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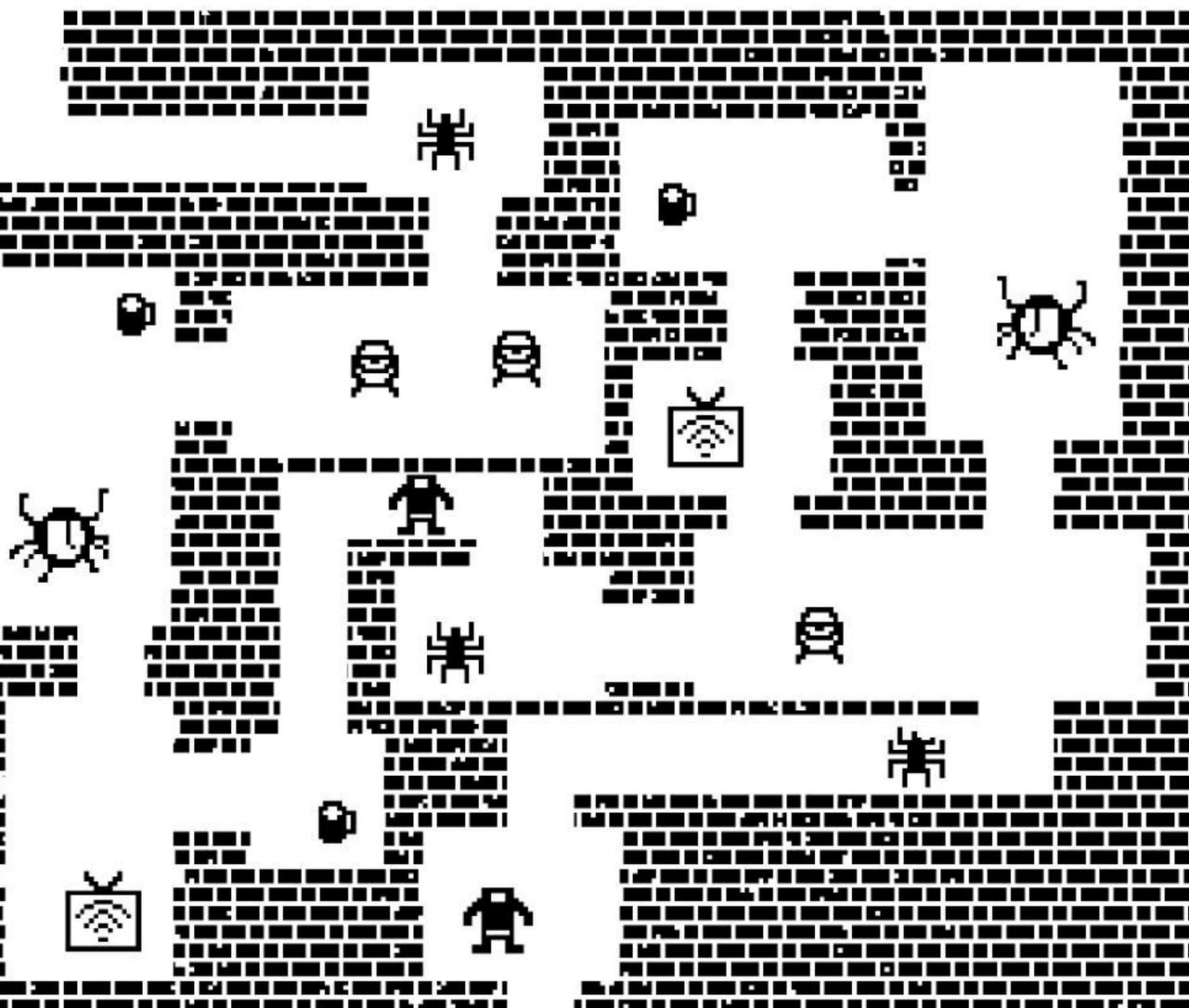
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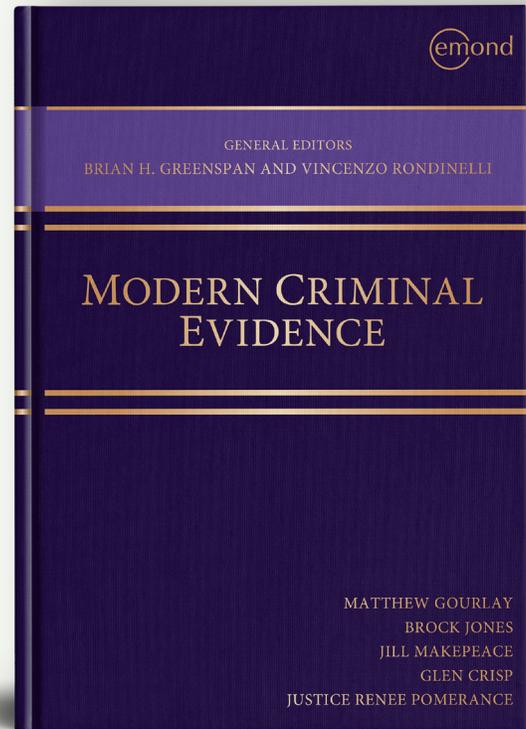
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III CONTENTS / SOMMAIRE

From the Editor De la rédactrice

President's Message Le mot de la présidente

Featured Article Article de fond

*Advanced Technologies and Algorithmic Literacy:
Exploring Insights from the Legal Information
Profession*
By Dominique Garingan

Reviews Recensions

Edited by Elizabeth Bruton and Dominique Garingan

*Teachers and the Law: Diverse Roles and New
Challenges*
Reviewed by Peter Aadoson

Artificial Intelligence and the Law in Canada
Reviewed by Katarina Daniels

*The Law Multiple: Judgment and Knowledge in
Practice*
Reviewed by Gillian Eguaras

*Confronting the Death Penalty: How Language
Influences Jurors in Capital Cases*
Reviewed by Erica Friesen

*The Justice Crisis: The Cost and Value of
Accessing Law*
Reviewed by Krisandra Iving

*Is Law Computable?: Critical Perspectives on
Law and Artificial Intelligence*
Reviewed by F. Tim Knight

*Legalized Identities: Cultural Heritage Law and
the Shaping of Transitional Justice*
Reviewed by Julie A. Lavigne

How to Do Things with Legal Doctrine
Reviewed by Alisa Lazear

Runaway Technology: Can Law Keep Up?
Reviewed by Sally Sax

*Five Words that Changed America: Miranda v.
Arizona and the Right to Remain Silent*
Reviewed by Leslie Taylor

Bibliographic Notes Chronique bibliographique

By Nancy Feeney

Local and Regional Updates Mise à jour locale et régionale

By Josée Viel

News From Further Afield Nouvelles de l'étranger

Notes from the U.K.: London Calling
By Jackie Fishleigh

Letter from Australia
By Margaret Hutchison

*The U.S. Legal Landscape: News From Across
the Border*
By Sarah Reis

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III From the Editor / De la rédactrice

As a child who grew up with parents who were voracious collectors and readers of science fiction, my concept of artificial intelligence (AI) was formed by my early forays into their extensive sci-fi library. Even now, despite the reality of present-day AI being quite different, my early imaginative perceptions tend to linger. To me, the quintessential image of AI entities can be either; petrifying, like Skynet in the Terminator movies and HAL in Arthur C Clarke's *2001: A Space Odyssey*, or attractively utopian, like Star Trek's android crew member Commander Data, and the franchise's omnipresent but always helpful onboard computer. I am not sure it ever occurred to me that, in my lifetime, AI would have mundane, real world, practical applications, but indeed it does!

As AI leaves the realm of fiction and begins to influence our daily lives and our work as legal information professionals, we are becoming more attuned to the idea of using AI as one of the components of successful legal research, often without much thought or reflection. But it is important for us to think and reflect on what AI is and to develop what author Dominique Garingan, in this issue's feature *Advanced Technologies and Algorithmic Literacy: Exploring Insights from The Legal Information Profession*, calls "algorithmic literacy." Very broadly, algorithmic literacy involves understanding how AI works, how to use it, and importantly how to "assess the influence and effect of algorithms in social, cultural, economic, and political contexts." Other recent issues of the *Canadian Law Library Review* have included articles ([Viselli, 2021](#) and [Soares, 2020](#)) that touch on the biases that can be inherent in AI. These articles remind us that it is not sufficient to merely be passive users of this technology but instead, as Garingan notes, we "must

shift towards more critical and rhetorical levels of awareness and understanding alongside foundational and technical competence." This article is a comprehensive evaluation of current legal information professionals' understanding of and approaches to the uses and impacts of AI.

While you are here, don't forget to take a look at the *Bibliographic Notes* column where you can learn about citation "stickiness" and the *Obnoxious Librarian from Hades* podcast. *Notes from Further Afield* will keep you informed as to what is happening beyond our borders from our friends in the U.K., the U.S., and Australia. And finally, after a long sleep due to COVID-19 restrictions, the local law library associations are beginning to emerge from hibernation. Learn what your colleagues from across the country have been doing in the *Local and Regional Updates* column.

This issue marks a change in the publication schedule for the *Canadian Law Library Review*. Starting with Volume 47 we will be publishing three issues per year. It also marks a change in the masthead, Stef Alexandru and Hannah Steeves have both stepped down as feature article editors. Thank you both for your hard work pulling together such interesting and informative content. Welcome to Andrea Black and Erica Friesen who have taken over as the new feature editors.

And as befits the science fiction nerd that I am, in valediction, I will close with the immortal words of Mr Spock "live long and prosper."

**ACTING EDITOR
SUSAN BARKER**

Ayant grandi avec des parents collectionneurs et lecteurs inconditionnels de science-fiction, mon concept de l'intelligence artificielle (IA) s'est formé par mes premières incursions dans leur vaste bibliothèque de cette littérature. Aujourd'hui encore, bien que la réalité de l'IA actuelle soit très différente, mes premières perceptions imaginatives ont tendance à perdurer. Pour moi, l'image par excellence des entités reposant sur l'IA peut être soit pétrifiante, comme Skynet dans *Terminator* et HAL dans *2001, l'Odyssée de l'espace* d'Arthur C. Clarke, ou soit bien utopique, comme le lieutenant-commandant Data et l'interface LCARS (pour «Library Computer Access/Retrieval System»), l'ordinateur omniprésent, mais toujours utile dans *Star Trek*. Je ne pense pas qu'il ne m'était jamais venu à l'esprit que, de mon vivant, l'IA aurait des applications banales, concrètes et pratiques, mais c'est pourtant le cas!

Alors que l'IA quitte le domaine de la fiction et commence à influencer notre vie quotidienne et notre travail en tant que professionnels de l'information juridique, nous devenons plus réceptifs à l'idée d'utiliser l'IA comme l'un des éléments d'une recherche juridique fructueuse, souvent sans penser ni réfléchir. Cependant, il est important pour nous de penser et de réfléchir à ce qu'est l'IA, et de développer ce que l'auteur Dominique Garingan appelle la «littératie algorithmique» dans l'article de fond de ce numéro intitulé *Advanced Technologies and Algorithmic Literacy: Exploring Insights from The Legal Information Profession*. De façon très générale, la littératie algorithmique consiste à comprendre comment fonctionne l'IA, comment l'utiliser et, surtout, comment «évaluer l'influence et l'incidence des algorithmes dans des contextes sociaux, culturels, économiques et politiques». D'autres numéros récents de la *Revue canadienne des bibliothèques de droit* ont présenté des articles ([Viselli, 2021](#) et [Soares, 2020](#)) qui abordent les biais qui peuvent être inhérents à l'IA. Ces articles nous informent qu'il ne suffit pas de se contenter d'être des utilisateurs passifs de cette technologie, mais qu'au contraire,

comme le souligne Garingan, nous «devons évoluer vers des niveaux de conscience et de compréhension plus critiques et rhétoriques, en plus d'avoir des compétences fondamentales et techniques.» Cet article présente une évaluation complète de la compréhension et des démarches actuelles de la part des professionnels de l'information juridique concernant les utilisations et les impacts de l'IA.

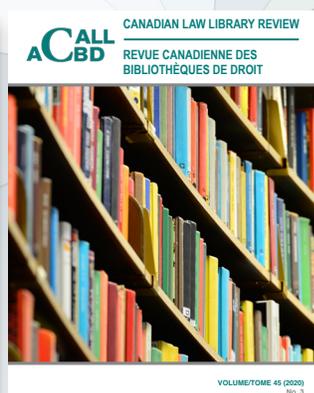
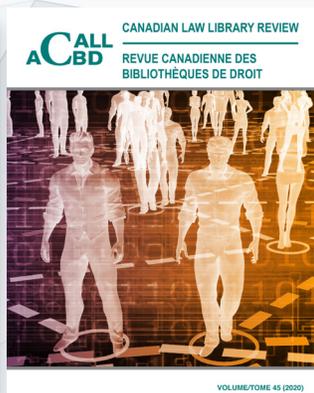
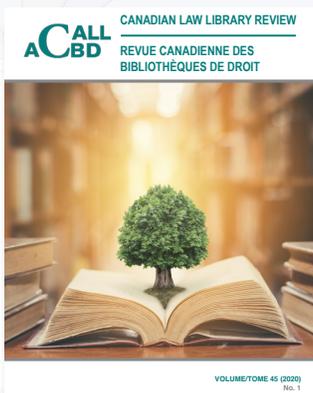
En parcourant la revue, n'oubliez pas de lire la *Chronique bibliographique* dans laquelle vous pourrez en apprendre sur la «viscosité» des citations et le balado *Obnoxious Librarian from Hades*. Les *Nouvelles de l'étranger* vous renseigneront sur ce qui se passe au-delà de nos frontières chez nos amis du Royaume-Uni, de l'Australie et des États-Unis. Et, après un long sommeil dû aux restrictions liées à la COVID-19, les associations régionales de bibliothèques de droit commencent à sortir de leur hibernation. Découvrez ce que vos collègues de partout au pays ont fait dans la *Mise à jour locale et régionale*.

Ce numéro marque un changement dans le calendrier de publication de la *Revue canadienne des bibliothèques de droit* puisque nous publierons désormais trois numéros par année à compter du volume 47. De plus, Stef Alexandru et Hannah Steeves ont quitté leur poste de rédactrice de chronique. Nous vous remercions toutes deux pour votre travail acharné qui a permis de rassembler du contenu très intéressant et informatif. Nous en profitons pour souhaiter la bienvenue à Andrea Black et Erica Friesen qui ont pris la relève à titre de nouvelles rédactrices de chronique.

Et, en tant que mordue de science-fiction, je conclurai par la phrase culte prononcée par Spock : «Longue vie et prospérité.»

RÉDACTRICE EN CHEF INTÉIMAIRE
SUSAN BARKER

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Volume 30 (2005)

Volume 31 (2006)
Volume 32 (2007)
Volume 33 (2008)

Volume 34 (2009)
Volume 35 (2010)
Volume 36 (2011)

Volume 37 (2012)
Volume 38 (2013)
Volume 39 (2014)

Volume 40 (2015)
Volume 41 (2016)
Volume 42 (2017)

Volume 43 (2018)
Volume 44 (2019)
Volume 45 (2020)



III President's Message / Le mot de la présidente

In my last column I wrote about the flux amid which we find ourselves: positive and invigorating, as well as challenging and daunting. Accompanying flux and change of any kind are ambiguity and doubt. One thing that can be said with certainty about times of flux is that little else can be said with certainty.

By this time of year, most of us are well into our planned initiatives and activities for the season, whether it is our workplace cycle, school and studies academic term, or family and home calendar. I myself am immersed in the execution of a daunting project plan for my law library's part in a large space repurposing project. Project plans and projected budgets can promote a positive framework and some level of certainty, softening the challenge and uncertainty. And I'm finding myself invigorated by the prospects of the space revitalization that this project will produce. I also was glad to take advice and guidance from colleagues who'd published their experiences and stories, including right [here in CLLR](#) (Mok, 2016).

Another area of flux legal information workers contend with regularly is the ever-changing impact of data in our work and in the tools we use. Data, of course, is incredibly valuable to support decision-making, such as the decisions we're making in our space repurposing project. (What kinds of seating is most favoured? Do we need more or fewer group study rooms? Which books do we move to which locations?)

Data is also a driver of many of our legal and non-legal information tools, products, and services. Components or features that incorporate artificial intelligence features such as machine learning and predictive analysis are dependent on data. I believe the legal information professional, worker, or student—in any sphere of legal information work—needs

to be or become conversant with data and the way data or datasets serve as both inputs and outputs of our legal *systems*, and thus serve as both inputs and outputs of our legal *information products*.

My own thoughts about the relationships among data, information, and knowledge are also in flux. Years ago, I saw data as largely passive, manipulable to give rise to useful information, which is in turn manipulated by us, information workers, to produce knowledge. Now, in a rapidly changing world of artificial intelligence, I see data as an active participant, drawn *from* information rather than only giving rise to information. Data is increasingly active and influential, an agent extractable from our informational activities. It follows that we must be ever vigilant and increasingly knowledgeable, so that we can take greater charge of knowing and perhaps contributing to determining which data is used, how datasets are used in products, and the impacts on our users, and our work.

**PRESIDENT
KIM NAYYER**

Dans le cadre de mon dernier mot, j'avais parlé du mouvement dans lequel nous nous trouvons : des changements positifs et stimulants de même que difficiles et décourageants. Le mouvement et le changement, quels qu'ils soient, s'accompagnent d'ambiguïté et de doute. Ce qu'on peut affirmer avec certitude au sujet des périodes de changement, c'est que très peu de choses peuvent être avancées avec certitude.

À cette période de l'année, la plupart d'entre nous sont déjà bien engagés dans les projets et les activités prévus pour la

saison, qu'il s'agisse du cycle de travail, du semestre d'études ou du calendrier des activités familiales et des tâches ménagères. Je suis moi-même plongée dans l'exécution d'une planification de projet d'envergure de l'espace de ma bibliothèque juridique qui fait partie d'un grand projet de réaménagement. Les plans et les budgets prévus peuvent favoriser un cadre positif et un certain niveau de certitude, ce qui atténue l'impact des difficultés et de l'incertitude. Et je me sens stimulée à l'idée du réaménagement de l'espace découlant de ce projet. Je suis contente d'avoir tenu compte des conseils et des idées de collègues qui ont publié leurs expériences et leurs histoires, notamment [ici dans la RCBD](#) (Mok, 2016).

Un autre secteur de mouvement auquel les travailleurs de l'information juridique sont régulièrement confrontés est l'impact des données en constante évolution dans notre travail et dans les outils que nous utilisons. Les données, bien sûr, sont extrêmement utiles pour appuyer la prise de décision, comme les décisions que nous prenons dans notre projet de réaménagement de l'espace. (Quels types de sièges sont les plus appréciés? Est-ce qu'il nous faut plus ou moins de salles d'études? Quels livres devons-nous déplacer et où?)

Les données constituent également le moteur d'un grand nombre de nos outils, produits et services d'information juridique et non juridique. Les composantes ou les caractéristiques qui sont intégrées aux fonctions d'intelligence artificielle, comme l'apprentissage automatique et l'analyse

prédictive, reposent sur les données. Je pense que le professionnel, le travailleur ou l'étudiant en information juridique – quel que soit le domaine de l'information juridique – doit connaître ou se familiariser avec les données et la manière dont les données ou les ensembles de données servent à la fois d'intrants et d'extrants de nos systèmes juridiques, et donc d'intrants et d'extrants de nos *produits d'information juridique*.

Mes propres réflexions sur les relations entre les données, l'information et les connaissances fluctuent également. Il y a quelques années, je considérais les données comme essentiellement passives, manipulables pour fournir des informations utiles, qui étaient ensuite manipulées par nous, travailleurs de l'information, pour générer des connaissances. Aujourd'hui, dans un monde d'intelligence artificielle qui évolue rapidement, je perçois les données comme un participant actif, qui *extraie* de l'information plutôt que de seulement *fournir* de l'information. Les données sont de plus en plus actives et influentes, un agent extractible de nos activités informationnelles. Cela signifie que nous devons être de plus en plus vigilants et de plus en plus informés afin de pouvoir prendre davantage en charge la connaissance et peut-être contribuer à déterminer quelles données sont utilisées, comment les ensembles de données sont utilisés dans les produits, et les répercussions sur nos utilisateurs et notre travail.

**PRÉSIDENTE
KIM NAYYER**

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Advanced Technologies and Algorithmic Literacy: Exploring Insights from the Legal Information Profession

By Dominique Garingan¹

ABSTRACT

In response to an increased presence of advanced legal technologies, this article explores perceptions held by legal information professionals regarding the uses and impacts of artificially intelligent tools and advanced technologies on the legal information profession. The author conducted a survey in support of a larger study on algorithmic literacy and the viability of an algorithmic literacy framework specific to the legal profession. The survey responses suggest that an algorithmic literacy framework or guideline might be used to facilitate principled, conceptual, and foundational understandings of advanced legal technologies along with technological competencies surrounding their use and application. The applicability and usefulness of a framework may be strongly contextual due to the varied roles, working environments, contexts, and understandings presented by the data. The survey uses non-random and voluntary response sampling and as such does not produce generalizable findings about the population but rather aims to support dialogue and deep qualitative understandings of a specific phenomenon within the profession.

SOMMAIRE

En réponse à une présence accrue des technologies juridiques avancées, cet article explore les perceptions des professionnels de l'information juridique concernant les utilisations et les impacts des outils d'intelligence artificielle et des technologies avancées sur la profession de l'information juridique. L'auteur a mené une enquête à l'appui d'une étude plus vaste sur la culture algorithmique et la viabilité d'un cadre de culture algorithmique spécifique à la profession juridique. Les réponses à l'enquête suggèrent qu'un cadre ou une ligne directrice sur la culture algorithmique pourrait être utilisé pour faciliter la compréhension des principes, des concepts et des fondements des technologies juridiques avancées ainsi que les compétences technologiques entourant leur utilisation et leur application. L'applicabilité et l'utilité d'un cadre peuvent être fortement contextuelles en raison des différents rôles, environnements de travail, contextes et compréhensions présentés par les données. L'enquête utilise un échantillonnage non aléatoire à réponse volontaire et, en tant que tel, ne produit pas de résultats généralisables sur la population, mais vise plutôt à soutenir le dialogue et la compréhension qualitative approfondie d'un phénomène spécifique au sein de la profession.

¹ Dominique Garingan is a Library Manager at Parlee McLaws LLP based in Calgary, AB. The author would like to thank the members of the Canadian Association of Law Libraries who shared their opinions, perceptions, and insights via the questionnaire as well as Dr. Alison Jane Pickard, Reader in Information Science and Associate Professor at Northumbria University, for her invaluable supervision of the research. The research and empirical data collection were conducted as a component of a dissertation project submitted for the University of Northumbria's MSc, Information Science (Library Management) programme.

Introduction

Legal information professionals and the information users they serve may increasingly be expected to engage with new technologies that retrieve, suggest, predict, recommend, summarize, and specify the law in particular areas based on user inputs and queries processed by intelligent systems.² In time, legal information professionals, regardless of library or work environment, may require some degree of professional competence in both advanced legal technologies and the legal issues related to the use of algorithms, legal data, and artificial intelligence (AI) tools.

The relatively recent concept of algorithmic literacy is defined in the literature as:

[T]he skill, expertise, and awareness to:

- Understand and reason about algorithms and their processes
- Recognize and interpret their use in systems (whether embedded or overt)
- Create and apply algorithmic techniques and tools to problems in a variety of domains
- Assess the influence and effect of algorithms in social, cultural, economic, and political contexts, and
- Position the individual as a co-constituent in algorithmic decision-making³

The study posits the need for algorithmic literacy and seeks to explore current perceptions of advanced technologies and AI systems held by legal information professionals. It further seeks to identify the priorities, nature, characteristics, and theoretical groundings of initiatives and interventions being undertaken to increase algorithmic literacy, digital literacy, and competence in the assessment and use of advanced legal technologies. The study aims to contribute a qualitative dataset to the discussion respecting evolving roles of legal information professionals and new literacies in response to the increased adoption of algorithm- and data-driven systems in the profession.

