on something quite alien to a prescriptive system: a well-founded fear of persecution. The opportunities for abuse in such a formula are manifest; but so too, alarmingly, are the

opportunities for error. An immigration judge who mistakenly disbelieves an account of persecution may be sending an innocent person back to their death” (p xi). Indeed, Care’s Preface makes plain that “flight to escape persecution has become commonplace ” and that “ a common method of evasion [from restrictions on migration] has been to claim asylum” (p xiii) .

The book, broadly speaking, contains six themes. The first three address government policies, legislation and the administration of the policies and legislation whilst the last three are devoted to the approaches of judges, including insights as to their attitudes, the question of the nature of the hearing process, and the issues of *régie interne*, that is to say the internal functioning of the tribunal.

At the end of the day, reasonable persons may disagree on any number of justifiable courses of actions open to the tribunals seized with a dossier advanced by a migrant claiming persecution, but unanimity is possible on the following: never has the plight of the migrant been more severe and the degree of vulnerability greater.

The first chapter, “Laying the Foundations,” is important not just for its detailed description of the various iterations of the tribunals that led to the present UK system, but in making plain the many decades marked by racist attitudes, notably towards Jews and (more recently) in the case of non-white migrants and the Roma. Indeed, I was reading *L’ordinateur du paradis*, by Benoit Duteurte (Gallimard, 2014), at the same time as Care’s book and was pleased to note the passage that holding such prejudiced views was sufficient to deny access to Heaven in that fictionalized account of the hereafter. (p 27)

I commend in particular the discussion touching upon the fierce resolve of early tribunal members to achieve the status of judges and the early discussion of the tension involved in any attempt to achieve balance between the claimant and the State: “That eternal enemy of justice – quantity not quality – was as pervasive then as it is today. Controls were imposed by procedural regulations at the expense of justice. ... The Government recognises that the judges are the great enemies of every government, because they are always supporting people who allege that they’re being downtrodden by government” (pp 20-21).

All that being said, perhaps the most important contribution is found in the wide-ranging discussion surrounding the thorny issue of fact-finding in the case of witnesses testifying through the medium of an interpreter about matters typically totally foreign to the fact-finders, be they religious persecution, arranged weddings or coerced surgical interventions. I highlight as well the far-reaching analysis on the topic of judicial notice and the interesting insights as to the value of judges travelling to the various geographical areas of conflict in order to become fully aware of the factual underpinnings to certain areas of controversy. The chapters focusing on

the experiences of other countries, notably Canada at pages 213 to 247 are quite valuable, not least by the richness of the comparative illustrations and the breadth of the techniques of case management that are discussed.

One of the great advantages of this text is that it provides the perspective of the judge; in other words, the reader is provided with the opportunity to look at the operation of the system from the inside. Clearly, the book will serve to assist judges chiefly, by illustrating how decisions they reach affect people and this, from a long-term perspective. The book will also prove to be a first-rate addition to the libraries of institutions wishing to assist the work of advocates for migrants and those called upon to decide the merits of the claims advanced.

REVIEWED BY
GILLES RENAUD
Ontario Court of Justice

Ontario Municipal Law: A User’s Manual – 2015. By George Rust-D’Eye, Ophir Bar-Moshe and Andrew James. Toronto: Thomson Reuters Canada Limited, 2014. Main volume, lxvii, 1002 p. Statute Reference Guide, iii, CKL-132, COC-8, MOU-10. Includes checklists, table of cases and index. ISBN 978-0-7798-6158-3 (softcover) \$111.00.

Ontario Municipal Law: A User’s Manual – 2015 is a useful text for practitioners, city councilors, municipal staff or anyone else who needs a portable and easy-to-use guide to Ontario municipal laws. The majority of the book is dedicated to the *Municipal Act, 2001*. The text also includes the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act* which are given full treatment.

New to the 2015 edition is a supplementary second volume entitled the *Statute Reference Guide*. This guide includes the checklists and Model form of Code of Conduct for Members of Council that were previously in the main volume, along with a Memorandum of Understanding between the Association of Municipalities of Ontario and the Province of Ontario.

The commentary is direct and useful, but not extensive, so those looking for detailed history or more background information would be wise to consult a different text. *The Ontario Municipal Act, A Comprehensive Guide*¹ works very well as an in-depth companion text for those who are doing more extensive research on municipal issues.

The text is soft cover with comb binding and has easy to read tabs which are labelled with the section title of the Act; for example the tab for Part II states ‘General Municipal Powers’. On turning to a specific section, the reader is presented with a statement of the specific sections of the statute that are covered along with an overview of the section. The overview includes a summary of the section,

¹ Virginia Maclean & John Tomlinson, *The Ontario Municipal Act, A Comprehensive Guide*, 2nd ed, looseleaf (Aurora, Ont, Canada Law Book, 2013)

information on recent major changes, directions to the *City of Toronto Act* equivalent and in some instances, a list of major cases.

Aside from the applicable legislation, the book includes a table of concordance, a table of cases, and an index. The table of contents contains a list of all regulations promulgated under the various municipal acts as well as a list indicating which of those regulations are not reproduced in the book. The regulations that are included in the book are very helpfully printed following the section they apply to (as opposed to all together at the end of the Act). Regulations are reproduced more than once if they are relevant to more than one section; this adds some length to the text but means that users will spend less time flipping back and forth between pages if they are reading regulations. The index is divided into a definitions index and a main index—a very helpful feature.

This text is recommended for practitioners, municipal councillors or staff who frequently refer to the *Municipal Act*. The format and size make it a portable, quick reference text with enough commentary and cases to give guidance to most issues. The inclusion of a definitions index and the regulations embedded within the Act make it particularly useful for those who will be using it in meetings or rush situations. Academics and users with more in-depth research needs, however, might still want to consult a more comprehensive source.

REVIEWED BY

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***Philosophical Foundations of Discrimination Law*. Edited by Deborah Hellman and Sophia Moreau. Oxford, UK: Oxford University Press, 2013. 304 p. Includes table of contents, footnotes, and index. ISBN 9780199664313 (hardback) \$115.**

Philosophical Foundations of Discrimination Law is an anthology of thirteen essays offering theoretical frameworks for thinking about discrimination. Many of the authors suggest and critique broad philosophical models; they examine and debate the value of using principles such as liberty, equality, and dignity for examining discrimination and the law. The authors engage with each other's ideas, and are often in dialogue with each other, examining the strengths and limitations of different theories. Ultimately, they look for a universal way to analyze how to think about discrimination, illustrating their ideas with the actual practice of lawmakers and courts.

Some chapters are quite specific, presenting judicial and legislative interpretations of particular legal issues. These include affirmative action, quotas, and indirect discrimination, as well as the social model of disability. Yet even these authors remain concerned with the wider theoretical picture.

As much as possible, they situate individual laws or cases in broader philosophical considerations rather than attempting to provide a detailed focus on the laws of any specific jurisdiction. Yet legal questions that are more common in the US – for example affirmative action – do receive more consideration than some other questions of discrimination law.

Generally, however, the authors refer to specific pieces of legislation and judicial decisions to illustrate theoretical frameworks. For example, Denise Réaume examines the role of equality as a way to understand discrimination. She notes that people or groups may compare how they receive benefits or face burdens. She cites Supreme Court of Canada decisions and makes reference to the *Canadian Charter of Rights and Freedoms* but is ultimately focused on the nature of equality as a universal principle for understanding discrimination law and is interested in a wider scope than how Canadian courts may interpret laws.

Most of the authors are affiliated with universities in the U.S., with a few scholars representing Israel and the U.K. The two Canadian authors in the group are both University of Toronto faculty members. The authors are primarily legal scholars, but a few are professors of philosophy or bioethics.

Hellman and Moreau have assembled a collection of philosophical examinations of the legal perspectives that try to interpret discrimination. It is the broad theoretical approach of this book that makes it unique. There are many other works on different types of discrimination and the non-legal frameworks for understanding them, as well as less theoretical titles on specific types of discrimination law. Naming all such titles is beyond the scope of this review.

This book would be suitable for any academic law library or any library serving students in philosophy or political science. Though it would be important reading for a lawyer interested in discrimination law, the book is not intended to directly inform practice on a day-to-day basis. Any law librarian seeking an expansive and practical –if expensive –legal work on discrimination law in Canada is no doubt aware of Justice Walter Tarnopolsky's modern classic, *Discrimination and the Law*, updated by William Pentney.² Discrimination law as it relates to *Charter* issues is also covered by Peter W. Hogg in *Constitutional Law of Canada*.³

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²William Pentney, *Discrimination and the Law*, contributing editor John D. Gardner (Toronto: Carswell, 1990).

³Peter W. Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007).

