

Derek McKee

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I. BACKGROUND

Current Position

2018– **Faculté de droit, Université de Montréal**
Associate Professor

Professional Experience

2012–2018 **Faculté de droit, Université de Sherbrooke**
Associate Professor (2018)
Assistant Professor (2013–2018)
Professor *chargé d'enseignement* (2012–2013)

2006–2007 **Supreme Court of Canada**
Law Clerk to Chief Justice Beverley McLachlin

Visiting Professor/Researcher

2024 (Jan.–Mar.) **Facultad de Derecho, Universidad de los Andes (Bogotá, Colombia)**
Visiting Researcher

2023 (Sept.–Dec.) **École nationale d'administration publique (Montréal)**
Visiting Professor

Education

2007–2013 **University of Toronto, Faculty of Law**
Doctor of Juridical Science (S.J.D.)

- Dissertation: “Internationalism and Global Governance in Canadian Public Law”
- Supervisor: Prof. Kerry Rittich
- SSHRC Canada Graduate Scholarship, 2008–2011 (\$105,000)
- Ontario Graduate Scholarship, 2007–2008 (\$15,000)
- University of Toronto Faculty of Law Doctoral Scholarship, 2007–2008 (\$9,000)

2002–2006 **McGill University, Faculty of Law**
Bachelor of Civil Laws/Bachelor of Laws (B.C.L./LL.B.)

- English Editorial Board, McGill Law Journal, 2003–2005

1993–1998

Harvard University

Bachelor of Arts *magna cum laude*

- Joint concentration in Visual and Environmental Studies and Anthropology

Professional credentials

Law Society of Ontario (called to the bar 2007)

Languages

English (native speaker), French (fluent), German (intermediate), Spanish (intermediate)

II. RESEARCH

Academic publications

Peer-Reviewed Articles

“Paradigms of Public Procurement Law” (2023) *Public Procurement Law Review* 67.

“The Boundaries of Judicial Review Since *Highwood Congregation of Jehovah’s Witnesses v Wall*” (2021) 47 *Queen’s Law Journal* 112.

“Peer Platform Markets and Licensing Regimes,” in Derek McKee, Finn Makela, and Teresa Scassa, eds., *Law and the “Sharing Economy”: Regulating Online Market Platforms*, Ottawa: University of Ottawa Press, 2018.

“The Platform Economy: Natural, Neutral, Consensual, and Efficient?” (2017) 8 *Transnational Legal Theory* 455.

“Neoliberalism and the legality of peer platform markets” (2017) 23 *Environmental Innovation and Societal Transitions* 105.

“The Responsibility of Common Law Scholarship: A Case Study” (2016) 118 *Revue du Notariat* 283.

“The Standard of Review for Questions of Procedural Fairness” (2016) 41 *Queen’s Law Journal* 355.

“The *Official Development Assistance Accountability Act*: Global Justice and Managerialism in Canadian Law” (2015) 48 *UBC Law Review* 447.

“Legal Ideas in the Creation of Canada’s Access to Medicines Regime” (2013) 4 *Transnational Legal Theory* 607.

“The Public/Private Distinction in *Roncarelli v. Duplessis*” (2010) 55 *McGill Law Journal* 461.

Other Articles

(with Oliver Barsalou et Hélène Mayrand) “Introduction : Illusions perdues? Droit et expertise dans un monde ingouvernable” (2020) 5 *Revue générale de droit* 5.

(with Marie-Claire Belleau) “Le Réalisme juridique et ses précurseurs dans la théorie du droit des États-Unis,” in Stéphane Bernatchez and Louise Lalonde, eds., *Approches et fondements du droit, Tome 3 : Interdisciplinarité et théories critiques*, Cowansville: Yvon Blais, 2019.

“Licensing Regimes and Platform-Based Businesses,” in Nestor M. Davidson, Michèle Finck, and John J. Infranca, eds., *Cambridge Handbook on Law and Regulation of the Sharing Economy*, Cambridge: Cambridge University Press, 2018.

Edited Volume

Derek McKee, Finn Makela, and Teresa Scassa, eds., *Law and the “Sharing Economy”: Regulating Online Market Platforms*, Ottawa: University of Ottawa Press, 2018.

Book Reviews

« Book Review: Joseph Heath, *The Machinery of Government: Public Administration and the Liberal State* » (2022) 35 *Canadian Journal of Administrative Law and Practice* 125.

“Book Review: Andrew Lang, *World Trade Law after Neoliberalism*” (2013) 4 *Transnational Legal Theory* 305.

“Book Review: Stephen Clarkson & Stepan Wood, *A Perilous Imbalance: The Globalization of Canadian Law and Governance*” (2012) 62 *University of Toronto Law Journal* 151.

