



Western Law

Celebrating Western Law Faculty Research (September 2016 – February 2017)

This newsletter celebrates faculty research related to the September 2016-February 2017 time period. Collectively, we **published 26 articles, book chapters and books**. We had **22 articles or book chapters accepted for publication**, and we undertook **45 presentations at conferences and other events in Canada and across the globe**. We negotiated **3 book contracts**. We also were successful in garnering **\$69,486 in grant funding**.

This newsletter is listed alphabetically by topic area.

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Business, Tax and Charity/Succession Law

Publications

Christopher Nicholls, Paul Halpern, Poonam Puri and Caroline Cakebread, *Back from the Brink: Lessons from the Canadian Asset-Backed Commercial Paper Crisis* (Toronto: University of Toronto Press, 2016).

Adam Parachin, "ITA as Accessory and the Charity Gift Tax Expenditure Program: Blurred Lines and Shifting Boundaries" in *100 Years of Canadian Income Taxation* (Toronto: Canadian Tax Foundation, 2017).

Accepted for Publication:

Adam Parachin, "How and Why to Legislate the Charity - Politics Distinction under the ITA" *Canadian Tax Journal* (Forthcoming).

Presentations

Colin Campbell, "Offshore Tax Avoidance – A Reality Check", Faculty Seminar, October 2016.

Christopher Nicholls, "Before the Revolution in Corporate Law": The Brief Wondrous Life of the Yale Law School/Harvard Business School Combined Law-Business Program", Melbourne Law School, Public Presentation, Melbourne Law School's Centre for Corporate Law and Securities Regulation and the Transactional Law Group, February 22, 2017.

Adam Parachin, "Charity versus Politics: Law, Policy and Reform". Annual Conference, Association for Research on Nonprofit Organizations and Voluntary Action ("ARNOVA"), Washington D.C., November 2016.

Book Contracts

Christopher Nicholls, *Securities Law*, 2nd Edition (Toronto: Irwin Law, forthcoming).

Other

Colin Campbell, Chaired (by invitation) the panel discussion. "Taxation of Activities Performed in Breach of Legal Regulations (Illegal Activities)" at the annual Congress of the International Fiscal Association in Madrid, Spain. September 26, 2016

Colin Campbell, co-author of the report of the CRA Offshore Compliance Advisory Committee on the Voluntary Disclosure Program. Presented to the Minister of National Revenue on December 5, 2016.

Christopher Nicholls, Visiting Professor of Law, Harvard Law School (Fall 2016)

Adam Parachin, "Canada Revenue Agency Consultation on Charities' Political Activities" Research Report Prepared for the Canada Revenue Agency (December 2016).

Contracts and Torts

Publications

Erika Chamberlain, "Snooping: How Should Damages be Assessed for Harmless Breaches of Privacy?" in Kit Barker, Karen Fairweather & Ross Grantham, editors, *Private Law in the 21st Century* (Oxford: Hart Publishing, 2017) 389.

Jason W Neyers, "Reconceptualising the Tort of Public Nuisance" (2016) 76(1) Cambridge Law Journal 87-115.

Zoë Sinel, "De-Ciphering Self-Help" (2017) 67:1 University of Toronto Law Journal 31.

Zoë Sinel, Anne Schuurman. "Matter over Mind: Tort Law's Treatment of Emotional Injury," in Kit Barker, Karen Fairweather, and Ross Grantham, eds, *Private Law in the 21st Century* (Oxford: Hart Publishing, 2017) 439.

Accepted for Publication:

Erika Chamberlain, "Clarifying the Fiduciary Obligations of University Boards of Governors" (forthcoming in Education & Law Journal).

David Grinlinton, "Tenant liability for negligent damage following *Holler v Osaki*" (2017) 27 NZULR.

Zoë Sinel, "Allan Beever's One-Dimensional Tort Universe" [Invited book review of Allan Beever's, *A Theory of Tort Liability*] New Zealand Universities Law Review, June 2017.

Presentations

Erika Chamberlain, "Does Proximity Provide Clarity or Obscurity in Affirmative Duty Cases?" Presented at Osgoode's 13th Annual Crown Liability Conference, Toronto, 28 February 2017.