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THOMSON REUTERS

***Practising Self-Government: A Comparative Study of Autonomous Regions.* By Yash Ghai, Sophia Woodman, eds. Cambridge, United Kingdom: Cambridge University Press, 2013. viii, 501 p. Includes bibliographical references, list of tables, and index. ISBN: 9781107018587 (hardcover) \$131.95. ISBN: 9781107287693 (Adobe eBook Reader) \$96.00.**

Practising Self-Government: A Comparative Study of Autonomous Regions is part of the Law in Context Series from Cambridge University Press. The focus of the book is on regional autonomy; it endeavors to contextualize autonomy by analyzing historical, political, and legal perspectives of autonomy in different regions. While it is not strictly a law text, it compares constitutional processes for accommodating autonomy. The book grew out of a 2005 conference on comparative national experiences of autonomy as well as the research of editor Yash Ghai, a professor emeritus of law at the University of Hong Kong who has written extensively on the subject of constitutional law, ethnic conflict, and human rights. Co-editor Sophia Woodman, a fellow at the University of Edinburgh, has also written widely on human rights and autonomy, particularly in relation to China. In addition to the editors, there are twelve contributing authors to the book. Each author is an established scholar in the field of law and politics for different countries, and some have practised law or served in government as well.

The book is divided into fourteen chapters with a detailed introduction that provides a thorough overview of autonomy within historical, political, and legal contexts. Each chapter is written by a different author and focusses on a different country and region, including Québec, the Åland Islands, Puerto Rico, South Tyrol, Kashmir, Norfolk Island, Catalonia, Zanzibar, Bosnia-Herzegovina, Scotland, Macau, and Papua New Guinea. The final chapter analyzes and compares each region and discusses the different social, political, and constitutional factors needed to properly achieve effective autonomy and resolve conflict.

There are a few ways to approach reading this book, depending on what readers are hoping to get out of it. If they are only interested in specific countries then those individual chapters could be read without regard to the rest of the book. For more of an analytical approach—perhaps a geographic approach—the chapters could be read out of order while still providing a comparative perspective. As it is not specifically a reference book, it can also be read from beginning to end. The book is nicely arranged and well organized. It features short editor biographies, a list of tables, a list of contributors with short biographies, and a very useful and detailed index. Each chapter as well as the introduction and conclusion are heavily footnoted with references to additional commentary and legislation. The format is hardcover, although the book is also available electronically from Cambridge University Press as an eBook, as well as through Cambridge Books Online.

There are similar publications which compare autonomy, self-determination, and constitutional development in

different countries, and some of the regions in this book have been written about quite extensively, such as Québec and Catalonia. Others do not have quite as extensive a literature on them, such as Papua New Guinea. Therefore this collection makes unique comparisons which other publications do not. Published in 2013, it is a fairly current work, although there have been some important events since (for example, the Scottish independence referendum in 2014).

At 486 pages (not including index) and with a relatively formal tone, *Practising Self-Government* is not an especially quick read, and it does assume that the reader has some prior knowledge of statehood, nationalism, or comparative politics. The Law in Context Series is geared towards students, and *Practising Self-Government* would definitely be of interest to anyone studying political science, constitutional law, comparative politics or comparative constitutional law, as well as regional and ethnic history, nationalism, and self-determination. *Practising Self-Government* would make a fine addition to any academic library collection that includes works in law and political science.

REVIEWED BY
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***Why Prison?* Edited by David Scott. Cambridge: Cambridge University Press, 2013. xxii, 381. Includes tables, bibliographic references, and index. Cambridge Studies in Law and Society series. ISBN 978-1-107-03074-9 (hardcover) \$125.99.**

Why Prison?, part of the Cambridge Studies in Law and Society series, is a collection of critical explorations of theories, policies and practices of imprisonment. The work addresses this complex question from the intersection of law and sociology, and, in particular, penal and carceral studies. It begins with the premise that prisons are failing to accomplish their goals – articulated in the introductory chapter as a response to crime, deterrence (both specific and general), rehabilitation, protection of the public and punishment. This is indicated by the increasing rates of incarceration around the world and by the placement of penal incarceration and global hyper-incarceration within the context of economic and social inequalities.

Why Prison? is comprised of fourteen essays arranged in five topics: jail as discipline and social control; public participation including penal practices and policies in culture; state detention including immigration, mental health and other forms of detention outside of the scope of criminal law; prison reformation; and prison abolition. The authors address racial, economic, cultural, and citizenship biases which increase incarceration rates, including mental illness and homelessness, through a variety of critical lenses.

The scope of analysis is limited to five English-speaking countries (focusing primarily on the United States but also including Canada) and seven European countries. This approach allows the authors to discuss incarceration in western countries while acknowledging that this leaves gaps in relation to Asian, African and South American penal systems when discussing global hyper-incarceration.

Rather than simply pointing out problems, *Why Prison?* succinctly offers alternatives to the current model of incarceration as penalty, by suggesting a more robust system of reparations to victims, societal reforms including an increase in non-custodial sentence options, additional support for all members of society, and the creation of intentional or therapeutic communities, particularly for those convicted of non-violent offences or who are incarcerated as a result of poverty, mental illness or addictions. However, this is an academic text rather than a practical handbook,

and so these options are outlined and not fully explored.

The table of contents is well organized, along with the list of figures and tables, the list of contributors, and the table of cases. The work also includes a lengthy bibliography citing all sources as well as an index.

Why Prison? is an important contribution to the growing body of penal literature. It is recommended for academic libraries, particularly those with strong collections in international criminal law and social justice.

REVIEWED BY
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Feature Article Submissions to the CLLR are Eligible for Consideration for the Annual \$500 Feature Article Award

To qualify for the award, the article must be:

- pertinent to both the interests and the information needs of the CALL/ACBD membership;
- relevant to law librarianship in Canada;
- excellent in content and style, as shown in its research and analysis, and its presentation and writing;
- not published elsewhere and preferably written specifically for the purpose of publication in *Canadian Law Library Review / Revue canadienne des bibliothèques de droit*.

The recipients of the award are chosen by the Editorial Board. One award may be given for each volume of *Canadian Law Library Review/Revue canadienne des bibliothèques de droit*. Award winners will be announced at the CALL/ACBD annual meeting and their names will be published in *Canadian Law Library Review/Revue canadienne des bibliothèques de droit*. Should the article be written by more than one author, the award will be given jointly.



III Bibliographic Notes / Chronique bibliographique

By Susan Jones

Marianne Foley & Katherine Bertel, “Hands-On Instruction: The iPad Self-Guided Library Tour” (2015) 43:2 Reference Services Review 309-318.

Last fall, one of the faculties at my institution hosted a social media scavenger hunt for its students. Participants were provided with a list of people, places, and things to find on campus (e.g., the Dean of Arts, Doreen at the café, an international film from the DVD collection at the main library) and instructed to photograph their finds using their smartphones. Students then posted those photos to the faculty’s Twitter feed or Facebook page for a chance to win prizes. Jazzing up the standard campus tour with mobile technology was a brilliant way both to engage students and to increase their awareness of some of the key spots and people around campus. I immediately started to think about how the same idea could be applied at the law library, but those thoughts were set aside in the wake of a busy new term. Set aside that is, until I read this piece by two librarians at the State University of New York in Buffalo. In the article, the authors describe how they used a self-guided library tour with iPads to increase student engagement and, at the same time, make students aware of the services, resources, and spaces available to them at the library.

The authors are not only librarians, but also the instructors of a semester-long information literacy class for first-year students. They had a few goals in mind with respect to their own teaching when they set out to create a self-guided library tour with iPads. For one thing, they wanted to increase the engagement of the students in their class. They also wanted to familiarize students with the layout of the library and

increase their understanding of its services and resources. To achieve those goals, the authors set out to apply active learning, teamwork, and mobile technology to that stalwart of all library instruction classes: the library tour. Active learning is defined in the article as, “instructional activities involving students in doing things and thinking about what they are doing.” In the past, the authors’ tours consisted of leading a group of students throughout the library and pointing out services and resources along the way. From their review of the literature, the authors determined that active learning, combined with teamwork and the employment of mobile devices, would engage students in the curriculum and, in turn, lead to deeper learning and greater achievement.

As noted above, one of the ways the authors wanted to increase students’ engagement and awareness of the library was through the application of active learning to the library tour. To that end, the authors provided small groups of students with a library-owned iPad and a list of tasks. The tasks directed each group of students to find places and things in the library (e.g., one of the computer labs, the quiet zone for silent study, the mobile charging stations, the computer help desk) and photograph their finds with their iPads. The tasks were designed to familiarize students with the library’s services, resources, and spaces, especially those things that students may not notice or learn about on their own. In addition to attending to the assigned questions, students were encouraged to photograph anything of interest to them in the library, provided they secured the permission of anyone who happened to be captured in the photos. The authors also sought to increase students’ engagement and awareness by incorporating mobile technology into the

new and improved library tour. In planning the self-guided tour, the authors considered alternatives to the iPad. Their own observations, along with the demographics of the student population at their institution, led the authors to believe that not everyone would be familiar with the iPad. Furthermore, and contrary to the popular belief about the millennial generation, the authors also knew that not all of their students were tech-savvy. The most obvious alternative to the iPad were students' own smartphones. Nearly all students on campus owned one, but the variety of brands and operating systems posed too many potential problems. The authors saw the self-guided library tour as a fun and friendly way to introduce students to new technology. What's more, the authors were confident that students would be able to apply their skills in using smartphones to the iPad.