“Review Essay: Emmanuel Melissaris’s *Ubiquitous Law: Legal Theory and the Space for Legal Pluralism*” (2010) 11 *German Law Journal* 573.

Academic Presentations

“La mise en œuvre au palier fédéral canadien des traités en matière de marchés publics”: Conference on *Droit international en droit interne : Développements récents et perspectives comparées*, Université de Montréal, 1 September 2023.

“L’ouverture graduelle au contrôle judiciaire”: Table ronde sur les enjeux contemporains et d’avenir en droit des marchés publics, École nationale de l’administration publique, Quebec City, 28 October 2022.

“Paradigms of Public Procurement Law”: Public Procurement Global Revolution XI Conference, University of Nottingham, 14 June 2022.

“Judicial Review of Procurement Decisions in Canada”: Atelier de recherche sur le droit des marchés publics, École nationale de l’administration publique, Quebec City, 5 November 2021.

“Paradigms of Public Procurement Law”: Atelier de recherche sur le droit des marchés publics, Université de Montréal, 30 October 2019.

“The Liberalization of Public Procurement and its Reception in Domestic Legal Regimes”: ATLAS Agora, University College Dublin, 13 June 2019.

“Public Contracting and the Impact of Recent Trade Agreements”: Canadian Law of Obligations Conference, University of New Brunswick, Fredericton, 11 May 2019.

“Public Procurement at the Intersection of Trade, Administration, and Contract”: Department of Legal Studies, Carleton University, Ottawa, 13 September 2018.

“Taxis, Platforms, and Regulatory Compromises”: Law and Society Association Annual Meeting, Toronto, 7 June 2018.

“Les marchés publics à l’intersection du commerce, de l’administration et du contrat”: conférence-midi CÉDIM-CÉIM, UQÀM, 13 March 2018.

“The Regulation of Airbnb in Canada”: Workshop on the *Cambridge Handbook on Law and Regulation of the Sharing Economy*, Suffolk University, Boston, 28 April 2017.

“Droit + Changement + Économie de partage : Le néolibéralisme et la légalité des plateformes de marché en ligne”: Centre de recherche en droit public, Université de Montréal, 28 March 2017.

“The Regulation of Market Power in the ‘Sharing Economy’”: Workshop on *Law and the “Sharing Economy”: Regulating Online Market-Based Platforms*, Université de Sherbrooke, 20 January 2017.

“La réglementation de l’économie de plateforme”: Common Law Colloquium, Université de Montréal, 28 September 2016.

“Regulating Peer-to-Peer Rentals and Services: The Canadian Experience”: 6th Biennial Conference of the European Consortium for Political Research (ECPR) Standing Group on Regulatory Governance, Tilburg University, 6 July 2016.

“Airbnb and Uber : The Structure of Policy Argument”: Canadian Law and Society Association Annual Meeting, University of Calgary, 30 May 2016.

“Airbnb et Uber : La structure de l’argumentation politique”: Workshop, Critical Legal Research Laboratory, Faculté de Droit, Université de Sherbrooke, 23 March 2016.

“The Positization of a Corrective Justice Approach to Tort Law”: *La responsabilité de la doctrine*, conference for the 40th anniversary of the Paul-André Crépeau Centre for Private and Comparative Law, Faculty of Law, McGill University, 12 February 2016.

“Regulating Sharing Economy Rentals and Services: Lessons from Canadian Experiences”: Second International Workshop on the Sharing Economy, ESCP Europe, Paris, 28 January 2016.

“Airbnb and Uber as Regulatory Challenges”: Midwinter meetings of the Canadian Law and Society Association, University of Waterloo, 16 January 2016.

“The Standard of Review for Questions of Procedural Fairness”: International Society of Public Law, New York University School of Law, 2 July 2015.

“Trade Liberalization and the Regulation of Public Procurement in Canada”: Institute for Global Law and Policy, Harvard Law School, 3 June 2015.

“Environmental Assessment, Territory, and Sovereignty”: *Combustion: Energy, Resources and Environmental Issues Igniting International Law*, annual conference of the Canadian Council of International Law, Ottawa, 14 November 2014.

“Canadian Environmental Assessments of Projects Outside Canada”: *Law’s Encounters: Co-existing and Contradictory Norms and Systems*, annual conference of the Canadian Law and Society Association, 7 June 2014.

“Introduction to Transnational Law”: guest lecture, Principes et concepts fondamentaux, Programme en common law et droit transnational, Faculté de droit, Université de Sherbrooke, 6 May 2013.

“Legal Pluralism and Globalization’s Background Rules”: *Stateless Law? The Future of the Discipline*, McGill University, 29 September 2012.

“Administrative Law”: *Regulating the World Society: Law, Governance, and the Quest for Global Justice*, SIAS Summer Institute, University of Indiana, 17 July 2012.

