



CANADIAN LAW LIBRARY REVIEW

REVUE CANADIENNE DES
BIBLIOTHÈQUES DE DROIT



VOLUME/TOME 43 (2018)
No. 2



The leading voice of English
case law since 1865.

**Old, free(ish) and single
since 2017.**

The Law Reports and The Weekly Law Reports, along with
ICLR's other authoritative series of reports, are now exclusively
available at iclr.co.uk.

So, if [your library](#) ever fields requests for English cases, you
should consider signing up.

iclr.co.uk

III CONTENTS / SOMMAIRE

5	From the Editors De les rédactrices		<i>The Unfilled Promise of Press Freedom in Canada</i> Reviewed by Paul F McKenna	33
7	President's Message Le mot de la présidente		<i>Unions in Court: Organized Labour and the Charter of Rights and Freedoms</i> Reviewed by Ken Fox	34
10	Featured Articles Articles de fond		<i>Wealth Planning Strategies for Canadians 2018</i> Reviewed by Helen Mok	35
	<i>Edited by John Bolan and Rex Shoyama</i>			
	<i>Exploring the Development of a Standard System of Citation Metrics for Legal Academics</i> By Susan Barker	10	38	Bibliographic Notes Chronique bibliographique
	<i>Are Publication and Citation Counts Reliable Indicators of Research Productivity or Impact?</i> By Sean Rehaag	26	41	Local and Regional Updates Mise à jour locale et régionale
28	Reviews Recensions			<i>By Kate Laukys</i>
	<i>Edited by Kim Clarke and Nancy McCormack</i>		43	NELI in a Nutshell NELI en Bref
	<i>Canadian Immigration and Refugee Law: A Practitioner's Handbook</i> Reviewed by Gregory Wurzer	28	45	News From Further Afield Nouvelles de l'étranger
	<i>Discovery in Canadian Common Law: Practice, Techniques and Strategies</i> Reviewed by Laura Lemmens	28		<i>Notes from the UK</i> Jackie Fishleigh
	<i>Human Rights and Judicial Review in Australia and Canada: The Newest Despotism</i> Reviewed by Silvia Dimitrova	29		<i>Letter from Canada</i> Margaret Hutchison
	<i>Incitement on Trial: Prosecuting International Speech Crimes</i> Reviewed by David Hurren	30		<i>The US Legal Landscape: News From Across the Border</i> Julienne Grant
	<i>The Law of Judicial Notice</i> Reviewed by Melanie R. Bueckert	32		
	<i>One Law for All? Weber v Ontario Hydro and Canadian Labour Law: Essays in Memory of Bernie Adell</i> Reviewed by Catherine Cotter	32		

CITED AS Can L Libr Rev

Canadian Law Library Review is published 4 times a year by the Canadian Association of Law Libraries.

CITÉ Rev can bibl dr

Revue canadienne des bibliothèques de droit est publiée 4 fois par année par l'Association canadienne des bibliothèques de droit.

III EDITORIAL BOARD / COMITÉ DE RÉDACTION

SUSAN BARKER

EDITOR
RÉDACTRICE EN CHEF
Digital Services and Reference Librarian
Bora Laskin Law Library
University of Toronto
E-mail: susan.barker@utoronto.ca

REX SHOYAMA

FEATURES EDITOR
RÉDACTEUR DE CHRONIQUES
Online Development Manager
Carswell, a Thomson Reuters business
E-mail: rex.shoyama@thomsonreuters.com

JANET MACDONALD

INDEXER
INDEXEURE
Macdonald Information Consultants
E-mail: janet@minclibrary.ca

NIKKI TANNER

ASSOCIATE EDITOR
RÉDACTRICE ADJOINTE
Reference / Instruction Librarian
Gerard V. La Forest Law Library
University of New Brunswick
E-mail: nikki.tanner@unb.ca

FUCHSIA NORWICH WHITE

FEATURE ARTICLE EDITOR
RÉDACTRICE DE ARTICLES DE FOND
E-mail: fuchsia.j.white@gmail.com

NATHALIE LÉONARD

FRENCH LANGUAGE EDITOR
RÉDACTRICE AUX TEXTES FRANÇAIS
Head, Reference Services and Law Libraries
Brian Dickson Law Librarian
Université d'Ottawa
E-mail: nleonard@uottawa.ca

NANCY MCCORMACK

EDITOR EMERITUS
RÉDACTRICE HONORAIRE
Librarian and Associate Professor
Lederman Law Library, Faculty of Law
Queen's University
E-mail: nm4@queensu.ca

HANNAH STEEVES

FEATURES EDITOR
RÉDACTRICE DE CHRONIQUES
Instruction & Reference Librarian
Sir James Dunn Law Library
Dalhousie University
E-mail: hannah.steeves@dal.ca

SUSAN JONES

COLUMN EDITOR
BIBLIOGRAPHIC NOTES
RESPONSABLE DE LA RUBRIQUE
CHRONIQUE BIBLIOGRAPHIQUE
Technical Services Librarian
Gerard V. La Forest Law Library
University of New Brunswick
E-mail: susan.jones@unb.ca

HANNAH SAUNDERS

ADVERTISING MANAGER
DIRECTRICE DE LA PUBLICITÉ
Researcher
Miller Thomson LLP
E-mail: hsaunders@millerthompson.com

KIM CLARKE

BOOK REVIEW EDITOR
RÉDACTRICE DE LA REVUE DE LIVRES
Director
Bennett Jones Law Library, Faculty of Law
University of Calgary
E-mail: kim.clarke@ucalgary.ca

KATE LAUKYS

COLUMN EDITOR
LOCAL AND REGIONAL UPDATES
RESPONSABLE DE RUBRIQUE MISE À JOUR LOCALE
ET RÉGIONALE
E-mail: klaukys@gmail.com

JOHN BOLAN

FEATURES EDITOR
RÉDACTEUR DE CHRONIQUES
Instructional and Reference Librarian
Bora Laskin Law Library
University of Toronto
E-mail: john.bolan@utoronto.ca

NANCY MCCORMACK

BOOK REVIEW EDITOR
RÉDACTRICE DE LA REVUE DE LIVRES
Librarian and Associate Professor
Lederman Law Library, Faculty of Law
Queen's University
E-mail: nm4@queensu.ca

RAPHAEL MATURINE

PRODUCTION EDITOR
DIRECTEUR DE LA PRODUCTION
Creative, Graphic and Web Designer
Managing Matters Inc.
E-mail: raphael@managingmatters.com

Deadlines / Dates de tombée

Issue	Articles	Advertisement Reservation / Réservation de publicité	Publication Date / Date de publication
no. 1	December 15/15 décembre	December 15/15 décembre	February 1/1er février
no. 2	March 15/15 mars	February 15/15 février	May 1/1er mai
no. 3	June 15/15 juin	May 15/15 mai	August 1/1er août
no. 4	September 15/15 septembre	August 15/15 août	November 1/1er novembre

MEMBERSHIP, SUBSCRIPTIONS, BACK ISSUES / ADHÉSION, ABONNEMENTS, NUMÉROS ANTÉRIEURS:

CALL National Office/Secrétariat ACBD
411 Richmond St. East, Toronto, ON, M5A 3S5
Telephone: (647) 346 – 8723
Fax/Télécopieur: (416) 929 – 5256
E-Mail: office@callacbd.ca





III From the Editors / De les rédactrices

This is my last letter from the editor after five years (or so) of being at the helm of the *Canadian Law Library Review*. I thought it would be sad to relinquish being the editor, but it isn't. I am fully confident that Nikki is ready to take on the editorship. She is going to do a great job and, as a bonus for you readers, she has a much sharper eye than I have when it comes to editing. And, to paraphrase that old saying, "how can you miss me when I won't go away?," I will be staying on as associate editor, along with Nancy McCormack, so the *Canadian Law Library Review* will have continuity and institutional memory working in concert with the fresh new ideas that come from a change in leadership. We are looking forward to a very exciting future.

The journal has seen many changes in the past five years: from print to electronic, from closed to open access. But there are a couple of things that have been consistent during that time. One is the dedication of the board members and overseas correspondents who have made each issue of *CLLR* possible: thank you, all. The other is the quality of the feature articles. We are an engaged and engaging community, and the range of our interests within the law library community are many and varied. I have learned so much from reading all the features we have published, and I am grateful that so many of you have shared your interests, insights, and ideas with us all.

And finally, we have another exciting advance coming up. We are in discussions with CanLII to add *CLLR* to their collection of law reviews. Having the review available on such a platform will increase our visibility even further and allow us to share our information with a much wider audience. We hope you are as excited as we are with this development.

Thanks for letting me be your editor for so long. I'll see you in Halifax!

EDITOR
SUSAN BARKER

Some people know from the start that they want to work in a law library, and some people, like me, fall into it quite accidentally. When I was in library school, I wanted to do my practicum placement in archives, thinking I could hide in a basement and avoid human interaction as much as possible (I am introvert, hear me roar—quietly). There were no archives placements left for me, so I ended up at the Nova Scotia Legislative Library. I had no experience with anything law related; I didn't know how a bill became law let alone what the people in the legislature were doing all day. If someone had told me then that I would end up teaching a legal research class, I would have laughed in their face. I spent three weeks in that beautiful library, and that led to an internship at the Dalhousie Law Library, which pretty much sealed my fate as a law librarian. It's funny to think that my path was decided for me by the practicum coordinator.

Before library school, I earned a master's degree in English and planned to do a PhD, but I decided I didn't want to teach (oh, the irony). Writing and editing is in my blood, so I am thrilled to take the reins from Susan as editor. Working on *CLLR* is one of the best parts of my job, and I look forward to working on every issue. I also look forward to hearing from you, the readers, about what topics and themes you want to see reflected in *CLLR*; it is your publication, after all.

I want to say a special thanks to Susan Barker for her years of service to *CLLR*. She has taken the review to new heights, and I hope I can fill her shoes. Lucky for us (and me!), she's not going very far. In fact, she is the author of this issue's feature article about the revolutionary *b*-index, law's answer to the traditional *h*-index. I'm sure you'll find it an interesting read.

You will also find in this issue Sean Rehaag's somewhat tongue-in-cheek response to the question "Are Publication and Citation Counts Reliable Indicators of Research Productivity or Impact?"

See you in Halifax!

**EDITOR
NIKKI TANNER**

Après environ cinq ans aux commandes de la *Revue canadienne des bibliothèques de droit*, le moment est venu de rédiger mon dernier mot. Je pensais être triste en quittant mes fonctions de rédactrice en chef, mais je n'ai pas ce sentiment. Je suis pleinement convaincue que Nikki est prête à prendre la tête de l'équipe rédactionnelle. Elle fera un merveilleux travail et, en prime (pour nos lecteurs), elle a l'œil bien plus aiguisé que le mien lorsque vient le moment de réviser. De plus, pour paraphraser un vieux dicton « Ne me dis pas que je te manque quand je ne m'éloigne pas », je reste au sein du comité de rédaction à titre de rédactrice adjointe, en compagnie de Nancy McCormack, afin d'assurer la continuité et la mémoire institutionnelle de la *Revue canadienne des bibliothèques de droit* en travaillant de concert avec une nouvelle direction qui devrait apporter des idées fraîches. L'avenir s'annonce passionnant et nous sommes très enthousiastes.

Bien que la revue ait connu de nombreux changements au cours des cinq dernières années en passant de l'imprimé à l'électronique, et d'un accès fermé à libre, il y a deux choses qui n'ont jamais changées. La première chose est le dévouement des membres du conseil et des correspondants à l'étranger qui ont rendu possible la parution des numéros de la *RCBD* : un gros merci à tous! La deuxième chose est la qualité des articles de fond. Nous sommes une communauté engagée et mobilisée, dont les champs d'intérêt des bibliothécaires de droit sont nombreux et variés. J'ai beaucoup appris en lisant tous les articles que nous avons publiés, et je vous suis très reconnaissante d'avoir partagé vos intérêts, vos opinions et vos idées avec nous en si grand nombre.

En terminant, nous avons un autre grand projet qui s'en vient. Nous sommes actuellement en pourparlers avec l'Institut canadien d'information juridique (CanLII) afin de pouvoir ajouter la *RCBD* à sa collection de revues juridiques. L'accessibilité à notre revue sur cette plateforme augmentera davantage notre visibilité et nous permettra de partager notre information auprès d'un auditoire plus vaste. Nous espérons que vous serez tout aussi emballés que nous par ce projet.

Merci de m'avoir permis d'être votre rédactrice en chef pendant tout ce temps. On se revoit bientôt à Halifax!

**RÉDACTRICE EN CHEF
SUSAN BARKER**

Certaines personnes savent dès le départ qu'elles veulent travailler dans une bibliothèque de droit, alors que d'autres, comme moi, y arrivent tout à fait par hasard. Lorsque j'ai fait mes études en bibliothéconomie, je voulais faire mon stage aux archives en espérant pouvoir me cacher au sous-sol et éviter autant que possible les interactions humaines (je suis introvertie, entendez-moi rugir – doucement). Comme il n'y avait pas de stage pour moi dans le domaine des archives, je me suis retrouvée à la bibliothèque de l'Assemblée législative de la Nouvelle-Écosse. Je n'avais aucune formation en ce qui touchait au droit; je ne connaissais pas le processus que suit un projet de loi pour devenir loi, ni encore moins ce que faisaient les gens à l'Assemblée toute la journée. À l'époque, si quelqu'un m'avait dit que je finirais par donner un cours en recherche juridique, je lui aurais ri au nez. Après l'expérience de trois semaines dans cette magnifique bibliothèque, qui a débouché sur un stage à la bibliothèque de droit de Dalhousie, mon destin à titre de bibliothécaire de droit était plus ou moins scellé. C'est amusant de penser que mon cheminement a été tracé par le coordonnateur de stages.

Avant de m'inscrire à l'école de bibliothéconomie, je détenais une maîtrise en langue anglaise et j'avais l'intention de faire un doctorat. Toutefois, j'ai changé d'idée parce que ne voulais pas enseigner (c'est plutôt ironique). Évidemment, la rédaction et la révision coulent dans mes veines, et je suis ravie de succéder à Susan comme rédactrice en chef. Travailler sur la *RCBD* est l'un des aspects les plus intéressants de mon travail, et j'ai hâte de préparer chacun des numéros. Je me réjouis aussi à la perspective de recevoir vos commentaires, en tant que lecteurs, pour connaître les sujets et les thèmes que vous aimeriez voir aborder dans la *RCBD*, car après tout, c'est votre publication.

Je tiens tout spécialement à remercier Susan Barker pour ses années de services à la *RCBD*. Elle a propulsé la revue vers de nouveaux sommets, et j'espère être à la hauteur de son héritage. Heureusement pour nous (et pour moi!), elle ne s'en va pas très loin. En fait, Susan est l'auteur de l'article de fond dans ce numéro qui porte sur la mesure révolutionnaire de l'indice *b*, la réponse juridique au traditionnel indice *h*. Je suis certaine que vous trouverez cet article fort intéressant.

Vous trouverez également dans ce numéro la réponse un peu osée de Sean Rehaag dans l'article Are Publication and Citation Counts Reliable Indicators of Research Productivity or Impact?

Au plaisir de vous voir tous à Halifax!

**RÉDACTRICE EN CHEF
NIKKI TANNER**



III President's Message / Le mot de la présidente

This journal you are reading, our journal, has been an important part of my life as an information professional since I started working in law libraries almost 30 years ago!

I keep back issues of the journal in a cupboard in my office. I looked inside the cupboard just now. It turns out that I've kept print copies from February 1994 up to the time the journal became completely digital in 2015. One might ask why I keep the print copies when they're all available online. I'm not sure why—nostalgia, perhaps? From time to time, I do enjoy perusing older issues. I know for sure that I won't recycle them until the day I retire. And even then, I should do my successor a favour and leave them in the cupboard.

I don't think I'm overstating it when I say that this journal is one of the backbones of our association. In the days before our CALL/ACBD listserv; our online newsletter, *In Session*; our Twitter feed; our CALL/ACBD Facebook page; and our CALL/ACBD webinars, *CLLR* was our primary form of communication. The journal and our annual conference were our main tools for professional development. Even though we now have additional ways to reach out to our members and new ways to learn, *CLLR* continues to be one of the best ways for us to keep up-to-date in our ever-changing profession.

The *CLLR* would not be the high-quality journal that it is without the volunteers who have worked on it over the years.

Susan Barker has been our editor for the past five years. She is stepping down and will soon become editor emeritus and associate editor. Susan has worked tirelessly to ensure we have a journal that provides the best information

possible for legal information professionals. During her tenure, the journal has gone through significant changes. It was completely redesigned, and it became an online journal. She brought it fully into the electronic age. And this past January, *CLLR* became a fully open-access journal! Susan noted in a recent "From the Editor" column that she is excited by this development, as it "puts into practice a core value of librarianship: access to information." On behalf of the CALL/ACBD executive board, and all CALL/ACBD members, thank you, Susan, for your vision, your dedication, your openness to change, and your hard work over the past five years!

If there is a name that is synonymous with *CLLR*, it is that of Wendy Hearder-Moan. She served as the editor for many years, and then as associate editor until she stepped down in 2016. Wendy, we really appreciate all the work you did over the years!

Members of our current editorial board are Nancy McCormack, Kim Clarke, Janet MacDonald, Nikki Tanner, Hannah Saunders, Nathalie Léonard, John Bolan, Susan Jones, Rex Shoyama, Kate Laukys, and Raphael Maturine. Jacquie Fex, Amy Kaufman, Annamarie Bergen, Sooin Kim, Mary Jane Kearns-Padgett, Susannah Tredwell, Eve Leung, and Rosalie Fox have served on the board in the recent past. Thanks to each of you for your work!

Thanks also to those of you who have written articles, book reviews, and provided content in any way. Your willingness to share your knowledge and experience with other members is critical to the continued success of our journal.

Looking ahead, associate editor Nikki Tanner will take over the reins as editor. As well, there will be changes to the editorial board: Rex Shoyama, John Bolan, and Hannah Saunders will step down, and Hannah Steeves and Fuchsia Norwich-White will join the board.

We look forward to seeing what the future will bring to *CLLR*!

Happy reading, everyone!

**PRESIDENT
ANNE MARIE MELVIE**



La revue que vous êtes en train de lire, notre revue, occupe une part importante de ma vie de professionnelle de l'information depuis que j'ai commencé à travailler dans les bibliothèques de droit il y a presque 30 ans!

Je garde d'anciens numéros dans une armoire de mon bureau, et je viens tout juste d'y jeter un coup d'oeil. Eh bien, il semble que j'ai conservé des copies papier des numéros de février 1994 jusqu'à 2015, année où la revue est devenue entièrement numérique. On pourrait se demander pourquoi je garde les copies papier alors qu'elles sont accessibles en ligne. Je ne saurais dire. Par nostalgie, peut-être? De temps à autre, j'aime feuilleter d'anciens numéros. Je sais en tout cas qu'ils n'iront pas au recyclage avant mon départ à la retraite. Et même là, je devrais faire une faveur à mon successeur et les laisser dans l'armoire.

Je ne crois pas exagérer en disant que cette revue est l'un des piliers de notre association. Avant l'arrivée de la liste de discussion électronique de l'ACBD/CALL, de notre bulletin électronique *In Session*, de notre fil Twitter, de la page Facebook et des webinaires de l'ACBD/CALL, la *Revue canadienne des bibliothèques de droit (RCBD)* était notre mode de communication principal. La revue et notre conférence annuelle étaient nos principaux outils de perfectionnement professionnel. Même si nous avons maintenant d'autres façons de joindre nos membres et de tirer des apprentissages, la *RCBD* demeure l'un des meilleurs moyens de nous tenir à jour dans notre profession qui ne cesse d'évoluer.

Et elle ne serait pas la revue de grande qualité qu'elle est sans la contribution des bénévoles qui y ont travaillé au fil des ans.

Susan Barker a été notre rédactrice en chef des cinq dernières années. Elle laisse maintenant sa place et deviendra bientôt *rédactrice en chef émérite*. Susan a travaillé sans relâche pour s'assurer que notre revue offre la meilleure information possible aux professionnels de l'information juridique. Pendant son mandat, la revue a connu des changements importants. Elle a subi une refonte complète et est devenue une revue en ligne. Susan l'a fait entrer totalement dans l'ère électronique. Et en janvier dernier, la *RCBD* est devenue complètement à libre accès! Dans un mot de la rédaction récent, Susan s'est dite enchantée de cette évolution, car elle « met en pratique une valeur fondamentale de la bibliothéconomie, soit l'accès à l'information ». Au nom du conseil d'administration et de tous les membres de l'ACBD/CALL, je tiens à remercier Susan de sa vision, de son dévouement, de son ouverture au changement et des efforts qu'elle a inlassablement déployés au cours des cinq dernières années.

S'il y a un nom que l'on associe automatiquement à la *RCBD*, c'est celui de Wendy Hearder-Moan. Elle a porté le chapeau de rédactrice en chef pendant de nombreuses années, puis celui de rédactrice en chef adjointe jusqu'en 2016. Wendy, nous apprécions sincèrement tout le travail que tu as accompli au fil des ans!

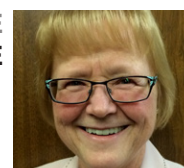
Les membres actuels du comité de rédaction sont : Nancy McCormack, Kim Clarke, Janet MacDonald, Nikki Tanner, Hannah Saunders, Nathalie Léonard, John Bolan, Susan Jones, Rex Shoyama, Kate Laukys et Raphael Maturine. Les autres membres qui y ont siégé récemment sont : Jackie Fex, Amy Kaufman, Annamaria Bergen, Sooin Kim, Mary Jane Kearns-Padgett, Susannah Tredwell, Eve Leung et Rosalie Fox. Je remercie chacune et chacun d'entre vous pour votre travail!

J'en profite aussi pour remercier tous ceux parmi vous qui ont rédigé des articles ou des critiques de livres et qui ont fourni du contenu d'une façon quelconque. Votre volonté de transmettre vos connaissances et votre expérience aux autres membres est essentielle au succès continu de notre revue.

Pour la suite des choses, c'est Nikki Tanner, rédactrice en chef adjointe, qui assumera les fonctions de rédactrice en chef. Il y aura aussi des changements au sein du comité de rédaction : Rex Shoyama, John Bolan et Hannah Saunders tireront leur révérence, tandis que Hannah Steeves et Fuchsia Norwich-White se joindront au comité.

Nous avons hâte de voir ce que l'avenir réserve à la *RCBD*! Bonne lecture à tous!

**PRÉSIDENTE
ANNE MARIE MELVIE**





LancasterHouse
labour • employment • human rights law

Lancaster House presents your new bargaining companion!

Introducing a paperback series on collective bargaining. These convenient texts will answer all of your questions pertaining to workplace law and contract language.



Designed for on-the-go negotiators, each of these ten handy texts is:

- A concise, informative paperback you can transport with ease
- An indispensable resource at the bargaining table
- A comprehensive guide to all major bargaining topics, including *human rights, job security, health and safety, etc.*
- An easy-to-access source of commentary on applicable legislation and case law

Order each volume separately at \$125!

Plus added feature: 1,700 clauses with commentary from over 600 collective agreements

**THE ONLY
RESOURCE OF
ITS KIND!**

**To order, visit our bookstore at
lancasterhouse.com or call (416) 977-6618**



III Exploring the Development of a Standard System of Citation Metrics for Legal Academics*

By Susan Barker¹

ABSTRACT

In 2017, I undertook a six-month research leave in order to examine the use of author-level citation metrics as means to measure the scholarly, judicial, and social influence of legal academics. As part of that leave, I developed a standard qualitative and quantitative metric that could be used by legal scholars everywhere. This paper is the nascent product of that leave, which I am presenting in the hopes of soliciting reactions and feedback from law librarians and legal academics.

SOMMAIRE

En 2017, j'ai entrepris un congé de recherche de six mois afin d'examiner l'utilisation des indicateurs de citations au niveau de l'auteur comme moyen de mesurer l'influence savante, judiciaire et sociale des universitaires de droit. Dans le cadre de ce congé, j'ai développé une mesure qualitative et quantitative standard qui pourrait être utilisée par les juristes partout dans le monde. Ce document est le produit naissant de ce congé, que je présente dans l'espoir de solliciter des réactions et des commentaires de la part des bibliothécaires de droit et des universitaires de droit.

