



**SCHULICH SCHOOL OF LAW
DALHOUSIE UNIVERSITY**

**FACULTY PUBLICATIONS
(2014 – 2015)**

**Dalhousie Law Faculty
Publications (2014 – 2015)**

Bruce Archibald –

Jamie Baxter –

- (with Albert Yoon) “No Lawyer for a Hundred Miles? Mapping the New Geography of Access of Justice in Canada” (2014) 52 *Osgoode Hall L.J.* 9 **R**
- “Storytelling, Social Movements, and the ‘Evolution’ of Indigenous Land Tenure” (2015) 18 *Australian Indigenous Law Review* 65 **R**

Vaughan Black –

- (with Peter Sankoff, & Katie Sykes, eds.) *Canadian Perspectives on Animals and the Law*, (Toronto: Irwin Law, 2015).

Kim Brooks –

- (with Neil Brooks) “The Supreme Court’s 2013 Tax Cases: Side-Stepping the Interesting, Important and Difficult Issues” (2015) 68 S.C.L.R. (2d) 335 – 387.
- (with Richard Krever) “The Troubling Role of Tax Treaties” in *Tax Design Issues Worldwide*, Geerten Michielse and Victor Thurony, eds. (The Netherlands: Kluwer Law International, 2015), chapter 6 (159 - 178).
- “International Tax Policy: The Counter-Story Presented by the BRICS” in *BRICS and the Emergence of International Tax Coordination*, Yariv Brauner and Pasquale Pistone, eds. (Amsterdam: IBFD, 2015), chapter 16 (447 – 467).
- “Scholarship as Activism” in Richard Janda, Rosalie Jukier, and Daniel Jutras, eds., *The Unbounded Level of the Mind: Rod Macdonald’s Legal Imagination* (Montreal: McGill-Queen’s University Press, 2015), 249 – 251.

Aldo Chircop –

- (with M. McConnell & Scott Coffen-Smout, eds.,) *Ocean Yearbook*, vol. 29 (Leiden: Nijhoff, 2015).

Articles & chapters in books

- “The International Maritime Organization.” In D.R. Rothwell, A. Oude Elferink, K.N. Scott & T. Stephens, eds., *Oxford Handbook on the Law of the Sea* (Oxford: Oxford University Press, 2014), 416-438. **R**
- “‘Polar Load Lines’ for Maritime safety: A Neglected Issue in the International Regulation of Navigation and Shipping in Arctic Waters,” with N. Reggio, D. Snider & B. Ray. In *CMI Yearbook* (Brussels: CMI, 2014), 345-356.
- “International Shipping in the Arctic Region: Confronting Legal Uncertainty.” In J. Schelin, ed., *Shipping & Environment: A Legal Perspective* (Stockholm: Poseidon Förlag, 2014).
- “The International Regulation of Arctic Shipping: Emerging Standards and Remaining Gaps,” 34 *Pacific Rim: Economics, Politics, Law Journal* 72-81 (2015).

Stephen Coughlan –

Books

- (with Don Stuart, *Learning Canadian Criminal Law* (13th ed.) (Toronto: Carswell, 2015)
- Steve Coughlan, Robert J Currie, Hugh Kindred and Teresa Scassa, *Law Beyond Borders: Extraterritorial Jurisdiction in an Age of Globalization* (Toronto: Irwin Law, 2014)

Articles

- “*Harasemow*: Infringing Bodily Integrity Incident to Arrest” (2015) 16 CR (7th) 48
- “Signing Away Rights: Should Private Contracts Trump the *Charter*?” (2014) 13 CR (7th) 124
- “On Abandonment and Flight” (2014) 10 CR (7th) 322

Case comments

- *R. v. Phan* (2015) 19 C.R. (7th) 66
- *R. v. Derbyshire* (2015) 18 C.R. (7th) 61
- *R. v. Kum* (2015) 17 C.R. (7th) 118
- *R. v. Allen* (2015) 16 C.R. (7th) 272
- *R. v. Magaya* (2014) 14 C.R. (7th) 267

