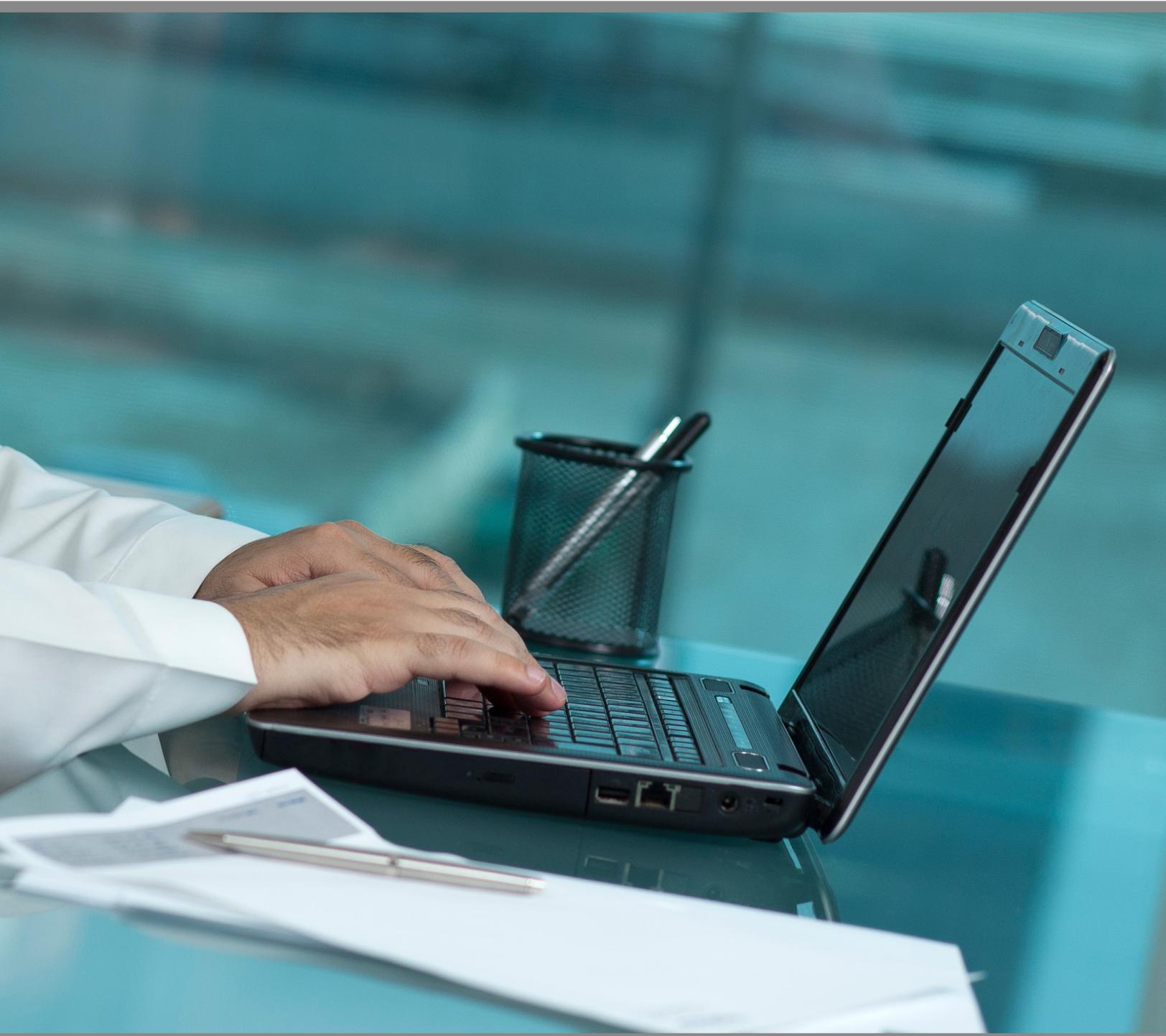


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Part two contains the results of Schertzer's original analysis of the SCC cases. His methodology and framework are described in chapter three, followed by an examination of the *Secession Reference* case as an exemplar of his research in chapter four. The remaining cases are analyzed in the final two chapters, with cases in which the Court applied a specific model of federalism discussed in chapter five and cases wherein the Court recognized that there are multiple models of federalism, and that the system works best through a process of negotiation, examined in chapter six.