INTRODUCTION

Legal scholars are faced with increasing pressure to provide quantitative measures of scholarly impact from their own institutions, with respect to granting awards, considering promotion as well as tenure, and from external sources such as funding agencies. At present, the production of citation metrics is dominated by the scientific research and publication paradigm. In an environment where legal scholars may be competing for grants and advancement, not only with scholars from their own discipline, but also with scholars from other disciplines, legal scholars may be at a disadvantage without a clearly defined standard for measuring impact.

The impact of legal scholarship goes beyond academic influence. What influence does legal scholarship have on society as a whole? Should being cited in case law, making reports or recommendations to government bodies or agencies, being an expert witness, or explaining the law and its impact in various forms of media also be considered when examining influence? I believe they should. The proposed *b-index* is an attempt to measure the academic, judicial, and social influence of legal academics.

¹ Digital Services and Reference Librarian, Bora Laskin Law Library, University of Toronto. The author would like to thank the many people that assisted and supported her in developing this proposal. Karen Knop, Assistant Dean of Research and Aleatha Cox, Research Administrator from the Faculty of Law, University of Toronto; John Bolan from the Bora Laskin Law Library; Yemisi Dina and Sharon Wang, Law Librarians at Osgoode Hall Law School Library; Rita Vine, Head, Faculty and Student Engagement, U of T Libraries; Simon Pratt, Director of Policy Research, University of Toronto; and Ruth Barker and Julia Maloney for their invaluable help with the model.

The Environment

Although the term bibliometrics only came into use in the late 1960s,² the idea of measuring “patterns of author productivity”³ was first explored in the 1920s. One subset of bibliometrics, citation analysis, had its inception in 1955 with the development of the *Science Citation Index (SCI)* and has grown from there. Today, online platforms such as SciVal, Clarivate Analytics, and even Google Scholar provide comprehensive “research performance”⁴ analyses easily and readily.

Despite the extensive literature that delves into the limitations of and controversies about using citation analysis (see resources list attached), the use of citation metrics as a measure of influence is an accepted practice in the pure sciences. As an example, the *h-index*, which is easily generated online, easy to understand, and objective, has become the standard measure of research impact in the pure sciences. Universities now use metrics for all disciplines, not just the pure sciences, to evaluate individual nominations for promotion, enhance their respective reputations, justify program funding, and support a variety of partnership proposals in the national and international arenas. Granting agencies use metrics in part to evaluate grant applications. Despite the fact that many institutions accept the use of citation metrics for all disciplines, the infrastructure that supports collecting and generating citation metrics remains biased towards the pure sciences, and many scholars and researchers consider their use in other disciplines to be problematic.

The influence of academics in the social sciences and humanities is particularly difficult to measure, as measures of impact have not matured in those disciplines as they have done in the pure sciences. Platforms like SciVal and Clarivate Analytics provide metrics of research performance based on the contents of the Scopus and Web of Science databases, respectively. In both cases, these databases focus primarily on scientific journals, and their coverage of the literature of the social sciences and humanities is less comprehensive. This limitation makes it difficult to ascertain the full measure of a social science researcher’s academic influence. To mitigate this issue, SciVal, for example, enables the use of relative measures like “Field-Weighted Citation Impact” rather than absolute citation counts for comparison purposes. Field-Weighted Citation Impact enables the researcher to compare like with like (in terms of subject specialty) and to situate the researcher within the realm of their own discipline as a means of comparison with others. The problem remains that the number of social science and humanities resources included in these platforms is limited when compared to those available for the sciences.

If the social sciences and humanities are problematic when it comes to measuring an author’s influence, then law has even more difficulties. In the pure sciences, the focus is almost entirely on the publication of articles in prestigious journals. In law, authorship of books and chapters in books and measuring citations to those books and chapters is as important, or possibly even more important, than measuring citations to journal articles. Although books and chapters in books are now being included in some databases, there are still many gaps in the coverage.

Law’s publishing paradigm is also complicated. Many of the law journals, even the elite journals, are student-run and published under the auspices of their respective faculties. Most of them do not have any connection to the commercial publishers that populate the databases like Scopus and Web of Science. Most published law journals are behind paywalls in the collections of WestLawNext or LexisNexis (which don’t have author metrics readily available) or on HeinOnline (which provides pure citation counts only). Google Scholar provides citation metrics as part of its Scholar Profiles but does not capture material that is behind the paywalls of the major resource providers.

What this lack of comprehensive metrics means for legal academics and for law librarians, who are often involved with generating metrics, is that it takes extensive text mining and evaluation to gather comprehensive citation metrics, unlike the convenient, automatically generated metrics that are available for the pure sciences. This text mining will also require taking a variety of pitfalls into consideration: name variations, name disambiguation, overlapping coverage in the databases, and an unclear understanding of what these metrics mean without any consistent contextualization, as a few examples. It is no wonder law faculty are resistant to the use of metrics as a means to identify academic influence, especially as there is no model or rubric for consistently quantifying research influence among law faculty.

It further needs to be noted that law professors are not just academics whose impact only influences other academics in their discipline. Legal academics are also members of a profession, and their influence extends to the profession of law as well as to society as a whole.⁵ Law faculty have authority that extends far beyond the university and can influence all levels of society. A book or paper might be cited in the courts, which could have a profound effect on the law of the land and how it is interpreted. Driedger’s modern principle of statutory interpretation is one good example of an idea that was adopted from a legal text⁶ that has now become entrenched in the law. David Dyzenhaus’s concept of “deference as respect”⁷ is another that has been cited in hundreds of Canadian cases. This type of influence cannot

² Dennis Thompson & Cheri K Walker, “A Descriptive and Historical Review of Bibliometrics with Applications to the Medical Sciences” (2015) 35:6 *Pharmacotherapy* 551 at 552.

³ *Ibid.*

⁴ SciVal, online: Elsevier <www.elsevier.com/solutions/scival>.

⁵ Craig Forcese, “The Law Professor as Public Citizen: Measuring Public Engagement in Canadian Common Law Schools”, (2015) 36 *Windsor Rev Legal Soc Issues* 66 [Forcese].

⁶ Elmer A Driedger, *The Construction of Statutes*, 2nd ed, (Toronto: Butterworths, 1983).

⁷ David Dyzenhaus, “The Politics of Deference: Judicial Review and Democracy” in Michael Taggart, ed, *The Province of Administrative Law* (Oxford: Hart Publishing, 1997).

be measured by journal citation metrics. Gathering these metrics that capture judicial influence also requires extensive text mining: searching for citations to academic articles and treatises in the case law databases. Further, many law professors engage in public interest/public policy work, and many take on high levels of “public policy engagement.”⁸ There is no existing way of measuring the social influence of legal academics, which most certainly cannot be quantified in the same way academic, or judicial influence, can be quantified.

In order to effectively measure influence, the model has to comprise three complementary components: academic influence, judicial influence, and social influence.

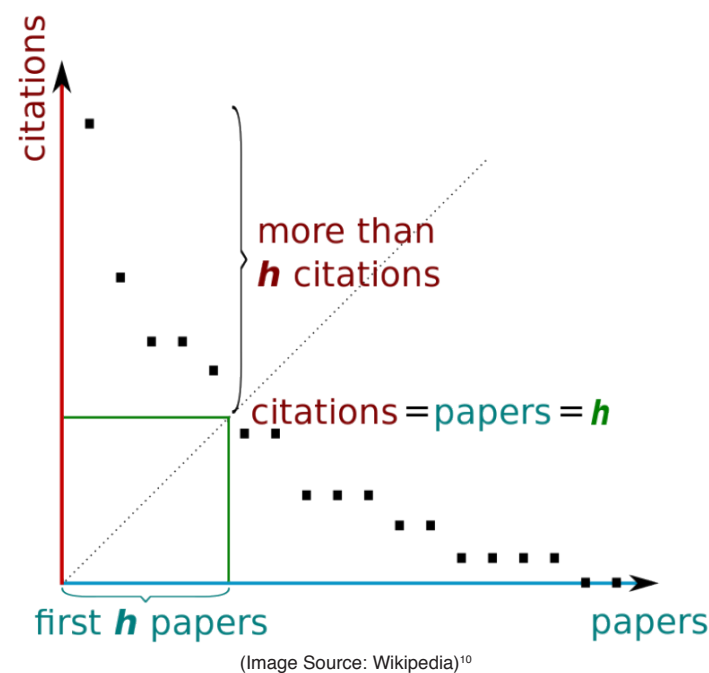
Existing Models for Measuring Impact at the Author Level

Models that Quantify Impact

There are a number of metrics that qualify impact at the journal or institutional level, but this paper focusses on metrics that measure individual impact.

Traditional Metrics – The *h*-index

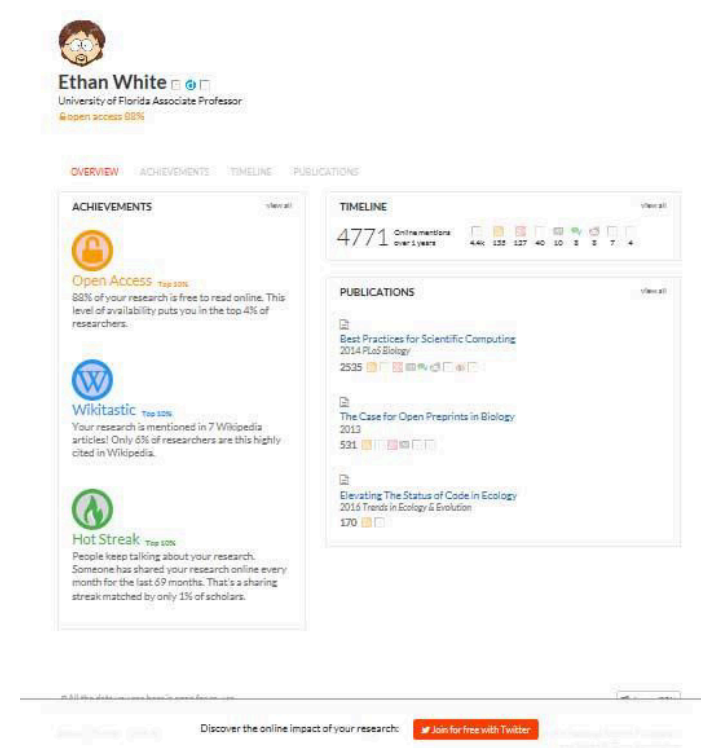
The *h*-index is likely the best known of the individual citation metrics and the most used. Administrators are comfortable using the *h*-index as a measure of academic performance due to its clarity and lack of ambiguity.⁹ Its beauty is in its simplicity. The number is derived from the intersection of the number of papers published by an individual and the number



of citations those papers have received. It is a simple number, but it captures both productivity and influence. It does not, however, distinguish quality of work by looking at peer review or journal impact factors. SciVal and Clarivate Analytics will automatically generate an *h*-index for every researcher that is included in the database. Google Scholar will generate an *h*-index and other metrics for anyone who has set up a profile. Publish or Perish is a Google Scholar add-on that will generate an *h*-index using the resources available through Google Scholar.

Altmetrics

Altmetrics can generally be defined as metrics that “examine the content of the social Web in order to provide either an alternative or enhancement to the use of journal impact factors and click-through rate analysis to measure the impact and value of scholarly work.”¹¹ This definition can be expanded to include individual impact.



Impactstory Profiles

While the *h*-index measures citations in academic literature, Impactstory plays a different role: this platform measures the impact of an individual's research using online sources like Twitter, blogs, or online news. Impactstory Profiles require a researcher have an ORCID (Open Researcher and Contributor ID) number in order to register. Once a researcher has connected their ORCID number and articles

⁸ Forcese, *supra* note 5 at 67.

⁹ Interview with Rita Vine, Head, Faculty and Student Engagement, University of Toronto Libraries (13 June 2017).

¹⁰ “*h*-index”, online: Wikipedia <upload.wikimedia.org/wikipedia/commons/thumb/d/da/H-index-en.svg/768px-H-index-en.svg.png>.

¹¹ Finbar Galligan & Sharon Dyas-Correia, “Altmetrics: Rethinking the Way We Measure” (2013) 39 *Serials Rev* 56 at 56.

¹² Impactstory: Sample Profile, online: Impactstory <profiles.impactstory.org/u/0000-0001-6728-7745>.

to Impactstory, this service monitors the internet and social media for mentions of those articles and then reports back to the user. Above is a sample profile from the Impactstory website.

Models that Qualify Impact

While judicial and academic impact can be quantified based on the number of citations, it is a lot harder to measure social impact in the same way. One way to memorialize social impact is through narrative that describes the nature and quality of the interaction.

Becker List: Impact Indicators

The Becker List of Impact Indicators was developed by the Bernard Becker Medical Library at the Washington University School of Medicine in St. Louis as a guide to “supplement ... publication analysis”¹³ by providing a list of areas in which researchers may have impact outside of the academy. Although most of the measures included in the list are not relevant to legal scholarship, the section on “Legislation and Policy” is directly relevant to legal academics. It provides some ideas as to which aspects of a law faculty member’s role in the community could be used to develop a narrative of social impact.¹⁴

UK Research Excellence Framework – Impact Case Studies

One of the components of the UK Research Excellence Framework is the inclusion of “Impact Case Studies.”¹⁵ These studies highlight the social impact of UK academic research on a national and international level. Each Impact

Case Study is evaluated by an expert panel according to established criteria and assigned a score. In the 2014 Research Excellence Framework, impact counted for 20 per cent of the total score.¹⁶

Here is an example from the University of Hull. While this example describes published research, it still provides a good model of a narrative description of impact.

Summary of the impact

Research published in peer-reviewed journals/ books and reports commissioned by government departments have had *significant impact on UK government policy relating to the reform of domestic consumer law*.

Impact can be seen in legislation adopted to transpose EU directives into domestic law, as well as the development of reform proposals during the current period (notably the Consumer Rights Bill [draft bill published on 12 June 2013]). The research was also used to give evidence to a House of Lords Select Committee and to assist the Law Commission with several projects.

The ultimate non-academic beneficiaries are UK consumers, because a clearer and streamlined set of legal rules will make it easier for them to identify their rights and encourage greater compliance by business. Other non-academic beneficiaries are staff from Consumer Direct and the Citizens Advice Bureau who advise on consumer law, and the UK government itself.¹⁷



MASTER_LAST UPDATED 04 February 2014. Washington University School of Medicine in St. Louis Bernard Becker Medical Library. This work is licensed under a [Creative Commons Attribution-NonCommercial-Share Alike 3.0 United States License](https://creativecommons.org/licenses/by-nc-sa/3.0/). Questions? Cathy C. Sarli (sarlic@wustl.edu)

LEGISLATION AND POLICY	Legislation and Policy represents codification of research outputs and/or activities into public law, guidelines, standards or policy.
Indicators	Evidence
Committee Participation	Research study members invited to serve on advisory boards. Research study members invited to serve on committees for policy development.
Guidelines	Research study cited in development of guidelines issued by organizations.
Legislation/Regulations	Research study cited in enactment of federal, state or local legislation or regulation.
Policy	Research study cited in enactment of federal, state or local policy. Research study cited in enactment of non-governmental policy. Policy-making organizations report that research findings resulted in change in policy.
Standards	Research study cited in enactment of standards such as American National Standards Institute (ANSI) or the International Standard Organization (ISO).
Testimony/Witness	Testimony based on research outputs and/or activity is presented before a legislative body.

¹³ *The Becker List*, online: Bernard Becker Medical Library <becker.wustl.edu/impact-assessment/model>.

¹⁴ *Ibid* at p 14.

¹⁵ Interview with Simon Pratt, Director of Policy and Analysis, University of Toronto (18 June 2017).

¹⁶ Research Excellent Framework 2014: Introduction, online: REF2014 <ref.ac.uk/2014/results/intro>.

¹⁷ Impact Case Study: Consumer Law Reform, online: REF2014 Case Studies <impact.ref.ac.uk/CaseStudies/CaseStudy.aspx?id=32745>.

My proposed model is a hybrid that includes both a numeric value and a narrative component. The narrative will capture the elements of social impact that cannot be quantified by citation counts, but are nonetheless an important part of the academic's contribution to society as a whole. Combining the structure of the Impact Cases Studies with the types of indicators that have been identified in the Becker List would be one effective means of providing this narrative content. These studies would be subjected to peer review and assigned a score that would be added to the overall proposed metric.

The *b*-Index: A Proposed Model for Creating a Metric to Measure the Academic, Judicial, and Social Influence of Legal Academics

Why is the model necessary?

Law needs a metric that captures all aspects of legal scholarship. Citation metrics are available through SciVal, Clarivate, Publish or Perish, or Google Scholar Profiles to anyone who wants to view them but, as noted above, none of these services are flexible enough to truly reflect the unique aspects of legal scholarship and its impact on the courts and society, as well as on the academy.

Why can't we just avoid using metrics?

Metrics might be required as part of a grant application. The Social Sciences and Humanities Research Council (SSHRC), for example, while not specifying that it is asking for citation metrics, does ask for "[e]vidence ... of impacts on professional practice, social services and policies."¹⁸ This evidence counts for 30 per cent of the SSHRC's evaluation criteria.

Citation metrics are sometimes used to compare candidates for promotion, often without the researcher's knowledge, as these nominations are confidential.

Individual researchers are still part of the larger community, and their reputation contributes to the reputation and success of their home institutions. The University of Toronto and Ontario Government's current *Strategic Mandate Agreement*, for example, identifies the university's goal with regards to "Research Excellence and Impact" as being the top Ontario University with highly cited researchers.¹⁹

What is the Model?

The model, which I am calling the *b*-index, will create a metric that includes both quantitative and qualitative reporting of academic, judicial, and social impact. This model will create a simple numerical metric, much like the *h*-index, that is objective, transparent (if the variables are

defined and applied consistently), and easy to understand. To ensure objective, consistent, and reproducible results when generating a *b*-index, it is important to make sure the parameters (like sources of information and date ranges) are applied across the board in all three areas of influence.

The Formula

$$(0.3*[(5a+2.5b+c)/3] + 0.5*d + 0.2*e)/10$$

The *b*-index is made up of three components: Judicial Influence, Academic Influence, and Social Influence (including altmetrics).

Judicial Influence

Judicial influence will be 30 per cent of the total and will be subdivided by citations at court level. Each court has been assigned a number that reflects its importance in the common law system. The numbers assigned are "5" for a citation at the Supreme Court or in a foreign or international court (measure a), "2.5" for a citation at the appeal level (measure b), and "1" for a citation at the trial level (measure c).²⁰ These numbers will be added and averaged to create the measure of judicial impact. The numbers for this part of the formula will be gleaned by using one of the commercial databases (i.e., WestlawNext Canada or Lexis Advance Quicklaw), as they will easily break down the search findings by court level, or from the free service CanLII (Canadian Legal Information Institute). Using CanLII will require more analysis, as it is less easy to extract court level information without doing a manual count.

Academic Influence

Academic influence counts for 50 per cent of the total number (measure d). Each citation will count as 1. This total number will be based on the total number of citations in the academic literature. There are a number of sources available (HeinOnline Author Pages, Google Scholar Profile Pages, or Publish or Perish, for example) that will generate these citation counts, although none will be individually completely comprehensive.

HeinOnline

The HeinOnline Author Profile Page provides the total number of citations, the number of citations in the last ten years, and the number of citations in the last 2 years. It does not, however, provide an *h*-index or equivalent. These profiles are generated automatically by HeinOnline, but legal academics can enhance their profile by adding information such as their university/affiliation, ORCID number, biography, social media links, and a photograph.

¹⁸ "Insight Development Grants: Evaluation and Adjudication", online: Social Sciences and Humanities Research Council <sshrccrsh.gc.ca/funding-financement/programmes-programmes/insight_development_grants-subventions_de_developpement_savoir-eng.aspx>.

¹⁹ "Strategic Mandate Agreement: University of Toronto – Ministry of Advance Education and Skills Development, 2017-2020" (October 6, 2017), online: <[www.utoronto.ca/sites/default/files/University of Toronto SMA 2017-2020 %28for publication%29.pdf](https://www.utoronto.ca/sites/default/files/University%20of%20Toronto%20SMA%202017-2020%20for%20publication%29.pdf)>.

²⁰ In all cases, the values assigned are arbitrary, but so long as they are applied across the board they will yield consistent results.

Roach, Kent (Edit Author Profile)

	#	Rank
Cited by Articles	663	1,441
Self-Citations	126	
Accessed (Past 12 Months)	3,878	18
Cited by Articles (Past 10 Years)	487	832
Cited by Articles (Past 1-2 years)	19	1,408
ScholarCheck Rank		6,006

105 results searching for (creator_facet:"Roach, Kent") in Law Journal Library, sorted by "Number of Times Cited by Articles"

Sort by:

HeinOnline Author Profile for Kent Roach²¹

Google Scholar Profiles

Scholars must sign up to create a Google Scholar Profile and add the articles and books that they want affiliated with their profile. One advantage of using this program is that it will include citations from materials other than journals. You will not, however, find citations from journal articles that are behind paywalls like WestlawNext Canada or Lexis Advance Quicklaw. The profile does provide a total citation count but does not provide the ability to set a date range.

The Google Scholar Profile provides raw citation numbers, an *h*-index, and Google Scholar's own *i10 index*, which indicates the number of publications with at least ten citations.

Publish or Perish

Publish or Perish is a downloadable program that searches Google Scholar for citation information. One advantage of using this program is that it will include citations from materials other than journals. As with Google Scholar Profiles, you will not find citations from journals that are behind paywalls like WestlawNext Canada or Lexis Advance Quicklaw. Publish or Perish is useful for locating citation metrics for academics who have not set up their Google Scholar Profile.

The results of a search for Kent Roach look like this

- kent roach from 2007 to 2017
- Publish or Perish 6.21.6159.6600
- Search terms
- Authors: kent roach
- Years: 2007 to 2017 ...

Metrics

- Publication years: 2007-2017
- Citation years: 11 (2007-2018)
- Papers: 167 Citations: 896
- Citations/year: 81.45
- Citations/paper: 5.37 (*count=1)
- Citations/author: 778.97
- Papers/author: 132.88
- Authors/paper: 1.57/1.0/1 (mean/median/mode)
- Age-weighted citation rate: 126.67 (sqrt=11.25), 105.67/author
- Hirsch h-index: 16 (a=3.50, m=1.45, 503 cites=56.1% coverage)
- Egghe g-index: 24 (g/h=1.50, 610 cites=68.1% coverage)
- PoP hl,norm: 15
- PoP hl,annual: 1.3

Commercial Databases

The final alternative for journal citation counts is the commercial databases. WestlawNext Canada provides

²¹ "Kent Roach Author Profile Page", online: HeinOnline <heinonline.org/HOL/AuthorProfile?action=edit&search_name=Roach%2C%20Kent&collection=journals>.



Kent Roach

Professor of Law, [University of Toronto](#)
Verified email at utoronto.ca - [Homepage](#)

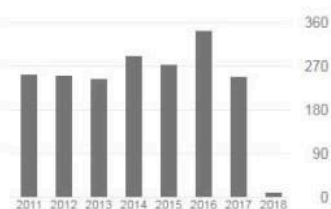
Counter-terrorism wrongful convictions criminal justice judicial review law reform

FOLLOW

Cited by

VIEW ALL

	All	Since 2013
Citations	3580	1412
h-index	33	21
i10-index	71	47



TITLE

CITED BY

YEAR

Restorative justice and criminal justice: Competing or reconcilable paradigms
A von Hirsch, J Roberts, AE Bottoms, K Roach, M Schiff
Bloomsbury Publishing

197 2003

The Supreme Court on trial: judicial activism or democratic dialogue
K Roach
Irwin Law

179 2001

Due process and victims' rights: The new law and politics of criminal justice
K Roach
University of Toronto Press

139 1999

September 11: Consequences for Canada
K Roach
McGill-Queen's Press-MQUP

137 2003

Four models of the criminal process
K Roach

128 1998

Google Scholar Profile for Kent Roach²²

access to the World Journals Database, which includes journals from jurisdictions all over the world. One drawback is that you cannot limit your search by date. A search for *kent/3 roach* or *k /3 roach* yielded 1187 results. Interestingly the overlap between Google Scholar and the commercial databases seems to be quite small. A comparison of a small sample of search results from Google Scholar with results from the WestlawNext World Journals database showed that only 12 to 15 per cent of the articles were duplicated.

