



**SCHULICH SCHOOL OF LAW
DALHOUSIE UNIVERSITY**

**FACULTY PUBLICATIONS
(2016 – 2017)**

Dalhousie Law Faculty Publications (2016 – 2017)

Bruce Archibald –

- "The Significance of the Systemic Relative Autonomy of Labour Law", (2017) 40 *Dal. L. J.* 1 – 65 [R]

Jamie Baxter –

- "Recovering Farmland Commons" in Jessica Duncan and Megan Bailey, *Sustainable Food Futures: Multidisciplinary Solutions* (Routledge, 2017) [R]
- "Access to Justice" in Alice Woolley, Richard Devlin, Brent Cotter and John M. Law, *Lawyers Ethics and Professional Regulation*, 3rd ed. (LexisNexis Canada, 2017) [in press] [R]

Vaughan Black –

- "The Rise and Fall of Plaintiff-Friendly Causation" (2016) 53 *Alta L Rev* 1013.
- Chapters 3 & 4 *Remedies: Cases and Materials* (7th ed.) by J. Berryman et al. (Toronto: Emond Montgomery, 2017).

Kim Brooks –

- "The High Cost of Transferring the Dream" (2016) 31:3 *Canadian Journal of Law and Society* 317-333. [R]
- "Carrying on the Tradition: Justice Rothstein's Contribution to Canadian Tax Law" (2016) 74 *S.C.L.R.* (4th) 361 – 404 (with Neil Brooks).
- *Comparative Tax Law*, 2nd ed. (The Netherlands: Kluwer Law International BV, 2016) (with Victor Thuronyi and Borbala Kolozs).
- "Canada" in *Trends and Players in Tax Policy*, Michael Lang et al., eds. (The Netherlands: IBFD, 2016), chapter 4 (191 – 217).
- Book and article reviews - *Canadian Tax Journal* (2016) 64(4):
 - Allison Christians, "While Parliament Sleeps: Treaty Practice in Canada"
 - Michael Graetz and Alvin Warren, "Integration of Corporate and Shareholder Taxes" and Robin Boadway and Jean-Francois Tremblay, *Modernizing Business Taxation*
 - Arthur Cockfield, "Big Data and Tax Haven Secrecy"

- Canada Revenue Agency, *Tax Gap in Canada: A Conceptual Study*
- David Duff, “Alternatives to the Gift and Estate Tax”
- Lily Kahng, “Who Owns Human Capital?”
- Sol Picciotto, “Taxing Multinational Enterprises as Unitary Entities”

Aldo Chircop –

- A. Chircop, M. McConnell & Scott Coffen-Smout, eds., *Ocean Yearbook*, vol. 31 (Leiden: Nijhoff, 2017).
- A. Chircop, “Article 82: Payments and Contributions with Respect to the Exploitation of the Continental Shelf Beyond 200 Nautical Miles.” In A. Proelß, ed., *The United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck & Hart Publishing; 2017), 639-651. [R]
- A. Chircop, “Gidel’s ‘Safety Valve’: The *Anglo-Norwegian Case*, 1951 and the Doctrine of Historic Waters Revisited.” Public International Law Colloquium on Maritime Disputes Settlement, Proceedings (Chinese Society of International Law and Hong Kong International Arbitration Centre, 2016), 340-358.
- A. Chircop, “Sustainable Arctic Shipping: Are Current International Rules for Polar Shipping Sufficient?” 11 *Journal of Ocean Technology* 39-52 (2016).
- A. Chircop, “Jurisdiction over Ice-covered Areas and the Polar Code: An Emerging Symbiotic Relationship?” 22 *Journal of International Maritime Law* 1-16 (2016). [R]

