



Celebrating Western Law Faculty Research (July 2015-August 2016)

This newsletter celebrates faculty research related to the July 2015-August 2016 time period. During that time frame, Western Law faculty collectively published 78 articles, book chapters and books. Faculty also garnered over \$53,000 in grants as Principal Investigators, and \$2.6 million as Co-Applicants.

This information is presented by theme in the following order: Business, Tax and Charity Law; Contracts and Torts; Environmental Law; Family Law; Intellectual Property, Information Technology Law; International Law (including Conflict of Laws/Private International Law); Legal Ethics; Public Health; Public Law (including Constitutional, Criminal, Labour, Social Justice); Sport Law; and Other.

1. BUSINESS, TAX AND CHARITY/SUCCESSION LAW

A. Publications:

Brian J. Arnold, **Colin Campbell**, Michael Hiltz, Richard Marcovitz, Shawn D. Porter, and James R. Wilson, *Timing and Income Taxation* (Canadian Tax Foundation, 2015).

Andrew Botterell and **Jason Neyers**, "Tate & Lyle: Pure Economic Loss and the Modern Tort of Public Nuisance" *Alberta Law Review* 53:4 (2016): 1031-1050.

Colin Campbell, *Administration of Income Tax 2016* (Carswell, 2016).

Colin Campbell, *Administration of Income Tax 2015* (Carswell, 2015).

Colin Campbell, "J.L.L. Ilsley and the Transition to the Postwar Tax System" (2015) 63:1 *Canadian Tax Journal* 1-52.

Arthur Cockfield and **Carl MacArthur**, "Country by Country Reporting and Commercial Confidentiality", *Canadian Tax Journal* (2015) 63:3, 627-60.

Mohamed Khimji and **Christopher Nicholls**, "Piercing the Corporate Veil in the Canadian Common Law Courts – An Empirical Study" (2015) 41 *Queen's LJ* 207.

Mohamed Khimji and **Christopher Nicholls**, "Piercing the Corporate Veil Reframed as Evasion and Concealment" (2015) 48 *UBC L Rev* 401.

Mohamed Khimji and **Christopher Nicholls**, "Corporate Veil Piercing and Allocation of Liability: Diagnosis and Prognosis" (2015) 30 *Banking and Finance Law Review* 211.

Carl MacArthur and **Colin Campbell**, “Dispute Resolution, Statutory interpretation and Tax Avoidance”, in T.W. Edgar et al., *Materials on Canadian Income Tax*, 15th ed. (Toronto: Carswell, 2015) 745-814.

Christopher Nicholls, “Canadian M & A from a Comparative Perspective”, Claire Hill and Steven Davidoff Solomon (eds.), *Research Handbook on Mergers and Acquisitions* (Edgar Elgar Publishing, 2016).

Christopher Nicholls, *Credit Unions as Cooperatives: How Charter Choice Drives Social Enterprise* (Madison, WI: Filene Research Institute, 2015).

A. Oosterhoff, C.D. Freedman, M. McInnes and **A. Parachin**, *Oosterhoff on Wills*, 8th ed (Toronto: Thomson Reuters, 2016).

Adam Parachin, “Reforming the Regulation of Political Advocacy by Charities: From Charity Under Siege to Charity Under Rescue?” (2016) 91:3 *Chicago-Kent Law Review* 1047-78.

Adam Parachin, “Human Rights and Charity — Regulatory Challenges” (2016) *The Philanthropist*: <http://thephilanthropist.ca/2016/09/human-rights-and-charity-regulatory-challenges>.

Adam Parachin, “Charity, Politics and Neutrality” (2015-2016) 18 *Charity Law & Practice Review* 23-56.

Adam Parachin, *Charity Versus Politics – Law, Policy and Reform* (2015, Pemsel Case Foundation).

Adam Parachin, “*Spence v BMO Trust*: Public Policy and the Excluded Heir” (2015) 34 *Estates, Trusts & Pensions Journal* 361-364.

B. Grants and Awards:

Colin Campbell, grant of approx. \$8,000 from the Canadian Tax Foundation for research into the history of the income tax in Canada.

Jennifer Farrell, winner of “New Voices” competition for her paper, “The Intersection of Tax and Trade: Redrawing the Lines”, presented at the 16th Annual Conference on WTO Law 10-11th June 2016, The Graduate Institute Geneva and WTO Headquarters, Geneva, Switzerland.

Christopher Nicholls was awarded a 2016-17 Canada-US Fulbright Scholar Award and is a visiting professor at the Harvard Law School for the Fall 2016 Term.

2. CONTRACTS AND TORTS:

A. Publications:

Andrew Botterell, “Rights, Loss and Compensation in the Law of Torts” (2015) 69 *Supreme Court Law Review* (2d) 135-164.