II. Literature Summary

In the current literature, the use of advanced technologies, including AI tools, in the delivery of legal research and information services has been noted as increasingly prevalent as well as abstract, opaque, and proprietary. The widespread adoption of algorithms and intelligent systems in various disciplines has been discussed alongside their increasing role in exercising power via information processing and automation.⁴ Recent scholarly literature has deemed advanced technologies to be “enigmas” for most practitioners due to challenges associated with possessing a clear sense of how the information outputs and work product of artificially intelligent tools are created.⁵

Recent scholarship has discussed the growing ubiquity of artificial intelligence and its effects on the legal practice.⁶ This may require information professionals to actively foster literacies associated with the appraisal, examination, and implementation of these technologies.⁷ This study is carried out under the presumption that understanding and evaluating the use of algorithms and artificially intelligent systems will likely be of continued interest and importance to legal information professionals and that an algorithmic literacy framework may ground initiatives in this area.⁸

III. Methodology

Surveys as research strategies commonly feature in library and information science literature employing empirical research methods.⁹ This study uses a questionnaire (see *Appendix A*) to support a larger study’s data collection.¹⁰ The strengths of using questionnaires as survey data collection tools include the ability to reach a large and geographically diverse community at relatively low cost, to acquire data from a larger sample than possible using other techniques, to offer participant anonymity and confidentiality, and to determine analysis from the outset.¹¹

III.A. Sampling

The anonymous questionnaire used a combination of *a priori* purposive sampling and voluntary response sampling. *A priori* purposive sampling was used to provide a structured sample capable of providing insight into the

² Dominique Garingan & Alison Jane Pickard, “Artificial Intelligence in Legal Practice: Exploring Theoretical Frameworks for Algorithmic Literacy in the Legal Information Profession” (2021) 21:2 Leg Info Mgmt 97.

³ Michael Ridley & Danica Pawlick-Potts, “Algorithmic Literacy and the Role for Libraries” (2021) 40:2 Information Technology and Libraries at 4.

⁴ Rob Kitchin, “Thinking Critically About and Researching Algorithms” (2017) 20:1 Information, Communication and Society 14.

⁵ Carla Swansburg, “Research and Writing” in Jill R Presser, Jesse Beatson & Gerald Chan, eds, *Litigating Artificial Intelligence* (Toronto: Emond Montgomery, 2021) 505.

⁶ See Michael Legg & Felicity Bell, *Artificial Intelligence and the Legal Profession* (Oxford: Hart Publishing, 2020); Hin-Yan Liu et al, “Artificial Intelligence and Legal Disruption: A New Model for Analysis” (2020) 12:2 L Innovation and Technology 205; Leanne Soares, “Artificial Intelligence in Canadian Law Libraries” (2020) 45:4 Can L Lib Rev 16; Jamie J Baker, “2018: A Legal Research Odyssey: Artificial Intelligence As Disruptor” (2018) 110:1 *Law Libr J* 5; Benjamin Alarie, Anthony Niblett & Albert H Yoon, “How Artificial Intelligence Will Affect the Practice of Law” (2018) 68:S1 UTLJ 106; Kevin D Ashley, *Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age* (Cambridge: Cambridge University Press, 2017). See also Channarong Intahchomphoo et al, “References to Artificial Intelligence in Canada’s Court Cases” (2020) 20:1 Leg Info Mgmt 39; Ridley & Pawlick-Potts, *supra* note 3; Ben Johnson, “Libraries in the Age of Artificial Intelligence” (2018) 38:1 Computers in Libraries 14.

⁷ Kailee Hilt, “What Does the Future Hold for the Law Librarian in the Advent of Artificial Intelligence?” (2017) 41:3 Can J Information & Libr Science 211.

⁸ Garingan & Pickard, *supra* note 2.

⁹ Philip Hider & Bob Pymm, “Empirical Research Methods Reported in High-Profile LIS Journal Literature” (2008) 30:2 Libr & Information Science Research 108.

¹⁰ Garingan & Pickard, *supra* note 2.

¹¹ Alison Jane Pickard, *Research Methods in Information*, 2nd ed (London: Facet Publishing, 2013).

research questions.¹² The questionnaire was circulated to the membership of the Canadian Association of Law Libraries/L'Association canadienne des bibliothèques de droit (CALL/ACBD) with the aim of collecting qualitative data representing perceptions regarding algorithmic literacy, digital literacy, and advanced technologies in the legal information field. The questionnaire also used voluntary response sampling to engage respondents from the population who chose to contribute data to the study without associated benefits or compensation.¹³

III.B. Instrument

The questionnaire consisted of 25 questions including single-answer, multiple-option, matrix, and Likert Scale questions, along with open-ended, text response questions.¹⁴ Many of the questionnaire's theory-based questions were grounded upon themes that have emerged from the literature that comprises the larger study's theoretical framework.¹⁵ A web link to the questionnaire was distributed via the CALL/ACBD Listserv on May 4, 2021 and left open until June 4, 2021.

Questions were classified into the following categories:

- *background/demographic questions*; participant demographics
- *opinion/value questions*; perceptions surrounding the scope and applications of advanced technologies and artificial intelligence in the legal field
- *experience/behaviour questions*; activities and delivery formats employed to promote algorithmic literacy
- *knowledge questions*; theoretical frameworks employed for existing teaching, learning, and training initiatives promoting algorithmic literacy
- *opinion/value questions*; the perceived degree of legal information professional involvement in facilitating algorithmic literacy in legal research, reference, and information services¹⁶

The instrument contained contingency questions, which activated groups of questions based on specific responses, and partially open questions where participants were given a set of responses along with an option to specify unenumerated answers.¹⁷

III.C. Data Analysis

Classification processes or groupings were used to present the findings of yes-or-no, selective, ranking, and scaled-response questions that captured predominantly categorical data. Although categorical data is considered qualitative, categorical variables may still be analyzed using simple statistical techniques, bearing in mind the data's characteristics.¹⁸ Descriptive statistical analysis was conducted within the qualitative dataset. Standard deviation and rank scoring calculations were used to illustrate ranking along with variations or dispersions in question responses.

Qualitative data analysis was used to analyze both closed and open-ended textual response questions. This analysis is less standardized in character and is described as creating new concepts and theory by blending empirical evidence with abstract concepts.¹⁹ A simplified thematic analysis was employed to analyze open-ended text responses. Emergent concepts and themes resulted in conceptual categories driven by the dataset.²⁰

III.D. Limitations

Limitations are associated with voluntary response sampling, which is a non-random and non-probability sampling that may yield a response bias because participants are self-selected.²¹ Samples based on self-selected volunteers risk an overrepresentation of population members with special or personal interests in the research topic and an underrepresentation of population members who hold no interest in the research topic or for whom the topic may not be deemed relevant.²² As such, the study does not produce generalizable findings about the population but rather supports a deeper qualitative understanding of a specific phenomenon within the profession as reported by participants.

The sample size was expected to be a minimal percentage of the CALL/ACBD membership due to factors such as limited interest, a diversity of legal information professional roles, and non-receipt of the questionnaire. Additionally, the use of contingency questions in the questionnaire, which activated or bypassed groups of questions based on specific responses, narrowed the sample further for questions regarding the use of literacy frameworks, learning theories, and professional competency standards used to ground algorithmic literacy initiatives.

¹² *Ibid.*

¹³ Stanley Murairwa, "Voluntary Sampling Design" (2015) 4:2 *Intl J Advanced Research in Management & Social Sciences* 185.

¹⁴ Joseph R Matthews, *The Evaluation and Measurement of Library Services*, 2nd ed (Santa Barbara, CA: Libraries Unlimited, 2018).

¹⁵ Garingan & Pickard, *supra* note 2.

¹⁶ Michael Quinn Patton, *Qualitative, Research & Evaluation Methods*, 3rd ed (London: Sage Publications, 2002).

¹⁷ W Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches*, 7th ed (Essex: Pearson Education, 2014).

¹⁸ Pickard, *supra* note 11.

¹⁹ Neuman, *supra* note 17.

²⁰ Victoria Clarke & Virginia Braun, "Thematic Analysis" (2017) 12:3 *J Positive Psychology* 297.

²¹ Murairwa, *supra* note 13.

²² Alison J Head, Barbara Fister & Margy MacMillan, "Information Literacy in the Age of Algorithms: Student Experiences with News and Information, and the Need for Change" (2020) online (pdf): *Project Information Literacy Research Institute* <projectinfolit.org/publications/algorithm-study/>.

When drafting the instrument, special care was taken to employ precise and straightforward language, provide simple and exhaustive answer options, and illustrate neutrality on the issues presented.²³ However, ambiguities and flaws in the drafting, which are attributed entirely to the researcher, may have subjected respondents to greater degrees of interpretation and, conversely, may have affected the ability to capture pertinent descriptive, in-depth, and contextual answers.

IV. Findings and Analysis

A total of 29 questionnaire responses were received, representing an estimated 8.31% sample response relative to the total membership (349) of CALL/ACBD, inclusive of inactive members, members who were not enlisted in the Listserv, and members for whom the subject of algorithmic literacy may not have warranted engagement.²⁴ Given the voluntary response sampling method, the study presumed that the final group of respondents would have at minimum, some personal experience, insight, or knowledge of algorithmic literacy in the legal information profession.

IV.A. Participant Demographics

Most questionnaire respondents (72.41%) identified as legal information professionals, law librarians, and legal information specialists, while others identified as lawyers or legal practitioners, knowledge management professionals, professors and academic instructors, legal technology providers, electronic records managers, and those with multiple concurrent roles.

Over one third of respondents (37.93%) worked in academic libraries and institutions. Approximately one-fifth of the sample (20.69%) worked in law firms, and 17.24% worked in federal, provincial, or municipal government departments or entities. The remaining quarter of the sample (24.14%) worked in legal technology companies, courthouse libraries, law societies or lawyers' associations, and corporate and professional services firms.

All questionnaire respondents indicated that their library or organization worked directly with members of the legal profession such as law students, lawyers, members of the judiciary, legal researchers, and other legal staff.

IV.B. Perceptions Surrounding the Scope and Applications of AI and Advanced Legal Technologies

Respondents were asked to define *artificial intelligence* based on their own understanding.²⁵ A quantitative analysis

of the responses involving a simple term count and relative frequency identified “human” (51.72%), “data” (34.48%), “machine learning” (31.03%), “use” (31.03%), “algorithms” (27.59%), and “computer” (27.59%) as the most used terms in respondent definitions. This was followed by a qualitative examination using a simplified thematic analysis and coding process to contextualize term usage. The analysis identified a number of themes in the respondents’ definitions: the machine-led or computational replication of human cognition and learning; the use of algorithms and machine learning to generate new information from existing data; the automation and facilitation of learning and decision-making processes; and the use of machine learning in processes such as data analysis, identifying outcomes, and input- or data-based problem solving within the sample’s definitions. Some responses identified the dependence of AI tools on the quality of data sources, and how this contributes to the failure or success of computers in mirroring intelligent abilities.

Published literature explores some of the current, new, and prospective uses of advanced legal technologies, both conceptually and in practice.²⁶ When presented with a list of processes, applications, or tasks involved with or affected by AI, most respondents (upwards of 85%) identified *information gathering and retrieval*, *predictive analytics*, and *legal research* as processes which involved or were affected by AI in the legal information field. *Case analytics*, *document and contract analytics*, and *text and document summary generation* were also identified by upwards of 75% of the sample. Processes identified by a smaller number of sample members included *collection development*, *library reference and information services*, and *document and record classification*.

Given the subjectivity associated with defining AI,²⁷ Question 5 (**Figure 1**) was used to better comprehend participants’ views of its scope and capabilities. Answers may reflect respondents’ experience, degrees of algorithmic and data literacy, information acquired from other sources, and/or aspirational beliefs. Participants may have referred to personal knowledge and experiences in indicating the processes, applications, and tasks that may involve or be affected by AI. Concurrently, they may have referred to personal understandings to identify the areas in which AI may perceivably have potential or further uses notwithstanding an absence of firsthand experience.

Most respondents (82.76%) indicated an understanding that the terms “digital literacy” or “computer literacy” encompassed the use of AI systems and advanced technologies. This response posits that elements of existing digital literacy and computer literacy theories may be perceived as relevant

²³ Neuman, *supra* note 17.

²⁴ Total recorded membership of CALL/ACBD as of May 2021.

²⁵ ‘Artificial intelligence’ has been given definitions in recent literature. See: Ethem Alpaydin, *Machine Learning: The New AI* (Cambridge: The MIT Press, 2016); Jerry Kaplan, *Artificial Intelligence: What Everyone Needs to Know* (New York: Oxford University Press, 2016); Alarie, Niblett & Yoon, *supra* note 6; Mary Lee Kennedy, “What Do Artificial Intelligence (AI) and Ethics of AI Mean in the Context of Research Libraries?” (2019) 299:4 *Research Libr Issues* 3; Melanie Mitchell, *Artificial Intelligence: A Guide for Thinking Humans* (New York: Farrar, Straus, and Giroux, 2019); Jill R Presser, Jesse Beatson & Gerald Chan, *Litigating Artificial Intelligence* (Toronto: Emond Montgomery, 2021).

²⁶ See Ridley & Pawlick-Potts, *supra* note 3; Johnson, *supra* note 6; Joanna Goodman, *Robots in Law: How Artificial Intelligence is Transforming Legal Services* (London: Ark Group, 2016); and Baker, *supra* note 6.

²⁷ See *supra* note 25.

Q5: Does your understanding of AI involve or affect any of the following processes, applications, or tasks within the legal field? (Select all that apply)

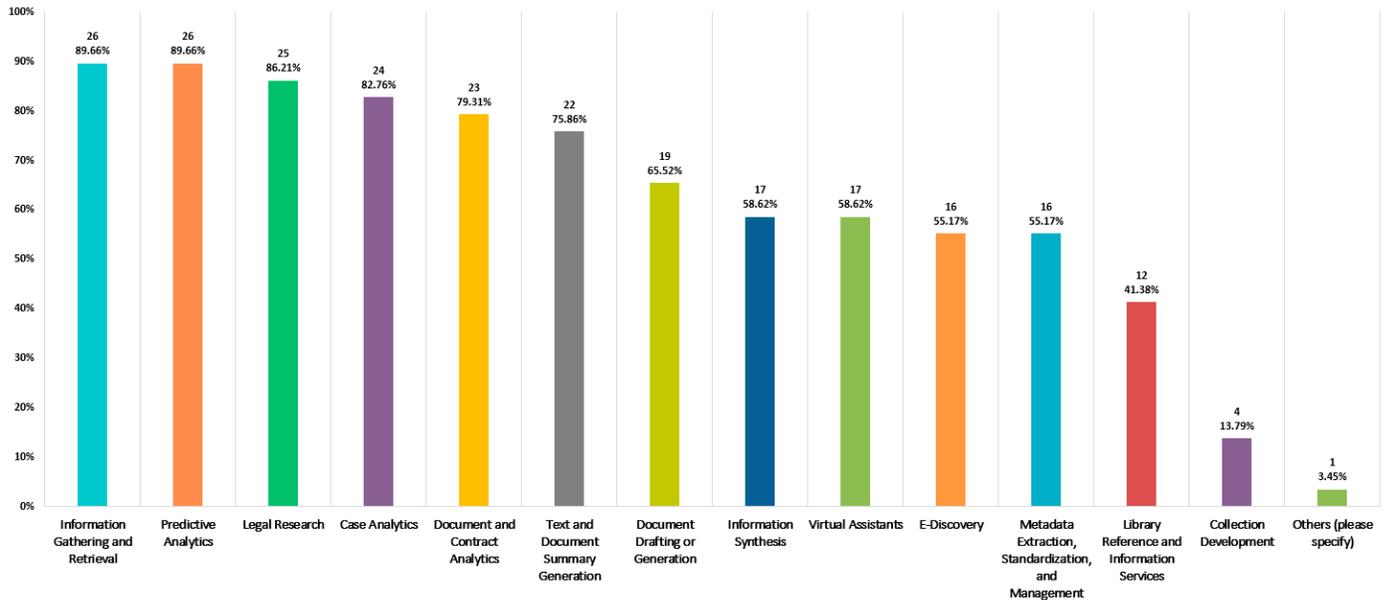


Figure 1 – Capabilities of AI (Processes, Applications, and Tasks)

or applicable to the development of an algorithmic literacy framework. This perception aligns with existing literature in which definitions for digital literacy encompass or reflect some components of algorithmic literacy. Digital literacy may be perceived as a combination of technological capabilities, intellectual competencies, and ethical/behavioral components alongside social responsibilities.²⁸ Extant frameworks such as the UNESCO Global Framework of Reference on Digital Literacy Skills define digital literacy as “the ability to access, manage, understand, integrate, communicate, evaluate, and create information safely and appropriately through digital technologies.”²⁹ However, other literature posits that algorithmic literacy comprises the next phase of digital and technological literacy.³⁰

Most respondents (75.86%) indicated having used or interacted with AI systems or advanced legal technologies as part of their professional duties. A minority of respondents (17.24%) indicated that they have not, while 6.9% of

respondents indicated an uncertainty regarding their use or interactions with such tools. Responses to this question are informed, in part, by the definitions, scopes, and limitations respondents attribute to AI systems and advanced legal technologies. For example, natural language searching capabilities embedded within legal research databases may be perceived as an advanced legal technology by some but not all respondents. The study acknowledges a subjective difficulty in affixing a definition to AI.³¹ Furthermore, while *artificial intelligence* and *intelligence augmentation* are conceptually distinct, the lines may blur in practice.

Perceptions held by legal information professionals regarding the growing use of advanced legal technologies within the legal profession is explored in current literature.³² When asked to characterize the impact of AI systems on the legal information profession in the next 5 to 7 years, nearly one-third of respondents (27.59%) indicated a perceived *high* impact on the legal information profession, reflecting

²⁸ Michael Hoechsmann & Helen DeWaard, “Mapping Digital Literacy Policy and Practice in the Canadian Education Landscape” (2015) online (pdf): [MediaSmarts <mediasmarts.ca/sites/mediasmarts/files/publication-report/full/mapping-digital-literacy.pdf>](https://mediasmarts.ca/sites/mediasmarts/files/publication-report/full/mapping-digital-literacy.pdf).

²⁹ United Nations Educational, Scientific and Cultural Organization (UNESCO), “A Global Framework of Reference on Digital Literacy Skills for Indicator 4.4.2, Information Paper No. 51, June 2018, Montreal, Quebec” (2018) online (pdf): [UNESCO <uis.unesco.org/sites/default/files/documents/ip51-global-framework-reference-digital-literacy-skills-2018-en.pdf>](https://uis.unesco.org/sites/default/files/documents/ip51-global-framework-reference-digital-literacy-skills-2018-en.pdf).

³⁰ Abby Koenig, “The Algorithms Know Me and I Know Them: Using Student Journals to Uncover Algorithmic Literacy Awareness” (2020) 58 *Computers & Composition*.

³¹ Mitchell, *supra* note 25.

³² See: Baker, *supra* note 6; Paul D Callister, “Law, Artificial Intelligence, and Natural Language Processing: A Funny Thing Happened on the Way to My Search Results” (2020) 112:2 *L Libr J* 161; Kate Galloway, “A Rationale and Framework for Digital Literacies in Legal Education” (2017) 27:1 *Leg Education Rev* 117; Sandy Hervieux & Amanda Wheatley, “Perceptions of Artificial Intelligence: A Survey of Academic Librarians in Canada and the United States” (2020) 47:1 *J Academic Librarianship*; Kim P Nayyer, Marcelo Rodriguez & Sarah Sutherland, “Artificial Intelligence and Implicit Bias: With Great Power Comes Great Responsibility: Addressing the Biases Inherent in the Datasets That Drive AI Applications and Their Algorithms” (2020) 24:5 *AALL Spectrum* 14; Ridley & Pawlick-Potts, *supra* note 3; Soares, *supra* note 6; Zhiqiong June Wang, “Between Constancy and Change: Legal Practice and Legal Education in the Age of Technology” (2019) 36:1 *L in Context: A Socio-Leg J* 64-79; Samuel Wiggins, “Reflections on Current Trends and Predictions for Commercial Law Libraries” (2019) 19:2 *Leg Info Mgmt* 94; Barbara A Wood & David Evans, “Librarians’ Perceptions of Artificial Intelligence and its Potential Impact on the Profession” (2018) 38:1 *Computers in Libr* 26.

Q8: How would you best characterize the impact of AI systems on the legal information profession in the next 5 to 7 years?

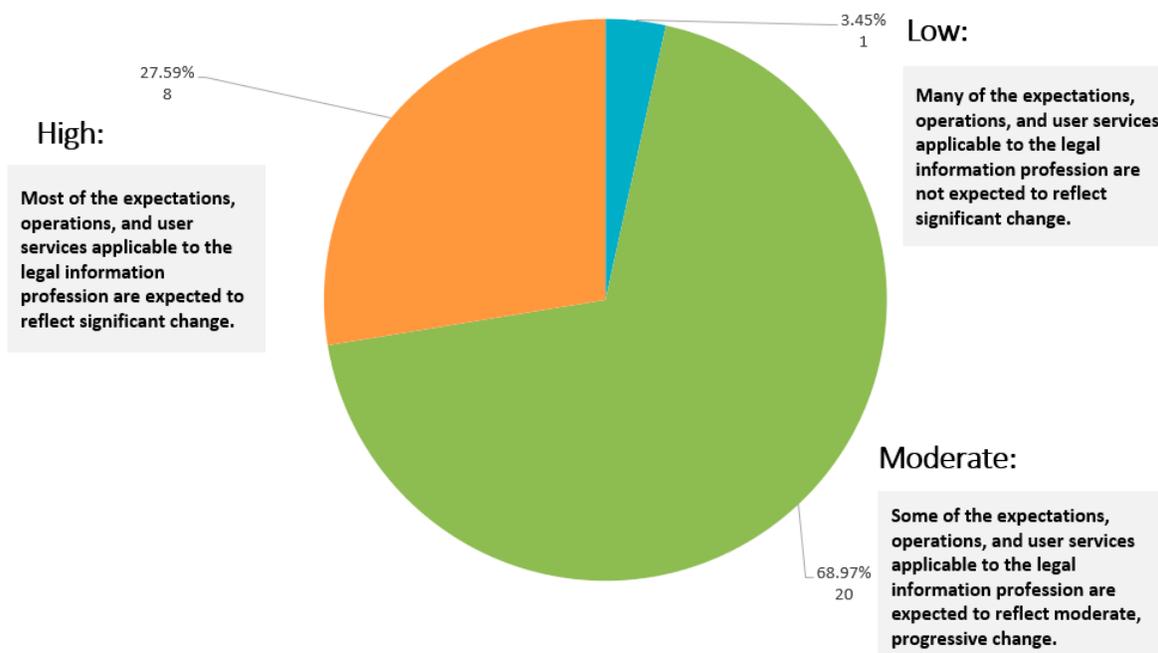


Figure 2 – The Impact of AI Systems (5-7 Years)

significant change in the expectations, operations, and user services applicable in the field. (Figure 2) Most respondents (68.97%) indicated a perceived moderate impact in the next 5 to 7 years, reflective of more progressive, but less than significant, change. Responses were dependent on participants' subjective interpretations of the normal pace of developments within the legal information field.

Participants were provided a list of potential effects of AI and asked to indicate whether they believed these would increase, decrease, or remain unchanged in response to an increased adoption of AI systems. This question aimed to identify participants' perceptions respecting areas highlighted in the literature that were purported to have some correlation with the increased use of AI systems. The relationship between the future of librarianship and the rise of legal technologies has been described as "distinct but unmistakably intertwined."³³

Almost all respondents (96.55%) indicated a positive correlation between an increased adoption of AI systems and an increase in the automation of *routinized tasks*. (Figure 3) The majority of respondents (upwards of 75%) also indicated that *laws and regulations governing AI systems, investments in technology, and the expectations of clients, patrons, and information users* are expected to increase in correlation with an increased adoption of AI systems.