Ideally the results from sources listed above and citations in the commercial databases would need to be combined in order to create the most comprehensive metric.

Social Influence

The most difficult aspect of influence to measure is social influence. For this aspect, I am proposing a narrative form like that of the *UK Research Excellence Framework Impact Case Studies*. This section of the index would require faculty input in the form of a report (the *Impact Report*) that highlights a faculty member's activities in the public sphere. Craig Forcece lists a number of activities that would fall under the heading of social engagement: "authoring reports for governments, law reform commissions, think tanks, or public interest groups; serving as an expert in law cases; direct participation in legal work; and membership in, or professional activities with, various boards, tribunals, and commissions."²³ This list, combined with the suggestions provided in the *Becker List*, provides ample examples of the

way that faculty members participate in the wider community. The report would consist of two parts: a summary of the activity and its impact, as well as a list of sources that would corroborate the impact. These sources could include media mentions, discussions in parliament, and mentions in social media (these could be measured using Impactstory, as discussed above).

Because this influence cannot be directly quantified, this report would and should be subject to peer review. It has been noted many times in the literature that peer review is still the best method of assessing impact. To incorporate peer review into the index would enhance its credibility. Social impact would be scored out of 20 (as is it valued as 20 per cent of the overall index (measure e)) by the peer reviewers and added to the *b*-index. I would suggest that this review be conducted by an in-house committee of academics, likely chaired by the institution's dean of research or equivalent.

The Model in Action

To test the feasibility of the model, I selected eight professors (anonymized) and tested the consistency of the results using different variables for each test. Each professor has been assigned a score of 20 on the social impact portion of the scale, as there are no extant *Impact Reports* to measure. The eight professors I chose are at varying stages of their careers, from new academics to experienced and well-respected scholars. Half are male and half are female. They are all, however, from the same academic institution.

²² "Kent Roach Google Scholar Profile", online: Google Scholar <scholar.google.com/citations?user=Q9cmDoEAAA&hl=en>.

²³ Forcece, *supra* note 5 at 67.

Identifier	Demographics
Professor A	(M) - publishing since 1989
Professor B	(M) - publishing since 1982
Professor C	(M) - publishing since 2011
Professor D	(F) - publishing since 1982
Professor E	(F) - publishing since 1983
Professor F	(F) - publishing since 2017
Professor G	(M) - publishing since 2003
Professor H	(F) - publishing since 2003

Test 1

Test 1 measures citations from the past **two years** using WestlawNext Canada for the judicial influence statistics, **Publish or Perish** as the source for citation information, and 20 as the number assigned for social influence, as there are no extant *Impact Reports* to measure.

	Judicial Influence			Academic Influence	Social Influence	
	Supreme Court Citations	Appeal Court Citations	Trial Court Citations	Citations in Academic Literature		
PROFESSORS	a	b	c	d	f	B-index Total
A	8	5	36	54	20	3.99
B	0	26	96	28	20	3.41
C	0	0	0	35	20	2.15
D	0	2	2	4	20	0.67
E	0	14	124	0	20	1.99
F	0	0	0	4	20	0.60
G	0	0	0	5	20	0.65
H	0	0	0	7	20	0.75

Test 2

Test 2 measures citations from the past **two years** using WestlawNext Canada for the judicial influence statistics, **HeinOnline** as the source for citation information, and 20 as the number assigned for social influence, as there are no extant *Impact Reports* to measure.

	Judicial Influence			Academic Influence	Social Influence	
	Supreme Court Citations	Appeal Court Citations	Trial Court Citations	Citations in Academic Literature		
PROFESSORS	a	b	c	d	e	B-index Total
A	8	5	36	19	20	2.24
B	0	26	96	8	20	2.41
C	0	0	0	12	20	1.00
D	0	2	2	0	20	0.47
E	0	14	124	2	20	2.09
F	0	0	0	0	20	0.40
G	0	0	0	7	20	0.75
H	0	0	0	19	20	1.35

Comparison of the results of Test 1 and 2

From this comparison, it is clear that the metrics from different sources will provide different results, but there are some consistencies. The professors at the top and bottom of the list are the same in both cases. The ranking has only shifted for the professors in the middle rankings.

To ensure neutral use of the *b*-index, it is important to compare like with like. Institutional or cross institutional (if the *b*-index was universally adopted) policy decisions would have to be made about which sources should be used and the method by which these numbers are generated.

Ranking highest to lowest

HeinOnline		Publish or Perish	
Professor A	2.2	Professor A	4.0
Professor B	2.4	Professor B	3.4
Professor E	2.1	Professor C	2.2
Professor H	1.4	Professor E	2.0
Professor C	1.0	Professor H	0.8
Professor G	0.8	Professor D	0.7
Professor D	0.5	Professor G	0.7
Professor F	0.4	Professor F	0.6

Test 3

Test 3 measures citations from the past **10 years** using WestlawNext Canada for the judicial influence statistics, **Publish or Perish** as the source for citation information, and 20 as the number assigned for social influence, as there are no extant *Impact Reports* to measure.

PROFESSORS	Judicial Influence			Academic Influence	Social Influence	B-index Total
	Supreme Court Citations	Appeal Court Citations	Trial Court Citations			
	a	b	c	d	f	
A	47	52	111	534	20	31.86
B	11	81	307	256	20	18.85
C	0	0	0	201	20	10.45
D	2	4	4	58	20	3.54
E	3	42	361	35	20	6.96
F	0	0	0	4	20	0.60
G	0	0	0	28	20	1.80
H	0	0	0	305	20	15.56

Test 4

Test 4 measures citations from the past **10 years** using WestlawNext Canada for the judicial influence statistics, **HeinOnline** as the source for citation information, and 20 as the number assigned for social influence, as there are no extant *Impact Reports* to measure.

PROFESSORS	Judicial Influence			Academic Influence	Social Influence	B-index Total
	Supreme Court Citations	Appeal Court Citations	Trial Court Citations			
	a	b	c	d	f	
A	47	52	111	487	20	29.51
B	11	81	307	248	20	18.45
C	0	0	0	31	20	1.95
D	2	4	4	15	20	1.39
E	3	42	361	30	20	6.71
F	0	0	0	0	20	0.40
G	0	0	0	51	20	2.95
H	0	0	0	138	20	7.30

Comparison of Test 3 and 4

Interestingly, over the 10-year period the results were much the same as over the two-year period. Those with the highest and lowest rankings remained the same, while there was some difference in the middle ranges.

Ranking highest to lowest

HeinOnline		Publish or Perish	
Professor A	29.95	Professor A	31.9
Professor B	18.5	Professor B	18.9
Professor H	7.3	Professor H	15.7
Professor E	6.7	Professor C	10.5
Professor G	3.0	Professor E	7.0
Professor C	2.0	Professor D	3.5
Professor D	1.4	Professor G	1.8
Professor F	0.4	Professor F	0.6

Comparison of a two-year span over a ten-year span

Once again, the results are consistent at the top and bottom levels and across the time spans.

2-YEAR SPAN Ranking highest to lowest

HeinOnline		Publish or Perish	
Professor A	2.2	Professor A	4.0
Professor B	2.4	Professor B	3.4
Professor E	2.1	Professor C	2.2
Professor H	1.4	Professor E	2.0
Professor C	1.0	Professor H	0.8
Professor G	0.8	Professor D	0.7
Professor D	0.5	Professor G	0.7
Professor F	0.4	Professor F	0.6

10-YEAR SPAN Ranking highest to lowest

HeinOnline		Publish or Perish	
Professor A	29.95	Professor A	31.9
Professor B	18.5	Professor B	18.9
Professor H	7.3	Professor H	15.7
Professor E	6.7	Professor C	10.5
Professor G	3.0	Professor E	7.0
Professor C	2.0	Professor D	3.5
Professor D	1.4	Professor G	1.8
Professor F	0.4	Professor F	0.6

Future Considerations

Two of the issues with creating metric reports for faculty members are its labour intensity and the lack of a single central location for gathering the information. It would be interesting to investigate developing a partnership with one of the commercial database providers to generate metrics for parts a and b using the *b*-index model.

The greatest hurdle is getting the support for this type of measurement from faculty members, many of whom do not believe in the value of metrics and have stated to me that they are concerned that these numbers will be used punitively (by withholding promotion or merit pay) instead of in support of their academic success. To this end, it would be helpful for law librarians to conduct education sessions and seminars

for faculty in order to show them that all factors have been considered, including grey areas like social impact, when developing this metric. The development of a *Responsible use of Metrics Policy* would also help to alleviate faculty fears.

Responsible Use of Metrics

Given that there is quite a bit of controversy with the respect to the use and “abuse” of research metrics, it is important to set some ground rules for their application.

The “Leiden Manifesto for Research Metrics” sets out “Ten Principles to Guide Research Evaluation.”²⁴ There are a few key principles relating to the use of individual metrics that I would like to highlight here.

Principle 1. Quantitative evaluation should support qualitative, expert assessment.²⁵

... [A]ssessors must not be tempted to cede decision making to the numbers. Indicators must not substitute for informed judgment. Everyone retains responsibility for their assessments.²⁶

Principle 5. Allow those evaluated to verify data and analysis.

Allowing researchers to verify the data on which they are being evaluated will give them a sense of agency over the process and allow them to be active participants thereby lessening their concerns about the fairness of the evaluation process.

Principle 6. Account for variation by field in publication and citation practices.²⁷

As noted above, law has a very specific publishing paradigm that is not well captured by databases like Web of Science and Scopus, and, since services like SciVal and Clarivate Analytics gather their information from those databases, it is important to contextualize the research by using tools such as “Field-Weighted Impact Measures.”

Principle 7. Base assessment of individual researchers on a qualitative judgement of their portfolio

Metrics are purely numeric and do not take a researcher’s demographic circumstances into consideration. Any review of metrics should include information about the researcher’s “expertise, experience, activities and influence.”²⁸

Administrators at each faculty of law should develop a policy on the *Responsible Use of Metrics* that would address and alleviate faculty members’ fears that metrics will be used punitively rather than as a means of supporting and

²⁴ Diana Hicks et al, “The Leiden Manifesto for Research Metrics” (2015) 520 Nature 429.

²⁵ *Ibid* at 430.

²⁶ *Ibid*.

²⁷ *Ibid*.

²⁸ *Ibid* at 431.

encouraging research, individual promotion, and partnership.

Reputation Management and Monitoring

As I have noted above, citation metrics are already publicly available and are often referred to and used without a faculty member's knowledge. As a consequence, it makes a great deal of sense for faculty members to take action to guard and enhance their academic reputations. Faculty members should be encouraged to monitor their citation metrics in the same way they would review a credit rating: to check for errors and ensure they are getting credit for their work. Law librarians have a great deal of expertise and familiarity with the tools that are used to generate citation metrics and manage professional reputations, so there is a logical role for them to play in alerting faculty members to, and training them in, the use of these resources.

Faculty should be encouraged to create a Google Scholar Profile and to enhance their HeinOnline Author Profile by adding an ORCID number and social media links. They should also be encouraged to sign up for an Impactstory profile that will help them to identify their level of public recognition and areas of social influence.

The ORCID number is likely the most important tool faculty members can use to manage their professional reputations. HeinOnline, Impactstory, and Scopus are some examples of resources that use the ORCID number as a means of connecting authors with their works. Having an ORCID

number can be especially useful for authors with common or double-barrelled names or names that have unusual spellings where citation errors are commonly made.

The Open Researcher and Contributor ID ("ORCID") was established to solve name ambiguity and researcher identification problems by giving individuals a unique numeric identifier that persists over time. Unlike other author identifiers, ORCID is not limited by discipline or by geographic region or to any proprietary publisher or information provider. Major publishers, funders and research institutions have been adopting this international standard to support improved data exchange between scholarly search platforms and information systems.²⁹

Taking these few steps would be an effective way for faculty members to manage their reputations and maximize the recognition of their academic contributions.

Conclusion

While not everyone will agree that a one-size-fits-all metric is appropriate, I would argue that a consistently defined and applied metric would provide clarity for granting agencies, promotion committees, and university administrators. The legal research and publishing model is sufficiently unique that legal scholars would benefit from a unique citation metric. The *b*-index offers a clearly defined standard and benchmark for measuring academic, judicial, and social impact.

²⁹ "ORCID", online: Scholarly Communications and Copyright Office, University of Toronto Libraries, <oneresearch.library.utoronto.ca/copyright/orcid>.

CHECK US OUT ON SOCIAL MEDIA



<https://www.facebook.com/callacbd>



<http://www.callacbd.ca/CALL-Blog>



<https://twitter.com/callacbd>



<http://www.callacbd.ca>

**CALL
ACBD**

CANADIAN ASSOCIATION
OF LAW LIBRARIES
ASSOCIATION CANADIENNE
DES BIBLIOTHÈQUES DE DROIT

RESOURCES CONSULTED

Adeleke, Victor Adedayo, "Citations in Introduction and Literature Should Not Count for Quality" (2015) 16:3 Performance Measure & Metrics 303.

"Assessment: Altmetrics", online: Loughborough University, Scholarly Communications <lboro.ac.uk/research/scholcomms/assessment/altmetrics>.

"Assessment: Bibliometric Indicators" online: Loughborough University, Scholarly Communications <lboro.ac.uk/research/scholcomms/assessment/bibliometrics>.

"Assessment: Using Bibliometrics Responsibly" online: Loughborough University, Scholarly Communications <lboro.ac.uk/research/scholcomms/assessment/respmetrics>.

Antell, Karen, Joe S Foote & Jody Bales Foote, "Scholarly Publishing's Evolving Landscape: Impact Metrics, Electronic-Only Journals, and Open Access in Journalism and Communications Research" (2016) 71:3 Journalism & Mass Communication Editor 309.

Arandjelovic, Ognjen, "Fairer Based Citation Metrics" (2016) 32 Publishing Research Q 163.

Ball, Alex & Monica Duke, "How to Track the Impact of Research Data with Metrics", online: Digital Curation Centre (DCC) <ruru.ac.uk/pdf/LSDA_literature_review_final.pdf>.

— — —, "How to Track the Impact of Research Data with Metrics" (29 June 2015), online: Digital Curation Centre: DCC How-to Guides <dcc.ac.uk/resources/how-guides/track-data-impact-metrics>.

"The Becker List: Impact Indicators", online: Bernard Becker Medical Library <becker.wustl.edu/sites/default/files/becker_model-reference.pdf>.

Bergstrom, Carl T, Jevin D West & Marc A Wiseman, "The Eigenfactor™ Metrics", (2008) 28:45 J Neuroscience 11433.

Blechner, A J et al, "Reports on Citation Metrics of Scholarly Impact" (July 2016), online: Association of Law Libraries, Scholarly Communications Committee <www.aallnet.org/sections/all/storage/committees/scholarlycommunication/Report-on-Citation-Metrics-of-Scholarly-Impact-2016.pdf>.

Blockmans, Wim, Lars Engwall & Denis Weaire, *Bibliometrics: Use and Abuse in the Review of Research Performance: Proceedings from a Symposium held in Stockholm, 23-25 May 2013*, (London: Portland Press, 2014).

Borman, Christine, ed, *Scholarly Communication and Bibliometrics* (Newbury Park, CA: Sage, 1990).

Bowrey, Kathy, "A Report into Methodologies Underpinning Australian Law Journal Rankings. Prepared for the Council of Australian Law Deans (CALD)" (February 8, 2016), online: <papers.ssrn.com/sol3/papers.cfm?abstract_id=2734017>.

— — —, "Assessing Research Performance in the Discipline of Law: The Australian Experience with Research Metrics, 206-2011" (13 March 2012), online: Council of Australian Law Deans <cald.asn.au/wp-content/uploads/2017/11/Prof-Kathy-Bowrey-Research-Quality-Report-to-CALD.pdf>.

Bryant, Rebecca, "I Registered for My ORCID ID... Now What?" (18 December 2013), online: ORCID blog <orcid.org/blog/2013/12/05/i-claimed-my-orcid-id-now-what>.

Chang, Chia-Lin, Michael McAleer & Les Oxley, "Coercive Journal Self-Citations, Impact Factor, Journal Influence and Article Influence", (2013) Mathematics & Computers in Simulation 190.

Cochran, Angela, "How Many Grains of Salt Must We Take When Looking at Metrics" (8 February 2017), online: The Scholarly Kitchen <scholarlykitchen.sspnet.org/2017/02/08/49186/>.

Craik, Neil, Phillip Bryden & Katie Ireton, "Law Review: Scholarship and Pedagogy in Canadian Law Journals", (2011) 36 Queen's LJ 393.

De Bellis, Nicola, *Bibliometrics and Citation Analysis, From the Science Citation Index to Cybermetrics* (Lanham, MD: Scarecrow Press, 2009).

De Santo, Dan & Aaron Nichols, "Scholarly Metrics Baseline: A Survey of Faculty Knowledge, Use and Opinion about Scholarly Metrics" (2017) 152 College & Research Libraries 150.

Diem, Andrea & Stefan C Wolter, "The Use of Bibliometrics to Measure Research Performance in the Social Sciences", (2013) 54 Research in Higher Education 86.

Forcese, Craig, "The Law Professor as Public Citizen: Measuring Public Engagement in Canadian Common Law Schools", (2015) 36 Windsor Rev Legal Soc Issues 66.

Gelfand, Julia, "Research Impacts Using Citation Metrics: Author Impact: Why is it Important?" (28 January 2015), online: University of California Irvine Libraries <guides.lib.uci.edu/researchimpact-metrics/author_impact>.

Harnand, Stevan, "Validating Research Performance Metrics Against Peer Rankings", (2008) 8 Ethics in Science & Environmental Politics 103.

Harzing, Anne-Wil & Satu Alakangas, "Google Scholar, Scopus, and the Web of Science: A Longitudinal and Cross Disciplinary Comparison" (2016) 106 Sociometrics 787.

Harzing, Anne-Wil, "Publish or Perish" (6 February 2016), online: Harzing.com <www.harzing.com/resources/publish-or-perish>.

Hicks, Diana, et al, "The Leiden Manifesto for Research Metrics" (23 April 2015), 520 Nature 429.

Hicks, Diana, "The Dangers of Partial Bibliometric Evaluation in the Social Sciences" (2006) XXIII:2 Ecomonia Politica 145.

"The Impacts of Humanities and Social Science Research: Working Paper" (October 2014), online: Federation for the Humanities and Social Sciences <www.ideas-idees.ca/sites/default/files/2014-10-03-impact-project-draft-report-english-version-final2.pdf>.

"An International Comparison of Performance Based Research Funding Systems (PBRFS)" online: New Zealand, Ministry of Education, <education.govt.nz/assets/Documents/Ministry/Strategies-and-policies/InternationalComparison.pdf>.

Jacso, Peter, "Calculating the H-Index and Other Bibliometric and Scientometric Indicators in Google Scholar with the Publish or Perish Software", (2009) 33:6 Online Information Rev 1189.

Kell, Douglas, "The Matthew Effect in Science: Citing the Most Cited" (12 March 2009), online: Biotechnology and Biological Sciences Research Council (BBSRC): Chief Executive's Blog <blogs.bbsrc.ac.uk/index.php/2009/02/>.

— — —, "What's in a Name: Guest, Ghost and Indeed Quite Imaginary Authorships" (23 February 2009), online: Biotechnology and Biological Sciences Research Council (BBSRC): Chief Executive's Blog <blogs.bbsrc.ac.uk/index.php/2009/02/>.

Linmans, AJM, "Why with Bibliometrics the Humanities Does Not Need to be the Weakest Link: Indicators for Research Evaluation Based on Citations, Library Holdings and Productivity Measures", (2010) 83 Scientometrics 337.

Mavodza, Judith, *Citation Tracking in Academic Libraries: An Overview* (Amsterdam: Elsevier, 2016).

"Maximising the Impacts of Your Research: A Handbook for Social Scientists" (2015), online: London School of Economics <blogs.lse.ac.uk/impactofsocialsciences/the-handbook/>.

"Measuring the Reach of Your Publications Using SciVal" (January 2017), online: University of Leeds Library <library.leeds.ac.uk/downloads/file/633/>.

[measuring_the_reach_of_your_publications_using_scival>](#).

"Measuring the Reach of Your Publications Using Web of Science" (January 2017), online: University of Leeds Library <[library.leeds.ac.uk/downloads/file/631/measuring_the_reach_of_your_publications_using_web_of_science>](#).

Mishra, Vinod & Russell Smyth, "Are More Senior Academics Really More Research Productive than Junior Academics? Evidence from Australian Law Schools" (2013) 96 *Scientometrics* 411.

Moed, Henk F, *Citation Analysis in Research Evaluation* (Dordrecht: Springer, 2005).

Nederhoff, Anton J, "Bibliometric Monitoring of Research Performance in The Social Sciences and the Humanities: A Review" (2006) 66:1 *Scientometrics* 81.

Neophytou, Jenny, "Anomalous Citation Patterns in the World of Citation Metrics", online: Wiley Network <[hub.wiley.com/community/exchanges/discover/blog/2015/09/09/anomalous-citation-patterns-in-the-world-of-citation-metrics>](#).

— — —, "How to Navigate the World of Citation Metrics" online: Wiley Network <[hub.wiley.com/community/exchanges/discover/blog/2014/05/14/how-to-navigate-the-world-of-citation-metrics>](#).

Nightingale, Julie M & Gil Marshall, "Citation Analysis as a Measure of Article Quality, Journal Influence and Individual Researcher Performance" (2012) 18 *Radiography* 60.

O'Leary, Daniel E, "The Relationship Between Citations and Number of Downloads in Decision Support Systems", (2008) 45 *Decision Support Systems* 972.

"ORCID: Open Researcher and Contributor ID", online: Wikipedia <[en.wikipedia.org/wiki/ORCID>](#).

Pendlebury, David A, "The Use and Misuse of Journal Metrics and Other Citation Indicators", (2009) 57 *Archivum Immunologiae et Therapiae Experimentalis* 1.

"Start Your Research: ORCID", online: University of Canberra: Library Guides <[canberra.edu.au/library/start-your-research/orcid>](#).

"Strategic Mandate Agreement: University of Toronto – Ministry of Advance Education and Skills Development, 2017-2020" (6 October 2017), online <[www.utoronto.ca/sites/default/files/University_of_Toronto_SMA_2017-20%28for_publication%29.pdf>](#).

"Ten Things You Need to Know About ORCID Right Now" (10 April 2014), online: Impactstory Blog <[blog.impactstory.org/ten-things-you-need-to-know-about-orcid-right-now/>](#).

"Tools for Authors: Enhancing Your Impact", online: Bernard Becker Medical Library <[beckerguides.wustl.edu/authors/eri>](#).

Thompson, Dennis & Cheri K Walker, "A Descriptive and Historical Review of Bibliometrics with Applications to the Medical Sciences" (2015) 35:6 *Pharmacotherapy* 551.

University of Toronto Libraries, *Reputation Metrics for Arts, Humanities and Social Sciences* (Tip Sheet).

Walter, Isabel, Sandra Nutley & Huw Davies, "Research Impact: A Cross Sector Literature Review", online: University of St Andrews: Research Unit for Research Utilisation <[ruru.ac.uk/pdf/LSDA_literature_review_final.pdf>](#).

"Why 'Publish or Perish' has the Edge Over Google Scholar or Scopus When it Comes to Finding Out How Your Work is Used by Other Academics" (26 May 2011), online: London School of Economics: LSE Impact Blog <[blogs.lse.ac.uk/impactofsocialsciences/2011/05/26/why-publish-or-perish-has-the-edge-over-google-scholar>](#).

Wiang, Jian, "Unpacking the Mathew Effect in Citations", (2014) 8 *J Infometrics* 329.

Williams, Catherine & Danielle Padula, "The Evolution of Impact Factors: From Bibliometrics to Altmetrics" (2015), online: Scholastica <[docs.scholastica.s3.amazonaws.com/altmetrics/evolution-of-impact-indicators.pdf>](#).

Wilsdon, James, et al, *The Metric Tide: Report of the Independent Review of the Role of Metrics in Research Assessment and Management* (2015) DOI: 10.13140/RG.2.1.4929.1363.