Jason Neyers, "Damage and Deceit" presented at the *Centre for Private Law Faculty Lecture Series*, Auckland University of Technology in February 2017.

Jason Neyers, "Public Nuisance in the Twenty-First Century" presented at the *Centre for Private Law Public Lecture Series*, Auckland University of Technology in February 2017.

Zoë Sinel, Commenter, North American Workshop in Private Law Theory: Fordham University, Faculty of Law; New York, NY, USA; November 4, 2016.

Grants and Awards

Jason Neyers, Distinguished Visitor, AUT Centre for Private Law, February 2017.

Environmental Law

Publications

David Grinlinton, “The Functions of Rights of Property in Environmental Law”, in Douglas E Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar, Cheltenham, Glos., UK, 2016).

Hugh Byrd, **David Grinlinton** and Stephen Knight-Lenihan (2016), "3.1 Addressing Climate Change", in Dory Reeves, Stephen Knight Lenihan and Sandeeka Mannakkara (eds), *A State of New Zealand Report For UN Habitat III* (Urban Research Network University of Auckland, October 2016), pp 50-55.

David Grinlinton and Kenneth Palmer (2016), "Urban Governance and Legislation", in Dory Reeves, Stephen Knight Lenihan and Sandeeka Mannakkara (Eds), *A State Of New Zealand Report For UN Habitat III* (Urban Research Network University of Auckland, October 2016), pp 63-75.

David Grinlinton, “National Policy Statement on Urban Development Capacity 2016” (2016) 11(16) *Butterworths Resource Management Bulletin* pp 205-209.

Accepted for Publication

David Grinlinton, “Book Review”, *Energy, Governance and Sustainability* (edited by Jordi Manzano, Nathalie Chalifour and Louis Kotzé, Edward Elgar, 2016) (2017) XX JENRL XX (forthcoming).

David Grinlinton, “The Continuing Relevance of Common Law Property Rights and Remedies in Addressing Environmental Challenges” (2017) 62 *McGill Law Journal* (in press).

Family Law

Publications

Berend Hovius, “Recognition of Foreign Divorces: A Primer” (2016), 35 Canadian Family Law Quarterly 259-284.

Book Contracts

Berend Hovius, Nick Bala, Mary-Jo Maur, *Family Law: Cases, Notes and Materials (9th Edition)*, Carswell, forthcoming.

Indigenous Law

Publications

John Borrows and **Michael Coyle**, eds. *The Right Relationship: Reimagining the Implementation of Historical Treaties*, (Toronto: University of Toronto Press, 2017).

Michael Coyle, John Borrows “Introduction – Reconciling Treaty Perspectives: Historical, Relational and Legal” in *The Right Relationship: Reimagining the Implementation of Historical Treaties*, (Toronto: University of Toronto Press, 2017).

Michael Coyle, “As Long As The Sun Shines... Recognizing That Treaties Were Intended To Last” in *The Right Relationship: Reimagining the Implementation of Historical Treaties*, (Toronto: University of Toronto Press, 2017).

Michael Coyle, “From Consultation to Consent: Squaring the Circle?” (2016) 67 UNBLJ 235.

Accepted for Publication:

Michael Coyle, “Rethinking the Transformative Potential of Canada’s Truth and Reconciliation Commission: A Skeptic’s Perspective”, accepted for publication by the Canadian Bar Review.

Presentations

Michael Coyle, “Mediation, Corporate Social Responsibility and the Rights of Indigenous Peoples”, presented at Mediation and Corporate Social Responsibility (in French) at the University of Aix-Marseille, October 13, 2016.

Grants and Awards

Michael Coyle, SSHRC Knowledge Synthesis Grant. \$24,986. “Recognizing Indigenous legal orders: Their content, embeddedness in distinct Indigenous epistemologies, and implications for reconciliation.”

Intellectual Property, Information and Technology Law

Presentations

Margaret Ann Wilkinson, with the Honourable Senator Douglas Black, “Copyright Update,” Ontario Library Association Superconference, Toronto, February 3, 2017.

Victoria Owen, **Margaret Ann Wilkinson**, Margaret Williams, “Managing in Light of *Marrakesh*,” Ontario Library Association Superconference, Toronto, February 2, 2017.

