

Schulich School of Law Dalhousie University

FACULTY PUBLICATIONS (2013 – 2014)

Dalhousie Law Faculty Publications (2013 – 2014)

Bruce Archibald -

- Restorative Justice and the Rule of Law: Rethinking Due Process through a Relational Theory of Rights, posted on SSRN, February, 14, 2014
- Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation 2013, *36:2 Dalhousie Law Journal 281* (with Jennifer Llewellyn, Don Clairmont and Diane Crocker) R

Jaime Baxter -

Vaughan Black -

• "Conditional *Forum Non Conveniens* in Canadian Courts", 39 *Queen's Law Journal* 41 and Out of Bounds: Can a Court Sit Outside its Home Jurisdiction?", 41 *The Advocates' Quarterly* 503 (with Stephen Pitel).

Sarah Bradley –

Kim Brooks -

- "The World Needs More Rod Macdonald: The Potential of Big Ideas" (2014) 51(4) Alberta Law Review 871-889. **R**
- "The Supreme Court's 2012 Tax Cases: Formalism Trumps Pragmatism and Good Sense" (2014) 64 S.C.L.R. (2d) 267 325 (with Neil Brooks).
- The Quest for Tax Reform Continues: The Royal Commission on Taxation Fifty Years Later (Toronto: Carswell, 2013).
- "Cameos from the Margins of Conjugality" in *After Legal Equality: Family, Sex, Kinship*, Robert Leckey, ed. (New York: Routledge, 2014), chapter 6 (99 114). **R**
- "'I believe we shall have significant tax reform': The Legacy and Importance of Canada's Carter Commission" in Kim Brooks, ed., The Quest for Tax Reform Continues: The Royal Commission on Taxation Fifty Years Later (Toronto: Carswell, 2013).

Aldo Chircop -

- (with M. McConnell & Scott Coffen-Smout, eds.,) *Ocean Yearbook*, vol. 28 (Leiden: Nijhoff, 2014).
- (with M.H. Nordquist, J.N. Moore, & R. Long, eds.) *The Regulation of Continental Shelf Development: Rethinking International Standards* (Leiden: Martinus Nijhoff, 2013).

- "Regulatory Challenges for International Arctic Navigation and Shipping in an Evolving Governance Environment" (2014) 28 *Ocean Yearbook*. 269. **R**
- (with I. Bunik, M. McConnell & K. Svendsen), "Course Convergence? Comparative Perspectives on the Governance of Navigation and Shipping in Canadian and Russian Arctic Waters" (2014) 28 Ocean Yearbook. 291. **R**
- "Regional Cooperation in Marine Environmental Protection in the South China Sea: A
 Reflection on New Directions for Marine Conservation," in N. A. Hu & T.L. McDorman,
 eds., *Maritime Issues in the South China Sea: Troubled Waters or a Sea of Opportunity?*(London: Routledge, 2013) 87; published also in D. R. Rothwell, ed., *Law of the Sea*(Cheltenham, UK: Edward Elgar, 2013). R
- "Equity on the Extended Continental Shelf? How an Obscure Provision in UNCLOS
 Provides New Challenges for Ocean Governance," in *Sustainable Oceans: Reconciling Economic Use and Protection* (Lübeck, Germany: Dräger Stiftung, 2014) 36; online:
 Dräger Stiftung http://www.draeger-stiftung.de/fileadmin/user_upload/konferenzen_2013/oceans_report_2013.pdf
- Shipping Law 5th ed. By S. Baughen, International Trade Law 4th ed. by I. Carr & P. Stone, International Trade Law Statutes and Conventions 2011-2013 by I. Carr & M. (2013) 25 Int. J. of Maritime History 383.