Schertzer scrutinizes each case for four pieces of information: the Court's depiction of federalism, its use of legal argument to reinforce that depiction, the outcome of the case, and the role the Court itself assumed in this process. The depiction of federalism is the lens through which the Court considers the legislative actions of the parties, either ascribing to one particular model of federalism or supporting the notion that the system relies on "negotiation between the holders of legitimate competing models" (p 179). The legal argument component of the study focusses on which of the seven possible models of constitutional interpretation is used by the Court. With respect to the outcome of the case, Schertzer noted the traditional meaning (which party won, and to what degree?) but also examined the effect the outcome had on the federal system. The final consideration was what the Court viewed as its role in the federalist system: umpire, branch of government, guardian, and facilitator/fair arbiter.

Schertzer also explores connections between these components. His research demonstrates, for example, that a "zero-sum" outcome resulting in a clear winner and loser usually occurred when the Court applied a specific model of federalism. His analysis also shows a correlation between the Court's self-imposed role in a federalist system and its view of federalism, with its umpire and branch of government roles appearing more frequently when a model of federalism is employed, and its facilitator role appearing double any other role when the Court recognized the negotiation aspect of federalism.

This is a well-written and organized book. The tables in chapters five and six display the analysis of every case in column form, serving as a quick reference for readers. The book's index is thorough, containing concepts, jurisdictions, people, statutes, and cases as index terms. It also uses "see also" references to authors and publications on the bibliography for readers who want to probe concepts further. The bibliography is a treasure trove for researchers, listing articles and books from Canada, the UK, and the US, along with cases and legislation.

Based on Schertzer's doctoral thesis research, *The Judicial Role in a Diverse Federation* was deservedly shortlisted for the Donald Smiley Prize from the Canadian Political Science Association in 2017. Schertzer's analysis of the bulk of the SCC's decisions from a 30-year period is a valuable addition to the Canadian constitutional law landscape. The patterns and connections reflected in his research will be of interest to Constitutional scholars and lawyers, providing them with the opportunity to gain a deeper understanding of why the Court reached the outcomes it did. A book with such a broad impact should be in every academic, governmental, and national law firm library.

Key Developments in Environmental Law 2017. Edited by Stanley D Berger. 11th ed. Toronto: Thomson Reuters, 2017. xx, 160 p. Includes preface, table of cases, bibliographic references, and index. ISBN 978-0779879700 (softcover) \$144.00.

The 11th edition of *Key Developments in Environmental Law* highlights important legal developments and trends in environmental law from the previous year. Editor Stanley D Berger introduces these developments in the preface. The succinct and easy-to-read compilation is written by environmental law practitioners and scholars. Each of the ten chapters is approximately 15 pages long and includes extensive footnotes to supporting documentation.

In chapter one, authors Jennifer Fairfax, Patrick G Welsh, Rebecca Hall-McGuire, and Isabelle Crew analyze the federal government's proposed ban on the "manufacture, use, import and export of asbestos and asbestos-containing products by 2018" (p 2). The chapter includes a brief background on Canada's history with asbestos, the current and proposed regulatory approach, and provincial and territorial responses to the federal government's plan.

In chapter two, Berger looks at recent initiatives to amend the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19. Berger analyzes reports produced from a 2016 review of federal environmental and regulatory processes undertaken by the Government of Canada as they relate to process, organization, human resources, information management, performance evaluation, intervenor funding, and budgeting.

Chapters three through seven provide commentary on five noteworthy cases. In chapter three, Natalie Mullins discusses *Midwest Properties Ltd v Thordarson*, 2015 ONCA 819, and the potential impact it may have on the law of damages. She argues that the decision "potentially paves the way for plaintiffs to recover very significant damage awards under section 99(2) of the [*Environmental Protection Act*] that grossly exceed their actual loss." The decision, she writes, has created "the potential for litigants to profit off of purchasing contaminated sites" (p 31).

Chapter four covers *Keswick Presbyterian Church v Ontario (Ministry of the Environment and Climate Change)* (2016), 4 CELR (4th) 194 (Ont ERT). Authors Marc McAree, Richard Butler, and Robert Woon examine the legal test for bringing a motion for costs to Ontario's Environmental Review Tribunal.

Chapter five opens a discussion of future lessons for due diligence defences as Marc McAree, Matt Gardner, and Giselle Davidian consider the wider legal implications of *R v ControlChem Canada Ltd* (March 15, 2016), Burlington 139537-01 (Ont CJ). In chapter six, Alex Smith and Mark Strychar-Bodnar review *Yaiguaje v Chevron Corporation*, 2017 ONSC 135, and question whether Chevron Canada is an asset of Chevron and whether the corporate veil should be pierced.

In chapter seven, Kirk N Lambrecht examines the BC Supreme Court decision *Prophet River First Nation v Canada (AG)*, 2017 FCA 15. He argues that treaty rights are not like asserted Aboriginal rights and, as such, the “infringement of such rights can be considered prior to the issuance of regulations and must be appropriately justified in Provincial Court proceedings” (p 97).