Stephen Coughlan –

- (with Glen Luther), *Detention and Arrest* (2nd ed.) (Toronto: Irwin Law, 2017).
- (with Gerry Ferguson and Michelle Lawrence), *Annual Review of Criminal Law 2015* (Toronto: Carswell, 2016) chapters 2 - 4.
- “Doing the Right Thing: Duress as a Defence to Murder” (2017) 33 CR (7th) 317.
- “Early Patterns in the New Section 11(b) Framework” (2016) 32 CR (7th) 386.
- “*R v Jordan*: A Dramatically New Approach to Trial Within a Reasonable Time” (2016) 29 CR (7th) 311.
- “Self-defence: Courts of Appeal Deciding New Provisions Guided by Old Principles” (2016) 29 CR (7th) 103.
- *R v Marakah* (2016) 30 CR (7th) 263.

- *R v Poirier* (2016) 30 CR (7th) 344.
- *R v Thompson* (2016) 29 CR (7th) 393.
- *R v Harflett* (2016) 28 CR (7th) 54.
- *R v Barclay* (2016) 28 CR (7th) 294.
- “Criminal Law Experts List”, October 2016, prepared for the Federal Department of Justice.
- “Outdated Criminal Code Provisions”, February 2017, prepared for the Federal Minister of Justice’s Office.

Elaine Craig –

- “Judging Sexual Assault Trials: Systemic Failure in the Case of *R v Bassam Al-Rawi*” (2017) Canadian Bar Review. [R]
- “Section 276 Misconstrued: The Failure to Properly Interpret and Apply Canada’s Rape Shield Provisions” (2016) 94:1 Canadian Bar Review (pg 45 – 83). [R]

Robert Currie –

- “Electronic Devices at the Border: The Next Frontier of Canadian Search and Seizure Law?” (2016) 14 CANADIAN JOURNAL OF LAW & TECHNOLOGY 289 [R]
- “Cross-Cutting Conflicts: Developments in the Use of *Norwich* Orders in Internet Defamation Cases” in T. Archibald et al., eds., *Annual Review of Civil Litigation 2016* (Toronto: Carswell, 2016) 67-98 [R]

Michael Deturbide –

- Chapter 14, “Stakeholder Remedies” (102 pages), *Business Organizations: Practice, Theory and Emerging Challenges* (Emond Publishing, 2017) [R]

Richard Devlin –

- *Regulating Judges: Beyond Independence and Accountability* (Cheltenham: Edward Elgar, 2016) [co-editor with Adam Dodek]. [R]
- *Canada and the Rule of Law: 150 Years After Confederation* (Ottawa: International Commission of Jurists, Canada, 2017) [co-editor with Janine L’Esperance et al].

- “Self-Regulation, Professional Responsibility and the Duty to Report” (2016) 35:2 Law Society Record, 20-22 [with J. Downie & S. Wildeman].
- “Introduction: Regulating Judges – Challenges, Controversies, Choices” [with A. Dodek] in *Regulating Judges: Beyond Independence and Accountability* (Edward Elgar, 2016).
- “Fightin’ Words: Regulating Judges in Canada” [with A. Dodek] in *Regulating Judges: Beyond Independence and Accountability* (Edward Elgar, 2016).
- “Of Lawyers and Lodestars: Embedding the Duty of Loyalty in the *Model Code of Conduct*” (2016) 39 Dalhousie L.J. 37-76 [with B. Cotter and C. Jackson]. [R]
- “The Rule of Law and Judicial Appointments in Canada” in J. L’Esperance et al eds, *Canada and the Rule of Law: 150 Years After Confederation* (Ottawa, International Commission of Jurists, 2017) 83-89. [R]

Meinhard Doelle –

- (with John A. Sinclair & Peter Duinker) “Looking Up, Down, and Sideways: Reconciling Cumulative Effects Assessment as a Mindset” (2017) 62 EIAR 183 [R]
- (with Jason McLean & Chris Tollefson), “Polyjural and Polycentric Sustainability Assessment: A Once-in-a-Generation Law Reform Opportunity” (2016) 30 J. Env. L. & Prac. 35 [R]

