

## INTRODUCTION: SYMPOSIUM IN HONOUR OF BRUCE ZIFF

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For many law students, and even for many seasoned lawyers, property law can be a daunting field of legal inquiry. It is ripe with complex and archaic rules (think *perpetuities* and *Shelley's case*<sup>1</sup>); it often requires challenging spatial reasoning (think *giant carrots*<sup>2</sup> and *underground caves*<sup>3</sup>); and it inevitably raises fundamental and potentially uncomfortable questions about the relationship that humans, individually and collectively, have to the world. From land to animals, castles to shacks, sky to stream, and tiaras to toothbrushes, property law has something to say about virtually *everything* that humans interact with or create. All of this means that, for a property law teacher and scholar, making property law accessible and meaningful to students is a challenging task. Making it fun or inspiring to learn is even harder. Professor Bruce H. Ziff made it look easy.

From 1981 until his retirement in 2019, Bruce Ziff was a member of the Faculty of Law at the University of Alberta. Over the course of nearly 40 years as a legal academic, Professor Ziff taught legions of law students the basics — and the nuances and intricacies — of Canadian property law. His work in the classroom, which included bringing property law to life through live performances of original property-law-focused songs, earned him recognition as a leading instructor at the Faculty of Law and in the broader university. In 1988, he received the University of Alberta Rutherford Award for Excellence in Undergraduate Teaching, and in 2014, he was awarded the Faculty of Law Honourable Tevie H. Miller Teaching Excellence Award. Numerous scholarly publications — including his sole-authored text *Principles of Property Law*<sup>4</sup> — earned him a well-deserved reputation as one of the foremost — if not *the* foremost — property law experts in the country.

Following his retirement, some of Professor Ziff's colleagues wanted to arrange a symposium to honour his many contributions to the field of property law.<sup>5</sup> As with so many events, the COVID-19 pandemic delayed the event for a few years, but enthusiasm for the project did not fade. It was ultimately held on 17 February 2023, at the Law Centre on the

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<sup>1</sup> Bruce Ziff & MM Litman, "Shelley's Rule in a Modern Context: Clearing the 'Heir'" (1984) 34:2 UTLJ 170.

<sup>2</sup> Giant carrot is a visualization of the Latin maxim *cujus est solum ejus est usque ad coelum et ad inferos*, which conceptualizes an ownership in land that begins at a point in the centre of the earth and continues all the way up to the height of the heavens — generally, in the shape of giant carrot. For an explanation of this maxim, see Eran Kaplinsky, Malcolm Lavoie & Jane Thomson, *Ziff's Principles of Property Law*, 8th ed (Toronto: Thomson Reuters, 2023) at 112.

<sup>3</sup> Bruce Ziff, "The Great Onyx Cave Cases: A Micro-History" (2013) 40:1 N Ky L Rev 1.

<sup>4</sup> Bruce Ziff, *Principles of Property Law*, 7th ed (Toronto: Thomson Reuters Canada, 2018). This text is now in its 8th edition. Following Professor Ziff's retirement in 2019, the text has been retitled *Ziff's Principles of Property Law* and is now authored by Eran Kaplinsky, Malcolm Lavoie, and Jane Thomson.

<sup>5</sup> Professor Malcolm Lavoie was the chief organizer of the symposium, with the assistance and support of Professors Eran Kaplinsky and Eric Adams.



University of Alberta campus and was attended by property law scholars from across the country. As Dean of the Faculty of Law, I had the honour of providing opening remarks. It was a great pleasure to have Professor Ziff back at the Law Centre for this event and to see so many colleagues and property law scholars gathered together to pay tribute to the man and his work.

The *Alberta Law Review* generously agreed to publish the symposium papers, which appear in this issue. Readers will note that each paper illuminates a different aspect of Professor Ziff's academic legacy. Broadly speaking, however, the articles can be categorized into three themes: (1) Professor Ziff's history and contributions as a professor at the University of Alberta Faculty of Law; (2) Professor Ziff's scholarship conceptualizing property law principles; and (3) the ongoing influence of Professor Ziff's scholarship in analyzing and resolving contemporary property law questions.

The first theme is addressed in the articles by Professors Eric Adams and Malcolm Lavoie, respectively. In "Bruce Ziff's Legal History,"<sup>6</sup> Adams reviews Professor Ziff's academic trajectory. Noting that Professor Ziff's scholarly work often relied on historical methodologies and perspectives to provide a contextual understanding of the underlying tensions and resolution of property law cases, Adams presents an overview of Professor Ziff's career through a similar historical and contextual lens. Adams' article illuminates Professor Ziff's scholarly contributions by situating his career in the context of the prevailing forces influencing legal education at the time. By comparison, in "Bruce Ziff's Property Pedagogy,"<sup>7</sup> Lavoie focuses more specifically on Professor Ziff's approach to teaching property law. Lavoie considers Professor Ziff's choice of teaching materials, his use of a contextual teaching methodology, his collaborative work with other property law instructors, and his innovative teaching methods. The paper reminds readers of the depths of Professor Ziff's contributions and legacy as an instructor of law.

