

# nexus

THE UNIVERSITY OF TORONTO FACULTY OF LAW ALUMNI MAGAZINE  
FALL/WINTER 2012

## Laborious Times

What does a post-industrial, hyper-technological, deficit-slashing world mean for union-management relations?



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# BOUNDLESS LEGACY

## nexus

Fall/Winter 2012  
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### DEAN'S MESSAGE



## Renaissance on track

We are halfway through another academic year, and so far 2012-13 has been absolutely extraordinary.

We enjoyed our best Reunion ever, with a turnout of more than 300 enthusiastic alumni (see p.33). During Reunion season, we checked in with some of our amazing women alumni, to talk about careers and staying in law ("Generation Now," p. 13). We also celebrated the graduation of our first class of Global Professional LLM students, who had nothing but good things to say about our executive-style program ("GPLLM Grads," p.8). And with labour issues taking up headlines across North America, we asked our alumni to weigh in on the state of union-management relations ("Laborious Times," p. 16).

As usual, our conference calendar was full of notable events, such as the first in an annual series of patent law colloquia ("Does Patent Law Help or Hinder Medical Innovation?" p.11). To kick off 2013, we reflect on the first five years of Canada's Indian Residential Schools Settlement Agreement ("Civil Action, Redress and Memory," p. 30).

The highlight of the fall term, of course, was the announcement of a \$10 million gift by The Hon. Hal Jackman to name our new Jackman Law Building ("The Future is Forthcoming," p.22). With the campaign now in its final stages, we are hard at work planning for a groundbreaking this summer and for our move to Victoria University, just across the street, for the duration of the construction.

We are so grateful to all of you who have supported us so far. If you have not yet donated, please consider lending your support to help us reach our goal by June 2013. Together, we can secure the future of our Faculty, one of Canada's great public institutions.

MAYO MORAN, SJD 1999  
DEAN OF THE FACULTY OF LAW

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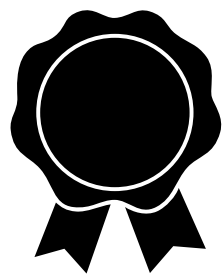
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*By Randi Chapnik Myers*

Nexus congratulates the inaugural class of the Global Professional LLM. We zeroed in on a consultant, a litigator, a corporate lawyer and an engineer to share their success stories with us.



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Henry N. R. Jackman's \$10M lead gift secures a bright future for the Faculty of Law with the Jackman Law Building, as our alumni continue to give generously.



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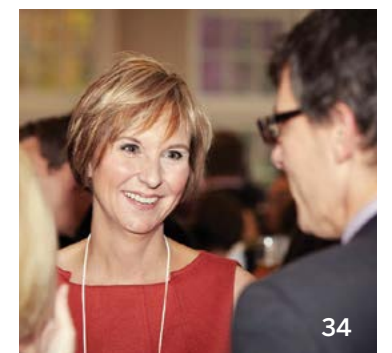
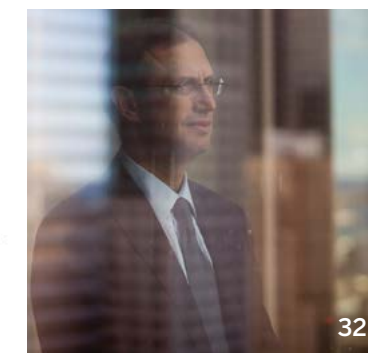
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**KATINA CONSTANTINO**,  
ART DIRECTOR, SUGAR DESIGN

Nexus introduces our new art director, Katina Constantinou, founder of Sugar Design. A creative director, brand strategist and designer, she has produced integrated campaigns, including visual identities, publication design, websites, advertising and retail design, for a diverse roster of clients: *Toronto Life*, *Oceana Magazine*, LCBO, Adidas, Rethink Breast Cancer and The Bay, among others. Her work has received international recognition including awards from the Advertising + Design Club of Canada, *Applied Arts* and *Coupe Magazine*. When she's not teaching as a sessional instructor at OCAD University, she's jetting off to New York City for inspiration.



**RAINA + WILSON**,  
PHOTOGRAPHERS, "GENERATION NOW," P. 13

Raina and Wilson are an award-winning commercial photography team based in Toronto, Canada.

They shoot a wide variety of subjects for clients such as *Toronto Life*, *Canadian Business*, Universal Music, and Bank of Montreal. They recently landed the first annual Applied Arts Creative Excellence Award for photography, and a silver and bronze from the Advertising + Design Club of Canada. Even though each is an only child, they never fight over the camera.



**MARK WITTEN**,  
WRITER, "DOES PATENT LAW HELP OR  
HINDER MEDICAL INNOVATION?" P.11

Mark Witten is a freelance writer specializing in health and science. He has written for *The Walrus*, *Toronto Life*, *Canadian Living*, *Reader's Digest*, *Today's Parent* and U of T's *Edge Magazine*. His article in *Homemakers* magazine, "Drugs made to measure," received the 2012 Sanofi Pasteur Medal for Excellence in Health Research Journalism. He stays fit by playing squash, tennis and trying to keep up with his wife Anne and daughter Leah.

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**GPLLM  
GRADS:  
WHERE  
LAW AND  
BUSINESS  
MEET**

BY RANDI CHAPNIK MYERS  
PHOTOGRAPHY BY JEFFERY KIRK

Congratulations to the inaugural class of the Global Professional Master of Laws program, a remarkable group of 25 people from a myriad of backgrounds.