Jocelyn Downie –

- (with Matthew Lowe) “Does legalization of medical assistance in dying affect rates of non-assisted suicide?” (May 25, 2017) Open Volume 10 Journal of Ethics in Mental Health 1-9.
- (with Justine Dembo), “Medical assistance in dying and mental illness under the new Canadian law” (November 18, 2016) Open Volume 10 Journal of Ethics in Mental Health 1-9. [R]
- (with Lindy Willmott and Ben White), “Next Up: A Proposal for values-based Law Reform on unilateral with-holdings and withdrawal of potentially life-sustaining treatment”, (2016) Alberta Law Review 54(3). [R]
- “‘And Miles to Go Before I Sleep’: The Future of End of Life Law and Policy in Canada” (2016) 39:2 Dalhousie Law Journal 413-430. [R]
- “Regulatory risk management and the abortion pill” (2017) <http://policyoptions.irpp.org/magazines/april-2017/regulatory-risk-mismanagement-and-the-abortion-pill/> 2017/04/25.

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- “Medical assistance in dying in Canada” (2016) <https://end-of-life.qut.edu.au/about/recent-developments> 2016/12/12.
- “Abortion pill: One step forward, two steps back” (2016) <http://policyoptions.irpp.org/magazines/july-2016/abortion-pill-one-step-forward-two-steps-back/> 2016/07/18.
- “Last Rights: Women Speak Out on Assisted Dying” (2016) 30:2 *Herizons* 16-19.

Joanna Erdman -

- “A Constitutional Future for Abortion Rights in Canada” (2017) 54:3 *Alberta Law Review* 727-751. [R]
- “Theorizing Time in Abortion Law and Human Rights” (2017) 19:1 *Health and Human Rights Journal* 29-40 [R]
- (with R. Khosla, C. Zampas, J.P. Vogel, M.A. Bohren & M. Roseman) “International Human Rights and the Mistreatment of Women During Childbirth.” (2016) 18:2 *Health and Human Rights Journal* 131-143 [R]
- “The Law of Stigma, Travel, and the Abortion-Free Island” (2016) 33:1 *Columbia Journal of Gender & Law* 29-37.
- “El giro procesal. El aborto en el Tribunal Europeo de Derechos Humanos,” in R. Cook, J.N. Erdman and B. Dickens, eds. *El aborto en el derecho transnacional: Casos y controversias*, 159-186 (FCE-CIDE, 2016) (Spanish Translation).
- (with Rebecca J. Cook, & Bernard M. Dickens), eds. *El aborto en el derecho transnacional: Casos y controversias* (FCE-CIDE, 2016) (Spanish Translation).

Elaine Gibson –

- “Is It Time to Adopt a No-Fault Scheme to Compensate Injured Patients?” (2016) 47 *Ottawa Law Review* 307-338. [R]
- “Privacy Protection and the Confidentiality of Psychiatric Health Care Records” in J. Chandler and C. Flood, eds., *Law & Mind: Mental Health Law and Policy in Canada* (Toronto: Lexis-Nexis, 2016) 161-185.