The broad theme of Professor Ziff's contributions to property law theory is addressed in the articles by Professors Paul Babie and Tenille E. Brown, respectively. In "The Thing and Judicial Methodology in Resolving Novel Property Claims: It Matters When It Matters,"<sup>8</sup> Babie focuses on Professor Ziff's lasting contribution to property law theory via the categorization of the judicial methodologies as *attributes* and *functional*. Babie explores the relationship between the attributes and functional categories on one hand, and the current governing property law theories of things-correlative and relations-correlative on the other hand. Through this discussion, Babie considers the extent to which judges' conceptions of property impact their approaches to resolving novel property claims. In "Property in Place: A Legacy of Context,"<sup>9</sup> Brown examines the importance of Professor Ziff's context-based property law research. Brown argues in support of this approach, explaining how, at both a micro and a macro level, understanding the historical, factual, and personal context of property law cases is fundamentally important to understanding the legal principles derived from these cases in more than just doctrinal terms.

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<sup>6</sup> Eric M Adams, "Bruce Ziff's Legal History" (2023) 61:1 Alta L Rev 111.

<sup>7</sup> Malcolm Lavoie, "Bruce Ziff's Property Pedagogy" (2023) 61:1 Alta L Rev 123.

<sup>8</sup> PT Babie, "The Think and Judicial Methodology in Resolving Novel Property Claims: It Matters When It Matters" (2023) 61:1 Alta L Rev 69.

<sup>9</sup> Tenille E Brown, "Property in Place: A Legacy of Context" (2023) 61:1 Alta L Rev 127.

The remaining symposium papers, by Professors Douglas C. Harris, Jim Phillips, Eran Kaplinsky, and Jane Thomson, respectively, utilize specific concepts in Professor Ziff's scholarship as a springboard for understanding current property law issues and judicial decisions. Harris and Phillips each reflect on Professor Ziff's description of Supreme Court of Canada property law decisions as either "tending the garden" by making minimal changes to established property law principles or "ploughing new fields" by developing new principles.<sup>10</sup> In "Tending Gardens, Ploughing Fields, and the Unexamined Drift to Constructive Takings at Common Law,"<sup>11</sup> Harris relies on this distinction to analyze the Supreme Court's 2022 decision in *Annapolis Group Inc. v. Halifax Regional Municipality*.<sup>12</sup> Phillips expands on the same theme in "The Invention of Advantage: *Annapolis Group v. Halifax Regional Municipality* and Canadian De Facto Expropriation Law."<sup>13</sup> Kaplinsky draws on Professor Ziff's scholarship on restrictive covenants in "Strawberry Fields Forever? Some Observations About Restrictive Covenants and Zoning."<sup>14</sup> Using recent cases from Alberta as examples, Kaplinsky argues that restrictive covenants and land use regulations can serve both public and private interest and both can be controversial property law tools, depending on the context. Finally, inspired by Professor Ziff's article "Welcome the Newest Unworthy Heir,"<sup>15</sup> Thomson's article "Welcome the Newest Unworthy Donor?"<sup>16</sup> considers Western University's 2022 application to change the name of a series of scholarships named after an honoree who allegedly held racist views. The article reflects on Professor Ziff's view that, while the law is imperfect and cannot solve all of the world's problems, it should do all that it can to remedy injustice.

Collectively, all of the papers from the 2023 *Symposium in Honour of Bruce Ziff* provide an important and insightful look into the career, teachings, and scholarship of one of Canada's best known property law professors. The content, the existence, and the publication of these papers in this edition of the *Alberta Law Review* is a testament to Professor Ziff's enduring contribution to the field of property law. Like so many of the property law concepts that he taught and studied, his legacy will endure.

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<sup>10</sup> Douglas C Harris, "Tending Gardens, Ploughing Fields, and the Unexamined Drift to Constructive Takings at Common Law" (2023) 61:1 Alta L Rev 89 at 90; Jim Phillips, "The Invention of Advantage: *Annapolis Group v. Halifax Regional Municipality* and Canadian De Facto Expropriation Law" (2023) 61:1 Alta L Rev 79 at 79.

<sup>11</sup> Harris, *ibid.*

<sup>12</sup> 2022 SCC 36.

<sup>13</sup> Phillips, *supra* note 10.

<sup>14</sup> Eran Kaplinsky, "Strawberry Fields Forever? Some Observations About Restrictive Covenant and Zoning" (2023) 61:1 Alta L Rev 101.

<sup>15</sup> (2014) 1 Estates & Trusts Reports (4th) 76.

<sup>16</sup> Jane Thomson, "Welcome the Newest Unworthy Donor?" (2023) 61:1 Alta L Rev 137.

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