Standard deviation calculations, as the preferred measure of

dispersion providing an overview of the numerical distribution of the dataset values, were used to illustrate variations or dispersions in question responses.³⁴ Areas with the lowest standard deviation, which illustrated the greatest dispersion of opinions among respondents and suggested greater areas of uncertainty, were *cost-effectiveness, transparency and accountability surrounding the use of new technologies, and the number of job opportunities for legal information professionals*. This data from the sample highlights key areas of uncertainty given an increased adoption of AI systems.

With respect to inverse correlations, given an increased adoption of AI systems, 41.38% of respondents indicated that they expected *transparency and accountability surrounding the use of new technologies* to decrease. *Cost-effectiveness* garnered the greatest amount of uncertainty, with nearly half of the respondents (48.28%) indicating uncertainty whether this would increase, decrease, or remain unchanged. While 65.52% of respondents indicated an expected increase in *changes to existing or traditional job roles and descriptions* given an increased adoption of AI systems, a lesser number (24.14%) indicated a belief that the *number of job opportunities for legal information professionals* would increase.

Approximately half of the respondents (51.72%) indicated a belief that *access to knowledge and information* would increase alongside increased adoption of AI systems. Approximately half of the respondents perceived

³³ Wiggins, *supra* note 32. This is supported to various extents by Baker, *supra* note 6; Wood & Evans, *supra* note 32; Hervieux & Wheatley, *supra* note 32; and Galloway, *supra* note 32.

³⁴ Pickard, *supra* note 11.

Q9: Do you expect the following to increase, decrease, or remain unchanged given an increased adoption of AI systems?

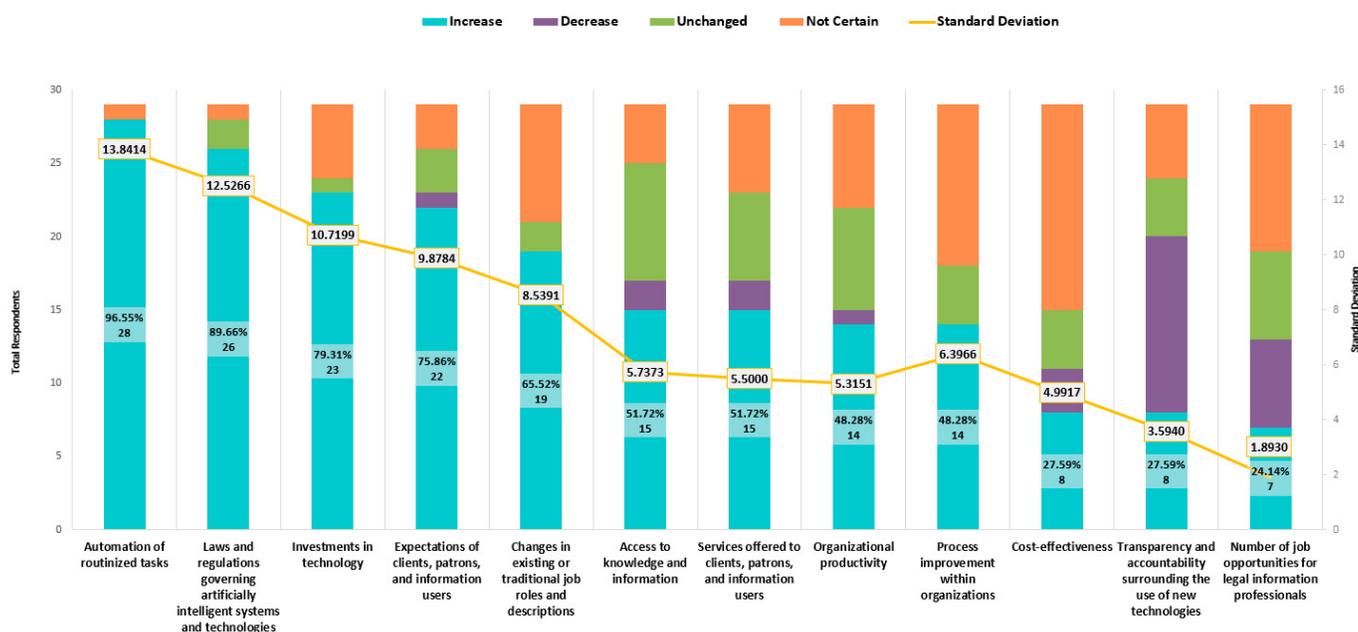


Figure 3 – Perceptions on the Effects of AI (on Processes and Other Phenomenon in the Legal Profession)

organizational productivity (48.28%) and services offered to clients, patrons, and information users (51.72%) would increase alongside an increased adoption of AI systems.

Participants were asked to indicate whether they believed AI systems increase or decrease the transparency of legal outcomes and decision-making on a linear scale. (Figure 4) The arithmetic mean of all responses was 59.867, with the sample majority (67.86%) providing scaled responses over 50, indicating the perception that AI systems decrease transparency. Approximately a sixth of respondents (14.29%) selected 50, the central scale number and sample mode, suggesting a balanced perception towards neither increasing nor decreasing transparency. Approximately a fifth of the sample (17.86%) provided responses under 50, indicating the perception that AI systems increase transparency. Sample responses above 50 presented an arithmetic mean of 73.789, while sample responses below 50 presented an arithmetic mean of 14.8.

Although most respondents indicated the perception that AI systems decrease the transparency of legal outcomes and decision-making, the arithmetic mean (59.867), mode (50), and median (66.5) of all responses suggest mixed and non-absolute perceptions regarding the question. Responses are viewed as contextual, and various circumstances may present both views as plausible. This debate is reflected in existing literature. Some authors note that explainability, enabling a human to understand an AI's reasoning, is often

lacking in advanced legal technologies.³⁵ Other authors posit circumstances in which AI may increase the transparency of outcomes and decision-making in legal procedures.³⁶

IV.C. Activities and Delivery Formats for Promoting Algorithmic Literacy

Participants were asked to identify their priorities in terms of *understandings*, or elements of algorithmic literacy, surrounding artificially intelligent systems. The definitions for the various *understandings* were based on Wang's³⁷ elements of algorithmic literacy, and the questionnaire explores which of those understandings would rank as the foremost priority. Each selection was given a rank score based on the frequency it was awarded a priority, and the score sum was divided according to the number of respondents in the sample. Standard deviation calculations were used to illustrate variations or dispersions in responses signifying varying degrees of consensus among participants (Figure 5).

Most respondents (72.41%) ranked a *principled understanding* of the rules, assumptions, limitations, and ethical issues associated with artificially intelligent systems as either their first or second priority. Most respondents (65.52%) provided a *conceptual understanding* (of the "datafication" of law, computational analysis, and machine learning as applied to legal information) as a first or second rank. Most respondents (82.76%) ranked a *foundational*

³⁵ See: Hilt, *supra* note 7; Jacob Turner, *Robot Rules: Regulating Artificial Intelligence* (Cham: Springer International Publishing, 2018); Geneva Henry, "Research Librarians as Guides and Navigators for AI Policies at Universities" (2019) 299:4 *Research Libr Issues* 47; Ridley & Pawlick-Potts, *supra* note 3; and Callister, *supra* note 32.

³⁶ See: Alarie, Niblett & Yoon, *supra* note 6.

³⁷ Wang, *supra* note 32.

Q20: On a scale from 1 to 100, please indicate your position on the following:
 "Artificially intelligent systems *increase* (1) or *decrease* (100) the transparency
 of legal outcomes and decision-making."

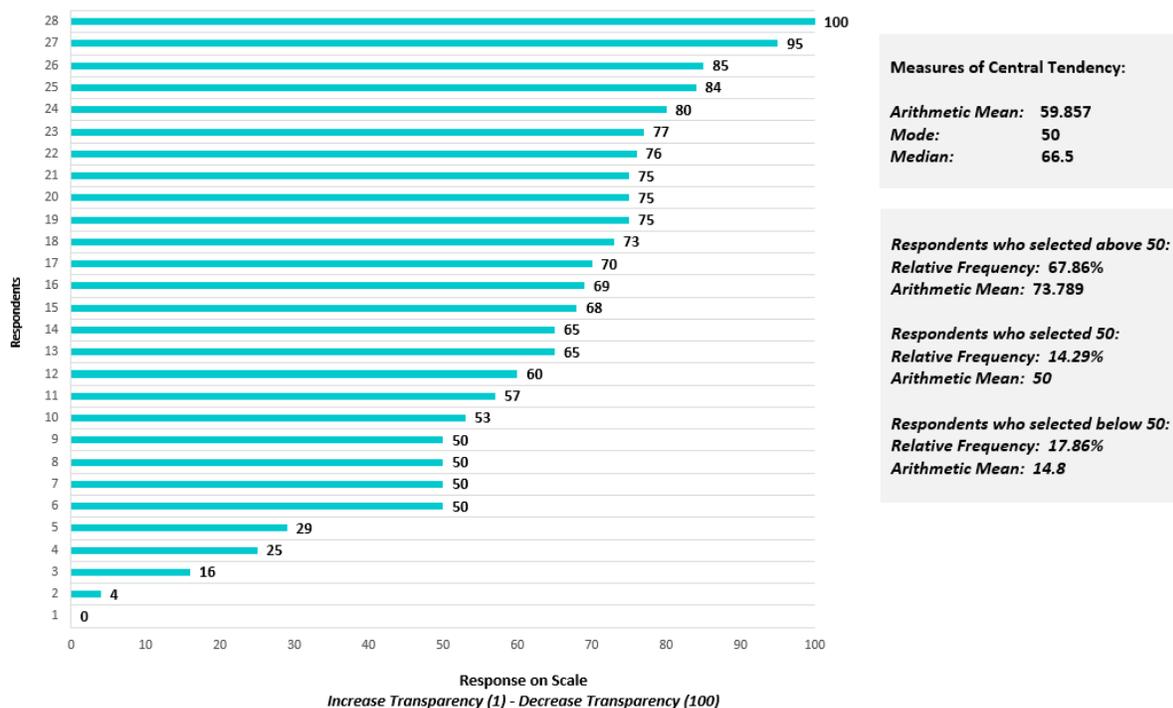


Figure 4 – Perceptions on whether AI systems increase or decrease transparency

understanding of the history, operations, domains, and computational methods of artificially intelligent systems as either their third or fourth priority. *Technological training, competence, and mastery of the specific application or system* presented the lowest standard deviation, suggesting the greatest dispersion of opinions amongst respondents.

The sample suggested that ethical, critical, pragmatic, and some skills-based approaches held higher priorities than foundational understandings of AI systems, although rankings indicate only a moderate margin. This may be due to factors such as legal information professionals having to facilitate practical and ethical interactions with new technologies as well as access and time limitations associated with teaching or adopting new technologies. These may prompt greater focus on technological competence alongside ethical and critical perspectives. Another factor may be the difficulty of delineating the concepts of principled, conceptual, and foundational understandings alongside technological training, competence, and mastery of the application or system. Such concepts emerged from theory and were distilled for the purposes of the questionnaire.³⁸ Furthermore, participants' interpretations may have been facilitated by personal knowledge, context, and environment.

Nearly half (44.83%) of respondents indicated that their organization delivered teaching, learning, or training

initiatives on AI systems or other advanced technologies that featured natural language processing, machine learning, legal analytics, or other emerging areas.

A comparison between responses to questions 10, 6, and 7 (see *Appendix A* for questionnaire) reveals that all respondents whose organizations deliver teaching, learning, or training initiatives on advanced legal technologies also indicated that their personal understanding of the terms "digital literacy" or "computer literacy" encompassed these technologies. All except one of these responses also indicated that they have used or interacted with AI systems or advanced legal technologies as part of their professional duties.

A probability calculation using data from questions 8 and 11 indicated that those who characterize the impact of AI systems on the legal information profession in the next 5 to 7 years as *high* were more likely (75%) to belong to an organization which delivered teaching, learning, or training initiatives on AI systems or other advanced legal technologies. Those who characterized the impact in the next 5 to 7 years as *moderate* were less likely (30%) to belong to such an organization. Although greater supporting evidence is needed, this suggests a correlation between those who perceive that AI will have a *high* impact on the profession and those who have direct or indirect organizational exposure to teaching, learning, or training initiatives on these technologies.

³⁸ *Ibid.*

Q10: If asked to use and adopt a new legal technology or AI system, I would prioritize:
Please rank the following according to value (1 = highest priority, 4 = least highest priority)

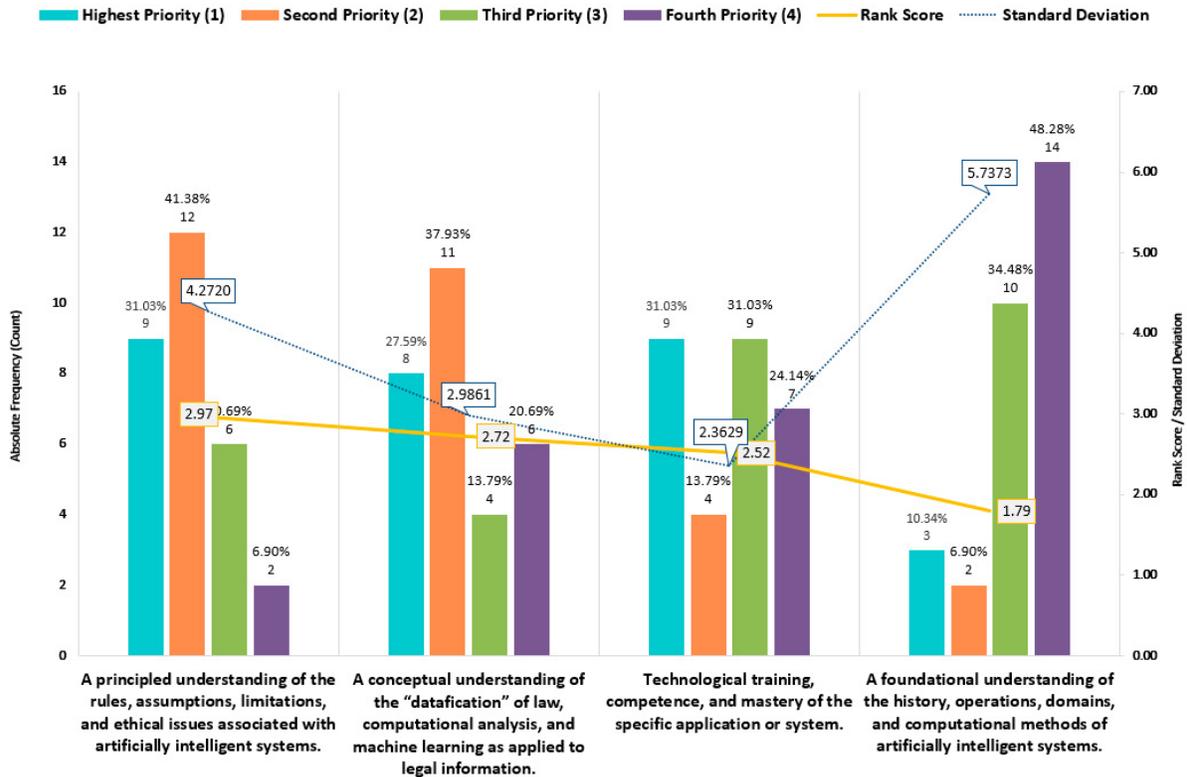


Figure 5 – Priorities of Understandings When Using or Adopting a New Legal Technology or AI System

Of those respondents who indicated that their organization delivered teaching, learning, or training initiatives, a majority (84.62%) indicated that these initiatives were directed to information users, patrons, and clients (inclusive of law students, lawyers, members of the judiciary, legal researchers, and other members or clients served). A lesser number (53.85%) indicated that their organization's teaching, learning, or training initiatives were directed to legal information professionals, law librarians, and legal information specialists. Over a third of that sub-group (38.45%) indicated a wider range of recipients, such as non-legal information professionals; technologists and non-legal staff members; directors, managers, and those with supervisory roles; and members of academic faculty.

The data suggests a discrepancy between the number of training initiatives aimed at information users, patrons, and clients and the number of training initiatives aimed at legal information professionals. This suggests that more training initiatives should be directed at legal information professionals, because existing literature recommends that training for information users is more effective when paired with increased support for information professionals on how to conduct such training effectively.³⁹

Of those respondents who indicated that their organization delivered teaching, learning, or training initiatives, most

(61.54%) indicated that these initiatives were delivered, in part, by legal information professionals, law librarians, or legal information specialists. When examined alongside Question 12, the evidence suggests that legal information professionals may serve more often as trainers on this subject than they do as participants in or target learners of teaching, learning, or training initiatives.

These respondents were also asked to identify the delivery formats used for these initiatives prior to and during the COVID-19 pandemic. Most (upwards of 60%) indicated *in-person or virtual classroom lectures, one-on-one information user sessions, and legal vendor demonstrations* as delivery formats for these initiatives. (Figure 6) Most (61.54%) indicated use of *informal conversations with patrons, clients, and information users* as opportunities to engage in teaching, learning, and training initiatives on AI systems. *Webinars and online presentations* were used by approximately half of this group (46.15%). Lesser used delivery formats, selected by less than 40% of the respondents, included *in-person or virtual library orientations, in-person or online conferences and seminars, and library-based (or place-centred) learning activities*. Learning initiatives such as *"flipped classroom" style learning activities, self-paced courses or modules in learning platforms, and directed research, supervised writing, and publications* were also selected by some respondents.

³⁹ Steve Mishkin, "How Can Law Librarians Most Effectively Provide Legal Research Training?" (2017) 17:1 Leg Info Mgmt 34.

Q14: What delivery formats are used for these teaching, learning, and training initiatives on AI systems? (Select all that apply, both before and during COVID-19)

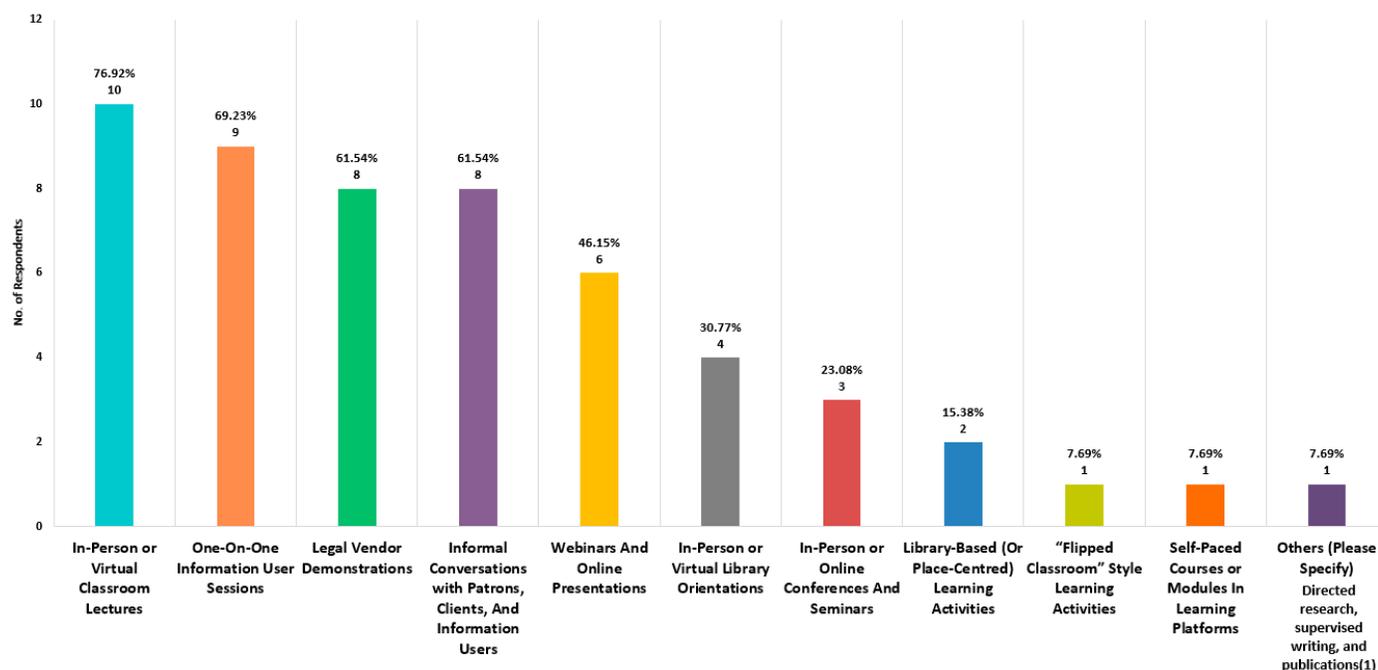


Figure 6 – Delivery Formats for Teaching, Learning, and Training Initiatives

Evidence from the respondent sub-group shows that both in-person and technology-facilitated delivery formats are in use for teaching, learning, and training initiatives. A greater number selected synchronous learning formats such as *in-person or virtual classroom lectures* and *one-on-one information sessions*, while fewer selected asynchronous and independent learning formats. This, in addition to formats permitting dialogue, such as *one-on-one information user sessions* and *informal conversations*, selected by upwards of 60% of this group, suggests a preference for teaching methods that enable interaction and exchange.

IV.D. Theoretical Frameworks Grounding Algorithmic Literacy Initiatives

Of the participants who indicated that their organization delivered teaching, learning, or training initiatives, over one third (38.46%) indicated the use of literacy frameworks, learning theories, or professional competency standards to ground these initiatives.

Only respondents who responded affirmatively or with uncertainty to this question were asked to identify literacy frameworks, learning theories, or professional competency standards used. (Figure 7) The respondent sub-group provided equal weight to *standards developed within one's organization; professional and technological competency standards of law practitioners* (such as the duty of technological competency required by provincial law societies); *legal information professional competencies* (such as the American Association of Law Libraries (AALL)

Competencies of Law Librarianship, the AALL Principles and Standards for Legal Research Competency, and the British and Irish Association of Law Librarians (BIALL) Legal Information Literacy Statement); and *academic learning theories*.

Information literacy frameworks (such as the Association of College and Research Libraries (ACRL) Framework for Information Literacy and the Society of College, National and University Libraries (SCONUL) Seven Pillars of Information Literacy) and *digital literacy frameworks* (such as the UNESCO Global Framework of Reference on Digital Literacy Skills) were used by 44.44% of the respondent sub-group. It must be noted that only 31.03% of the entire sample provided responses to this question due to the use of contingency questions.

IV.E. Facilitating Algorithmic Literacy in Legal Research, Reference, and Information Services

All participants were asked to identify the skills or competencies on which they would focus if tasked with designing a teaching, learning, or training initiative introducing an advanced legal technology. The selections were based on Selber's categories of computer literacy adopted within an algorithmic literacy context.⁴⁰ Definitions of *functional skills*, *critical skills*, and *metacognitive skills* were provided in the questionnaire. Both *functional skills* and *critical skills* received a nearly equal number of selections from most respondents (85%). Over half the sample (57.14%) included *metacognitive skills* as a focus. (Figure 8).

⁴⁰ Stuart A Selber, *Multiliteracies for a Digital Age* (Carbondale, IL: Southern Illinois University Press, 2004).

Q16: What literacy frameworks, learning theories, or professional competency standards do you or your organization use to ground teaching, learning, or training initiatives involving AI?(Select all that apply.)