“The Official Development Assistance Accountability Act”: *Regulating the World Society: Law, Governance, and the Quest for Global Justice*, SIAS Summer Institute, Wissenschaftskolleg zu Berlin, 18 July 2011.

“Canadian Extraterritorial Environmental Assessment”: Harvard Institute for Global Law and Policy, Harvard Law School, 7 June 2011.

“Canadian Foreign Relations Law”: Osgoode Syllabus Design Workshop, Osgoode Hall Law School, York University, 4 March 2011.

“Access to Medicines and the Limits of Canadian Legal Internationalism”: *Praxis of Resistance: Communities of Inclusion and Exclusion*, Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law, Faculty of Law, University of Toronto, 28 January 2011.

“From ‘Constitutionalism as Mindset’ to Legal Pluralism”: *Concerning States of Mind, Disturbing the Minds of States*, Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law, Faculty of Law, University of Toronto, 29 January 2010.

“The Official Development Assistance Accountability Act and Canadian Legal Internationalism”: doctoral student workshop, Faculty of Law, University of Toronto, 25 September 2009.

“Public and Private in *Roncarelli v. Duplessis*”: *The Legacy of Roncarelli v. Duplessis: 1959-2009*, North Hatley, Quebec, 18 September 2009.

“The *Official Development Assistance Accountability Act*: Canadian Public Law and Global Governance”: Brown International Advanced Research Institute: Law, Social Thought and Global Governance, Brown University, 16 June 2009.

“The Globalization of Legal Pluralism: What Does it Mean for Canadian Law?”: *The Geographies of Legal Education: Policy, Practice and Theory*, Canadian Association of Law Teachers Annual Conference, Carleton University, 27 May 2009.

“The Official Development Assistance Accountability Act: Canadian Public Law and Global Governance”: Canadian Law and Society Association Annual Meeting, Carleton University, 25 May 2009.

“The Globalization of Legal Pluralism”: *Regulating a World in Crisis*, Osgoode Hall Graduate Law Students’ Association Conference, Osgoode Hall Law School, York University, 2 May 2009.

“Security Certificates and Citizenship in Canadian Law”: guest lecture, Migration and Urban Geography, Department of Geography, University of Toronto, 4 March 2009.

“Canadian Public Law and Global Issues: A Methodological Sketch”: *Quo Vadis Constitution? The Boundaries of Modern Law*, Osgoode Hall Graduate Law Students’ Association Conference, Osgoode Hall Law School, York University, 9 May 2008.

“Globalization and Canadian Public Law”: McGill Graduate Legal Studies Conference, Faculty of Law, McGill University, 8 March 2008.

“Legislating Foreign Aid: The ODA Accountability Bill”: *Mapping Emergent Terrains, Contesting Rigidified Traditions*, Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law, Faculty of Law, University of Toronto, 12 January 2008.

Grants

- 2019 “Illusions perdues? Droit et expertise dans un monde ingouvernable”: Connections Grant, Social Sciences and Humanities Research Council of Canada (as co-investigator; principal investigator: Olivier Barsalou) (\$24,622)
- 2016 “Le droit et « l'économie du partage »: réglementer les plateformes des marchés en ligne”: Connections Grant, Social Sciences and Humanities Research Council of Canada (\$21,525)
- 2016 “La réglementation des marchés publics des provinces et territoires canadiens et son adaptation au droit du commerce international”: Grant, Établissement de nouveaux professeurs-chercheurs, Fonds de recherche du Québec – Société et culture (\$50,292)
- 2016 “Colloque Terre à Terre : environnement et approches critiques du droit”: Connections Grant, Social Sciences and Humanities Research Council of Canada (as co-investigator; principal investigator: Hélène Mayrand) (\$24,915)
- 2015 “La réglementation de l'économie du partage”: Chambre des notaires du Québec (\$6000)

Conferences and Workshops Organized

Atelier de recherche sur le droit des marchés publics, École nationale de l'administration publique, Quebec City, 5 November 2021.

Atelier de recherche sur le droit des marchés publics, Université de Montréal, 30 October 2019.

Illusions perdues? Droit et expertise dans un monde ingouvernable, conference of the Centre d'études sur le droit international et la mondialisation and the Laboratoire pour la recherche critique en droit, Université de Sherbrooke, Longueuil, Quebec, 12–13 September 2019.

Law and the 'Sharing Economy': Regulating Market-Based Online Platforms, research workshop, Université de Sherbrooke, Longueuil, Quebec, 19–21 January 2017.

Concerning States of Minds, Disturbing the Minds of States: The Third Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law, 29–30 January 2010.

Toward Critical Mass: The Second Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law, 9–11 January 2009.

