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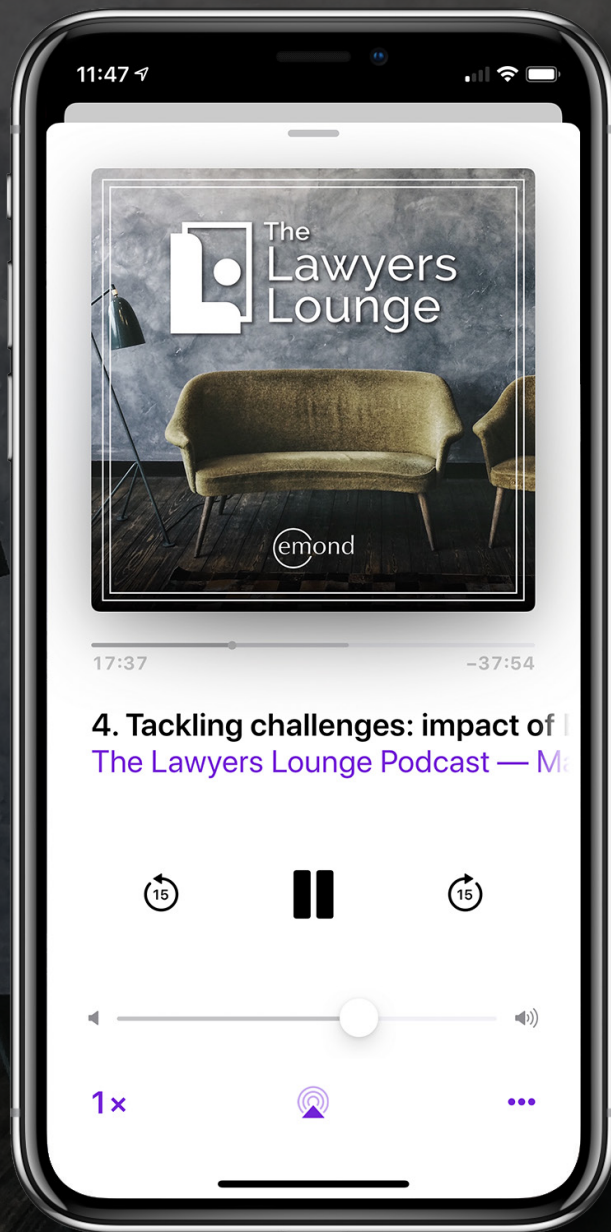
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III From the Editor / De la rédactrice

I'm writing this from my living room, as a heat wave renders my third-floor office uninhabitable. Yes, scholars reading this in the future, most of us are still working from home due to the COVID-19 pandemic. I never fathomed it would last this long, and now that masks have inexplicably become a political statement, I can't fathom when it will end.

Those of us in academia are facing a fall, and possibly winter, term online. I don't envy our faculty members who are scrambling to prepare for a virtual year. And I have no idea how moots will work, but since many courts have heard cases via Zoom, it might not be an issue.

We've all had experience answering research questions via email, but many of us are doing reference interviews with video chat for the first time. I did a few last month, and I found that it wasn't that much different. I was able to have a friendly chat, explain resources, and share my screen as if they were in the room with me, not two provinces over. Some of you have even taught sessions virtually with Teams or Zoom. I haven't had to do that yet, but I imagine fall will bring the opportunity. This pandemic has brought a lot of things to light, for better or for worse, and it has definitely showcased how fast information professionals can adapt without missing too many beats.

Speaking of adapting, hats off to the conference organizers for putting together the Virtual Conference so quickly! I think this year's conference was my favourite yet. I attended most of the sessions, and some of the highlights for me include "Top Ten Tips for Taming Time" by Cyndi Murphy—I've already implemented some of her tips into my work life—and Joshua Sealy-Harrington's "Putting Speech and Equality in Conversation, Not Opposition." But my definite favourite was "Putting Facts First" by Daniel Dale, CNN's Donald Trump

fact checker. I don't know how he manages to keep up. I hope he has several assistants and takes lots of mental health breaks!

During the Virtual Conference, I presented our two [article awards](#). Amy Kaufman won the CLLR Feature Article Award for "Building a Monument in the Mind: Comparing Early Modern and Contemporary Legal Reading through Sir John Dodderidge's *The English Lawyer* and Glanville Williams's *Learning the Law*." Our Student Article Award went to recent iSchool grad Lynie Awywen for her article "What's Race Got to Do with It? Law Librarians, Race, and the Reference Desk." Lynie is planning to use her award winnings to start a fundraiser to purchase books by Black authors from Black-owned bookstores to donate to various mentoring programs centred on the empowerment of Black youth. I'm thrilled that we could help with such a worthwhile initiative. Both articles are from [CLLR 44:3](#), so give them a read if you haven't already.

This issue's feature is "Additions in Acquisitions: Collection Development in Law Libraries" by another recent iSchool grad, Christine Emery. She's tackling the topic of collections development in law libraries and all the fun that goes along with choosing between digital and print resources and stretching shrinking budgets. It's a timely topic, sadly, as the pandemic continues to take its toll on not only our friends and neighbours, but also the economy. I don't need my tarot cards to predict that our acquisitions budgets are going to take (another) hit.

Finally, this issue marks Julianne E. Grant's last update as our "American correspondent." Julianne has been keeping us up to date for five years now—and what a five years it has been! Thanks for your dedication, Julianne. We'll miss you! Luckily, next issue brings us a new correspondent,

Sarah Reis, Foreign and International Law Librarian at Northwestern's Pritzker Legal Research Center. We hope she'll have some positive news for us going forward—we could use it!

Stay safe,

EDITOR
NIKKI TANNER

J'écris ces lignes depuis mon salon puisque la vague de chaleur qui déferle rend mon bureau au troisième étage de la maison inhabitable. Pour les universitaires qui liront ce numéro dans le futur, nous sommes encore nombreux à faire du télétravail en raison de la pandémie de COVID-19. Je n'aurais jamais pensé que ça durerait aussi longtemps, mais comme les masques sont devenus inexplicablement une déclaration politique, je ne sais pas quand tout cela se terminera.

Pour ceux et celles qui travaillent dans le milieu universitaire comme moi, nous devons composer avec un trimestre d'automne en ligne et peut-être d'hiver. Je n'envie pas les membres du corps professoral qui doivent faire des pieds et des mains pour se préparer à une année virtuelle. Et je n'ai aucune idée comment fonctionneront les tribunaux-écoles. Étant donné que de nombreux tribunaux ont pris des mesures pour entendre des dossiers par visioconférence, il est possible que cela ne pose aucun problème.

Nous avons tous déjà répondu à des questions de recherche par courriel, mais beaucoup d'entre nous ont dû faire des entrevues de référence par vidéoclavardage pour la première fois. J'en ai fait quelques-unes le mois dernier, et j'ai constaté que cela n'était guère différent. J'ai pu avoir une conversation amicale, expliquer les ressources et partager mon écran comme si les personnes étaient dans la pièce avec moi plutôt qu'à deux provinces de chez moi. Certains membres ont même donné des formations virtuelles sur Teams ou Zoom. Je n'ai pas encore eu à le faire, mais j' imagine que j'aurai l'occasion à l'automne. Cette pandémie a mis en lumière beaucoup de choses – pour le meilleur ou pour le pire – et a clairement démontré à quel point les professionnels de l'information peuvent s'adapter rapidement sans trop perdre de temps.

En parlant d'adaptation, je lève mon chapeau aux organisateurs du congrès annuel pour avoir organisé si rapidement la version virtuelle! Je crois que cet événement est mon préféré jusqu'à maintenant. J'ai assisté à la plupart des séances, et celles qui m'ont particulièrement interpellée sont *Top Ten Tips for Taming Time* de Cyndi Murphy (j'ai d'ailleurs déjà mis en pratique quelques-uns de ses conseils dans ma vie professionnelle) et *Putting Speech and Equality*

in Conversation, Not Opposition de Joshua Sealy-Harrington. Toutefois, ma séance préférée est incontestablement *Putting Facts First* de Daniel Dale, le vérificateur de faits de Donald Trump sur CNN. J'ignore comment il arrive à suivre tous ces faits, mais j'espère qu'il a plusieurs assistants et qu'il prend beaucoup de pauses pour sa santé mentale.

Lors de notre congrès virtuel, j'ai remis nos [deux prix pour les meilleurs articles](#). Amy Kaufman a remporté le Prix du meilleur article de fond pour son texte *Building a Monument in the Mind: Comparing Early Modern and Contemporary Legal Reading through Sir John Dodderidge's The English Lawyer and Glanville Williams's Learning the Law*. Le Prix du meilleur article étudiant a été décerné à Lynie Awywen, récemment diplômée de l'iSchool, pour son article intitulé *What's Race Got to Do with It? Law Librarians, Race, and the Reference Desk*. Lynie a l'intention d'utiliser la bourse obtenue avec son prix pour lancer une collecte de fonds qui servira à acheter des livres d'auteurs noirs dans des librairies appartenant à des Noirs afin de les donner à divers programmes de mentorat centrés sur l'autonomisation des jeunes Noirs. Je suis ravie que nous puissions contribuer à une initiative aussi intéressante. Les deux articles sont publiés dans la [RCBD 44:3](#). Je vous invite à les lire si vous ne l'avez pas déjà fait!

L'article de fond du présent numéro s'intitule *Additions in Acquisitions: Collection Development in Law Libraries* de Christine Emery, une autre jeune diplômée de l'iSchool. Elle y aborde le sujet du développement des collections dans les bibliothèques de droit ainsi que toutes les tâches divertissantes pour choisir entre les ressources numériques ou imprimées et pour maximiser les budgets qui ne cessent de diminuer. C'est un sujet d'actualité, malheureusement, puisque la pandémie continue de faire des ravages non seulement chez nos amis et voisins, mais aussi dans l'économie. Je n'ai pas besoin de mes cartes de tarot pour prédire que nos budgets d'acquisition subiront un (autre) coup dur.

Enfin, ce numéro présente le dernier article de Julianne E. Grant, notre correspondante aux États-Unis. Julianne nous a tenu au courant de l'actualité de l'autre côté de la frontière au cours des cinq dernières années bien remplies. Merci pour ton dévouement Julianne, tu vas nous manquer! Heureusement, notre revue accueillera une nouvelle correspondante dans le prochain numéro. Sarah Reis est bibliothécaire spécialisée en droit international et affaires étrangères au Pritzker Legal Research Center de Northwestern. Nous espérons qu'elle aura quelques nouvelles positives à nous donner, car nous en aurons besoin!

Soyez prudents!

RÉDACTRICE EN CHEF
NIKKI TANNER



III President's Message / Le mot de la présidente

Friends, I am writing this in June 2020. I think it is safe to describe our world so far this year as having two phases: *pre-COVID-19* and *during COVID-19*.

Under “normal” circumstances, or pre-COVID-19, I would be describing my travel to the BIALL conference and CALL/ACBD’s liaison activities with our sister association in the U.K. and Ireland. I would also be anticipating travel to one of my favourite U.S. cities, New Orleans, and what I hoped to share with our AALL friends.

During COVID-19, the only change is that our sister associations, like ours, pivoted to virtual conferences. The BIALL Conference was held June 11 and 12 with 1.5 hours of programming each day. Though I would much rather have travelled, as I find that personally enriching, I was delighted to log on at 5 a.m. Alberta time to take in the learning opportunities offered by BIALL. Much like CALL/ACBD, BIALL chose to provide their virtual programming free of charge. When speaking with Karen Brown, BIALL’s president for 2020–21, she noted that they had excellent attendance and noticed colleagues from Canada, the U.S., and many participants from Europe, Africa, Australia, and New Zealand. I look forward to joining colleagues from around the world in July at the AALL virtual conference.

Pre-COVID-19, we would have gathered in Hamilton and enjoyed excellent programming at our CALL/ACBD Conference. In early February, when looking ahead to the conference, I was already beginning to fret over which breakout session to attend in the various conference time slots. I was wondering how to manage a schedule of business meetings where several were in concurrent time slots. I was remembering how this scheduling challenge was the same *every. single. year*.

During COVID-19, the CALL/ACBD Virtual Conference Series allowed me to attend every single educational session. It also meant that I was able to observe all the vendor demonstrations and each of the sessions offered by our key sponsors, LexisNexis and Thomson Reuters. Although I will confess to some Zoomxhaustion, as there were executive board meetings, smaller CALL/ACBD team meetings, work meetings, and personal activities interspersed with the conference, I was able to take in *every. single. event*.