Woolgar, Steve, "Beyond the Citation Debate: Towards a Sociology of Measurement Technologies and their use in Science Policy" (1991) 18:5 *Science Policy* 319. Appendix – Research Excellence Framework Impact

Impact case study (REF3b)



Institution: University of Oxford
Unit of Assessment: 20 - Law
Title of case study:
Shaping the English law of unjust enrichment (restitution)
1. Summary of the impact <p>The work of the late Professor Peter Birks and of Professor Andrew Burrows QC has had a profound impact on the development by the courts of a new branch of English private law, namely the law of unjust enrichment (sometimes called the law of restitution). This branch was first officially recognised by the highest court in the United Kingdom in 1991 and it is now widely viewed as being an important and independent part of the law as is, for example, the law of contract or the law of tort. Every citizen and institution is potentially affected by it, most obviously where payments are made by mistake. The particular contribution of Birks' and Burrows' research has been in assisting the courts to identify, clarify, and refine the leading principles of this new branch of the law. Their work has made what was previously obscure and under-developed, intelligible and accessible, thereby enhancing the quality of decisions made by the courts and offering guidance to counsel. Their doctrinal and theoretical writings on this subject are among the works most cited in the English courts. As the <i>Times</i> put it, 'a mere footnote in a Birks article proved to be the subject of several paragraphs of reasoning in the speeches of the law lords.'</p>

2. Underpinning research

Building on early work by Goff and Jones in 1966, Peter Birks' important book *An Introduction to the Law of Restitution* (1985) was followed by a prolific stream of articles and books published while he was the Regius Professor of Civil Law at Oxford between 1 January 1993 and his death in 2004. Andrew Burrows' most influential work has been the three editions of his book, *The Law of Restitution* [R2] and, most recently, *A Restatement of the English Law of Unjust Enrichment* [R1] (all researched and published while he has been at Oxford (1986 to 2013), as Tutorial Fellow at Lady Margaret Hall, as Norton Rose Professor of Commercial Law and Fellow of St Hugh's, and now as Professor of the Law of England and Fellow of All Souls College).

Birks' and Burrows' extensive research revealed [R1, R2, R4] that every claim that is properly seen as based on the event or cause of action of unjust enrichment involves four distinct questions: has the defendant been enriched ('the enrichment question')?; was the enrichment at the claimant's expense ('the at the expense of question')?; was the enrichment at the claimant's expense unjust ('the unjust question')?; and does the defendant have a defence ('the defences question')? If the first three questions are answered 'yes' and the last 'no', the claimant has a right to restitution, reversing the unjust enrichment. With that conceptual structure in place, their work goes on to articulate in detail the principles explaining what is meant by enrichment at the claimant's expense, what injustice is in play (articulated by recognising various 'unjust factors' such as mistake, failure of consideration, and duress) and what are the defences and their ingredients (most importantly the defence of change of position but also, for example, limitation) [R3, R5].

3. References to the research

[R1] Burrows, Andrew, (assisted by an advisory group of academics, judges and practitioners), *A Restatement of the English Law of Unjust Enrichment*, 2012 (Oxford University Press) - Assisted by an advisory expert group, the Restatement and commentary were the work of Burrows (as made clear at xi of the book).

[R2] Burrows, Andrew, *The Law of Restitution* (1st edn, 1993 (Butterworths, London), 2nd edn, 2002 (Butterworths, London), 3rd edn, 2011 (Oxford University Press)) 1-737 - The 1st edn of Burrows' *The Law of Restitution* won the Society of Public Teachers of Law Prize for Outstanding Legal Scholarship. It was reviewed favourably in the leading law journals.

[R3] Burrows, Andrew, 'Restitution in Respect of Mistakenly Paid Tax' (2005) 121 LQR 540-546.

[R4] Birks, Peter, *Unjust Enrichment* (1st edn, 2003 (Oxford University Press), 2nd edn, 2005 (Oxford University Press)) 1-318 - Birks' *Unjust Enrichment* was published in the Clarendon Law series and was reviewed favourably in leading law journals and was the subject matter of a colloquium of the leading scholars in the field the proceedings of which were published in the 2004 *Restitution Law Review* 260-289.

[R5] Birks, Peter, 'Change of Position and Surviving Enrichment' in *The Limits of Restitutionary Claims: A Comparative Analysis* (ed, Swadling, William, 1997, United Kingdom National Committee of Comparative Law) 36-63 - Based on a paper presented at an international conference run by the UK National Committee of Comparative Law in association with the British Institute of International and Comparative Law.

4. Details of the impact

In developing this area of the law, the English courts have expressly relied on and adopted the four-part analytic framework developed over several years by Birks and Burrows, as well as other particular aspects of their views. Their framework has been so widely endorsed by the courts and used by counsel that it left a profound mark on the law in this area. There are few fields of English law where the courts have made such pivotal and persistent use of academic research. Indeed, so entrenched has the Birks-Burrows approach become, that it is routinely described by the courts and others as the standard view of the area.

The research of Birks and Burrows has been favourably cited in scores of decisions of the courts in England and Wales (as well as in other 'common law' jurisdictions, including Australia, Canada and Hong Kong). In these decisions, the courts gradually shaped a ground of recovery that was, in English law, entirely new. Restitution was known and recognised in the United States and some other jurisdictions. Nonetheless, seeing that there is space for, and a need for, a kind of legal remedy, is not sufficient to call it into being. Someone needs to articulate and recognise its basic principles, and to show how these can be integrated with the rest of the law of that jurisdiction. In some areas, this is work for Parliament, but in large fields of common law it falls to the courts. So it is in the law of unjust enrichment. When counsel and the courts sought guidance in developing this area of law they naturally looked to other jurisdictions. But they also looked to the work of legal researchers, and in England and Wales, very extensively to the work of Birks and Burrows. Their arguments reached the courts by their frequent citation by academic writers, through the work of counsel who actively sought out research that offered guidance that could be useful developing arguments, and by more than a decade of direct engagement with the legal profession in seminars at Oxford and elsewhere, including Professor Burrows' work in judicial education through the Civil Committee of the Judicial Studies Board.

In the period 2008-2013, the courts made specific use of the post-1993 publications of Birks and/or Burrows in many leading cases, including the following:

(i) Arden LJ in *Benedetti v Sawiris* [2010] EWCA Civ 1427, having just cited a passage from Burrows [R2], immediately went on to say 'I would add ... at this point that the writings of scholars are of great importance in the development of the law of restitution ... I have found [them] helpful as background in resolving some of the novel issues on this appeal.' The case concerned the question of how one should value services rendered where there is no binding contract between the parties. The decision of the Court of Appeal was upheld by the Supreme Court (see (v) below) [C1].

(ii) Aikens LJ in *Haugesund Kommune v Depfa Bank* [2012] 2 WLR 199 had to decide whether the best interpretation of the law was that one House of Lords decision had been overruled by another. Having cited at [86] Birks' [R4 and R1] he went on in the next paragraph to reach a conclusion relying on their analysis [C2].

(iii) In *Test Claimants in the FII Group Litigation v HMRC* [2012] 2 WLR 1149, which concerned restitutionary claims for several billions of pounds of overpaid corporation tax, Lord Walker at [61] cited Burrows [R3 at 544] as being 'generally supportive' of the earlier case of *Phillips-Higgins* before going on to say that, contrary to what he had indicated in a previous case, he now thought that '*Phillips-Higgins* was rightly decided'. On the separate question of whether one needed a demand for a *Woolwich* claim, his Lordship, at [73], cited Burrows [R2, at 507-8] along with other writers arguing that a demand was not needed before saying in the next paragraph, 'This is a formidable volume of distinguished academic opinion' and then going on, at [79], to restate the law as not needing a demand, authoritatively settling an important and controversial point of law [C3].

(iv) In *Investment Trust Companies v HMRC* [2012] EWHC 458 (Ch) at [38]-[39], which dealt with restitution of incorrectly charged VAT, Henderson J said the following: 'It has now become conventional to consider the question whether English law recognises a right to restitution by reference to the four questions ... namely:

- a) Has the defendant been benefited, in the sense of being enriched?
- b) Was the enrichment at the claimant's expense?
- c) Was the enrichment unjust?
- d) Are there any defences?

As Professor Andrew Burrows QC says in *The Law of Restitution*, 3rd edition (2011), at p.27, if the first three questions are answered affirmatively, and the fourth negatively, the claimant will be entitled to restitution. He adds that these four elements "constitute the fundamental conceptual structure of an unjust enrichment claim". While reminding us that this is a framework for analysis, Henderson J continued, 'I have no quarrel with this basic conceptual structure.'

And later at [74], he said, 'The next question is whether the enrichment of HMRC at the expense of the claimants was unjust. As Professor Burrows explains in *The Law of Restitution* 3rd edition (2011), chapter 5, the traditional common law approach to this question requires the claimant to establish the existence of an "unjust factor" which caused the payment that the claimant seeks to recover.' The primary issue in the case was a question on the meaning of 'at the expense of'. Having looked at various views, he set out the view of Burrows, saying at [54] that Burrows occupied 'a somewhat intermediate position' before going on at [67] to decide that that intermediate position was the correct approach to apply [C4].

(v) Perhaps most importantly of all, on the appeal to the Supreme Court in *Benedetti v Sawiris* [2013] UKSC 50, Lord Clarke giving the leading judgment relied very extensively on the work of Burrows. There are favourable references to Burrows [R2] at [16], [18-20], [22], [25] and to Burrows [R1] at [28] and [31-32]. Indeed at [31]-[32], the very detailed examples set out in Burrows [R1] are repeated and the conclusions Burrows put forward on their basis are regarded as correct [C5].

The broad general impact of Birks' research is fairly summarised by a passage in his obituary in *The Times* (July 9, 2004) [C6]: 'By now [the late 1990s] his work was inspiring not only other academics but was also influencing practitioners and judges. He came to be held in great esteem by many senior judges who admired the power of his analysis in pointing the way to a principled decision. The respect afforded to his views reached the point where, in one case, even a mere footnote in a Birks article proved to be the subject of several paragraphs of reasoning in the speeches of the law lords.' That was a case in 1996. But this is not mere background: given the way the common law works, decisions reached on the law of unjust enrichment in the period 2008-2013 continue to rely on prior decisions that were directly influenced by Birks, as well as on current decisions such as those detailed above invoking the work of Burrows. For example, in *Haugesund Kommune v Depfa Bank* [2010] EWCA Civ 579 at [152] Etherton LJ relied again on the case of *Dextra Bank Trust Co Ltd v Bank of Jamaica* [2002] 1 All ER (Comm) 193 in which the Privy Council said at [45], 'Their Lordships find themselves to be in agreement with Professor Peter Birks who, in his article [see 4 above on change of position] at p 49 rejected the adoption of the criterion of relative fault in forthright language.'

The enormous impact of this research is acknowledged throughout the legal profession. A leading QC says '[T]he work done in this area of law by Professors Birks and Burrows has been absolutely pivotal, forming not only the core of the submissions by Counsel as to what the law is or should be, but (perhaps more significantly) also underpinning the decisions actually made by the courts which are, of course, littered with citations to both Professor Birks' and Professor Burrows' works'. [C7] And one of Britain's most senior judges, now retired, says 'Their works made a major contribution to the development of the law by the House of Lords judges during this period.' And 'I regarded the Professors' work as essential and extremely useful background reading when I was preparing my judgment in that case. This is because understanding the structure of the English law in this field is extremely important to its future development, and it is important that the judges get this right when writing their judgments. I found the clarity and accessibility of their exposition of the subject of very great assistance.' [C8]

The impact of this research endures; it affects everyone in England and Wales who might have a claim

in unjust enrichment, or who might have to answer such a claim, and everything from a phone bill inadvertently paid twice, to disputes involving millions of pounds in mistakenly paid tax. It has profoundly shaped an entire area of our law.

5. Sources to corroborate the impact

[C1] Arden LJ in *Benedetti v Sawiris* [2010] EWCA Civ 1427.

[C2] Aikens LJ in *Haugesund Kommune v Depfa Bank* [2010] EWCA Civ 579.

[C3] Lord Walker in *Test Claimants in the FII Group Litigation v HMRC* [2012] 2 WLR 1149.

[C4] Henderson J in *Investment Trust Companies v HMRC* [2012] EWHC 458 (Ch) at [38]-[39].

[C5] Lord Clarke in *Benedetti v Sawiris* [2013] UKSC 50.

[C6] Obituary of Peter Birks, *The Times* (July 9, 2004).

[C7] Letter on file from leading Queen's Counsel who works extensively in this field.

[C8] Letter on file from one of Britain's most senior judges, now retired.



III Are Publication and Citation Counts Reliable Indicators of Research Productivity or Impact?*

By Sean Rehaag**

ABSTRACT

Universities are increasingly using metrics such as publication and citation counts to measure faculty research productivity and impact, and to compare productivity and impact across departments and institutions. Canadian law schools are facing pressure to adopt similar metrics. In this article the author argues that publication and citation counts are not reliable indicators of research productivity or impact.

SOMMAIRE

Les universités utilisent de plus en plus des paramètres tels que le nombre de publications et le nombre de citations pour mesurer la productivité et l'impact de la recherche au niveau des facultés et pour comparer la productivité et l'impact de la recherche entre les départements et les institutions. Les facultés de droit canadiennes font face à des pressions pour adopter des paramètres similaires. Dans cet article, l'auteur fait valoir que le nombre de publications et le nombre de citations ne sont pas des indicateurs fiables de la productivité ou de l'impact de la recherche.

RELIABILITY OF PUBLICATION & CITATION COUNTS

Are publication and citation counts reliable indicators of research productivity or impact?

No.¹

* © Sean Rehaag 2018

** Associate Professor, Osgoode Hall Law School.

¹The following represent the most recently published journal articles listed on the faculty research websites of each faculty member at Osgoode Hall Law School at the time of writing: Harry W Arthurs, "Mining the Philosophers' Stone: Sixteen Tons and What Do You Get? Another Day Older and Deeper in Doubt" (2016) 12:12 Osgoode Legal Studies Research Paper Series 8; Margaret Beare & Chris Hogg, "Listening in ... to Gang

Culture" (2013) 55:3 Canadian Journal of Criminology and Criminal Justice 421; Stephanie Ben-Ishai, "Reaffirmation of Debt in Consumer Bankruptcy in Canada" (2015) 56 Canadian Business Law Journal 238; Benjamin Berger & Gerry Ferguson, "Recent Developments in Canadian Criminal Law" (2016) 40 Criminal Law Journal 33-48; Faisal Bhabha, "Towards a Pedagogy of Diversity in Legal Education" (2015) 52 Osgoode Hall Law Journal 59; Amar Bhatia, "We Are All Here to Stay? Indigeneity, Migration, and 'Decolonizing' the Treaty Right to Be Here" (2013) 13:2 Windsor Yearbook of Access to Justice 39; Andr  e Boisselle, "To Dignity Through the Back Door: Tsilhqot'in and the Aboriginal Title Test" (2015) 71 Supreme Court Law Review (2d) 27; Margaret Boittin, "New Perspectives from the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China" (2013) 47:2 Law and Society Review 245; Ruth Buchanan, "'Passing Through the Mirror': Dead Man, Legal Pluralism and the De-Territorialization of the West" (2013) 7:2 Law, Culture and the Humanities 289; Jamie Cameron, "Law, Politics and Legacy Building at the McLachlin Court in 2014" (2015) 71 Supreme Court Law Review (2d) 3; Cristie L Ford & Mary Condon, "Introduction to 'New Governance and the Business Organization' Special Issue of Law and Policy" (2011) 33:4 Law & Policy 449; Carys J Craig, "Technological Neutrality: Recalibrating Copyright in the Information Age" (2016) 17:2 Theoretical Inquiries in Law 601; Giuseppina D'Agostino et al, "On the Importance of Intellectual Property Rights for E-science and the Integrated Health Record" (2008) 14:2 Health Informatics Journal 95; Signa Daum Shanks, "Why Coywolf Goes to Court" (2016) 2:1 Lakehead Law Journal 31; John N Davis, "Legal Research Judicially Considered" (2006) 25:4 TALL Newsletter 5; Aaron Dhir, "Towards a Race and Gender-Conscious Conception of the Firm: Canadian Corporate Governance, Law and Diversity" (2010) 35:2 Queen's Law Journal 569; Susan G Drummond, "Eloquent (In)Action: Enforcement and Prosecutorial Restraint in the Transnational Trade in Human Eggs as Deep Ambivalence about the Law" (2014) 26:2 Canadian Journal of Women and the Law 206; Lisa Dufrainmont, "Hart and Mack: New Restraints on Mr. Big and a New Approach to Unreliable Prosecution Evidence" (2015) 71 Supreme Court Law Review (2d) 475; Jonathan Silver & Trevor Farrow, "Canadian Civil Justice: Relief in Small and Simple Matters in an Age of Efficiency" (2015) 4 Erasmus Law Review 232; Shelley Gavigan, "Something Old, Something New?: Re-Theorizing Patriarchal Relations and Privatization from the Outskirts of Family Law" (2012) 13:1 Theoretical Inquiries in Law 271; Benjamin Geva, "Disintermediating Electronic Payments: Digital Cash and Virtual Currencies" (2016) 31:12 Journal of International Banking Law and Regulation 661; Joan Gilmour, "Fallout from Chaoulli: Is It Time to Find Cover?" (2006) 44:2 Osgoode Hall Law Journal 327; Philip Girard, "The 'Atlantic Seat' on the Supreme Court of Canada: An Endangered Species?" (2017) 80:2 Supreme Court Law Review; Howard Kislowicz, Richard Haigh & Adrienne Ng, "Calculations of Conscience: The Costs and Benefits of Religious and Conscientious Freedom" (2011) 48:3 Alberta Law Review 679; Allan Hutchinson, "Why I Don't Teach Administrative Law (And Perhaps Why I Should?)" (2016) 53:3 Osgoode Hall Law Journal 1033; Shin Imai, Bernadette Maheandiran & Valerie Crystal, "Access to Justice and Corporate Accountability: A Legal Case Study of HudBay in Guatemala" (2014) 35:2 Canadian Journal of Development Studies 285; Tom Johnson, "Quebec's Executory Hypothec: A History Rewritten?" 15:3 Canadian Business Law Journal 335; Shelley Kierstead & Erika Abner, "Text Work as Identity Work for Legal Writers: How Writing Texts Contribute to the Construction of a Professional Identity" (2012) 9 Legal Communication and Rhetoric: JALWD 327; Sonia Lawrence & Signa Daum Shanks, "Indigenous Lawyers in Canada: Identity, Professionalization, Law" (2016) 38:2 Dalhousie Law Journal 503; Jinyan Li & S Ji, "Location-Specific Advantages: A Rising Disruptive Factor in Transfer Pricing" (2017) 71:5 Bulletin for International Taxation; John McCamus, "Unjust Enrichment, Existing Categories and *Kerr v Baranow*: A Reply to Professor McInnes" (2012) 52:3 Canadian Business Law Journal 390; Deborah McGregor, "Traditional Knowledge: Considerations for Protecting Water in Ontario" (2012) 3:3 International Indigenous Policy Journal 11; Kent McNeil, "The Doctrine of Discovery Reconsidered: Reflecting on Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies, by Robert J Miller, Jacinta Ruru, Larissa Behrendt, and Tracey Lindberg, and Reconciling Sovereignities: Aboriginal Nations and Canada, by Felix Hoehn" (2016) 53:2 Osgoode Hall Law Journal 699; Ikechi Mgbeoji, "The Comprador Complex: Africa's IPRs Elites, Neo-Colonialism and the Enduring Control of African IPR Agenda by External Interests" (2015) 26 Intellectual Property Journal 315; Janet Mosher, "Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners" (2015) 32:2 Windsor Yearbook of Access to Justice 149; Mary Jane Mossman, "Precedents, Patterns and Puzzles: Feminist Reflections on the First Women Lawyers" (2016) 5:4 Laws 1; Roxanne Mykitiuk & Isabel Karpin, "Fit or Fitting In: Deciding Against Normal When Reproducing the Future" (2016) 31:3 Continuum: Journal of Media and Cultural Studies 341; Obiora C Okafor & Basil E Ugochukwu, "Poverty in the Human Rights Jurisprudence of the Nigerian Appellate Courts (1999-2011)" (2016) 60:2 Journal of African Law 289; Palma Paciocco, "Abandoning Abandoned DNA: Reconsidering How the Fourth Amendment Abandonment Doctrine is Applied to DNA Samples" (2015) 51:6 Criminal Law Bulletin 1386; Lisa Philipps, "Registered Savings Plans and the Making of Middle-Class Canada: Toward a Performative Theory of Tax Policy" (2016) 84:6 Fordham Law Review 2677; Marilyn L Pilkington, "Enforcing the Charter: The Supervisory Role of Superior Courts and the Responsibility of Legislatures for Remedial Systems" (2004) 25 Supreme Court Law Review (2d) 77; Dan Priel, "Holmes's 'Path of the Law' as Non-Analytic Jurisprudence" (2016) 35 University of Queensland Law Journal 57; Poonam Puri & Andrew Nichol, "The Role of Corporate Governance in Curbing Foreign Corrupt Business Practices" (2015) 53:1 Osgoode Hall Law Journal 164; Sean Rehaag, Julianna Beaudoin & Jennifer Danch, "No Refuge: Hungarian Romani Refugee Claimants in Canada" (2015) 52 Osgoode Hall Law Journal 705; Bruce Ryder, "The Strange Double Life of Canadian Equality Rights" (2013) 63 Supreme Court Law Review (2d) 261; Hengameh Saberi, "Love It or Hate It, But for the Right Reasons: Pragmatism and the New Haven School's International Law of Human Dignity" (2012) 35:1 Boston College International and Comparative Law Review 59; R Liora Salter, "The Value Debate in Regulation" (1982) 20:3 Osgoode Hall Law Journal 485; Craig Scott, "Postscript on 'The Serious Consequences of Word Games': The Signaling Game around the 'Final Opportunity' of Security Council Resolution 1441" (2010) 11:8 German Law Journal 943; Dayna Scott and Adrian A Smith, "The Abstract Subject of the Climate Migrant: Displaced by the Rising Tides of the Green Energy Economy" (2017) 8:1 Journal of Human Rights and the Environment 30; Brian Slattery, "The Constitutional Dimensions of Aboriginal Title" (2015) 71 Supreme Court Law Review (2d) 45; Sara Slinn & Eric Tucker, "Canadian Strike Ballot and Notice Law: Barely a Tempest in a Teapot" (2016) 29 Australian Journal of Labour Law 171; Darcel Bullen & Lorne Sossin, "A Flex-Time JD in Canada: New Approaches to the Accessibility of Legal Education" (2017) 95:1 Canadian Bar Review 91; Kate Sutherland, "The Impact of the Tort of Defamation on Public Discourse about Racism" (2009) 44 Supreme Court Law Review (2d) 135; Fran  ois Tanguay-Renaud, "Criminalizing the State" (2013) 7:2 Criminal Law and Philosophy 255; Eric Tucker, "On Writing Labour Law History: A Reconnaissance" (2017) 33:1 International Journal of Comparative Labour Law and Industrial Relations 39; Gus Van Harten, "Arbitrator Behaviour in Asymmetrical Adjudication (Part Two): An Examination of Hypotheses of Bias in Investment Treaty Arbitration" (2016) 53 Osgoode Hall Law Journal 541; David Vaver, "Copyright Defenses as User Rights" (2013) 60:4 Journal of the Copyright Society of the USA 661; Robert Wai, "The Interlegality of Transnational Private Law" (2008) 71 Law and Contemporary Problems 107; Edward J Waitzer & Douglas Sarro, "Protecting Reasonable Expectations: Mapping the Trajectory of the Law" (2016) 57:3 Canadian Business Law Journal 285; Janet Walker, "The Impact of Teaching Procedure" (2013) 51 Osgoode Hall Law Journal i; Cynthia A Williams, "The Global Reporting Initiative, Transnational Corporate Accountability, and Global Regulatory Counter-Currents" (2016) 1 UC Irvine Journal of International, Transnational, and Comparative Law 67; Alan N Young, "Proving a Violation: Rhetoric, Research and Remedy" (2014) 67 Supreme Court Law Review (2d) 617; Frederick Zemans & James Stribopoulos, "Peer Review in Canada: Results from a Promising Experiment" (2008) 46 Osgoode Hall Law Journal 697; Peer Zumbansen, "Where the Wild Things Are: Journeys to Transnational Legal Orders, and Back" (2016) 1 UC Irvine Journal of International, Transnational and Comparative Law 161.