In September 2011, they set off to study the intersection of international law and global business transactions in this unique, executive-style graduate degree at the Faculty of Law. We zeroed in on a consultant, a litigator, a corporate lawyer and an engineer to share their success stories with *Nexus*.



**CYNTHIA  
ROBERTSON**

Cynthia Robertson was enjoying breakfast one Saturday last June when her husband, Stanley Strug, noticed an ad in the *Globe and Mail* newspaper. It was for the University of Toronto law school's new Global Professional Master of Laws—exactly the type of program the husband-and-wife business team had been seeking.

Partners at Parkridge Properties Inc., a Toronto and Halifax-based consultancy that advises the public and private sectors on infrastructure projects, the couple had been on the hunt for some legal training with an international flavour.

“Our business had expanded to clients outside of Canada and we had set up strategic partnerships to take on more international work,” says Robertson, who along with Strug founded Parkridge in 2002. Before that, she worked in various senior government and management roles in Nova Scotia, Ontario and abroad.

“My husband and I had both worked in other countries but we felt a lot was missing from our legal knowledge base. We had found one program open to non-lawyers in the UK but that meant uprooting and leaving our business behind.”

The GPLLM was ideal, Robertson says. She and Strug could continue to work while attending classes on Wednesday nights and weekends.

So the two made a deal: They would apply but only head back to school if they both got in.

Today, she is delighted to report on the result. “It was a journey we embarked on together with an interesting group of people with such dynamic backgrounds and skills.”

At 57, Robertson loved returning to academia at her stage of life. “There were younger participants typing away on their iPads and there were oldies like us, with hands up, asking questions,” she says. “We were all so engaged.”

There is no doubt that learning about the legalities of international trade agreements and globalization has boosted business, even though Robertson has yet to print business cards with her new credentials.

“Everyone who knew we were enrolled in the GPLLM showed admiration, and a Canadian-based partner who heard recently brought us new export opportunities,” she says.

**FATEH  
SALIM**

Fateh Salim, a civil litigator with the Ministry of the Attorney General in Toronto, heard about the GPLLM program from a law professor friend. Just a couple of years back, Salim had been employed at a private sector firm in North Africa and he was keen to incorporate international law into his practice.

“There is a deficit when it comes to government lawyers’ understanding of cross-border issues and globalization, which are among the most important issues of today,” Salim says.

His employer, who supported his decision to return to school, also appreciated the program’s value. “When I told them about my plans, they were forward-thinking,” he recalls. “They recognized the importance of the skill set not just for my practice but for its availability in government in general.”

It was clear that acquiring such specialized knowledge would really benefit his clients, Salim says. Plus, the program offered an intensive international arbitration course that appealed to him. “I practice both litigation and alternative dispute resolution, so I knew I would be using those skills right away,” he says.

While most law courses Salim had taken in the past were purely academic, this one offered something unique. It was a complete meld of law and business taught by real professionals. “I was impressed by the variety of the law faculty—professors from within the U of T community and exceptional practitioners from firms—and their experience in both business and international law,” he says.

Even the makeup of the student body, lawyers and non-lawyers, reflected that law-business mix. There were students from government, private firms, in-house counsel, and business people with experience in the corporate world.

The exposure to so much experience has made Salim feel more confident when advising clients within and outside government on matters related to globalization. The future looks bright, he says.

“These credentials open up many opportunities for me. Whether I progress to different areas of government or choose to work at an international or multinational organization or corporation, the GPLLM will be attractive to employers. It’s unique, relevant and timely in today’s age, given the internationalization of issues and harmonization of laws.”





## HILARY THOMPSON

As an engineer working as manager of regulatory products on the GTA project at Enbridge Gas Distribution, Hilary Thompson has always been interested in how energy is delivered to customers. When she heard about the GPLLM, she became fascinated by the prospect of learning how it moves across provincial and international borders.

"I wanted to learn and contribute more in the industry on a macro level," Thompson says. So she knew right away that she wanted to apply. "The fit was right, the program was right, and the timing was right."

For Thompson, the most exciting aspect of the program was the first-hand exposure to practitioners' knowledge and experience. Highlights included guest lecturers from the firm that represented Lehman Brothers through its collapse, the firm representing TMX in the Maple-TMX deal, and a lawyer from Greece offering insight into the debt crisis.

Even when lectures did not relate to her industry, Thompson felt enriched by the information she was absorbing. "Education in business law, both domestically and globally, enhances my ability to recognize business and industry influences and gives me the tools to ask the right questions," she says.

The balancing act—work, school and "whatever personal life she could squeeze in"—was manageable because the GPLLM is modeled after an Executive MBA, and takes the busy schedules of professionals into consideration, she explains.

All that hard work has paid off. "The degree has already opened doors in my career path," Thompson says. After completing it, she moved from the operations and engineering areas of the business to a role specific to regulatory affairs. The course also inspired her to pursue volunteer opportunities in the future on a not-for-profit board in the areas of corporate governance and finance.

"Most of all, the program helped me identify and focus my interests on a career path," says Thompson, now a professional engineer with a master of laws—a unique and valuable combination.

"I love my new role," she says, "and I'm not sure if I would have been offered the opportunity without the experience I gained through the GPLLM."

## MARK MAHONEY

Midway through his associate career on Bay Street in Toronto, Mark Mahoney, a lawyer specializing in securities and corporate/commercial law at Fraser Milner Casgrain, was contemplating an MBA to beef up his business knowledge. Then he heard about U of T's GPLLM degree.