Margaret Ann Wilkinson, “Copyright Workshop,” Golden Horseshoe Health Library Association, Hamilton, January 13, 2017.

Margaret Ann Wilkinson, “Copyright Board: Possible Advocacy Opportunities,” Ontario Library Association Users’ Committee Copyright Workshop, Toronto, December 5, 2016.

Michael Ciccone, **Margaret Ann Wilkinson**, Jason Bird, “External Conditions Pertinent to Shaping Advocacy,” Ontario Library Association Users’ Committee Copyright Workshop, Toronto, December 5, 2016.

Margaret Ann Wilkinson, “Copyright: Considering the Upcoming Statutory Review,” Keynote Address, CRKN-RCDR AGM, Halifax, October 20, 2016.

Book Contracts

Hagen, Hutchison, Lametti, Reynolds, Scassa & **Margaret Ann Wilkinson**, *Canadian Intellectual Property Law: Cases and Materials* (2nd edition) Emond Montgomery, forthcoming, 2017.

International Law (including Conflict of Laws/Private International Law)

Publications

Valerie Oosterveld, “Crimes Against Humanity”, in Anne-Marie de Brouwer and Alette Smeulers (eds.), *Companion to the International Criminal Tribunal for Rwanda* (Elgar Publishers, 2016) 110-139.

Valerie Oosterveld, “Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention”, in Volker Türk, Alice Edwards and Cornelius Wouters (eds.), *In Flight from Conflict and Violence: UNHCR’s Consultations on Refugee Status and other Forms of International Protection* (Cambridge University Press, 2016) 183-214.

Valerie Oosterveld, “Procedural Steps Addressing Sexual Violence: the Legacy of the International Criminal Tribunal for Rwanda Traced in the Special Court for Sierra Leone”, in *The Legacy of the International Criminal Tribunal for Rwanda: Compendium of Papers* (ICTR, 2016), online: <http://unictr.unmict.org/sites/unictr.org/files/publications/compendium-documents/ii-procedures-addressing-sexual-gender-violence-legacy-application-oosterveid.pdf>

Sara L Seck, “Treaties, and the Emancipatory Potential of International Law” in Michael Coyle & John Borrows, eds, *The Right(s) Relationship: Reimagining the Implementation of Historic Treaties* (University of Toronto Press, 2017) 344-369.

Sara L Seck, “Indigenous Rights, Environmental Rights, or Stakeholder Engagement? Comparing IFC and OECD Approaches to the Implementation of the Business Responsibility to Respect Human Rights” (2016) 12:1 McGill International Journal of Sustainable Development Law and Policy 48

Accepted for Publication:

Chios Carmody, “Obligations and Rights: Substantive Differences Between WTO and International Investment Law” 12:1 Asian Journal of WTO & International Health Law and Policy (forthcoming 2017).

Valerie Oosterveld, “The Special Court for Sierra Leone: Initial Structural and Procedural Decisions on Sexual and Gender-Based Violence” (2017) Cambrian Law Review (forthcoming June 2017).

Valerie Oosterveld, “Crimes of Sexual Violence” in John R. Jones QC and Misa Zgonec-Rozeij (eds.), *Blackstone’s International Criminal Practice* (Oxford University Press, forthcoming 2017).

Sara L Seck, “Revisiting Transnational Corporations and Extractive Industries: Climate Justice, Feminism, and State Sovereignty” (2017) 26 Transnational Law & Contemporary Problems 1 (in press).

Presentations

Margaret Martin, Nathanson Centre Seminar Series on Legal Philosophy between State and Transnationalism, December 2, 2016 (Invited speaker).

Margaret Martin, "The International Criminal Court: the New *Leviathan*?" Conference Presentation, University College Dublin, January 13th-14 2017. Proceedings to be published in a book by Cambridge University Press, *Legal Authority Beyond the State*, edited by P. Capps and H. Olsen.

Margaret Martin, Panel Presentation for Richard Collins' book, *The Institutional Problem of Modern International Law* (Hart Publishing, 2016), University College, Dublin, January 14, 2017.