The final means of increasing students' engagement and awareness was by adding elements of teamwork to the library tour. To encourage teamwork and build camaraderie, the authors divided their class into groups of five students. An advantage of this team-based approach is that it also reduced the number of iPads required for the exercise. To avoid large clusters of students from gathering at any one location in the library, each group tackled the tasks in a different order. The students were also required to complete the assignment within 15 minutes and they used the iPad's timer app to monitor their progress. Once students had addressed all of the assigned questions, or their 15 minutes were up, they reconvened in the classroom to share their photos. The authors gave careful consideration to how the photos would be shared, keeping in mind that they wanted to continue to encourage teamwork and camaraderie. One option was to connect each of the iPads to a media:scape table to display each group's photos one at a time. Another option was to upload the photos to students' own Facebook accounts. In the end, though, the authors opted for a photo-sharing website. Flickr was the most user-friendly of the photo-sharing sites evaluated by the authors and an account was created specifically for the class. A postscript to the article notes that in subsequent library instruction classes, the authors replaced Flickr with a free photo-based scavenger hunt app, called GooseChase.

Each group uploaded its own photos to Flickr following a short demonstration by the authors. Discussion and identification of the photos was lively and entertaining for the students and instructors alike and at the end of class, the authors noted a marked change in students' behaviour. Each student arrived at class that day alone and there was little talking prior to the start of the session. In contrast, no one returned from the self-guided tour alone and there was a steady hum of conversation throughout the classroom until the session resumed. The authors report that the teamwork and collaboration demanded by the exercise, and embraced by the students, set the tone for the rest of the semester.

The authors included questions about the self-guided library tour on their end-of-term course evaluation. The results show that 85 percent of students thought the tour was a worthwhile exercise, while five percent disagreed, and the

other 10 percent were neutral. Ninety-five percent of students liked the group format of the library tour and the other group-based activities throughout the term. The results also showed that the self-guided tour increased students' engagement, increased their awareness of library resources and services, and created a collaborative classroom environment.

Throughout the article, the authors offer readers a few tips about the logistics of organizing a self-guided library tour with tablet computers and they're worth mentioning here for those who want to organize a similar exercise. To avoid a number of problems associated with logging into the campus Wi-Fi system by newly-registered students, the authors logged into every iPad with their own credentials prior to the start of class. They also changed each tablet's settings to prevent it from falling into sleep mode, thereby avoiding the need for additional logins by the authors. For the convenience of the students and to save time, the authors placed a shortcut to the Flickr account on each tablet's taskbar, along with shortcuts to the iPad's camera and timer app. Altogether, the authors spent two weeks pulling everything together – troubleshooting issues with the campus Wi-Fi connectivity, crafting the assignment, evaluating photo-sharing tools, and setting up the iPads. With the information provided in this article, however, the authors believe others could plan a similar project in less time.

Allie Lustigman, "Your Intranet Needs YOU: How Information Professionals Can Add Value to Intranets and Portals" (March 2015) 15:1 Legal Information Management 57-60.

As information professionals, we should all be looking for opportunities to add value to our organizations. In this article, Allie Lustigman, Information Manager at the Standard P&I Club in London, outlines the ways that librarians can increase their profile and demonstrate their value by participating in the management of their organizations' intranets and portals. It seems like a natural fit for librarians given our roles as managers, organizers, and expert searchers of information, for what are intranets and portals if not vast collections of information that need to be organized and made discoverable to users? The author begins, very helpfully, with some basic information about intranets and portals. These terms are often used interchangeably and while they're similar tools, there are differences. A portal is a gateway that sits within an intranet. An intranet, in comparison, can stand alone and operate without a portal. To illustrate further, the author describes how the two work together within her own organization. As noted above, the author works for the Standard Club, which is just one component of a professional services firm. There's one overall intranet for the firm and a number of portals for its various parts, including the Standard Club.

The author describes the Standard Club's portal as a repository of information, which essentially serves as its own intranet. The portal provides access to key documents,

business processes, resources, procedures, forms and precedents, and information about teams and personnel. It's also used as a document management system of sorts for various projects and teams. Managing the Standard Club's portal is one of the author's main responsibilities and through this experience, she's come to realize how much librarians have to offer in this area. More specifically, the author believes there are four types of skill and expertise that librarians can bring to the management of intranets and portals.

The first skill or expertise is in the organization and searching of information. Librarians are experts at navigating through databases, constructing complex search strategies, and using unique search syntax to extract information from online resources. Not only do librarians know how to use databases, but they sometimes build them, too. Librarians index documents and catalogue books, and do so with an understanding of the importance of controlled vocabularies and taxonomies. Given that intranets and portals are vast repositories of information, librarians' expertise in organizing, storing, searching, and retrieving information, as well as making it discoverable, are skills that should be highly valued in the management of these tools.

These valued skills can also be used to train users to index documents in order to improve a portal's search functionality and ensure the efficient retrieval of documents. Librarians can also demonstrate how to set up document folders and libraries to facilitate users' navigation to needed information. Indeed, librarians spend so much time navigating through websites and online resources that they're in a good position to provide input on the information architecture of intranets and portals, too. The structure and layout of these tools is key to easy navigation and discoverability. Librarians also have a lot to contribute to the archiving of information in intranets and portals. Records management is an area in which many librarians have had to develop expertise and they can use this experience to develop policies that ensure information in intranets and portals is current and up-to-date.

The second area in which librarians can contribute to the management of intranets and portals is in taking ownership of pages. Although management of the portal is one of the author's main responsibilities, she recognizes that this isn't the case for every librarian. Even so, there are still ways to get involved, and for those librarians already participating in the management of some part of an intranet, the author urges them to seek out new and different roles.

One way for librarians to get involved is by creating and managing useful spaces for the people at their organizations. The author encourages librarians to seek out their users, discover what they're working on, and then let them know how you can build and maintain spaces on the intranet that can be used to store, present, and share their information. In the author's case, she created pages for the subject specialists at her firm who use that space to store answers to frequently asked questions, write blog posts, develop libraries of useful documents, and provide

links to helpful websites. In other cases, the author created pages with jurisdiction- and country-specific information on particular law and commercial-related topics, as well as a group of pages about a specific sector of the construction industry that provides links to useful websites, documents, and contact lists.

There are other ways for librarians to take ownership, too. There are people throughout the author's organization who are tasked with updating intranet content. Librarians can make a contribution in this area by taking responsibility for coordinating the content owners, outlining their roles and responsibilities, and providing training. In doing so, librarians can ensure the uniformity of content and regular updating.

The third skill or expertise that librarians can bring to the management of intranets and portals concerns current awareness. Librarians are frequently tasked with the management of their organizations' news and current awareness resources, which often include a mix of magazines, newspapers, journals, and online resources. The author encourages librarians to speak to the publishers and vendors of their current awareness tools and services to find out how they might provide access to content through the intranet.

The fourth skill or expertise is in training. Training in the efficient and effective use of resources has long been the responsibility of librarians, so why not extend that skill and expertise to the organization's intranet? Librarians can train users to navigate the intranet to find what they need, to upload and store information, to apply metadata to documents, and to set up document libraries. The author offers this kind of training herself at the Standard Club, along with a bi-monthly update to users with information about recently-created pages and tips for searching the portal. The author stresses that training is a great way for librarians to reach out to their users, increase their exposure, and demonstrate their value.

The author concludes her article by emphasizing the long-standing value and reliability of intranets to organizations and how much librarians can contribute to the enhancement and management of these tools. So take a look at your intranet today and ask, "What can I add?"

Sarah Glasser, "Providing Perpetual Access: Results of a Survey" (July 2014) 58:3 Library Resources & Technical Services 144-152. Available online: <<http://journals.ala.org/lrts/article/view/5259/6389>> (accessed 3 July 2015).

There's no dearth of articles on the topic of perpetual access to e-journals. Those articles tend to focus on the vague language in license agreements or the unusable formats provided by publishers and vendors in the name of perpetual access. This article, however, is the only one I've read about the reality of providing access to e-journals that have ceased publication, were canceled, or were transferred to a

different publisher. Moreover, I think this article's publication is well-timed. Ever-shrinking budgets have necessitated, for many, the cancellation of subscriptions – particularly those in duplicate formats – and consequently, more libraries may be facing the challenges of providing and maintaining perpetual access. With this article, Sarah Glasser, Serials & Electronic Resources Librarian at Hofstra University in Hempstead, New York, attempts to make up for the lack of literature on the actual experience of libraries in providing perpetual access.