Diana Ginn –

- “Recognition of Aboriginal Self-Government in Canada: The Changing Landscape” (2016) 46:4 *Advocates Quarterly* 395 [co-authored with Nicholas Hooper].
- “Pluralism, Autonomy and Resistance: A Canadian Perspective on Resolving Conflicts Between Freedom of Religion and LGBTQ Rights” (2017) 12:1 *Religion & Human Rights* 1 [coauthored with Kevin Kindred]. [R]
- “How Has *Dunsmuir* Worked? A Legal-Empirical Analysis of Substantive Review of Administrative Decisions after *Dunsmuir v. New Brunswick*: Findings from the Federal Courts” (2017) 30:1 *Canadian Journal of Administrative Law & Practice* 51 [coauthored with William Lahey, Lauren Soubolsky and Madison Veinotte.] [R]
- “The Scope of Protection Provided by Apology Legislation in Canada with Emphasis on the Patient-Health Care Provider Relationship” (2017) 46:3 *Advocates Quarterly* 285 [coauthored with Rachel Boyle].
- “A Legal-Empirical Analysis of Substantive Review: Findings from the British Columbia Courts” (2017) 30:2 *Canadian Journal of Administrative Law and Practice*, 173-209. [Co-authored with William Lahey and Madison Veinotte]
- “Land Claims Settlements in Canada’s Arctic: Pragmatism and Instrumentalism at Work” in Waliul Hasanat, ed, *Current Developments in Arctic Law*, vol 4 (Rovaniemi: Arctic Law Thematic Network, 2016).
- Book Review of *Social Equality of Religion and Belief* (2016) 177 *Christian Law Review* 193.
- Four updates to the *Nova Scotia Real Property Practice Manual*, published by LexisNexis

Archie Kaiser –

- Article, “A Partial Ceasefire in Canada’s War on Drugs? Reflections on the Impending Legalization of Marijuana”, (2016) 63 *Criminal Law Quarterly*, 367-404.

William Lahey –

- “Screening for Frailty in Canada’s Health Care System: A Time for Action” (2016) 35:3 *Canadian Journal on Aging*, 281-297. [With John Muscedere, Melissa K. Andrew, Sean M. Bagshaw, Carole Estabrooks, David Hagan, Joyna Holroyd-Leduc, Susan Howlett, Colleen Maxwell, Mary McNally, Paige Moorhouse, Kenneth Rockwood, Darryl Rolfson, Samir Sinha and Bill Tholl].
- “Has *Dunsmuir* Worked? A Legal-Empirical Analysis of Substantive Review of Administrative Decisions after *Dunsmuir v. New Brunswick*: Findings from the Federal

Courts” (2017) 30:1 *Canadian Journal of Administrative Law and Practice*, 51-85. [With Diana Ginn, Lauren Soubolsky and Madison Veinotte]

- “A Legal-Empirical Analysis of Substantive Review: Findings from the British Columbia Courts” (2017) 30:2 *Canadian Journal of Administrative Law and Practice*, 173-209. [With Diana Ginn and Madison Vienotte]
- [with Colleen Flood and Bryan Thomas] “Federalism and Health Care in Canada: A Troubled Romance?” in Peter Oliver, Patrick Macklem and Nathalie Des Rosiers, eds, *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017), 449-474.

Jennifer Llewellyn –

- (with Ami Harbin) "Restorative Justice in Transitions: The Problem of "The Community" and Collective Responsibility" in Kerry Clamp ed. *Restorative Justice in Transitional Settings* (London: Routledge Press, 2016). [R]

Constance MacIntosh –

- “Carter, Medical Aid in Dying, and Mature Minors,” (2016) 10(1) *McGill Journal of Law and Health* S1. [R]
- “Indigenous Mental Health: Imagining a Future where Action Follows Obligations and Promises” (2017) 54(3) *Alberta Law Review* 589 [R]

Wayne MacKay –

- “Merging Public Law Silos and Canada’s Evolving Constitutional Landscape” in Errol Mendes, ed., *Canada’s Constitutional Democracy: The 150th Anniversary Celebration* (Toronto: LexisNexis Canada, 2017) 207.
- “The False Dichotomy Between Regional Representation and Other Forms of Diversity: Reimagining a Representative Court”, in *University of New Brunswick Law Journal* (2017) 68 UNBLJ 46

Naiomi Metallic –

- “Indian Act By-Laws: A Viable means for First Nations to (Re)Assert Control over Local Matters Now and Not Later” (2016) 67 *UNBLJ* 211 [R]
- “The Door has a Tendency to Swing Shut: The Saga of Aboriginal Peoples’ Equality Claims” in *Aboriginal Law Bench Book*, 2nd ed (Ottawa: National Judicial Institute, 2017) online: www.nji-inm.ca. [R]

David Michels –

- “Out of the Library: Identity and Practice in Changing Times.” in Anne-Marie Deitering, Richard Stoddart, and Robert Schroeder, eds. *The Self as Subject: Autoethnographic Research Method into Identity, Culture, and Academic Librarianship*. (Chicago, IL: Association of College and Research Libraries, 2017).

