

ABlawg's Year in Review, 2016

ABlawg is pleased to provide this compilation of highlights from 2016, consisting of some statistics and synthesis of our bloggers' contributions in substantive areas of law this past year.

The Numbers

ABlawg has published one hundred and fifty (150) posts so far in 2016, with more to come before we take our annual holiday hiatus. The post that generated the most hits this year was Nigel Bankes' [The Termination of Power Purchase Arrangements in Alberta: What is the Legal Position and What are the Implications of Termination?](#), with 6071 views overall, showing the appetite for informed public policy discussions in Alberta. The runners-up were three posts on the *Ghameshi* trial: Joshua Sealy-Harrington's [Mastery or Misogyny? The Ghameshi Judgment and Sexual Assault Reform](#), with 5178 views overall, Jennifer Koshan's [Reflections on Week One of the Ghameshi Trial](#), with 3798 views overall, and Alice Woolley's [What Ought Crown Counsel to do in Prosecuting Sexual Assault Charges? Some Post-Ghameshi Reflections, with 2827 views overall](#). "Mastery or Misogyny" also established a new record for daily hits to ABlawg, with 2989 views of our site the day it was posted.

The post that spurred the most comments in 2016 was Martin Olszynski's [Northern Gateway: Federal Court of Appeal Applies Wrong CEEA Provisions and Unwittingly Affirms Regressiveness of 2012 Budget Bills](#). This post led to an intense debate on the proper interpretation of the *Canadian Environmental Assessment Act, 2012*, with Martin's position being recently adopted by both the appellant and respondent before the Supreme Court of Canada, as discussed in his most recent comment on that post.

Topical Contributions

Administrative Law

Alberta was the source of at least two important judgments from the Supreme Court of Canada in administrative law during 2016. The Supreme Court reversed the Alberta Court of Appeal in *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, [2016 SCC 47 \(Can LII\)](#), a case involving property tax assessment in Alberta. Shaun Fluker's post [The Supreme Court of Canada \(By a Slim Majority\) Confirms the Presumption of Deference in Alberta](#) explores what the Court's 5:4 split reveals for the presumption of deference which has dominated substantive judicial review since the Court's 2008 decision in *Dunsmuir*. Alice Woolley's [The Dangers of Inconsistency \(and Consistency\) in Supreme Court Jurisprudence](#) examines the Supreme Court's decision in *Alberta (Information and Privacy Commissioner) v. University of Calgary*, [2016 SCC 53 \(CanLII\)](#), a case involving solicitor-client privilege to refuse the production of documents under freedom of information legislation, and comments on the Court's recent struggle for coherency in its standard of review jurisprudence. Shaun's post [Does Judicial Review Apply to Decisions Made by Religious Groups?](#) suggests the Supreme Court may soon be returning to Alberta if it grants leave to appeal in *Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses*, [2016 ABCA 255 \(CanLII\)](#), where the Court of Appeal purported to

extend the scope of judicial review to decisions made by non-statutory entities who are not exercising powers sourced in legislation.

Criminal Law

As noted in our post commemorating the [National Day of Remembrance and Action on Violence Against Women](#) on December 6, ABlawg published several posts this year dealing with gender-based violence. We are also in the midst of a series of posts on Bill C-51, the *Anti-terrorism Act*, in which Michael Nesbitt and his students in the [Criminal Law & Policy Lab: Terrorism Law & Reform](#) report on their submissions to the federal government's review of Bill C-51 (see [here](#), [here](#) and [here](#)). Erin Sheley posted on a range of criminal law topics, from the [sex offender registry](#) to [animal cruelty law](#) to [jury trials](#). And Lisa Silver wrote a series of posts exploring what it means to be "modern" in our approach to criminal law, including commentary on the Supreme Court's decisions in [R v DLW](#) (involving the *Criminal Code*'s bestiality provisions; see also Joshua Sealy-Harrington and Evan Choate's post on that case [here](#)); [R v Villaroman](#) (involving the assessment of circumstantial evidence); and [R v Anthony-Cook](#) (involving joint sentencing submissions and the community's sense of justice).

Constitutional / Human Rights Law

ABlawg published a number of posts in 2016 on the constitutional right to assisted dying, from Elliot Holzman's post considering the Supreme Court's decision granting the federal government more time to amend the *Criminal Code* in [Carter II](#), to Jennifer Koshan's posts on interim applications for judicial authorization of constitutional exemptions ([here](#) and [here](#)), and a [comment](#) on Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*.

We also published a number of posts dealing with freedom of expression issues, with Emily Laidlaw examining [defamatory Facebook posts](#); Hasna Shireen considering [publication bans and privacy rights](#), Ola Malik, Jeff Watson and Holly Wong writing about [municipal regulation of hate speech](#), and Linda McKay-Panos exploring the application of protest rights [here](#) and [here](#).