Not all of our registrants chose to participate in all of the events. Well over 400 people registered for sessions within the virtual conference series, and over half of registrants were not members of our association. We hope that our educational outreach will encourage legal information specialists to join CALL/ACBD. Members of our association will have access to recordings of the sessions.

In addition to the Virtual Conference Series, we were able to hold our two largest business activities online. These usually occur during our in-person conference and are only available to those who can travel to the conference location. Our Members Open Forum solicited some excellent feedback that the board is excited to work on. The Annual General Meeting was well attended and flowed smoothly with motions, seconders, and members able to fully participate, including casting votes on the business of the meeting.

During COVID-19, we were able to accelerate the potential for a CALL/ACBD member to participate in the activities of our association when there is no possibility of attending in person. It is like suddenly being gifted with a vehicle that can take you places in less time with minimal cost. The opportunities that this changed world presents us with are quite remarkable.

As a process improvement manager, my role involved encouraging people to accept required changes. During COVID-19, we have magically moved past acceptance of change to simply *adapting* to change. This is a significant moment in history, and a significant time of opportunity for CALL/ACBD.

One year ago, I became the president of CALL/ACBD. Our fine editor of this journal confirmed with me that I had a message to write almost immediately. Pre-COVID-19, [I wrote this](#) about my goal for law librarians to take over the world:

I guess I should correctly state my goal as aiming to see law librarians recognized for the contributions we make to the legal and legal information landscape in Canada. Our contributions prove our flexibility and our ability to react with speed to change.

During COVID-19, the contributions of legal information specialists have proved our flexibility and our ability to react with speed to change. Well done, all!



**PRESIDENT
SHAUNNA MIREAU**

Bonjour! J'écris ce mot en juin 2020. Je crois qu'on peut décrire notre monde comme comptant deux phases jusqu'à présent cette année : avant la COVID-19 et *pendant* la COVID-19.

Dans des circonstances « normales », ou avant la COVID-19, je vous décrirais ma participation au congrès de la BIALL et les activités de liaison de l'ACBD/CALL avec notre association sœur au Royaume-Uni et en Irlande. J'aurais hâte de me rendre à la Nouvelle-Orléans, l'une de mes villes préférées aux États-Unis, pour assister au congrès de l'AAL et échanger avec nos amis.

Pendant la COVID-19, la seule nouveauté est que nos associations sœurs se sont tournées vers la tenue d'un congrès virtuel, tout comme notre association. Le congrès de la BIALL s'est tenu les 11 et 12 juin en offrant un programme d'une heure et demie par jour. J'aurais de loin préféré me rendre sur place, car je trouve ces rencontres personnellement enrichissantes, mais j'étais contente de me connecter à 5 h du matin (heure de l'Alberta), afin de profiter des possibilités d'apprentissage offertes par la BIALL. Tout comme nous l'avons fait, la BIALL a choisi d'offrir gratuitement sa programmation virtuelle. En parlant avec Karen Brown, la présidente de la BIALL en 2020-2021, celle-ci a indiqué que le taux de participation avait été excellent et qu'elle avait remarqué la participation de collègues du Canada et des États-Unis ainsi que de nombreux participants provenant

de l'Europe, de l'Afrique, de l'Australie et de la Nouvelle-Zélande. Je suis impatiente d'échanger avec des collègues des quatre coins du monde lors du congrès virtuel de l'AAL en juillet.

Avant la COVID-19, nous nous serions réunis à Hamilton et aurions profité d'une excellente programmation dans le cadre du congrès annuel de l'ACBD/CALL. Au début février, je commençais déjà à me demander quelle séance choisir parmi les différentes plages horaires. Je me demandais comment j'allais faire pour gérer mon horaire de réunions d'affaires qui ont lieu à la même heure. Je me suis souvenue que ce problème d'horaire se posait *tous les ans*.

Pendant la COVID-19, le congrès virtuel de l'ACBD/CALL m'a permis d'assister à toutes les séances de formation. J'ai également pu voir toutes les démonstrations des fournisseurs et chacune des séances offertes par nos principaux commanditaires, LexisNexis et Thomson Reuters. Même si je dois avouer une certaine « fatigue Zoom », car il y a eu des réunions du conseil d'administration, des plus petites réunions d'équipe de l'ACBD/CALL, des réunions de travail et des activités personnelles intercalées aux séances, j'ai pu assister à *toutes les activités*.

Les participants n'ont pas tous assisté à toutes les activités, mais plus de 400 personnes se sont inscrites à la série de conférences virtuelles. Puisque la moitié de ces participants n'étaient pas membres de notre association, nous espérons que nos activités éducatives encourageront les spécialistes de l'information juridique à adhérer à l'ACBD/CALL. Les membres de notre association auront accès aux enregistrements de toutes ces séances.

Outre cet événement virtuel tenu pendant la COVID-19, nous avons organisé nos deux plus grandes rencontres qui se tiennent habituellement en marge de notre congrès annuel et qui ne sont accessibles qu'aux membres pouvant se déplacer pour assister au congrès. Notre forum pour les membres a permis de recueillir d'excellentes suggestions, et les membres du conseil d'administration sont enthousiastes de travailler sur ces projets. De nombreux membres ont assisté à l'assemblée générale annuelle, qui s'est bien déroulée. Les membres ont participé pleinement à la présentation et l'appui de propositions, ainsi qu'aux mécanismes de vote sur les questions à l'ordre du jour.

Pendant la COVID-19, nous avons été en mesure d'accélérer la possibilité pour les membres de l'ACBD/CALL de participer aux activités de notre association lorsqu'il est impossible d'y assister en personne. C'est comme si nous nous dotions soudainement d'un véhicule qui peut nous emmener à des endroits en moins de temps et à un coût minime. Les occasions que ce monde transformé nous offre sont sans précédent.

En tant que gestionnaire de l'amélioration des processus, mon rôle consiste à encourager les gens à accepter les

changements nécessaires. Pendant la COVID-19, nous sommes passés comme par magie de l'acceptation du changement à la simple *adaptation* au changement. C'est un moment important dans l'histoire, et un contexte qui présente des occasions considérables pour l'ACBD/CALL.

Il y a un an, je devenais la présidente de l'ACBD/CALL. Très peu de temps après, notre excellente rédactrice en chef me rappelait que j'avais le mot de la présidente à rédiger. Avant la COVID-19, [j'avais écrit ceci](#) au sujet de mon objectif de voir les bibliothécaires de droit partir à la conquête du monde.

Je devrais plutôt énoncer correctement que mon objectif est de viser à ce que les bibliothécaires de droit soient reconnus pour les contributions que nous apportons au paysage juridique et à l'information juridique au Canada. Nos contributions démontrent notre flexibilité et notre capacité à réagir rapidement aux changements.

Pendant la COVID-19, les contributions des spécialistes de l'information juridique *ont* démontré notre flexibilité et notre capacité à réagir rapidement aux changements. Bravo pour l'excellent travail!

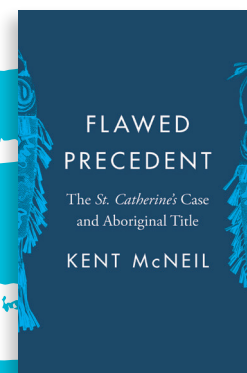
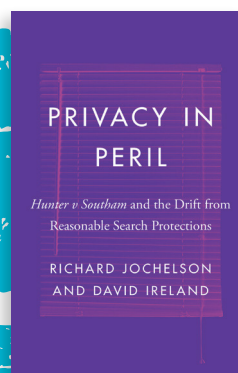
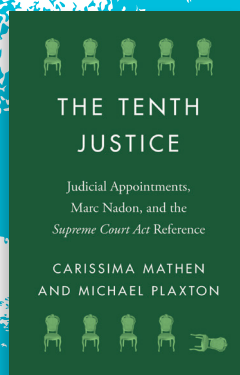
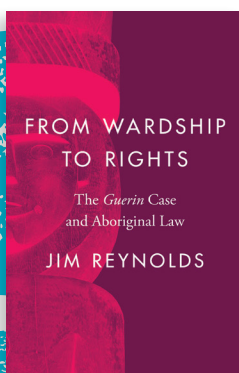


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III Additions in Acquisitions: Collection Development in Law Libraries

By Christine Emery¹

ABSTRACT

This article provides a broad overview of acquisitions work in law libraries and summarizes various factors that affect the quality of materials and sources. Acquisitions play a key part in how a law library can help its patrons, but recent technological developments are fundamentally changing how materials are chosen. In order for a law library to best serve its patrons, it is crucial that its librarians recognize several of the factors that contribute to a healthy and useful collection. The following analysis will explore some of these elements, such as a well-written collections policy, a close management of budget, and a detailed examination of demand-driven acquisition.

SOMMAIRE

Cet article donne un aperçu global du travail d'acquisition fait dans les bibliothèques juridiques et résume les différents facteurs qui affectent la qualité des documents et des sources. Les acquisitions jouent un rôle clé dans la façon dont une bibliothèque de droit peut aider ses usagers, mais les récents développements technologiques modifient fondamentalement la façon dont les documents sont choisis. Pour qu'une bibliothèque de droit puisse servir au mieux ses usagers, il est essentiel que ses bibliothécaires reconnaissent plusieurs des facteurs qui contribuent à une collection saine et utile. L'analyse suivante explorera certains de ces éléments, tels qu'une politique de collections bien écrite, une gestion étroite du budget et un examen détaillé de l'acquisition en fonction de la demande.

Introduction

Librarians, regardless of the type of library they work in, should know the needs of the community they serve. A library's principal purpose is to meet the needs of its patrons, present and future. Librarians must therefore cultivate a collection that meets those needs through the acquisition of authoritative and relevant materials in appropriate formats. This is not an easy task, especially for law libraries, as in recent years the delineation between digital and print resources has narrowed as a result of the increasing availability and use of databases and electronic journals and texts. A thoughtfully acquired collection means that law library staff are able to provide quality service to their patrons. Collection development, and in particular acquisitions, plays a major part in determining whether the library can be useful to patrons by ensuring that relevant materials are available and accessible. Acquisitions work serves the core of the law library's mission: to meet the needs of patrons. However, if the acquisitions department is overlooked at a law library, the quality of its collection can suffer as a result. This article demonstrates how vital thoughtful acquisitions and collection development work is to the life of a law library. Despite cutbacks in recent years, acquisitions work is one of the most vital processes of the library. The collection and materials available to users are the heart of any law library, and if this is ignored, the health of the whole library will suffer in consequence.

¹ Christine Emery is a recent graduate from the Faculty of Information at the iSchool at the University of Toronto. The author would like to thank Susan Barker and John Bolan for their feedback.

Acquisitions Defined

Acquisitions can be defined as the process of selecting, ordering, contracting for and receiving new resources.² Essentially, the purpose of acquisitions or, as it has come to be known, collection management is to supervise the life of an object from the time it arrives until the moment it departs the library's collection. In addition, the American Library Association (ALA) notes that "policies on re-evaluation (weeding), replacing and repairing materials, and gift materials may also be included" as part of acquisitions.³ Though, now, this definition of acquisitions encompasses many areas of library work, it has not always been the case. Collection development responsibilities grew as collections increased in quantity. This is especially applicable since the development of digital objects. Casserly notes that with the advent of the digital era, libraries were often forced to combine and manage print and digital resources, vastly increasing the scope of collection development work.⁴ In this new environment, how does a law librarian know what to acquire, especially with the ever-increasing amount of materials available? Many law libraries follow the guidelines set out by the American Bar Association (ABA), which provides instructions that academic law libraries must follow in order to be accredited by the organization.⁵ These materials are divided into two categories: primary and secondary. Secondary sources such as citators, digests, legal encyclopedias, dictionaries, and volumes of legal textbooks and treatises are emphasized as essential resources. Over time, these guidelines have changed, and in 1995 the ABA released a revision with some major changes. In this revision, even though the exact materials required were no longer fixed, it was mandatory for each accredited library to have a written plan for the development of its own collection.⁶ Such mandates are essential because they help to ensure that every academic law library has materials that satisfy the specific needs of its users.