Jonathan Penney –

- “Chilling Effects: Online Surveillance and Wikipedia Use” (2016) 31:1 Berkeley Technology Law Journal 117 [R]
- “Comparative Chilling Effects: A Case Study” (2016) Internet Policy Review [R]
- “Can Cyber-Harassment Laws Encourage Online Speech?” in Harmful Speech Online: At the Intersection of Algorithms and Human Behavior, Berkman Klein Center Research Publication/Report, Berkman Klein Center for Internet & Society, Harvard University, 2017
- “Children and Cyberwar: Victimization and Protection” in Dustin Johnson, ed, *Allons-Y: Theory Into Action*, vol 2 (Halifax: The Roméo Dallaire Child Soldiers Initiative, August 2017).

Leonard Rotman –

- "The 'Fusion' of Law and Equity?: A Canadian Perspective on the Substantive, Jurisdictional, or Non-Fusion of Legal and Equitable Matters" (2016) 2 CJCL 497-536.
- "The End of History Thesis for Corporate Law" in Fathali M. Moghaddam, ed., *The SAGE Encyclopedia of Political Behavior*, (Thousand Oaks, CA: SAGE, 2017).

Rollie Thompson –

- “The Ten Evidence ‘Rules’ That Every Family Law Lawyer Needs to Know” (2016), 35 Can. Fam. L.Q. 285-322.
- “The Retreat from ‘Least Intrusive Intervention’ in Canadian Child Protection Law” in 7th World Congress on Family Law and Children’s Rights, Dublin, Ireland, June 5-7, 2017.
- Editor, *Nova Scotia Civil Procedure Rules*, 2nd ed. (LexisNexis, loose-leaf), Issues 32, 33, 34 and 35.
- “Evidence” in Nova Scotia Barristers’ Society, *2017 Bar Review Materials* (May 2017).

David VanderZwaag –

- (with Nigel Bankes & Irene Dahl), eds, *Aquaculture Law and Policy: Global, Regional and National Perspectives* (Cheltenham, UK: Edward Elgar, 2016)
- (with Nigel Bankes & Irene Dahl), “Introduction: Navigating Multilevel Governance in Aquaculture”, in *ibid*, 1-8
- “The International Law and Policy Seascape for Aquaculture: Navigating Tangled Currents”, in *ibid*, 11-32
- (with Nigel Bankes & Irene Dahl), “Conclusion: A Summary of Common Themes”, in *ibid*, 462-473
- (with Megan Bailey & Nancy L Shackell), “Canada-U.S. Fisheries Management in the Gulf of Maine: Taking Stock and Charting Future Coordinates in the Face of Climate Change” (2017) 31 *Ocean YB* 3 [R]
- (with Julia Jabour & Tim Stephens), “Special Collection: New Frontiers in Tracking and Protecting Marine Species at Risk: Canadian and Australian Perspectives” (2016) 47 *Ocean Dev & Intl L* 219
- (with Jeffrey A. Hutchings & Tim Stephens), “Marine Species at Risk Protection in Australia and Canada: Paper Promises, Paltry Progressions” (2016) 47 *Ocean Dev & Intl L* 233 [R]

Sheila Wildeman –

- “Agonizing Identity in Mental Health Law and Policy (Part II): A Political Taxonomy of Psychiatric Subjectification” (2016) 39 *Dalhousie Law Journal* (pp.147-193).
- “Administrative Law” *Bar Review Materials* (Nova Scotia Barristers’ Society, May 2017)