III Reviews / Recensions

Edited by Kim Clarke and Nancy McCormack

***Canadian Immigration and Refugee Law: A Practitioner's Handbook.* By Chantel Desloges & Cathryn Sawicki, with Lynn Fournier-Ruggles. Toronto: Emond, 2017. 720 p. ISBN 978-1-77255-047-4 (softcover) \$149.00; ISBN 978-1-77255-049-8 (digital) \$129.00; ISBN 978-1-77255-048-1 (eBook) \$96.85.**

Canadian Immigration and Refugee Law: A Practitioner's Handbook is an essential text for anyone practicing or researching Canadian immigration and refugee law. The book is detailed, filled with essential information, yet at the same time written in language that makes it accessible to people not familiar with this area of law. What the reader first notices is the physical layout of the book. Coloured tabs demarcate different sections of the book. Headings, subheadings, and blue blocks emphasize specific information, and there are charts, graphs, images, and a very detailed table of contents. These all work together to organize information useful to both the scholar and practitioner.

The book is divided into eight parts: *The Fundamentals of Immigration and Refugee Law*; *Temporary Resident Status*; *Permanent Resident Status*; *Citizenship*; *Refugee Law*; *Enforcement, Appeals and Judicial Review*; and *Legal Professionals*. Related statutes and regulations, such as the *Immigration and Refugee Protection Act* and *Citizenship Regulations*, are discussed, as well as the Constitution and government policies. Plain language makes the book very readable for anyone not familiar with legal terminology.

Detailed footnotes provide the reader with citations to journal articles, federal websites, and many other sources. The

glossary, table of cases, and a very detailed index all point the reader to useful information. In light of the many changes that immigration and refugee laws have experienced in the last few years, and the importance of law libraries providing legal information that is accessible to all, I highly recommend this title to any legal practitioner in this area of the law, as well as law school, government, and public libraries. This practically written and well-laid-out book should be helpful to all readers who require current, succinct information about Canada's immigration and refugee law.

REVIEWED BY
GREGORY WURZER

Associate Librarian
Law Library
University of Saskatchewan

***Discovery in Canadian Common Law: Practice, Techniques and Strategies.* By Todd L Archibald, James C Morton & Sam R Sasso. Toronto: LexisNexis, 2017. xv, 241 p. Includes bibliographic references and index. ISBN 978-0-433-49240-5 (softcover) \$115.00.**

Discovery in Canadian Common Law focusses on examination methods used to prepare clients for and maximize benefits from the discovery process. Litigators and judges will gain insight from this book, one of the few published on the subject. While the title centres on Canadian law, specifically from an Ontario practice focus, it refers to leading practices and techniques from all common law jurisdictions.

The authors are eminently qualified to speak on discovery practice methods. Morton and Sasso are experienced litigators, and Justice Archibald is an Ontario Superior Court judge and an adjunct professor at Osgoode Hall Law School. This title is the third publication from the authors on discovery techniques in Canada. The previous works, with slightly different titles and another publisher, were published in 2004 and 2009.

Readers are lead through the purpose, fundamentals, and practice of discovery. Chapters cover the following: principles for a productive discovery; history, purpose, and scope of discovery; privilege and discovery; documentary production; discovery plan; examination for discovery; preparing and examining witnesses; written interrogatories; discovery from non-parties; inspection of property; medical examination of the parties; e-discovery; confidentiality; use of discovery at trial; powers of investigation; examination practice tips; discovery in practice; and summary of critical principles. Each chapter includes an introduction, a logical outlay of the concepts and practical tips with analysis, and a conclusion. The final three chapters provide techniques, questioning examples, and an overall summary of the book.

The text is one of the few Canadian resources on discovery suitable for litigation practitioners or law clerks. The volume includes a preface, a table of contents, footnotes, techniques, wording and templates for discovery, and an index. There are plenty of footnotes and references throughout the volume. A concordance of rules related to discovery in Canadian jurisdictions was included in the first and second version of this title, but this latest version lacks the concordance. A table of cases, table of rules, or bibliography would have been a welcome addition.

Discovery in Canadian Common Law is also available as an eBook. The eBook format could allow a practitioner to access it anywhere, and possibly to search the text for keywords. Unfortunately, the publisher's information does not state what format type or platform the eBook would work on.

A practical text with valuable examples on how to prepare for and execute a discovery, *Discovery in Canadian Common Law: Practice, Techniques and Strategies* would be a welcome addition to any library collection. The book is easy to read and offers a plain language discussion relating to the purpose of discovery and techniques to achieve the best outcome from the discovery process. Librarians, novice, and even more experienced practitioners will appreciate this text; it is a must-have for any litigation practice collection.

REVIEWED BY
LAURA LEMMENS, BA BEd MLIS
Acting Head, Library and Open Information
Alberta Government Library – Capital Boulevard
Edmonton, Alberta

***Human Rights and Judicial Review in Australia and Canada: The Newest Despotism?* By Janina Boughey. London, UK: Hart, 2017. 288 p. ISBN 9781509907885 (PDF eBook) \$151.00; ISBN 9781509907861 (hardcover) \$134.00.**

Human Rights and Judicial Review in Australia and Canada: The Newest Despotism? by Professor Janina Boughey analyzes the effect of the presence of a bill of rights on the relationship between courts and administrative decision makers. In this text, the author compares the development of the principles of judicial review of administrative action in Canada (a jurisdiction with a bill of rights) and Australia, the only Western democracy without one. The purpose of this comparison is to answer two questions: 1) has there has been a “righting of Canadian administrative law?”, and 2) has there been a transfer of discretion from administrative decision makers to courts, resulting in courts becoming the new “despots”? After exploring the arguments, assumptions, suggestions, and questions of commentators, judges, and politicians about the effect that bills of rights have on administrative law in both Australia and Canada, the author concludes that there has not been a righting effect of administrative law in Canada, despite the presence of a charter of rights.

The book is aimed at an academic audience familiar with the judicial review terminology. The publication is divided into seven chapters: it is organized thematically in chapters 2 and 3 for Australia and Canada, respectively, and provides a more comparative analysis in chapters 4, 5, and 6. Chapter 7, the concluding chapter, is a good reference point for readers looking for a concise overview of the key similarities and differences between judicial review in both countries along with a brief prediction of the trends in judicial review given more recent case law in both jurisdictions.

Chapters 2 and 3 outline the framework for judicial review of administrative action and human rights in Australia and Canada. The author looks at key differences between Canada and Australia, such as express provisions guaranteeing the supervisory jurisdiction of the High Court of Australia over administrative action in contrast to Canada. Furthermore, the Canadian approach to privative clauses is different than the Australian one, since Canada is more deferential to administrative decisions with reasonableness becoming the default standard of review. Despite methodological differences, the author concludes that both countries have nevertheless both entrenched the supervisory role of superior courts at both the federal and state (provincial) levels.

Chapter 4 examines judicial review in both Australia and Canada in the procedural fairness context. It argues that despite constitutional and legislative protections of procedural fairness in Canada, and the Supreme Court of Canada being more comfortable with using the rights terminology and more vague terms such as the rule of law and Canadian values, the duty of decision makers to afford fairness at common law is substantially the same in both jurisdictions.

Chapter 5 analyzes the extent to which courts in each jurisdiction limit and intervene in discretionary aspects of the administrative process. Despite finding a number of differences, the chapter concludes that courts in both Australia and Canada have expanded the scope of and their supervision over administrative action over the past 50 years. While the chapter determines that Canadian law gives administrative decision makers discretion over many more aspects of administrative decisions, the author does not find a discernible difference between Australian and Canadian administrative law, despite Canada's more developed human rights framework. The author goes even further by concluding that "despite the constitutional entrenchment of human rights in Canada, in Australian jurisdictions with statutory charters of rights, protected rights appear to act as stronger and more absolute limits on administrative discretion than in Canada" (p 279).

Chapter 6 analyzes the intensity of judicial review and whether the presence of the *Canadian Bill of Rights* has resulted in Canadian courts scrutinizing administrative decisions more vigorously compared with Australia. The author makes use of tables to outline the intensity of review in Australia, Canada, and the United Kingdom. While significant methodological differences exist, the author concludes no such pattern emerges from comparison despite the presence of a charter of rights in Canada.

The book does not argue that Canada protects human rights better than Australia. While the presence of a charter is very likely to mean that rights are better protected in Canada than in Australia in administrative decision making, an exploration of the effect of a charter of rights on government decision making is not the subject of this book. Even so, the publication, despite its ground-breaking, novel comparison between these jurisdictions, arrives at unsurprising conclusions about the similarities in judicial review in two jurisdictions that both derive their legal and constitutional traditions from UK law.

The text is aimed at graduate students and scholars interested in comparative studies of judicial review, human rights, and public law. As such, it would be a valuable acquisition for law libraries and scholarly collections on judicial review.

REVIEWED BY
SILVIA DIMITROVA

Barrister/Solicitor (Ontario Bar)
and FRANCISCA SOTELO
Barrister/Solicitor (Ontario Bar)

***Incitement on Trial: Prosecuting International Speech Crimes.* By Richard Ashby Wilson. Cambridge: Cambridge University Press, 2017. xii, 356 p. Includes bibliography and index. ISBN 978-1-107-10310-8 (hardbound) \$92.00; ISBN 978-1-107-50126-3 (paperback) \$34.00.**

Incitement on Trial by Richard Ashby Wilson is a detailed examination of the International Criminal Court (ICC) and its inability to prosecute what the author calls the inchoate crime of incitement. Wilson's book goes beyond mere fact-finding and reporting: it is a critical review of the functioning of the ICC in the prosecution of incitement as a war crime.

In the book's description, the publisher explains that these type of conflicts "are usually preceded by a media campaign in which public figures foment ethnic, national, racial or religious hatred, inciting listeners to acts of violence. *Incitement on Trial* evaluates the efforts of the international criminal tribunals to hold such insiders criminally responsible." The author expands the scope, stating that the book "evaluates the efforts of the international tribunals to hold media owners and broadcasters, politicians and other public figures criminally responsible for inciting speech acts, from the International Military Tribunal at Nuremberg in the 1940s to the International Criminal Court of today" (p 1-2).

Two themes are explored: first, that inciting hate, advocating genocide, and other forms of "speech crimes" are crimes, *per se*, and inchoate because the advocated violence may or may not necessarily ensue; and secondly, that the publication, including media coverage, of the inciting speech is, or should also be, a crime. The notion that reporting on hate speech should be a crime *per se* may not be universally shared. The attempt to criminalize the act of reporting or publishing is sure to conflict with the competing notion of the right, if not the positive duty, of the media to report all news no matter how odious. In addition, attempting to prosecute publication is sure to conflict with the more expansive and fundamental right to free speech. Those in support of the criminalization of publication argue that if the segment of the population disposed to act upon such incitement isn't made aware of the offending hate speech, either directly or through the media, then that segment may not be otherwise motivated to act upon it. In this argument, hate speech prosecutions should be pre-emptive and seek out and prosecute hate speech before it has a chance to manifest itself in war crimes of violence against an identifiable group.

In pursuit of proving his theses, Wilson analyzes some historical occurrences of speech crimes, as well as some attempts of the international community to prosecute them. His analysis always comes to the same conclusion, and he is clearly dissatisfied with the result.

The reader will soon detect that the main reasons for this perceived lack of success are factors such as the lack of a clear consensus about what activities constitute incitement. Even in the seemingly clearest of cases, such as the Nazi programme of propaganda against the Jews, the author points out that the Nuremberg trials of two of the chief Nazi propagandists, Julius Streicher and Hans Fritzsche, produced inexplicably opposite results. Notwithstanding evidence that both men published hatred against the Jews, Streicher was found guilty and hanged while Fritzsche was found not guilty. Consistency, Wilson argues, is lacking.

In the more modern era, it appears that some of the lack of success in prosecuting incitement is because incitement is not always capable of attracting the same level of attention as other war crimes; for example, the attention that was received by the prosecutions of the World War II atrocities. Much of the book is dedicated to the examination of the case against Vojislav Seselj, a Serb nationalist who figured prominently as a propagandist in the Serb/Croat conflicts in the Balkans. His case study appears repeatedly in the book and is a lightning rod for a great deal of the author's criticism

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

Our weekly payroll and employment law services aggregate all the news from every jurisdiction. If you're looking for policy precedents, we have **hundreds of model policies** for HR, finance, corporate governance, IT, accessibility and more.

For over 20 years, researchers, librarians, lawyers and other legal professionals have trusted the **expert commentary, user-friendly indexing, cross-references, links to relevant laws, and other practical tools** in the Human Resources and Payroll Collection and Internal Control Library from First Reference Inc.



Have you tried any of these First Reference titles for your research? (Click links below for details.)

- [Human Resources PolicyPro](#)
- [The Human Resources Advisor](#)
- [PaySource](#)
- [The HRinfodesk newsletter and archive](#)
- [Finance & Accounting PolicyPro](#)
- [Not-for-Profit PolicyPro](#)
- [Information Technology PolicyPro](#)
- [Accessibility Standards PolicyPro](#)

Learn more and take a free trial of any of these products at [FirstReference.com/CLLR](https://www.firstreference.com/CLLR).

Questions? Please call or email: 1-800-750-8175 | info@firstreference.com



of the ICC. It seems to me that, apart from discussion amongst students of international criminal law, Seselj's case was not widely known or greatly discussed either in the media or at the local Tim Hortons. It may also be a fair comment that the activities of the international courts and tribunals in such matters cultivate very little attention in the mainstream media, particularly in North America, especially the United States. Wilson's exhaustive study focusses on one particular aspect of international law and is, perhaps, of limited general interest.

In Wilson's examination of the *Seselj* (ICTY, 2016) case, we read that Seselj was completely exonerated of a nine count indictment including incitement to commit war crimes. The author notes that that verdict is under appeal and may be changed by that process, but he goes to great lengths to demonstrate that the trial, in his opinion, was a farcical affair. Seselj conducted his own defence, browbeat and intimidated the judges and prosecutors, and mocked, ridiculed and argued with prosecution witnesses. Wilson does not hide the fact that he thinks that the lead judge in the three-man panel was incompetent, the prosecutors were less than effective, and many of the witnesses had recanted or were intimidated or bribed into silence. He suggests also that the failure to successfully prosecute many other Balkan war crimes was a result of witness intimidation, bribery, and the inevitable recantations.

Some of the book is dedicated to an examination of the war crimes that took place in the Rwanda Civil War between the Tutsi and Hutu. In those trials, some of the perpetrators, including members of the media, were convicted and some

were acquitted. Again, in his examination of those trials, Wilson is critical of the process and apparently not at all happy with the inconsistent results. His chief complaint is that the ICC panel failed to give due weight to the testimony of the prosecution expert, Mathias Ruzindana, who testified a great length about a number of things: the sociological factors, the cause and effect links of the publication to the genocide, and the metaphorical references in the hate speech that were euphemistic code for more serious activity. Wilson argues that social science analysis can be a useful tool in identifying incitement and hate speech and that the courts accept the analysis on an inconsistent basis.

In the closing chapter, Wilson makes a series of recommendations that he suggests would make prosecutions more successful. He also advocates that the prosecution of the inchoate crime of incitement be undertaken as a preventative measure in an effort to prevent the atrocities from being committed. Currently, of course, it has been the rule, by and large, that incitement only becomes visible as a crime once the atrocities advocated by it actually take place. He laments that "[a]t present, there is not a coherent and established framework in international law that prohibits hate speech as an inchoate crime" (p 255). The crime of incitement, it seems, has seldom been punished except *ex post facto* the atrocity.

Having no familiarity with international law or the ICC, I found the book a tough read, requiring great care to distinguish some very subtle differences in the defined terms and some very subtle nuances in the analysis. The way that the author defines his terms and then formulates his analysis using

those definitions makes reading it very much like reading the *Critique of Pure Reason*.

The book is a very sharply focussed examination of the workings of the International Court and its treatment of the inchoate crime of incitement. As such, it would be most at home in academic law libraries with strong international criminal law collections.

REVIEWED BY
DAVID HURREN
Hurren and Gibson
Fort Erie, ON

***The Law of Judicial Notice.* By Jeffrey Miller. Toronto: Thomson Reuters, 2017. xxxvi, 258 p. Includes table of cases, index, and appendices. ISBN 978-0-7798-8026-9 (hardcover) \$135.00.**

The Law of Judicial Notice—that sounds about as exciting as a visit to the dentist. Yet, somehow, author Jeffrey Miller (who also wrote *The Law of Contempt in Canada*) has managed to bring his sense of humour to bear on the subject, as illustrated by headings like “You say notice, I say knowledge; he says conusance, or maybe cognizance” and “What judicial notice of facts is not—at least sometimes.”

The doctrine of judicial notice is summed up neatly in the Latin phrase “*notoria non indigent probatione*.” Basically, judicial notice “dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath” (*R v Find*, 2001 SCC 32 at para 48, [2001] 1 SCR 863). Or, as Quebec’s *Civil Code* says (in art 2808), “[j]udicial notice shall be taken of any fact that is so generally known that it cannot reasonably be questioned.”

The book opens with a 14-page overview, then delves into the history of the judicial notice doctrine and its varying scope over time. In succeeding chapters, it discusses different aspects of the doctrine, including “readily accessible sources of indisputable accuracy” and the nature of “facts.” Chapter 7 specifically addresses constitutional cases, while Chapter 8 focusses on cases at the appeal stage. Chapter 9 points out some of the dangers inherent in the doctrine, while Chapter 10 provides a helpful checklist of procedural considerations for both trial and appellate cases.

Chapter 11 includes a very interesting “Judicial Notice Database,” which is essentially a chart cataloguing various subjects and noting whether they did or did not receive judicial notice in particular cases. The subject is identified in the column on the left, while the cases (and comments thereon) are set out in one column on the right. The subjects are definitely wide-ranging and include such topics as “Choking to unconsciousness, risk of” and “Hockey, strategy and standards of play.” Obviously, it would be ideal if this material were online and searchable, though the book’s index does assist with this task, to a degree. Indeed, the index entries reveal the scope of the subjects covered by the book, with entries such as “Homosexuality,” “Hunting rights,” and “Ice cream, health value of.” For the sake of completeness, “Beer, and human health” is also addressed, along with “Lemonade, and human health.”

While I am not a fan of appendices that include statutes or other readily available materials, the brief appendices in this volume are helpful, as the extract from a 1982 federal bill and a 1973 Law Reform Commission of Canada study paper are very relevant to the text. Given that they only fill four pages of the text, I can’t complain about their inclusion here.

Despite its lighthearted tone, the book is important because it fills a longstanding gap in the existing literature. Previously, the subject of judicial notice was only addressed in passing in the various evidence law texts (and *Halsbury’s* title on Evidence). This is the first standalone Canadian title on the subject, of which I am aware. As the Honourable Ian Binnie writes in his foreword to the book, “[t]he book is both learned and readable and deserves a welcome in any law library.” I concur.

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

***One Law for All? Weber v Ontario Hydro and Canadian Labour Law: Essays in Memory of Bernie Adell.* Edited by Elizabeth Shilton & Karen Schucher. Toronto: Irwin Law, 2017. vii, 382 p. Includes bibliographic references, table of cases, and index. ISBN 978-1-55221-454-1 (softcover) \$65.00.**

One Law for All? Weber v Ontario Hydro and Canadian Labour Law: Essays in Memory of Bernie Adell is a collection with two motivations: the first, to discuss how *Weber v Ontario Hydro* (SCC, 1995) (*Weber*) has had an impact on Canadian labour law; the second, to honour the late labour law professor, arbitrator, and mediator Dr Bernard Adell. The majority of the book is dedicated to the *Weber* case, but Dr Adell’s contributions to labour law are elegantly described in the introduction. He was a giant in the area of Canadian labour law.

Labour law has evolved a great deal over the past several decades; similarly, the labour arbitration system has also matured and weathered a great deal of change. The case of *Weber* is an example of evolution. In *Weber*, an employee sought to sue his employer under various tort and *Charter* claims. The Supreme Court of Canada held such claims fell within the jurisdiction of labour arbitration, not the courts. As Brian Etherington states, “[t]his model went far beyond the Court’s previous calls for judicial deference” (p 25). Accordingly, the essays reflect on the shift in labour arbitration in the 20 years since *Weber*.

The essays are wide-ranging, on topics such as access to justice issues, arbitral delays, *Weber’s* impact on human rights, how *Weber* has been applied in Quebec, a view from the United States, and more. As well, some essayists take contrary positions, ensuring a broad range of opinions. Etherington argues, for example, that one difficulty with *Weber* is its failure to consider the access to justice and institutional appropriateness concerns that arise from making collective bargaining institutions—designed for the effective pursuit of collective interests—the exclusive mechanism for the enforcement of fundamental, individual constitutional

and statutory rights, and certain common law rights (p 81).

Brian Langille takes an opposite view: “*Weber* stands for an entirely sound proposition in basic legal thinking—that the work contract, whether individual or collective, speaks to and alters the normal set of rights, responsibilities, and remedies that apply between strangers” (p 127). Similarly, Karen Schucher posits that

Etherington’s access-to-justice critique of *Weber* places excessive value on the opportunity to pursue common law and *Charter* claims. When examined in the broader context of the overall benefits that unionized employees generally enjoy, a claim that individual, unionized employees are denied access to justice ... when they cannot pursue common law and *Charter* claims either in the courts or at arbitration cannot be sustained (p 144).

Such divergent opinions provide the reader with much to ponder, making for an engaging read.

Of course, no case should be viewed in a vacuum, and the essayists include references to several cases that function alongside *Weber* in determining what is within the jurisdiction of labour arbitration and collective agreements. For example, Renée-Claude Drouin writes that the court in *Parry Sound (District) Welfare Administration Board v Ontario Public Service Employees Union Local 324* (SCC, 2003) “implicitly incorporated human rights and statutory labour rights into the content of collective agreements” (p 259). This works alongside *Weber* in having a significant effect on Canadian labour law. The integration of these related cases allows for a more nuanced understanding of the issues at hand.

The essays are well written, giving the reader an overview of some issues that have arisen since *Weber* and contributing new theories on how *Weber* has influenced Canadian labour law and arbitration (such as its impact on statutory tribunals). Additionally, a chapter on US labour arbitration broadens the book’s overall scope, allowing the reader a greater understanding of labour arbitration in other jurisdictions (including their benefits and drawbacks). This book sits very well within the ethos of Canadian labour law.

This book would be of most use to academics and law students. Practitioners will also find it beneficial, but as theoretical commentary rather than practical resource. It would also be of interest to labour arbitrators and those who negotiate collective agreements given that understanding the issues brought forward by *Weber* and other related cases would be vital to their work.

**REVIEWED BY
CATHERINE COTTER**

*Head Law Librarian
Gerard V La Forest Law Library
University of New Brunswick*

***The Unfilled Promise of Press Freedom in Canada.*
Edited by Lisa Taylor & Cara-Marie O’Hagan. Toronto:
University of Toronto Press, 2017. ix, 277 p. Includes
bibliography and index. ISBN: 978-1-4875-0037-5 (paper
cover) \$29.95.**

This collection of essays sheds light on developments that have altered the status of freedom of the press in Canada. It largely began as presentations to a conference co-sponsored by the law and journalism research centres at Ryerson University in 2012.

The work is divided into four parts reflecting on specific aspects of press freedom: internal pressures, court processes, institutional secrecy, and the *Charter*. Part 1 looks at the internal pressures on press freedom in Canada. At the centre of the treatment of this theme are two concerns. First, it is reasonable to assert that while journalism is an important craft, it is decidedly not a profession. Unlike law, engineering, medicine, and other “true” professions, virtually anyone may operate as a “journalist” if they are engaged in the quotidian task of delivering “news” through some media outlet. This reality poses a persistent and profound problem for those who wish to claim some high moral ground for journalism, *per se*. Second, the disruptive breadth and relentlessly expanding scope of technological change is creating chaos for every media outlet and platform. Journalism, as preached and performed by people like HL Mencken and George Orwell, is largely dead and the new models are ill-defined, in flux, and well outside the bounds of any professional “control” or regulation.