Stephen Coughlan -

- (with Gerry Ferguson and Lee Seshagiri), *Annual Review of Criminal Law 2013* (Toronto: Carswell, 2014).
- Canadian Law Dictionary (Hauppage NY, Barrons Educational Series, 2013)
- "Citizen's Arrest, Property Owners, and Private Fiefdoms" (2014) 18 Can Crim LR 1
- "Social Media: The Law Simply Stated" (2013) 11 CJLT 229 (with Robert J Currie)
- "Learning from Experience about Learning from Experience: Modifying the Objective Test for Arrest and Detention" (2013) 4 CR (7th) 245
- "The Rise and Fall of Duress (or How Duress Changed Necessity Before Being Excluded by Self-defence)" (2013) 39 Queen's LJ 83
- "Sections 9, 10 and 11 of the Canadian Charter" in E. Mendes and S. Beaulac *Canadian Charter of Rights and Freedoms* (5th ed) (Toronto: LexisNexis Canada Inc, 2013) (with Robert J Currie)
- "Telus: Asking the Right Questions about General Warrants" (2013) 100 CR (6th) 290

- Case comment on R. v. Spin (2014) 9 C.R. (7th) 308
- Case comment on *R. v. Cisar* (2014) 9 C.R. (7th) 73
- Case comment on R. v. Sekhon (2014) 8 C.R. (7th) 223
- Case comment on R. v. Duszak (2014) 7 C.R. (7th) 97
- Case comment on R. v. McRae (2014) 6 C.R. (7th) 339
- Case comment on R. v. Vu (2014) 6 C.R. (7th) 1
- Case comment on R. v. Felix (2013) 3 C.R. (7th) 223
- Case comment on R. v. Hiscoe (2013) 1 C.R. (7th) 350

Elaine Craig -

- Elaine Craig, "The Ethical Obligations of Defence Counsel in Sexual Assault Cases" (2014) 51 (2) Osgoode Hall Law Journal 427 (pgs 427 467).
- Elaine Craig, "Capacity to Consent to Sexual Risk" (2014) 17(1) New Criminal Law Review 103 (pgs 103 – 134). R
- Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25(1) Canadian Journal of Women and the Law 148 (pgs 148 170). **R**

Robert Currie -

- (with Joseph Rikhof), *International and Transnational Criminal Law*, 2nd ed. (Toronto: Irwin Law, 2013) [second updated edition of external, blind peer-reviewed book]
- "Sections 9, 10 and 11 of the Canadian *Charter*" in E. Mendes & S. Beaulac, eds., *Canadian Charter of Rights and Freedoms*, 5th ed. (Markham, ON: LexisNexis Canada Inc., 2013) 793-878 (with Steve Coughlan) [external blind peer review]
- "Extradition" in Joel E. Pink & David C. Perrier, eds., *From Crime to Punishment*, 8th ed. (Toronto: Carswell, 2014) 669-680 [peer reviewed by editors]
- (with Steve Coughlan), "Social Media: The Law Simply Stated" (2013) 11 CJLT 229
- "Abrogating the Witness Immunity Rule: How Far? How Fast?" in T. Archibald & R. Echlin, eds., *Annual Review of Civil Litigation 2013* (Toronto: Carswell, 2013) 31-52 [peer-reviewed by editors]
- Book Review, *Prosecuting Genocide, Crimes Against Humanity and War Crimes in Canadian Courts* by Fannie Lafontaine (2013) 11 JOURNAL OF INTERNATIONAL CRIMINAL

JUSTICE 1166-1168 [external blind peer-review]

- Book Review, Terje Einarsen, The Concept of Universal Crimes in International Law
 (2014) 12 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 162-163 [external blind peerreview]
- "Apprehension of Bias on the part of the Trial Judge", in Federation of Law Societies, 2014 National Criminal Law Program [peer-reviewed, by Justice David Watt]
- "Social Media and the Open Courts Principle", in Federation of Law Societies, 2014 National Criminal Law Program [peer-reviewed, by Justice David Watt]

Michael Deturbide -

Richard Devlin -

- "Culturally Incompetent Counsel and the Trial Level Judge: A Legal and Ethical Analysis" (2014) 60 CLQ 360-385. [with D. Layton] **R**
- "Public Interest Vocationalism: A Way Forward for Legal Education in Canada" in F. Westwood, ed., *The Calling of Law* (Ashgate, 2014) 85-109. [with Jocelyn Downie] **R**
- "Book Review: Sitting in Judgement" (2013) Canadian Journal of Law and Society.
- "Access to Justice and the Ethics and Politics of Alternative Business Structures" (2012) 91.3 Can Bar. Rev 483-553. [with Ora Morison] **R**