Intrigued, Mahoney attended an introductory session to find out more. "I was impressed by the fact that this would be executive, not thesis-style learning, and I was excited about the opportunity to interact with both practitioners and clients in school," he says.

The program surpassed his expectations.

"The best part was hearing a broad range of perspectives through engaging debates," he says. "It's not sitting through lectures. Here, you're engaged on specific topics where instructors and students have direct work experience. You're going way beyond the readings by learning from each other." And, he adds, it was amazing to see professors take notes during class. "They were learning as much as we were."

For a busy litigator, going back to school took juggling, he admits. It helped that the hours were predictable and that the firm backed his commitment. In the short term, coworkers had to cover him, but the GPLLM has given him unique networking opportunities with existing and prospective clients that could eventually develop into new business for the firm, Mahoney says.

"I had ongoing files on my desk. It was fantastic to be able to ask real-life questions of professionals in class to get their thoughts, and benefit from their experience."

Now that he has brought so much wisdom back to the firm, Mahoney predicts that coworkers will be considering taking the program as well. It's been that valuable, he says, pointing out that the job market is increasingly competitive among lawyers.

"These days, it's hard to distinguish yourself. Now that I know the names and faces of top practitioners in the city, I have contacts in companies that I've gotten to know on a different level. Now it's up to me to leverage that into something tangible."



# Does patent law help or hinder medical innovation?

BY MARK WITTEN  
ILLUSTRATION BY PETER RYAN

Patent law is necessary for the invention of new medicines. But in order for patients and the health-care system to benefit appropriately from these inventions, the courts have a duty to ensure broad societal benefits are realized, in exchange for granting pharmaceutical companies the exclusivity of monopoly patent protection.

In his keynote speech at the 2012 Patents Colloquium, hosted Nov. 30, 2012 by the Faculty of Law's Centre for Innovation Law and Policy, the Honourable Justice Ian Binnie, LLB 1965, described the "patent law bargain" as the "big notion" in the Patent Act—one which gives judges huge policy scope to set limits on what is patentable, and allow the public fair access to new medicines. "You can't say that anything under the sun can be patented. The costs to the public of such a sweeping generalization would be unimaginable," said Binnie.

Panel lead Tim Gilbert, LLB 1988, founder and principal of Gilbert LLP, said that without the exclusivity of patent law protection, investments for drug development won't get funded. However, while there is general agreement about patent protection for genuine innovations, the disagreements, complexity and costly litigious disputes with respect to less valid patents hinder drug development and delay access to new medicines that improve quality of life for patients.

Gilbert, one of the few advocates who represents both generic drug manufacturers and leading brand companies, said open dialogue between judges and parties on opposite sides of the issues in forums outside the courtroom can lead to more agreement and certainty about what the patent rules should be, and reduce barriers to innovation. "Fashion your own resolutions," he advised.

The recent Supreme Court of Canada decision that struck down Pfizer Canada's Canadian patent for Viagra reaffirmed the fundamental importance of public disclosure in fulfilling the patent bargain. In his judgment, Justice Louis LeBel said patent holders should not be allowed to "game" the system in this way. The court ruled that the drug company failed to describe which of the preferred chemical compounds (sildenafil) was the ingredient that actually worked for the promised purpose. The lack of public disclosure about the invention made it more difficult for society to benefit from this new knowledge.

The intent of patent law is to promote innovation, but advocates for both the generic and brand companies agreed that a key

challenge today is to ensure the law helps more than it hinders.

Ildiko Mehes, vice-president and general counsel for Teva Canada, argued public disclosure is also essential to bring the transparency and openness of the legal system to a relatively new intellectual property system, known as data exclusivity, which affects drug development.

"We need to create a system of appropriate checks and balances. The process should be publicly available and open to scrutiny," she said.

Panelist Marta Gross, a partner at Procter Goodwin who practices patent law in New York City, observed that generic and brand companies in the U.S. are increasingly fashioning their own patent bargains outside the courtroom.

"Our case law in the United States hasn't provided any certainty. The trend in the last three or four years is towards more settlements as a way of getting certainty," she said.

The bargains being struck in cases where there is uncertainty about whether a drug patent can be successfully challenged is to "split the baby" and settle on an early market entry date that gives patients access to the generic drug before the patent was scheduled to expire.

Gross maintained that the Federal Trade Commission is vigilant in scrutinizing these settlement agreements to ensure that the public interest is served and not injured through anticompetitive activities or payments.

Panelist Patrick McGrade, vice-president of corporate and legal affairs for GlaxoSmithKline Inc., cautioned against overly narrow definitions of innovation that fail to adequately consider the benefits of a new drug for the patient. "The science of drug development is not a whole bunch of moonshots. What's best for patients is to foster innovation—and incremental innovations impact patients hugely," he said, citing the example of a new medication to treat depression, which teens are much more likely to take as prescribed because it doesn't cause weight gain as a side effect. ↩

The 2012 Patents Colloquium was sponsored by Teva Canada through its generous gift to the Faculty of Law to establish a cutting-edge patent law program for scholars and law students. Read the full version of this story online at: <http://uoft.me/patentlaw12>



FROM LEFT: EMMELINE MORSE, SIGNE LEISK, KIRBY CHOWN, LINDA ROTHSTEIN AND RIMA RAMCHANDANI.



# Generation **NOW**

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BY KAREN GROSS  
PHOTOGRAPHY BY RAINA + WILSON

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A Faculty of Law conference in 2006 on women in law helped to launch the Justicia Project to encourage the retention of women in the legal profession. More than five years later, has anything changed?