Erika Chamberlain, *Misfeasance in a Public Office* (Toronto: Thomson Carswell, 2016).

Erika Chamberlain, “Revisiting Canada’s Approach to Fiduciary Relationships” in Andrew Robertson & Michael Tilbury, eds, *Divergences in Private Law* (Oxford: Hart Publishing, 2016) 225.

Erika Chamberlain, “To Serve and Protect Whom? Proximity in Cases of Police Failure to Protect” (2016) 53:4 *Alberta Law Review* 977-993.

Erika Chamberlain, “When Unlawfulness Becomes Tortious: Misfeasance in a Public Office and Administrative Law” (2015) 44 *Adv Q* 489.

Jason Neyers, “Divergence and Convergence in the Tort of Public Nuisance” in M Tilbury and A Robertson, eds, *Divergences in Private Law* (Oxford: Hart Publishing, 2015) (26 pp).

Jason Neyers & Andrew Botterell, “*Tate & Lyle*, Pure Economic Loss and The Modern Tort of Public Nuisance” (2016) 53 *Alberta Law Review* 1031-1050 (20 pp).

Jason Neyers & E Andrews, “Loss of Custom and Public Nuisance: The Authority of *Ricket*” (2016) *Lloyd’s Maritime and Commercial Law Quarterly* 135-68 (33 pp).

Zoë Sinel, *The Methods and Madness of Unjust Enrichment*, in Andrew Robertson and Michael Tilbury, eds, *Divergences in Private Law* (Oxford: Hart Publishing, 2016) 179-199.

Robert Solomon, Mitchell McInnes, **Erika Chamberlain & Stephen Pitel**, *Cases and Materials on the Law of Torts, 9th ed* (Toronto: Carswell, 2015).

3. ENVIRONMENTAL LAW

A. Publications:

David Grinlinton, “Horizontal and Vertical Integration of Sustainability into Policymaking, Planning and Implementation of Renewable Energy Projects – The New Zealand Model”, in Volker Mauerhofer (ed), *Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issues* (Springer, Cham, Switzerland, 2016), pp 423-448.

David Grinlinton, “The Role of the Common Law” in Salmon & Grinlinton (Eds.), *Environmental Law in New Zealand* (Wellington: Thomson Reuters, 2015), pp 137-202.

David Grinlinton, “Sustainability in New Zealand Environmental Law and Policy”, in Salmon & Grinlinton (eds.), *Environmental Law in New Zealand* (Wellington: Thomson Reuters, 2015) pp 105-135.

David Grinlinton, “The Context of Environmental Law”, in Salmon & Grinlinton (eds.), *Environmental Law in New Zealand* (Wellington: Thomson Reuters, 2015), pp 25-71.

David Grinlinton, “Defining the Nature and Boundaries of Environmental Law”, in Salmon & Grinlinton (eds.), *Environmental Law in New Zealand* (Wellington: Thomson Reuters, 2015), pp 1-23.

David Grinlinton, “Legitimate Planning Guidance or Potential Constitutional Vandalism? National Policy Statements after *King Salmon*” (2015) 11 (7) *Butterworths Resource Management Bulletin* 83-85.

David Grinlinton and Takeshi Tsunoda, “Defining the Nature and Boundaries of Environmental Law” (translated by Professor Takeshi Tsunoda), (2015) 65(4) *Kansai University Law Review*, 236-265.

Peter M. Salmon and **David Grinlinton**, (eds.) *Environmental Law in New Zealand* (Wellington: Thomson Reuters, 2015) pp 1152.

4. FAMILY LAW

A. Publications:

Ben Hovius, “Property Disputes between Separating Common-Law/*De Facto* Partners” in Johanne O’Hanlon, ed., *Gender, Sex and the Law in Canada* (Carswell, 2015) 121-204.

Ben Hovius, “Limitation Periods for Property Claims by Common-Law Partners and Spouses” (2015), 34 *Canadian Family Law Quarterly* 135-165.

5. INTELLECTUAL PROPERTY, INFORMATION AND TECHNOLOGY LAW

A. Publications:

Margaret Ann Wilkinson and Tierney GB Deluzio, “The Term of Copyright Protection in Photographs,” (2016) 31 *Canadian Intellectual Property Review*, 95-109.

Margaret Ann Wilkinson, “International Copyright: *Marrakesh* and the future of users' rights exceptions,” Chapter 7 in Mark Perry (ed) *Global Governance of Intellectual Property in the 21st Century* (New York: Springer, 2016) 107-127.

B. Grants and Awards:

Sam Trosow received a \$5000 grant from the Foundation for Legal Research for his project “*The Internet of Things: Implications for Consumer Privacy under Canadian Law*”.

Margaret Ann Wilkinson and Mistrale Goudreau (Ottawa Civil Law), “*Le prisme de la culture d’entreprise et la protection des inventions et données*” from SSHRC-CRSH, 2016-2020 (\$109,374).