Participation in Research Groups

2020– Member, Centre de recherche en droit public

2019– Member, Centre de droit des affaires et du commerce international

2015– Member, Critical Legal Research Laboratory, Université de Sherbrooke

Supervision of Graduate Students

Grace Koussa, “‘Doctor Knows Best’: A Research Paper Exploring the Ineffectiveness of Civil Liability Claims against Canadian Health Care Providers,” supervised paper, LLM in comparative common law, Université de Montréal, 2023.

Sara Allameh, “Judicial Approaches to Covid-19 Restrictions on Freedom of Religion,” supervised paper, LLM in comparative common law, Université de Montréal, 2022.

Félix Tessier, “La discipline professionnelle et Vavilov : une étude comparée Québec-Canada des conséquences d’un appel statutaire,” supervised paper, LLM in common law, Université de Montréal, 2022.

Vanelle Stabilito Mesquita, “Canadian Courts: Their Approach to Business Contracts During the COVID-Pandemic Era,” supervised paper, LLM in comparative common law, Université de Montréal, 2022.

Simone Truemner-Caron, “Testing Legal Avenues to Hold Canadian Mining Multinational Corporations Accountable for Human Rights Abuses Abroad,” common law and transnational law LLM essay, Université de Sherbrooke, 2020.

Jean-René Dominique Junior Kwilu Muyumbu, “Good Faith in Bargaining: Effecting the Reasonable Expectations of the Honest Person” : supervised paper, LLM in common law, Université de Montréal, 2020.

Mohammadsadegh Tabaeenia, “A History of Impediments to Codification in the English Common Law: From the Beginning of the 16th Century to the End of the 19th Century” : supervised paper, LLM in comparative common law, Université de Montréal, 2020.

Erin Schachter, “The Influence of Multilateral Trade Agreements on Canadian Copyright Law,” common law and transnational law LLM essay, Université de Sherbrooke, 2017.

III. TEACHING

2020– *Elements of common law (Éléments de la common law)*, Faculté de droit, Université de Montréal

2019– *Administrative Law (Droit administratif général)*, Faculté de droit, Université de Montréal

2019– *Common law epistemology and methodology (Épistémologie et méthodologie de la common law)*, Faculté de droit, Université de Montréal

2018 *Transnational practice I and Transnational practice II*, Common law and transnational law program, Faculté de droit, Université de Sherbrooke

2014–2018 *Torts*, Common law and transnational law program, Faculté de droit, Université de Sherbrooke (course divided with Prof. David Blaikie, Lakehead University)

- 2014–2018 *Fundamental Principles and Concepts*, Common law and transnational law program, Faculté de droit, Université de Sherbrooke (portion of course dealing with transnational law only)
- 2014–2018 *Canadian Law and Foreign Policy (Le Canada et l'espace international)*, Droit international et politique internationale appliqués, Université de Sherbrooke (taught jointly with Prof. David Morin, École de politique appliquée, Université de Sherbrooke, 2014–2016; taught jointly with Prof. Stéphane Paquin, École nationale de l'administration publique, 2017; taught jointly with Dr. Stéphane Tremblay, 2018)
- 2012–2018 *Administrative Law (Droit administratif général)*, Faculté de droit, Université de Sherbrooke (Note : \$ 6300 grant received from the Université de Sherbrooke pedagogical innovation fund for the creation of video capsules for this course, 2014–2015)

IV. SERVICE

Committee Work

- 2021–2022 Member, Comité de nomination, Faculté de droit, Université de Montréal
- 2019–2022 Member, Comité des bourses, Faculté de droit, Université de Montréal
- 2019–2020 Member, Comité d'évaluation des bourses d'excellence des Études supérieures et postdoctorales (ESP) – maîtrise, Université de Montréal
- 2017 Ad hoc member, Comité de recrutement, Faculté de droit, Université de Sherbrooke
- 2014–2018 Director, Programs in common law and transnational law, Université de Sherbrooke
- 2013– Member, Comité ad hoc sur les critères et indicateurs de promotion, Faculté de droit, Université de Sherbrooke

Service to the Academic Community

- 2019– Member, Editorial Board, *German Law Journal*
- 2012–2020 Canadian Association of Law Teachers
President (2019–2020)
Treasurer (2015–2019)
Secretary-Treasurer (2012–2015)
- 2012–2014 Member, Research Ethics Board, Bishop's University, Sherbrooke, Quebec

Media Interventions

(with Finn Makela) "Avec ou sans Uber, les défis demeureront" *La Presse+*, 10 May 2016.

"Modification de la loi sur l'hébergement touristique : une rigidité dissimulée" *À qui de droit* (blog), Faculté de droit, Université de Sherbrooke, 13 January 2016.

“Opinion: Quebec’s approach to regulating Airbnb is flawed” *Montreal Gazette*, 13 November 2015.