Valerie Oosterveld, presented "The Definition of Gender at the International Criminal Court" and facilitated as an expert on 'Challenges and Opportunities at the International Criminal Court', Expert Group Meeting on Reimagining Justice: Ending Impunity for Gender-Based Crimes at the Margins, Sorensen Center for International Peace and Justice, City University of New York, December 15, 2016, New York.

Valerie Oosterveld, 'The Special Court for Sierra Leone: Structural and Procedural Decisions Made on Sexual and Gender-Based Violence', American Society of International Law International Criminal Law Interest Group Works-in-Progress Workshop, SMU Dedman School of Law, December 9, 2016, Dallas.

Valerie Oosterveld, 'The Promise of International Criminal Law – Gender Issues', The Promise of International Law: Solutions for the World's Crises, November 3-5, 2016, Ottawa.

Valerie Oosterveld, 'Gender and the Sierra Leone Truth and Reconciliation Commission', Transition & Reconciliation, Laval Faculty of Law, September 30-October 1, 2016, Quebec City.

Valerie Oosterveld, 'The Special Court for Sierra Leone Project: Lessons Learned Applied to the Women, Peace and Security Agenda', Women in War and at War: Gender, Peace and Security Post-2015, Open University, September 15-16, 2016 (United Kingdom).

Stephen Pitel, "Six of One, Half a Dozen of the Other? Jurisdiction in Common Law Canada" at The CJPTA: A Decade of Progress symposium, Toronto, October 21, 2016.

Stephen Pitel, Commentator on paper at The CJPTA: A Decade of Progress symposium, Toronto, October 21, 2016.

Sara L Seck, "Gender Dimensions of Ecology, Economy, and the Global South," International Environmental Law and the Global South Conference, University of Iowa Transnational Law and Contemporary Problems Symposium, October 20, 2016

Sara L Seck, "An Environmental Perspective," Labour Regulation in the Global Value Chain: An Exploratory Workshop, Transnational Law Institute, The Dickson Poon School of Law, King's College London, UK, November 11-12, 2016

Sara L Seck, “Relational Autonomy and the Bounded Sovereign State: Implications for Business and Human Rights in the Anthropocene”, Relationality, Place and Time panel, *Relational Autonomy Workshop*, Faculty of Law, University of Toronto, January 27-28, 2017

Sara L Seck, “A Gender Perspective on Business, Human Rights, and Sustainable Mining” Centre of Excellence for Sustainable Mining and Exploration, Lakehead University, Thunder Bay, February 8, 2017 (invited).

Sara L Seck, “Legalizing Sustainable Business: Trade and the Environment” panel, International Development Conference 2017, *Bridging Theory and Practice*, University of Toronto, Scarborough, February 11-12, 2017 (invited).

Grants and Awards

Valerie Oosterveld, \$37,000, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women); *Prosecuting Sexual and Gender-Based Violence at the Special Court for Sierra Leone: Lessons Learned*.

Other

Valerie Oosterveld, “Gender Justice Legacies at the International Criminal Court: A Book Discussion”, EJILTalk!, December 2016, <https://www.ejiltalk.org/author/voosterveld/>

Stephen Pitel, 15 posts to e-mail list for Canadian private international law scholars commenting on recent developments.

Sara L Seck, Opinion, “Put Climate at the Heart of Business and Human Rights Work: *What is the relationship between business, human rights, and climate change*” (January 4, 2017) International Law Research Program, CIGI: <https://www.cigionline.org/articles/put-climate-heart-business-and-human-rights-work>

Legal Ethics

Publications

Stephen G.A. Pitel & Y.S. Gadsden-Chung, “Reconsidering a Lawyer’s Obligation to Raise Adverse Authority” (2016) 49 U.B.C.L. Rev. 521-561.

Presentations

Randal Graham, “Modern Civility Regulation” delivered to the lawyers of Lenczner Slaght during their retreat at Langdon Hall, Cambridge, September 17, 2016.

Randal Graham, “Personal Conflicts of Interest” delivered at Goodmans, LLP, Toronto, December 9, 2016.