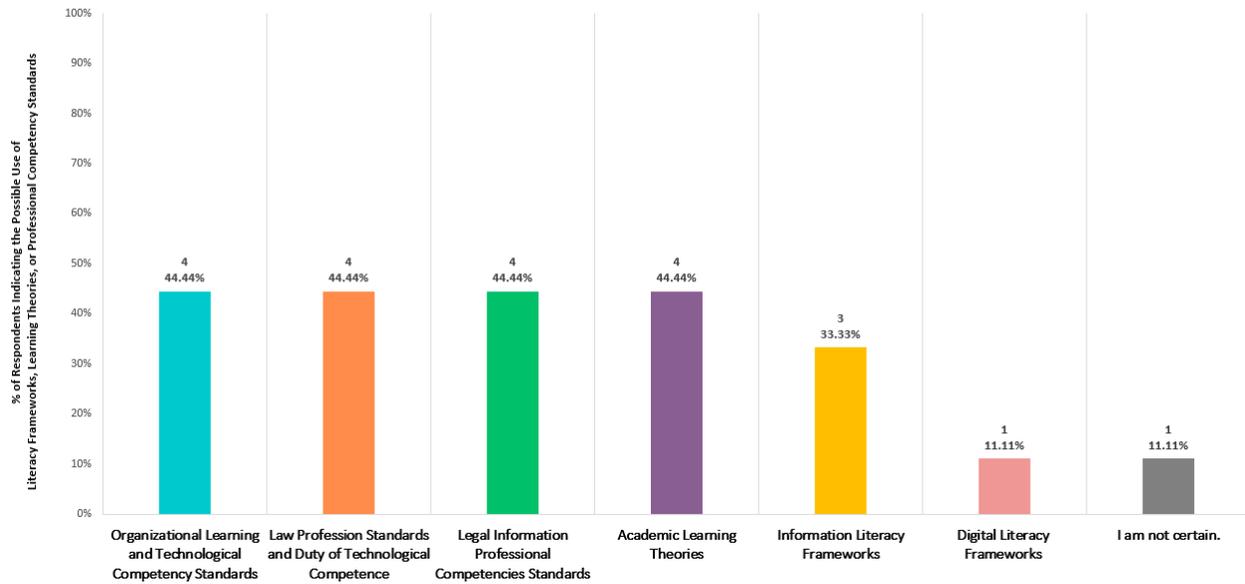


Figure 7 – Literacy Frameworks, Learning Theories, And Professional Competency Standards

The evidence suggests respondents would approach the design of teaching, learning, or training initiatives principally from pragmatic and analytic standpoints. Learning outcomes may be weighted more on competence, understanding, and critical analysis over reflection, ethical user interactions, and the personal and social merits and detriments associated with increased AI integration. However, evidence may similarly suggest that metacognitive skills and reflective practices require development over time and may not present as immediate outcomes of initiatives aimed at introducing AI technologies.

This question was analyzed alongside Question 10 where participants indicated what understandings they would prioritize if asked to use and adopt a new legal technology or AI system. Respondents were presented with selections of understandings based on elements of algorithmic literacy from the literature.⁴¹ In Question 10, respondents indicated that they would prioritize a *principled understanding of rules*, assumptions, limitations, and ethical issues associated with AI systems alongside a *conceptual understanding* of the “datafication” of law, computational analysis, and machine learning as applied to legal information (Figure 5). The definition of *metacognitive skills* in Question 17 exhibited some parallels with the definition of *principled understanding* in Question 10. The evidence posits that, as *learners*, and when facilitating their own knowledge, respondents may prioritize principled and conceptual understandings surrounding the use of AI-assisted technologies. As *teachers* and *facilitators* of algorithmic literacy initiatives, respondents

may focus on instilling more functional and critical skills in learners.

Fulfilling the learner and *teacher/facilitator* roles may reflect understanding professional competency requirements, the underlying concepts of AI, and external factors such as the social, political, legal, and regulatory implications of the uses of AI systems and issues surrounding transparency, accountability, and bias.⁴² The literature suggests that fulfilling the duty of technological competence is not about coaching users to be technological experts. Rather, it should center learning on authentic and reflective practice, as well as the understanding of principles underlying the technologies within holistic, ethical, and social frameworks while equipping users with practical skills and technological competency.⁴³

Most respondents (60.17%) indicated a belief that not enough emphasis is placed on teaching, learning, and training initiatives involving AI systems. A minority of respondents (7.14%) indicated a belief that enough emphasis is placed on such initiatives, while the remainder of respondents were uncertain. Responses may have reflected a dearth of available training opportunities, issues regarding cost or broader organizational support, the accessibility of technologies for training opportunities, and other factors.

Respondents were also asked if their organization used guidelines, frameworks, or standards when evaluating and integrating AI systems. Ridley’s elements or questions

⁴¹ Wang, *supra* note 32.

⁴² See Carolyn Caffey Gardner, “Teaching Algorithmic Bias in a Credit-Bearing Course” (2019) 51:4 Intl Information & Libr Rev 321; Nayyer, Rodriguez & Sutherland, *supra* note 32.

⁴³ Wang, *supra* note 32; Anne Binsfeld, “New Barristers’ Information Literacy Challenges as They Transition from Education to the Workplace” (2019) 19:1 Leg Info Mgmt 36.

Q17: If you were to design a teaching, learning, or training initiative introducing an AI technology, which of the following skills or competencies would the initiative focus on? (Select all that apply)

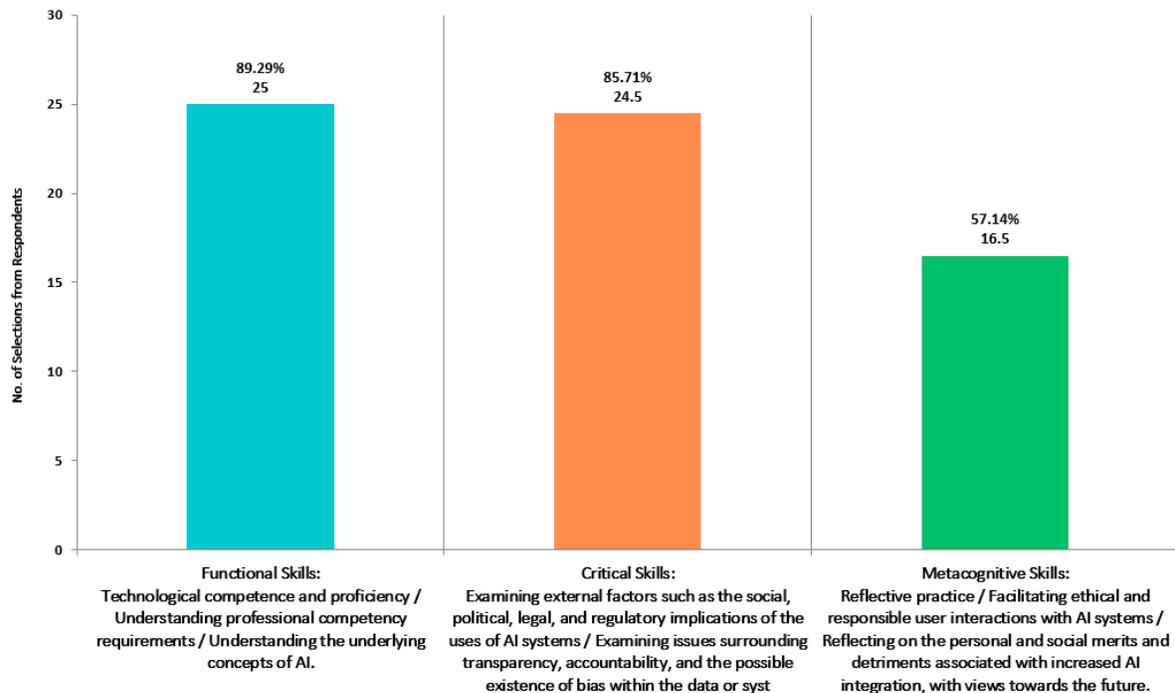


Figure 8 – Priorities for Designing a Teaching, Learning, or Training Initiative Introducing an AI Technology

contributing to explainable artificial intelligence⁴⁴ and Grossman and Morrison’s list of questions about AI products⁴⁵ were provided as examples of guidance from existing literature.

Only one respondent (3.57%) affirmed the use of guidelines, frameworks, or standards in their organization when evaluating and integrating AI systems. Under half (46.43%) indicated that no guidelines, frameworks, or standards existed. A quarter (25%) indicated uncertainty, and a minority (10.71%) indicated that guidelines, frameworks, or standards were not yet in place but were being developed.

Responses suggest that guidelines, frameworks, or standards may not yet be extant in certain practices. Considerations include the plausibility that these technologies may be used in silos within organizations, exclusive of respondents’ departments, or that they are not widely communicated within an organization. Additionally, resources that aid the evaluation and integration of AI systems may be informal, organic, and continuously evolving in nature, and therefore may not exemplify guidelines, frameworks, or standards.

Responses to questions 16 and 19 suggest the use of literacy frameworks, learning theories, or professional competency standards may be seen as a separate practice from the use of guidelines, frameworks, or standards when evaluating and

integrating AI systems in an organization. The adoption and integration of AI tools into an organization may be regarded as a separate organizational process which may not be directly involved with teaching, learning, and training initiatives. In further support of this, most of the sub-group that answered Question 16 (on literacy frameworks, learning theories, and professional competency standards) identified as being from an academic setting. However, those who answered affirmatively to Question 19 (guidelines, frameworks, or standards for evaluating and integrating an AI system), which was posed to all respondents, were mostly not from an academic setting. This leads to the suggestion that literacy frameworks, learning theories, and professional competency standards may be used more in academic settings, while guidelines, frameworks, and standards for evaluating a tool may be more in use in non-academic settings.

Participants were asked to identify which characteristics they would prioritize if asked to develop a critical and transparent understanding of an AI-assisted system. Selections and term definitions were derived from Turner’s laws and key evaluative components for building a conceptual understanding of algorithmic literacy⁴⁶ (Figure 9).

Limitations of use received the highest rank score (2.57) from the selection, with 28.57% of the sample awarding it the highest priority and 25% awarding it second highest

⁴⁴ Ridley & Pawlick-Potts, *supra* note 3.

⁴⁵ Maura R Grossman & Rees W Morrison, “7 Questions Lawyers Should Ask Vendors About Their AI Products” (2019) 91:2 New York State Bar Assoc J 49.

⁴⁶ Turner, *supra* note 35.

Q21: If asked to develop a critical and transparent understanding of an AI system, which of the following would you prioritize most?
Please rank the following according to value (1 = highest priority, 4 = least highest priority)



Figure 9 – Priorities for Developing a Critical and Transparent Understanding of an AI System

priority. This was followed by *Bias*, which received a rank score of 2.50 and was awarded first priority by 17.86% of respondents and second priority by 39.29% of respondents. Both *Identification* and *Explainability* received a rank score of 2.46, with *Identification* receiving a higher standard deviation (3.559) suggesting a greater spread between responses and a more cohesive majority.

Rank score calculations evidenced a highly even set of values among respondents, while the standard deviation of rank scores (0.0505) indicated an exceedingly close spread between priorities. For example, *limitations of use*, which is defined as a disclosure of the AI system's limitations, including explicit identification of areas where human oversight (or accountability) is required, received the highest rank score (2.57). It also received the lowest standard deviation, suggesting a more thorough split in respondents' priority rankings. *Identification*, defined as a conceptual disclosure of a system's computational components and methods, and an identification of the sources of data along with how the data is treated and analyzed, received the highest number of first priority rankings (35.71%) along with the highest standard deviation (3.5590), suggesting a greater ranking consensus among respondents despite being ranked third.

Evidence of consistently spread respondent views suggests

the validity and importance of all four of Turner's⁴⁷ laws and key components for building a conceptual understanding of algorithmic literacy. This evidence from the sample posits that a fulsome, critical, and transparent understanding of an advanced legal technology incorporates all four components.

Questions 22 and 23 focused on legal information professionals' interest in participating in algorithmic literacy training or professional development opportunities. Most respondents (78.57%) indicated an interest in participating in such professional development and training opportunities. Approximately one-fifth of respondents (21.43%) indicated either a non-interest in or uncertainty towards these activities.

Under half the sample (42.86%) indicated a willingness to propose professional development and training opportunities to their employers or undertake these within their immediate team or department. Areas for future research may wish to explore the evidenced disparity between the number of respondents seeking training opportunities surrounding advanced legal technologies and the number of respondents willing to initiate or propose such training or opportunities. Literature supports the idea that legal information professionals may continue to add value to their organizations by "humanising [the] technology" transforming their sectors.⁴⁸ The literature reviewed advocates for training

⁴⁷ *Ibid.*

⁴⁸ Holger Aman, "The Legal Information Landscape: Change is the New Normal" (2019) 19:2 Leg Info Mgmt 98.

Q25: With respect to AI and advancing legal technologies, do you believe the role of law librarians, legal information professionals, and legal information specialists should include:

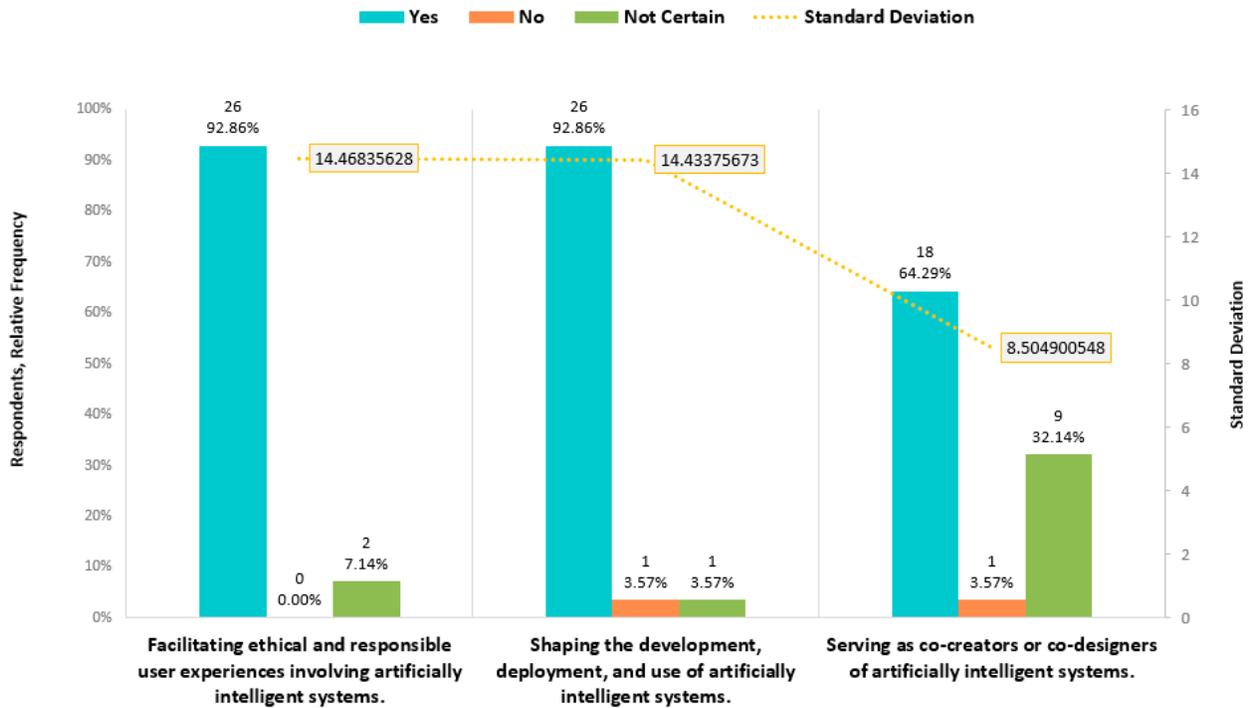


Figure 10 – Expanding the Role of Legal Information Professionals

and resources to help legal information professionals assist information users in becoming skillful practitioners and critical independent thinkers.⁴⁹

Towards the end of the questionnaire, respondents were asked what additional considerations they would value in a teaching, learning, or training initiative aimed at increasing user literacies surrounding the use of AI systems. Nearly half of the respondents (46.43%) provided additional considerations. A simplified thematic analysis employing open coding was used to analyze responses and create a data-driven coding hierarchy.

The evidence suggests both a need for training and a need for access to advanced legal technologies and systems to fill a functional gap in hands-on and applied learning. In referencing the sample's responses to Question 17, this would likely facilitate functional, pragmatic, and hands-on learning experiences and system experimentation alongside teaching, learning, and training initiatives focused on more critical and metacognitive understandings of these technologies. Other considerations with high frequencies included the opportunity to evaluate the outputs and identify the limitations of advanced legal technologies, which would

facilitate greater transparency surrounding their use. Users' ability to evaluate their own skills and knowledge limitations, receive feedback from a variety of perspectives, and learn how to critically evaluate the benefits of advanced legal technologies were also identified as considerations in increasing user literacies.

In concluding the questionnaire, respondents were asked about expansions of the roles of legal information professionals given the existing literature, which notes that several advanced technologies and AI systems are underpinned, in part, by principles that librarians specialize in (Figure 10).⁵⁰ Respondents' opinions regarding certain findings in literature were canvassed. The literature posited that:

- Legal information professionals may serve as co-creators and facilitators of intelligent information systems⁵¹
- Libraries play a central role in teaching patrons how to appraise, interrogate, and analyze the roles algorithms play;⁵² and

⁴⁹ Colin Stevenson & Jesse Beatson, "AI-Enabled Litigation Tools: An Introduction" in Jill R Presser, Jesse Beatson & Gerald Chan, eds, *Litigating Artificial Intelligence* (Toronto: Emond Montgomery, 2021) 451.

⁵⁰ Wiggins, *supra* note 32.

⁵¹ Catherine Nicole Coleman, "Artificial Intelligence and the Library of the Future, Revisited" (3 November 2017), online (blog): *Digital Library Blog, Stanford Libraries* <library.stanford.edu/blogs/digital-library-blog/2017/11/artificial-intelligence-and-library-future-revisited>.

⁵² Gardner, *supra* note 42.

- Libraries play a unique and important opportunity to shape the development, deployment, and use of intelligent systems in a manner consistent with the values of scholarship and librarianship⁵³

Most respondents (92.86%) indicated that the role of legal information professionals may encompass facilitating ethical and responsible user experiences and shaping the development, deployment, and use of AI systems. This may be interpreted as evidence supporting the need for an algorithmic literacy framework incorporating multiple areas of focus. Serving as co-creators or co-designers of AI systems yielded a greater dispersion of views, although most respondents (64.29%) indicated the possibility of legal information professionals engaging in this process.

V. Conclusion

Algorithms, legal data, and AI systems continue to influence and direct interactions between users and legal information. The questionnaire explored various perceptions of legal information professionals and the need for algorithmic literacy in a legal context. An analysis of this dataset supports the assertion that legal information professionals must shift towards more critical and rhetorical levels of awareness and understanding alongside foundational and technical competence.

The findings support some theories emergent from the literature review. Evidence suggests that an algorithmic literacy framework may be useful in supporting initiatives aimed at fostering ethical, responsible, and algorithmically aware technology users who engage in critical and higher orders of thinking when engaging with advanced systems.

The applicability and practicality of a framework may be heavily contextual on account of users' varied roles, working

environments, contexts, resources, and understandings surrounding AI and the use of advanced technologies. For the time being, the study concludes that the creation of an algorithmic literacy framework may assist in the following objectives within the legal information profession, in varying degrees:

1. Facilitating more fulsome and critical understandings of AI-assisted tools and their uses in the legal information field.
2. Facilitating principled, conceptual, and foundational understandings of advanced legal technologies, along with technological competence surrounding their use and application.
3. Building the functional, critical, and metacognitive skills involved in the introduction and continued use of AI-assisted tools.
4. Facilitating effective design and delivery of teaching, learning, and training initiatives involving AI in the legal information profession.

Further research, ideally with a larger and randomized sample, would be required to confirm or diversify qualitative findings attributable to the population. The use of varied research strategies and data collection methods, such as those yielding descriptive and narrative data, may be employed to reveal deeper insights, frames of reference, and a diversity of contexts that may not have been possible via questionnaire. The study should not be viewed as comprehensive or descriptive, but rather as part of ongoing research on the impacts of advanced legal technologies on the legal information profession and the new literacies emerging in response.

⁵³ Ridley & Pawlick-Potts, *supra* note 3.

APPENDIX A - QUESTIONNAIRE: DATA COLLECTION INSTRUMENT

Q1. How would you best characterize your current role?

- Legal information professional, Law librarian, or Legal information specialist
- Student
- Lawyer or legal practitioner
- Professor or academic instructor
- Legal publisher
- Legal technology provider
- Library management or information systems provider
- Non-legal librarian or information professional
- Knowledge management professional
- Business intelligence professional
- Other (please specify)

Q2. How would you best characterize your work environment?

- Academic library / institution
- Corporate / professional services
- Courthouse
- Government (provincial or federal)
- Law firm
- Law society / lawyer's association
- Legal publishing company
- Legal technology company
- Library management or information systems provider
- Public library
- Other (please specify)

Q3. Does your library or organization work directly with members of the legal profession such as law students, lawyers, members of the judiciary, legal researchers, and other legal staff?

- Yes
- No

Q4. In your own words, how would you best define the term “artificial intelligence” (AI)?

Short-form text response. Participants to use own words.

Q5. Does your understanding of AI involve or affect any of the following processes, applications, or tasks within the legal field?

(Select all that apply)

- Case analytics
- Collection development
- Document and contract analytics
- Document drafting or generation
- E-discovery
- Information gathering and retrieval
- Information synthesis
- Legal research
- Library reference and information services
- Metadata extraction, standardization, and management
- Predictive analytics
- Text and document summary generation
- Virtual assistants
- Other (please specify)

Q6. Does your personal understanding of the terms “digital literacy” or “computer literacy” encompass the use of AI systems and advanced legal technologies?

- Yes
- No

Q7. Have you used or interacted with any AI systems or advanced legal technologies as part of your professional duties?

- Yes
- No
- I am not certain.

Q8. How would you best characterize the impact of AI systems on the legal information profession in the next 5 to 7 years?

- Low: Many of the expectations, operations, and services applicable to the legal information profession are not expected to reflect significant change.
- Moderate: Some of the expectations, operations, and services applicable to the legal information profession are expected to reflect moderate, progressive change.
- High: Most of the expectations, operations, and services applicable to the legal information profession are expected to reflect significant change.

Q9. Do you expect the following to increase, decrease, or remain unchanged given an increased adoption of AI systems?

(Please answer all items. Matrix/Likert scale question)

Selections for each choice:

Increase

Decrease

Unchanged

Not Certain

- Access to knowledge and information
- Automation of routinized tasks
- Changes in existing or traditional job roles and descriptions
- Cost-effectiveness
- Expectations of clients, patrons, and information users
- Investments in technology
- Laws and regulations governing artificially intelligent systems and technologies
- Organizational productivity
- Number of job opportunities for legal information professionals
- Process improvement within organizations
- Services offered to clients, patrons, and information users
- Transparency and accountability surrounding the use of new technologies

Q10. Please complete the sentence by ranking the following choices. (1 = highest priority, 4 = least highest priority)

If asked to use and adopt a new legal technology or AI system, I would prioritize:

1. Technological training, competence, and mastery of the specific application or system.
2. A foundational understanding of the history, operations, domains, and computational methods of artificially intelligent systems.
3. A conceptual understanding of the “datafication” of law, computational analysis, and machine learning as applied to legal information.
4. A principled understanding of the rules, assumptions, limitations, and ethical issues associated with artificially intelligent systems.
5. Other type of understanding (please specify and rank accordingly)

Q11. Does your organization deliver teaching, learning, or training initiatives on AI systems or other advanced legal technologies that feature natural language processing, machine learning, legal analytics, or other emerging areas?

- Yes
- No

Q12. To whom are these teaching, learning, or training initiatives on AI systems and other advanced legal technologies directed?

(Select all that apply)

- Information users, patrons, and clients (such as law students, lawyers, members of the judiciary, legal researchers, and other members or clients served)
- Legal information professionals, law librarians, and legal information specialists
- Non-legal information professionals
- Technologists and non-legal staff members
- Directors, managers, and those with supervisory roles.
- Others (please specify)

Q13. Are these teaching, learning, or training initiatives delivered by legal information professionals, law librarians, or legal information specialists?

- Yes
- No

Q14. What delivery formats are used for these teaching, learning, and training initiatives on AI systems?

(Select all that apply, both before and during COVID-19)

- In-person or virtual classroom lectures
- In-person or virtual library orientations
- In-person or online conferences and seminars
- Webinars and online presentations
- Legal vendor demonstrations
- “Flipped classroom” style learning activities
- Library-based (or place-centred) learning activities
- One-on-one information user sessions
- Self-paced courses or modules on learning platforms
- Informal conversations with patrons, clients, and information users
- Others (please specify)

Q15. Are these teaching, learning, or training initiatives grounded in any existing literacy frameworks, learning theories, or professional competency standards?