Despite the increasing use of digital materials, print items are still popular and frequently used in law libraries. Traditionally in law, print materials are the most common and are considered the most authoritative; as a result, significant amounts of money are spent in purchasing them. In a global survey of law library trends, Gee notes that the mean acquisition cost for print materials was over \$1 million in 2012, while the mean for electronic costs was about \$500,000.⁷ He further notes that the mean number of volumes in a law library was about 250,000 volumes, with academic law libraries having the highest number of materials when compared with courthouse and law firm libraries.⁸ These numbers counteract the commonly held opinion that electronic materials are where law libraries spend the most money. Further, these numbers

are simply acquisition costs, which do not include the funds needed for upkeep and preservation of the collection. Such costs are important factors in acquisitions work and should be kept in mind when budgeting for print materials.

In recent years, little acquisitions scholarship that focusses on print sources has been undertaken. Instead, much of the research centres on digital acquisitions, which suggests that law librarians and scholars are shifting focus to a future where electronic sources are the norm. Many of the issues in library acquisitions revolve around the rapid increase in the number of electronic items, which will be discussed below. Due in part to the pressures that the internet and electronic reference databases place on book collections (whether print or digital), it is more important than ever to identify new collection development strategies to pinpoint which titles will be used. It is safe to say that the use of digital materials to conduct electronic research is more than just a trend, and law libraries must adapt their policies to follow suit.

Policy

A key factor that determines what materials are brought into a law library is the collection development policy. Selwyn and Eldridge note that "a well-written collection development policy provides the guidance necessary to select those titles and formats best suited to the library's needs and limitations."⁹ An acquisitions policy can encompass many different facets, such as budget (whether anticipated or current), projected use patterns, title formats, and preservation needs. An essential part of the policy is the mission statement, which is simply a broad description of what the library does. A library's mission can be extensive, encompassing all library departments, or can be specifically tailored to collection development. This mission statement will often include the library's goals and will serve as the framework that librarians can use to develop the collection policy. Perhaps one of the biggest factors that goes into drafting the policy comes from patron needs and demographics. For instance, depending on whether the law library is at a courthouse, university, or law firm, needs can vary according to the education level of patrons, the availability of internet access at the library, or the number of library staff on hand to help users. It is not easy to develop a collection based on demographics; therefore, it is paramount that the library has a solid policy that can help guide librarians to make appropriate acquisition choices.

The purpose of policy guidelines is to establish a purchasing strategy for acquisitions that is consistent and uses the budget in the most effective way in the least amount of time. A

² Laurie Selwyn & Virginia Eldridge, *Public Law Librarianship: Objectives, Challenges, and Solutions* (Hershey, PA: Information Science Reference, 2012).

³ "Acquisitions Procedures" (last modified January 2018), online: American Library Association <www.ala.org/tools/challengesupport/selectionpolicytoolkit/acquisitions>.

⁴ Mary Casserly, "Developing a Concept of Collection for the Digital Age" (2002) 2:4 Libraries & Academy 577.

⁵ Mark P Bernstein & John Cannan, *Evolution and Change in American Legal Education: Implications for Academic Law Collections* (Hershey, PA: Information Science Reference, 2013).

⁶ *Ibid.*

⁷ David Gee, "A Survey of Major Law Libraries around the World" (2013) 41:2 Intl J Leg Info 108.

⁸ *Ibid.*

⁹ Selwyn & Eldridge, *supra* note 2 at 138.

collections policy is important, as the materials acquired will affect other departments of the library besides acquisitions. Milunovich argues that the collection development policy must be organized in a clear formula presenting the library's collection objectives.¹⁰ The development of this formula is important because an acquisitions policy will become the library's most potent weapon in its struggle to control expenditures. A clear collection development policy allows librarians to make accurate decisions using the library's funds and represents the library's goals in the future development of the collection.

Budget

Next to policy and mission statements, the budget is the leading contributing factor in acquisitions work. The planning and management of a budget for acquisitions can be a challenging and intimidating task. The ALA does provide sources to help overall with budgeting, but there is little tailored specifically to law libraries. Many resources that advertise themselves as helping librarians to develop and manage budgets seem to simply bemoan the lack of funding and provide little practical help. Economic constraints are one of the largest barriers in collection development work, and budget cuts affect every aspect of the law library. Budget cuts can have unsatisfactory outcomes for both librarians and patrons. They can lead to layoffs or limited hiring, and thus understaffing, which can lead to pressures and work overloading on the existing staff. In the case of law firms, recent layoffs in Canada due to the lasting consequences of the 2008 global recession have meant that only larger law firms have the luxury of employing a law librarian. For smaller firms, the practical aspects of acquisitions work have been deprioritized or outsourced, as there is no in-house staff to take this on.¹¹ Another change that Fitchett et al note is that the global recession has drastically changed how law librarians work, partly because there are fewer positions available, especially for new graduates.¹² As a consequence of budget decreases, more librarians engage in collections development decisions, in addition to their regular duties, than ever before.¹³

Unfortunately, while budgets have decreased, the cost of many legal materials has increased. Milunovich notes that one reason for these increases is simply because the publishers can get away with it.¹⁴ He notes that many law firm libraries have to compete with one another and can therefore afford to recover the expenses of materials through client billing. But this method does not work for academic law libraries. Instead, they must often make acquisition cuts

or evaluate which materials are absolutely necessary and discontinue titles that are not critical for the overall health of the collection. This is actually one of the few bright sides of shrinking budgets and cutbacks: by evaluating the collection, librarians become much more familiar with the materials they already have and can not only make better purchasing decisions but also better help researchers searching for specific information. Yet, it is incongruous that a library must use all of its collection development funding or lose the conditions of the funding for future titles, thereby putting its ability to grow its collections in the future at risk.

Digital

The previous decade has seen an increasing use and availability of digital materials. In law, there has been a tendency in the past to consider the cases that were reported in print as more authoritative. Unreported cases were seen to be of less value and were much harder to access in the print environment. However, in recent years, printed cases are falling out of favour, especially among law students, simply because of their format and the ease of locating both reported and unreported cases online. As such, digital materials and resources have become increasingly important to legal research, and it is not unexpected that these items can take up a substantial portion of a library's operating budget. In an analysis of the University of Virginia School of Law Library, Fitchett et al note that "the greatest amount paid by the law library is for access to electronic information."¹⁵ This is not surprising, considering how the use of digital materials has drastically increased over recent decades. It should be noted that just because a law library "acquires" an item, it does not mean that they own it. As Balleste et al note, acquiring a digital source refers to licensing a digital resource under a contract with specific conditions.¹⁶ The most common reason for cancelling a contract for a digital resource, including databases, are cost constraints.¹⁷ Another consideration with digital materials is material limits. Some databases do not allow users to download copies of articles, or they implement page limits, both of which represent a barrier to access.

Digital materials cannot be discussed without making note of legal databases. Within acquisitions, librarians must include these databases as part of the library's collection. Bernstein and Cannan write that "the impact of electronic databases for legal research is evident in the absence from library shelves of what were once the mainstays of print legal research."¹⁸ In his survey, Gee notes that "the three most popular databases were, in order, Westlaw, Lexis, and HeinOnline, and the

¹⁰ Kent Milunovich, "Issues in Law Library Acquisitions: An Analysis" (2000) 92:2 Law Libr J 203.

¹¹ Channarong Intahchomphoo, Margo Jeske & André Vellino, "Coping with Budget Cuts: How Canadian Libraries Compare with Other Countries" (2016) 41:3 Can L Libr Rev 17.

¹² Taylor Fitchett et al, "Law Library Budgets in Hard Times" (2011) 103 Law Libr J 91.

¹³ *Ibid.*

¹⁴ Milunovich, *supra* note 10.

¹⁵ Fitchett et al, *supra* note 12 at 106.

¹⁶ Roy Balleste, Lisa Smith-Butler & Sonia Luna-Lamas, *Law Librarianship in the Twenty-First Century*, 2nd ed (Lanham, MD: Scarecrow Press, 2014).

¹⁷ Gee, *supra* note 7.

¹⁸ Bernstein & Cannan, *supra* note 5 at 59.

mean number of databases for law libraries was 124.”¹⁹ Not surprisingly, academic libraries had the highest subscription rates, with a mean of 172 databases.²⁰ These numbers indicate that database subscriptions are incredibly important to the law library, which is also not surprising given the increasing volume of primary and secondary legal resources readily available online. This has caused a huge change in collections development procedures, as the expansion of these databases suddenly allowed a number of materials to become accessible electronically and did not require the librarian to source them separately. Although Bernstein and Cannan note that the development of Westlaw and Lexis did not immediately transform how legal research was done, in the decades that followed they caused huge alterations, such as the minimal intervention needed from a librarian.²¹

Despite the cost, digital sources can be lifesaving for some libraries, especially within the acquisitions department. Milunovich writes that smaller law libraries have found technological solutions to budget constraints using digital sources.²² Legal authorities, including case law and statutes, have become more widely available on the internet and are often free via government websites. This does not provide a solution to all budgeting problems; however, it does mean that the library can use budgeted funds on other items and resources. Furthermore, in the case of smaller libraries, especially those in firms, digital materials are often preferred, as they do not take up physical space in the library. Jarvis makes an interesting point in advocating for the library to increase electronic collections over print. He argues that law professors, and perhaps other users of the library, prefer electronic sources because these allow them to be independent users of the library who do not need a librarian’s help.²³ Furthermore, electronic materials often mean that patrons do not have to physically be in the library to access them, making them less place-bound, and thus encouraging patrons to use them at their convenience. While these might seem like positive things for the library user, they raise questions about the role of the law librarian in the future. If users do not need help accessing resources, and they do not even need to come to the library, librarians and other staff may be left in an incredibly precarious position.

Demand-Driven Acquisition

A big issue for libraries, whether public, law, or academic, is demand-driven acquisition (DDA), which has been revolutionary in the world of acquisitions, for better or worse.

Also known as patron-driven acquisition, DDA has been quickly gaining popularity in the past decade. Balleste et al define it as a “formal process that includes library patrons in the collection-development process.”²⁴ Instead of purchasing materials and subsequently adding them to the online catalogue, the library adds the items to the catalogue before purchasing them. When a patron searches for a book or material that the library does not have, the search will trigger an automatic purchase of the item.²⁵ This is thought to be more convenient for the user because it will always seem like the library has all the resources they search for. It is often thought that this system is used exclusively for eBooks, but this is not the case. Similar systems can also be used for journal articles and printed books. In recent years, many have advocated for DDA-based purchasing instead of using inter-library loans.²⁶ However, it is prudent for librarians to use guidelines like the ones discussed earlier to decide which materials will be acquired. Otherwise, the library might overrun its purchasing, or a patron might search for a book worth hundreds of dollars, triggering its purchase, even if it is drastically over budget. Furthermore, Van Dyk cites research showing that purchasing a title via DDA versus borrowing it is roughly double the cost, regardless of the price of the book.²⁷ Setting limits is also wise for certain kinds of materials, such as textbooks, as these might be requested often by students in academic libraries, but not offer new research to the library collection.

At first glance, DDA seems like a guaranteed solution for everyone. For librarians, it means less time spent on acquisitions work and more time for other tasks. For patrons, it means more convenience. However, there are a host of issues that can affect both legal libraries and the librarians who work there. One of the biggest arguments is the effect that DDA can have on the quality of the overall collection. Some librarians believe that collections grown via DDA will be poorly developed because they will consist of books that serve only the immediate research needs of the individuals who requested the material.²⁸ The use of DDA also requires librarians to be very diligent in ensuring the catalogue contains records only for available materials. Keeping a catalogue current is time consuming work; however, it is time well spent because the collection will be more accurate, and the librarians will be more familiar with the resources available.

While many find DDA problematic, some libraries prefer it because it increases collection use. For example, Balleste et al note that Purdue University and Buckell University

¹⁹ Gee, *supra* note 7 at 113.

²⁰ *Ibid.*

²¹ Bernstein & Cannan, *supra* note 5.

²² Milunovich, *supra* note 10.

²³ Robert M Jarvis, “What Law Professors Will Want from Law Librarians in the Twenty-first Century” (2004) 96 Law Libr J 503.

²⁴ Balleste et al, *supra* note 16 at 137.

²⁵ Janet Sinder, “The Effects of Demand-Driven Acquisitions on Law Library Collection Development” (2016) 108 Law Libr J 155.

²⁶ Gerrit Van Dyk, “Demand-Driven Acquisitions for Print Books: How Holds Can Help as Much as Interlibrary Loan” (2014) 11:4 J Access Services 298.

²⁷ *Ibid.*

²⁸ Janet Sinder, “The Effects of Demand-Driven Acquisitions on Law Library Collection Development” (2016) 108 Law Libr J 155.