**B**ack in the 1980s and '90s, when television shows like *Street Legal* and *L.A. Law* were making private practice look sexy and seductive, you could hardly blame a woman for believing that life in a law firm promised endless excitement and boundless opportunity. But for those women who were bold enough to actually try it out, reality often felt like a shockingly cold shower.

"We felt that we were under greater scrutiny than our male colleagues," recalls Linda Rothstein, LLB 1980, managing partner at Paliare Roland Rosenberg Rothstein LLP in downtown Toronto. "We felt that the culture wasn't entirely known or knowable to us. We felt a little bit excluded from time to time and occasionally we were subject to outright sexism."

No one would argue that life for women on Bay Street hasn't come a long way since the days Rothstein describes. What many women do say is that it hasn't progressed far enough fast enough, and it's one reason women are leaving private practice at two to three times the rate of their male colleagues even though they comprise more than half those called to the bar in the last 10 years. Across Ontario, women in private law firms hold just about 21 percent of all partnerships.

It's not a new problem but it's one that has grabbed a lot more attention and scrutiny in recent years, as young female associates continue to exit firms before they make partner—most citing work/life balance as the main issue driving them out. Several years ago, the Law Society of Upper Canada made it a priority, with the creation of a special working group tasked with the Herculean objective of keeping more women in private practice.

"In the old days when everyone had a stay-at-home spouse, the guys were able to devote all their time and energy to advancing in a firm and serving their clients because they didn't have to worry about who was going to pick up the kids," says Laurie Pawlitz, co-chair of the Retention of Women in Private Practice Working Group, and former treasurer of the LSUC. "The demographics of our profession have changed and we as a profession are slow to recognize that."

As part of its plan to move things along, the Law Society launched the Justicia project, which now counts 58 law firms as members and is being adopted in four other provinces. Though not officially accountable or responsible for submitting statistics, the firms have pledged to adopt new practices that promote the retention and advancement of women. They include parental leave models, options for flex-time scheduling, and alternative paths for advancement that go beyond the conventional trajectories. Many larger Toronto firms had already initiated their own women's working groups, but Justicia has brought the matter into the open and forced a heightened awareness on all sides.

"When I was hired as an articling student in 2001, I was one

of 32 and less than half were female," says Rima Ramchandani, LLB 2001, now a partner at Torys LLP. "As time has gone by, the number of women who have left since I began has definitely outnumbered the number of men. I was the sole remaining woman in my group."

Since then, Ramchandani has been heavily involved in the recruitment and retention of women at her firm. It's something she says Torys and others have begun to take very seriously, and not just because it's politically correct to do so. When a talented young associate leaves a firm, the firm loses not only a valuable person, but a hefty investment worth time and money. Clients are beginning to apply pressure as well, and when the bottom line is threatened, even the most traditional operations are forced to make changes.

"The best way to deal with this in a law firm is to make a business case for it," says Kirby Chown, LLB 1979, a co-chair in the Large Firm Working Group of the Justicia Project and former Ontario regional managing partner of McCarthy Tétrault LLP. "If you have a big client that says it has a big focus on retaining women lawyers, law firms want to say they do too."

But Chown argues there are other inherent factors at play that continue to compete with increasing financial and political pressure. Whether they admit it or even recognize it, she says law firms remain largely male bastions whose members still harbour implicit biases that prevent women from advancing. Justicia provides them with research-based information, aimed at teaching them how to recognize and refine their attitudes.

"If we talk about what does a successful lawyer look like, there would be lawyers who would unconsciously think of a male, tall, and able to work 2200 hours a year," she says. "For women who don't look like that or sound like that and say they'd like to rearrange their practices to fit their lives, sometimes unconscious bias decides that person doesn't have what it takes to be partner."

So a woman who opts to go into private practice after law school can sometimes face a dual challenge: the implicit bias described by Chown coupled with her own struggle to satisfy work demands, often while starting a family at the same time.

"It's hectic, for sure," says Signe Leisk, LLB 2000, a partner at Cassels Brock LLP and mother of three. "I'm always on the go. Luckily while private practice is demanding, it's not set 9 to 5 so you can have flexibility if you need to." That said, Leisk's husband—a financial planner—has a more regular schedule than she does, and is often the parent at home with the kids in the evenings.

"Probably the most important thing is that I really love what I do," she says. "I try to take a much bigger picture look at it, because on any given day, I don't think anyone balances anything. There are days when you're just going to be swamped

with work. And there are days when the home responsibilities are going to need to take precedence."

Along with shifting attitudes, many say changing demographics and a move away from the traditional billable hour model will ultimately help to keep more women in private practice. Skyrocketing hourly fees are sparking protests from clients who are beginning to demand a different kind of payment structure. And more young men coming out of law schools are seeking the same work/life balance that their female counterparts have chased for years. They too want to spend more time with their families, and their spouses often expect them to do so.

female articling students who felt there wasn't enough support for their particular cohort. The group focuses on networking and other matters that affect women at a similar stage, such as financial planning, how to dress for work, and how to attain that elusive work/life balance. For Morse, that last issue has become very personal, but she says she feels extremely positive about her parental leave and her return to work once it's over. She predicts a supportive spouse, helpful colleagues, and remote access to files through better technology will make her life as a working parent a lot smoother.