6. INTERNATIONAL LAW (INCLUDING CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW)

A. Publications:

V. Black & **S.G.A. Pitel**, “Forum-Selection Clauses: Beyond the Contracting Parties” (2016) *J. Priv. Int’l L.* 26.

Chi Carmody, “Theory and Theoretical Approaches to WTO Law”, (2016) 13:2 *Manchester Journal of International Economic Law* 152.

Chi Carmody, “Fairness as Appropriateness: Some Reflections on Procedural Fairness in WTO law” in Armin Sarvarian et al. (eds), *Procedural Fairness in International Courts and Tribunals* (British Institute of International and Comparative Law, 2015).

Asad G. Kiyani, “Group-Based Selectivity and Domestic Repression” (2016) *Journal of International Criminal Justice*. DOI: 10.1093/jicj/mqw052 (4 September 2016).

Asad G. Kiyani, “Foreword: Third World Approaches to International Criminal Law” (with John Reynolds and Sujith Xavier) (2016) *Journal of International Criminal Justice*. DOI: 10.1093/jicj/mqw037 (4 August 2016).

Asad G. Kiyani, “International Crime and the Politics of Criminal Theory: Voices and Conduct of Exclusion” (2015) 48 *New York University Journal of International Law and Politics* 129-208.

Valerie Oosterveld and Patricia Viseur-Sellers, “The Contributions of the ECCC on Sexual and Gender-Based Violence”, in Simon Meisenberg and Ignaz Stegmiller (eds.), *The Hybrid Contributions of the Extraordinary Chambers in the Courts of Cambodia to International Criminal Law* (TMC Asser/Springer, 2016) pp 321-351.

Valerie Oosterveld, “Sexual and Gender-Based Violence in Post-Conflict Sierra Leone: The Contribution of Transitional Justice Mechanisms to Domestic Law Reform” in Kirsten Ainley, Rebekka Friedman and Christopher Mahony (eds.), *Evaluating Transitional Justice: Accountability and Peacebuilding in Post-Conflict Sierra Leone* (New York, Palgrave Macmillan, 2015) 129-151.

S.G.A. Pitel & N.S. Rafferty, *Conflict of Laws*, 2d ed (Toronto: Irwin Law, 2016) (Prof. Pitel had sole responsibility for updates in this edition).

S.G.A. Pitel, J. Blom, E. Edinger, G. Saumier, J. Walker and C. Walsh, *Private International Law in Common Law Canada: Cases, Text and Materials*, 4th ed. (Toronto: Emond Publishing, 2016).

Stephen Pitel, Review of Coughlan, Currie, Kindred and Scassa, *Law Beyond Borders: Extraterritorial Jurisdiction in an Age of Globalization* (2016) 58 *Can. Bus. L.J.* 113.

Melanie Randall and Vasanthi Venkatesh, “Criminalizing Sexual Violence Against Women in Intimate Relationships: State Obligations Under Human Rights Law”, lead article, (2016) 109 *American Journal of International Law Unbound* 189.

Melanie Randall and Vasanthi Venkatesh, “Criminalizing Sexual Violence Against Women in Intimate Relationships: Why Sexual Assault in Intimate Relationships Must Be Criminalized as Required by International Human Rights Law: A Response to the Symposium Comments” (2016) 109 *American Journal of International Law Unbound* 342 (2016).

Sara L Seck & Kirsten Stefanik, “Business and Human Rights: Challenges in Accessing Remedy and Justice” in Gordon DiGiacomo, ed, *Human Rights: Current Issues and Controversies* (University of Toronto Press, 2016) 381.

Sara L Seck, “Human Rights and Extractive Industries: Environmental Laws and Standards” *Human Rights Law and the Extractive Industries*, Paper 12, (Rocky Mt Min L Fdn 2016).

Sara L Seck, “Energy in the Great Lakes Region: Imagining a Shared Strategy” (2015) 39 *Canada-United States Law Journal* 20-35.

Sara L Seck and Michael Slattery, “Business, Human Rights, and the IBA Achieving Climate Justice Report” (2015) 34:1 *Journal of Energy and Natural Resources Law* 1-11.

Sara Seck, Review of *The Governance Gap: Extractive industries, human rights, and the home state advantage* by Penelope Simons and Audrey Macklin, (2015) 15 *Osgoode Hall Law Journal*.

B. Grants and Awards:

Valerie Oosterveld (co-applicant), SSHRC Partnership Grant, “Strengthening Justice for International Crimes: A Canadian Partnership”, \$2.5 million from 2016-2021.

Sara Seck, IUCN Academy of Environmental Law Emerging Scholar Award (awarded in September 2015).

Sara Seck, CIGI International Law Research Program Senior Fellowship Agreement, \$16,000 in research funds.