Chapters eight through ten address a number of key international environmental law issues. Meinhard Doelle looks at the Bilcon NAFTA tribunal in chapter eight, while Simon Tilling and Ian Truman consider the impact of Brexit on UK environmental and nuclear law in chapter nine. In the final chapter, James Rendell comments on *Urgenda Foundation v The State of the Netherlands* (June 24, 2015), Chamber for Commercial Affairs C/09/456689/HA ZA 13-1396 (Hague District Court).

Key Developments in Environmental Law gathers all of the key information for the year into one concise book and offers a more in-depth discussion of key trends in environmental law than is available in loose-leaf services such as *The Prosecution and Defence of Environmental Offences* (also by Berger) and online netletters such as LexisNexis’s Environmental Law Netletter. For example, although the Berger loose-leaf references *Midwest Properties Ltd v Thordarson*, 2015 ONCA 819, briefly in chapter two under “Damage to Property” and in chapter four under “Qualifications” (expert evidence), it does not theorize about the potential consequences of the decision as Natalie Mullins has done in *Key Developments*.

This book is recommended for law students, practitioners, and scholars working in the area of environmental law.

REVIEWED BY
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***Landlord’s Rights and Remedies in a Commercial Lease: A Practical Guide.* By Harvey M Haber & Kenneth A Beallor. 2nd ed. Toronto: Thomson Reuters, 2017. Iv, 652 p. Includes table of cases, appendices, and index. ISBN 978-0779880126 (hardcover) \$173.00.**

This book is a collection of essays on various topics on commercial leases written by 25 experts in the field and coedited by Haber and Beallor, who also contributed three chapters. This is the second edition of the book originally published in 1996 by Canada Law Book. The first edition was entirely authored by Haber, so this is a significant change. Haber is a former senior partner with Goldman Sloan Nash and Haber in Toronto and is now a mediator and arbitrator with Coe ADR Management. He is the author or editor of many titles in the area of commercial leasing, with several in multiple editions. Beallor is a partner in the Commercial Real Estate Group at Torkin Manes LLP in Toronto. He has chaired the ICSC Canadian Law Conference, and he lectures and writes on the topic of commercial leasing. Regrettably the book does not include biographical information for the other authors apart from their names and affiliations.

This book addresses the Canadian legal context with a particular focus on Ontario, although Haber is quick to point out that the principles would apply to all common law jurisdictions. The individual authors address applicable federal legislation and case law, and, where relevant, reference legislation and case law from other provincial jurisdictions. For example, in “Remedies for Breach of Covenant,” the author notes that the chapter will deal specifically with the Ontario statute, but in a footnote provides a list of other provincial statutes where they exist. There is also a chapter dealing specifically with commercial landlords’ rights and remedies in Quebec.

The foreword of the first edition states that the intended audience is landlords and tenants, lawyers, and others involved in the leasing of commercial properties. Its organization is that of a textbook or handbook, with a detailed table of contents.

The preface of the second edition suggests a similar audience and intent. This new edition has an abbreviated table of contents, which might make the book less accessible for the reader without legal training, although an excellent index helps mitigate that limitation. The book contains a short introduction, which is an introduction to the topic rather than the book, and twenty essays on topics from rent arrears to renewal rights. This edition covers most of the same material as the first but adds new content such as chapters on environmental considerations and insurance. As in the previous edition, there are appendices that include sample notices and agreement provisions. Although the individual chapters were well structured, I was uncertain how they related to each other; e.g., should I read chapter one before moving on to chapter two, or do I need to understand concepts introduced in the chapter on indemnity agreements before proceeding to drafting indemnity and limitation of liability clauses?

It is challenging to write for both legally trained and lay readers. The authors have taken great care to write in a plain style and explain the legal principles applied in the cases they cite. While the authors usually are careful to define their terms, it might have been helpful to include a glossary of legal terms for quick reference. Does the average layperson understand what “estoppel” or “in obiter” mean? Where possible, the authors provide practical guidance to the legal concepts discussed; e.g., “A landlord should avoid general use clauses,” followed by examples of that type of clause, and then preferred clauses. Some chapters, such as “A Bailiff’s Perspective on Distress and Termination: What Actually Happens,” offer helpful walkthroughs of the processes and explain the risks and alternatives at each stage. Though occasionally the narrative might be a little dense for a non-legally trained reader, I found the book overall accessible.

Notwithstanding the few shortcomings noted above, this is a well written and useful volume. It contains a wealth of information for anyone engaged in commercial leasing and would be a valuable addition to any law library.

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