"Those two things—at-home access and couples recognizing that this is a 50-50 split—I think will help us see more women

**Women are leaving private practice at two to three times the rate of their male colleagues even though they comprise more than half those called to the bar in the last 10 years. Across Ontario, women in private law firms hold just about 21 percent of all partnerships.**

"I have certainly heard many a young law student—male as well as female—articulate an overall rejection of the law firm culture," says Brenda Cossman, professor of law and director of the Bonham Centre for Sexual Diversity Studies. "They don't want to make those kinds of sacrifices. They also want to have a life."

While the pace may be too slow for some, the trend appears to be heading in the right direction. In its 2010 Change of Status report, the Law Society of Upper Canada found that fewer women had left private practice than in 2009, and that more men had left than in the previous year. Men are also increasingly likely to cite work/life balance as the reason for a change in employment. While it's too soon to declare any kind of real shift, there is reasonable cause for optimism. In many Toronto law firms, women are getting more support in the workplace and feeling more inclined to speak up when they feel they aren't.

"I've been so impressed by all the partners, male and female," says Emmeline Morse, JD 2008, an associate at Fasken Martineau LLP and mother of a newborn baby. "I told the firm I wanted to take a full year and I didn't know what the response would be. Everyone hands down told me to take the full year and enjoy it."

Morse is a founding member and former vice-president of Young Women in Law, an organization created by a group of 10

staying in their firms and in private practice," she says.

At the end of the day, what all young lawyers come to realize is that life in a private law firm is often tough and demanding. The hours are long, the clients can be needy, and the days are frequently unpredictable.

"A lot of women pre-empt," says Rima Ramchandani. "They look ahead before they're even ready to have kids. They worry about how they're going to manage their lives in the context of this very demanding job environment." But she and other, more seasoned lawyers are urging women to think carefully and speak up before they leave.

"What happens is often women feel too low down on the totem pole to raise questions and demand things," says Kirby Chown. "But if you are seen as a valued lawyer, they will want to keep you. They won't want to lose that talent."

And ultimately, adds Linda Rothstein, it's more about how you feel about your job, than whether you can balance it with your family obligations. Rothstein raised four children over a 30-year career in private practice. Being a good lawyer, she argues, does not preclude being a good parent.

"I just don't see childcare as an insurmountable obstacle unless a woman really doesn't have partners who get it," she says. "The practice of law is simply not for everyone. I actually think that's the starting point of the conversation. It's not about juggling. It's about whether you really like it." ↵





# LABORIOUS TIMES

BY SHELDON GORDON  
ILLUSTRATION BY OLI WINWARD

What does a post-industrial, hyper-technological, deficit-slashing world mean for union-management relations? The evolution of new labour laws.

“Solidarity forever, Solidarity forever, Solidarity forever,” rings out the hallowed workers’ anthem. “For the union makes us strong.”

But in 2012, not so much. It’s been a tumultuous couple of years for labour-management relations in Canada, and unions are feeling besieged.

The Canadian Auto Workers, anxious to avoid a crippling strike in the auto industry, submitted to four-year contracts with the Big Three auto makers that provide for annual bonuses, rather than wage increases, and a lower wage for new workers.

The federal government began laying off more than 19,000 workers as an austerity measure and used back-to-work legislation to pre-empt work stoppages—and collective bargaining—at Air Canada, CP Rail, Canada Post and Marine Atlantic.

Ontario’s government, in an effort to rein in its budget deficit, moved to impose a two-year wage freeze on its one-million public sector workers, starting with the province’s teachers.

This hard line toward organized labour came against a backdrop of a rapidly changing workplace, weakening union clout and a rightward shift in public opinion.

“In the U.S., and to some extent in Canada, you’re seeing politicians questioning the fundamental underpinnings of the labour model” that has defined labour-management relations since the 1930s, says Rhonda Shirreff, LLB 1999, of Heenan Blaikie LLP.

#### **PUBLIC SECTOR**

In recent years, the public sector has been the stronghold of unionism in Canada. While 30 per cent of the Canadian workforce is unionized, only about 16 per cent of private sector workers are in unions vs. more than 70 per cent of public sector workers. Lately, however, federal and provincial governments have targeted these unions and their members.

The federal government, in the March 2012 budget, unveiled plans to cut the civil service by 19,200 jobs over the next three years through layoffs and retirements. The Public Service Alliance of Canada says more than 18,000 of its members have already received “workforce adjustment” notices.

At the provincial level, the Liberal government announced plans to impose a two-year wage freeze on Ontario’s public sector workers. It passed legislation imposing a collective agreement that, in essence, forbids teachers from striking during this round.

Governments at all levels have figured out that taking a hard line against public sector unions plays well with most voters, says John Monger, LLB 1989, of Paliare Roland Rosenberg Rothstein LLP. “There is a shift to the right generally in what the public seems to want. Governments feel they will advance their short-term interests by taking a run at ‘fat’ public sector

employees, who, the man on the street has decided, are living better than he is.”

Labour has compared Ontario’s firm stance toward public sector workers to Wisconsin’s. (In 1959, Wisconsin was the first U.S. state to grant collective bargaining rights to public sector workers, but it stripped them of most of those rights in 2011.)

“Wisconsin was different in kind,” says Rhonda Shirreff, “because the state government was saying, ‘You no longer have a collective agreement. We’re not bargaining with you anymore.’ In Ontario, however, they’re just trying to change the bargain. We’ve seen it before [during the Bob Rae government’s Social Contract in 1993] and those changes didn’t gut collective bargaining.”

Canadian unions are spooked by a trend in the U.S., where “right-to-work” legislation has spread to 24 states, denying unions the mandatory payment of union dues from workers—effectively making it virtually impossible for a union to sustain itself.