In the article, the author presents the results of an online survey about the practical aspects of providing and maintaining perpetual access. For her purposes, the author defines perpetual access as, “access to the years of content paid before the affected serials were canceled, ceased publication, or transferred to different publishers.” The survey queried respondents about the situations in which they invoked the perpetual access provisions for e-journals (e.g., individual canceled titles, ceased titles, transferred titles, and the cancellation of e-journal packages); about their success or failure in providing and maintaining perpetual access; the reasons for that success or failure; and the cost, in terms of both money and staff time, of providing and maintaining perpetual access (all of the questions are included as an appendix to the article). In addition to presenting the responses to these questions, the author discusses the key findings from the survey and then outlines the most common challenges to providing perpetual access.

The author received 200 responses to her survey and it's worthwhile relaying a few statistics about those respondents. Seventy-four percent of the respondents work at a university, 12 percent at a four-year college, and the remaining 14 percent work at a variety of institutions, including medical libraries, law libraries, government organizations, and non-governmental research institutes. The full-time student body at these institutions vary from fewer than 2,500 to up to 45,000, but most respondents work at institutions with a student body in the 2,501 to 10,000 range (26 percent), the 10,001, to 20,000 range (24 percent), and the 20,001 to 30,000 range (26 percent). Sixty percent of respondents work at institutions with a serials budget in excess of \$1 million, and of that group, 60 percent indicated that 80 percent or more of their serials collection is electronic.

The first survey question sought to capture when libraries were trying to invoke the perpetual access clauses in their e-journal license agreements. It's important to note that this question, and others in the survey, allowed for multiple answers and respondents were instructed to select all that applied. Eighty percent of respondents invoked perpetual access for individual canceled titles, 62 percent for titles transferred from one publisher to another, 60 percent for ceased titles, and 26 percent for the cancellation of e-journal packages. Another six percent responded with “other”, which included the cancellation of small packages and situations in which one company was acquired by another.

The next few survey questions asked about libraries' success rate in providing perpetual access, the way in which they

were able to provide that access, and the reasons for any failed attempts to provide access. The author was surprised to learn that 52 percent of libraries were able to provide perpetual access “always” or “often”. Only two percent of respondents indicated that they were “never” successful and six percent were “rarely” successful. Of those that were able to successfully provide perpetual access, 87 percent did so by linking to the publisher's website; 56 percent linked to a membership archive, such as LOCKSS, CLOCKSS, or Portico; 14 percent provided access through CD-ROMs, DVDs, or external drives; nine percent linked to content on library servers; and seven percent provided access through “other” means, such as EBSCO's Electronic Journals Service or content on a consortium server.

As for the reasons why libraries were sometimes unsuccessful in providing perpetual access, 51 percent of respondents indicated it was because the publisher offered perpetual access in an unusable format, such as unsearchable DVDs or CD-ROMs, raw data that required institutional server space and the creation of a search interface, email with PDF attachments, and external drives. Forty-five percent of respondents indicated that lack of staff was the reason they failed to provide perpetual access, while 26 percent reported a lack of funds for the perpetual access fees. Thirty-six percent selected “other” as the reason for their failed attempts, which included a lack of documentation showing payment for the years covered by perpetual access and a new publisher's refusal to honour a former publisher's license agreement.

The author's survey included an open-ended question about the most challenging part of providing perpetual access. The answers to this question reveal four challenges to the successful provision of perpetual access. The first, and the one most often mentioned by respondents, is *the amount of work involved* in providing access. This includes determining entitlement to perpetual access, the technical aspects of providing access, the routine monitoring of access (some respondents reported that access disappeared periodically), making claims for lost access, and dealing with archiving issues and unworkable formats.

The second most frequent challenge concerns *documentation*. Many respondents reported not being able to provide the records showing their institution's payment history and when electronic access began, both of which are important for determining and proving eligibility for perpetual access.

The third most-cited challenge is dealing with *e-journals transferred from one publisher to another*. Some respondents reported instances of new publishers refusing to honour the perpetual access provisions of former publishers. Furthermore, respondents commented that considerable staff time is required to keep track of the details of transferred titles.

The fourth most common challenge in providing perpetual access concerns *license agreements*. One specific challenge is the vagueness of the language of perpetual access

clauses in agreements, making it difficult to understand what exactly libraries are entitled to when it comes to perpetual access. Other agreement-related challenges include contracts signed before perpetual access was a concern and publishers that don't offer any type of perpetual access.

In her discussion of the results of the survey, the author highlights some of the ways that these challenges could be eased. The first is through better record-keeping, although the author recognizes that not all libraries have the staff available to take on this time-consuming task. Interestingly, some institutions of higher learning in the United Kingdom have taken steps to alleviate the burden of record-keeping through the creation of a post-cancellation entitlement registry.

Another way to ease the challenge of provided perpetual access is to standardize the language of the relevant clauses in license agreements. The author acknowledges the difficulty of this task, which can be achieved only when publishers, libraries, and other stakeholders can work together to agree on mutually-acceptable terms.

Ensuring that publishers and vendors provide libraries with

content in usable formats is another way to deal with the challenges of providing perpetual access. The results of the survey show a preference for access through the publisher or provider's website. In this way, libraries can continue to provide links through their link resolvers, thus maintaining the kind of access already familiar to staff and the users of their library catalogues and discovery tools.

Finally, there's good news on the horizon that may ease the challenge of providing perpetual access to transferred titles, at least in the United Kingdom. According to the author, new language added to the latest version of the TRANSFER Code of Practice – a standard created by the United Kingdom Serials Group – may assist in ensuring new publishers honour the perpetual access clauses of former publishers.

Following the survey and the analysis of the results, the author was left feeling that the provision of perpetual access is not a hopeless endeavour. Furthermore, she's optimistic that with greater awareness of the issues, better record-keeping practices, standard contractual language, and better policies on transferred titles, progress can be achieved in the provision of perpetual access.

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

Susan Barker,
Co-Chair, CALL/ACBD Committee to Promote Research
Email: susan.barker@utoronto.ca

Elizabeth Bruton
Co-Chair, CALL/ACBD Committee to Promote Research
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For more information.

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

Edited by Sooin Kim

Calgary Law Library Group (CLLG)

The CLLG Annual General Meeting was held June 24, 2014. New executive and committee members were nominated and approved and will be formally introduced to the membership at the Fall Business Meeting.

Elda Figueira was presented with the Shelagh Mikulak Library Leadership Award. Elda is the fourth recipient of this award.

Murray Mikulak presented Christine Pinkney with the inaugural Shelagh Mikulak Scholarship for Library Sciences (awarded in October 2014).

SUBMITTED BY REBECCA CLEAVER
CLLG Secretary

Toronto Association of Law Libraries (TALL)

The TALL AGM took place at the University of Toronto Faculty Club on June 12, and the TALL executive for 2015/16 is: President – Eileen Lewis (Ontario Legislative Library), Vice President – Eve Leung (McMillan LLP), Treasurer – Laura Chuang (Goodmans LLP), Membership Liaison – Victoria Baranow (Norton Rose), Secretary – Leanne Grilli (Blakes LLP), Past President – John Bolan (Bora Laskin Library). Laura Knapp (OSC) continues as TALL's administrative coordinator..

SUBMITTED BY JOHN BOLAN,
Instructional and Reference Librarian
Bora Laskin Law Library

Edmonton Law Libraries Association (ELLA)

ELLA held its 13th annual HeadStart program on June 18, 2015. Forty law students and librarians had a full day of intensive legal orientation to legal research. Ana San Miguel, Julie Olson, Jane Symons, Carrie Jackson, Jane Cavanaugh, and Josette McEachern planned a fantastic event. Thanks to all of the ELLA volunteers who make this event a success.

The ELLA AGM saw a changing of the Guard. Welcome to the 2015-2017 Executive: Chair Megan Siu (Emery Jamieson LLP), Secretary Treasurer Jane Symons (Field Law), Member-at-Large Ana San Miguel, and Webmaster Shauna Mireau.

SUBMITTED BY SHAUNA MIREAU
Edmonton Law Libraries Association :

Ontario Courthouse Libraries Association (OCLA)

Many changes have taken place in the system during the last few months. On July 16, 2015, Mary Jane Kearns-Padgett left the Hamilton Law Association. Librarians Kirsten Clement and Nira Persaud joined the Association in May and June respectively. Long time OCLA member, Nancy Frivalt retired from the Toronto Lawyers Association in June. Lindsay Parsons has been hired on by the Toronto Lawyers Association as the Reference & Outreach Librarian. Past President of OCLA, Anne Bowers of the Northumberland County Law Association announced her official retirement on

August 14, 2015. Ciara Ward, who has worked professionally as a reference archivist and research librarian has taken over the helm at the Association. OCLA wishes Anne all the best on this new chapter of her life!