Stephen Pitel, “Judicial Confidentiality in Canada” at Canadian Association for Legal Ethics conference, University of Alberta, October 28-29, 2016

Legal History

Presentations

Thomas Telfer, “Remaking the Federal Bankruptcy and Insolvency Power: Political and Constitutional Challenges to the *Bankruptcy Act of 1919* during the 1920s” *Commercial Law Conference Honouring Professor RCC Cuming*, University of Saskatchewan, College of Law (September 2016).

Public Health

Publications

Robert Solomon, E. Dumshat, “Passive Alcohol Sensors: A Second Best Impaired-Driving Countermeasure” (2016), 20(2) *Canadian Criminal Law Review*, at 229-245.

Accepted for Publication:

Jacob J. Shelley, “Food Safety and the Law” in Heather McLeod-Kilmurray, Nathalie J Chalifour & Angela Lee, eds, *Food Law in Canada* (Toronto: Thomson Reuters, 2017), forthcoming.

M.L. McPhail & **Jacob J. Shelley**, “Restrictions on the Marketing and Advertising of Food Products” in Heather McLeod-Kilmurray, Nathalie J Chalifour & Angela Lee, eds, *Food Law in Canada* (Toronto: Thomson Reuters, 2017), forthcoming.

Jacob J. Shelley, “Chronic Disease and Public Health” in Joanna Erdman, Erin Nelson & Vanessa Gruben, eds, *Canadian Health Law and Policy*, 5th ed (Markham, ON: LexisNexis, 2017), forthcoming.

Kurt L. Tulsieram^o, Sylvia Rinaldi^o & **Jacob J. Shelley**, “Recommendations: Will the *Tobacco and Vaping Products Act* go Far Enough?” *Canadian Journal of Public Health* (2017), accepted.

Jacob J. Shelley, “A Future for Obesity Litigation in Canada? A Reflection on the Duty to Warn After *Létourneau*” (2016) *McGill Journal of Law and Medicine*, forthcoming.

S. Sibbald & **Jacob J. Shelley**, “Policy Meets Practice – People Who Inject Drugs (PWID)” in A. John-Baptiste & G. McKinley, eds, *Western MPH Casebook 2017* (London: Western University, 2017), forthcoming.

J. Anderson^o, S. Dosanjh, L. Wylie & **Jacob J. Shelley**, “eHealth is a congested highway of security roadblocks, privacy incidents, and hard lessons learned” (2017) in A. John-Baptiste & G. McKinley, eds, *Western MPH Casebook 2017* (London: Western University, 2017), forthcoming.

Robert Solomon, Erika Chamberlain, “The Road to Traffic Safety: Mandatory Breath Screening and Bill C-226” *Canadian Criminal Law Review*, forthcoming.

Thomas Telfer, Review of *The Wellness Doctrines: For Law Students & Young Lawyers*, by Jerome Doraisamy (Xoum Publishing, 2015) (2017) 54:2 *Osgoode Hall Law Journal* (forthcoming 2017).

Presentations

Jacob J. Shelley, “The Ottawa Principles: Restrictions on Food Advertising in Canada” (2016) Food Governance: The Role of Law, Regulation, and Policy In Meeting 21st Century Challenges to the Food Supply” (Sydney, Australia, November 1-3, 2016).

Jacob J. Shelley & M. McPhail, “The Duty to Warn and Dangerous Foods: Lessons From Product Liability Law in Canada”, Food Governance: The Role of Law, Regulation, and Policy In Meeting 21st Century Challenges to the Food Supply” (Sydney, Australia, November 1-3, 2016).

Jacob J. Shelley, “The Duty to Warn and Food Products: A Future for Obesity Litigation in Canada”, Newcastle Law School & Priority Research Centre for Physical Activity & Nutrition (Newcastle, Australia, November 7, 2016).

Jacob J. Shelley, “Judges as Gatekeepers or Posts?” *Western Law*, November 17, 2016.

Thomas Telfer, “Mental Health Awareness: ‘We Must Not Maintain Silence’” London Lawyers’ Leadership Challenge, United Way, London Club, London ON (October 2016).

Thomas Telfer, “Mental Health Awareness: ‘We Must Not Maintain Silence’” Western University Leadership Breakfast, United Way, London ON (November 2016).