One noteworthy paper considers the changing business model of modern media and serves to secure the argument that the higher public interest purpose of journalism is more myth than reality, more aspirational goal than actual mission. Norman Landry’s essay on the alarming existence of strategic lawsuits against public participation (SLAPP) is less about freedom of the press and more pertinent to the sad truth that the law may be enlisted for purposes that are clearly anathema to the public interest. When large corporate interests are able to control the levers of the media and aspects of the legal system, there is little that conventional journalism can do to rescue the public interest.

Part 2 looks at press freedom, court processes, and relevant sections of the *Charter*. The importance of the Ashley Smith case (i.e., *Smith v Porter* (Judicial Review) (ONSC 2011)) is discussed highlighting the benefit of judicial review when seeking to permit the public access to shocking, yet vital, evidence of governmental wrongdoing. The presence of cameras and the use of Twitter in the courtroom is also considered and underscores the reality that technology appears to further endanger the future of conventional journalism.

This part also looks at the important Dagenais-Mentuck test dealing with the complex matter of publication bans in court proceedings. Lisa Taylor addresses the fraught issue of the relationship between the *Criminal Code* and sexual assault complainants. Taylor makes the argument that victims should be free to self-identify, if only as a component of their own healing. The capacity to speak is elemental to the empowerment of women.

The role of news reporters in leveraging the criminal justice system is nicely profiled in an essay by Robert Koopmans. He begins with a reminder of *R v Mentuck* (SCC 2001) where the Supreme Court set aside a publication ban involving a “Mr. Big” investigation. It is puzzling that the RCMP continue to deploy this flawed investigative technique.

Part 3 considers institutional secrecy and provides a clear view that public and private corporations continue to strain against the demands for openness, transparency, and access to information. Of course, it is not difficult to comprehend the need to protect certain categories of data where policy inputs are in flux and final determinations have not been made. Nor is it surprising that trade secrets, proprietary data, and other kinds of information need protection in our current capitalist environment. However, as Suzanne Craig elaborates in her contribution on municipal access to information, there remains a fundamental tension that exists in virtually all Freedom of Information and Protection of Privacy (FOIPP) legislation.

Part 4 is decidedly the most interesting aspect of this collection, although it contains only two essays. Jamie Cameron’s examination of section 2(b) of the *Charter* is illuminating. Cameron argues that the courts should be more willing to invoke the freedom of the press elements of 2(b) in order to properly defend this institution. It may be that the judges have proven themselves wise in resisting arguments in favour of privileging the “press” under the aegis of section 2(b). This section actually encompasses freedom of thought, belief, opinion, and expression. In their willingness to support and sustain press freedom as something aligned to these other freedoms protected under 2(b), the court has looked more appropriately to the common law tradition for principles guiding matters of open justice and newsgathering rather than pinpointing the press freedom cited in section 2(b).

James Allan raises some alarm over the threats to press freedom embedded in aspects of our human rights regime. He uses the example of Mark Steyn’s writing in *Macleans* to highlight the potential for a “chilling effect” on a free press. Steyn’s journalistic commentary on the flaws of multiculturalism and his provocative critique of Muslim culture brought him into conflict with human rights agencies in Canada. Allan argues that the *Charter of Rights and Freedoms* adds nothing to Canadian freedom of the press.

In the concluding essay, Ivor Shapiro encapsulates the discussion taking place during the conference on the thirtieth anniversary of the *Charter*. With journalists, legal scholars, and others engaged in dialogue about press freedom in Canada, it is revealed that victories have been won for access to court proceedings, protection of confidential sources, and disclosure of relevant court documents. Certainly, what the best journalists do when they are performing on behalf of the public interest may be stirring, substantial, and salutary. But it remains unclear as to whether our formal news media can survive the tsunami effects of social media as it evolves and continues to envelope the dissemination of information.

Overall, this publication offers a range of valuable insights and useful reminders about the challenges that face both freedom of expression and freedom of the press. Lawyers

and judges across Canada will continue to play a pivotal role in preserving (or preventing) that sanctity from being realized, which is why this is an important acquisition for any law library collection that seeks to address these interrelated issues.

REVIEWED BY

PAUL F MCKENNA

Adjunct, School of Graduate Studies
Dalhousie University

***Unions in Court: Organized Labour and the Charter of Rights and Freedoms.* By Larry Savage & Charles W Smith. Vancouver: UBC Press, 2017. x, 268 p. Includes bibliographic references and index. ISBN 9780774835381 (hardcover) \$85.00; ISBN 9780774835398 (softcover) \$32.95.**

When an employer hires a new employee, they meet as equals in contract. This is a basic assumption of our liberal democratic society. The economic untruth of this alleged equality, from the perspective of history and politics, has been discussed in many books. In *Unions in Court*, the authors offer a detailed review of the role Canadian courts have played in this ongoing dynamic from the pre-*Charter* era to 2015.

The book is organized into six chapters, each covering a period of history and arranged chronologically, and there is a brief introduction and conclusion. All parts of the book are jointly authored by Savage and Smith, both political science professors at Canadian universities.

If one were to limit this history to the unions’ encounter with the judicial system, it would begin with defeat, followed by some ups and downs, and a string of victories beginning in 1999 and culminating in the Supreme Court of Canada’s 2015 ruling that strike action is a *Charter* right in *Saskatchewan Federation of Labour v Saskatchewan*. There are many who would adopt such a narrative as an accurate reflection of reality, and it is essentially the teleology of the six main chapters of this book. But over every union victory, the book casts a shadow of doubt. Despite obvious sympathies with unions and workers, the authors do not celebrate court victories, but treat them with caution and skepticism. The shadow appears in full colour only in the introductory and concluding sections of the books, where Smith and Savage express their doubts and counter-arguments in their own voices, rather than via quotations by players contemporary with the reported events.

The strength of this book is that it looks at the judicial system in the larger political and social context of which it is a part. It sees the opponent of working people’s struggle for the right to bargain collectively and withhold their labour not as any government or private company, or even an inherent legal bias in favour of individual rights, but as a self-consciously anti-worker philosophy known as neoliberalism. By identifying this non-legal entity as the workers’ principle adversary, the authors implicate the court system as a political player, rather than neutral mediator.

They see what a strictly judicial history would leave out; for

example, that the Supreme Court's ruling that workers have a *Charter* right to strike comes at a time when actual strikes are low in number and intensity, and when an historically small percentage of Canadian workers are union members. With their encyclopedic knowledge of labour history and keen eye for paradox, Savage and Smith never lose sight of the fact that strikes and picket lines are worker inventions, not creations of the legal system, and that the initial reason the law encountered unions was to protect business interests. Traditionally, the labour movement avoided the court, seeing it as an institution supporting a liberal, rights-based model that favoured business over workers' collective action. Now, as union victories begin to pile up, the book takes a step back and identifies political factors hidden in such victories, offering a realistic assessment of the actual state of working people, and suggesting more radical, and potentially more effective, alternatives to the court system.

The main weakness in this book, I would argue, is that Savage and Smith reserve their own insights, for the most part, to the introductory and concluding sections. Despite their lucidity and interest, they allow their subjective engagement to recede in favour of objective reportage. I understand this as a valid academic strategy—stand back and let history speak for itself. But it makes for some dull pages. Given the quality of the authors' minds, I would have found the book more entertaining and enlightening if they had given themselves license to drop strong opinions and arguments throughout.

Unions in Court is a key account of a vital piece of Canadian history and is a must-read for anyone involved in labour law. It should find its way into public, academic, courthouse, and government libraries, and, of course, the collection of any private firm with a labour department.

REVIEWED BY
KEN FOX

Reference Librarian
Law Society of Saskatchewan Library

***Wealth Planning Strategies for Canadians 2018.* By Christine Van Cauwenberghe. Toronto: Thomson Reuters, 2017. xxxvi, 681 p. Includes endnotes and index. ISBN 978-0-7798-7924-3 (softcover) \$72.00.**

Wealth planning is an elusive and often overwhelming topic for many people. Christine Van Cauwenberghe does a fantastic job of breaking down this complex subject into manageable, reader-friendly segments in her book *Wealth Planning Strategies for Canadians 2018*. Published annually by Thomson Reuters, this book is a valuable resource for the layperson and will help them gain a basic understanding of how to manage the different elements of the wealth planning process.

At 681 pages, this book may first appear like a tome, but Van Cauwenberghe organizes the content intuitively by dividing it into life scenario chapters and reference chapters. Readers can choose to go through as many, or as few, chapters as they need depending on their personal circumstances. There are fifteen life scenario chapters: single, common-law couples, engaged, married, separated, divorced, blended families, widowed, children, grandchildren, disabled persons,

elderly parents, seniors and retirees, vacation properties, and business owners. The life scenarios encompass marital status, dependants and extended family, and life stages or special assets. The breadth of categories is impressive, and the author includes scenarios, such as engaged, common-law, and separated individuals, that are less frequently highlighted in other books on financial and wealth planning or may be lumped together into more common categories like married or divorced couples.

By introducing information in the life scenario format, the author approaches the content in the same way readers would: allowing personal circumstances to dictate planning strategy, rather than learning about strategy and trying to decide if it applies to their situation. Their inclusion reflects the comprehensive nature in which this book surveys the topic of wealth planning and demonstrates the author's awareness of the personalized nature of the planning process; one size does not fit all, and individual circumstances may significantly influence decisions and strategies. While wealth planning books specific to life stages do exist, the life scenario format is fairly unique among more comprehensive financial/wealth planning titles.

Each life scenario chapter is further subdivided into the different aspects of the wealth planning process: financial planning, tax planning, family law issues, disability planning, estate planning, and insurance planning. Common issues, situations, and questions for each aspect are discussed under subsequent headings. The tiered organizational structure of the book's contents results in each topical section ranging from one paragraph to three pages in length. Van Cauwenberghe writes in plain language using a very straightforward style. This writing style combined with the short content sections communicates wealth planning concepts and strategies in an accessible and easily digestible format for the reader.

The life scenario chapters end with two additional sections that are extremely helpful: jurisdictional differences and case studies. The jurisdictional differences sections highlight how each province and territory define specific concepts and address certain wealth planning strategies from a legal/regulatory perspective. Since many elements in the wealth planning process are governed by provincial or territorial, rather than federal, legislation, it's important to be aware of jurisdictional differences, particularly when moving from one location to another. The case studies frame the concepts and strategies discussed in each chapter in a real-world context so readers can understand how they might implement the strategies on a practical level. They also help illustrate how strategies interrelate, work together, or conflict in different situations. While the scenarios covered by the case studies are not exhaustive, and not every chapter necessarily has its own case study, they do provide a succinct overview of common circumstances that can help the reader determine how to plan for the objectives most important to them.

The second half of the book is made up of nine reference chapters: family property, powers of attorney, estates, personal representatives, taxation at death, probate, trusts, charitable giving, and insurance. These are topics that reoccur throughout the life scenario chapters, so Van

Cauwenberghe has compiled more detailed information about each subject into its own chapter to help the reader understand the topic and decide whether applying a particular strategy is in their best interest. This part of the book more closely resembles the typical financial/wealth planning book, but the author continues to ensure that the information is divided into short, concise sections that don't overwhelm the reader. The valuable jurisdictional differences and case study sections are also included at the end of each chapter; however, the author repeatedly refers back to life scenario case studies (instead of including new ones) since they already incorporate the information from reference chapters. Van Cauwenberghe frequently cross-references other chapters and sections throughout her book. While this highlights the interconnected nature of wealth planning strategies and scenarios, it can result in a lot of flipping back and forth in the book. This isn't something that can really be helped, and it does demonstrate the author's continued mindfulness to the unique and personalized nature of wealth planning.

Wealth Planning Strategies for Canadians 2018 is an intuitively organized, well-written book that provides a fairly

comprehensive overview of the elements and strategies of the wealth planning process. One area not covered by this book is cross-border issues, such as the ownership of foreign property or foreign residency. The author clearly states this limitation in her introduction and advises readers in these situations to consult a qualified advisor. In fact, Van Cauwenberghe strongly recommends readers use her book as a starting point to familiarize themselves with the elements and strategies of wealth planning to make working with an advisor more effective. Van Cauwenberghe's 20+ years of experience as a tax and estate lawyer come across clearly in this book, but what really makes this title stand apart from other financial/wealth planning books is how the author presents the information. She truly keeps the reader in mind, and that makes this book a must-have in one's financial/wealth planning library.

REVIEWED BY
HELEN MOK
Calgary Librarian
Parlee McLaws



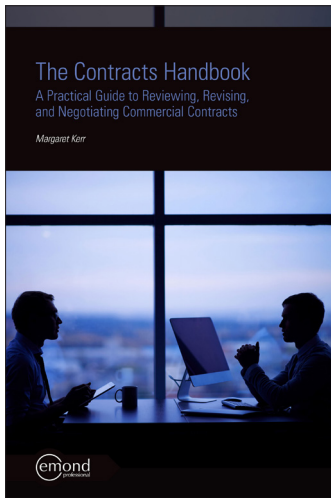
N L L I
CALL I ACBD

NEW LAW LIBRARIANS' INSTITUTE
Not just for NEW law librarians - everyone welcome!

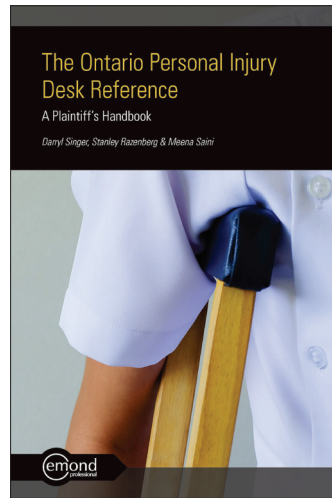
JUNE 19 -22
2018

CLICK HERE TO REGISTER

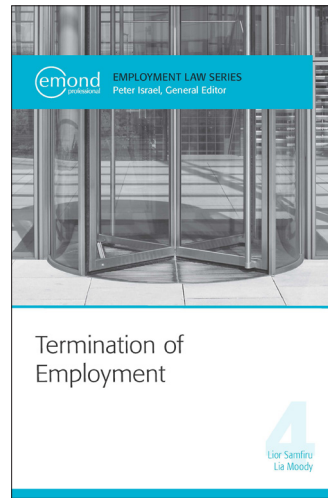
JUST PUBLISHED & COMING SOON



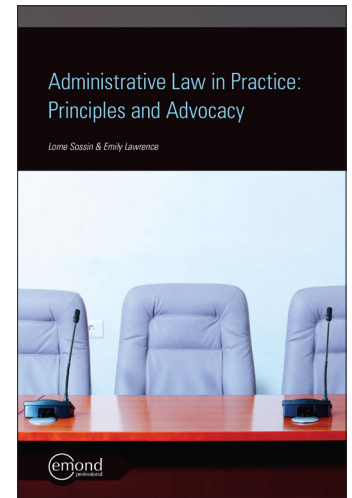
The Contracts Handbook:
A Practical Guide to
Reviewing, Revising, and
Negotiating Commercial
Contracts
Kerr • \$99 • 5284-3



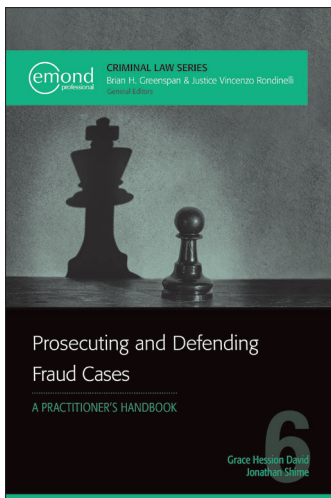
**The Ontario Personal Injury
Desk Reference:**
A Plaintiff's Handbook
Singer, Razenberg, Saini
\$92 • 5223-2



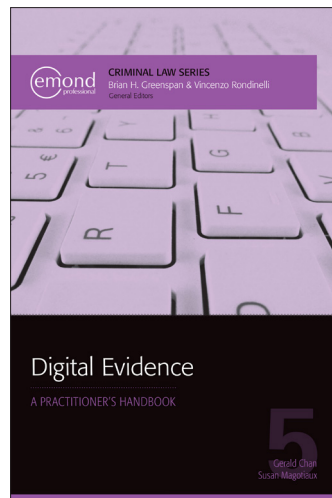
Termination of Employment
Samfiru, Moody
\$102 • 5237-9
Coming June 2018



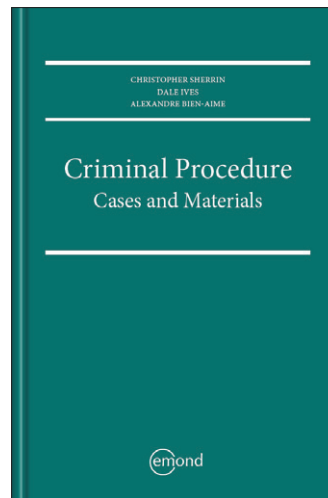
**Administrative Law in
Practice: Principles and
Advocacy**
Sossin, Lawrence
\$154 • 5414-9
Coming Oct 2018



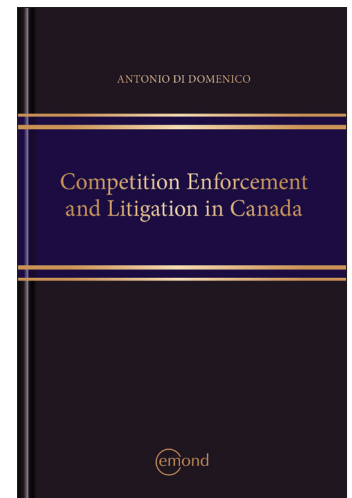
**Prosecuting and Defending
Fraud Cases:**
A Practitioner's Handbook
Hession David, Shime
\$115 • 5214-0



Digital Evidence:
A Practitioner's Handbook
Chan, Magotiaux
\$115 • 5230-0



Criminal Procedure:
Cases and Materials
Sherrin, Ives, Bien-Aime
\$129 • 5309-3
Coming May 2018



**Competition Enforcement
and Litigation in Canada**
Di Domenico
\$249 • 643-8
Coming Oct 2018



III Bibliographic Notes / Chronique bibliographique

By Susan Jones

Brian Detweiler, “A Quick Word About Technology Competence: The University at Buffalo School of Law’s Microsoft Word Training Program” (Spring 2017) 25:2 Perspectives: Teaching Legal Research & Writing 97. Available online: <static.legalsolutions.thomsonreuters.com/static/pdf/perspectives/2017-spring/2017-spring-2.pdf> (accessed 17 February 2018).

There’s long been a push to provide law students with the practical skills needed for them to hit the ground running upon graduation. In this article, Brian Detweiler, student services librarian at the University at Buffalo School of Law, shares how he and his colleagues contribute to the cause of producing practice-ready graduates through their Microsoft Word training program. The article begins with an explanation of how the program was developed, followed by a discussion of the librarians’ experience with the program, their efforts to expand the program, and future developments for the program.

The idea for the program came about when legal research and writing (LRW) faculty expressed concern that first-year students lacked the necessary word processing skills to complete their class assignments. Not surprisingly, LRW instructors wanted to spend their assigned classroom time teaching legal research rather than showing students how to format a document. With those concerns in mind, the librarians developed a Microsoft Word training program to provide students with the skills in document formatting that would not only help them succeed as law students, but also as lawyers. The planning began with a list of the Word formatting skills that LRW faculty believed would

help first-year students complete their assignments. That list was then expanded to include the skills the librarians believed would most benefit students. In the end, the list included very basic skills, like changing font type and size, adjusting line spacing, and setting margins, but also more complex ones, like creating custom outlines and tables of contents, using shortcut keys, changing pagination within a document, and tracking changes.

With the list of formatting skills in hand, the librarians decided to present their training program through a series of PowerPoint slides. You might think it would be easier to demonstrate the skills live, but the author gives a few reasons for using PowerPoint. One reason is that the librarians need to teach to both Mac and PC users. Another reason is that using PowerPoint slides enables the librarians to cover all the material in the 30 minutes they’re given during first-year orientation. Finally, the librarians are able to post the PowerPoint slides to the law library’s website, which means students can access the information when they need it.

To grab students’ attention from the very start, the librarians begin their presentation by explaining and showing students how points are deducted on their LRW assignments for simple formatting errors. They then cover the most basic Word formatting skills. While the author admits that many students find this section of the class boring, teaching the basic formatting skills ensures all students are starting out on equal footing. Once they turn to the more complex skills, students’ interest generally picks up. The librarians close their presentation by inviting questions and encouraging students to contact

them directly about any formatting issues when working on their assignments.

With positive reviews from LRW faculty, the librarians decided to expand the Microsoft Word training program. The first part of that expansion involved creating a series of videos on Word formatting skills. The videos range in length from 30 seconds to seven minutes and cover both basic and complex skills. The videos were uploaded to YouTube and linked to the law library's website. Like the PowerPoint slides, students can access the videos when they need them. The second part of the expansion was teaching practice-related Word skills to upper-year students enrolled in the law school's clinical programs. Those sessions include a review of the skills students learned in their first-year orientation, but the librarians also teach more advanced Word functions, like using the collaboration tools, managing styles, protecting and comparing documents, and removing metadata and personal information. The training also covers some practice tips unrelated to Word, such as remembering to check court websites for information on formatting and page limits. The author notes how important these skills will become to students when they begin to practice, particularly with respect to removing comments and tracked changes from documents before submitting them to the court or opposing counsel.

In the final section of the article, the author discusses future developments for the program. For the upper-year students in the law school's clinical programs, the librarians are developing a flipped classroom model for the training. In the flipped classroom, students are required to watch a voice-over PowerPoint presentation before class that focusses on Word formatting skills not covered in their first-year orientation. In addition to watching the presentation, students are asked to review the library's video tutorials and refresh any long-forgotten Word formatting skills. During class, students are provided with one or two unformatted and marked-up Word documents to format and sanitize according to a set of instructions. Although librarians are present during the session to respond to questions, students are required to apply what they learned from their pre-class preparations. The librarians hope the flipped classroom approach to training will help students to truly understand, and be able to apply, the learned skills.

The advantages of the Microsoft Word training program are many, according to the author. First, the librarians created a program that is of immediate and future benefit to students, and in doing so, they also addressed a concern identified by faculty. Second, the material the librarians created to support the training program is engaging and always available to students through the law library's website. Third, the training program is a great start to the development of a larger technology competence training program. To that end, the librarians are considering training sessions on Adobe Acrobat and other programs from the Microsoft Office Suite. As noted earlier, the supporting materials for the training to first- and upper-year students are available on the Charles B Sears Law Library's website, so check them out to learn more about the programs described in this article.

Zelda Chatten, "Making Social Media Work: Finding a Library Voice" (November 2017) 30:3 Insights 51. Available online: <insights.uksg.org/articles/10.1629/uksg.374> (accessed 17 February 2018).

Running a social media account for a library is a tricky business. Concerns about appropriateness and professionalism often mean that accounts become dull, one-way communication channels for relaying news, making announcements, and promoting new resources. In this article, author Zelda Chatten, liaison librarian at the University of Liverpool, describes how the library found its own voice on social media, developed a library persona, and created an active, verified Twitter account with over 9,000 followers. The author begins the article by providing some background about the use of social media at the University of Liverpool Library. She then discusses finding a library voice and developing a library persona, and concludes by describing the challenges of the library's new approach to social media.

The University of Liverpool Library's foray into social media began in 2007 with Facebook, followed by Twitter in 2009 (@LivUniLibrary), and Instagram in 2014. Like many libraries, its approach to Twitter for many years was very guarded: the feed was primarily used to make announcements about hours, services, new resources, and events. The author readily admits it was a lacklustre account that didn't hold much appeal for potential followers, but as time went on and the popularity of Twitter grew, staff realized they needed to reconsider how they were using Twitter, as well as the library's other social media accounts. One of the first steps in that process was the creation of a 10-person social media team with representation from all departments within the library.