- Yes
- No
- I am not certain.

Q16. What literacy frameworks, learning theories, or professional competency standards do you or your organization use to ground teaching, learning, or training initiatives involving AI?

(Select all that apply)

- Learning and technological competency standards developed within my organization.
- Law Societies, lawyers' technological competency requirements, and public interest mandates of the legal profession.
- Legal information professional competencies such as the AALL Competencies of Law Librarianship, the AALL Principles and Standards for Legal Research Competency, and the BIALL Legal Information Literacy Statement.
- Academic learning theories (for example, Constructivism, Bloom's Taxonomy (and Krathwohl's Revised Taxonomy) of Learning, Active Learning, Deep and Surface Approaches to Learning, Inquiry- or Problem-Based Learning, Gamified Learning, and others.)
- Information literacy frameworks (for example, the ACRL Framework for Information Literacy, the SCONUL Seven Pillars of Information Literacy, and others.)
- Digital literacy frameworks (for example, the UNESCO's Global Framework of Reference on Digital Literacy Skills, JISC'S Seven Elements of Digital Literacy, the Canadian Schools' Use-Understand-Create Digital Literacy Framework, the BC (Provincial) Digital Literacy Framework, and others.)
- Others (please specify)
- I am not certain.
- I/we do not use a framework.

Q17. If you were to design a teaching, learning, or training initiative introducing an AI technology, which of the following skills or competencies would the initiative focus on?

(Select all that apply)

- Functional Skills: Technological competence and proficiency. Understanding professional competency requirements. Understanding the underlying concepts of AI.

- Critical Skills: Examining external factors such as the social, political, legal, and regulatory implications of the uses of AI systems. Examining issues surrounding transparency, accountability, and the possible existence of bias within the data or systems.
- Metacognitive Skills: Reflective practice. Facilitating ethical and responsible user interactions with AI systems. Reflecting on the personal and social merits and detriments associated with increased AI integration, with views towards the future.
- Others (please specify)

Q18. Do you believe enough emphasis is being placed on training, teaching, and learning initiatives involving AI systems?

- Yes
- No
- I am not certain.

Q19. Does your organization use guidelines, frameworks, or standards when evaluating and integrating AI systems into the organizations' existing technologies?

(Select all that apply)

- Yes
- No, although my immediate team is seeking to develop such guidelines, frameworks, or standards.
- No, although I am aware of some guidelines, frameworks, or standards being developed outside of my team.
- No, and I am not aware of any guidelines, frameworks, or standards in development.
- No, my organization is not seeking to develop such guidelines, frameworks, or standards.
- I am not certain.

Q20. Please use the slider bar to indicate your position on the following: Artificially intelligent systems [increase or decrease] the transparency of legal outcomes and decision-making.

- Spectrum start: Artificially intelligent systems increase the transparency of legal outcomes and decision-making.
- Spectrum end: Artificially intelligent systems decrease the transparency of legal outcomes and decision-making.

Q21. If you were asked to develop a critical and transparent understanding of an AI system, which of the following would you prioritize most?

Please rank the following according to value. (1 = highest priority, 4 = least highest priority)

1. Identification: A conceptual disclosure of the system's computational components and methods, and an identification of the sources of data along with how the data is treated and analyzed.
2. Explainability: The system's ability to explain and outline its processes, reasonings, and outcomes for its users, and other features that assist users with auditing and oversight.
3. Bias: A disclosure of the data selection, annotation, and treatment processes, and a critical identification of areas where bias or underrepresentation may occur in the system's data, data sources, or programming.
4. Limitations of Use: A disclosure of the limitations of the artificially intelligent system, including explicit identification of areas where human oversight (or accountability) is required.

Q22. Would you be interested in engaging in professional development and training opportunities aimed at increasing literacies surrounding the use of AI systems?

- Yes
- No
- I am not certain

Q23. Would you be willing to propose professional development and training opportunities aimed at increasing literacies surrounding the use of AI to your employer, or undertake these within your immediate team or department?

- Yes
- No
- I am not certain

Q24. Apart from those encountered in this survey, what considerations would you value in a teaching, learning, or training initiative aimed at increasing user literacies surrounding the use of AI systems?

(Please provide a short response or enter "None".)

Short-form text response. Participants to use own words.

Q25. With respect to AI and advancing legal technologies, do you believe the role of law librarians, legal information professionals, and legal information specialists should include:

(Please answer all items. Matrix/Likert scale question)

Selections for each choice:

Yes

No

I am not Certain

- Serving as co-creators or co-designers of artificially intelligent systems.
- Shaping the development, deployment, and use of artificially intelligent systems.
- Facilitating ethical and responsible user experiences involving artificially intelligent systems.

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III Reviews / Recensions

Edited by Elizabeth Bruton and Dominique Garingan

***Teachers and the Law: Diverse Roles and New Challenges.* 4th ed. By A Wayne MacKay and Lyle Sutherland. Case Studies by Jennifer Barnett. Toronto: Emond, 2020. xiv, 345p. Includes glossary, table of cases, and index. ISBN 978-1-77255-543-1 (softcover) \$87.00.**

Teachers and the Law provides a clear and quite readable survey of the many legal issues teachers can expect to encounter in their careers. While the target audience is teachers, this book will also be a valuable resource for school administrators and professionals involved in training or advising educators.

The book covers a staggering array of potential issues in which a teacher can become embroiled, while organizing them in a way that keeps the reader from feeling overwhelmed. This discussion is cleverly organized not by legal issue, but by the roles that teachers take on, whether that be as surrogate parents, educational state agents, social welfare agents, or unionized employees. The authors address legal issues by considering the challenges and risks inherent in each of those roles. This contextualizes the law and helps those already familiar with the underlying legal principles to see how they are applied in this specific context.

Teachers and the Law is clearly designed as a teaching and learning tool. Each chapter includes a series of discussion questions and ends with a pair of case studies. The reader is asked to review the facts of past cases and consider how different principles discussed in the chapter may apply to those facts. This helps the reader engage with the legal precedents and truly understand some of the implications of

different situations. For those with legal training, extensive footnotes identify the sources of law and flesh out some of the case details omitted from the main text. For those who are less familiar with the law, the authors provide a helpful glossary of key terms.

The authors have avoided a sterile summary of the law by inserting their own perspectives and predictions. They show not only where the law is, but how it got there and where it might be going. The greatest value of this book comes from those moments when the authors consider new and future challenges and speculate on how our legal system will evolve to address them. The authors take these opportunities not only to identify a reasonable outcome, but to provide educators and administrators with advice on how best to avoid or mitigate these challenges before they can arise.

If there is one reason to fault the book, it is that it occasionally loses sight of the main audience. While the book is clearly written with teachers in mind, specifically elementary and high school teachers, many of the concepts and cases are presented in a way that suggests that the authors expect their readers to have some familiarity with the law and major cases in the field. While the authors do a good job of breaking down key sections of the *Charter* and explaining the prevailing tests, they occasionally reference other legal principles or provisions that a non-legally trained reader may not be familiar with. Similarly, a few of the cases are presented without sufficient context to fully appreciate their significance.

Overall, *Teachers and the Law* is a commendable work that will be a worthwhile read for any teacher looking for guidance on how to address or avoid legal issues, as well

as for any lawyer interested in learning how familiar legal issues uniquely impact educators.

REVIEWED BY
PETER AADOSON
*Counsel, Judicial Education
National Judicial Institute*

***Artificial Intelligence and the Law in Canada.* Edited by Florian Martin-Bariteau and Teresa Scassa. Toronto: LexisNexis Canada Inc., 2021. xxvii, 422 p. Includes contributor biographies, foreword, table of contents, table of cases, and index. ISBN 978-0-433-51467-1 (hardback) \$195.00.**

It is a well-known fact that the law is slow to adapt to new technology. The regulation of artificial intelligence (AI) is no exception. Given how quickly AI has permeated all aspects and levels of society—with use by individual consumers, key industries, the health care and legal systems, government, and military—it has become that much more important to consider whether our existing legal frameworks are equipped to treat matters relating to AI, and if not, how they might be adapted.

Artificial Intelligence and the Law in Canada, edited by Florian Martin-Bariteau and Teresa Scassa, starts this discussion. The collection brings together a who's who of AI law and policy experts from across the country while paying homage to one of the most respected authorities in this area of law, the late Ian Kerr. *Artificial Intelligence and the Law in Canada* highlights all the ways in which AI has had and will continue to have an impact on significant aspects of Canadian society. It explains how the law has responded to or might respond to issues raised by AI's current or potential applications within the current legal framework. Where appropriate, it considers how the law could or should be reconceptualized to respond to these issues.

The book could not be organised in a more efficient or effective manner. It is divided into 16 chapters. The first 11 chapters deal with AI as it relates to substantive areas of law, including intellectual property law, contracts, torts, competition law, and administrative law; the succeeding three chapters look at AI's applications within, and impact on, the legal system; and the final two chapters look at the foreign regulation of AI. The chapters are structured nearly identically. Each chapter starts with a succinct overview and helpfully identifies, in list form, key challenges and issues relating to the topic. In addition, at the end of each chapter, the authors discuss the risks and opportunities that AI poses in relation to that area of law or topic. The authors also identify key gaps in the law—easy red flags for policymakers to turn to. Lastly, the authors of each chapter provide additional reading lists for those who wish to delve further into the particular area of law addressed by the chapter.

The editors opt not to use a strict definition of AI. Instead, they approach it as a “general concept,” arguing that “the rule of law is better served by governing behaviours and actions, rather than specific technologies or technological states” (p 3). Aside from allowing for the array of topics addressed in the book, such an approach has two benefits:

first, readers are not bogged down by complex and potentially contradicting definitions of various subcategories of AI, as the focus is truly on the impact of the tools; and second, it mitigates against obsolescence caused by technological advancement, ensuring the long-term relevance of the text.

Of note, there are a number of areas of law that one might have expected to see in this text that are not covered as discrete chapters. These include criminal law, labour and employment law, and evidence. Here, the editors point out an opportunity for development in future editions, while also suggesting some related coverage in other chapters. For instance, discussions on sentencing tools may be expanded in the chapter on judicial decision-making.

If readers were uncertain before, this book makes it abundantly clear that AI is here, and it is here to stay. In this context, *Artificial Intelligence and the Law in Canada* is an essential read for practicing lawyers across all areas of law, judges, policymakers, and of course legal academics, and is a must-purchase for all types of law libraries. Without wanting to trespass on academic freedom, I would argue that modules on AI's impact on law are essential across substantive law courses. Law professors teaching any of the substantive areas of law addressed in this book should consider updating their syllabi to include the reading from the appropriate chapter, as leaving it out would be a disservice to students. To that end, academic law librarians and law faculty members alike will be happy to hear that, in addition to being available in LexisNexis Digital Library, *Artificial Intelligence and the Law in Canada* is slated to become available in Lexis Advance Quicklaw.

Lastly, I would recommend that my fellow legal information professionals read the chapters on equality by design, legal ethics, judicial decision-making, and legal analytics. At the very least, most of us are using legal research tools that leverage AI, while some of our colleagues are increasingly involved in legal operations and in selecting legal technology. To the extent that these chapters reference technologies with which legal information professionals may be called upon to interact, it is important for us to be aware of the risks and opportunities relating to their use and any legal implications.

REVIEWED BY
KATARINA DANIELS
*Liaison Librarian
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***The Law Multiple: Judgment and Knowledge in Practice.* By Irene Van Oorschoot. New York: Cambridge University Press, 2021. xiii, 205 p. Includes notes, bibliographic references, and index. ISBN 978-1-108-49480-9 (hardcover) \$126.95.**

The Law Multiple provides a scholarly introduction to the interconnected and distinct relationship between sociology and the law. Straightforwardly, Van Oorschoot informs the reader, “[T]his book commits itself to an understanding of social and legal life as practical, and occasionally messy business: always ongoing, never not concrete, irreducibly multiple” (p 1). Thus, this book encourages readers to

challenge their notions of the evolving definitions of social and legal practices.

In her research, Van Oorschot proposes “to use the notion of the hyper-object as a productive fiction to make sense of the law in its multiplicity” (p 15). Often referring to the title of her discourse, she views the law as an inter-subjective and inter-objective practice that is multifaceted and developing. Requesting the reader to view her study, “[w]ith an emphasis placed on concrete legal practices and the concreteness of social scientific representation” (p 11), she encourages the reader to examine this study with an open mind.

Van Oorschot provides a specific approach to discovering how judgments are made and how researchers can study concrete ways of judging and knowing. Through an ethnographic study set in courts in the Netherlands, which involved informal conversations with judges and in-court observations, Van Oorschot concludes that judging and knowing cannot be concretely defined. “A sociology of hyper-objects, in my view, is a sociology for life: it finds its impetus, its jurisdiction, its telos not in the realm of purification, contemplation and finalization, but in the only task we really share: that of living-with” (p 182). In other words, knowledge and judgment have ever-changing and multiple definitions. While both cannot be concretely defined in a lifetime, they can be accepted as being multi-faceted.

Van Oorschot’s text provides a multi-disciplinary approach to examine socio-legal studies reminiscent of social science academic texts. *The Law Multiple* is a recommended text for former liberal arts alumni. Theoretically backed by prominent ethnographic theorists, this text demonstrates how passionately social scientists study human behaviours, especially when applied to the legal realm. Intellectually stimulating, Van Oorschot’s academic tone of writing reveals her own social scientist biases when she conducts her field studies. Moreover, the reader who is unaware of socio-legal discourses should read this text. Van Oorschot expertly articulates and dovetails social science methodologies for readers who pursue legal careers. This text is a bridge between these multi-disciplinary studies and provides an exemplary overview of their evolving courses of study.

REVIEWED BY
GILLIAN EGUARAS
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***Confronting the Death Penalty: How Language Influences Jurors in Capital Cases.* By Robin Conley Riner. New York: Oxford University Press, 2015 xi, 256 p. Includes bibliographic references and index. ISBN 9780199334162 (hardcover) \$38.95. ISBN 9780197545546 (softcover) \$24.95. ISBN 9780190263911 (eBook) price varies.**

“How can one human being sentence another to death?” That is the central question of this fascinating ethnographic study of capital trials in Texas by linguistic anthropologist Dr Robin Conley Riner (p 14).

Dr Riner’s approach is a unique one that makes for a compelling read: her research, conducted for her dissertation, follows four capital trials in and around Houston over a period of 12 months from 2009 to 2010. Through a combination of methods including participant observation, post-verdict juror interviews, and close analysis of trial transcripts, she illuminates the socio-linguistic aspects of a capital trial as it unfolds. The result is a lucid exposition of the contradictions and fallacies that capital jurors must wrestle with in their role within the American criminal justice system.

The book’s structure and contents reflect that it is written for a wide variety of audiences. The introduction in Chapter 1 explains the author’s interest in the topic as well as provides a detailed overview of the book’s contents. Chapter 2 outlines the research methods used by the author as well as essential background to the study, including information on how capital trials work in Texas, and a description of the anomalous state of capital punishment in Texas and the United States in relation to other jurisdictions.

The remaining chapters dig into an analysis of language and discursive practices found in the courtroom, specifically in the decision-making process of jurors. In Chapter 3, the author examines a vital contradiction in the task assigned to jurors: that the instructions they receive emphasize the role that both objectivity and subjectivity should play. Yet jurors’ perceptions of their role and their understanding of these instructions often lead them to deny the role of morality and empathy in their decision-making process.

Chapter 4 brings this contradiction into the physical space of the courtroom, detailing how jurors interact with the defendant. These encounters are then reframed in ways that create physical and emotional distance from the defendant. Chapters 5 and 6 analyze linguistic formations of distance and grammatical constructions of agency used by jurors to mediate their sense of responsibility for the death of a defendant.

As the final chapter, Chapter 7 concludes with the main argument of the book: that “these discourses lead jurors and others engaged in doing law to put aside human elements of legal decision-making in the name of objectivity” (p 201-202). Dr Riner notes that these trials are an example of practices of discursive violence that connect law and reason “to the exclusion of other forms of human understanding,” even despite court rulings that require empathy and emotion to be considered in the application of the law (p 201).

In this final chapter Dr Riner also provides several concrete recommendations on the ways that legal practitioners can address the implications of this research. While ostensibly most relevant to practitioners involved in capital punishment trials, the conclusions can be generalized to encompass the influence that language brings more broadly to the practice of law and the legal system.

Confronting the Death Penalty: How Language Influences Jurors in Capital Cases would be an asset to the collection of any academic law library, as well as to legal practitioners

searching for a deeper understanding of the link between language and the legal practice. The book's accessible writing style and absorbing subject matter may also be of interest to the general public.

REVIEWED BY
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***The Justice Crisis: The Cost and Value of Accessing Law.* Edited by Trevor CW Farrow and Lesley A Jacobs. Vancouver: UBC Press, 2020. 345 p. Includes index. ISBN 9780774863575 (hardcover) \$89.95. ISBN 9780774863582 (paperback) \$39.95. ISBN 9780774863599 (PDF) \$39.95. ISBN 9780774863605 (EPUB) \$39.95.**

What is the current state of civil and family law access to justice in Canada? The authors and editors of *The Justice Crisis* come together to describe a complex system in need of reform. This compilation of essays is the culminating project of the Canadian Forum on Civil Justice's SSHRC Community-University Research Alliance (CURA) Cost of Justice Project, which aimed to produce research needed for evidence-based decision-making for civil justice reform in Canada and internationally. The project asked, first, what does it cost to deliver an effective civil justice system? and second, what are the social and economic costs of failing to do so? This volume targets these questions.

The book begins with a foreword written by former Supreme Court Justice Thomas Cromwell, situating the book within the current state of civil justice in Canada. Justice Cromwell defines civil justice as "a practical and fair outcome for civil legal problems," (p xi) one that encompasses not just adjudication but a range of practices leading up to that point. In the book's *Introduction*, editors Farrow and Jacobs, in a similar way, broadly define access to civil and family justice as "having paths available for citizens to prevent, address, and resolve the legal challenges and problems they face in their everyday lives" (p 3).

This system of justice, however, is described as in crisis. According to Justice Cromwell, the system needs timely, coherent reform and innovation in line with contemporary legal needs and alongside public engagement. Farrow and Jacobs describe a need for evidence-based reform initiatives in the civil justice system in broad areas including housing, gender violence, justice for Indigenous communities, and more.

The remainder of the book is split into four sections. Part I, *Understanding the Access to Justice Crisis*, lays out the current funding mechanisms for the justice system and provides some forward-looking policy recommendations and best practices. Part 2, *Experiencing Everyday Legal Problems*, discusses individual experiences within the justice system. This section includes an important chapter critiquing the residential schools claims process and its impacts on

reconciliation efforts in Canada. Part 3, *Legal Services and Paths to Justice*, describes several case studies designed to advance access to justice. Finally, Part 4, *The Legal Profession and Meaningful Access to Justice*, focuses on the legal profession and specifically how legal culture and fees can serve as an impediment to access to justice for Canadians.

The Justice Crisis is an ambitious project that covers considerable ground in its 350 pages. No book alone can hope to address every facet of a topic, but this one covers an impressive breadth while remaining cohesive. The editors aim not just to describe problems, but also to present solutions. This goal is particularly well met in the case studies and the focus on the role of legal professionals in the system. Because of this, the book successfully strikes a balance between academic inquiry and lived experience. It bridges the gap some academic texts often leave open by raising practical solutions to the issues raised. Its language is generally accessible to a non-legal audience, making this a particularly useful cross-over text for social science readers as well.

If *The Justice Crisis* leaves any reader uninspired, this flaw would perhaps be less a result of the book's content and more the nature of an edited collection. The book provides its readers with in-depth information on specific topics but lacks a summarizing conclusion and a final call to action or rallying principle for its audience. It is therefore up to each reader to reflect on the many calls of individual authors and find ways to integrate their suggestions into practice. The detailed index is useful in ensuring that readers will find all sections of interest.

All told, *The Justice Crisis* has much to teach us and will make an important addition to the shelves of both law and social science academic collections as well as those of legal professionals who are able to advocate for or effectuate changes to Canada's civil justice system.

REVIEWED BY
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***Is Law Computable?: Critical Perspectives on Law and Artificial Intelligence.* Edited by Simon Deakin and Christopher Markou. Oxford; New York: Hart Publishing, 2020. xxi, 320 p. Includes bibliographic references and index. ISBN 978-1-5099-3706-6 (hardback) \$130.05.**

If you have any interest in artificial intelligence (AI), especially if it's coupled with a desire to learn more about how developments in AI are related to law and legal technology, then this collection of papers has been compiled just for you. However, as Frank Pasquale¹ rightly suggests in his thoughtful foreword, this is also "a collection that should be read by a wide range of audiences both in and around the legal profession" (p v).

¹ See his fantastic keynote presentation "Battle of the Experts: The Promise and Peril of Automating Knowledge Work" delivered at the 2021 Virtual CALL/ACBD Conference.

Why such high praise? Firstly, these papers were prepared for a one-day workshop² that brought together “some of the most influential scholars working at the intersection of law/technology” (p 19). This diverse range of experts gathered at the University of Cambridge in December 2019 to share their ideas and talk about how artificial intelligence, machine learning, and data science have been and might be applied to legal procedures and decision-making. Secondly, as stated in the concluding remarks of the editors’ introductory chapter, these papers are a “deliberate effort to push-back against the more hagiographical accounts of AI in law” (p 28). In other words, these papers provide a much-needed critical analysis and reality check.

While AI is mentioned regularly in media and social media sources, the general fervor over AI seems to have died down since IBM’s Watson won that fabled Jeopardy! tournament in 2011, or when DeepMind’s AlphaGo beat Lee Sedol, the reigning 9-dan professional Go champion, four games to one in 2016. Computational successes like these, or even the earlier Deep Blue chess program, have led some legal AI proponents to “mistakenly assume that because machine learning systems can perform well in certain well-defined and well-delineated tasks, they are transferable ... to a complex, shifting thing like law, filled with loosely-defined abstract concepts” (p 119).

The idea of the “legal singularity,”³ which Dr Jennifer Cobbe describes as “the point at which machines become as good as if not better than humans at understanding, applying, and, potentially, writing the law” (p 107), is raised and contested by many of the writers in this collection. Professor Lyria Bennett Moses, for example, explains in Chapter 9, *Not a Single Singularity*, that law and legal processes are much more of a “multi-dimensional puzzle” (p 205) and therefore there will not be a “single singularity.” She also provides a particularly useful conceptualization describing these legal singularities as a three-dimensional solid changing over time where “each axis comprises legal tasks otherwise performed by human paralegals, lawyers and judges” (p 205). Think of an amorphous object that expands until all aspects of this legal puzzle have reached out to touch an encompassing sphere that represents the perfect or “functionally complete”⁴ legal system.

All contributions to this collection are well-written, impeccably researched, thought provoking, and worth reading. In addition to the application of AI to law in general, there are papers that focus more specifically on law and politics, law and society, the rule of law, holding AI criminally responsible, copyright, and assessing mental capacity.

Having said that, if you could only read one of these chapters, the final chapter by Dr Christopher Markou and Lily Hands would be recommended. It provides an excellent overview of the challenges involved when using AI to assess legal capacity. It begins by considering the influence of early applications of AI and medicine, including the development

of medical expert systems used for psychiatric diagnoses and clinical decision support. In the process, Dr Markou and Hands also review various stages in AI development: Logical AI, Connectionist AI, Affective Computing, Automated Mental State Detection, and briefly touch on human brain interfaces.

Since machines are not “capable of cognitive awareness” (p 195) they don’t, nor can they, “think.”⁵ Therefore, the idea of using a machine to assess the psychological state of a human being is an important legal problem to consider. Especially, as Dr Markou and Hands explain, when the assessment process calls on the courts “to apply a fundamentally imprecise concept to subjective evidence while resolving conflicts between individual autonomy, social norms, ethics and public policy” (p 279). In other words, this is not a well-defined area of law.