Natural Resources, Energy and Environmental Law

This proved to be an important and busy year in the electricity sector in Alberta. Nigel Bankes' popular backgrounder on [The Termination of Power Purchase Arrangements \(PPAs\)](#) was followed up with his post on the [Attorney General's application for a declaration of invalidity](#) with respect to the "more unprofitable" language of the so-called "Enron amendment". November brought a flurry of changes in energy policy and energy markets which Nigel followed with [posts on Bill 27, The Renewable Electricity Act](#), the [proposal to add a capacity market](#) to Alberta's energy-only market, and [some PPA arbitrations](#).

Climate change was also an area that attracted a great deal of attention from the courts and the legislatures this year. Sharon Mascher posted on the Federal Court of Appeal's [Synchrude v Canada](#) decision (which demonstrated just how far the federal government can go with the criminal law power to regulate greenhouse gases), and Nigel Bankes provided detailed analysis of the [new oil sands emissions legislation](#).

Martin Olszynski and Sharon Mascher joined forces to tackle the complex legal issues raised in *Gitxaala Nation v Canada*, [2016 FCA 187 \(CanLII\)](#), dealing with the Northern Gateway pipeline

approval. In his post, noted above, Martin analyzed the Federal Court of Appeal's [approach to the Canadian Environmental Assessment Act, 2012](#) – an approach which led to the substantive challenges brought against the Joint Review Panel's report, and consequently the Cabinet's determination, being dismissed. Sharon's post focused on the Federal Court of Appeal's reasoning in the *Gitxaala* decision [relating to the duty to consult](#). This aspect of the decision is of lasting significance as it provides substantive guidance on what meaningful consultation with Aboriginal people looks like.

Private Law

Evar Oshionebo contributed two posts on developments at the Alberta Court of Appeal on contract law (see [here](#) and [here](#)), and Nickie Nikolaou and Jonnette Watson Hamilton wrote several posts on property law, involving issues from [adverse possession](#) to [restrictive covenants](#) to [matrimonial property rights](#). Nigel Bankes contributed several posts on oil and gas contracts and leases, including posts on [royalty agreements](#), [rights of first refusal](#), [knock-for-knock](#) mutual indemnity provisions, and a post (with LLM student Heather Lilles) on a case dealing with [the gap between law and practice](#) in an oil and gas joint venture subject to the CAPL Operating procedure. Nigel also contributed to the debate on two Queen's Bench decisions (both of which are under appeal): the [Redwater](#) decision (dealing with the constitutionality of the AER licensee liability program (LLR)) and the [GSI](#) decision (dealing the issue of intellectual property in seismic data). The Faculty of Law also welcomed new faculty member and blogger Rudi Tscherning this year, who wrote his first post in the area of private international law on [international child abduction under the Hague Convention](#).

Residential Tenancies

This year was an important one for residential tenancy law reform in Alberta. Jonnette Watson Hamilton wrote a series of posts on deficiencies in the Residential Tenancies Dispute Resolution Service that worked to the disadvantage of tenants, starting just before the new year with [Setting Aside Residential Tenancy Dispute Resolution Service Orders for Problems with Service: It Can't Be Done](#), and continuing in early 2016 with [For Shame: An Obvious and Fundamental Breach of Natural Justice by the Residential Tenancies Dispute Resolution Service \(RTDRS\)](#) and [Don't Think Twice: The Residential Tenancies Dispute Resolution Board's Power to Correct for Procedural Unfairness](#). The "For Shame" post was cited by Master Robertson in *Hewitt v Barlow*, [2016 ABQB 81 \(CanLII\)](#). The posts also formed the basis of the inaugural project of the law school's [Public Interest Law Clinic](#): advocating for access to justice and procedural fairness for tenants in Alberta by suggesting needed changes to the government in April. Subsequently the government's Legislative Review Committee decided to review the *Residential Tenancy Dispute Resolution Service Regulation* and the Public Interest Law Clinic participated in the consultation process in the fall of 2016.

Student Contributions

In addition to the residential tenancies work of the Public Interest Law Clinic and the Bill C-51 posts from students in the Criminal Law & Policy Lab, Clinic and other students blogged on issues related to access to justice (see [here](#), [here](#), [here](#), and [here](#)), prisoners' rights (see [here](#) and [here](#)), and environmental law matters (see [here](#) and [here](#)). Other students contributed to ABLawg this year on work they performed as research assistants for various faculty members: Stephen

Armstrong and Kristin Barham reported on their research with Anna-Maria Hubert on the right to science ([here](#) and [here](#)), and Kyle Gardiner posted on his work with Jonnette Watson Hamilton, Jennifer Koshan and Saul Templeton on tax and equality [here](#).

In sum, this was another productive year for ABlawg. Thanks to our readers for following us!

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