- *R. v. Conception* (2014) 13 C.R. (7th) 317
- *R. v. Booth-Rowe* (2014) 12 C.R. (7th) 37
- *R. v. Spencer* (2014) 11 C.R. (7th) 52

Elaine Craig –

Articles:

- “Personal *Stare Decisis* and the Decision in *Mabior*” (2015) 53:1 Alberta Law Review. **R**
- “Examining the Websites of Canada’s ‘Top Sex Crime Lawyers’: The Ethical Parameters of Commercial Expression by the Criminal Defence Bar” (2015) 48:2 UBC Law Review (pg 257 – 304). **R**
- “Person/s of Interest and Missing Women: Legal Abandonment in the Downtown Eastside” (2014) 60:1 McGill Law Journal (pg 1-42) **R**
- “TWU Law: A Reply to Proponents of Approval” (2014) 37(2) Dalhousie Law Journal (pg 621 – 660) **R**

Reviews:

- “A Queer Story of Same Sex Marriage” a Review of Michael Boucai, *Glorious Precedents: When Gay Marriage was Radical* (2015) 12 Yale Journal of Law & Humanities 101 in online journal: Jotwell Equality Section (2014).

Robert Currie –

- (with Hugh M. Kindred and Phillip M. Saunders general eds.,) *International Law: Chiefly As Interpreted and Applied in Canada*, 8th ed. (Toronto: Emond Montgomery, 2014), co-editor and author
- (with Neil Boister, eds.,) *Routledge Handbook of Transnational Criminal Law* (Routledge, 2014), co-editor
- (with Steve Coughlan, Hugh M. Kindred & Teresa Scassa), *Law Beyond Borders: Extraterritorial Jurisdiction in a Globalized World* (Toronto: Irwin Law, 2014)
- “The Protection of Human Rights in Transnational Criminal Law” in Neil Boister & Robert J. Currie, eds, *Routledge Handbook of Transnational Criminal Law* (Routledge, 2015) 27-40

- (with Bill Lahey & Lorraine Lafferty) “Interprofessional Health Care Policy and Regulation” in Sue Coffey & Charles Anyinam, eds, *Interprofessional Health Care Practice* (Toronto: Pearson, 2015 [published October 2014])
- Annotation: *Wakeling v. United States of America* (2015), 15 C.R. (7th) 1 (SCC)

Michael Deturbide –

- “Is there a reasonable protection of privacy on social media?” (2014) Proceedings of the Canadian Institute for the Administration of Justice Conference “Privacy in the Age of Information”

Richard Devlin, University Research Professor –

- “Teaching ‘Professionalism in the Public Interest’: Law as a Case Study” in Irene Wienzock ed, *Educating Professionals – Ethics and Judgement in a Changing Learning Environment* (Toronto: Canadian Professional Accountants Association, 2014) [with J. Downie].
- “Three Strikes and You’re out... Maybe or Maybe Not: A Comment on *Wallace v C.N. Railway*.” (2013) 92 Canadian Bar Review 123-148 [with B. Cotter]. **R**
- “Frustration” S. Ben Ishai & D. Percy, *Contracts: Cases and Materials*, 9th ed. (Toronto: Carswells, 2014) 635-686.