²⁸ Gerrit Van Dyk, “Demand-Driven Acquisitions for Print Books: How Holds Can Help as Much as Interlibrary Loan” (2014) 11:4 J Access Services 298.

had higher circulation rates and use rates for DDA books compared to books acquired through more traditional means.²⁹ They found that 96 per cent of purchased titles were borrowed, versus 61 per cent of firm orders.³⁰ They also found that these titles were often more interdisciplinary and outside of the librarians' specialties, so the librarians were thankful that they did not have to research these titles themselves. Overall, the use of DDA has both positives and negatives for a law library. Ultimately, it falls to librarians to decide whether it will enhance or hinder their collection.

Weeding Items

Including weeding as part of acquisitions may seem counterintuitive. However, actively discarding certain materials is essential for the overall health of the library, and it leaves room for items that are more relevant for patrons. Weeding is a vital part of collection development and maintenance. The decision to weed can come from several factors, and two of the most common ones are financial and budget constraints. Conversely, just because a library has the space to keep all print resources does not mean that it should do so. Removing underused materials makes it easier for both patrons and librarians to find the materials that are useful and needed.³¹ Even digital materials are not immune from weeding, especially if they have high costs. The increasing use of electronic items also means that print materials are being weeded at a quicker rate than they would have been otherwise. The ability to search through documents and to note them up with databases like Westlaw have led to huge decreases in the use and publication of print citation tools. Some even argue that these features will lead to the extinction of print legal encyclopedias.³² In the same way that librarians take great care to select appropriate titles to add to a law library's collection, they must also re-evaluate the titles for currency, appearance, and applicability. Doing so will benefit the library as a whole.

Conclusion

Collection development and acquisitions are time consuming. These branches of library work have become increasingly complex as the number of publications and means to access them has grown. There are many more issues to consider involving acquisitions in law libraries that have not been included in this article. For instance, a major influencing force in library acquisitions is the changing role of legal education. This greatly affects what materials are brought into the library, but delving into the history and different theories of legal education are better left for another time. Nonetheless, most law libraries will no longer need all the stacks space they once had. The change in ABA requirements means there is a need to maintain as many materials in print as in the past. As more researchers work from their desktops or laptops, or even from their phones, a significant portion of materials they use can now be accessed outside the library. These changes are happening in all types of libraries, not only law libraries. Many of the resources that discuss acquisitions for law libraries list only notable or highly esteemed titles, with little practical advice for choosing materials. There is more work to be done in assessing how the changing role of acquisitions will affect the library and its collection in the future. However, this does not mean that the law library or the law librarian is an endangered species. Libraries, particularly law libraries, will continue to need specialists among their professional staff to assist patrons, whether it be faculty, lawyers, or the public in new and emerging areas of law and technology. Accessing law materials is easier than ever, but that does not mean that the ability to use these tools effectively is simpler.

²⁹ *Ibid.*

³⁰ Van Dyk, *supra* note 26.

³¹ Vicki L. Gregory, *Collection Development and Management for 21st Century Library Collections: An Introduction* (New York: Neal-Schuman, 2011).

³² Bernstein & Cannan, *supra* note 5.



III Reviews / Recensions

Edited by Kim Clarke and Elizabeth Bruton

***Commissions of Inquiry.* By Hon. Stephen Goudge & Heather MacIvor. Toronto: LexisNexis, 2019. xvi, 510 p. Includes appendices and index. ISBN 9780433503118 (softcover) \$120.00.**

This comprehensive work deals with all things related to the concept, characteristics, construction, conduct, and conclusion of commissions of inquiry. The authors are particularly well suited to this task. Stephen Goudge was the former Commissioner of the Public Inquiry into Pediatric Forensic Pathology, and, more recently (2014), chaired the Expert Panel on Future of Canadian Policing Models for the Canadian Council of Academies and Public Safety Canada. Heather MacIvor is a former political science professor. Together they have assembled an impressive, and exhaustive, amount of information dealing with this critical apparatus of the state.

Commissions of inquiry have a long tradition in Canada and other Commonwealth jurisdictions, serving as a mechanism for closely examining structural, systemic, and societal issues. Oddly enough, there is no official tally of public inquiries in Canada. One study estimates that 450 public inquiries were held under Part I of the *Inquiries Act* (as it is now) between 1868 and 2014, which amounts to about 10 per year. Public inquiries are undeniably a fixture in the firmament of government reform.

The work is divided into five parts: introduction to commissions of inquiry, the law of commissions of inquiry, getting to work,

participants and witnesses, and answering the questions set out in the terms of reference. Each part is replete with illustrative examples drawn from Canadian experience and other jurisdictions within the Westminster tradition.

The authors begin with the observation that commissions of inquiry fall into two broad categories: fact-finding and policy/advisory. This is a useful and necessary distinction. An excellent example of this dichotomy may be found in the efforts of Thomas Braidwood with respect to the death of Robert Dziekański at the Vancouver airport. One facet of Braidwood's work took the form of a *hearing* inquiry looking at the misadventures of the RCMP officers who interacted with Dziekański; the other facet was his *study* inquiry, which examined the lethality of conducted energy weapons manufactured by Axon Canada.

The legal aspects of Commissions of Inquiry hinge substantially on the various *Inquiries Acts* that exist in Canadian jurisdictions and are impacted by the *Charter* and the potential for judicial review of all findings and recommendations of any commission of inquiry. It is noted that British Columbia, Saskatchewan, Newfoundland and Labrador, as well as Ontario, have newer and more prescriptive *Inquiries Acts* that reflect the model act proposed by the 2004 Uniform Law Conference of Canada. This portion of the work is particularly valuable as it consolidates relevant legislative information and recapitulates much of the earlier research.

It is essential to take stock of the *sui generis* nature of commissions of inquiry. Each inquiry is in response to specific and particular precipitating events or concerns, and they typically include issues of significant public interest. Topics have ranged from wrongful convictions, Canada's blood supply system, the quality of drinking water, the non-medical use of drugs, the shooting death of a First Nations protestor, new reproductive technologies, political corruption, deployment of Canadian forces in Somalia, to the murder of nursing home patients.

Each inquiry must fashion its own unique and distinctive terms of reference. This publication offers clear guidance of how commissioners should tackle the daunting task of crafting appropriate terms of reference. The authors are somewhat critical of the Missing and Murdered Indigenous Women and Girls (MMIWG) Inquiry's mandate, which they found to be "exceptionally broad and phrased in vague aspirational terms" (p. 127). They suggest that, by breaking one of the cardinal rules of good practice, the MMIWG inquiry set itself up for confusion and delay.

The authors next delve into the characteristics of commissions of inquiry. All public inquiries should be effective, thorough, expeditious, in accordance with the principle of proportionality, and cost-effective. Of course, these are aspirational features in that virtually every public inquiry comes into being within a climate of controversy, conflict, and crisis. Commissions of inquiry have considerable autonomy with respect to process within the parameters of their terms of reference.

The selection of the commissioner is pivotal to the success of any public inquiry. Judges occupy a unique role in the ecosystem of inquiries, often being called upon to serve as commissioner. They are perceived to have political independence, experience with running hearings, an ability for the analysis of information, and legal experience. But while commissioners are often judges (serving or retired), commissions of inquiry are not judicial bodies. Rather, they are an agency of the executive branch of government. Accordingly, the findings of a commissioner amount to "expressions of opinion" and are subject to judicial review. Commissions of inquiry, to a great extent, feature inquisitorial, as opposed to adversarial, fact-finding approaches. Similarly, while the commissions cannot assign civil or criminal liability, they can effectively pinpoint improper or unprofessional behaviour and instances of bad management (p. 191).

Inquiry commissioners have made an indelible mark on Canadian policy and leveraged government innovation through their efforts; however, at times, it has been necessary to place a bridle on the work of commissioners. For example, the Federal Court determined that Commissioner Parker exceeded his jurisdiction when he applied his own definition of "conflict of interest" in the inquiry into federal Cabinet minister Sinclair Stevens's actions. Other judges have also been known to fall somewhat short of the Platonic ideal, including Justice Létourneau, who was thought to have

"disabling bias" toward Brigadier-General Beno during the Somalia Inquiry.

Goudge and MacIvor consider several matters that can affect the commissioner's ability to compel testimony and the production of documents, including considerations of national security. National security concerns were raised during the Maher Arar and Somalia inquiries. Goudge's own inquiry into pediatric forensic pathology had to overcome the stiff opposition of Charles Smith, whose incompetent work had triggered that inquiry, and the concerns raised by the College of Physicians and Surgeons of Ontario. These considerations can slow the proceedings and divert attention from the issues at hand.

Once a commission of inquiry has completed its work, there is no formal mechanism to ensure that its recommendations get implemented. In fact, the final report of the commissioner is the property of the executive level of government that created the commission of inquiry. A federal inquiry becomes "a confidence of the Queen's Privy Council for Canada" (p. 251) and the federal Cabinet has complete discretion over whether, or not, to publish the commissioner's report.

It is noteworthy that multi-member inquiry panels can become deadlocked, such as occurred with the Royal Commission on New Reproductive Technologies. When only three of the seven commissioners agreed to sign the final report, the commission appealed to the Clerk of the Privy Council for some form of intervention. The federal government chose not to interfere with the Commission's work.

Many of us have been gripped by revelations issuing from public inquiries. For example, there was the vivid moment when Mr. Justice Archie Campbell, on the 1996 Bernardo Investigation Review, pronounced that police services in Ontario functioned as though they were operating in different countries. His review and recommendations led inexorably to the introduction of major case management protocols, which now represent good (and standard) practice in Canadian policing.

The six appendices, ranging from Canadian *Inquiries Acts* (the actual text of the federal and Ontario statutes, and links to all others), sample terms of reference, selected rules of procedure and practice from five inquiries, to the "Salmon Principles," appropriately complement the thoroughness of the text. This publication is a true treasure for anyone seeking to begin their understanding of commissions of inquiry or those who wish to refine and refocus their efforts to inaugurate this most important tool in the arsenal of government innovation.

REVIEWED BY

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***The Conscientious Justice: How Supreme Court Justices' Personalities Influence the Law, the High Court, and the Constitution.* By Ryan C. Black, Ryan J. Owens, Justin Wedeking & Patrick C. Wohlfarth. New York: Cambridge University Press, 2019. 351 p. Includes bibliographic references and index. ISBN 978-1-107-16871-8 (hardback) \$126.95; ISBN 978-1-31671755-4 (ePub) \$120.00.**

There are over 1200 justices across Canada, and it is safe to say that there are over 1200 different personalities distributed amongst these justices. After working for more than five years with justices at the federal level, it is an understatement to say that I have been intrigued by the personalities I have had the pleasure of encountering during this time. And based on my own experience, the adjective that seems most appropriate to describe these personalities is “inscrutable.” So, I very much looked forward to reading *The Conscientious Justice*, hoping that it might provide some insight into the personalities of the judiciary.

In short, this book did not provide me with that insight. But that does not mean the book disappointed—rather, it has a more specific and academic purpose, which does not include getting into the mind of a justice. According to the authors, the book’s social science analysis aims “to improve existing theories and understanding of judicial behavior by incorporating personality” (p. 45). More specifically, they focus on one specific personality trait: being conscientiousness.

Definitions, of course, are important here. The authors mostly abandon any attempt to define personality and instead focus on the “Big Five” traits (i.e., conscientiousness, agreeableness, neuroticism, openness, extraversion), where a trait is a “tendency to think, feel, and behave in a relatively enduring and consistent fashion across time” (p. 37). It is worth including the authors’ definition of conscientiousness, in full, here:

Conscientiousness is a person’s tendency to act in an organized or thoughtful way. It captures whether a person is dutiful, deliberate, driven, persistent, self-assured, or hardworking. In surveys, people who score low on conscientiousness, in contrast, tend to be carefree, unstructured, self-doubting, and content. (p. 38)

The bulk of the book, then, consists of the authors trying to prove their main hypothesis: that conscientiousness influences justices. Over a series of chapters, the authors pose eight sub-hypotheses in their attempt to demonstrate how conscientiousness will affect a justice. They do so through an exploration of the key aspects of a U.S. Supreme Court Justice’s role: agenda setting, legal persuasion, responding to the U.S. Solicitor General, majority opinion assignments, opinion bargaining, opinion content, the treatment of precedent, responding to public opinion, and recusal.