Elizabeth McIntyre, LLB 1976, of Cavalluzzo Shilton McIntyre & Cornish LLP, has dealt with intrusions into the collective bargaining process as far back as Pierre Trudeau’s wage and price controls under the Anti-Inflation Act. “It’s always triggered by difficult economic circumstances,” she says.

“Then, it was inflation. Now, in Ontario, it’s the deficit.” While these interruptions may not signal the end of collective bargaining, she says, “Historically, it has led not only to a lot of anger, but to a lot of litigation. Ten years after the Social Contract legislation, I was still doing litigation concerning it.”

#### **PRIVATE SECTOR**

There’s anger and litigation in the private sector, too. In the last two years, the Harper government has used back-to-work legislation—or the threat of it—to forestall or end strikes/lockouts at Air Canada and CP Rail (as well as at Crown corporations Canada Post and Marine Atlantic). Ottawa cited the potential harm to the “fragile economy.” The government asked the Canadian Industrial Relations Board (CIRB) to determine whether an airline such as Air Canada is an essential service.

Prof. Brian Langille, a labour law expert at the Faculty of Law, says the Canada Labour Code has a well-known test for essential services and the Air Canada case doesn’t meet that test. “Air Canada is not a public service nor is it a monopoly,” he says. “It is the view, across the board in the labour law community, that this doesn’t meet the statutory test of an essential service and that this intrusion into collective bargaining is completely unhelpful.”

Elizabeth McIntyre also doubts that the Harper back-to-work bills were about widening the definition of essential services. “If that’s what it is, it bears no relationship to how previous governments have dealt with essential services. They would normally allow the parties to work out in advance who are the essential workers.” She dubs Harper’s suppression of strikes a “Whack-A-Mole” response.

Damian Rigolo, LLB 1995, of Osler, Hoskin & Harcourt LLP in Calgary disagrees, saying that the Harper government does indeed want a broadening of the definition. “This has a true philosophical underpinning,” he says. “But ultimately, they’ll have to amend the Canada Labour Code if they want a structured, entrenched change. I don’t think the CIRB will want to be the ultimate arbiter.”

#### **THE RAND FORMULA**

Canadian unions are spooked by a trend in the U.S., where “right-to-work” legislation has spread to 24 states, denying unions the mandatory payment of union dues from workers—effectively making it virtually impossible for a union to sustain itself.

In contrast, Canada’s Rand formula assures a mandatory union checkoff at the federal level and in the majority of provinces. The formula states that since all workers in a bargaining unit benefit when a union negotiates for them, it is reasonable to require them all to contribute a small amount towards the union’s costs.

In Ontario, Alberta and Saskatchewan, however, the conservative opposition parties now urge Rand’s repeal. Damian Rigolo says that if the U.S. right-to-work ideology “were to bleed into Canada, it could take hold in less unionized provinces. But it’s not on the very near horizon.”

Donald Eady, LLB 1988, of Paliare Roland, also doubts that Canadian provinces will turn into right-to-work jurisdictions. “Even in 1995, when Mike Harris led the most right-wing government Ontario has ever seen, he made changes to labour legislation but did not interfere with the Rand formula.” He points out that right-to-work legislation has been around in the U.S. for years without spreading to Canada.

#### **THE NEW WORKPLACE**

Even if the Rand formula survives, however, technological innovation and globalization are radically changing the way work is performed and where it is performed. Some labour law practitioners believe the traditional approach to unionization has to be rethought.

It may be harder to organize when you have workers performing the same work in different ways and different places,” says Rhonda Shirreff. “Europe has a very different model than North America. You can have multiple unions in the same workplace, and workers can decide which union they wish to join.”

Prof. Langille says the traditional basis of labour law—“to protect vulnerable workers against the market power of employers”—needs to be supplemented with a more positive account. Labour law should no longer be viewed by management as “throwing sand into the wheels of the economy. There’s always going to be labour law, but the question is what kind of labour law do we want?”

“In the post-industrial, knowledge-based society, labour law should be conceived more as the law which structures the deployment of our most valuable asset—human capital—and not simply in terms of protecting workers,” Langille says. “Collective bargaining and employment standards law are more important than ever and need to be rethought. Consider pensions. In a world where people will increasingly work for more than one employer, it’s not sensible to link pensions to any particular employer because they become golden handcuffs, restricting employee mobility.”

A recent Abacus Data poll conducted for labour interests found a majority (53 per cent) of Canadians under the age of 30 say they would join a union if given the opportunity. That's the highest level of any demographic surveyed.



Damian Rigolo also is convinced that, in a post-industrial workplace, the labour movement needs a different approach in how it recruits and represents workers. "A lot of employees will be working from home. How does a union represent those workers? How does it collectively bargain for them? And do those workers really want collective bargaining when they work in isolation or away from the traditional workplace?"

"I believe factors like those will lead to some type of re-evaluation," he says, "but I don't think that in the next 10 to 20 years there will be drastic overhauls in how unions operate. Just as employers may be a static entity, unions are, too. It's tough to overhaul not only structural issues but philosophical issues of how a union works."

#### COURT RULINGS

Whatever the federal and provincial governments may do in specific interventions or with systemic laws, the rulings of the Supreme Court of Canada will also be crucial in determining the extent and character of collective bargaining.

Canadians are guaranteed the right to "freedom of association" under Sec. 2 of the Charter of Rights, but what does that actually mean? The high court interpreted that right somewhat differently in 2007 (B.C. health services) and in 2011 (Ontario farm workers).