Meinhard Doelle –

- “The Sydney Tar Ponds Case: Shutting the Door on Environmental Class Action Suits in Nova Scotia?” (2015) 27 J. Env. L. & Prac. 279 **R**
- "Aquaculture and Marine Planning in Nova Scotia", in N. Boillet (dir.), *L'aménagement du territoire maritime dans le contexte de la politique maritime intégrée, Actes du colloque de Brest des 9 et 10 octobre 2014*, Paris, Pedone, 2015.
- (with Rebecca Critchley) "The Role of Strategic Environmental Assessments in Improving the Governance of Emerging New Industries: A Case Study of Wind Developments in Nova Scotia" (2015) 11:1 JSDLP. **R**
- (with A John Sinclair) “Environmental Assessment In Canada: Encouraging Decisions For Sustainability” in B. Mitchell, ed., *Resource and Environmental Management in Canada 5th ed.* (Oxford: Oxford University Press, 2015)

- (with Bill Lahey) “A New Regulatory Framework for Low-Impact/High-Value Aquaculture in Nova Scotia” (Report to the Nova Scotia Minister of Fisheries and Agriculture, December, 2014)
- (co-author) “The Role of the UNFCCC Regime in Ensuring Effective Adaptation in Developing Countries: Lessons from Bangladesh” (2014) 4 *Climate Law* 327 **R**
- Canadian EA Chapter in Daniel R. Mandelker, et al, *NEPA Law and Litigation*, (Thomson Reuters: Danvers, MA, 2014)
- “The Birth of the Warsaw Loss & Damage Mechanism: Planting a Seed to Grow Ambition?” (2014) 8 *Carbon & Climate Law Review* 35 **R**
- “Geoengineering and Dispute Settlement Under UNCLOS and the UNFCCC: Stormy Seas Ahead?” in Randall S. Abate, ed., *Climate Change Impacts on Ocean and Coastal Law: U.S. and International Perspectives* (Oxford: Oxford University Press, 2014)
- Book Review: "International Law in the Era of Climate Change" Rosemary Rayfuse, Shirley Scott (2014) 4 *Climate Law* 169

Jocelyn Downie –

Special Issues of Journals

- (with Françoise Baylis eds.,) Transnational Reproductive Travel (2014) 7:2, *International Journal of Feminist Approaches to Bioethics* 1-9. **R**

Chapters in Books

- (with Richard Devlin), "Public Interest Vocationalism: A Way Forward for Legal Education in Canada" in Fiona Westwood & Karen Barton eds., *The Calling of Law: The Pivotal Role of Vocational Legal Education* (Ashgate, 2014) 85-109. **R**

Peer-Reviewed Articles

- (with Lindy Willmott, & Ben White), “Cutting the Gordian Knot of Futility: A Case for Law Reform on Unilateral Withholding and Withdrawal of Potentially Life-Sustaining Treatment” (2014) 26(1) *New Zealand Universities Law Review* 24-59. **R**
- (with Michael Hadskis), “In Defence of Consent and Capacity Boards for End-of-life Care” (2014) 61:10 *Canadian Journal of Anesthesia* 899-904. **R**

Non-Peer-Reviewed Articles

- “*Carter v. Canada*: what’s next for physicians?” *CMAJ* 2015 Apr 21; 187(7): 481-2.

- “After *Carter v. Canada*” National Magazine February 24, 2015
- (with Georgia Lloyd-Smith), “The making of a myth: Unreliable data on access to palliative care in Canada” (2014) 22:3 Health Law Review 46-48.
- (with Richard Devlin), “Teaching ‘Professionalism in the Public Interest’: Law as a Case Study” Symposium Proceedings (2015).
- “‘Speak up, we can’t hear you’: A commentary on ‘End of Life in Canada’” (2014) 14:10 Healthcare Papers 21-26.
- (with Michael Hadskis), “In Defence of Consent and Capacity Boards for End-of-life Care” (2014) 61:10 Canadian Journal of Anesthesia 899-904.
- (with Georgia Lloyd-Smith), “Assisted dying for individuals with dementia: Challenges for translating ethical positions into law” in Michael Cholbi and Jukka Varelius, eds.,

Joanna Erdman, MacBain Chair in Health Law and Policy -

- “Procedural Abortion Rights: Ireland and The European Court of Human Rights,” (2014) 22(44) *Reproductive Health Matters* 22---30 **R**
- “Bioethics, Human Rights, and Childbirth,” (2015) 17(1) *Health and Human Rights Journal* 43--51 **R**