The social role of law is often overlooked in legal AI which leads Dr Cobbe to conclude that “without rethinking how law is problematized and responses developed, and without working towards radically rebuilding the law to try to produce a fairer, more just society, legal singularity as a vision and a goal remain primarily concerned with making the law better at entrenching market-oriented logics, commercial imperatives, and a particularly computational worldview” (p 133). This omission is another common thread found throughout this collection and raises another important question that many authors allude to: just because “arbitrary software developers in big tech or big law” (p 83) can apply AI to an area of law, or indeed to any aspect of life, should they?

From a practical perspective, these papers are enhanced by a glossary and a decent index. For each term in the glossary, for example ‘Machine Ethics,’ a definition and a short reading list are provided. This is very helpful for readers looking to gain a better understanding of the concepts and historical developments of AI and law. As AI continues to seep into many areas of legal practice, this is an important collection of critical papers relevant not just for law libraries but for any library collection hoping to inform readers about ongoing developments in AI and society.

REVIEWED BY
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***Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice.* By Lucas Lixinski. Cambridge, UK: Cambridge University Press, 2021. 227 p. Series: *Law in Context*. Includes bibliographical references and index. ISBN 978-1-108-48815-0 (hardcover) \$126.95.**

Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice examines the ways in which identity, memory, and principles of transitional justice intersect with cultural heritage. The author, Lucas Lixinski, is a professor

² For some additional information see <https://www.jesus.cam.ac.uk/articles/lex-ex-machina-conference-laws-computability>.

³ Benjamin Alarie, “The Path of the Law: Toward Legal Singularity” (2016) 66:4 UTLJ 443.

⁴ *Ibid.*

⁵ “Even though machines that ‘think’ is how some people have conceptualized AI, this remains a futuristic vision” (p 207).

of law at the University of New South Wales in Sydney, Australia who has written extensively about international cultural heritage law and international human rights law.

Cultural heritage includes those artifacts, both tangible and intangible, that define what a society is: buildings, monuments, places, stories, customs, traditions, etc. It is protected to varying degrees by laws and other legislative frameworks that identify, design, protect, and conserve heritage. Cultural heritage frequently does not end at national borders. A whole system of international cooperation has developed, including the UNESCO Constitution, several UNESCO conventions, and various UN treaties, which serves to protect (mostly tangible) cultural property and objects.

Transitional justice, on the other hand, refers to the ways in which a country deals with human rights violations following a period of conflict or significant change. It aims to establish accountability and confidence in public institutions, acknowledge violations and redress wrongs, and put systems in place so that these errors are not repeated. It is not restorative justice, though that may often be a feature.

Transitional justice and cultural heritage law have traditionally been claimed to be parts of two very separate processes, the first being a way to break away from the past, and the second a way to preserve parts of the past. Furthermore, heritage often claims to be neutral; however, as Lixinski writes, “ignoring the past does not make it go away, nor does it help overcome it ... Rather it is proactive measures of truth-seeking, reparations..., and guarantees of non-repetition that can lead to a positive engagement between society and its cultural heritage” (p 116). Lixinski makes the compelling argument that by better understanding the interplay between memory, cultural heritage, and law, transitional justice can better dispense justice that will help advance society toward a future free of atrocities.

Across seven chapters, Lixinski shows how decision-making has often been based on “experience rather than predetermined abstract or principled commitments” (p 169), and how pragmatism can easily include a justice-based theory of human rights and be founded on theory as well as practice. Much of the book focuses on how symbols of heritage can be conserved, erased, replaced, or even created anew. Specific examples include Second World War sites in Poland (Auschwitz-Birkenau) and Japan (Hiroshima Peace Memorial Park), post-colonial and post-apartheid South African sites such as Kirstenbosch and Robben Island, and newly created sites meant to memorialize past events such as Memento Park in Budapest. An entire section of one chapter is devoted to Confederate monuments in the U.S., a particularly timely discussion these days. Lixinski also discusses how these laws and international instruments both enable and restrict the ability of a society to memorialize its history. For instance, UNESCO tends to only recognize those agreements that are “unquestionable and uncontested,” leading to difficulties in places like Cyprus as they attempt to conserve their heritage according to UNESCO principles. In addition to being reluctant to engage with designations of sites where transitional justice is still at play, the status of some cultural heritage sites is sometimes threatened by

reconstructions that serve to preserve otherwise partially destroyed heritage, such as in the case of the Bamiyan Buddhas of Afghanistan (p 36).

This book is well written and is a fairly unique addition to the extant scholarship on cultural heritage and transitional justice. The bibliographic references are incredibly detailed, varied, and extensive, and while the domestic legislation cited is restricted to that of Australia, the discussion of these and how they interplay with international instruments is detailed enough that local equivalents will not be difficult to determine (e.g., the *Ontario Heritage Act*, RSO 1990, c O.18).

This text would be an invaluable addition to the collections of academic and law school libraries, particularly those offering courses in human rights, intellectual property, and traditional knowledge, as well as to any researchers or policy makers who focus on UNESCO, cultural heritage, and the cultural and social aspects of post-conflict transitioning societies.

REVIEWED BY
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***How to Do Things with Legal Doctrine.* By Pierre Schlag and Amy J Griffin. Chicago, IL: The University of Chicago Press, 2020. 208 p. Includes bibliographic references and index. ISBN 978-0-226-72624-3 (paperback) \$30.00 USD. ISBN 978-0-226-72610-6 (hardcover) \$90.00 USD.**

How to Do Things with Legal Doctrine is written for legal educators and law students with a baseline knowledge of the law. The authors, Pierre Schlag and Amy J Griffin, discuss how legal doctrine is a subject that should not be taken for granted, and challenge readers to explore and treat legal doctrine as a distinctive expression of the law and a subject in its own right.

Both authors have a wealth of experience in legal academia and acknowledge the insights gained from their students in contributing to this text. Pierre Schlag is Distinguished Professor at the University of Colorado and the Byron R White Professor of Law. He has written on legal philosophy, constitutional interpretation, legal reasoning, law and economics, freedom of speech, and the aesthetics of law. Co-author Amy J Griffin is Legal Writing Professor and the Associate Dean for Instructional Development at the University of Colorado. She works with students to advance their legal writing skills in both doctrinal classes and clinics.

The book defines legal doctrine as the creation of doctrinal concepts, arguments, and legal regimes built on the foundation of written law. Unlike the traditional explanation of legal doctrine through analysis and critique, this book asks readers to go back to the roots of legal doctrine and consider the basic questions that can inspire creativity and activate the imagination. Key questions include, “What is the role of doctrine in the big picture of our modern legal systems?” and “What are the doctrine’s key characteristics?” The book answers these questions and uses this information to explain how to apply legal doctrine.

Readers are led through doctrinal topics with chapters discussing: what legal doctrine is, frames and framing, baselines, the legal distinction, rules and standards, resolving regime conflicts, interpretation, and cluster logic. Although the book is structured in a way that starts and ends with broad ideas on the topic and contains more specific details in the body, it can be read in a linear way or used to focus on a particular topic.

The book includes a table of contents, introduction, acknowledgments, a coda, and an index. There are footnotes that provide further reading and often bleed into related subject areas of rhetoric, cognitive science, philosophy, economics, and other disciplines. Some footnotes throughout the book provide brief elaborations on a topic discussed in the text. The book does not contain a table of cases or bibliography. Despite being written about and referencing U.S. law, most of the concepts in this book can be applied to the Canadian context. This book could be used in a variety of courses on jurisprudence, ethics, legal writing, and legal theory.

How to Do Things with Legal Doctrine would be a welcome addition for academic law library collections. It provides a comprehensive discussion of legal doctrine and related concepts. The text is available in paper, cloth (hardcover), PDF, and EPUB. The accompanying legal doctrine exercises, which are available in PDF format for free on the publisher's website, will be appreciated by both instructors and their students.

REVIEWED BY
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***Runaway Technology: Can Law Keep Up?* By Joshua A T Fairfield. New York: Cambridge University Press, 2021. 298p. Includes index. ISBN 978-1-108-42612-1 (hardcover) \$74.95. ISBN 978-1-108-44457-6 (softcover) \$22.95.**

The regulation of big tech, or frustration with the lack thereof, is a common theme running through an abundance of recent work examining society's relationship with social media and big data companies. Joshua Fairfield injects some much-needed optimism into the discussion with *Runaway Technology: Can Law Keep Up?*

Runaway Technology doesn't offer much in the way of legislative solutions to the problems presented by new technology. Instead, it explains how law remains relevant despite industry claims that law is too slow to address technological change and a barrier to innovation and economic growth. Fairfield's book is a conversation about what law is, how it works, and the purpose it serves (or ought to serve). As Fairfield sees it, law should reflect social and democratic values that ensure viable and thriving communities and democracies.

The book contains three parts. Part I, *Keeping Up: Law As Social Technology*, is dedicated to defining the concept of "social" technology and exploring the ways in which law

meets the criteria of that concept. "Social technology is the practical implementation of rules and norms through human social systems... [which is] no less technology for being practical implementations of observations on human wetware and through human social networks than would be hard implementations through silicon chips, forged steel, or smokestack-sporting factories" (p 13).

If technologies are the product of human ability and are designed to attain human goals, claiming that "hard" tech is more legitimate than "soft" tech is a lie, as both are equally necessary for human flourishing. It's an interesting expansion of the argument that technological solutions are required to solve technological problems. Fairfield undermines the claim that big tech alone can solve or regulate the problems created by big tech when law, viewed as a different type of technology, can also provide effective solutions.

Part II, *Running on Words: Law As Cooperative Fiction*, goes deeper into how human language functions and how law uses language to communicate collective goals and values. The latter is achieved through analogies and narratives that link past to present. Fairfield discusses the means by which past legal precedents for "traditional" problems can be applied to current and future technological problems. One example of this is how hundred-year-old common carrier laws were successfully applied to net neutrality regulations in the United States.

Fairfield gets more philosophical about the purpose of law in this section, positing that law is about acknowledging the reality of domination and force in human relationships. Law uses language to generate a cooperative fiction that identifies imbalances of power in societies and attempts to level the playing field. It is here that Fairfield argues for the importance of a diversified legal landscape and against the current legal monoculture that perpetuates imbalances of power. While Fairfield acknowledges that diversifying the legal profession is a complex issue requiring its own book, the lack of discussion about how to achieve that diversity makes this part of the book feel a bit cursory.

In Part III, *Law and the Language We Need*, Fairfield discusses how "[l]aw is a form of language in which humans discern together, in community, how to build a bridge from what is to what should be" (p 250). Fairfield envisions future "... jurisgenerative communities—communities that build life-giving cooperative fictions" (p 252). These communities wouldn't exist solely to address problems raised by big tech but would be a feature of a more responsive system of law containing diverse perspectives that would develop, communicate, and achieve common legal goals.

In answer to the title question of *Runaway Technology: Can Law Keep Up?*, Fairfield's own view is that law can indeed keep up. Its failure to do so to date in the United States is due to a lack of political will, not to a fatal flaw inherent in the legal system as is. It's worth noting that since *Runaway Technology* was published, the current United States administration has appointed some notable critics of big tech to key positions responsible for technology policy, and we may well see a greater willingness to regulate industry in the coming months

and years. Even with these promising developments, the way we envision and use law can still be improved. This book will appeal to readers who want a deeper understanding of how language, and the language of law, can be cooperatively used to effect social and legal change.

REVIEWED BY

SALLY SAX

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***Five Words that Changed America: Miranda v. Arizona and the Right to Remain Silent.* By Amos N Guiora and Louisa M Heiny. Durham, NC: Carolina Academic Press, 2020. xiv, 281 p. Includes illustrations and maps. ISBN 978-1-946074-30-0 (paperback) \$26.95 USD.**

Miranda v Arizona, 384 U.S. 436 (1966) is one of the best-known United States Supreme Court cases of the twentieth century. The famous words “You have the right to remain silent”, featured in many American crime movies and television shows, originated from this case. From a legal perspective, these words were enshrined in American law in 1966 when the Supreme Court of the United States ruled in *Miranda v Arizona* that a defendant’s statements are inadmissible in court unless they have been warned that they have a right to remain silent, that anything they say can be used against them in a court of law, and that they have a right to the presence of an attorney during questioning.

At the time the case was decided, *Miranda v. Arizona* was highly controversial. Society was divided on how much protection to accord the rights of individual suspects versus how much latitude to give law enforcement to execute its role. Police officers could question suspects and extract confessions from them without explicitly warning them of their rights. Many people, including Chief Justice Earl Warren, believed these interrogation practices were coercive and infringed upon individuals’ constitutional rights. Conversely, many others, including several of the Supreme Court justices, believed that requiring police to warn suspects of their rights ahead of interrogation would unduly hamper the ability of law enforcement officials to interrogate suspects and prosecute crimes. Reflecting this divide, the court in *Miranda v Arizona* ruled in favour of giving the warning by a narrow 5-4 majority.

While many books and articles have been written about the legal issues raised by the case, *Five Words that Changed America* is unique because it describes in detail the people and events that surrounded it. The book is organized chronologically, starting with the crimes committed by Ernesto Miranda in Phoenix, Arizona in early 1963, and followed by

the subsequent police investigations and trial before the Superior Court of Arizona. Miranda’s imprisonment in an Arizona State Prison is also briefly discussed. However, most of the book is devoted to the appeal of Miranda’s case, and three other cases like it, to the Supreme Court of the United States in 1965-66.

Throughout the book, the reader is immersed in the stories of the many individuals who played pivotal roles in the case, including police detectives, lawyers, law clerks, and judges. Chief Justice Earl Warren’s endeavour to bring the issue of suspects’ rights to the Supreme Court was particularly interesting, as it highlighted the role that individual people play in shaping the law. The details of the people, their personalities, and personal stories are a strength of this book because they bring to life the history of the law.

Another strength of the book is that it is extremely well-researched. The authors have backed up every fact with a reference to a primary source such as a court transcript, a police report, or an interview. Their dedication to finding evidence for all claims made in the book is important because many of the details in previously published works about the case are contradictory. In addition, the book is filled with images of the letters, case briefs, handwritten notes of Supreme Court justices, and other documentary artifacts that the authors uncovered in their research. These artifacts lend weight to the factual claims made by the authors, as well as adding richness to the book.

The authors’ stated goal was to “produce a meticulously researched book that was interesting and accessible-not just to the legal reader, but to all readers” (*Introduction*). The authors admirably accomplished their goal. Even a reader with only a passing interest in the subject of criminal procedure could become inspired to learn more about the topic after reading this book. As such, I think it would be an excellent addition to any law library’s legal history collection. In addition, it could be of particular interest to aspiring students to pursue careers in law enforcement. Accordingly, I would recommend it to a college library with law enforcement and paralegal programs. Finally, it would make a fine addition to a public library where members of the public who are interested in legal topics would enjoy reading it.

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III Bibliographic Notes / Chronique bibliographique

By Nancy Feeney

Kevin Bennardo and Alexa Chew, “Citation Stickiness,” (19 April 2019) 20 *Journal of Appellate Practice & Process* 61 (2019), UNC Legal Studies Research Paper, online: SSRN <ssrn.com/abstract=3375050>.

Alexa Chew and Kevin Bennardo, both clinical associate professors of law at the University of North Carolina School of Law, conducted an extensive analysis of whether, when rendering opinions, jurists refer to the legal authorities cited by the parties in their respective briefs. They defined this as “stickiness:” A case citation in a brief that later appears in the court’s opinion is “sticky,” one that does not appear in a decision, is “unsticky.” Citations not referred to by either party that appear for the first time in the court’s opinion are considered “endogenous.”

Using 25 cases from each of the 13 U.S. Circuit Courts of Appeal of 2017, where briefs were available on Westlaw, Bennardo and Chew identified 7,552 unique case citations in the judicial opinions and 23,479 unique case citations in the filed briefs. Their paper sets out a variety of data gleaned from their analysis, including stickiness by case characteristics (civil or criminal), stickiness by judicial characteristics (age, length of time on the bench, law school attended, and, political ideology), stickiness by type of brief (opening, responsive, reply), and whether the submission ultimately prevailed or lost.

Most surprisingly, courts, not parties, accounted for more than half of the cases cited in the 325 judicial opinions included in the study: 51 per cent of the cases cited in opinions were endogenous. It is a long-standing presumption that the research conducted by the parties’ lawyers influences

the ultimate decision of the court. Lawyers present cases supporting their respective positions, with the belief that the court will discuss those same cases when rendering an opinion. Chew and Bennardo’s research shows that this does not appear to be happening with regularity. Instead, this study seems to indicate that jurists and/or their clerks are actively engaged in independent research and are relying on cases not mentioned by either party when crafting opinions. This raises an interesting question: since judges are prohibited from independently researching facts, should they be similarly restricted from researching law?

Bennardo and Chew offer some theories as to why endogenous case citations outnumber sticky ones, but do not definitively answer the question. Nevertheless, their research and the data they have generated reveal surprising information about judicial decision-making, and provide a strong foundation for future inquiries into the factors effecting legal persuasion.

Aaron Kirschenfeld and Alexa Chew, “Citation Stickiness, Computer-Assisted Legal Research, and the Universe of Thinkable Thoughts,” (19 April 2021), UNC Legal Studies Research Paper, online: SSRN <ssrn.com/abstract=3860978>.

Building on her research with Bennardo, Chew partnered with another colleague, Aaron Kirschenfeld, digital initiatives law librarian and clinical associate professor of law, to determine whether the digital era affected citation stickiness.

Looking at decisions rendered by the United States Court of Appeals for the Fourth Circuit in 1957, 1987 and 2017,

and the briefs filed in those respective cases, Chew and Kirschenfeld were able to compare the stickiness of citations before and after the advent of computer assisted legal research (CALR).

The 1957 collection included 309 unique case citations in the decisions, and 1,057 in the briefs. The 1987 collection included 236 unique case citations in the decisions, and 1,018 in the briefs. Finally, the 2017 collection included 436 unique case citations in the decisions, and 2,002 in the briefs. Kirschenfeld and Chew had hypothesized that there would be more citation stickiness in the 1957 pre-CALR sample, due to the more limited methods available to search and find case law. However, they found the opposite to be true: citation stickiness was lower in the earlier cases and higher in the 2017 opinions.

In the 2017 sample, 55 percent of citations in the opinions were cited in at least one party's brief, compared to 44 percent in the 1957 sample. The stickiness of the 1987 sample was 48 percent. Surprisingly, the court was more inclined to identify relevant case law authority endogenously when there were fewer, and more limited case finding tools.

Chew and Kirschenfeld posit a number of theories to explain their data, including the development and use of reliable "depth of treatment" tools, more uniform research and writing instruction in law schools, and improved search algorithms on case law databases. They believe the area continues to be ripe for further study.

Jerry Lawson, "Handling Questions: A Presenter's Guide," (27 August 2021), online: LLRX <llrx.com/2021/08/handling-questions-a-presenters-guide/>.

Effective presentation skills include the ability to handle audience questions. Lawson outlines a series of recommendations that will bolster the impact of any presentation. These include:

- anticipating likely questions
- repeating the question
- maintaining appropriate eye contact, when possible
- requesting elaboration if the initial question is unclear and
- reflecting before reacting

Lawson points out that not knowing an answer is perfectly acceptable. If possible, offer to look up the answer and follow up later. Alternatively, crowdsource; attempt to solicit answers from the audience. In instances where the audience has no questions, break the ice by asking your own questions, or offer to answer questions privately. At the end of a presentation, with or without questions, Lawson recommends finishing strong: reiterate a key point and thank the audience for their attention.

Tina Sieber, "40+ Cool Productivity Keyboard Tricks Few People Know About," (7 July 2021) online: MUO <www.makeuseof.com/tag/some-cool-keyboard-tricks-that-few-people-know-about/>.

Sieber provides a list of handy Windows, Office, Chrome, and Firefox keyboard shortcuts that purport to save time and increase productivity. Highlights for Windows include:

- Activating High Contrast – Shift + Alt + Print
- Undoing and Redoing – Ctrl + Z and Ctrl + Y
- Lock System – Windows + L

She offers a range of useful keyboard shortcuts for all of the Microsoft Office applications and provides guidance on how users can create their own.

Cool Canadian History, (online podcast): <coolcanadianhistory.com>.

Now in its seventh season, this bi-weekly podcast, created and narrated by David Borys, an historian and lecturer at UBC, provides interesting coverage of lesser-known events in history. The episode entitled, "The Mystery of Capreol's Mass Grave," illustrates the importance of micro histories, events that affect a small community or person, and put into relief the larger themes of macro history. The cemetery in Capreol, a small town in Northern Ontario, where two major rail lines converged, contains a monument, alleged to be the mass grave of victims of a terrible railway disaster in the town. Three separate train derailments occurred on June 26, 1930, a day of unprecedented, torrential rains. Borys expertly narrates the events leading up to the accidents, describes the mystery surrounding the monument, and places these local events into the context of Canadian history more generally. Other episodes are tied more closely to current events; these include a story about the Canadian Forces' mission in Afghanistan, and an episode devoted to residential schools. The podcast is available on Apple, Google, and Spotify.

Here's Something Good, (online podcast): <senecawomen.com/podcasts>.

As the COVID-19 pandemic and its repercussions continue to wreak havoc on all aspects of our lives, listening to this inspirational podcast is a simple way to refocus. Daily episodes are no longer than 10 minutes, and they offer heartwarming stories and helpful tips to motivate and inspire. The podcast is available on Apple and Spotify. Notable episodes include an interview with nine-year old Peyton, who, moved by the unhoused in her city, established *Eye of a Child*, a non-profit that sends money, toys, and personal hygiene products to homeless shelters around the Milwaukee, Wisconsin. Additionally, an episode on the physical and emotional benefits of laughing, and another on the power of offering compliments, will at the very least, put a smile on your face!

Obnoxious Librarian from Hades, (online podcast) <podcasts.apple.com/us/podcast/obnoxious-librarian-from-hades/id1560881086>.

A satirical, fictional account of the trials and tribulations of a librarian working at Hades, an aptly named global corporate organization. Creator and real-life information specialist, Dennie Heye, narrates each five-minute episode, which he originally published as blog posts. The stories, loosely based

on personal experience, are irreverent; Heye refers to library patrons as “l-users.” With a nod to Heye’s favourite sitcom, *Friends*, the title of each episode starts with “The one with...”. The episode about presentations is especially funny; he drolly lists as “must-dos” all the ways to fail spectacularly as an effective presenter. The podcast is available on Apple, Google, Stitcher, and Spotify.

CALL/ACBD Research Grant

The Committee to Promote Research and CALL/ACBD invite members to apply for the CALL/ACBD Research Grant. The application deadline is February 28, 2022.

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

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

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

Leslie Taylor (leslie.taylor@queensu.ca) & Christine Brown (christine.brown@ualberta.ca)

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

By Josée Viel

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

Halifax Area Law Libraries (HALL)

In the Spring, HALL hosted a virtual Show and Tell. Ilana Luther, Executive Director, NS Access to Justice and Law Reform Institute, presented on developing a legal information program for public libraries; Hannah Steeves, Librarian, Sir James Dunn Law Library at Dalhousie University, presented on Schulich Law Scholars, an open access legal repository; and Jacob Ericson, Legal Information Coordinator, Stewart McKelvey, presented on Collective Agreements in the Nova Scotia Open Data Portal. This session was well received and additional Show and Tells will be scheduled in the coming year.

Due to COVID-19 restrictions, we were not able to meet over the summer for our annual closing luncheon but will be taking the opportunity this month to gather and honour our recent retirees. Cyndi Murphy has retired as Knowledge Manager after nearly 40 years with Stewart McKelvey and its predecessor firms. Linda Keddy has retired as Librarian and Director of Research after 31 years at Pink Larkin, and 9 years at their predecessor firms. Both colleagues will be keenly missed by our community for their contributions to HALL, CALL, and law librarianship. After 17 months of closure and then restricted access, the Sir James Dunn Law Library has returned to regular hours and services and is now open to the public.