Since 2013, Shabira Tamachi of the Oxford Law Association has been our webmaster, and has done an outstanding job creating and managing the Ontario Courthouse Libraries Association website <http://oclanet.org/>. As Shabira was looking to hand over the reins, Jennie Clarke of Durham Region Law Association has graciously volunteered to take over as the new website administrator.

OCLA was delighted to learn that former LibraryCo Board Chair and Director, E. Susan Elliott was appointed to the Federal Court. The Honourable E. Susan Elliott has been long-time advocate for the County & District law libraries and her leadership, past and present has strengthened the system. We wish her much success in her recent appointment.

November 11 – 13, 2013 marks the first ever parallel County & District Law Presidents Association Plenary, and the LibraryCo Conference for Ontario Law Associations' Libraries (COLAL). More news of this significant conference will be forthcoming.

SUBMITTED BY CHRISTIANE WYSKIEL,
Brant Law Association

Vancouver Association of Law Libraries (VALL)

The VALL closed the 2014-2015 season with a seminar on the topic of mentor/mentee relationships in the law libraries. The speakers were Debbie Millward of Lawson Lundell and Shannon Cheng, a MLIS student at UBC. With a focus on the what, why, and who of being a mentor/mentee, this seminar covered what newer members looking for advice might ask, how experienced members could give back to the profession and ideas for mid-career members contemplating

a job change.

At this seminar the Executive for 2015/16 was announced : President – Debbie Millward; Past president – Larisa Titova; Vice president – Sarah Richmond; Treasurer – Angela Ho; Membership – Heather Headly and Shannon McLeod; Programs – Brenda Alm, Emily Klomps-Spanjers, Laura Eno; VALL Review – Taryn Gunter, Alexandria Everitt; Webmaster – Joni Sherman.

SUBMITTED BY LARISA TITOVA,
Manager of Research and Information Services
Blake, Cassels & Graydon LLP

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

Lors de l'Assemblée générale en juin 2015, des changements sont survenus dans la composition du Comité exécutif. Le poste de vice-présidente est maintenant assumé par Josée Viel (Stikeman Elliott) et le poste de trésorière par Isabelle Lizotte (Centre d'accès à l'information juridique). Sophie Lecoq (Chambre des notaires du Québec) occupe désormais le poste de présidente et Maryvon Côté celui de président sortant (McGill University).

Deux conférences sont déjà planifiées cet automne. Le 13 octobre 2015, une présentation de l'outil Lexbox, qui permet d'organiser et de faire le suivi de recherches juridiques, sera réalisé par Pierre-Paul Lemyre de Lexum au cabinet Lapointe Rosenstein Marchand Melançon, SENCRL. Également, le 10 novembre 2015, une conférence sur le Nouveau Code de procédure civile sera offerte par Hélène Maillette à la Chambre des notaires du Québec et permettra d'être mieux outillés sur les changements législatifs qui surviendront en janvier 2016.

SUBMITTED BY SOPHIE LECOQ
MALL President / Présidente de l'ABDM

Deadlines / Dates de tombée

Issue	Articles	Advertisement Reservation / Réserve de publicité	Publication Date / Date de publication
no. 1	November 1/1 novembre	November 15/15 novembre	February 1/1 février
no. 2	February 1/1 février	February 15/15 février	May 1/1 mai
no. 3	May 1/1 mai	May 15/15 mai	August 1/1 août
no. 4	August 1/1 août	August 15/15 août	November 1/1 novembre

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III News from Further Afield / Nouvelles de l'étranger

Notes from the UK

London Calling!

By Jackie Fishleigh*

Hi Folks!

I hope you are having, or by the time you are reading this, have had a good summer.

We experienced a rare heatwave of over 30 degrees in London, which brought out the sort of clothing in the office that is normally worn only on exotic holidays! In June, the BIALL conference made a return to Brighton where, during our visit, the seafront was like the Mediterranean at times.

Aftermath of UK election

The fallout from our dull but also dramatic election result continues.

Lib Dems

Sadly Charles Kennedy, leader of the Liberal Democrats from 1999 to 2006 and MP from 1983 to 2015, most recently for the Ross, Skye and Lochaber constituency, was found dead at his constituency home in Fort William. The Lib Dems were routed in a backlash over the way the coalition with the Tories made them depart from core liberal values. He lost his seat in the tidal wave of support for the Scottish National Party. Kennedy was a popular figure, who had spoken out passionately against the Iraq war. He finally lost his terrible battle with alcoholism which had already cost him the

leadership of his party.

Nick Clegg, former Deputy Prime Minister and leader of the Liberal Democrats was replaced by the largely unknown Tim Farron who now has only a handful of MPs in his party when they were previously a group of 50.

Labour – the law of unintended consequences and the one that got away...

The Labour leadership contest is currently mired in controversy. Four candidates are in the race: Yvette Cooper, Liz Kendall, Andy Burnham and Jeremy Corbyn. The last, who holds strongly left wing views, is leading in the polls against all expectations.

His fellow MPs put him up purely to ensure that there were a range of views represented by the candidates from all sections of the party. Large numbers have now joined Labour just so they can vote for him in the leadership contest. At the time of writing, the debate rages as to whether this is fair or whether it should be stopped. Corbyn has himself now asked people not to join just to vote for him!

If he is elected in 2 weeks' time, then this is a surprising move for the party given that Ed Milliband, their previous leader, was mocked for his crypto-communist views. These gained no traction with the general public at the polls. Personally I think Labour should have stuck with the woman who always stands in for them as leader after election defeats while they pick another loser, or so it seems. Her name is Harriet Harman and she is a woman (yes!), highly respected, hugely

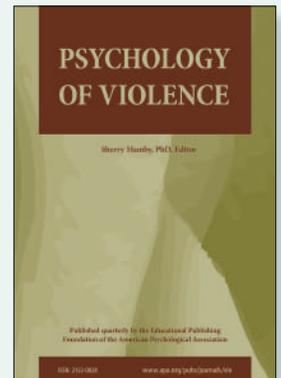
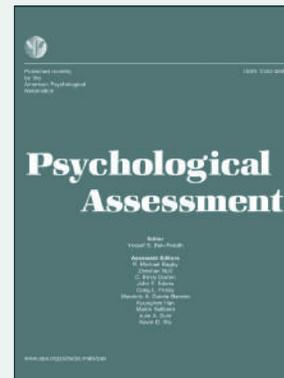
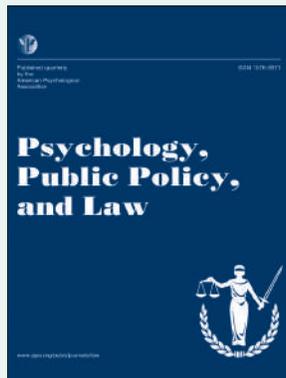


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experienced, well known to the voting public and a socialist through and through, although not extreme.

SNP

Meanwhile the former leader of the Scottish Nationalists, Alex Salmond, who is now an MP in Westminster, is saying that there will be another referendum on Scottish independence in the not so far off future depending on what the new party leader and First Minister of Scotland, Nicola Sturgeon, decides.

This contrasts with his stance before the referendum when he described it as a “once in a generation” event.

Terrorist Attack in Tunisia – 26 June 2015

This was the worst terrorist attack on Britons since the 7/7 bombings in London a decade ago. Thirty people were killed by a lone gunman while relaxing on a beach in the tourist resort of Sousse. Newly re-elected David Cameron has promised a “full spectrum response” whatever that means. I dread to think... The Guardian newspaper pointed out that “military options are severely limited and there is still no clear overall plan in place for defeating Islamic State.”¹ Maybe just fighting talk then...

Islamic State (IS)

This has become a pressing and very disturbing issue.

Alarming high numbers of British Muslims, including teenagers and on occasion entire families, have been leaving the UK to get involved with the activities of so called IS. The attraction of becoming cannon fodder for IS, or a jihadi bride to a gun toting extremist husband are hard to see, and the government is trying to get the message across to youngsters that there is nothing remotely clever, romantic, or rational about wanting to become involved. Indeed, even those who return are likely to have problems re-integrating as they will have blotted their copybooks so badly it could ruin their lives.

Those who do go may have had problems integrating into UK life, while at the same time they may not have felt part of the Muslim community here. If they are welcomed online with open arms and gradually radicalised they may fall prey to IS. Radicalisation is really a form of mind-poisoning and it would be good if it could be recognised and designated as such. Once a young person’s mind is poisoned, the person is, effectively, lost to society’s norms of behaviour, and even previously quiet and respectful youths can be capable of the most hideous violent atrocities.

Teachers in schools here have now been asked to report any signs of extremist views among pupils.

Parents have also been asked to monitor their children and can even get their passports confiscated if there are reasonable suspicions that they are planning to head for Syria.