Elaine Gibson –

- (with Leah Hutt, Constance MacIntosh, and Sheila Wildeman), *Report as to Proposed Pilot Project on the Electronic Monitoring of Forensic Mental Health Patients* (Department of Health and Wellness, 2014). <http://novascotia.ca/dhw/mental-health/documents/Electronic-Monitoring-of-Forensic-Mental-Health-Patients-Report-Dalhousie.pdf>

Diana Ginn –

- [co-authored with James Barry] “Reading *Hutterian Brethern v. Alberta* in a larger constitutional law context” 43 *Advocates Quarterly* 306
- Four updates to the Nova Scotia Real Property Manual, published by Lexisnexis

- Case comment on SCC decision, *Loyola High School v. Quebec*, published in Jurist Academic Commentary, available at <http://jurist.org/forum/2015/06/diana-ginn-canadian-religious-freedom.php>.

Michael Hadskis –

- (with Jocelyn Downie), “In Defence of Consent and Capacity Boards for End-of-Life Care”, (2014) 61(1) *Canadian Journal of Anesthesia* **R**

Archie Kaiser –

- “*Hart*: More Positive Steps Needed To Rein In Mr. Big Undercover Operations”, (2014) 12 C.R. (7th), 304-323
- “*Mack*: Mr. Big Receives an Undeserved Reprieve, Recommended Jury Instructions Are Too Weak”, (2014) 13 C.R. (7th), 251-269

William Lahey –

- “The Contributions of Utilities Regulation to Electricity System Transformation: the Case of Nova Scotia” (2015) 2 *Energy Regulation Quarterly* 235.
- “Interprofessional Health Care Policy and Regulation”, Sue Coffey and Charles Anyinam, eds, *Interprofessional Health Care Practice* (Toronto: Pearson, 2015) 183. [With Lorraine Lafferty and Robert Currie]
- “Frailty’s Place in Ethics and Law: Some Thoughts on Equality and Autonomy and on Limits and Possibilities for Aging Citizens”, in O. Theou & K. Rockwood, eds, *Frailty in Aging: Biological, Clinical and Social Implications: Vol. 14, Interdisciplinary Topics in Gerontology and Geriatrics* (Basel: Karger, 2015) 174. [With Mary McNally]
- *A New Regulatory Framework for Low Impact/High Value Aquaculture in Nova Scotia* (Halifax: Independent Aquaculture Regulatory Review for Nova Scotia, 2014), available at: http://www.aquaculturereview.ca/sites/default/files/Aquaculture_Regulatory_Framework_Final_04Dec14.pdf. [With Meinhard Doelle]

Jennifer Llewellyn, Viscount Bennett Professor of Law –

- *Terms of Reference and Mandate: Restorative Inquiry for the Home for Colored Children*, Government of Nova Scotia, June 2015.

- *Report from the Dalhousie Restorative Justice Process at the Faculty of Dentistry, Dalhousie University*, May 2015 (with J. MacIsaac and M. MacKay) online at: <http://www.dal.ca/cultureofrespect/process/report-from-the-restorative-justice-process.html>
- *Northwest Territories Human Rights Act Comprehensive Review: A Review and Analysis of Human Rights Promotion and Protection in the Northwest Territories*, April 2015 (with G. Hashey and G. Sinclair) online at: <http://nwthumanrights.ca/wp-content/uploads/2015/06/NWT-HRA-Review.pdf>
- *Review of the Nova Scotia Education Panel Report*, Prepared for Victims of Institutional Child Exploitation Society (VOICES), November 2014.