Thomas Telfer, “Suicide Prevention Strategies” Ambulatory Care Business Meeting, Parkwood Hospital, London ON (December 2016).

Thomas Telfer, “Zero Suicide Innovation at St. Joseph’s Healthcare” St. Joseph’s Healthcare Quality Council, London ON (January 2017).

Thomas Telfer, “Blue Skies: A Journey to Mental Health Recovery” Riverside United Church Speaker Series, London ON (February 2017).

Grants and Awards

Jacob Shelley, Western University Teaching Support Center, Mentoring Micro Grant, “Public Health Advocacy” (2017) \$2,500.

Jacob Shelley, Canadian Obesity Network, FOCUS, “Obesity as a Disability” (2016) \$5,000.

Other

Jacob J. Shelley, Interview with Valerie Fortney for “Outing bad sugar on Canadian food labels a good start” *Calgary Herald* (October 24, 2016), online: <http://calgaryherald.com/news/local-news/fortney-outing-bad-sugar-on-canadian-food-labels-a-good-start>.

Jacob J. Shelley, Interview with Bryan Alary for “Hit the brakes on distracted driving ... in the courtroom?” (September 26, 2016) *UAlberta.com*, online: <https://www.ualberta.ca/news-and-events/newsarticles/2016/september/hit-the-brakes-on-distracted-driving>.

Robert Solomon & Erika Chamberlain, *Submission of Mothers Against Drunk Driving (MADD) Canada to the Standing Committee on Public Safety and National Security Re: Bill C-226, An Act to amend the Criminal Code (offences in relation to conveyances and the Criminal Records Act and to make consequential amendments to other Acts* (Oakville: MADD Canada, 2016).

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).

Public Law (including Constitutional, Criminal, Labour, Social Justice)

Publications

Kate Glover, “Structural Cooperative Federalism” (2016) *SCLR* (2d) 21.

Kate Glover, “The Supreme Court in Canada’s Constitutional Order” (2016) 20:2 *Review of Constitutional Studies* 143.

Michael Lynk, “Labour Law and the Political Economy of Inequality: A Tribute to Harry Arthurs”, in P. Zumbansen, D. Drache & S. Archer, *The Daunting Enterprise of the Law: Essays in Honour of Harry Arthurs* (McGill-Queens U. Press, 2017).

Michael Lynk, Book review of *Taking Liberties: A History of Human Rights in Canada* by Gouter and Heathorn (eds.) (2016), 85(3) *University of Toronto Quarterly* 300.

Accepted for Publication:

Kate Glover, “Hard Amendment Cases in Canada” in Richard Albert, Xenophon Contiades & Alkmene Fotiadou, eds, *Foundations and Traditions of Constitutional Amendment* (Oxford: Hart Publishing), forthcoming, 2017.

Kate Glover, “The Impact of Constitutional References on Institutional Reform” in Emmett Macfarlane, ed, *The Policy Impact of the Courts* (Toronto: University Press) forthcoming, 2018.

Presentations

Kate Glover, “New Dilemmas in Procedural Fairness”, National Annual Forum on Administrative Law, Osgoode Hall Law School, Toronto, 29 November 2016.

Kate Glover, “Canadian Constitutionalism & Judicial Appointments to the Supreme Court”, Public Law Research Group’s Research Showcase, Western Law, 30 November 2016.

Kate Glover, “Judicial Advisory Opinions & Legal Constraints on Policy Implementation”, Policy Impact Conference, University of Waterloo, 7 October 2016.

Kate Glover, “Canadian Constitutionalism & Judicial Appointments to the Supreme Court”, Institutions, Constitutions: The Judiciary’s Role in the 21st Century: a Symposium in Honour of Chief Justice Asher Grunis, York Centre for Public Policy & Law, Toronto, 27 September 2016.

Margaret Martin, commentator, “The Philosophy of Criminal Procedure”, Osgoode Hall Law School, November 4-6, 2016.

Other

Kate Glover, Witness before the Special Committee on Senate Modernization, Senate of Canada (Ottawa, 15 February 2017).

Michael Lynk, Report to the United Nations General Assembly, 3rd Committee, October 2016, New York. http://www.ohchr.org/Documents/Countries/PS/A_71_554_en.pdf