While normally such interventions would seem draconian, they are the result of a desperate desire to get a grip on the situation before it spirals out of control.

Immigration out of control at the French border

Meanwhile while some are keen to leave the UK, others are truly desperate to come here. Over 2,000 migrants tried to get into the Eurotunnel site (Channel tunnel) yesterday.

Crowd funding for Justice

This is a new way of funding cases in the UK. According to the website there are 4 steps:

1. Submit your case
2. Share it with your community (Engage with people who are passionate about the issue)
3. Collect funds (Backers contribute to help you meet your target)
4. Have your day in court (Let your backers know via the site how your case is progressing).

The first case to be funded this way is *Torres v BP and others*. This is a human rights case between an oil engineer, Gilberto Torres, and various British multinational oil and gas companies. Torres, who is a Colombian trade unionist leader, claims oil firms BP and Ocesa funded paramilitaries who abducted and planned to murder him.

So not just a dispute over a car parking ticket then!

It will be interesting to see if this catches on.

Human Rights

Our new government has now decided not to scrap the *Human Rights Act* in its first session of parliament after all. Withdrawing from the *European Convention on Human Rights*, as threatened in a Tory policy paper last autumn, is also off the agenda.

Meanwhile a proposed British *Bill of Rights* has been indefinitely delayed but not shelved. However, a lengthy and detailed consultation is likely according to our new justice secretary, Michael Gove, who is best known for driving teachers up the wall when he was the education secretary! Will he do the same to lawyers? He says he wants to find out where the objections lie and allay people’s fears, and seems to have pencilled in a great deal of consultation time to do just that. The Conservatives stated aim is to “reverse the mission creep that has meant human rights law being used

¹ “UK’s ‘Full Spectrum’ response to Tunisia attack looks like business as usual” *The Guardian*, June 29, 2015 <<http://www.theguardian.com/uk-news/2015/jun/29/uk-full-spectrum-response-tunisia-attack-isis>>

for more and more purposes and often with little regard for the rights of wider society.”²

However the UK government seems to be getting its way in the EU courts by more subtle means according to an opinion piece by legal commentator, Joshua Rozenberg in the *Law Society Gazette*³. He says that the Strasbourg Court seems increasingly reluctant to rule against the UK on anything that can be brought within a state’s “margin of appreciation.” He predicts that the successor to Paul Mahoney, the only British judge at Strasbourg, will be a Tory. Finally where Section 2 of the *Human Rights Act 1998* states that our judges “must take into account” judgments of the Strasbourg court, he thinks this will be amended to “may” before long, allowing UK judges more leeway.

Drugs in Sport

This summer of sport has been somewhat tarnished by unproven innuendo and allegations of drug-taking against two top British sportsmen, double Olympic champion athlete Mo Farrah and world beating cyclist Chris Froome. A BBC Panorama documentary has claimed that Farrah’s trainer, Alberto Salazar has broken the rules on anti-doping, while Froome was abused by spectators during his second Tour de France win. One even threw urine in his face.

Oh Lord

After the high profile MPs expenses scandal in 2009, the Speaker of the House of Commons is now having to justify his own mind-boggling expenses. Over at the Lords, head of standards Lord Sewel has just resigned after admitting to snorting cocaine with prostitutes. There is even footage of him doing it. Yes, you read that right. You really couldn’t make that one up...

In the words of Porky Pig, – “That’s all folks!”

Notes from the Steel City

By Pete Smith**

The new Conservative government has set out its plans in the Queen’s Speech, and subsequent announcements...

Human Rights

The Queen’s Speech announced that a reform plan for the *Human Rights Act* within the early days of the new government had been shelved. A plan for a *British Bill of Rights* would still be part of the government’s plans, and,

over a number of speeches, ministers have talked up a Bill of Rights—an example being the Prime Minister’s speech on Magna Carta, where the Charter was held out as the basis for rights and (by implication) part of a history leading to a British *Bill of Rights*.

The new Lord Chancellor, Michael Gove, is committed to the repeal of the *HRA* and the creation of a British *Bill of Rights*. However, there have been clear indications from devolved governments in Wales and Scotland that they would not agree to any repeal of the *Act*. It seems that the government had not thought through the degree to which the *Act* is embedded in the devolution settlements. There has also been opposition to repeal – and potential withdrawal from the European Court of Human Rights – from within the Tory Party, notably from former Attorney General Dominic Grieve.

So, the issue has been put on the back burner for a while as other work within the Ministry of Justice is dealt with, and the thornier aspects of the question are debated.

European Union

The issue of human rights links with the question of EU membership, in that (i) membership of the EU is contingent on membership of the Council of Europe and hence the ECHR and (ii) both are issues over which the Tory party faces potential internal conflict.

The government will hold an ‘in / out’ referendum on EU membership, probably in 2017. The Prime Minister supports staying in a reformed EU – reformed along lines congenial to the Prime Minister naturally – but leads a party with a substantial anti-EU component both in parliament and in the country. The debates leading up to the referendum will test the Tory party, as much as it will the relationship between the UK and Europe.

JACKIE “English Votes for English Laws”

This move relates to wider questions around Scottish devolution which followed from the independence referendum. Whilst that campaign led to a No vote, a number of concessions were offered by the Yes campaign, which have found their expression in the *Scotland Bill* introduced in the Queen’s Speech.

The increased powers offered to the Scottish Government, coupled with the large number of Scottish National Party at Westminster, has led to calls for changes in how Parliament deals with “English only” issues.

The recent attempt to change the law on fox hunting illustrates some of the issues. The government had promised a repeal of the hunting legislation, and moved to do so, but the SNP

² *Conservative Party Manifesto, 2015*, p. 73. See <<http://s3-eu-west-1.amazonaws.com/manifesto2015>> (accessed 24 October 2015)

³ “Breaking with Convention” Joshua Rozenberg, *Law Society Gazette*, 1 June 2015 <<http://www.lawgazette.co.uk/analysis/comment-and-opinion/breaking-with-convention/5049081.article>> (accessed 24 October 2015)

indicated they would vote against it rather than abstain. Along with some “rebel” Tory votes and the opposition of Labour this meant the legislation would be unlikely to pass, and so the plans were shelved.

The introduction of “English Votes for English Laws” would avoid such a scenario. Any legislation affecting only England would be voted on only by English MPs – the fox hunting ban repeal is likely to be reintroduced should “EVEL” be passed. With a majority of only 12, that is not a foregone conclusion, although it is hard to see 12 or more Tory MPs rebelling on this issue.

Ministry of Justice – Legal Aid , Courts, and Lawyers

Along with human rights, the Lord Chancellor has a number of tricky issues to deal with.

The ongoing issue of legal aid is perhaps the biggest problem. Already heavily cut, The new round of cuts introduced by the Chancellor means that legal aid will again lose out. Both the Bar and solicitors have come out against the cuts, and launched another strike. Already the effects are being felt in courts and police stations, but it is difficult to see what Gove can do. It is unlikely he can get the cuts reduced, much less reversed, and savings elsewhere are unlikely to be enough.

Some savings for the Ministry have been identified in the use of the courts' estate. It has been suggested that many courts could be closed, and alternative locations used for hearings, such as town halls or hotels. There has also been renewed interest in online dispute resolution, with online courts holding hearings over a system such as Skype.

Gove has taken a more conciliatory approach to the legal profession — at least to the Bar — than did his predecessor Chris Grayling, and it will be interesting to see what he does in the longer term. Those who remember his time at Education have noted that he started there with positive and constructive approaches to teachers, only to end with a hostile relationship and a near total lack of trust in him and his department.

Counter-extremism

The Prime Minister made a speech in which he outlined a counter-extremism strategy and gave details of a planned counter extremism bill to be introduced later this year.

The strategy focuses on Islamist radicalisation — not, the PM was at pains to stress, Islam itself. The strategy would aim to identify and tackle the causes of radicalisation; the bill will introduce powers to enable this. It will also extend the reporting requirements already in place in schools. They will be expected to monitor students and report any 'at risk' of radicalisation — Islamist, of course, although in theory one

could argue any form of radicalisation could be reported.

The proposed powers in the bill and the scope of the strategy represent a challenge to human rights, particularly privacy, and it will be interesting to see how the counter-extremism work meshes with the debates on human rights reform.

Data Retention and Investigatory Powers Act 2014

In more positive news for human rights supporters, a judicial review brought by MPs Tom Watson and David Davis was successful. The Act, which allowed for the retention of data, was found to be in breach of EU law. The Act has been 'disapplied', this to take effect in 2016 which will give the government time to come up with a data retention regime which is compliant with EU law.

Education and training of lawyers

Back in March the Solicitors Regulation Authority issued its 'Competence Statement'⁴, which outlines what can be expected of a solicitor from 'day one' of independent practice. This covers what solicitors should know and be able to do and also lays out ethical expectations.