Meinhard Doelle -

- (with Chris Tollefson) *Environmental Law: Cases and Materials 2nd ed.* (Toronto: Thomson/Carswell, 2013)
- "Arctic Climate Governance: Can the Canary in the Coal Mine lift Canada's Head out of the Sand(s)?" in Timothy Stephens and David VanderZwaag, eds, *Polar Oceans Governance in An Era of Environmental Change* (Edward Elgar Publishing, 2014)
- (with John Terry) "International Framework", in D. Mahony ed., *Climate Change Law in Canada* (Aurora: Canada Law Book, 2013) (updated)
- Book Review of: "Climate Change and the Oceans: Gauging the Legal and Policy Currents in the Asia Pacific and Beyond" by Robin Warner, Clive Schofield (2013 Ocean Yearbook)

Jocelyn Downie -

• (with Carolyn McLeod eds.) Let Conscience Be Their Guide?: Conscientious Refusals in Health Care (28:1 Bioethics Special Issue January 2014). **R**

- (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. **REd**
- (with Jacqueline Shaw, & Carolyn McLeod), "Moving Forward with a Clear Conscience: A Model Conscientious Objection Policy for Canadian Colleges of Physicians and Surgeons" (2013) 21:3 Health Law Review. R
- (with Françoise Baylis), "The Tale of Assisted Human Reproduction Canada: A Tragedy in Five Acts" (2013) 25:2 Canadian Journal of Women and the Law 183. **R**
- (with Jacqueline Shaw), "Welcome to the Wild, Wild North: Conscientious Objection Policies Governing Canada's Medical, Nursing, Pharmacy, and Dental Professions" (2013) 28:1 *Bioethics* 33. R
- (with Françoise Baylis & Dave Snow), "Fake it 'till you make it: Policymaking and assisted human reproduction in Canada" (2014) 36:6 *Journal of Obstetrics and Gynaecology* 510. **REd**
- (with Carolyn McLeod), "Introduction to Special Issue: Let Conscience Be Their Guide?: Conscientious Refusals in Health Care" (2014) 28:1 *Bioethics*.

R =subjected by the publisher to anonymous evaluation by experts in the field REd =reviewed by the editors of the book or journal

Joanna Erdman -

- Abortion Law in Transnational Perspective: Cases and Controversies (University of Pennsylvania Press, 2014) (with R. Cook and B. Dickens). http://www.upenn.edu/pennpress/book/15282.html.
- "The Procedural Turn: Abortion at the European Court of Human Rights," in R. Cook, J.N. Erdman and B. Dickens eds., *New Idea in Old Conflicts: Transnational Abortion Law* (University of Pennsylvania Press, 2014) **R**
- "Abortion in International Human Rights Law," in S. Rowlands ed., *Abortion Care*, 244-250 (Cambridge University Press, 2014) R

Elaine Gibson –

• (with M. Herder, J. Graham, J. Lexchin, B. Mintzes), "Regulating Prescription Drugs for Patient Safety: Does Bill C-17 Go Far Enough?" Canadian Medical Association Journal May 13, 2014 vol. 186 no. 8 E287 – E292; **R**

Diana Ginn -

• *Title on Religious Institutions*, for newest edition of Halsbury's Laws of Canada, published by LexisNexis

Michael Hadskis -

Archie Kaiser –

• Comment / Article, "*Babos*: Further Narrowing Access to a Stay of Proceedings Where the Integrity of the Judicial Process Is Implicated", (2014) 8 *Criminal Reports* (7th), 59 – 83.