**SUBMITTED BY
DAVID MICHELS**

Public Services Librarian, Schulich School of Law

Ontario Courthouse Libraries Association (OCLA)

Hello from Ontario to our CALL-leagues across the country. As the time this update is being written, it's back to school for the province, and in many cases back to the courthouse library. Many of our member libraries are reopening (or have reopened) to in-person service after a province-wide shut-down closed facilities at many locations earlier in 2021. The eerily empty courthouses are still surreal, however, as compared to the hustle and bustle that used to greet us every day.

Within the OCLA executive, we were sad to bid farewell to our Vice President in early 2021 as she pursued a private law firm library opportunity but delighted to welcome Stacey Zip (Barrie) into that role, and Mary-Jo Petsche (Welland) into the newly vacant Member-at-Large position. Normally, the entire membership would be looking forward to gathering for a two-day conference and meeting in Toronto in the Fall. Sadly, this is not possible for this year, so we are currently planning our second virtual AGM. We will undoubtedly enjoy seeing each other over Zoom. Zoom has been a vital link for many of our libraries during the last year, with regular meetings occurring between libraries of similar sizes. Creating and maintaining this virtual connection has been very helpful during the pandemic, and we anticipate the practice will continue in the years to come.

**SUBMITTED BY
JENNIFER WALKER**
OCLA, Chair

Toronto Association of Law Libraries (TALL)

In July we welcomed a new executive at the Toronto Association of Law Libraries (TALL) as follows:

Catherine MacGregor, President; Danielle Chiang, Vice President; Laurene Kortner, Treasurer; Devin New, Membership Liaison; Kate Terech, Secretary; Julie Hetherington-Field, Past President.

TALL functioned entirely remotely this past year. We supported professional development with several well-attended online education sessions, continued our successful Coffee Roulette social program, solicited member questions and collected vendor answers through the Publisher Liaison Committee, and gathered requirements for a website refresh.

We're excited to be launching a new award, the TALL Excellence Award, with a formal announcement to TALL members this fall. We are planning for TALL's third conference, TALL eXchange 2022, at MaRS Discovery Centre in downtown Toronto, in September of next year. If

you would like to get involved, please email us at talladmin [at] gmail.com for available volunteer opportunities.

Please feel free to reach out to me, or any of the Executive Committee, with questions or feedback.

SUBMITTED BY
CATHERINE MACGREGOR
President, TALL

Legal Research and Writing (Special Interest Group)

The LRW-SIG is hosting casual coffee chats via Zoom to network with other instructors across Canada and to discuss the trials and tribulations of teaching legal research and writing. Please [join the LRW-SIG LISTSERV](#) if you are interested in attending.

SUBMITTED BY
HANNAH STEEVES
Co-Chair, LRW-SIG

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III News from Further Afield / Nouvelles de l'étranger

Notes from the U.K.: London Calling

By Jackie Fishleigh*

Hi folks!

I am now back in our office in Lincoln's Inn, which is in the heart of legal London, just on Mondays and Wednesdays, sharing a desk, PC, and telephone with a colleague who works alternate days. The only problem we have encountered so far is that we need different chairs, as we have opposite requirements regarding seating.

Definition of Domestic Abuse Widened

Earlier this year the landmark [Domestic Abuse Bill](#) received Royal Assent. This statute will provide further protections to the millions of people who experience domestic abuse and will also strengthen measures to tackle perpetrators. For the first time in legal history, there will be a wide-ranging definition of domestic abuse which incorporates a range of abuses beyond physical violence, including emotional, coercive or controlling behaviour, and economic abuse.

West Midlands Police Liable for Failing to Protect Domestic Abuse Victim

A recent case has dealt with the difficult topic of domestic violence and the role of the police in protecting victims.

Eight years after officers dismissed the murder of a Birmingham woman, Suzanne Van Hagan, as a drug overdose, the Chief Constable of West Midlands Police issued a public apology to the Van Hagan family who pursued legal action against the police force. According to [a recent article in the *New Law Journal*](#), her family claimed the

“police failed to take effective action despite receiving eight reports of domestic abuse prior to Van Hagan’s death.”

West Midlands police has now admitted liability and agreed to pay compensation to the family for police failings in the case.

Whereas historically the emergency services were relatively immune to prosecution, they are increasingly being held to account.

A Domestic Homicide Review, [as mentioned in the *New Law Journal*](#), concluded that Van Hagan’s death may have been prevented had “more positive and joined up intervention, understanding of the nature of domestic violence/coercive control...taken place.”

Greenwashing: Exaggerated Corporate Environmental Claims

This term was first coined by environmentalist Jay Westerveld in 1986. He used it to describe a hotel that claimed to reuse towels to help save the planet when, in reality, it was just trying to save money. The combination of limited public access to information at that time and seemingly unlimited advertising enabled companies to present themselves as caring environmental stewards, even as they were engaging in environmentally unsustainable practices, according to [Bruce Watson in the *Guardian*](#).

Since then, the problem has morphed into something more widespread and complex. On the 26th of August this year, *The Financial Times* reported that shares in German asset manager DWS fell by more than 13% following reports of the launch of an investigation by the U.S. Securities and Exchange Commission and Germany’s financial regulator

(BaFin) into claims that DWS misled clients about its sustainable investing efforts. The issue surfaced when its former group sustainability officer said [the company was exaggerating its green record to impress investors](#).

Although Europe has traditionally been a global leader in ESG (environmental, social and governance) investments, now, with regulatory intervention, and a media increasingly prepared to challenge inflated environmental claims, the cost of greenwashing may prove more expensive than the environmental initiatives themselves in the long run.

[The Lawyer commented on a recent financial markets report](#) on how to secure the U.K.'s role as a green financial hub. The [report](#) describes the findings of a survey of stakeholders that was designed to uncover what needs to be done by government and key stakeholders to grow green finance options in the U.K. and further encourage environmentally friendly financial decision-making.

Greener decision-making should play a part in office real estate. One of the effects of COVID-19 is organisations reassessing their property needs, be that consolidating office space, relocating, or even expansion. Many businesses in London have reduced their footprints since the pandemic.

UK hosts the 26th UN Climate Change Conference in November (31 October – 12 November)

The climate talks will bring together heads of state, climate experts, and campaigners to agree coordinated action to tackle climate change.

Let's hope this one can achieve more than the other 25 did!

During lockdown, I attended a very interesting webinar, featuring Chair of the Climate Change Committee, Lord Deben. He spoke passionately about the loss of biodiversity, the way we have polluted the atmosphere, the way in which we've reduced the fertility of our soil, and the greed with which we have used our resources. He pointed out that some poorer populations have already had to leave their homes because of climate change.

On a lighter note...

Teenage Tennis Titans do Battle!

Great Britain and Canada battled in the U.S. Open final on Saturday the 11th of September. Emma Raducanu and Leylah Fernandez are both brilliant tennis players. What a fantastic spotlight on women's sport and such enthralling viewing. Channel 4 did a deal with Amazon Prime so anyone with access to a telly could see it here. My tennis club was buzzing the next day!

Emma lives in Bromley, South London. I know that area very well. She went to a normal school that happens to be right next to a large tennis centre. This is unusual as many of the top players train abroad and some attend hardcore sports academies, losing touch with their old peer group.

She practiced with her father during lockdown by whacking a ball to him along a line of garages near their home. A passer-

by commented that if she "carried on like that she could end up at Wimbledon!"

With very best wishes,

Jackie

Letter from Australia **By Margaret Hutchison****

Well, hello from lockdown. I know you all cringe at this and it brings back bad memories.

New South Wales has been in lockdown for nine weeks. Victoria has been in and out of lockdown as well during this time and is, at the time of this writing, in its sixth lockdown. The Australian Capital Territory (ACT) has only had 5 weeks of lockdown (as I write) but as we are [surrounded by New South Wales](#) with their huge Delta outbreak, we're dependent on what happens there.

The consensus is that the lockdown was imposed partly to buy time to get enough people vaccinated in order to avoid overloading the health services when New South Wales lifts its restrictions. There's no way the ACT can be kept COVID-free, with 72 access roads into the territory, though some are fire trails with locked gates. Areas of New South Wales, which are home to people who commute into Canberra for work (and vice-versa), are covered under a standing exemption for essential work or health travel.

Otherwise, not much is happening. Federal Parliament is continuing to sit but with reduced numbers of members. Some are caught by interstate travel bans and others are locked down in their home electorates, while some quarantine in Canberra between sittings. Generally, relationships between the state premiers are fraught, both about travel restrictions and who's getting more of the urgently imported Pfizer vaccine than the others. Last Sunday was Father's Day here, and in the area known as the Twin Towns (Coolangatta and Tweed Heads) that spans the Queensland/New South Wales border, had families gathered at the orange plastic bollards marking the state border in the streets of Coolangatta for picnics, hugs, and catch ups. These gatherings have happened despite the NSW stay-at-home orders, and despite the Queensland Premier, Annastacia Palaszczuk, warning people of the dangers of this behaviour. Victorian Premier, Daniel Andrews, said that he did not sign up to a ["national plan to vaccinate Sydney"](#) after it emerged NSW was receiving more than its per capita share of COVID-19 vaccines under a GP supply deal that was not announced publicly. It all sounds very childish.

Court cases are continuing, although lower court cases are delayed until at least the end of September. Higher court cases are either conducted online or being delayed in the case of future criminal trials, however, current criminal trials will continue. The High Court is sitting virtually again, though this time the judges are in their individual chambers, but you can't tell that from their screen backgrounds.

Another major case of interest has been delayed for several months on account of COVID-19. Ben Roberts-Smith, a former Special Air Services (SAS) officer and a recipient of

the Victoria Cross, is suing *The Age*, the *Sydney Morning Herald* (both owned by Nine Entertainment), and the *Canberra Times* over a series of reports published in 2018 that he alleges are defamatory because they portray him as someone who “[broke the moral and legal rules of military engagement](#)” and committed war crimes, including murder, while on deployment in Afghanistan.

The 42-year-old has consistently denied the allegations. The newspapers are defending their reporting as true. The high-profile trial had been delayed for a year by the initial coronavirus pandemic outbreak, but the renewed outbreak in Sydney forced another delay for at least three months until the 1st of November.

It was suggested that the defamation trial be moved to another state, such as South Australia or Canberra, by Mr Robert-Smith’s barrister. The judge said the case’s national security sensitivities meant he was unwilling to move the trial to another city, or to allow other witnesses to give evidence by video link, given the time and expense in setting up the courtroom with secure facilities in another city, and the need for everyone involved to quarantine for two weeks beforehand in the new state.

The major barrier is bringing witnesses to Sydney to give their evidence in person. Most of these are serving or former SAS soldiers based in Perth, and they would face restrictions on returning to Western Australia should they come to Sydney.

There could still be more than 40 further witnesses called, and the trial is likely to run for months once hearings resume.

Before hearings ceased temporarily, the court heard evidence from three witnesses from the village of Darwan, in Afghanistan’s Uruzgan province, the site of an SAS raid in 2012 and where Roberts-Smith is alleged to have participated in the murder of a farmer, who was allegedly kicked off a cliff while handcuffed and then shot.

Roberts-Smith denies the allegation and says the man purported to be the farmer was an enemy “spotter” who was encountered carrying a radio in a cornfield and legally killed within the laws of war.

The witnesses, who were living in safe houses in Kabul, would go to a legal office to begin giving their testimony at 4.45am. As they are Pashtu speakers, they required an interpreter to answer the questions coming from half a world away, but without an interpreter in Australia with both the sufficient translating qualifications and security clearance to act as intermediary, their answers were bouncing, on secure lines, from Kabul to an interpreter in Ontario, Canada, to the courtroom in Sydney.

This case has all sorts of implications. A win for the media companies would be viewed as a victory for public interest journalism. But should the media companies lose, beyond already enormous legal costs and a potentially massive bill for aggravated damages, the ability to undertake courageous public interest investigations may be significantly diminished. Also, this is only a single judge Federal Court matter, there’s an appeal to the Federal Court Full Bench and then probably a High Court appeal after that.

For Mr Roberts-Smith, the consequences are very personal.

If he wins, he could claim vindication of his consistent denials of the allegations against him with a restoration of his former reputation.

If he loses, his reputation will be destroyed. While it is not a criminal conviction, though that is still possible as there is an ongoing Australian Federal Police investigation into the allegations, many in Australia will see him as a war criminal.

Mr Roberts-Smith’s defence is being paid for with a loan from media baron Kerry Stokes, chairman of the Seven West Media TV and newspaper network, one of Nine Entertainment’s key competitors. From Western Australia, Mr Stokes is an ardent military buff and has close links to the Perth-based SAS. Mr Roberts-Smith, having left the military, works for Stokes as the managing director of SevenWest’s Queensland operations.

In return for the loan, Mr Roberts-Smith has put up his medals as collateral, including a medal for gallantry and a commendation for distinguished service, as well as his Victoria Cross.

If Roberts-Smith cannot repay the loan, Stokes has said the medals will be donated to the Australian War Memorial in Canberra, of which he is chairman.

Depending on the outcome of the case, this could present the War Memorial with major moral issues. If Roberts-Smith loses, the War Memorial would have to consider whether it could continue to honour a soldier a judge has believed killed unarmed, bound non-combatants. It might also be forced to confront a decision over whether to display his medals, essentially “bought” for the memorial by its own chairman, rather than being donated willingly by the recipient.

This case will continue well into next year and probably the year after if appealed all the way up to the High Court and the costs to all parties, both financial and reputational, will continue to rise.

On a completely different topic, the merger of the Family and Federal Circuit Courts came into being on the 1st of September. On February 18th, 2021, the [Federal Circuit and Family Court of Australia Act 2021 and the Federal Circuit and Family Court of Australia \(Consequential Amendments and Transitional Arrangements\) Act 2021](#) passed through Parliament.

Under the legislation, the Family Court of Australia and the Federal Circuit Court of Australia was brought together into a unified administrative structure to be called the Federal Circuit and Family Court of Australia (FCFC).

There will be one court, but there will be two divisions of that court. The Family Court of Australia will become the Federal Circuit Court and Family Court of Australia (Division 1). The Federal Circuit Court of Australia will become the Federal Circuit Court and Family Court of Australia (Division 2).

All family law matters will commence in Division 2, while all appeals will commence in Division 1. Division 2 will also continue to exercise the general federal law jurisdiction of the existing Federal Circuit Court including matters such as immigration, trade practices, admiralty, fair employment law, human rights, and privacy matters.

Applications will be “assessed and triaged” when they are first filed in Division 2. This is drawn from existing practices that currently exist around child abuse, family violence, and parenting risk matters. After a first appearance before a registrar, the aim is for parties to proceed to mediation within five months—and to trial soon after if that process fails and resolved within 12 months. Previously, cases could linger in the system for several years.

There will be one consistent set of forms across both divisions and new rules introduced. One new feature is a [video](#), which will be required to be watched by both parties on first filing a matter.

As well as new court rules and forms, a new media neutral citation has been devised, which apparently went through considerable permutations.

This merger, which was first announced in 2018, has been strongly opposed by prominent lawyers including 11 retired judges of the Family Court and Federal Circuit Court, in addition to former chief justices the Honourable Elizabeth Evatt AC and the Honourable Alastair Nicholson AO RFD QC.

In an [open letter published in November 2019](#), the group of judges underscored that the merger would “result in a loss of structural, systemic specialisation and dismantle the appeal division.”

The merger also attracted concerns from the Law Council of Australia (LCA), Community Legal Centres Australia, Women’s Legal Services Australia and National Aboriginal and Torres Strait Islander Legal Services, who said that combining the courts would spark “devastating impacts” on families. But all are agreed that more support needs to be given to this court for it to function successfully.

To finish, some photos. One is of gangs-gangs in my garden, since I haven’t been anywhere else lately and the other is of the [Skywhale](#) family, taken at dawn in early May.



(source: https://commons.wikimedia.org/wiki/File:The_Skywhale_and_Skywhalepapa_February_2021.jpg)

Until next time, best wishes,

Margaret Hutchison

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

By Sarah Reis***

Greetings! Our 2021-22 academic year is now underway, and we have returned to a mostly in-person experience this year. I am grateful that my law school has required all faculty, students, and staff to be vaccinated, but it is unfortunate that the same cannot be said for all universities and law schools around the country.

I have enjoyed being able to have spontaneous chats with colleagues and students again. I also really love how our international LLM student population has returned to normal levels now that they can obtain visas again. It has been a bit of an adjustment learning how to teach while wearing a mask, but it has been less challenging than expected. All in all, things have been going relatively smoothly at the law school despite the rise in COVID-19 cases throughout the country due to the Delta variant.

ABA and Law Schools

The ABA granted approval for the first time to an online-only J.D. program, [St. Mary’s University School of Law](#), which is set to launch a five-year pilot program in Fall 2022. While some law schools offer hybrid J.D. programs, no fully online J.D. program has been accredited by the ABA before.

The ABA House of Delegates met to [vote on various resolutions](#) in their annual meeting in August. Some of the adopted resolutions affect law schools, such as [Resolution 300](#) that urges law schools to offer courses on the law of the U.S. territories and [Resolution 513](#) that urges law schools to prioritize environmental justice.

The council of the ABA’s Section of Legal Education and Admissions to the Bar [approved](#) changes to a standard report, which will require law schools to disclose information about how many students receive loans. The data must also be categorized by race, ethnicity, and gender.

Law Firms and Employment

Many large law firms [announced](#) plans to ask attorneys to return to their office during the fall in some sort of hybrid work model. However, in late summer, Delta variant cases began to surge throughout the country, prompting many of these same firms to [postpone](#) return dates.

The Biden administration issued an [executive order](#) in September requiring that all federal employees and contractors get vaccinated against COVID-19. Biden also directed the Occupational Safety and Health Administration (OSHA) to write a rule geared toward private businesses with 100 or more employees to require employees to be vaccinated or otherwise undergo weekly testing.

Bar Exam

Some jurisdictions began releasing [results from the July 2021 bar exam](#) in September, but applicants in many states, including California and New York, which have the highest number of bar applicants, will need to wait until later in the fall to receive their results.

The National Conference of Bar Examiners [announced](#) that MBE scores slightly decreased from the last time a “normal” bar exam was administered in July 2019. The national MBE mean scaled score for the July 2020 exam was 140.4, which was down 0.7 points compared to July 2019’s mean score of 141.1.

In 2020, certain states temporarily granted an emergency diploma privilege due to the uncertainties surrounding the July 2020 bar exam. Oregon was one of those jurisdictions, but it was just a one-time exception, as the state offered the remote Uniform bar exam in February 2021. However, over the summer, the Oregon Supreme Court held a hearing to consider [proposals](#) by the Oregon State Bar Board of Bar Examiners to add an experiential pathway and a supervised practice pathway as two alternative licensure options beyond the traditional bar exam.

ALA

ALA’s Committee on Diversity released a [Diversity, Equity, and Inclusion \(DEI\) Scorecard for Library and Information Organizations](#). This [scorecard](#) is intended to assess levels of performance of institutions on five DEI measures, including: (1) embeddedness of DEI into the culture and climate of the organization; (2) training and education; (3) recruitment, hiring, retention, and promotion; (4) budget priorities for DEI; and (5) data practices.

SCOTUS

The Supreme Court began hearing cases for the [new term](#) on October 4, 2021 and resumed oral arguments in person for the first time since March 2020. All cases heard during the 2020-21 term were done via teleconference.

Among the flurry of opinions released at the end of June to wrap up October Term (OT) 2020 decisions, the Supreme Court [unanimously upheld](#) a lower court’s decision that the NCAA violated antitrust rules with their restrictions on education benefits for players. This ruling will allow colleges and universities to provide athletes with additional

compensation and benefits that are connected to their education, such as cash awards for maintaining a certain GPA, graduate school scholarships, or study abroad opportunities.

In [Brnovich v. Democratic National Committee](#), another decision closing out OT 2020, the Supreme Court upheld measures that imposed restrictions on voting rights in Arizona and ruled that these measures did not violate the Voting Rights Act. This case was closely watched because Arizona is a battleground state in presidential elections: the state voted Republican from 1952-2016 with the exception of Bill Clinton’s win in 1996 but voted Democrat in 2020 by a very narrow margin. One voting rule at issue was an “out-of-precinct policy” that disqualified ballots cast in the wrong precinct on Election Day, while the other measure forbade collection and delivery of ballots to the polls by most people other than family members. The 9th Circuit had ruled that the out-of-precinct policy had a discriminatory impact on minorities and that racial bias influenced the enactment of the ballot collection law. But the Supreme Court voted along party lines and upheld both the out-of-precinct policy and ballot collection measure, which is a blow to voting rights.

The Supreme Court [voted 5-4](#) to deny an emergency request submitted by abortion providers to block a [Texas law](#) that bans abortions after six weeks. This law allows Texans to sue anyone who performs or induces an abortion and “aids or abets the performance or inducement of an abortion[.]” Because the Supreme Court did not block enforcement of the Texas law, the precedent set by *Roe v. Wade* is at risk. The future of abortion rights in this country is at stake this term: the Supreme Court plans to hear arguments on December 1 in [Dobbs v. Jackson Women’s Health Organization](#), a Mississippi abortion case that threatens to overturn the abortion protections established by *Roe v. Wade*. The Mississippi law at issue in this case bans most abortions after 15 weeks.

[Col. Gail Curley](#) assumed her duties as the new Marshal of the Supreme Court on June 21. The Marshal of the Supreme Court makes the “Oyez, oyez, oyez!” announcement to open each session when the justices take the bench, but also has many other duties outside of the courtroom. Col. Curley became the second female marshal, as she succeeded Pamela Talkin in the role, who was the first woman to serve as marshal.

Trials and Lawsuits

The first trial in the [“Varsity Blues” college admissions scandal](#) commenced in September in the U.S. District Court for the District of Massachusetts. Many wealthy, high-profile parents are defendants in this case involving an extensive criminal scheme to fraudulently secure college admissions for their children.

Also in September, both [Amazon](#) and the [Big Five publishers](#) submitted motions to dismiss a [class action lawsuit](#) filed against them by independent booksellers who accuse Amazon and the publishers of price fixing in violation of antitrust law. This proceeding is pending in the U.S. District Court for the Southern District of New York.

U.S. Legal Research

The Transactional Records Access Clearinghouse, an organization at Syracuse University, updated its [interactive map tool](#) to illustrate how many pending deportation cases are in each state and rates of attorney representation. The sources of data for this tool are case records obtained through Freedom of Information Act requests to the Executive Office for Immigration Review.

Congressional Research Service Reports are nonpartisan, objective reports that offer detailed policy and legal analysis to committees and Members of Congress. CRS reports are wonderful free secondary sources covering a wide range of national policy issues. Examples to illustrate the range of topics covered include [International Law and Agreements: Their Effects upon U.S. Law](#), [Indian Water Rights Settlements](#), and [The Individuals with Disabilities Education Act: A Comparison of State Eligibility Criteria](#). In September 2018, the Library of Congress began collecting and releasing CRS reports to the public at [crsreports.congress.gov](#). Prior to that, libraries and other organizations archived and provided access to reports, but it never quite made sense why the federal government didn't have its own website to collect and archive them. The U.S. Government Publishing Office (GPO) [announced](#) that, as of July 31, it has cataloged and posted 7,466 CRS reports to the [Congressional Research Services Reports collection on the GitHub repository](#).

The GPO also [announced](#) that they have made Statute Compilations available in USLM XML format. This modern format will make the documents easier to use, read, and download. Statute Compilations are compilations of public laws that either do not appear in the United States Code or that have been classified to a title of the United States Code that has not been enacted into positive law. The Statute Compilations are available on [govinfo.gov](#), which is the best resource to find authenticated documents from the federal government, such as the United States Code and Code of Federal Regulations. By the time you read this, the U.S. Congressional Serial Set, which contains House and Senate documents and reports, should be available on govinfo.gov as well.