The authors are very persuasive in demonstrating proof of their hypothesis. Given the social science nature of the book, it also provides a large amount of statistical data in order to validate their methodology and conclusions. Yet most of their conclusions are not especially controversial or even surprising. A more conscientious judge is less likely to be swayed by emotional reasoning. They are more likely to produce lengthier decisions and more likely to adhere to *stare decisis*. At the same time, conscientious justices can sometimes “muddle the law” and write less readable opinions.

The book is entertaining and, for the most part, very readable. It is interspersed with anecdotes and insight into the operations of the U.S. Supreme Court. This being said, the behaviours demonstrated and expected of Supreme Court Justices of the United States have only limited value when compared with the behaviours of justices in Canada, which limits the transferability of some of the book’s conclusions.

It is also fair to say that the book serves to raise more questions than provide answers. This is not a criticism. *The Conscientious Justice* stands on its own as a piece of social science research that serves to advance our understanding of the judiciary and how personality can, and will, influence its behaviour.

But the value of this book certainly goes beyond the U.S. Supreme Court and even the judiciary in general. Instead, it serves (intentionally or otherwise) as a starting point for a number of conversations that are applicable to many human resource scenarios across many professions. Can we rely on more sophisticated assessment tools to ensure a more effective hiring process? Is it appropriate or ethical to assess someone’s personality without their consent (the authors here rely on IBM Watson to evaluate the writings of justices and determine their level of conscientiousness)? To what extent is it desirable or necessary to have diversity within an organization or a profession? Or to insist on consistency?

The authors touch briefly on these questions when they point out that policy makers can influence the impact of the Supreme Court through appointing more conscientious justices (in order to maintain the status quo) or less conscientious justices (so as to alter foundational precedents). But just as the authors take no position on whether cognitively complex opinions are worse or better than less complex opinions, they have chosen not to weigh in on whether or not this is a desirable course of action.

**REVIEWED BY
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***Criminal Law and the Man Problem.* By Ngaire Naffine. Oxford: Hart, 2019. xiii, 205 p. Includes bibliographic references and index. ISBN 978-1-50991-801-0 (hardcover) £38.50; ISBN 978-1-50991-802-7 (ePub) £41.58; ISBN 978-1-50991-803-4 (ePDF) £41.58.**

Note: due to an error in the last issue, we're reprinting a corrected version of this review.

What is the “man” problem? Doesn’t the criminal law regulate human behaviour, regardless of gender? These questions keep the reader willing to engage Naffine’s text hanging in suspense. If you are like me (and likely you are), then you might be several chapters deep before the topic of this treatise comes into focus.

The topic is, of course, criminal law and its relation to gender. But beyond that, it is difficult to summarize the arguments.

The book opens with an account of a 1975 British case in which a man was found not guilty of raping his wife. In a similar situation today, there would be no question of the man’s guilt. So has the “man problem” been solved?

No, it has not.

Criminal law was made by men to regulate the behaviour of men. It also provided exceptions for men, granted them privileges, and allowed them access to women’s bodies. A crucial point to Naffine’s argument is that criminal law did not recognize men as men, but as autonomous “bounded” human beings, a category which, until very recently, excluded women.

The entrance of women into criminal law, both as legal professionals and more broadly as autonomous individuals capable of rational thought and criminal behaviour, has been characterized as a product of the changing status of women. What happened to the status of men? Nothing, because there are no “men” in criminal law.

Over the last several decades, men have indeed lost some privilege in cases of rape and murder, notably the defense of a right of unlimited access to one woman and the defense of an expectation of a faithful wife. So, two criminal defenses have been struck from the books, and women have entered the legal profession en masse—we are getting somewhere, right?

Yes, but also no.

Naffine’s topic, remember, is the criminal law, and the basic framework as such is still in place. Naffine argues, citing the historically great men of criminal law, that the aforementioned two defenses are not exceptional to the law, but are essentially central to it. Their elimination seals a dangerous fissure but ignores the seismic shift that initially exposed the fissure.

Who is the subject of criminal law? A bounded, rational individual person. For many centuries, this person was assumed to be a man (although never said to be a man). Who is it now? An abstracted human being. Criminal law has lost its subject, and in its place has an air-thin spectre, called “person.” Who is person? What are person’s qualities?

For the most part, “person” is still a man. Even after being stripped of his privilege, and after women have entered the category of the rational, bounded individual, the character of the abstract subject of criminal law is still, if you close your eyes and picture him, a man. This fact, as well as the seismic historical shift in the law, has been (for Naffine) glaringly undiscussed and unacknowledged. The criminal law has survived an earthquake—much has been destroyed—and the legal community refuses to look at it, pick through the wreckage, and assess the damage. What remains is a deeply flawed substructure having undergone superficial repairs.

The above is by no means an adequate summary of Naffine’s complex and compelling argument. It is my own best effort to grapple with a set of ideas that are for the most part new to me (even though I have absorbed a fair amount of feminist theory and a modest amount of criminal law over the years).

There is little to criticize in this excellent book, but I will say that it is quite repetitive. It might have been half its length and covered the same ground. But I can’t actually fault Naffine for repeating certain key ideas in new contexts. She expects to encounter cognitive dissonance in her exposure of the flaws in the historical institution of criminal law with its enormous modern-day influences. Thus, she is earnest in wishing to take her readers along with her and not leave us overwhelmed with dense legal-philosophical rhetoric.

And I would be remiss if I didn’t note an absence in this book, as it deals with gender issues on a philosophical level. The book is written in an age where gender is increasingly seen as a spectrum, with significant and increasing numbers of people declaring themselves gender non-binary or transgender. But Naffine never strays from the standpoint of binary gender. As this is a mostly historical study, perhaps excluding contemporary views of gender can be justified as out of scope. But to the extent that it challenges the legal establishment to rethink the (genderless) subject of criminal law, and bring “men” back into focus, she might have found occasion to include gender fluidity (even briefly) in the picture.

This ground-breaking and readable treatise belongs in every predominantly English law library in the world.

REVIEWED BY
KEN FOX

*Reference Librarian
Law Society of Saskatchewan Library*

***Designing Effective Legislation.* By Maria Mousmouti. Cheltenham, U.K.: Edward Elgar, 2019. x, 199 p. Includes references, case studies, bibliography, and index. ISBN 978-1-78811-822-4 (hardcover) \$107.00; ISBN 978-1-78811-823-1 (eBook) \$40.00.**

Have you ever pondered the legislative process, the players involved, or, indeed, thought about the development of a law or set of laws from beginning to end? If so, then Maria Mousmouti’s text, *Designing Effective Legislation*, is for you.

Mousmouti provides the reader with insight into the intricate

interconnectedness of each phase in creating law. She analyzes each step through the lens of effectiveness. The concept of *effectiveness* is not new, but it has traditionally only been associated with analyzing the outcome or result of the law. The author's thesis is that one must look at the entire process from beginning to end of the lawmaking exercise in order to have truly effective legislation.

Mousmouti argues that the concept of effectiveness must be at the core of this analysis during all stages of the legislative process. She provides a comprehensive analysis of how effective legislation can be achieved by looking through the lawmakers' lens at four key elements of every law: purpose, content, context, and results. Mousmouti submits that the key concept of effectiveness must be part of the analysis in each of these four elements in order to develop truly effective legislation.

The book includes a number of chapters that focus on the steps necessary to ensure that the process achieves effective legislation. These include looking at it from the lawmakers' points of view, reviewing the purpose of any piece of legislation, exploring the content and context of legislation, through to the implementation phase. Mousmouti explores with the reader different techniques that can be used for effective lawmaking, such as impact assessments. She also sets out a framework using the concept of effectiveness to help lawmakers achieve better results.

Throughout the book, the author tests the elements of effectiveness in theory and practice and analyzes this in part by reviewing several pieces of legislation and giving concrete examples of effectiveness at play, or where effectiveness can be used to enhance the process of lawmaking. While Mousmouti does not put forth a formula as to how to achieve effective legislation, she does argue that through the lens of effectiveness, the potential to proactively guide lawmaking from beginning to end will create better results overall, particularly for the citizens for whom the law was created.

Policy makers, academics, social scientists, and those interested in the process of legislative design would benefit from reading Mousmouti's text. There is an extensive bibliography at the end, and the book is well researched.

REVIEWED BY
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Lawyer
Legal Aid Ontario

Life and the Law in the Era of Data-Driven Agency.
Edited by Mireille Hildebrandt & Kieron O'Hara.
Cheltenham, U.K.: Edward Elgar, 2020. xiv, 280 p.
Includes bibliographic references and index. ISBN 978-1-78897-199-7 (hardcover) \$145.00; ISBN 978-1-78897-200-0 (eBook) \$40.00.

Life and the Law in the Era of Data-Driven Agency undertakes an in-depth discussion of life and the law in a big data world. It brings together research from co-editors and contributors hailing from law, computing, and philosophy.

Co-editor Hildebrandt is a research professor at Vrije Universiteit Brussels and a full professor at Radboud University Nijmegen. She researches and teaches in the fields of law, science, technology, social sciences, smart technologies, data protection, and the Rule of Law. O'Hara is an associate professor at the University of Southampton in computing science digital innovation and privacy focussing on the Web. They have collaborated with fifteen academics specializing in intellectual property, rights, the Rule of Law, data, computing science, and agency. One of the chapter authors teaches in Japan, two teach in the United States, and the remaining contributors instruct at E.U. academic institutions.

This text is the result of a European Research Council Advanced Grant, which provided the opportunity for several philosophers, lawyers, and computer technologists to have interdisciplinary discussions that formed the basis of *Life and the Law in the Era of Data-Driven Agency*.

The volume includes an introduction to life, law, big-data, and agency, and a cross discussion "between the editors." The chapters focus on data driven agency and knowledge; the emergent limbic media system; smart technologies and self; rethinking transparency and the Internet of Things; from digital to post-digital; digital technology and democracy; "Toma" and algorithmic enhancement of a sense of justice; conservative reaction to data-driven agency; artificial intelligence and fundamental rights; throttling machine learning; contrasting modes of personification; life, law, and machine agency; and a final chapter with the editors' response to the previous chapters.

Each chapter rolls out with an introduction to a topic before the concepts are broken down into sections. Most chapters have a conclusion, though the book as a whole provides no conclusion, only the aforementioned response to the content that has preceded. The title is focussed on an out-of-the-silo intellectual discussion of the intersecting issues with references to numerous online and print scholarly articles, books, and websites.

Big data and knowledge are analyzed in one of the early collaborator chapters. Readers are introduced to the idea of a master algorithm where all knowledge would flow forth from data. The author questions what type of knowledge would come from the data. Is data-driven agency a type of agency, and, if so, does its processing emanate from machine-collected computer and administrative operations or a broader universe of data? The terminology related to data-driven agency varies, and different disciplines use differing processes that are applied in myriad ways. Data can be collected based on a specific premise or without a premise. The writer continues on to discuss learning, computer learning, and how computer learning is measured. Natural sciences data comes with a hypothesis and principled judgments where it is proposed that big data is considered unbiased data; however, it may require more scrutiny and ethics in formulating conclusions.

This title is an in-depth, foundational text on agency, data, privacy, and the law. It is written with a focus on ideas,

philosophy, and ethics of data for the academic and more seasoned lawyer. The book mentions multiple acronyms, such as “legal protection by design” (LPbD) or “legal by design” (LBD), providing an educating read for the reviewer.

There are at least two methods of accessing the text or portions thereof. Edward Elgar Publishing provides for the purchase of both a hardcover and eBook version through their website. The volume includes a table of contents, a list of contributors, chapters, a response, notes, index, and a handful of figures. There are plentiful notes and references at the end of each chapter. The absence of references to case law and legislation makes this text more of a philosophical discussion than a standard legal text.

Life and the Law in the Era of Data-Driven Agency is one of the few resources on this topic and is most suitable for the academic or senior practitioner in this emerging and complex area of law; thus, it would be a valuable addition to anyone working in the area. While this book was a thought-provoking read, its analysis and discussion are dense reading for those without a background or significant interest in the areas of agency, computing science, data, ethics, and law. It provides some entertaining comments, even mentioning the psychodrama of the 2016 U.S. election. Academics, data scientists, and practiced lawyers will appreciate this edition, and it is a must-have for any practice dealing with such current issues.