Lorraine Lafferty -

William Lahey -

- Health Care Federalism in Canada: Critical Junctures and Critical Perspectives
 (Montreal and Kingston: McGill-Queens' University Press, 2013), co-edited with
 Katherine Fierlbeck.
- "The Legal Framework for Intergovernmental Health Care Governance: Making the Most of Limited Options", in Katherine Fierlbeck and William Lahey, eds., *Health Care Federalism in Canada: Critical Junctures and Critical Perspectives* (Montreal and Kingston: McGill-Queens' University Press, 2013), 71-98.
- "Combining the Knowledge of Federalism Researchers, Health Care Researchers, and Policy Practitioners to Understand and Improve Canadian Health Care Federalism", in Katherine Fierlbeck and William Lahey, eds., *Health Care Federalism in Canada:* Critical Junctures and Critical Perspectives (Montreal and Kingston: McGill-Queens' University Press, 2013), 192-204.
- "Gérard V. La Forest and the Uncertain Greening of Canadian Public Law", (2013) 54, *Canadian Business Law Journal*, 223-245.
- "Legislating Interprofessional Regulatory Collaboration in Nova Scotia", Health Reform Observer – Observatoire des Réformes de Santé, (2013) 1:1, Article 4, DOI:http://dx.doi.org/10.13162/hro-ors.01.01.04.
 http://digitalcommons.mcmaster.ca/hro-ors/vol1/iss1/4.
- Report of the Independent Panel to Review the Involuntary Psychiatric Treatment Act and Community Treatment Orders Submitted July 10, 2013 to the Minister of Health and Wellness, Nova Scotia, http://novascotia.ca/dhw/mental-health/reports/IPTA-Review-2013.pdf, co-authored with Justice Gérard V. La Forest.
- "The Legislative Framework Governing Access to 'Insured Health Services' under the *Canada Health Act* and to 'Insured Services' under the Legislation of the Province of Alberta A Report to the Health Services Preferential Access Inquiry of the Province of Alberta", in Health Services Preferential Access Inquiry of Alberta, *Volume 2: Research and Expert Opinions*. (August, 2013).

Jennifer Llewellyn -

- (with B. Archibald (eds.)), Restorative Justice Theory and Practice: Research from the Nova Scotia Restorative Justice Community University Research Alliance, Dalhousie Law Journal 36:2 Fall 2013. **R**
- (with B. Archibald, D. Clairmont, D. Crocker), "Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation" *Dalhousie Law Journal* 36:2 Fall 2013. **R**

Geoffrey Loomer -

Constance MacIntosh -

- "Tsilhqot'in Nation v BC: Re-Configuring Aboriginal Title in the Name of Reconciliation" 2014 47(1) UBCLR 167-210. Peer-reviewed by 2 anonymous reviewers. R
- "The Intersection of Aboriginal Public Health with Canadian Health Law and Policy" in T. Bailey, T. Caulfield and Ries, eds., *Public Health Law and Policy in Canada*, 3nd ed (Butterworths: Toronto, 2013).
- "Developments in Aboriginal Law: The 2012-13 Term: The Honour of the Crown and Constitutional Obligations Support a Declaration for the Métis, while Blockades hit a Roadblock" 2014 SCLR (2nd) 1-36
- Expert Panel on the State of Knowledge of Food Security in Northern Canada, *Aboriginal Food Security in Northern Canada: An Assessment of the State of Knowledge* (2014 Council of Canadian Academies). **R**

Wayne MacKay -

Moira McConnell -

- (P) (with Aldo Chircop, Ivan Bunik, Kristoffer Svendsen), "Course Convergence? Comparative Perspectives on the Governance of Navigation and Shipping in Canadian and Russian Arctic Waters" in *Ocean Yearbook*, eds., Chircop, Coffen-Smout, McConnell, Vol 28 (Leiden/Boston: Martinus Nijhoff, 2014, 291-327) **R**
- (P) (expert contributor to a UN publication) *Maritime Labour Convention*, 2006 *Frequently Asked Questions (3rd revised edition 2014)* (International Labour Standards Department, ILO, Geneva). Also available as an online database @) http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm
- (P) (expert contributor to a UN publication/ document) *Background paper for discussion at the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention*, 2006 (Geneva, 7-11 April 2014) ILO

Doc. No. STCMLC/2014. Available online @ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/normes/documents/genericdocument/wcms 235062.pdf>

- (P) (with Aldo Chircop, Scott Coffen-Smout, eds.), *Ocean Yearbook*, Volume 28 (Leiden/Boston: Brill/Martinus Nijhoff). **R**
- (P) (as one of the Associate Editors) *Yearbook of International Environmental Law* Vol. 23 (2012 edited in 2013 and published in 2014) (Oxford: Oxford University Press).