Geoffrey Loomer –

- “Canada” (National Report) in Florian Haase, ed., *Taxation of International Partnerships* (Amsterdam: IBFD, 2014) 141–82.
- “The Disjunction Between Corporate Residence and Corporate Taxation: Is Improvement Possible?” (2015) 63 *Canadian Tax Journal* 91–132. **R**

Constance MacIntosh –

Reports

- Expert Panel Member, *Nova Scotia Independent Review of Hydraulic Fracturing (“The Wheeler Panel”)*. Lead author for two chapters: Regulatory Issues, & The Aboriginal, Treaty and Statutory Rights of the Mi’kmaq. (2014) **R**
- (with Elaine Gibson, Leah Hutt and Sheila Wildeman), *Report as to Proposed Pilot Project on the Electronic Monitoring of Forensic Mental Health Patients* (For the Nova Scotia Department of Health and Wellness. September 12, 2014)

Book Chapters

- “Indigenous Rights and Relations with Animals: Seeing beyond Canadian Law” in Vaughan Black, Catherine Sykes and Peter Sankoff (eds) *Canadian Perspectives on Animals and the Law* (Irwin Law 2015) pages 187-208.
- “The Right to Safe Water and Crown-Aboriginal Fiduciary Law: Litigating a Resolution to the Public Health Hazards of On-Reserve Water Problems” *Advancing Social Rights in Canada* (Martha Jackman and Bruce Porter eds) (2014 Irwin Law) pages 281-308.

Wayne MacKay , Yogis & Keddy Chair in Human Rights Law –

- “Law as an Ally or Enemy in the War on Cyberbullying: Exploring the Contested Terrain of Privacy and Other Legal Concepts in the Age of Technology and Social Media” (2015) 66 UNB LJ 3 (Rand Lecture).

Jonathan Penney –

- “The Cycles of Global Telecommunications Censorship and Surveillance” (2015) 36 University of Pennsylvania Journal of International Law 693 (R) (peer review)
- “Warrant Canaries Beyond the First Amendment” in *Internet Monitor 2014: Reflections on the Digital World: Platforms, Policy, Privacy, and Public Discourse*, Berkman Center Research Publication No. 2014-17, Berkman Center for Internet & Society, Harvard University, 2014
- “Code is Law, But Law is Increasingly Determining the Ethics of Code” in *Internet Monitor 2014: Reflections on the Digital World: Platforms, Policy, Privacy, and Public Discourse*, Berkman Center Research Publication No. 2014-17, Berkman Center for Internet & Society, Harvard University, 2014

Leonard Rotman, Purdy Crawford Chair in Business Law –

Chapters

- *Fiduciary Obligations*, in M. Gillen and F. Woodman, eds., *THE LAW OF TRUSTS, 3RD ED.* (Toronto: Emond Montgomery, 2015) 769-838.
- *Remedies*, in M. Gillen and F. Woodman, eds., *THE LAW OF TRUSTS, 3RD ED.* (Toronto: Emond Montgomery, 2015) (with J. Berryman), 521-625.

Articles

- *Is Corporate Law Experiencing its Own “Groundhog Day”?* (2013) 10 *U. St. Thomas LJ Symposium on Corporate Social Responsibility* 1045-59 (invited contribution).

Conference Papers

- *The Availability of Disgorgement in Canadian Contract Law* (128 pp.), *Civil Law Seminar*, National Judicial Institute, Halifax, NS, May 13, 2015.

Phillip Saunders –

- With Hugh M. Kindred and Robert Currie, general eds., *International Law: Chiefly As Interpreted and Applied in Canada*, 8th ed. (Toronto: Emond Montgomery, 2014), co-editor and author
- Dalhousie Law Journal, Vol 7 No 1, Special Edition on East Coast Energy Law, Guest Editor.