REVIEWED BY
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***Loving Justice: Legal Emotions in Blackstone's England.* By Kathryn D. Temple. New York: New York University Press, 2019. 265 p. Includes notes, bibliography, and index. ISBN 9781479895274 (hardbound) \$65.00.**

In *Loving Justice*, author Kathryn D. Temple examines the writing of William Blackstone, including his *Commentaries on the Laws of England*, from a “humanities-oriented,” rather than a strictly legalistic, perspective. The purpose of this examination is to explore the idea that “our conceptions of justice ... are arrived at emotionally and esthetically, as well as rationally” (p. 1–2), an argument that can be considered as true today as it was in Blackstone’s England. Consider, as an example, the number of us, at this moment, who are feeling a great deal of moral outrage at the injustice we have seen highlighted by the law’s response to the recent tragic murder of George Floyd.

To set some context for this treatise, it is helpful to have an idea of who William Blackstone was. Blackstone (1723–1780) was a legal scholar and a jurist who was most noted for his authorship of the massively influential *Commentaries on the Laws of England*. But he was also a poet and a scholar and, apparently, quite socially awkward and a poor public speaker. In Chapter 3, “The Orators Dilemma: Public

Embarrassment and the Promise of the Book,” the author looks at law as performance, starting with contemporary accounts or critiques of Blackstone’s own disfluency and awkwardness when speaking in public. From there, she goes on to describe how in Blackstone’s England, trials were treated as popular entertainment, with an audience in the gallery and newspaper reports of trials much like theatre reviews. These reports provided often harsh critiques of the participants’ body language, oral ability, physical appearance, and behaviour. The author suggests that the movement to greater reliance on print as an authority (Blackstone’s *Commentaries*, for example) was a reaction to the emotional responses of shame and embarrassment caused by these critiques as a consequence of the “theatricalization of the juridical world” (p. 98), a reaction that led the way to the “victory of print over performance in the modern period” (p. 112).

While Blackstone failed as a speaker, he excelled as a legal scholar and writer. Blackstone’s major work, the *Commentaries on the Laws of England*, was an immediate success, selling out its first edition (published in four volumes between 1765–1770) and being reprinted more than 200 times since, most recently by Oxford University Press in 2016. The success of *Commentaries* is in its reflection of “Blackstone’s literary and rhetorical skill in reshaping the common law’s messy technicalities into a coherent and rational body of knowledge.”¹ Essentially, he systematized the common law, creating a tool to provide lawyers with what has been described as an “elegant, readable, easily transportable four-volume summary” (p. 1) of the common law. The *Commentaries* continue to have enormous influence on the law today and are often referred to by courts of the major common law jurisdictions. They were, in fact, cited recently by the Supreme Court of Canada in *Nevsun Resources Ltd v Araya*, 2020 SCC 5.

In addition to being a legal scholar, Blackstone was a poet. In *Loving Justice*, Dr. Temple frequently refers to and discusses Blackstone’s poem *The Lawyer’s Farewell to his Muse* (1774). In this poem, Blackstone “‘drops a last tear’ as he turns away from a delighted appreciation of literature and poetry to enter the law” (p. 7). In this text, the author views both the *Commentaries* and the *Farewell* equally as literary works. And through this text, we get the sense that Blackstone never left literature too far behind. Here, for example, is his poetic description of the common law as he saw it:

We inherit an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless. The inferior apartments, now converted into rooms of convenience, are cheerful and commodious, though their approaches are winding and difficult. (p. 114, citing Blackstone’s *Commentaries* III:268)

Loving Justice is a highly academic treatise and complicated

¹ Wilfrid Prest & Michael Widener, *250 Years of Blackstone's Commentaries: An Exhibition* (Buffalo, NY: William S Hein & Co, 2015), online: Yale Law School Legal Scholarship Repository <digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1009&context=amlaw#:~:text=Oxford%3A%20Clarendon%20Press%2C%201765%2D,was%20a%20self%2Dpublished%20venture>.

to describe. Each of the chapters focusses on a particular emotion or set of emotions. The author draws from Blackstone's own writing, as well as that of his contemporaries, literature generally, current popular culture, and academic theory to both enforce and illustrate each chapter's ideas. The text is heavily referenced, and the bibliography is extensive. The author pulls a wide variety of threads from these sources and weaves a dense narrative that makes it sometimes difficult to see where the threads all connect at first. This book takes close reading (and some perseverance), and as such will be appreciated by legal historians, social historians, and those involved in cultural studies.

REVIEWED BY
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***A Reconciliation without Recollection? An Investigation of the Foundations of Aboriginal Law in Canada.* By Joshua Ben David Nichols. Toronto: University of Toronto Press, 2020. xxx, 376 p. Includes bibliography and index. ISBN 978-1-4875-2187-5 (paper) \$49.95; ISBN 978-1-4875-0225-6 (cloth) \$125.00; ISBN 978-1-4875-1498-3 (ePub) \$49.95; ISBN 978-1-4875-1497-6 (PDF) \$49.95.**

A Reconciliation without Recollection? traces the origin and history of the relationship between the British Imperial and Canadian federal governments and Indigenous nations. In this text, Nichols describes the evolution of the concept of this relationship from that of (purportedly) equal nations dealing with mutual independence and respect to the open, unilateral assertion of Crown sovereignty that was intended "from the outset" (*R v Sparrow*, [1990] 1 SCR 1075 at para 49).

The author uses the historical record (including legislation, policy documents, letters, and commission reports) and the works of philosophers (Kant, J.S. Mills, Wittgenstein, and others) to question the legitimacy of the claim of Crown sovereignty, which stems from the racist legal fiction of *terra nullius*. He further examines how Canadian case law fails to question the basis of that claim.

According to Nichols, pursuing reconciliation without understanding the relationship between the parties is charting a course using a blank map. Recalling this history un-anchors reconciliation from the foundation of Crown sovereignty and opens up a "map of possibilities of the inherent right of self-government" (p. 294).

The book comprises five parts, each one resetting the research trail to pre-confederation and working its way forward to the topic under examination. It includes a bibliography and index and makes liberal use of footnotes.

Brief forewords by John Borrows and James Tully help situate the book and highlight its importance in proposing a path forward for the parties engaged in reconciliation grounded in the history of their relationship. The preface and introduction present key concepts and sources and detail the author's approach in his investigation.

Part 1 looks at the evolving interpretation of reconciliation in the case law and at Canadian courts' assumptions pertaining to Crown sovereignty. Part 2 considers conceptual foundations of the *Indian Act*. It explores the act's stated purposes, as well as its philosophical underpinnings, including the topics of enfranchisement, civilizing liberal-imperialism, culturalism, extinction, and reconciliation.

Part 3 describes governance and policy relating to Indigenous peoples in Canada. It addresses the creation of the first Indian Department, early legislation relating to "Indian" lands and bands, the ending of treaty presents, the replacement of traditional political systems, and policies of assimilation. It also discusses colonial rebellions, the Red River and North-West resistances, the Six Nations appeal for justice to the League of Nations, and legislation created in response to and aimed at quelling resistance.

Part 4 examines how the federal government and Canadian courts have interpreted section 91(24) of the *Constitution Act, 1867*. It then describes how the federal government has delegated some of its authority over "Indians" to the provinces and the consequences of that action. This Part also begins to suggest different approaches going forward, including a "living tree" interpretation of section 91(24), and a re-examination of the "enclave theory" suggested by Laskin, J in his dissent in *Cardinal v Alberta (Attorney General)*, [1974] SCR 695.

Part 5 considers the government and courts' attempts to grapple with the issue of legitimacy after the existence of the inherent rights of Indigenous nations are acknowledged in *Calder v British Columbia (Attorney General)*, [1973] SCR 313. It touches on modern land claims agreements, the *Constitution Act, 1982*, and the Penner Report. Nichols relates the quest for Aboriginal self-governance to international decolonization and speculates on how implementing the principles of the *United Nations Declaration of the Rights of Indigenous Peoples* could affect reconciliation efforts. Finally, he considers what mutual reconciliation *with* recollection might look like.

The book assumes a familiarity with the legal instruments and cases on this topic. In places, it discusses these without providing the relevant wording or background needed to understand them. Occasionally it gets bogged down in philosophical discussions, though in most instances these concepts complement the text very effectively.

Overall, this book is an engrossing read for those interested in Aboriginal law, Canadian history, and decolonization. I would strongly recommend it to any lawyers, judges, or policy analysts involved in the interpretation of section 91(24) or engaged in dealings between the Crown and Indigenous Peoples.

REVIEWED BY
ANDREA BLACK
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Dentons Canada LLP



III Bibliographic Notes / Chronique bibliographique

By Nancy Feeney

Miriam Kahn, “For Librarians Who Telework: Separating Work from Home” (31 March 2020), online (blog): *Lucidea Think Clearly Blog* <lucidea.com/blog/for-librarians-who-telework-separating-work-from-home>.

———, “For Librarians Who Telework: Separating Work from Home, Part II” (28 April 2020), online (blog): *Lucidea Think Clearly Blog* <lucidea.com/blog/for-librarians-who-telework-separating-work-from-home-part-ii>.

Lucidea’s *Think Clearly Blog* recently featured a series of articles by Miriam Kahn, founder of MBK Consulting, that are succinct enough not to overwhelm our already taxed brains and provide simple guidance for law librarians during these trying times. The disruption to our work and home lives as a result of the COVID-19 pandemic has been significant. It is very likely that some of these changes will be long lasting, if not permanent. Kahn has worked from home as a freelance librarian and consultant for most of her career and speaks with authority on this topic. Her posts offer guidance on how to navigate the new normal.

The absence of a commute and the freedom to not wear work attire are two examples of all of the built-in and structured separations between our two lives that no longer apply. As home becomes the workplace, the responsibilities of both are ever present and amplify the drain on our mental and physical capabilities. At home, everything can become a distraction, especially if other family members are living and working in the same space. Kahn believes it is imperative to separate work from the rest of life, and she offers a number of suggestions on how to create and maintain these boundaries.

Kahn recommends setting up a dedicated workspace, ideally in a room with a door. That way, during the day, you minimize home distractions, and at the end of the day you can close the door to the space and “leave.” She warns against working in the kitchen, which is the space where the family gathers and where you eat and relax. It should not be co-opted for other purposes; besides, it offers too many diversions when trying to work.

Kahn promotes continuing rituals that create transition times to better delineate the working day: dress each day in casual work attire (which is all the more important if you are participating in video conferencing); change your clothes at the end of the workday; schedule specific work hours, if possible; create daily, realistic to-do lists and finish what you can; take regular, short breaks to clear the mind; take an actual lunch break; and shut down your computer when your workday ends. While it may be tempting to keep working at the end of the day, it is emotionally and mentally healthier to shift your focus back to “home.”

For this transition, Kahn recommends the following: change out of your “work clothes,” take a walk around the block, check in with loved ones, read something non-work related before fixing dinner, or do some light housework. Kahn stresses that maintaining a routine is imperative. These small but important activities signal a change in activity and environment that allow you to separate home-life from work-life. Kahn concedes that it is difficult to live and work in the same space, and she reminds us that we are not alone: our colleagues are all facing the same challenges. We should take some comfort in the knowledge that these are unprecedented times for all of us.

Ashley Matthews, “What’s a Librarian without A Library” (9 June 2020), online (blog): [RIPS Law Librarian Blog <ripslawlibrarian.wordpress.com/2020/06/09/whats-a-librarian-without-a-library>](https://ripslawlibrarian.wordpress.com/2020/06/09/whats-a-librarian-without-a-library).

This post by Ashley Matthews, on AALL’s Research, Instruction, and Patron Services Special Interest Section’s (RIPS-SIS) blog, reviews the challenges encountered by law librarians unable to access the physical space of their libraries due to the pandemic. Matthews discusses how law librarians have adapted in order to continue to provide a high level of service and to maintain personal connections with their patrons. She believes that librarianship may be changed forever, yet offers these inspirational words:

A library’s worth is also found in the intellectual capital of its librarians, with our varied backgrounds, perspectives, hidden talents, and more. ... [W]e’ll continue to take active roles in legal education and maintain solid and resourceful connections with our patrons despite physical location.

Our methods may change, but our roles—the true essence of our roles, at least—will always stay the same.

Despite the uncertainty and challenges we are all facing professionally, it is reassuring to keep in mind that we, as information professionals, have the skills to adapt, maintain relevance, and ultimately persevere by meeting the needs of our users.

Jean O’Grady, “Law Librarians Helping Law Firms Meet COVID-19 Research and Practice Challenges” (1 June 2020), online: [Above The Law <abovethelaw.com/2020/06/law-librarians-helping-law-firms-meet-covid-19-research-and-practice-challenges>](https://abovethelaw.com/2020/06/law-librarians-helping-law-firms-meet-covid-19-research-and-practice-challenges).