Jonathan Penney-

• "Copyright's Media Theory and the Internet: The Case of the Chilling Effects Doctrine," in Courtney B Doagoo, Mistrale Goudreau, Madelaine Saginur & Teresa Scassa, eds, Intellectual Property for the 21st Century: Interdisciplinary Perspectives on Intellectual Property Law (Toronto: Irwin Law, 2013) (R) (double blind peer review)

Leonard Rotman -

• "Is Corporate Law Experiencing its Own "Groundhog Day"? (2013) 10 U. St. Thomas L.J. Symposium on Corporate Social Responsibility 1045-59. Symposium on Corporate Social Responsibility invited contribution.

Phillip Saunders -

- Canada, in A. Reinisch (ed) The Privileges and Immunities of International Organizations in Domestic Courts, (OUP 2013).
- Guest editor, Special edition of the DLJ on East Coast Oil and Gas Issues undertook updating of articles completed (due to delay in production).
- International Law, Chiefly as Interpreted and Applied in Canada",8th ed with co-editors H. Kindred and R. Currie.

Jonathan Shapiro –

Rollie Thompson –

- Editor, *Nova Scotia Civil Procedure Rules*, 2nd ed. (LexisNexis, looseleaf), Issues 19, 20, 21, 22 and 23.
- "The TLC of Shared Parenting: Time, Language and Cash", (2013), 32 Can.Fam.L.Q. 315-349.
- "Dividing Matrimonial Property: Common-Law Partners Still Excluded from Property Laws" (2013), 43 Transition 8-9.

- "The Ten Evidence 'Rules' That Every Family Law Lawyer Needs to Know", in various versions for Law Society of Saskatchewan, *Evidence in Family Law Proceedings*, Saskatoon and Regina, September 10-11, 2013, for National Judicial Institute, *Family Law Seminar*, Quebec City, February 13-14, 2014, and for Federation of Law Societies, *National Family Law Program*, Whistler, July 13-17, 2014.
- "Evidence" in Nova Scotia Barristers' Society, 2014 Bar Review Materials (May 2014).
- (with Carol Rogerson) "A Reply to Mr. Grant: No 'Errors' in the Shared Custody Formula" in OBA Family Law Section, *Matrimonial Affairs* (May 12, 2014)(online)
- "Child Hearsay in Criminal and Family Cases: A Comparison" in Ontario Court of Justice, *Education Seminar*, Deerhurst, Ontario, May 21, 2014.