The creation of the social media team coincided with a change in service philosophy at the University of Liverpool Library. Like many academic institutions, there were a number of branch libraries on campus, but starting in 2013 they began to think of themselves as one library service. In keeping with this new mindset, and recognizing the need to change how it approached social media, the team decided to experiment with developing a single online identity with a distinct library voice. With these goals in mind, the team set aside its previously cautious approach to social media and instead decided to try out different styles and attitudes. As part of that approach, team members began to examine their tweets more closely to discern why some were more successful than others. The tweets they thought worked well often included images and typically took on a particular tone of voice, a voice the author describes as "slightly cranky, sometimes annoyed, but with a sparkling wit and who above all always has the students' best interests at heart" (p 52). The cranky and annoyed voice often complains about students removing chairs from the study rooms, grumbles about the library stapler that always jams, and bemoans the inability to regulate the temperature in the building. The more lighthearted side of that voice conveys congratulations to graduating students on behalf of the library zoo (#LivUniLibZoo) and tweets about the purchase of an exciting new stapler with anti-jamming

technology. For students, this style of tweeting gives them a different view of the library and the people who work there, and for the library it's a way to connect with students, establish relationships, and build a community. Another benefit of this style of tweeting is that it makes it easy to pop in the occasional boring but necessary tweet about returning books on time or changes to library hours.

The author highlights a few points that were key to the library finding its own voice on social media. The first key point to finding its voice was identifying its core audience. Not surprisingly, current students comprise the library's target audience, followed by faculty and staff and the larger university community. The second and third key points were keeping the core audience in mind in its social media messaging and treating social media as a form of two-way communication, instead of a broadcast-only medium. The fourth key point was speaking like a real person and using a consistent voice. To ensure they speak like a real person, social media team members avoid the jargon and formal tone that were the hallmarks of their previously cautious approach to Twitter. And although using a consistent voice is best achieved when one person is responsible for creating all social media content, that's not a realistic option for most libraries. The social media team succeeds in using a consistent voice by working together and ensuring that everyone has a clear vision of the library and the image it wants to project. It's only by working collectively that the team is able to generate the quantity and quality of the content they produce.

Once the social media team found the library's voice, they set out to develop the persona behind that voice. The library persona was cultivated, and continues to be fostered, through events and initiatives that involve and engage students. As an example, one of these initiatives occurs in mid-December when library staff and students participate in Christmas Jumper Day, an annual event in the UK to raise money for charity that sees participants donning their favourite festive sweaters. To accompany the event, the social media team created an appropriately-themed Spotify playlist called "Now That's What I Call Knitwear."

There are also initiatives to develop the library persona during exam time. For example, to help students with their studying, the social media team created a Spotify playlist called "EatSleepReviseRepeat." To encourage and remind students to take study breaks, colouring stations are set up around the library and display boards are used to showcase students' efforts. The most popular exam-time activity, though, is looking for the library's hidden golden tickets. Any student lucky enough to find one of the golden tickets tucked into a book or hidden elsewhere in the library can exchange it for their choice of

prize, such as chocolate, cereal bars, USB pens, refillable water bottles, coffee vouchers, and grab-bags of exam survival essentials. Students can also win a golden ticket by tweeting an exam tip or posting a photo of their study notes.

One of the social media team's initiatives to develop the library persona followed an environmental awareness theme that highlights a problem likely familiar to a lot of libraries. Spurred by the amount of litter left in study rooms over the weekends, the team decided to tackle the issue through social media. At the start, the team posted a photo of the weekend's trash every Monday morning to bring the problem to the attention of students and hopefully influence their behaviour. The author reports that the team's efforts seem to be having an effect and things are slowly improving. Interestingly, the most retweeted and liked tweet from the @LivUniLibrary account stems from this environmental awareness initiative. Dubbed the #shelfwich, a photo of a sandwich wrapper shelved in the stacks has been retweeted over 2,500 times.

The author closes her article by discussing some of the challenges faced by the social media team in taking a new approach to social media management. The main challenge, due to the size of the team, is ensuring they all use the same voice. It's difficult, but not impossible, to maintain a consistent, unified voice while also encouraging team members to experiment and try new things. Communication and teamwork are the keys to maintaining a single voice and persona for the library. Another challenge is involving staff members beyond the social media team. By ensuring there's at least one member from every department in the library, the team tries to include others beyond the core group by encouraging them to share their ideas for content. Another challenge, and one that all institutional social media teams share, is measuring success and, more specifically, engagement. To date, the only way the team continues to build engagement is to track what works best and then keep doing the same. The final challenge discussed by the author is striking the right balance between being the official voice of the library—and the concerns about professionalism that that entails—with feeling free to experiment and make mistakes without worrying about reputational damage. Fortunately, complaints about social media have been rare.

At the end of her article, the author notes that maintaining a successful and engaging social media account isn't an easy task. The social media team at the University of Liverpool Library found success by allowing staff to be themselves and letting their collective personality shine through. In doing so, they were able to gain more followers and communicate and engage with students in a meaningful way that benefits both students and staff.



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

By Kate Laukys

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

NATIONAL CAPITAL ASSOCIATION OF LAW LIBRARIES (NCALL)

At a lunch session in December, the National Capital Association of Law Librarians voted on a motion to change its name. The motion passed, and our new name is the National Capital Association of Law Libraries/Association des bibliothèques de droit de la capitale nationale. At the same meeting, updates to the association's terms of reference were approved.

We have a number of interesting sessions planned for 2018. These include an update on WestlawNext, a session on Indigenous law, and a panel on the future of hot topics and technologies coming to law and law libraries. The association's annual general meeting will be held in June.

SUBMITTED BY ALLISON HARRISON

National Capital Association of Law Libraries, Secretary

HALIFAX AREA LAW LIBRARIES (HALL)

Many of the Halifax Area Law Libraries (HALL) members are busily preparing for the upcoming CALL/ACBD Conference, "Build Bridges / Broaden Our Reach." We look forward to welcoming our CALLeagues to the local scene and food, as well as a full and exciting program schedule. Registration is open—we hope to see you here in May to enjoy some east coast hospitality!

Our group has met less often since last summer to allow

HALL members time to focus on conference planning. Conference updates were a key focus of the September and March meetings. At those meetings, HALL also reviewed our membership policies; an updated version will be approved this spring.

HALL celebrated the holiday season with a brunch at LeBistro by Liz on December 5th. Most members attended to catch up and enjoy a glass of wine, as well as the Famous Yummy Lemon Parfait Pie. As usual, we will have a year-end social in June, so if you plan to be in the province, get in touch. There's always room for one more!

New member Jacob Ericson started in November 2017 as the legal information specialist at Stewart McKelvey. Jacob is a 2017 graduate of the MLIS program at Dalhousie University. We are happy to welcome a new member to bring fresh ideas and perspectives.

HALL is delighted to announce that Hannah Steeves, instruction/reference services librarian at Dalhousie University's Sir James Dunn Law Library, was granted tenure in September 2017. Congratulations, Hannah!

The Nova Scotia Legislature launched a new website in December 2017. The aim of the refreshed site is to improve and expand access to information about the legislature and the work of members of the legislative assembly. The website, nslegislature.ca, features integrated legislation and bills, quick access to top tasks, and a responsive design. The legislature has also expanded its social media presence to YouTube and Facebook.

Don't forget to review the conference website, callacbd.ca/Conference, for announcements and updates, and, of course, to register!

SUBMITTED BY ANNE VAN IDERSTINE

HALL Co-Chair

Manager of Information Services, Nova Scotia Legislative Library

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

Le 12 décembre 2017, de nombreux membres de l'ABDM ont assisté à l'activité de Noël ayant eu lieu au Restaurant Hambar. La prochaine conférence aura pour sujet « La recherche juridique et l'intelligence artificielle ».

On December 12, 2017, a number of MALL members attended a Christmas event at Restaurant Hambar. The subject for our next conference will be "Legal research and artificial intelligence."

SUBMITTED BY JOSÉE VIEL

MALL President / Présidente de l'ABDM

**ONTARIO COURTHOUSE LIBRARIES ASSOCIATION
(OCLA)**

We are pleased to welcome the following new members to our association during the last few months: Pia Williams is the new library manager and executive director at the Waterloo Region Law Association, and Liz Mitchell has replaced Bev Brett at the Lanark Law Association as of January 1st. We said goodbye to Shanna Giguere, who recently left her part-time position at Durham Law Association, and to Amanda Fudge, who left Waterloo Region Law Association in December to pursue other job opportunities.

The LibraryCo board is currently working on establishing criteria for the new LIRN (Legal Information Resource Network) board of directors. The expectation is that the new board will be in place by the fall, and then the focus will be on hiring a manager for the courthouse library system.

This May, a number of county courthouse librarians will be descending on Halifax to attend the annual CALL conference. Many of us look forward to the plenary on the future role of the law librarian, the panel discussion on Bill C-45, the sessions on blockchain, AI, and more. And of course, the opening reception at the Halifax Central Library will be spectacular, with its sweeping views of the city. See you in Halifax!

SUBMITTED BY HELEN HEEREMA

TORONTO ASSOCIATION OF LAW LIBRARIES (TALL)

The Toronto Association of Law Libraries recently launched a new website, at talltoronto.ca. While we are still working out the kinks, it is up and running and will be updated soon

with new material for our members. We also recently have expanded our social media presence, with active accounts on Facebook, Instagram, Twitter, and LinkedIn.

In addition, we are in the early days of planning our 2nd TALL Conference, to be held in October 2018 in Toronto. The theme of the conference will be innovation in the legal field. Keep an eye out for more details in the coming months.

SUBMITTED BY ROBERT KESHEN

TALL, President

OCLA, Chair

EDMONTON LAW LIBRARIES ASSOCIATION (ELLA)

We have added Lucinda Johnston as webmaster for ELLA, and she has already been busy updating and organizing the website. Thank you to Lucinda for agreeing to take this on.

In January, we were very fortunate to have the Honourable Judges Anderson and Johnson of the Provincial Court of Alberta attend our meeting to update us on the status of the Mental Health Court and the Drug Treatment Court. The Drug Treatment Court is quite well established in Edmonton and doing some great work, but it is always dealing with funding issues. The Mental Health Court is just in the process of getting established. Both are wonderful alternatives to the traditional court system.

For a change of pace, we had Delray the black lab join us at our February meeting. His handler, Erika Olson, told us about their work in the PAWS (Psychological Awareness and Wellness Support) program, which supports EMS workers in Alberta. You can follow Delray and Erika at [Delray PAWS](https://www.facebook.com/DelrayPAWS) on Facebook, [Delray.paws](https://www.instagram.com/delray_paws) on Instagram, or checkout their website at albertahealthservices.ca/ems/Page15692.aspx.

Upcoming events include a tour of the Legislature Library on March 27th and a talk on medical marijuana in the workplace by a lawyer from Field Law on April 26th.

SUBMITTED BY SUSAN FRAME

Member-At-Large, ELLA

VANCOUVER ASSOCIATION OF LAW LIBRARIES (VALL)

Greetings from Vancouver!

VALL continues to enjoy a year of varied programming and events. We launched our new website (vall.vancouver.bc.ca) in January with a morning social hosted by Fasken. We are excited by the more modern look and feel of our website and the ease with which we can post information. Our February brown bag lunch was lively and well attended. Sarah Sutherland presented "What's happening?: Situational analysis for legal information professionals," where she explained the use of the Porter Five Forces Analysis to identify competitive forces in law libraries. VALL marks its 30th anniversary in March, and we are celebrating with a gala social event at the Rosewood Hotel Georgia.

SUBMITTED BY TERESA GLEAVE

President, Vancouver Association of Law Libraries
2017/2018



III NELI in a Nutshell

By Eve Leung

Truth be told, my experience at the Northern Exposure to Leadership Institute cannot be summarized in an article, but I'm going to try!

I attended NELI in December 2016 with over 50 other colleagues from across the nation. After an opening reception in Edmonton, we piled into coaches, together with the facilitators and mentors, which brought us to our home and laboratory for the week: the beautiful Jasper Park Lodge. I was happy to see a couple of familiar faces, especially that of Annette Demers, who was attending as a mentor.

As participants, you do not really know what to expect, as there is an air of mystery that follows NELI. The cone of silence is real and necessary to provide a safe place for participants to share their thoughts and feelings about their careers and experiences. The details of the program are also preserved so that future participants can embrace the experience fully. What I didn't know at the time was that the cone of silence is also in place to safeguard the stories and experiences shared by the facilitators and mentors.

My experience at NELI can be broken down into three components: knowledge, team work, and introspection.

The NELI cohort spend a lot of time learning and discussing leadership topics such as developing a leadership plan, conflict resolution, active listening, and the dynamics of change. This knowledge is invaluable to everyone in the workforce. We tend to get caught up in the day-to-day, leaving little room to explore these topics in depth, and attending NELI really reinforced the need to study these topics further.

A large component of the week involved working in predetermined groups. With a mutual goal in mind and a temperature of -20°C, we spent a lot of time inside together preparing for our task. Rarely would I ever be holed up at the

office working on a group deliverable until 12am each night. Working in very close quarters with a tight timeline reminded me that everyone has a different approach to processing things and that it is best to recognize that reality head on so that the "would-be conflicts" actually work to the group's advantage. Leaders and non-leaders alike have a role to play in recognizing the strengths of each person. If you have never completed a personality or strengths assessment (for example, Myers Brigg or CliftonStrengths), I would highly recommend it and, if possible, suggest that your team members do them, too.

Introspection was an underlying theme of NELI. The forum provided attendees with many moments for formal and informal introspection and many moments to witness the introspection of others. One of the most impactful components of the Institute for me was listening to the stories and experiences of our library giants. As the target audience for NELI tends to be information professionals who are early in their career, hearing the about journeys, hardships, and successes of our mentors and facilitators was incredibly insightful. I am grateful for the honesty and trust that they shared with us. Contact a colleague and see if they are willing to share their career journey with you. If they are, it will be a touch point you will not soon forget.

You may wonder why it has taken me so long to write this recap, and I can tell you that it is because I continued to process my experience several months after NELI, and, honestly, I still do. I recommend this experience to information professionals who are unafraid to put their full selves into an intense week of learning, self-reflection, and challenges. I hope that even if you decide not to attend NELI you will have gained a few insights to apply to your own situation.

I will end with a heartfelt thanks to CALL for supporting my application to NELI and for providing the necessary funding for me to make this journey.



III News from Further Afield / Nouvelles de l'étranger

Notes from the UK London Calling

By Jackie Fishleigh

Beast from the East

I have no idea whether this means anything to you—probably not. Over here, these days we seem to give weather events names, and this one refers to the bitterly cold weather and snowfall we experienced earlier in the month.

It caused a lot of inconvenience for many people including about half a dozen of my co-workers who got stuck on two trains for five hours in the snow. Some of their fellow passengers got so fed up that they decided to get out of one of the trains and walk on the rail tracks. Not only is this dangerous, it also caused the train driver to call the police, creating a further delay.

Meanwhile, I had the day off to get ready for a Caribbean cruise, flying out from Gatwick to Barbados in the early hours. We left ridiculously early just in case the road between our house and LGW was blocked. It is only 30 minutes away, but we were anxious not to miss our holiday. In any event, it was getting increasingly foggy and we were late taking off for the same reason. But it could have been much worse.

Many of our fellow passengers on our TUI Dreamliner aircraft had spent days worrying about closed airports, being snowed in, and being caught in freezing conditions as roads were blocked and travel options were gradually reduced.

First Non-stop Flight from Australia to London on Dreamliner

Less than a month after our holiday, Dreamliner aircrafts are very much in the news after a Boeing 787 Dreamliner touched down at Heathrow on 26th March after a 17-hour, 9,050 mile flight from Australia! This was Qantas Flight 9 from Perth, Western Australia, which flew through the night over the Indian Ocean, Sri Lanka, the southern tip of India, the Middle East, and then on to Europe. Previously all Australia–UK flights stopped at least once en route to refuel. According to the TUI website, “the 787 Dreamliner can fly about 8,000 miles without stopping.”¹ Hmm—well, I'm glad they squeezed out a bit more fuel for the show flight!

The Salisbury I Know

Just a day after arriving in the Caribbean, the news came through on Sky TV of the suspicious poisoning of a former Russian spy and a young woman. Details were scant, but I strained carefully to hear in which part of London it happened. There have been a number of similar incidents in the capital, including the one that led to the death of Alexander Litvinenko back in 2006. He was poisoned with radioactive polonium and took months to die, seemingly naming his killers in the process. Misha Glenny, the writer of *McMafia*, which was recently turned into a controversial and disturbing BBC TV drama series, has commented that disputes that are started in Moscow are being transferred to London and played out there.

¹“TUI Airways 787 Dreamliner”, online: TUI <www.tui.co.uk/destinations/info/dreamliner>.

When the reporter said, “Salisbury,” it stopped me in my tracks for several minutes. Not only is it a sleepy cathedral town, but it is where my two great aunts, Auntie Phyllis and Auntie Joyce, spent their entire lives! We visited them regularly when I was a child in their rather smart house with its beautiful terraced garden on the steeply sloping banks of the River Avon. The highlight was afternoon tea served on high quality china and gleaming cake stands, covered in doilies. There was always lardy cake and meringues. My brother once got into terrible trouble for accidentally treading a fragment of Swiss roll into their carpet.

Auntie Phyl (Norris) was a successful children’s author who is buried in the London Road cemetery along with Sergei Skripal’s wife and son. I have strong memories of her graveside funeral: it was bitterly cold, and the wind swept through us. Auntie Joyce was a civil servant, involved in work at the now notorious Porton Down in Wiltshire. Founded in 1916, this is the oldest chemical warfare research installation in the world. The tight secrecy that has surrounded the establishment for decades has fed the growth of all sorts of myths and rumours about its experiments. The Russians are now claiming that the nerve agent apparently used on the Skripals came from Porton Down. It sounded a rather scary place to me at the time.

Auntie Joyce lived to the grand old age of 99 and a half, and in 2015 I visited Salisbury for her funeral. She wasn’t disappointed at missing her telegram from the Queen; she hated birthdays and had no wish to turn 100. I arrived the evening before the funeral and noted that it is possible to get a bus from Salisbury station to the world-famous Stonehenge. I was on my own, so I spent some time looking for somewhere to have a solo meal. I spotted the Mill pub where the Skripals had a drink on that fateful Sunday but decided that would be too public and noisy. I could easily have dined in Zizzi’s where the Skripals dined and where their table has since been reported as having been destroyed.

It was a lovely autumnal evening, so I wandered by the cathedral and took in the views. It truly is one of the best parts of Southern England. Salisbury Cathedral sits in the spectacular setting of the largest and most lovely Cathedral Close in Britain.

In the event, the *bon viveur* in me took over, and I found somewhere that was really special and rather expensive, with quality wine. I told myself that Auntie Joyce would have approved.

The Russia I Know

I have visited Russia twice and spent a year learning Russian at Birmingham University. I have never got much farther than Moscow and St. Petersburg, but I was very taken by what I saw. Victory Park in Moscow brings to life the massive sacrifice and contribution the Russian people made in the Second World War. Visiting the ballet in Moscow or the

Hermitage at the Winter Palace in St. Petersburg reminds us of the great dancers, artists, and writers that Russia has produced. There is also a lot of poverty, alcoholism, and mental health problems in such an enormous country, but the people themselves are as good and as bad as those anywhere, in my view.

A Real Life Political Thriller

This is how BBC journalist Matt Frei described the Salisbury incident in his Channel Four documentary entitled *Russian Spy Assassins: The Salisbury Attack*. Shown on Monday 26th March, this programme suggested that Mr. Skripal was poisoned by Russia because he was still lunching each month at Salisbury’s Cote brasserie with his MI6 handler. During these meetings, they spoke Russian and Skripal was thought to have been still providing intelligence. The young woman turned out to be his own daughter, Yulia, who had just come back from Russia.

At the time of writing, it is still not even known *where* the Skripals were poisoned. Only last night a new theory was made public that it was left on the front door of Mr. Skripal’s house in the form of a gel. Porton Down has identified the nerve agent as Novichok. This has stunned everyone as it is deadly and practically undetectable. Meanwhile those who were in the Mill pub and Zizzi’s have been belatedly advised to clean clothing, mobile phones, etc. The general air of panic and the cordoning off of parts of the centre of town by police have left the shops and businesses with a dwindling number of customers. Free parking has been offered to lure back customers. It may take more than that...

Russia Increasingly Isolated

PM Theresa May spoke out very strongly about the attack on the Skripals. She seemed comfortable addressing the topic, perhaps because she was home(land) secretary for some years. She didn’t mince her words in immediately blaming the Russians, even without hard evidence. This surprised me. Jeremy Corbyn, leader of the opposition, used more measured language but was widely criticised for acting weakly.

May then took some more decisive and rapid action, kicking out large numbers of diplomats.

“Largest Collective Expulsion of Russian Intelligence Officers in History”

The rest of the world quickly followed suit.

According to *The Huffington Post*, more than 100 Russian diplomats have now been expelled from the West in response to the Salisbury nerve agent attack.²

It seems that many of the diplomats and intelligence officers were actually suspected of spying.

² Sara C Nelson & Graeme Demianyk, “More than 100 Russian Diplomats Expelled from the West in Response to Salisbury Nerve Agent Attack” *The Huffington Post* (26 March 2018), online: <www.huffingtonpost.co.uk>.

Money Laundering – Russian Property in London

The use of foreign “dirty money” to buy luxury homes in Britain is to be investigated by MPs. There will be no surprise if it focusses on Russian cash.

What a Difference Nearly a Year Makes

PM May’s leadership has been praised in many quarters while Labour Leader Jeremy Corbyn struggles with claims of anti-Semitism within his Labour party. Mind you, anti-Semitism didn’t prevent Jewish atheist Ed Milliband from becoming Labour Party leader from 2010-2015.

A year ago, the situation was reversed with Corbyn in the ascendance and May facing criticism. The turnaround has occurred rather fast.

Whether May’s approach will succeed over a longer period is questionable. We will still need to liaise with Russia and who knows what reprisals will come our way.

John Worboys Case

Worboys, a notorious rapist who assaulted many women in his London black cab by drugging them with spiked champagne, remains behind bars after months of protests and legal challenges to his upcoming release.

Due to an omission by the Ministry of Justice, the Parole Board’s decision behind closed doors to release him was apparently taken without all the relevant information being included for them to consider. The head of the Parole Board has been made to resign. He feels that the Parole Board’s independence is being undermined.

Some of his victims fought to keep him locked up, as he had shown no remorse. Many other women have come forward with allegations, although these have not been tried in court.

Commonwealth

BBC journalist George Alagiah was on our screens this week examining our Queen’s tireless work as head of the Commonwealth. This included archive footage of her first overseas tour, which lasted six whole months. The monarch even visited far away Tonga to return the favour of Queen Sālote, who attended the Coronation in 1953. The pair had struck up a friendship. A report in the *Daily Telegraph* stated:

Queen Salote of Tonga, alone among the carriage-riding classes, ignored the weather and travelled with the top down so she could smile and wave to the crowds. Our Queen apart, she was the star of the day. An enormous woman accompanied by a man half her size, she inspired the Coronation’s most quoted quote. “Who’s that with Queen Salote?” Noël Coward was asked. “Her lunch,” he replied.³

What came over to me in the documentary was the respect the Queen quickly commanded around the world in our transition from empire. She was immediately active, engaged, and determined yet deployed grace and quiet diplomacy to deal with tricky situations such as what arose in Ghana and South Africa. She recently thanked your prime minister at an official dinner in Scotland “for making [her] feel so old.”⁴ She seems to have a lively sense of humour.

Acoustic Shock

A classical musician has won a landmark case for damages against the Royal Opera House after claiming his hearing was irreparably damaged by the horn section during a thunderous rendition of Wagner’s Ring Cycle.

In the first case of its kind, Christopher Goldscheider, a viola player, claimed he was exposed to unacceptable noise levels in the pit at Covent Garden as the orchestra rehearsed “Die Walküre” (“The Valkyrie”) in 2012.

Facebook

Not just fake news... some good old-fashioned lying and evasion. Mark Zuckerberg has refused to appear before a House of Commons committee, to the outrage of MPs.

As a sop, Facebook is making it easier for customers to access privacy settings. This is not in Facebook’s interest, though, because it will make it harder to collect data for advertising purposes. Facebook does not make money out of nice people sending nice messages to each other.

It seems that illegally used data passed to an apparently dodgy data company called Cambridge Analytica may have had a hand in increasing the Leave vote at our referendum on EU membership in 2016. Some think this is worth investigating. Others don’t.

One year today until Brexit

The less said about it probably the better...