In addition to the personal challenges the various work-from-home orders created for law librarians, they were quickly tasked with meeting the needs of lawyers and legal professionals coping with a new and fast-paced pandemic law practice. COVID-19 emergency orders and legislation were enacted at break-neck speed, and occasionally were published initially in non-traditional formats, like social media platforms. Legal professionals across a wide range of practice areas needed accurate information in real time to accurately advise clients. O’Grady discusses the ways information professionals quickly rose to the challenge, creatively met the needs of their users, and adapted to the new normal of working remotely. In time, the pandemic will recede; however, its impact on the legal profession and law librarianship will linger.

Nate DeMeo, *The Memory Palace* (2008–), online (podcast): thememorypalace.us/category/episodes.

Nate DeMeo’s independently produced history podcast has been around since 2008. DeMeo is a fantastic storyteller who brings the past to life through the narration of simple yet beautiful vignettes, set to perfectly chosen background music. Episodes are short: they generally range from 10–15

minutes. A recently rebroadcast story, “White Horse,” paints an evocative picture of the oldest gay bar in the U.S. The episode was originally released immediately after the Pulse Night Club shooting in 2016 and is replayed each year on the anniversary of the tragedy.

The episode entitled “Dora Salter” recounts the story of the first woman elected mayor of Argonia, Kansas, in 1887, who was, in fact, the first woman elected to *any* political office in the United States. “Wong Kim Ark” introduces listeners to the man at the centre of the 1898 U.S. Supreme Court decision establishing birthright citizenship in America.

“A Strange Land” tells the story of Isaac Israel Hayes, a polar explorer who, in the 1860s, set out to locate an inland polar sea, a hypothesized ice-free ocean surrounding the North Pole. While the expedition did find a body of water, it was not what the explorers believed it to be. Upon Hayes’s return, he and his crew found the country embroiled in the Civil War, completely indifferent to Hayes’s “discovery.”

In the show notes of each episode, DeMeo includes links to the resources he has consulted, which is a welcome bonus for any listener with historical or archival interests. Be forewarned, though: DeMeo prefers that one listen to the episode first to avoid spoilers.

***Insight Timer* (last visited 17 June 2020), online (app): insighttimer.com (available for download from Apple Store and Google Play; cost is free, with optional in-app premium purchases for certain features).**

In these stressful times, it is essential, though often difficult, to find time for selfcare. One way to do this is to develop a practice of mindfulness. The Insight Timer app offers 45,000 free guided meditations to get you started. Accessing the “Beginner Kit” allows you to customize your experience. Categories include: “Learning to Meditate,” “Managing Stress,” “Mindfulness at Work,” and “Coping with Anxiety.” Within each module, you can choose sessions by length of time or instructor. An in-app timer allows you to chart your progress and track the time spent meditating. If your day is still too full to partake in quiet reflection, or if you are not the meditating type, Insight Timer’s “Improve your Sleep” module offers a wide range of soothing music and stories to help quiet the mind and assist you in drifting off to sleep. For meditation enthusiasts, Insight Timer also offers a subscription service, which unlocks premium content, including hundreds of courses on confidence, spirituality, life goals, and happiness.



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

By Josée Viel

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

Note: due to COVID-19, there are very few updates to report in this issue. Stay safe!

VANCOUVER ASSOCIATION OF LAW LIBRARIES

What a difference a few months can make! When VALL last provided an update, we had just held our last in-person session. We made the difficult decision to cancel the April and May sessions. With no end in sight (as of this writing) of the Provincial Health Officer Orders on Mass Gatherings, we decided to go ahead with our June session on the groundbreaking B.C. [Declaration of the Rights of Indigenous Peoples Act](#) via Zoom! Thanks to our Programs Committee, it was a rousing success, and we will be able to enhance our future programming options now that we have one webinar under our belts.

VALL is also looking for a few solutions on how to communicate and meet with each other virtually, in a more

casual setting. There are a few possibilities for a members-only listserv that are being examined, with the hope that even if some of our members do remain working from home for longer than others, we can still maintain a sense of community. Necessity has spurred us on to explore other ways of keeping the membership active, supported, and provided with opportunities to share how we are working through these challenging times.

VALL sends its best wishes to all members in our fellow organizations, and I know I speak for all of us when I say we can't wait to be able to connect in person once again.

**SUBMITTED BY
MARNIE BAILEY**

President, VALL 2019–2020



III News from Further Afield / Nouvelles de l'étranger

Notes from the U.K.: London Calling

By Jackie Fishleigh*

Hi folks!

Coronavirus: U.K. “the Sick Man of Europe”

As I am writing this, over [40,000 people have died](#) here from the virus, according to official government figures, in a matter of months. The true figure, including those who have never been diagnosed and those in care homes, would be even higher.

The pandemic is the worst since the Spanish flu a hundred years ago. A virus was predicted by scientists and notably [Bill Gates](#), who was dismayed when his clarion call fell on deaf ears.

I find it difficult to describe my feelings about it as I feel numb from the weirdness and terrible sadness of it all. And I still feel afraid.

How on earth have so many lost their lives in a well-resourced, purportedly “civilised” country like the U.K.?

A three-day training exercise in October 2016 showed that our much loved National Health Service (NHS) [would not cope](#) in the event of a pandemic. Despite the severity of the findings, precious little action was taken, although some personal protective equipment (PPE) was ordered on a just-in-time basis from China. This is according to an insightful [Channel 4 Dispatches](#) investigation, “Did the Government Get it Wrong?”, presented by Antony Barnett.

Although news of the emergence of an unusual and apparently deadly virus in Wuhan began to circulate here

towards the end of January, for some reason I don't think many of us thought it would spread here. In fact, my partner, Rob, and I booked a short holiday to a Greek island for the end of April, which, with the benefit of hindsight, seems bonkers.

Only weeks later, things began to become alarming when COVID-19 [suddenly spread to Europe](#). That was a huge wake-up call. Not long after, the first case was diagnosed in Britain, a businessman who had been to a conference in the Far East and then went skiing in Northern Italy. He had unwittingly infected many others in the Brighton area. At this point the government policy was to track and trace those he had been in contact with. A short time later this approach was abandoned as being too difficult, but, ironically, this good practice has been reinstated in quite a major way now.

The U.K. was only a few weeks behind Italy where COVID-19 had overwhelmed hospitals and morgues. These crucial weeks were [wasted](#), according to top scientists Neil Ferguson (aka: Professor Lockdown) and Sir Paul Nurse, CEO and Director of the Francis Crick Institute and joint winner of a Nobel prize. The latter described trying to persuade the government to take action as being like [poking a blancmange](#) because “it wobbles for a while and then more or less goes back to the original shape it had.”

The timing of our lockdown is currently a huge subject of debate. As late as 10th and 11th March, large sporting events were taking place in Cheltenham and Liverpool. The week starting 16th March, my commuter trains to London were beginning to carry fewer passengers as more and more employees worked from home. Each day felt weirder. The cafes were emptying of customers, refusing to take reusable

cups, and later it was takeaways only. At work I tried to avoid getting too close to other people for too long. I felt hugely relieved when I shut the front door on arriving home after my final day at our office on 19th March. Our office is still shut. Many are working from home, but I have been furloughed thanks to a huge and costly government scheme to stem job losses.

Boris finally decided to [start our lockdown](#) on Monday 23rd March, well after our neighbours, like France. Apparently, Macron [blasted the PM](#) on the phone for his inaction.

The U.K.'s lockdown [mantra](#) became *Stay At Home, Protect the NHS, Save Lives*. The level of compliance was higher than expected. Routines were disrupted, sacrifices were made, some heartbreakingly difficult. We all painted our lives on a much smaller canvas than normal. For 10 weeks, we clapped and cheered at 8:00 p.m. every Thursday for our essential workers on the frontline.

Every day, the news of deaths on an unparalleled scale were announced and terrified everyone. Around [75 per cent](#) were of those over 70 years of age. Black and ethnic minorities were affected [disproportionately](#). Colleagues at work lost relatives. Care homes were badly hit when elderly hospital patients were moved to them without being tested for the virus. The lack of testing and shortages of PPE were woeful but were gradually stepped up. The government put on televised daily briefings, where statistics, graphs, and comparisons sometimes look like window dressing.

And then Boris got seriously ill with the virus. He was admitted to [intensive care](#) at St. Thomas' Hospital on 7th April. Given that he almost boasted that he had been shaking hands with all and sundry, including COVID-19 patients, this was hardly surprising.

Election of Keir Starmer as Opposition Leader

Only days before, the main opposition Labour party had finally ditched Jeremy Corbyn for the highly credible [Sir Keir Starmer](#). A human rights lawyer and former director of Public Prosecutions and head of the Crown Prosecution Service, Starmer's forensic debating skills look likely to highlight the shortcomings of Johnson's vacuous bluster. His chief adviser, Brexit ringleader Dominic Cummings, has already caused fury for flouting the lockdown rules he helped create. He even claimed to have driven 30 miles to a beauty spot called Barnard Castle to [test his eyesight](#). He still hasn't [resigned](#).

75th Anniversary of Victory in Europe Day: 8th May

As the veterans and heroes of the Second World War reach extreme old age, this was to have been an important date in the calendar of our nation. Very sadly, the horrors of the virus made it very difficult for fitting celebrations to take place. That said, some socially distanced street parties and other events did still happen.

Captain Tom Moore: Fundraiser Extraordinaire

One 99-year-old veteran found a unique way to raise money and boost the morale of the nation by walking up and down

his garden using his walking frame. He was hoping to raise £1,000 for NHS charities after a hip operation. He ended up raising over [£30 million](#)!

Two other stories that have gained attention in spite of the virus are the emergence of a [credible suspect](#) for the disappearance of 3-year-old Madeleine McCann in Portugal back in 2007, and the [tearing down of a statue](#) of a slave trader in Bristol as part of the global Black Lives Matter protests at the murder of George Floyd in the U.S. The mayor of Bristol, Marvin Rees, said he found the monument to Edward Colston an [affront](#) to his own Jamaican heritage. He is the only black Afro-Caribbean mayor in Europe.

Stay safe.

Until next time, with very best wishes,

Jackie

Letter from Australia

By Margaret Hutchison**

Greetings from a gradually unlocking Australia.

COVID-19

The last letter I sent was just after the fires, then we had rain and flooding, now we have a plague. Australia has done very well in response to the COVID-19 outbreaks. One advantage of being an island is that we don't have any land borders to worry about, and anyone flying in from overseas is now sent to hotel quarantine for 14 days (paid for by the various state, territory, and federal governments). However, these arrivals are limited to Australian citizens, residents, and immediate family members with a few exceptions, such as diplomats and cabin crew.

Most Australian states and territories have introduced restrictions on state border entry and a 14-day quarantine for anyone entering those states. Last weekend, which was the Queen's birthday long weekend in New South Wales and the ACT, was the first time that Canberrans have been able to visit the south coast of NSW, known as Canberra-by-the-sea, since December. Businesses on the coast were pinning their hopes on that weekend to allow them to survive. As the number of COVID-19 cases declines, the restrictions are being eased but not quickly enough, as there are murmurs of a High Court challenge to the state closures being brought by some tourism operators who are suffering from lack of business. They are challenging under [section 92](#) of the [Australian Constitution](#), which is about free trade between states.

High Court Decisions: Pell Update, AFP Raids, and More

Some recent High Court decisions of note have been handed down.

Cardinal Pell

In my last letter, I wrote of the special leave application and appeal hearing from Cardinal George Pell against his sentence for child sexual abuse. The [decision](#) was handed

down on 7 April and, as expected, the number of people wanting to access the judgment crashed the High Court's website. The High Court found that the jury in the original trial, acting rationally on the whole of the evidence, ought to have entertained a doubt as to the applicant's guilt with respect to each of the offences for which he was convicted, and ordered that the convictions be quashed and that verdicts of acquittal be entered in their place. There was great media interest at the time but that has died down now, as people concentrate on COVID-19.