Esmeralda Thornhill -

David VanderZwaag -

- (with Richard Apostle & Steven J Cooke), "Tracking and Protecting Marine Species at Risk: Scientific Advances, Sea of Governance Challenges" (2013) 16:2-3 J Int'l Wildlife L & Pol'y 105.
- (with Cecilia Engler-Palma, & Richard Apostle et al.), "Sustaining American Eels: A Slippery Species for Science and Governance" (2013) 16:2-3 J Int'l Wildlife L & Pol'y 128.
- (with Richard Apostle, Michael J Dodswell, Cecilia Engler-Palma, Mathew K Litvak, Montana F McLean, Michael JW Stokesburry & Andrew D Taylor) "Sustaining Atlantic Sturgeon: Stitching a Stronger Scientific and Governance Net" (2013) 16:2-3 J Int'l Wildlife L & Pol'y 170.
- (with Brendal Davis & Aurelie Cosandey-Godin et al.), "The Conservation of the Greenland Shark (*Somniosus microcephalus*): Setting Scientific, Law and Policy Coordinates for Avoiding a Species at Risk" (2013) 16:4 J Int'l Wildlife L & Pol'y 300.
- "Social science perspective: the future of Arctic fisheries governance a restless sea" in Oran Young et al., eds, *The Arctic in World Affairs: A North Pacific Dialogue on the Future of the Arctic* (Korea Maritime Institute and East-West Centre, 2013), 221-227.
- "The ICJ, ITLOS and the Precautionary Approach: Paltry Progressions, Jurisprudential Jousting" (2013) 35 *U Haw L Rev* 617.
- (with Hai Dang Vu), "Regional Cooperation in the South China Sea and the Arctic: Lessons To Be Learned?" (2013) 6 Tsinghua L Rev 29 (in Chinese).
- (with Tim Stephens, eds), *Polar Oceans Governance in an Era of Environmental Change* (Northampton, MA: Edward Elgar, 2014).

- (with Tim Stephens), "Polar oceans governance: shifting seascapes, hazy horizons" in David L VanderZwaag & Tim Stephens, eds, *Polar Oceans Governance in an Era of Environmental Change* (Northampton, MA: Edward Elgar, 2014), 1-17.
- "The Arctic Council and the future of Arctic Ocean governance: edging forward in a sea of governance challenges" in David L VanderZwaag & Tim Stephens, eds, *Polar Oceans Governance in an Era of Environmental Change* (Northampton, MA: Edward Elgar, 2014), 308-338.
- "Canada and the Governance of the Northwest Passage: Rough Waters, Cooperative Currents, Sea of Challenges" in David D Caron & Nilufer Oral, eds, *Navigating Straits: Challenges for International Law* (Boston: Brill Nijhoff, 2014), 87-121.
- (with Alexander Globokov, Alf Hakon Hoel, Susan Rolston & Sarah Turgeon) "Governance of Russian Arctic Fisheries in the Barents Sea: Surveying National and Cooperative Currents" in Aldo Chircop, Scott Coffen-Smout, and Moira McConnell, eds, 28 Ocean YB (Leiden: Brill Nijhoff, 2014), 328-347.
- (with Aaron Lemkow) "Recovery Planning under Canada's Species at Risk Act in a Changing Ocean: Gauging the Tides, Charting Future Coordinates" (2014) 26 J Envtl L & Prac 121.
- (with Lauren Warner & Cecilia Engler), "Canada and the Governance of Arctic Marine Fisheries: Tending a Fragmented Net" in Aldo Chircop, Scott Coffen-Smout & Moira McConnell, eds, 28 Ocean YB (Leiden: Brill Nijhoff, 2014), 380-422.

Sheila Wildeman –

- (with Gina Bravo, Scott Y.H. Kim, Marie-France Dubois, Carole A. Cohen, and Janice E. Graham), "Surrogate Consent for Dementia Research: Factors Influencing Five Stakeholder Groups from the SCORES Study" (July-Aug 2013) 35:4 *IRB: Ethics & Human Research* 1-11 [Feature Article] [P]
- (with Gina Bravo, Marie-France Dubois, Scott YH Kim, Carole Cohen, Janice Graham and Karen Painter), "Substitute consent practices in the face of uncertainty: a survey of Canadian researchers in aging" (November 2013) 25:11 *International Psychogeriatrics* 1821-1830 [P]
 - "Administrative Law" Bar Review Materials (Nova Scotia Barristers' Society, 2014)
- "Doing the Rule of Law in Different Voices (or, what to do with *Doré v. Barreau du Quebec?*)" prepared for / distributed to participants at the CIAJ (Canadian Institute for the Administration of Justice) *National Dialogue on Administrative Law*, Halifax, Nova Scotia: November, 2013 (*revised* version of paper distributed for CIAJ event in Toronto, May 24, 2013.)

Michelle Williams -

• "African Nova Scotian Restorative Justice: A Change Has Gotta Come" (2013) 36 Dal LJ 419-459.

Faye Woodman -