"The Supreme Court of Canada case law is uncertain now as to how much, and to what extent, collective bargaining is a constitutionally protected activity," says Bernard Fishbein, chair of the Ontario Labour Relations Board.

"It's unclear where they're going to go. The only certainty is that there will be more cases for them to comment on. Every time there's a government intervention, the unions say they're going to challenge it under the Charter."

Interpreting the two landmark decisions, Rhonda Shirreff says: "In the 2011 decision, the Supreme Court may have created the possibility that other models could be considered."

The next law to face a Charter challenge will be the Liberal government's bill overriding the teachers' bargaining rights, says Donald Eady. "Both the teachers' unions and Canadian Union of Public Employees have challenged Bill 115 under the Charter."

"The Supreme Court of Canada said in its B.C. Health Services ruling that it's important to consult with unions before you legislate [terms of employment], says Eady. "There was a form of consultation between the teachers' unions and the government, but the government was very inflexible in the consultations."

He adds: "The Ontario government also has a significant problem here in that they legislated in advance of allowing collective bargaining to work—as opposed to looking at the outcome of collective bargaining and saying as a government, 'We can't afford those outcomes.'"

#### NEW LABOUR STRATEGIES

With employers drastically restructuring the workplace, unions are seeking new strategies. One such initiative is the forthcoming merger of the Canadian Auto Workers with the Communications, Energy and Paperworkers Union. The resulting entity will be the largest private-sector union in Canada, bargaining for 300,000 workers across 22 economic sectors.

The new union hopes not only to benefit from the shared resources of the unified workers (e.g., a bigger strike fund and more legal and research help) but also to organize people who have not previously joined unions, i.e., students, pensioners, the self-employed and the unemployed, as well as non-unionized workers such as contract staff or temps.

A recent Abacus Data poll conducted for labour interests found a majority (53 per cent) of Canadians under the age of 30 say they would join a union if given the opportunity. That's the highest level of any demographic surveyed.

Representing pensioners would give unions more authority when bargaining on pensions and retiree benefits, says Donald Eady. As for students, if they are welcomed into a union, they might be more likely to consider joining one when they enter the work force. "Self-employed individuals could be offered a range of union benefits that might not otherwise be available to them," he adds.

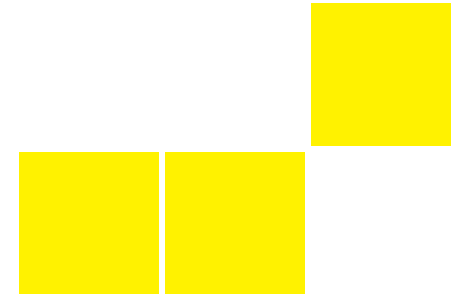
Faced with more difficult organizing conditions, unions need greater access to communicate with employees, Elizabeth McIntyre says. She cites the recent success of her client, the Ontario Nurses' Association, in certifying two hospitals, one in Mississauga, the other in London.

"Under the Public Sector Labour Relations Transition Act, the union was able to put up information stands on the premises and do more public campaigns," she says. "Because these were both hospital mergers, the union wasn't limited—as unions usually are—to communicating with one employee at a time."

It's even more important for workers to exercise their right to bargain collectively today than it was in the past, says McIntyre. "Trade unions have always played a role in setting decent wages and benefits for workers. Today, however, the middle class is disappearing."

No less an authority than Mark Carney, governor of the Bank of Canada, made that point last August when he told the CAW convention that "labour's share of national income is now at its lowest level in half a century across most advanced economies, including Canada."

As the labour movement looks ahead to an uncertain future, it's clear that reversing that trend will take more than a robust rendition of "Solidarity Forever." ↩



# THE FUTURE IS FORTHCOMING

BY KAREN GROSS AND  
LUCIANNA CICCOCIOPPO  
PHOTOGRAPHY BY  
NIGEL DICKSON

## Henry N. R. Jackman's \$10M lead gift secures a bright future for the Faculty of Law with the Jackman Law Building, as our alumni continue to give generously.

There was an energy buzzing around the law school on October 1, 2012. Students, faculty and staff were asked to meet in the Rowell Room at Flavelle House at the end of the day to hear an update on the building campaign.

It was great news, as Dean Mayo Moran announced the largest donation in the history of the law school: an extraordinary \$10-million lead gift to the campaign from the Honourable Henry N. R. "Hal" Jackman, LLB 1956, a former Lieutenant-Governor of Ontario, U of T Chancellor and long-time benefactor to Canada's largest university.

This generous gift to name the Jackman Law Building is in addition to a \$1-million donation made at the time of the campaign's launch on November 29, 2011, to name a lecture hall after early 20th-century jurists Richard Haldane and William Watson. Jackman admires their work in articulating the divisional powers between the federal and provincial governments under the Canadian Constitution.