As part of its Future Bar Training program⁵ the Bar Standards Board has launched a consultation on education and training for barristers. This will review the academic, vocational, and professional stages as part of the development of a 'Professional Statement.'

Law schools will be watching these developments with interest. Law schools may want to incorporate elements of the Competence / Professional statements into their degrees alongside the Benchmark requirements set by the Quality Assurance Agency⁶. The changes to the vocational stage of education will have an effect on those law schools that provide them, especially if such changes mean that the courses as offered no longer run. They attract a lot of students and thus a lot of money.

And of course as this was the subject of my thesis, I'll be keeping an eye on it too!

The end... or at least an end

This is my last column. I have very much enjoyed working on it, and would like to thank CALL / ACBD for the opportunity to write for the *Review*. Good luck in all your endeavours, personal and professional, and thank you for reading.

PETE

⁴ <http://www.sra.org.uk/competence/>

⁵ <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/>

⁶ <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf>

Letter from Australia August 2015

By Margaret Hutchison***

Greetings from Australia,

The ongoing saga of security and telecommunications legislation continues. In my last letter, I noted that new legislation required telecommunication companies to store the data from calls for several years. In June, the Attorney-General and the Communications Minister jointly released a draft Explanatory Memorandum and Regulatory Impact Statement for public comment before the introduction of the *Telecommunications and Other Legislation Amendment Bill 2015* later in the year.

According to the overview on the Attorney-General's Department website:

[t]he draft Telecommunications and Other Legislation Amendment Bill 2015 provides for a more effective regulatory framework for managing national security risks associated with unauthorised access and interference with telecommunications networks.

The Bill formalises and enhances existing information sharing and relationships between government and telecommunications carriers, carriage service providers and carriage service intermediaries (C/CSPs) to ensure greater consistency, transparency and accountability for managing national security risks across all parts of the telecommunications sector.

- Building on the existing security obligations on C/CSPs in the *Telecommunications Act 1997*, the Bill will oblige all C/CSPs to take steps to protect their networks from unauthorised access and interference
- require C/CSPs to notify security agencies of key changes to networks and management systems that could affect their ability to protect their networks
- provide the Secretary of the Attorney-General's Department with powers to request information from C/CSPs, and issue directions to C/CSPs, enforceable by a civil penalty regime.

In helping to manage national security risks to telecommunications infrastructure, the framework will strengthen the safeguards for metadata stored in accordance with the government's data retention legislation.

This *Telecommunications Act*, which was released last month by Attorney-General George Brandis and Communications Minister Malcolm Turnbull, proposes to establish the secretary of the Attorney-General's department as a new type of regulator with powers to gather commercial-in-confidence information from the nation's top telcos, including Optus, Telstra and Vodafone, to pinpoint security weaknesses in their fixed-line and mobile networks.

The draft amendments will also grant new powers to the Attorney-General's department allowing it to direct service providers to alter or abandon procurements for telecommunications equipment if such deals are found to pose national security risks. Such rules could see companies deemed a security threat by the Australian government, such as Chinese telecommunications equipment maker Huawei, prohibited from supplying any equipment to telecom networks and IT systems. Under the previous government, Huawei was prevented from tendering to provide equipment to the National Broadband Network rollout amid concerns the company had close links to the Chinese government. Huawei has strongly denied such links. Huawei is, by the way, the principal sponsor of the Canberra Raiders rugby league team, our local team.

A year has passed since I mentioned the controversial appointment of the Chief Justice of Queensland, Tim Carmody. In March 2015, Supreme Court Justice Alan Wilson used his retirement speech to say the Carmody appointment had plunged the court into crisis, with judges of all levels of seniority considering quitting. He also accused the Chief Justice of calling his colleagues snakes and scum, and says he improperly meddled with protocols of appointing judges to the Court of Disputed Returns after the cliff-hanger election.

In response, the Chief Justice wrote an open letter to the Bar Association of Queensland saying he wouldn't be bullied into resigning. At the same time, the new government announced the development of a transparent process for the appointment of judges.

In April, lawyers handling a high profile appeal by a child murderer argued that the Chief Justice should be disqualified from hearing the case because he met with a well-known child protection campaigner after the hearing and before the decision was handed down. Several weeks later, Chief Justice Carmody announced that he would withdraw from the panel presiding over the *Cowan* appeal but called bias claims an absurd sideshow.

In May, an email exchange surfaced revealing Court of Appeal President Margaret McMurdo refused to work with the Chief Justice Carmody in any court as a result of the handling of the perceived bias. The emails, tendered in evidence in a motion to disqualify the Chief Justice from sitting on the appeal, also revealed that Chief Justice Carmody had not read the other appeal justices' draft judgments on the appeal despite them being circulated in February. A week later, the Chief Justice went on a month's sick leave, citing a back problem but still insisting he had every intention of finishing his term.

In late May, the Chief Justice said his position has become untenable and revealed he had offered to quit, on "just terms" and the government acted to reform the courts. The government was put in a difficult position as it could not be seen to offer him money as that would be an enticement. After negotiations, the Chief Justice resigned but will retain his office and standing as a Judge of the Supreme Court.

He will serve as a supplementary judicial member of the Queensland Civil and Administrative Tribunal. When the Presidency of that body becomes vacant, the Attorney-General will give favourable consideration to the judge's appointment to that position.

At this time, the position of Chief Justice is still vacant. The new appointee will still be appointed under the old process as the Queensland government has not yet established its protocol for appointing judges.

This appointment has been a more extreme case of politicians trying to influence judicial appointments. While I was researching this, I found how judges are appointed in Canada which is much more open than any here in Australia. Here, only in the Federal Court, Family Court and Federal Circuit Court, are positions advertised but for all other courts, both state and federal, positions are filled through the "secret system" of consultation.

These photos are of the snow in Hobart today. While it snows about once a year in Hobart, it is rare that snow reaches the beaches. Also a Tasmanian Devil looks most unhappy about the snow.



That's all till next time,

MARGARET

The U.S. Legal Landscape: News From Across the Border

By Julienne Grant****

When I was asked to take over this column from my colleague Anne Abramson, I was daunted, but pleased to have the opportunity to write for a Canadian audience. Besides having a bit of Canadian blood (a paternal great-grandmother of mine was from New Brunswick), I generally advocate and recognize the value of professional cross-border information exchanges.

When I initially accepted this assignment, I wasn't exactly sure where I was going to go with the column's content. Anne's column was entitled "U.S. Developments in Law Libraries," but I decided that CALL members' interests likely extend beyond the walls of law libraries to law schools, firms, U.S. law itself, and other legal-related miscellany. Thus, the column's new title, "The U.S. Legal Landscape: News From Across the Border," hopefully reflects a broader scope of coverage. The column will indeed cover developments in U.S. law libraries, but it will also delve into other areas that I think may be of interest to my Canadian counterparts.

AALL Annual Meeting & Conference

The American Association of Law Libraries 2015 Annual Meeting & Conference was held in Philadelphia from July 18-21 (yes, it was like a steam bath). The conference's theme was "The Power of Connection," and there were 1450 registered attendees, including 39 Canadians.

AALL tried a new format this year that included "must-have" programs that focused on topics identified by AALL members as being essential to their professional development. Programs were additionally tagged with content Track codes, such as those for Teaching, Library Management, and Information Technology. Personally, I didn't see much substantive difference between the regular programs and the "must-have" programs, and I never did rely on the Track codes. No matter, however, because the breadth of program coverage was large, and there were plenty of opportunities to absorb valuable information. As usual, I particularly enjoyed the smaller "Special Interest Section" meetings where librarians with similar jobs and responsibilities met to share ideas and experiences.

The Exhibit Hall was represented largely by the "Big Three" (LexisNexis, Thomson Reuters, and Wolters Kluwer), but other vendors, publishers, and organizations were also present, including Bloomberg BNA, bepress, LLMC Digital, Fastcase, Casemaker, and Justis. Attendees were invited to learn about new platforms and publications while being tempted with various souvenir freebies and treats. Browsing through the Exhibit Hall was mindboggling, and I couldn't help but think about the forthcoming challenge of teaching some of the new platforms to my students.

The “bells and whistles” of the Exhibit Hall were in stark contrast to the most interesting program I attended this year, which was a presentation by Atarino Helieisar, the 2015 Schaffer Grant Winner. The Schaffer Grant, which is sponsored by AALL’s Foreign, Comparative and International Law Special Interest Section (FCIL-SIS), provides a foreign librarian with financial assistance to attend the AALL annual meeting. Atarino is the Chief Law Librarian at the Supreme Court of the Federated States of Micronesia (FSM), and he offered a fascinating talk on what it’s like to provide legal information services and outreach to a nation consisting of 607 islands. After learning about the financial and geographic challenges that Atarino faces on a daily basis, I couldn’t help but feel humbled.