“Canada” in Case Studies on National Legislation Relevant to Deep-Sea Mining; in: MRAG, Study to investigate state of knowledge of deep sea mining, European Commission, DG Maritime Affairs and Fisheries (2014)

Rollie Thompson –

- Editor, *Nova Scotia Civil Procedure Rules*, 2nd ed. (LexisNexis, looseleaf), Issues 24, 25, 26 and 27.
- “Burdens, Presumptions and Best Interests in Relocation” (2015), 53 Fam.Ct.Rev. 40
- “Ideas of Spousal Support Entitlement” (2015), 34 Can.Fam.L.Q. 1
- “Evidence” in Nova Scotia Barristers’ Society, *2015 Bar Review Materials* (May 2015). (with Carol Rogerson) “SSAG Update: 2010- 2015; New Cases and Developments” (March 2015)
- “6 Errors That You Could Make Using the SSAG (But Shouldn’t, and Now Won’t)” in Law Society of Upper Canada, *The Six-Minute Family Law Lawyer 2014* (Toronto, December 4, 2014)

David VanderZwaag, Canada Research Chair (Tier 1) in Ocean Law and Governance -

- “Climate Change and the Shifting International Law and Policy Seascape for Arctic Shipping” in Randall Abate, ed, *Climate Change Impacts on Ocean and Coastal Law: U.S. and International Perspectives* (Oxford: Oxford University Press, 2015), 299-314.
- (with Karen N Scott), “Polar Oceans and Law of the Sea” in *The Oxford Handbook of the Law of the Sea* (Oxford: Oxford University Press, 2015), 724-751.
- (with Biliana Cicin-Sain, & Miriam C Balgos, eds), *Routledge Handbook of National and Regional Ocean Policies* (London & New York: Routledge, 2015)

- (with Miriam M Balgos, Biliana Cicin-Sain), “A Comparative Analysis of Ocean Policies in Fifteen Nations and Four Regions” in *ibid.* , 3-48.
- (with Camille Mageau, Ken Huffman & Susan Farlinger), “Oceans Policy: A Canadian Case Study” in *ibid.*, 87-131.
- (with Jonathan R Edge), “Canada-Russia Relations in the Arctic: Conflictual Rhetoric, Cooperative Realities” in Suzanne Lalonde and Ted L McDorman, (eds), *International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand* (Leiden/Boston: Brill Nijhoff, 2015), 240-265.
- (with Wesley Hartman, & Katja Fennel), “Recovery Planning for Pacific Marine Species at Risk in the Wake of Climate Change and Ocean Acidification: Canadian Practice, Future Courses” (2014) 27 J Envtl L & Prac 23. **R**
- (with A.H. Hoel), “The Global Legal Dimension: Navigating the Legal Currents of Rights and Responsibilities” in Serge Garcia, Jake Rice and Anthony Charles, eds., *Governance of Marine Fisheries and Biodiversity Conservation: Interaction and Coevolution* (Hoboken, NJ: Wiley Blackwell, 2014), 96-109. **R**.
- “Arctic” (2014) 24 YB Intl Envtl L 300.
- “Perspective on International Cooperation in the Arctic” in Oran R. Young, Jong Dong Kim & Yoon Hyung Kim, eds, *The Arctic in World Affairs, A North Pacific Dialogue on International Cooperation in a Changing Arctic: 2014 North Pacific Arctic Conference Proceedings* (Seoul: Korea Maritime Institute and Honolulu: East-West Center, 2014), 389-398.

Sheila Wildeman –

Government Reports

- (with Elaine Gibson, Leah Hutt & Constance MacIntosh), *Report as to Proposed Pilot Project on the Electronic Monitoring of Forensic Mental Health Patients* (Department of Health and Wellness, 2014). <http://novascotia.ca/dhw/mental-health/documents/Electronic-Monitoring-of-Forensic-Mental-Health-Patients-Report-Dalhousie.pdf>

Updating NSBS Self-Study Materials

- “Administrative Law” *Bar Review Materials* (Nova Scotia Barristers’ Society, 2015) [Wildeman updating materials originally authored by Diana Ginn].

Faye Woodman –

- (with Mark Gillen), *The Law of Trusts: A Contextual Approach* (Emond Montgomery, Toronto, 2015).