7. LEGAL ETHICS:

A. Publications:

Randal Graham, *Book Review: Adam Dodek's "Solicitor Client Privilege"* (2016) 57 *Canadian Business Law Journal* 3 380.

8. PUBLIC HEALTH:

A. Publications:

Andrew Botterell, "Why Gametes Are Not Like Enriched Uranium" (2106) 30:9 *Bioethics* 741-750.

Robert Solomon, Erika Chamberlain & Nusaiba El-Azem, *Submission of Mothers Against Drunk Driving (MADD) Canada to the Task Force on Marijuana Legalization and Regulation* (Oakville: MADD Canada, 2016).

Robert Solomon, E. Dumschat & A. Healey, *The 2015 Provincial Impaired Driving Report* (Oakville, Ontario: MADD Canada, 2015), 22 pages.

Robert Solomon and E. Dumschat, *Passive Alcohol Sensors: A Reasonable Canadian Compromise* (Oakville, Ontario: MADD Canada, 2015), 10 pages.

Robert Solomon, D. Perkins-Leitman and E. Dumschat, *A Summary of Provincial and Territorial Traffic Legislation Related to Impaired Driving* (Oakville, Ontario: MADD Canada, 2015), 65 pages.

B. Grants and Awards:

Jacob Shelley, "Big Data on Trial: The Role of Judges as Scientific Gatekeepers", Western Strategic Support - SSHRC Seed Grant: \$23,815.

9. PUBLIC LAW (INCLUDING CONSTITUTIONAL, CRIMINAL, LABOUR, SOCIAL JUSTICE)

A. Publications:

Andrew Botterell and Carolyn McLeod, "Licensing Parents in International Contract Pregnancies" (2016) 33:2 *Journal of Applied Philosophy* 178-196.

Andrew Botterell and C. McLeod, "Can a Right to Reproduce Justify the Status Quo on Parental Licensing?" in R. Vernon, S. Hannan, and S. Brennan, eds., *Permissible Progeny: The Morality of Procreation and Parenting* (Oxford: OUP, 2015), 184.

Kate Glover, “The Supreme Court in a Pluralistic World: Four Readings of a Reference” (2015) 60:4 *McGill LJ* 839.

Kate Glover, “Complexity and the Amending Formula” (2015) 24:2 *Constitutional Forum* 9.

Melanie Randall, “Particularized Social Groups and Categorical Imperatives in Refugee Law: State Failures to Recognize Gender and the Legal Reception of Gender Persecution Claims in Canada, the United Kingdom, and the United States” (2015) 23 *Am. UJ Gender Soc. Pol'y & L* 529-685.

Michael Lynk, *A Review of the Employee Occupational Exclusions under the Ontario Labour Relations Act, 1995*, Prepared for the Ontario Ministry of Labour, to support the Changing Workplaces Review of 2015 (June 2016).

Michael Lynk, *Trade Union Law in Canada* (Canada Law Book, 2015).

Michael Lynk, ‘Human Rights’ in *Employment Law in Canada* (LexisNexis, December 2015).

Michael Lynk, “The Duty to Accommodate” in David Doorey (ed.), *The Law of Work* (Emond Publishing, 2015).

Michael Lynk, Book review of *Young Man with a Red Tie* by Sir Bob Hepple, (2015) 18 *Canadian Labour and Employment Law Journal* 685.

Wade K. Wright, “Courts as Facilitators of Intergovernmental Dialogue: Cooperative Federalism and Judicial Review” (2016) 72 *S.C.L.R.* (2d) 365-454.

10. SPORT LAW

A. Publications:

Richard W. Pound, **Richard McLaren** and Günter Younger, “The Independent Commission Report #1” [to the World Anti-Doping Agency on doping in Russian track and field] (November 9, 2015), available at https://wada-main-prod.s3.amazonaws.com/resources/files/wada_independent_commission_report_1_en.pdf.

Richard W. Pound, **Richard McLaren** and Günter Younger, “The Independent Commission Report #2” [to the World Anti-Doping Agency on doping in Russian track and field] (January 14 and 27, 2016), available at https://wada-main-prod.s3.amazonaws.com/resources/files/wada_independent_commission_report_2_2016_en_rev.pdf.

11. OTHER:

A. Publications:

Kate Glover, “The Joy of Doctoral Studies” in Richard Janda, Rosalie Jukier & Daniel Jutras, eds, *The Unbounded Level of the Mind: Rod Macdonald’s Legal Imagination* (Montreal: McGill-Queen’s University Press, 2015) 275.

B. Grants and Awards:

Richard McLaren was awarded one of Canada’s highest civilian honours: Governor General David Johnston named McLaren an Officer of the Order of Canada on December 30, 2015.

Jacob Shelley. Western Mentoring Micro Grant, Teaching Support Centre: \$1000.