With very best wishes.

JACKIE

Letter to Canada March 2018

By Margaret Hutchison

It seems hardly any time since my last letter from Australia.

I’m usually making notes of topics to write about, but I seem to have covered most of them in my last letter.

³ David Robson, “Queen’s Coronation Anniversary: A Party to Remember for Ever”, *The Telegraph* (2 June 2013), online: <www.telegraph.co.uk>.

⁴ ODN, “Queen Thanks Canadian PM for Making Her ‘Feel Old’ in Malta” (28 November 2015), online: YouTube <www.youtube.com/watch?v=vbVXI9RY0zY> at 00h:1m:0s.

Like the rest of Australia, I'm horrified by the cricket ball tampering scandal at present unravelling in South Africa. It is probably the equivalent of the Canadian hockey team being discovered damaging the puck during a match against the United States or Russia. Australians, like Canadians, love their sport. In fact, a former prime minister (and cricket tragic) once said he had the second most important job in the country—being the Australian Test captain was the most important. The last time this type of cricketing scandal happened, war almost broke out between Australia and New Zealand over a ball that was bowled underarm, rather than overarm (apparently legal but unsportsmanlike). The players concerned will live forever with the epithet being involved in the “underarm bowling incident,” as will these players.

The Royal Commission into the banking industry continues with some horrendous witness stories coming out, such as the one of the problem gambler. Shortly after the customer in question revealed to the bank that he had a serious gambling problem, his credit card limit was increased by \$27,000—presumably as an incentive to keep trying his luck.

Later, he received a letter from the bank concerned informing him it would take 138 years to pay off his debt if he made only the minimum monthly repayments. Only a few selected people are able to give witness testimony as examples, as the Commission only has a year's time limit before submitting its report.

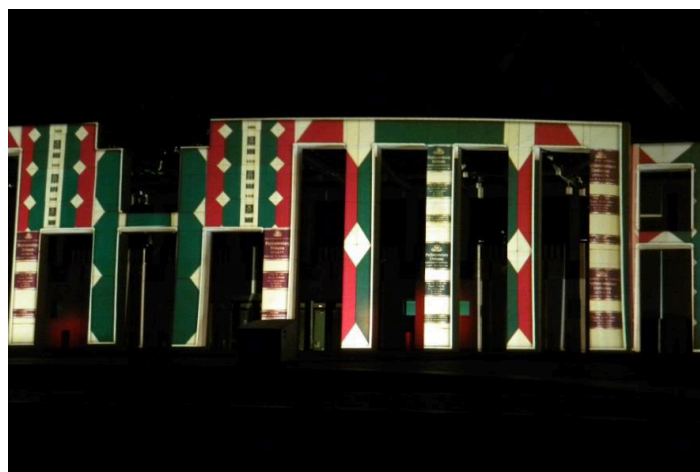
The High Court has finished the latest raft of *Commonwealth of Australia Constitution Act* section 44 referrals; today it was announced that those members who were declared to be dual citizens do *not* have to pay back their salaries and allowances for the period they were in parliament. As well, the Joint Parliamentary Standing Committee on Electoral Matters is due to hand down a [report on section 44](#) after the deadline for this letter, so you'll have to wait until the next time for a summary of its recommendations.

An interesting case is working its way through the federal court system. An academic, Professor Jenny Hocking from Monash University, is seeking access to a bundle of correspondence between the then governor-general of Australia, Sir John Kerr, and the Queen or the Queen's private secretary. She is crowdfunding her case as well. The correspondence period includes the time of the dismissal of the Whitlam government by Sir John Kerr, a tumultuous period in Australian politics. Professor Hocking was refused access to the documents under the *Archives Act 1983* on the grounds that the documents were not Commonwealth records, rather the “personal and confidential correspondence” between Sir John and the Queen. Under the deposit terms, these documents were not to be released until 60 years after the end of Sir John's appointment as governor-general, which means the release date will be 2037 and then only in consultation with the sovereign's private secretary of the day and the governor-general's private secretary of the day. This case raises issues of what exactly is a Commonwealth

record, with the consequence that possible public access to these documents, if classified as Commonwealth record, would be governed by the *Archives Act* and not the terms of the instrument (or letter) of deposit of the bundle of correspondence.



This is one of the illuminations of Parliament House during the recent Enlighten Festival. This was 30 birthday candles, as it's been 30 years since the building was opened. Another illumination used the bound volumes of *Hansard* as inspiration. *Hansard* is no longer published in hardcopy except for special requests. In fact, there are competitions during Enlighten at Old Parliament House to make things with pages from *Hansard*!



Another publication that is no longer available in print except for pre-orders is the bound annual volumes of Commonwealth statutes, and we were told that there will no longer be bound copies of bills available, either.

The National Library of Australia building turns 50 this year, and among the illuminations projected on its front was an image of a set of the original catalogue drawers, made especially for the building. The building lends itself so well to these images.

Amongst other commemorations, it's also been 75 years

⁴*Marriage Amendment (Definition and Religious Freedoms) Act 2017*, (Cth), s 47 (3).

⁵*Ibid*, s 47B.

⁶Religious Freedom Review, online: Australian Government: Department of the Prime Minister and Cabinet <pmc.gov.au/domestic-policy/religious-freedom-review>.

By Julianne E Grant

The past three months have not been the easiest here in the US. Between the chaos of the White House and the horrific school shooting in Parkland, Florida, it has been a bumpy ride. On a positive note, however, we have witnessed some of our youth taking matters into their own hands—specifically in the area of gun control. Instead of embracing apathy, students in Parkland have sparked a national movement to keep guns away from those who pose a danger to themselves and the general population. These young activists have already compelled politicians in their own state of Florida to pass stricter gun laws (although not strict enough, according to the Parkland students).⁵ Frankly, in the midst of chaos and tragedy, it has been heartening and impressive to watch a younger generation take on an issue that my own generation has not been able to navigate successfully.

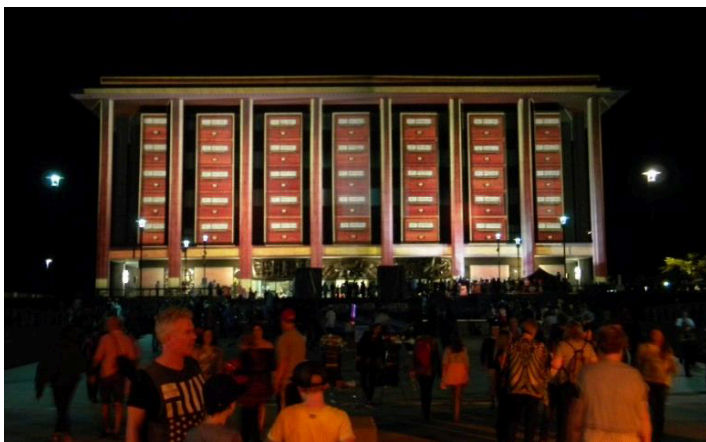
Although Trump and Parkland made the headlines, there have been other developments here during the first quarter of 2018. As usual, this column attempts to compile relevant legal and law library news. Thus, there are short reports on AALL, the ABA, SCOTUS (Supreme Court of the US), and law schools, libraries, and firms. Also check out the “Legal Miscellany” section for a tidbit about a “sweet” contest. Read on!

AALL & ABA

According to an [AALL eBriefing](#) (Feb 27, 2018), Executive Director Kate Hagan is resigning at the end of the fiscal year (Sept 2018). Ms. Hagan has served in that position for eleven years. AALL president Greg Lambert has appointed a search committee for her replacement, chaired by [Gail Warren](#) (Virginia State law librarian). Ms. Hagan will not depart prior to AALL’s [2018 Annual Meeting & Conference](#), which will be held in Baltimore (July 14-17). The slated keynote speaker is director [John Waters](#).

AALL continues to assist and support various federal and state legislative initiatives. The organization’s February 2018 [Washington eBulletin](#) reported that AALL is actively involved in the reform of [44 USC](#), which addresses public printing and documents. The reform bill is [HR 5305 \(FDLP Modernization Act of 2018\)](#). The association is also working with state advocates and the [Uniform Law Commissioners](#) to support the [Uniform Electronic Legal Material Act \(UELMA\)](#). UELMA bills are currently pending in a number of states.

Meanwhile, the ABA continues its exploration of the status of legal education in the US; its [Commission on the Future of Legal Education](#) held its first open forum on February 4. In other ABA developments, [Judy Perry Martinez](#), Of counsel at Simon, Peragine, Smith & Redfearn (New Orleans), will be the association’s next president.



since the first women entered the Australian Parliament. In the election of August 1943, Senator Dorothy Tangey was elected as a senator for Western Australia and Dame Enid Lyons was elected to the House of Representatives representing the division of Darwin in Tasmania. Australia was the first country in the world to give most women both the right to vote and the right to stand for Parliament when, in 1902, the federal Parliament passed legislation to provide for a uniform franchise throughout the Commonwealth.

And to finish, a frog balloon and a humming bird balloon from the balloon festival that started as Enlighten finished. March is a very busy month in Canberra!



Until next time, enjoy the CALL Conference in Halifax. I’m going to the ALLA conference in Darwin in May, so my next Letter from Australia may include a report from Darwin.

Regards,

MARGARET

⁵ See 60 Minutes (March 18, 2018) for a segment about some of the Parkland student activists’ thoughts on the new Florida gun control legislation, online: <www.cbsnews.com/news/parkland-shooting-students-calling-for-change-60-minutes-interview>.

Law Libraries

The [Law Library of Congress](#) (LLOC) has released digital copies of the printed volumes of the [United States Reports](#) (SCOTUS' official reporter), covering 1791 to 2004. The collection is searchable by keyword and topic. In addition, the LLOC has posted digital versions of the USC, spanning 1925 through 1988. Also noteworthy is a March 5, 2018, post on the LLOC's [In Custodia Legis](#) blog pertaining to the library's role in collecting, organizing, and digitizing SCOTUS briefs.

At Yale, the Lillian Goldman Law Library has a new exhibit, [Law Books Bright and Beautiful: Examples from the Yale Law Library Collection](#), running through June 1, 2018. If you're in Minneapolis, drop by to see the University of Minnesota Law Library's [A Foundation in the Law: Celebrating 40 Years at Walter F Mondale Hall](#). This exhibit is an homage to the 40th anniversary of the dedication of the Minnesota Law School's current digs, as well as the building's namesake, former US Vice President [Walter Mondale](#).

Also, if you didn't know already, the ABA is no longer requiring US academic law libraries to submit annual statistics. To learn more about this turn of events, see Phillip Gragg's piece in the March/April 2018 issue of [AALL Spectrum](#) ("[Are Law Libraries Victims of their Own Success?](#)" p 40-42).

Law Schools

According to Above the Law, the "GRE creep" continues, with more US law schools jumping on the GRE (Graduate Record Exam) bandwagon.⁶ Both UCLA and the University of Chicago are now allowing some law school applicants to submit GRE scores. In other news, the first students from [Mitchell Hamline's online hybrid JD program](#) graduated in early January. No reports yet on how they fared on the bar exam or finding jobs in the legal field. Meanwhile, at the University of Houston, the Law Center will offer its award-winning [Pre-Law Pipeline Program](#) for the fourth time this summer. The highly successful program preps undergraduates for the LSAT and the law school application process.⁷ At Chicago-Kent, the law school has opened a [Center for Design, Law & Technology](#) that focuses on the link between technology and the law.

Law Firms

In early 2018, [Law360](#) published a number of interesting statistics pertaining to 2017 firm activity. Law firms, for example, merged at a record rate last year, with 102 joining forces.⁸ The largest merger in 2017 involved US-based

Womble Carlyle and UK-based Bond Dickinson to form [Womble Bond Dickinson](#). [Law360](#) also reported that the median hourly rate for partners in the US's 50 largest law firms increased eight percent in 2017.⁹ In addition, [Law360](#) named its 2017 Firms of the Year: [Skadden Arps Slate Meagher & Flom](#) and [Mayer Brown](#).¹⁰ Those firms dominated [Law360's](#) individual practice group rankings.

Despite the high costs of hiring an attorney, a [DRI](#) national poll on the civil justice system indicated that the average American is not willing to rely on computers or non-lawyer assistants for legal advice.¹¹ The poll involved more than 1,400 US households. Some attorneys are apparently ditching fancy offices all together to keep costs down and are working in the cloud. A recent piece in the [Chicago Daily Law Bulletin](#) indicated that a virtual model is gaining momentum in the legal field.¹²

Federal Bench

It is no secret that the Trump administration has been rapidly contouring the federal bench to reflect its conservative agenda. According to [Law360](#), President Trump appointed 23 federal judges during his first year in office, including SCOTUS Justice Neil Gorsuch.¹³ This was 10 more than President Obama appointed during his first year as president. Trump actually set a record with 12 circuit court appointments—the most ever by a president during his initial year in office.¹⁴ And, by the way, only four of the Trump federal judiciary appointees during his first presidential year were women. [Law360](#) also determined that the Trump administration favors the law firm [Jones Day](#) for filling government seats requiring Senate confirmation—eight out of 108 placements during Trump's first year represented that firm.¹⁵ The president continues to roll out nominees, tapping nine people in early February for open judgeships in the Ninth, Seventh, and Fifth Circuits.

SCOTUS

After Ninth Circuit judge [Alex Kozinski](#) retired in December 2017 amidst allegations of sexual harassment, SCOTUS Chief Justice John Roberts announced an initiative to protect federal law clerks and other court employees from sexual misconduct. The announcement appeared in his [2017 Year-End Report on the Federal Judiciary](#), released at the end of December. A group of nearly 700 law professors and current and former federal law clerks had previously asked SCOTUS to weigh in on the issue of sexual harassment via a December 20, 2017, [petition](#).

⁶ Kathryn Rubino, "More Law Schools Get In On The GRE Creep—But Some Conditions Apply," Above the Law (3 January 2018), online: <www.abovethelaw.com/2018/01/more-law-schools-get-in-on-the-gre-creep-but-some-conditions-apply>.

⁷ University of Houston Law Center, "UH Law Center Enrolling College Students for Pre-Law Pipeline Program" (March 13, 2018), online: <law.uh.edu/news/spring2018/0313pipeline.asp>.

⁸ Adam Rhodes, "Law Firms Merged at Record Rate in 2017," [Law360](#) (3 January 2018).

⁹ Aebera Coe, "Law Partners' Hourly Rates Keep Climbing," [Law360](#) (27 February 2018).

¹⁰ Michele Gorman, "The Firms That Dominated in 2017," [Law360](#) (15 January 2018).

¹¹ "DRI National Poll: Average Americans Not Yet Willing to Entrust Their Legal Fate to Computers or Non-Lawyer Assistants" (20 February 2018), online: [DRI <www.dri.org/news/news-detail/2018/02/20/dri-national-poll-average-americans-not-yet-willing-to-entrust-their-legal-fate-to-computers-or-non-lawyer-assistants>](http://www.dri.org/news/news-detail/2018/02/20/dri-national-poll-average-americans-not-yet-willing-to-entrust-their-legal-fate-to-computers-or-non-lawyer-assistants).

¹² Joyce M Rosenberg, "No Art or Wood Paneling—Some Law Firms Work in the Cloud," [Chi Daily L Bull](#) (28 February 2018) at 4.

¹³ Ed Beeson, "By the Numbers: A Snapshot of Trump's First Year," [Law360](#) (18 January 2018).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

As of February 13, 2018, SCOTUS had only released four signed opinions for the 2017-2018 term—a comparatively slow pace, according to a CNN article.¹⁶ The CNN piece speculated that Justice Gorsuch was responsible for the bottleneck, noting tensions between the newbie and some of his colleagues.¹⁷ Such tensions were on display in a January 22, 2018, decision about filing deadlines (*Artis v District of Columbia*) where Justices Gorsuch and Ginsburg openly sparred. Justice Gorsuch lost.

Several other SCOTUS opinions were published in early 2018. Among these was *District of Columbia v Wesby*, also decided on January 22. In that case, SCOTUS ruled that police who responded to a raucous gathering at a vacant house in Washington, DC, did have probable cause to arrest the partygoers, overturning both of the lower courts' decisions. On February 21, in *Ruben v Islamic Republic of Iran*, the Justices agreed 8-0 that US survivors of a 1997 Jerusalem suicide bombing could not rely on the *Foreign Sovereign Immunities Act* to seize Iranian artifacts held at several Chicago museums. In *Digital Realty Trust v Somers*, also decided on February 21, SCOTUS opined that whistleblower protections codified by the *2010 Dodd-Frank Act* only apply to people who report trouble to the SEC, not more broadly. That decision, according to a piece in *Law360*, reflected SCOTUS' "long-running tensions over the use of legislative history."¹⁸

After a month-long break from mid-January to mid-February, SCOTUS again began hearing oral arguments. On February 26, in what appeared to be a divided Court, the Justices heard arguments about an Illinois law that allows unions that represent government employees to collect fees from workers who haven't joined (*Janus v AFSCME, Council 31*). Justice Gorsuch, who will likely be the deciding vote in that case, was mum during oral arguments.¹⁹ The following day, the Justices addressed whether federal and state law enforcement officials can demand emails and other electronic data stored abroad by US companies (*US v Microsoft*). Other prominent cases heard this spring include *Currier v Virginia* (double jeopardy), *Rosales-Mireles v US* ("plain error" standard), and *City of Hays, Kansas v Vogt* (self-incrimination).

In an unusual move on February 27, Justice Breyer read aloud his dissent in *Jennings v Rodriguez*. In that decision, a plurality voted to deny bail hearings to several immigrants slated for deportation. The case was remanded back to the Ninth Circuit appeals court.

According to a *Law360* article, reading a decision aloud in open court is rare and is "traditionally meant to emphasize extreme displeasure with the [C]ourt's ruling."²⁰ Justice Breyer was apparently not a happy camper.

Court watchers are eagerly awaiting SCOTUS' decision on the *Masterpiece Cakeshop* case, which involves a Colorado baker who refused to prepare a cake for a gay couple's nuptials. The owner of the bakery argued that he had a right to refuse per his First Amendment rights to freedom of religion and speech. The 2017-2018 term overall will feature five freedom of speech cases, which is "extraordinary," according to UC, Berkeley Dean of Law Erwin Chemerinsky.²¹

SCOTUS Out and About

During SCOTUS' month-long break, several of the Justices were busy outside the office. Justice Ginsburg spent part of her free time on a speaking tour, which took her to law schools on the East Coast, as well as the *Sundance Film Festival* (Park City, Utah). During her talks and interviews, Justice Ginsburg addressed a wide range of topics, including the #MeToo movement. She also revealed in an NPR interview that she herself had been the victim of sexual harassment as an undergraduate.²² And, as far as retiring, you can forget it. The 84-year-old RBG has made it clear she is not doing that anytime soon. According to a *Chicago Daily Law Bulletin* piece, Justice Ginsburg has hired law clerks to take her through June 2020.²³

Justice Thomas was not homebound during the Court's break either. On February 15, he was the featured guest for the LLoC's *2018 Supreme Court Fellows Program Annual Lecture*, which was conducted in a discussion format. There, Justice Thomas indicated that he was not bitter about his rocky confirmation hearings in 1991, but he did feel that the entire SCOTUS nominations process has become a "gladiator-like 'spectacle.'"²⁴

Justice Gorsuch was also away from DC during the SCOTUS break. At Stockton University in Connecticut, in a speech on January 23, Gorsuch said that SCOTUS' biggest future challenge will be reconciling the Constitution with legal issues emanating from new technology.²⁵ He reportedly spent much of his time discussing the founding fathers' vision of civics and civility.²⁶

New Federal Government Database: govinfo

The US federal government's familiar *FDsys* database is

¹⁶ Joan Biskupic, "Supreme Court still feeling the impact of Antonin Scalia's death," CNN Politics (13 February 2018), online: <www.cnn.com/2018/02/13/politics/scalia-gorsuch-supreme-court/index.html>.

¹⁷ *Ibid.*

¹⁸ Jimmy Hoover, "SEC Case Exposes Justices' Rift Over 'Legislative History,'" *Law360* (22 February 2018).

¹⁹ Mark Sherman, "Gorsuch, Key to Fate of Illinois Union Fees, Stays Quiet During Oral Arguments," *Chi Daily L Bull* (26 February 2018) at 1, 5.

²⁰ Jimmy Hoover, "Breyer Reads Aloud Fiery Dissent Over Immigration Bail Ruling," *Law360* (27 February 2018).

²¹ Erwin Chemerinsky, "Chemerinsky: Free speech at the Supreme Court," *ABA J* (8 February 2018), online: <www.abajournal.com/news/article/chemerinsky_free_speech_at_the_supreme_court>.

²² See Debra Cassens Weiss, "Justice Ginsburg Supports #MeToo Movement and Tells of Harassment," *ABA J* (22 January 2018), online: <www.abajournal.com/news/article/justice_ginsburg_supports_metroo_and_tells_of_harassment>.

²³ Mark Sherman & Jessica Gresko, "Ginsburg Says She is Not Going Anywhere, Mentions Stevens," *Chi Daily L Bull* (31 January 2018) at 3.

²⁴ Jimmy Hoover, "Justice Thomas Not Bitter, But Says Senate Process Broken," *Law360* (15 February 2018).

²⁵ Jeannie O'Sullivan, "Gorsuch Says Tech Advancements Will Test High Court," *Law360* (23 January 2018).

²⁶ *Ibid.*

being replaced by [govinfo](#). The new database contains all of FDsys's content but has additional features, such as the ability to apply multiple filters. Within govinfo's "Browse" menu, documents are organized into ten broad categories, including "Bills and Statutes" and "Judicial Publications." The govinfo database also allows browsing by date, issuing Congressional committee, and government author. FDsys will remain active through December 2018.

Legal Miscellany: Peeps in Law

By the time this issue is published, the ABA will have announced the winner of its 10th annual [Peeps in Law](#)

[contest](#). For this competition, contestants create law-related dioramas of marshmallow Peeps and then submit photos of their creations to the ABA. Members of the *ABA Journal* staff select finalists, and the public is invited to vote for a grand prize winner. Check out the many humorous entries in the [historical gallery](#), although I admit I'm partial to "[Peeparazzi](#)."

Conclusion

That wraps it up for another three months. If any readers would like to comment on any of the above, or make suggestions for additional content, please feel free to contact me at jgrant6@luc.edu.

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

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

***Julienne Grant is Reference Librarian/Foreign & International Research Specialist at the Law Library, Loyola University Chicago School of Law.

Please note that any and all opinions are those of the authors and do not reflect those of their employers or any professional body with which they are associated.

Call for Submissions

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

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

The Association is unable to make any payment for contributions. Authors will receive one complimentary copy of their article upon publication. The Canadian Association of Law Libraries does not assume any responsibility for the statements advanced by the contributors to, and the advertisers in, the Association's publications. Editorial views do not necessarily represent the official position of the Association.

Canadian Law Library Review/Revue canadienne des bibliothèques de droit is indexed in the *Index to Canadian Legal Literature*, *Index to Canadian Legal Periodical Literature*, *Legal Information and Management Index*, *Index to Canadian Periodical Literature*, and *Library and Information Science Abstracts*.

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

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

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

Les articles publiés dans Canadian Law Library Review/Revue canadienne des bibliothèques de droit sont répertoriés dans *Index à la documentation juridique au Canada*, *Index to Canadian Legal Periodical Literature*, *Legal Information and Management Index*, *Index to Canadian Periodical Literature* et *Library and Information Science Abstracts*.

CALL/ACBD Research Grant

Perhaps it is time to start thinking about your next research project. The deadline for the 2018 research grant will be March 15, 2018 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.

Please contact

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

Elizabeth Bruton
Co-Chair, CALL/ACBD Committee to Promote Research
Email: ebruton@uwo.ca

For more information.

<http://www.callacbd.ca/Resources/Documents/Awards/Research%20Grant1.pdf>



The Canadian Law Library Review by Canadian Association of Law Libraries is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Permissions beyond the scope of this license may be available at <http://www.callacbd.ca/contact>.

Canadian Law Library Review
is published by:

*Revue canadienne des bibliothèques
de droit est publiée par:*



CANADIAN ASSOCIATION
OF LAW LIBRARIES
ASSOCIATION CANADIENNE
DES BIBLIOTHÈQUES DE DROIT