AFP Raids

Another case that caused the media great interest was that of journalist [Annika Smethurst](#) against the Australian Federal Police (AFP). The AFP had raided Ms. Smethurst's Canberra home in June 2019, with a search warrant dated the day before the raid, after she had written articles published in the New South Wales newspaper *The Sunday Telegraph* in April 2018. The articles concerned an internal government proposal to expand the domestic powers of the Australian Signals Directorate, an electronic intelligence agency. The government insists details of this proposal were leaked to Ms. Smethurst. This raid also ties in with a raid on the Australian Broadcasting Corporation's offices in February 2019 about much the same issue. While searching Ms. Smethurst's home, the AFP copied data from her phone to a USB belonging to the AFP. Naturally, Ms. Smethurst and her employer, Nationwide News, appealed this raid. The High Court found that the warrant was invalid, but on technical grounds because it "misstated" relevant criminal laws and was not specific enough about the alleged offences. Where the bench differed was that only three of the seven judges agreed that the evidence collected by the AFP on their USB should be destroyed or kept from investigators. This means the evidence could still be used in a prosecution over an April 2018 story that triggered the police investigation and led to the raid on Smethurst's home over a year later. Use of the evidence would, however, be open to legal challenge based on the High Court's finding that the warrant was invalid.

Palace Letters

The most recent case was that of [Hocking v Director-General of the National Archives](#). This was handed down at the end of May. This case relates to the "Palace Letters," which are copies of 211 pieces of correspondence between Sir John Kerr and the Queen's private secretary, Sir Martin Charteris, exchanged between August 1974 and December 1977, in the lead-up to the November 11, 1975, dismissal of Gough Whitlam, the then Australian prime minister.

Anger over the dismissal still lingers within the Australian Labor Party (ALP) and the "True Believers," even 45 years later. (That long ago! I remember it. I'm getting old!)

Professor Jenny Hocking, a political historian who has written extensively on ALP figures, including Gough Whitlam and his attorney-general Lionel Murphy, has fought for several years for access to the letters to help shed light on what Buckingham Palace knew before the dismissal in November 1975.

The letters were deposited with the National Archives by Sir John Kerr's official secretary, Mr David Smith, in 1978 as part of Kerr's personal collection, with instructions that they not be made available for 60 years after Sir John Kerr had ceased to be governor-general (i.e., until 2037), which was when the Queen's copies of the letters would be made available. In 1991, the access period was brought forward to 2027 on the Queen's instruction, with the condition that release of the letters to the public be subject to potential veto by the Queen's private secretary or the Governor-General's official secretary ("royal veto").

The High Court, by a majority of 6 to 1, decided that the correspondence was constituted by Commonwealth records because it was the property of the Commonwealth or of a Commonwealth institution, namely the official establishment of the Governor-General. Five Justices in the majority held that in the statutory context of the *Archives Act*, the term "property" connoted the existence of a relationship in which the Commonwealth or a Commonwealth institution had a legally endorsed concentration of power to control the custody of a record. They held that the arrangement by which the correspondence was kept by Mr Smith and then deposited with the Archives demonstrated that lawful power to control the custody of the correspondence lay with the Official Secretary, an office within the official establishment of the Governor-General, such that the correspondence was the property of the official establishment. The other Justice in the majority held that the correspondence was, by common law concepts of property employed in the *Archives Act*, the "property of the Commonwealth" because it had been created or received officially and kept by the official establishment of the Governor-General. The Court ordered that the Director-General of the National Archives reconsider Professor Hocking's request for access to the deposited correspondence and pay Professor Hocking's costs for all appeals. The National Archives has accepted the decision; however, they have asked for 90 working days to assess the documents before release.

Today, while researching this letter, I found that professor Hocking will publish a book in November containing the Palace Letters and her legal battle to obtain access to the documents. The heading on the blog is "[Scribe \[the publisher\] has acquired The Palace Letters](#)," which is probably exactly what Sir John Kerr, Sir David Smith, Buckingham Palace, and the National Archives *didn't* want to happen.

Celeste Barber's Bushfire Fundraiser

And finally, for those of you who gave money to Celeste Barber's fundraiser during the bushfires earlier this year on the understanding that the money would assist the people who lost property and animals injured, I'm sorry. The [decision](#) is that all that money must stay with the New South Wales Rural Fire Service (RFS). It can't even be spread to assist other state volunteer fire services. The RFS can set up a fund to assist families of injured or killed volunteer firefighters, and they can provide volunteer firefighters with physical and mental health training and resources and

trauma counselling services, but not new trucks or helmets. They can also purchase firefighting equipment including respiratory systems, helmets, and chainsaws, and improve “network connectivity” in vehicles and stations, but no money for outside New South Wales or to the animals.

There is also a [Royal Commission](#), referred to as the “Bushfires Royal Commission,” which has started hearings, and a final report is due at the end of August. The Commission will examine “coordination, preparedness for, response to and recovery from disasters as well as improving resilience and adapting to changing climatic conditions and mitigating the impact of natural disasters”—not just fires, but cyclones and floods. The inquiry will also consider the legal framework for Commonwealth involvement in responding to national emergencies. It has already emerged that the radio networks used by firefighting agencies in each jurisdiction are “largely incompatible” with each other, and the lack of national coordination meant that resources were not always used effectively. However, there are legal issues around Commonwealth involvement in responding to national emergencies and its interaction with the states and territories, as well as the involvement of the Australian Defence Forces.

Until next time—stay safe!

Margaret

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

By Julianne E. Grant***

I just reread my last column. I could not have imagined that, three months later, I would still be holed up in my apartment and wearing a face mask every time I venture to the grocery store.

The COVID-19 pandemic has infiltrated just about every facet of life, with minority groups (in particular, African-American and Latinx) being hit much harder than others in the United States. The heinous murder of George Floyd added yet another layer to my country’s abhorrent history of racial injustice. It’s a sad state of affairs, and these systemic problems are not disappearing anytime soon. It’s going to take a great deal of effort, over a great deal of time, to tackle and solve these deep-rooted problems.

In terms of the U.S. legal landscape, changes have been monumental and numerous during the past three months. Below, I have attempted to capture what I consider to be the most significant.

AALL

The 2020 AALL Annual Meeting & Conference, scheduled to be held in New Orleans in July, has been moved to a virtual platform (“[AALL Reimagined](#)”). Running from July 13 through July 17, [Jim Kwik](#) remains the keynote speaker.

Dawn Smith, chair of AALL’s [Black Caucus](#), drafted an open letter to AALL’s executive board with a “Call to Action” list after the George Floyd killing. Among the list was a demand that AALL “immediately issue a statement that the association

stands in solidarity with the protestors and with the other library associations around our country.” (The letter is only available with AALL login credentials.)

For a list of U.S. library and library organization statements pertaining to racism and increased violence, see the [Infodocket page](#) of *Library Journal* (filed by Gary Price, last updated June 15, 2020).

Law Schools & the Bar Exam

On June 3, Harvard [announced](#) that six of its graduate schools, including the law school, will hold all classes online this fall. Other U.S. law schools may follow suit or opt for a hybrid online/onsite model.

The American Bar Association (ABA) [is contemplating rule changes](#) and emergency measures that would accommodate law schools that offer all of their courses online.

A TestMax survey of over 1,600 U.S. law students showed that “some 56% of those polled said their education last semester was ‘less effective’ because of remote learning, while only 37% said there was ‘no change’ going from in-person to remote learning.” See Richard Vedder, “[Is a Law School Meltdown Coming?](#)” *Forbes* (June 8, 2020).

Some July [state bar exams are being postponed](#) due to fears about the spread of COVID. New York, California, Massachusetts, Connecticut, Georgia, and Illinois are among the states that are delaying the July sitting.

Law Firms & Lawyers

In response to the COVID-19 pandemic, many U.S. law firms have cut salaries, and/or furloughed workers, and/or laid off employees, and/or altered their summer associate programs. Law360 is maintaining a [running list](#) (free access) of how individual firms are handling the crisis.

The Courts

All levels of U.S. courts have been affected by the COVID-19 pandemic—some allowing court personnel to work offsite and many relying on technology for remote hearings.

SCOTUS (Supreme Court of the United States) postponed its oral arguments scheduled for the March and April sessions. In a [press release on April 13](#), the Court announced it would hear oral arguments for some of the postponed cases via teleconference on May 4, 5, 6 and 11, 12, 13. In an unprecedented move, the Court provided a live feed of the proceedings. By all accounts, the technology was successful, and it also allowed Justice Ginsburg, [who was hospitalized](#) in early May, to participate.

In a landmark decision ([Bostock v Clayton County](#)), SCOTUS ruled that existing federal law (Title VII of the Civil Rights Act of 1964) protects LGBTQ workers from discrimination. In a six to three decision, Justices Roberts and Gorsuch (surprisingly) joined the liberal members of the Court. Justice Gorsuch penned the majority opinion.

Federal courts have coordinated with state and local health

officials regarding courthouse openings and usage during the pandemic. Links to information about each federal court is available on the [federal courts' website](#). In the [Seventh Circuit](#) (Chicago), oral arguments will be held via Zoom or telephone at least until August 31, and the audio will be livestreamed. The courtroom in the Dirksen Federal Building remains closed to the public.

The National Center for State Courts has compiled [a page with links](#) to state courts' COVID-19 websites. The page also includes information about state jury trial restrictions and statewide court entrance rules.

On May 18, 2020, two Texas state court judges conducted a [jury voir dire via Zoom](#). This may have been the first virtual *voir dire* ever held in the United States.

COVID-19 Legislation

New COVID-19-related legislation has passed in recent months:

- Federal: [Paycheck Protection Program and Health Care Enhancement Act](#); [Coronavirus Preparedness and Response Supplemental Appropriations Act](#); [Families First Coronavirus Response Act](#) (FFCRA); [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES).
- State: The National Conference of State Legislatures has compiled a useful [database of state laws](#) related to COVID-19.

COVID-19 Miscellany

- USA.gov has a [page](#) that collects all U.S. government information related to COVID.
- The [Congressional Research Service](#) (CRS) has published a number of reports related to COVID. Search "COVID" for a list.
- ProQuest has compiled a [Coronavirus Research Database](#) for subscribers. Many other subscription platforms (Westlaw, Lexis, Bloomberg Law, Law360, etc.) have dedicated databases that focus on the pandemic. Some of these may be used without a subscription.
- The ABA's Standing Committee on Legal Aid and Indigent Defense has a comprehensive [COVID-19 Resources page](#).

Conclusion

That wraps things up for an unprecedented and extremely challenging quarter. This column also ends my five-year tenure as your roving U.S. reporter. I have thoroughly enjoyed sharing news with all of you, even though some of it has frankly been embarrassing as an American. I now hand the baton to my colleague Sarah Reis, the FCIL (Foreign, Comparative, and International Law) librarian at Northwestern University's [Pritzker Legal Research Center](#). Let's hope that Sarah will have some positive news to report for her first contribution. Onward and upward! *Adieu!*

Julienne E. Grant

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

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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.

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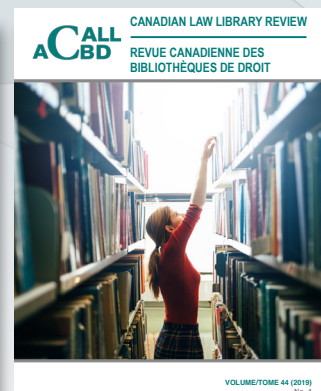
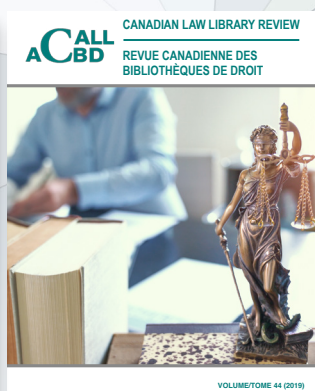
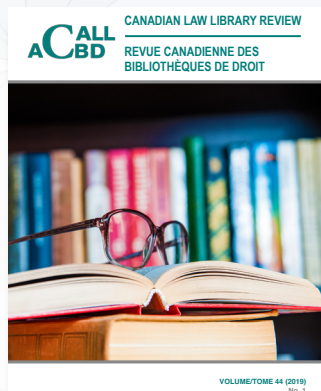
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Tous les membres de l'ACBD ainsi que toute autre personne intéressée à la bibliothéconomie et faisant partie du monde juridique sont invités à soumettre des articles. La revue sollicite également des commentaires bibliographiques d'ouvrages de nature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

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CALL/ACBD Research Grant

Perhaps it is time to start thinking about your next research project. The deadline for the 2021 research grant will be March 15, 2021, and the grant will be awarded in May.

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

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

The grant comes with some expectations. Research is to be completed within two years of receipt of the award with a progress report submitted to the Committee after one year. The deliverables are a written report, publication or presentation at the CALL/ACBD conference.

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