State libraries engage in digitization projects that improve access to historical legal materials from that state. For example, the Massachusetts State Library has a [digital repository](#) providing access to session laws and legislative history documents, while the Connecticut State Library has a [database](#) containing compiled legislative histories for public acts. The Tennessee State Library and Archives has now made the full records for many Tennessee Supreme Court cases searchable through an [online database](#). The case files were previously stored in over 10,000 boxes in the attic of the Capitol building, but the records have been indexed in the database. However, obtaining copies is fee-based, both for the option to receive paper files by mail as well as for the option to receive PDF images via email. I am hoping that the State Library and Archives will eventually make the digitized records freely available online for all because fees impose barriers to access.

Miscellaneous News

Juneteenth, which commemorates the end of slavery on June 19, 1865 in the United States, became an official federal holiday after the [Juneteenth National Independence Day Act](#) was enacted into law on June 17. Several states followed suit and passed laws to make Juneteenth an official state holiday, including the state where I live ([Illinois](#)).

In August, the Librarian of Congress [announced](#) new executive appointments to fill leadership roles at the Library of Congress, including the appointment of Aslihan Bulut as the Law Librarian of Congress.

Many law librarians, particularly those working at court or government libraries or not-for-profit institutions such as academic libraries, participate in the Public Service Loan Forgiveness program because they had to take out substantial loans for law school and library school. Back in March 2020, the Department of Education paused student loan repayments and collections in addition to temporarily reducing and freezing the interest rate for federal student loans at 0%. Significantly, each month during this pause has counted toward the 120 months (ten years) needed to obtain loan forgiveness under the PSLF program, so borrowers still progressed toward forgiveness. The pause on payments has been extended a few times since initially going into effect. In early August, the Department of Education [announced](#) one final extension through January 31, 2022.

Some states permit [political recalls](#), where citizens can remove elected officials from office before the end of their term. The recall process varies from state to state for those that allow them, but the processes are outlined in the [states' constitutions](#). California had the country's attention on September 14 when Californians voted in a [gubernatorial recall election](#) on whether they wanted to recall Governor Newsom (Democrat), and if recalled, who should replace him. California has voted for the presidential candidate from the Democratic party in each election since the 1992 general election and has voted for a governor from the Democratic party for the past three elections. Nevertheless, this recall election was a test for whether California is still solidly a "blue" state. Ultimately, the recall attempt failed, with [62.9%](#) of Californians voting no to removing Governor Newsom from office (there were 37.1% yes votes).

The U.S. Census Bureau has started to release [2020 Census](#) results. These statistics influence how congressional, legislative, and local district boundaries are drawn as well as apportionment of Congressional seats, so these results will affect future elections in our country. Fingers crossed that we manage to get through the rest of this fall semester without incident. So far, so good.

Until next time!

Sarah



III Index of Volume 46 / Index du volume 46

Compiled by/Compilé par Janet Macdonald

Articles are indexed in the language of origin. *Library of Congress Subject Headings* has been used for subject analysis. *See also* references have been made between the French and the English terms if an article is in both languages and *See* references have been made from a French/English entry to an English/French entry where needed. Titles of articles and columns are indicated in bold, titles of books and other publications are indicated in *italics*. Reviews are listed by the author and the title of the work under the heading **Reviews/Recensions**, as well as by the name of the reviewer.

Les articles sont indexés selon la langue d'origine. Les vedettes matières sont tirées du *Library of Congress Subject Headings*. Les mentions « voir aussi » sont établies entre les vedettes françaises et anglaises si l'article a été publié dans les deux langues et les mentions « voir » sont établies, le cas échéant, entre une vedette française et une vedette anglaise ou vice versa. Les titres des articles et des rubriques sont en caractères gras, les titres des livres et autres publications sont en *italique*. Les recensions sont indexées selon le nom du lecteur critique, ainsi que selon le nom de l'auteur et le titre de l'ouvrage sous la rubrique **Reviews/Recensions**.

A

Aadoson, Peter

An Introduction to the Canadian Law of Restitution and Unjust Enrichment. By John D. McCamus. Toronto : Thomson Reuters, 2020 (Review), 46(1):29

Accessing Justice Through Information: The Public Library, 46(1):11

Advanced Technologies and Algorithmic Literacy: Exploring Insights from the Legal Information Profession, 46(4):10

Alexandru, Stef

Managing Privacy in a Connected World. By Éloïse Gratton and Elisa Hendry. Toronto : LexisNexis Canada, 2020 (Review), 46(2):28

Anti-Black Racism Legal Resource Guide, 46(3):16

Artificial intelligence, 46(2):17

-- Library applications, 46(4):10

Artificial Intelligence and Access to Justice: A New Frontier for Law Librarians, 46(2):17

Association des bibliothèques de droit de Montréal, 46(1):26, 46(3):33

B

Barker, Susan

From the editor/De la rédactrice, 46(3):6, 46(4):6

Benton, Emily

Feminist Judgments: Rewritten Tort Opinions. Edited by Martha Chamallas and Lucinda M. Finley. Cambridge : Cambridge University Press, 2020 (Review), 46(3):23

Bibliographic notes/Chronique bibliographique, 46(1):24, 46(2):34, 46(3):29, 46(4):37

Bruton, Elizabeth

Reviews/Recensions, 46(1):17, 46(2):24, 46(3):22, 46(4):29

C

Calgary Law Library Group, 46(1):26

Chronique bibliographique

voir **Bibliographic notes/Chronique bibliographique**

Civil Rights--Bibliography, 46(3):16

Clarke, Kim

Fixing Law Schools: From Collapse to the Trump Bump and Beyond. By Benjamin H. Barton. New York : New York University Press, 2019 (Review), 46(2):27

Reviews/Recensions, 46(1):17

CLLG

see Calgary Law Library Group

COVID-19 (Disease), 46(3):10

COVID-19 in Latin America and the Caribbean: Experts Examining Legal Responses, 46(3):10

COVID-19 Pandemic, 2020- , 46(3):10

D

Da Silva, Emily

Statutory Interpretation: Pragmatics and Argumentation. By Douglas Walton, Fabrizio Macagno, and Giovanni Sartor. New York, NY: Cambridge University Press, 2021 (Review), 43(3):26

Daniels, Katarina

Artificial Intelligence and the Law in Canada. Edited by Florian Martin-Bariteau and Teresa Scassa. Toronto : LexisNexis Canada Inc., 2021 (Review), 46(4):30

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Davidson, Charles R.

Debates in Charity Law. Edited by John Picton and Jennifer Sigafos. Oxford : Hart, 2020 (Review), 46(1):18

De la rédactrice

voir **From the editor/De la rédactrice**

De Rijcke, Izaak

Inalienable Properties: The Political Economy of Indigenous Land Reform. By Jamie Baxter. Vancouver : UBC Press, 2020 (Review), 46(1):20

E

Edmonton Law Libraries Association, 46(3):32

Eguaras, Gillian

Law and Reputation: How the Legal System Shapes Behavior by Producing Information. By Roy Shapira. Cambridge : Cambridge University Press, 2020 (Review), 46(2):28

The Law Multiple: Judgment and Knowledge in Practice. By Irene Van Oorschot. New York : Cambridge University Press, 2021 (Review), 46(4):30

ELLA

see Edmonton Law Libraries Association

F

Feeney, Nancy

Bibliographic notes/Chronique bibliographique, 46(1):24, 46(2):34, 46(3):29, 46(4):37

Fishleigh, Jackie

Notes from the U.K: London calling, 46(1):28, 46(2):38, 46(3):34, 46(4):42

Fox, Alexi

The Law Librarian's Role in Reconciliation, 46(2):11

Friesen, Erica

Artificial Intelligence and the Legal Profession. By Michael Legg and Felicity Bell. Oxford: Hart Publishing, 2020 (Review), 46(2):26

Confronting the Death Penalty: How Language Influences Jurors in Capital Cases. By Robin Conley Riner. New York : Oxford University Press, 2015 (Review), 46(4):31

From the editor/De la rédactrice, 46(1):6, 46(2):6, 46(3):6, 46(4):6

G

Garingan, Dominique

Advanced Technologies and Algorithmic Literacy: Exploring Insights from the Legal Information Profession, 46(4):10

A Great Revolutionary Wave: Women and the Vote in British Columbia. By Lara Campbell. Vancouver : UBC Press, 2020 (Review), 46(2):25

Reviews/Recensions, 46(1):17, 46(1):24, 46(3):22, 46(4):29

Geddes, Sandra

The Role of Monarchy in Modern Democracy: European Monarchies Compared. Edited by Robert Hazell and Bob Morris. Oxford, New York : Hart, 2020 (Review), 46(3):27

H

Halifax Area Law Libraries, 46(4):40

HALL

see Halifax Area Law Libraries

Hemmings, Mary

Wounded Feelings: Litigating Emotions in Quebec, 1870–1950. By Eric H. Reiter. Toronto : University of Toronto Press, 2019 (Review), 46(2):33

Hooper, Jonathan

Torts and Other Wrongs. By John Gardner. Oxford: Oxford University Press, 2019 (Review), 46(2):32

Hutchinson, Margaret

Letter from Australia, 46(1):29, 46(2):39, 46(3):35, 46(4):43

I

Ivings, Krisandra

The Justice Crisis: The Cost and Value of Accessing Law. Edited by Trevor C.W. Farrow and Lesley A. Jacobs. Vancouver : UBC Press, 2020 (Review), 46(4):32

J

Jeske, Margo

Abortion and the Law in America: Roe v Wade to the Present. By Mary Ziegler. New York : Cambridge University Press, 2020 (Review), 46(2):24

K

Knight, F. Tim

Is Law Computable?: Critical Perspectives on Law and Artificial Intelligence. Edited by Simon Deakin and Christopher Markou. Oxford; New York : Hart Publishing, 2020 (Review), 46(4):32

L

Lavigne, Julie A.

Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice. By Lucas Lixinski. Cambridge, UK : Cambridge University Press, 2021 (Review), 46(4):33

The Law Librarian's Role in Reconciliation, 46(2):11

Lazear, Alisa

How to Do Things with Legal Doctrine. By Pierre Schlag and Amy J Griffin. Chicago, IL : The University of Chicago Press, 2020 (Review), 46(4):34

The Legal Responsibilities of Healthcare Facilities in Canada. By Nicholas Léger-Riopel. Toronto : LexisNexis Canada, 2020 (Review), 46(1):22

Legal aid, 46(1):11

Legal assistance to the poor, 46(1):11

Legal Research and Writing (Special Interest Group), 46(4):41

Letter from Australia, 46(1):29, 46(2):39, 46(3):35, 46(4):43

Leung, Vicki

25 Rules for Success... and 10 Tips to Help You Enjoy the Practice of Law. By Jacqueline L King. Toronto : Thomson Reuters, 2020 (Review), 46(3):22

Lewis, Goldwynn

An Introduction to the Canadian Law of Restitution and Unjust Enrichment. By John D. McCamus. Toronto : Thomson Reuters, 2020 (Review), 46(1):17

Local and regional update/Mise à jour locale et régionale, 46(1):26, 46(2):37, 46(3):32, 46(4):40

Local law library associations

see **Local and Regional Update/Mise à jour locale et régionale**

M

MALL

see Association des bibliothèques de droit de Montréal

McCaffrey, Michael

Legal Research: Step by Step. By Arlene Blatt and JoAnn Kurtz. 5th ed. Toronto : Emond Montgomery, 2020 (Review), 46(1):20

McKenna, Paul F

Terrorism and Counterterrorism in Canada. Edited by Jez Littlewood, Lorne L. Dawson and Sara K. Thompson. Toronto : University of Toronto Press, 2020 (Review), 46(2):30

Melvie, Ann Marie

By the Court: Anonymous Judgments at the Supreme Court of Canada. By Peter McCormick and Marc D Zaroni. Vancouver : UBC Press, 2019 (Review), 46(3):23

Mireau, Shaunna

President's Message/Le mot de la présidente, 46(1):8, 46(2):8

Mise à jour locale et régionale

see **Local and regional update/Mise à jour locale et régionale**

Le mot de la présidente

voir **President's message/Le mot de la présidente**

N

Nayer, Kim

President's Message/Le mot de la présidente, 46(3):8, 46(4):8

News from further afield, 46(1):28, 46(2):38, 46(3):34, 46(4):42

Nickerson, Emily

The Canadian Law of Obligations: Access to Justice. Edited by Hilary Young. Toronto : LexisNexis Canada, 2020 (Review), 46(3):31

Notes from the U.K: London calling, 46(1):28, 46(2):38, 46(3):34, 46(4):42

O

O'Connor, Lori

Law and Neurodiversity: Youth with Autism and the Juvenile Justice Systems in Canada and the United States. By Dana Lee Baker, Laurie A Drapela, and Whitney Littlefield. Vancouver : UBC Press, 2020 (Review), 46(3):25

OCLA

see **Ontario Courthouse Librarians' Association**

Ontario Courthouse Librarians' Association , 46(1):26, 46(4):40

P

President's Message/Le mot de la présidente, 46(1):8, 46(2):8, 46(3):8, 46(3):8

Public libraries, 46(1):11

Pugh, Kyle

Accessing Justice Through Information: The Public Library, 46(1):11

Q

R

Race discrimination--Bibliography, 46(3):16

Recensions

voir **Reviews/Recensions**

Reis, Sarah

The U.S. legal landscape: news from across the border, 46(1):31, 46(2):40, 46(3):37, 46(4):45

Renaud, Gilles

Murder in Montague: Frontier Justice and Retribution in Texas. By Glen Sample Ely. Norman, OK: University of Oklahoma Press, 2020 (Review), 46(2):29

Reviews/Recensions, 46(1):17, 46(2):24, 46(3):22, 46(4):29

25 Rules for Success... and 10 Tips to Help You Enjoy the Practice of Law. By Jacqueline L King. Toronto : Thomson Reuters, 2020, 46(3):22

Abbott, Ryan. *The Reasonable Robot: Artificial Intelligence and the Law.* By Ryan Abbott. Cambridge : Cambridge University Press, 2020, 46(1):23

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Baker, Dana Lee. *Law and Neurodiversity: Youth with Autism and the Juvenile Justice Systems in Canada*

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- Bakht, Natasha. *In Your Face: Law, Justice, and Niqab-Wearing Women in Canada*. By Natasha Bakht. Toronto : Irwin Law, 2020, 46(3):24
- Barton, Benjamin H. *Fixing Law Schools: From Collapse to the Trump Bump and Beyond*. By Benjamin H. Barton. New York : New York University Press, 2019, 46(2):27
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- Brauti, Peter M. *Prosecuting and Defending Drug Offences*, 2nd ed. By Peter M. Brauti and Brian G. Puddington. Toronto : Thomson Reuters, 2020, 46(3):26
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- Chamallas, Martha. *Feminist Judgments: Rewritten Tort Opinions*. Edited by Martha Chamallas and Lucinda M. Finley. Cambridge : Cambridge University Press, 2020, 46(3):23
- Confronting the Death Penalty: How Language Influences Jurors in Capital Cases*. By Robin Conley Riner. New York : Oxford University Press, 2015, 46(4):31
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- Ely, Gen Sample. *Murder in Montague: Frontier Justice and Retribution in Texas*. By Glen Sample Ely. Norman, OK : University of Oklahoma Press, 2020, 46(2):29
- Fairfield, Joshua A.T. *Runaway Technology: Can Law Keep Up?* By Joshua A.T. Fairfield. New York : Cambridge University Press, 2021, 46(4):35
- Farrow, Trevor C.W. *The Justice Crisis: The Cost and Value of Accessing Law*. Edited by Trevor C.W. Farrow and Lesley A. Jacobs. Vancouver : UBC Press, 2020, 46(4):32
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- Finley, Lucinda M. *Feminist Judgments: Rewritten Tort Opinions*. Edited by Martha Chamallas and Lucinda M. Finley. Cambridge : Cambridge University Press, 2020, 46(3):23
- Five Words that Changed America: Miranda v. Arizona and the Right to Remain Silent*. By Amos N. Guiora and Louisa M. Heiny. Durham, NC : Carolina Academic Press, 2020, 46(4):36
- Fixing Law Schools: From Collapse to the Trump Bump and Beyond*. By Benjamin H. Barton. New York : New York University Press, 2019, 46(2):27
- Gardner, John. *Torts and Other Wrongs*. By John Gardner. Oxford : Oxford University Press, 2019, 46(2):32
- Gratton, Éloïse. *Managing Privacy in a Connected World*. By Éloïse Gratton and Elisa Hendry. Toronto : LexisNexis Canada, 2020, 46(2):28
- A Great Revolutionary Wave: Women and the Vote in British Columbia*. By Lara Campbell. Vancouver : UBC Press, 2020, 46(2):25
- Griffin, Amy J. *How to Do Things with Legal Doctrine*. By Pierre Schlag and Amy J Griffin. Chicago, IL : The University of Chicago Press, 2020, 46(4):34
- Guiora, Amos N. *Five Words that Changed America: Miranda v. Arizona and the Right to Remain Silent*. By Amos N. Guiora and Louisa M. Heiny. Durham, NC : Carolina Academic Press, 2020, 46(4):36
- Hazell, Robert. *The Role of Monarchy in Modern Democracy: European Monarchies Compared*. Edited by Robert Hazell and Bob Morris. Oxford, New York : Hart, 2020, 46(3):27
- Heiny, Louisa M. *Five Words that Changed America: Miranda v. Arizona and the Right to Remain Silent*. By

- Amos N. Guiora and Louisa M. Heiny. Durham, NC : Carolina Academic Press, 2020, 46(4):36
- Hendry, Elisa. *Managing Privacy in a Connected World*. By Éloïse Gratton and Elisa Hendry. Toronto : LexisNexis Canada, 2020, 46(2):28
- How to Do Things with Legal Doctrine*. By Pierre Schlag and Amy J Griffin. Chicago, IL : The University of Chicago Press, 2020, 46(4):34
- In the Shadow of International Law: Secrecy and Regime Change in the Postwar World*. By Michael Poznansky. New York : Oxford University Press, 2020, 46(1):19
- In Your Face: Law, Justice, and Niqab-Wearing Women in Canada*. By Natasha Bakht. Toronto : Irwin Law, 2020, 46(3):24
- Inalienable Properties: The Political Economy of Indigenous Land Reform*. By Jamie Baxter. Vancouver : UBC Press, 2020, 46(1):20
- An Introduction to the Canadian Law of Restitution and Unjust Enrichment*. By John D. McCamus. Toronto : Thomson Reuters, 2020, 46(1):17
- Is Law Computable?: Critical Perspectives on Law and Artificial Intelligence*. Edited by Simon Deakin and Christopher Markou. Oxford; New York : Hart Publishing, 2020, 46(4):32
- Jacobs, Lesley A. *The Justice Crisis: The Cost and Value of Accessing Law*. Edited by Trevor C.W. Farrow and Lesley A. Jacobs. Vancouver : UBC Press, 2020, 46(4):32
- The Justice Crisis: The Cost and Value of Accessing Law*. Edited by Trevor C.W. Farrow and Lesley A. Jacobs. Vancouver : UBC Press, 2020, 46(4):32
- King, Jacqueline L. *25 Rules for Success... and 10 Tips to Help You Enjoy the Practice of Law*. By Jacqueline L King. Toronto : Thomson Reuters, 2020, 46(3):22
- Kurtz, JoAnn. *Legal Research: Step by Step*. By Arlene Blatt and JoAnn Kurtz. 5th ed. Toronto : Emond Montgomery, 2020, 46(1):20
- Land, Molly K. *New Technologies for Human Rights Law and Practice*. Edited by Molly K. Land and Jay D. Aronson. Cambridge : Cambridge University Press, 2018, 46(1):21
- Law and Neurodiversity: Youth with Autism and the Juvenile Justice Systems in Canada and the United States*. By Dana Lee Baker, Laurie A Drapela, and Whitney Littlefield. Vancouver : UBC Press, 2020, 46(3):25
- Law and Reputation: How the Legal System Shapes Behavior by Producing Information*. By Roy Shapira. Cambridge : Cambridge University Press, 2020, 46(2):28
- The Law Multiple: Judgment and Knowledge in Practice*. By Irene Van Oorschot. New York : Cambridge University Press, 2021, 46(4):30
- Legal Research: Step by Step*. By Arlene Blatt and JoAnn Kurtz. 5th ed. Toronto : Emond Montgomery, 2020, 46(1):20
- The Legal Responsibilities of Healthcare Facilities in Canada*. By Nicholas Léger-Riopel. Toronto : LexisNexis Canada, 2020, 46(1):22
- Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*. By Lucas Lixinski. Cambridge, UK : Cambridge University Press, 2021, 46(4):33
- Legg, Michael. *Artificial Intelligence and the Legal Profession*. By Michael Legg and Felicity Bell. Oxford : Hart Publishing, 2020, 46(2):26
- Léger-Riopel. *The Legal Responsibilities of Healthcare Facilities in Canada*. By Nicholas Léger-Riopel. Toronto : LexisNexis Canada, 2020, 46(1):22
- Littlefield, Whitney. *Law and Neurodiversity: Youth with Autism and the Juvenile Justice Systems in Canada and the United States*. By Dana Lee Baker, Laurie A Drapela, and Whitney Littlefield. Vancouver : UBC Press, 2020, 46(3):25
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- Lixinski, Lucas. *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*. By Lucas Lixinski. Cambridge, UK : Cambridge University Press, 2021, 46(4):33
- Macagno, Fabrizio. *Statutory Interpretation: Pragmatics and Argumentation*. By Douglas Walton, Fabrizio Macagno, and Giovanni Sartor. New York, NY : Cambridge University Press, 2021, 43(3):26
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- Reiter, Eric H. *Wounded Feelings: Litigating Emotions in Quebec, 1870–1950*. By Eric H. Reiter. Toronto : University of Toronto Press, 2019, 46(2):33
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- The Role of Monarchy in Modern Democracy: European Monarchies Compared*. Edited by Robert Hazell and Bob Morris. Oxford, New York : Hart, 2020, 46(3):27
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Zeigler, Mary. *Abortion and the Law in America: Roe v. Wade to the Present*. By Mary Ziegler. New York : Cambridge University Press, 2020, 46(2):24

Rodriguez, Marcelo

COVID-19 in Latin America and the Caribbean: Experts Examining Legal Responses, 46(3):10

S

Sax, Sally

Runaway Technology: Can Law Keep Up? By Joshua A.T. Fairfield. New York : Cambridge University Press, 2021 (Review), 46(4):35

Smith, Sonia

In Your Face: Law, Justice, and Niqab-Wearing Women in Canada. By Natasha Bakht. Toronto : Irwin Law, 2020 (Review), 46(3):24

Steeves, Hannah

In the Shadow of International Law: Secrecy and Regime Change in the Postwar World. By Michael Poznansky. New York, NY: Oxford University Press, 2020 (Review), 46(1):19

Legal Research and Writing (Special Interest Group), 46(4):41

T

TALL

see Toronto Association of Law Libraries

Tanner, Nikki

From the Editor/De la rédactrice, 46(1):6, 46(2):6

Taylor, Leslie

Five Words that Changed America: Miranda v. Arizona and the Right to Remain Silent. By Amos N. Guiora and Louisa M. Heiny. Durham, NC : Carolina Academic Press, 2020 (Review), 46(4):36

Toronto Association of Law Libraries, 46(4):41

Tredwell, Susannah

The Reasonable Robot: Artificial Intelligence and the Law. By Ryan Abbott. Cambridge : Cambridge University Press, 2020 (Review), 46(1):23

U

The U.S. Legal Landscape: News from Across the Border, 46(1):31, 46(2):40, 46(3):37, 46(4):45

V

VALL

see Vancouver Association of Law Libraries

Vancouver Association of Law Libraries, 46(1):27, 46(2):37, 46(3):33

Viel, Josée

Local and regional update/Mise à jour locale et régionale, 46(1):26, 46(2):37, 46(3):32, 46(4):40

Villagran, Michele A.L.

COVID-19 in Latin America and the Caribbean: Experts Examining Legal Responses, 46(3):10

Viselli, Laura

Artificial Intelligence and Access to Justice: A New Frontier for Law Librarians, 46(2):17

W

Walker, Bobbie A

Prosecuting and Defending Drug Offences, 2nd ed. By Peter M. Brauti and Brian G. Puddington. Toronto : Thomson Reuters, 2020 (Review), 46(3):26

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