Perhaps the highlight of my time in Philadelphia, however, was a visit to the Barnes Foundation. For those who are unaware, the Foundation owns one of the finest collections of Post-Impressionist and early Modern paintings in the world; the collection itself is valued in the billions of dollars. The storied history of the collection is too complex to detail here, but suffice it to say that it has involved much litigation. There are numerous books available on the Foundation, its founder (Dr. Albert C. Barnes), and the collection itself, as well as a fascinating documentary, *The Art of the Steal* (2009), which chronicles the struggle for control of the collection.

Trends in Academic and Firm Libraries

I can’t speak for all academic law librarians, but I think my observations are on target in terms of what’s happening around the country. The recent decline in J.D. enrollments at U.S. law schools has been well publicized, and that trend has greatly affected law school libraries. Certainly, library budgets are being cut, and that has obviously had an impact on the amount of funds available for acquisitions and staff salaries. Academic law librarians are also being asked to take on additional and diverse responsibilities in the wake of dwindling financial resources. Specifically, as online graduate law programs proliferate (to cover the lost income from J.D. enrollments), academic law librarians are handling a growing number of online reference queries to service these new student populations. Academic law librarians are also increasingly being asked to create and manage digital scholarship repositories. As such, many librarians are scrambling to learn new platforms and collect, manage, and digitize faculty scholarship. Further, as the pressure on law schools increases to offer more practical skills-type training, academic law librarians who teach are having to adapt legal research course curricula to reflect this new demand.

Since I am not a firm librarian, I asked one of my local colleagues who is, to share her thoughts on trends in that type of library. Firm libraries, she told me, are being pushed

hard these days to be more efficient, due to the importance of the “bottom line.” She also explained that the physical spaces of firm libraries are being compressed to save money, as print collections are reduced and moved to offsite locations and basements, and e-Books are coming into their own. In terms of attorneys’ research tools, she noted that Westlaw and Lexis are no longer enough, as the value of analytics proliferates. In sum, she indicated that the role of firm libraries is evolving and expanding to include additional functions; the word “library” has already been replaced in some instances with new department labels, such as “Knowledge Services” and “Knowledge Solutions.” For a good read on the increasing importance of firm librarians in business development, my colleague recommended a recent article in *Law360*, “How Librarians Can Drum Up Business For Your Firm” (Lisa Ryan, July 27, 2015).

Uniform Bar Exam

There has been more buzz recently here in the U.S. about the Uniform Bar Exam (UBE). The UBE, which is coordinated by the National Conference of Bar Examiners (NCBE), is a uniform exam that is designed to test all law graduates on the knowledge they should possess prior to practicing law. The aim is to provide a standard test that can be administered in any state, with a score that can be transferred to any UBE jurisdiction. States can add state-specific material to the UBE, if desired. As of now, 16 states have adopted the UBE, with New York being the most recent. (New York’s first UBE will be administered next July.) Other states that have adopted the UBE include Alaska, Washington, Minnesota, and Arizona. According to a recent article in the *Chicago Daily Law Bulletin*, the IBAB (Illinois Board of Admissions to the Bar) has formed a committee to examine the possibility of adopting the national test, and several Illinois law school deans are in favor of adopting the UBE here.⁷ *The Law Bulletin* article also reported that Vermont and Iowa are considering the UBE.⁸

U.S. Law

A *Duke Law Journal* article published this past March reports on the results of an empirical study of the timing of “big case” U.S. Supreme Court decisions.⁹ Specifically, the study concluded that “big case” decisions tend to cluster at the end of the term (June) and offered possible reasons for this phenomenon.¹⁰ This conclusion certainly was validated with the announcement on June 26 of the *Obergefell v. Hodges* decision (576 U.S. ____ (2015)), which made gay marriage legal in every U.S. state. That case, of course, made international headlines (“*Il Matrimonio Gay è Legale in Tutti gli USA*,” “*El Tribunal Supremo de EE.UU. Legaliza el Matrimonio Gay*,” etc.). The plaintiff, Jim Obergefell,

⁷ Jack Silverstein, “Getting in Uniform,” *Chi. Daily L. Bull.*, July 10, 2015, at 3.

⁸ *Ibid.* at 20.

⁹ Lee Epstein, William M. Landes, & Richard A. Posner, “The Best for Last: The Timing of U.S. Supreme Court Decisions.” 64 *Duke L. J.* 991 (2015), <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3799&context=dj>>.

¹⁰ *Ibid.* at 1021-22.

¹¹ Brooks Barnes, “Fox is Planning to Make Movie about Same-Sex Marriage Ruling,” *N.Y. Times*, July 7, 2015, <<http://www.nytimes.com/2015/07/08/business/media/fox-is-planning-to-make-movie-about-same-sex-marriage-ruling.html>>.

reportedly has already signed a book deal, and Fox is apparently planning a movie about the case.¹¹

U.S. Supreme Court decisions, as well as blockbuster criminal and civil trials, are covered widely in the media here. Television legal analysts are abundant, and some are even network celebrities in their own right. I'm more partial, however, to the syndicated radio program "Looking at the Law,"TM which has been written and hosted by Harvard law graduate Neil Chayet for over 35 years. His witty one-minute broadcasts highlight compelling and truly offbeat case opinions from around the country (although not necessarily current). Recent broadcasts have included "It's Easy to Hate and Difficult to Love," (July 23, 2015), "I Love Lucille," (June 29, 2015), and "Game of Check-Hers," (June 18, 2015). I was particularly enamored with "A Fish Tale" (July 4, 2015), which profiled an older Massachusetts opinion (*Knox v. Massachusetts Soc. For Prevention of Cruelty to Animals*, 12 Mass. App.Ct. 407 (1981)), where the court cited an 1887 case and Black's Law Dictionary before concluding that a goldfish is indeed an animal and could not be awarded as a prize. "Looking at the Law"TM podcasts are available at <http://www.lookingatthelaw.com/>.

At the Opera & Other Legal Miscellany

This isn't exactly serious legal news here in the U.S., but there is now an opera based on the unlikely friendship and well-known sparring of two of our most famous Supreme Court Justices. "Scalia/Ginsburg" had its world premiere at the Castleton Festival (Virginia) in mid-July. Composed by University of Maryland law graduate Derrick Wang, and based on his own libretto, the opera has received mixed reviews, although Justice Ginsburg has given it a thumbs up.¹² Derrick Wang's website features video and audio clips from the opera, which are worth checking out.¹³ According to the website, the opera "is a valentine to law and opera, where the law's leading players go toe-to-toe and trill-to-trill in a (gentle) parody of operatic proportions. Opinions will

be offered. Dissents will be delivered. And justice will be sung."¹⁴ Not exactly Verdi, but still compelling.

Also falling under the category of "legal miscellany" is the July 14 release of the newly discovered Harper Lee book, *Go Set a Watchman*. The novel, which was published with much fanfare, and became an instant best seller in the U.S., is set some 20 years after Lee's famous first novel, *To Kill a Mockingbird*. Critics have generally panned it, and I read the book myself and found it to be extremely disappointing as a work of literature. Also, to the dismay of many fans of Atticus Finch (the revered attorney in *Mockingbird*), Finch is portrayed in this novel as a racist, and his reputation as a role model for U.S. attorneys is now forever blemished. For a more in-depth analysis of *Go Set a Watchman*, see Harvard law professor Randall Kennedy's review in the *New York Times Sunday Book Review*.¹⁵

Another new book release that merits mention (although admittedly not as interesting as the above) is the 20th edition of *The Bluebook*. *The Bluebook*, of course, is the most widely used legal style guide in the U.S. Although most law students and practitioners cringe at its sight, it is an essential tool for anyone working in the legal field here. Differences between the 19th and 20th editions are not worth describing here, but law librarian Janelle Beitz (William Mitchell College of Law) has compiled a manageable list of these differences on Google Drive.¹⁶

Conclusion

That wraps up my first column, and I hope I have managed to cover a bit of the ever-changing, and sometimes entertaining, U.S. legal landscape in the above paragraphs. Thank you for allowing me the opportunity to share my views and observations, and I look forward to checking in again in a few months. In the meantime, if any readers would like to comment on the above, or make suggestions for additional content, please feel free to contact me at jgrant6@luc.edu.

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

** Pete Smith, Information Adviser, Development and Society Faculty Support Team, Sheffield Hallam University.

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

****Julienne Grant is 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.

¹² See <http://www.derrickwang.com/scalia-ginsburg/>.

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ Randall Kennedy, "Harper Lee's 'Go Set a Watchman,'" N.Y. Times Sunday Book Review, July 14, 2015, <http://www.nytimes.com/2015/07/14/books/review/harper-lees-go-set-a-watchman.html?ref=review>.

¹⁶ See <https://drive.google.com/file/d/0B2M3mwEalmj-cXhFUkk5UDRBN00/view?pli=1>.



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