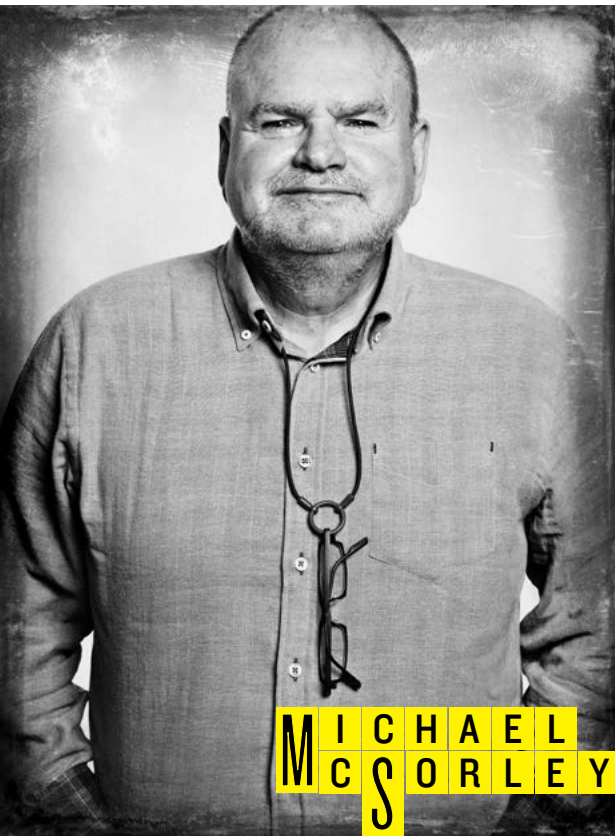
Jackman's lead gift brings the total amount of his support and generosity to the Faculty of Law campaign to \$11 million.

As a result, the private fundraising total for the building is now at \$32.5 million—more than 90 percent of our overall goal for the building campaign. Construction of the facility—a \$54-million state-of-the-art architectural landmark for the University of Toronto—will commence in the summer of 2013.

An adviser to the Faculty of Law Building campaign cabinet and an honorary chair of the University of Toronto's Boundless Campaign, Jackman's dedication to education, public service and the university is remarkable, spanning more than half a century. A loyal and engaged alumnus, he has donated millions to various faculties and schools across the UofT campuses.

"A great city such as Toronto deserves a great university," says Jackman, "And we have it."

Dean Moran says: "Hal Jackman is one of the Faculty's most distinguished alumni, and we are very proud that our new building will bear his name. He exemplifies the very best qualities of the Faculty of Law: a deep intellectual engagement with the law, a passion for excellence and an unwavering commitment to the public good. His extraordinary generosity will transform our great law school and ensure that we offer the best legal education in the world, right here in Canada." ↗



**MICHAEL MCSORLEY, JD 1977**

It's literally been a long journey for Michael McSorley, since he graduated from law school in 1977. A native of Toronto and Oakville, McSorley worked in the Canadian mining industry for some 30 years—ultimately serving as managing director of Falconbridge International Ltd. He traveled the world from his base in Brussels, negotiating complex contracts with companies and governments in Africa, Asia, and Europe. Along the way, he also became a certified Divemaster.

"While I did not work in law, specifically," McSorley says, "I had to consider many of the issues we studied in law school in the course of my work. I had to process many materials, and develop strategies to negotiate with parties in different cultures. That involved many of the issues we studied in law school such as international conflict law and arbitration."

Even though he now lives in England, McSorley had maintained close ties with the law school and feels strongly about the role alumni need to play in its future. Classrooms and meeting rooms must be brought up to current standards in order to keep the school connected with the rest of the world.

"We need to contribute our time and funds," he says. "Education is one of the most important factors in the success of any society, and a great source of personal success and satisfaction in life."

**BENNETT JONES**

When Jeffrey Leon graduated from law school in 1977, he couldn't know that 35 years later his own daughter would do the same. But that's exactly what happened, and now both of them are proud alumni of the Faculty of Law.

"It comes around," says Leon, a partner and co-head of litigation at Bennett Jones LLP. "We need to enable future generations to benefit the same way we did."

Leon describes himself as a reluctant law student in the mid-1970s who entered law school after completing a master's in sociology, feeling unsure and undecided about what he wanted to do next. His legal education gave him a solid grounding and the inspiration to pursue and establish what has become a very successful career in litigation. In particular, he credits Mary Eberts and Bernard Dickens as professors who motivated him—and lit a critical spark.

Back then, he says, the old, cramped buildings were just part of the package.

"It was dated even then," he remembers. "But I guess it had a certain charm to it. Some of the classrooms had no working heating or air."

Students and faculty accepted their surroundings without question in those days. But they don't anymore.

"Times have changed," Leon says. "The traditional educational system that we grew up in has progressed a long way. I think you have to keep pace or you become irrelevant."

**CLASS OF 1977**

Many alumni remember all too well the conditions "in the bowels of Flavelle," says Mitch Wolfe, Class of 1977 fundraising chair, "with no natural light, little food and water and terrible coffee from a broken vending machine. We survived on *lex*, hugs and rock and roll, and a lot of pinball. So we appreciate the need to raise funds for new and expanded space for the students and faculty."

The Class of 1977 has gone one step further and dedicated a plaque honouring deceased classmates which will be hung in the Betty Ho room of the new building. The late Prof. Ho was a well-loved teacher and remarkable scholar, and most importantly, a fellow classmate and friend, says Linda Gehrke, Class of 1977 campaign co-chair. "The plaque is a fitting reflection of the accomplishments and diversity of our year. There was a lot happening in the broader political and social context at the time, and we were a microcosm of the community."

Wolfe and Gehrke both have fond memories of their law school days. "As I approach the end of my career," says Gehrke, "I appreciate more and more the value of the education I received, and I want to help build something that will help the future development of law."

Adds Wolfe: "So we are all ready to do a little 'fun-raising' and have a good time."

**TORKIN MANES**

As a Toronto-based law firm with just a single office, Torkin Manes takes pride in the city's legal community, and its own prominent niche within that sphere. Supporting the community as a whole, and the law schools within it, is something the firm takes very seriously.

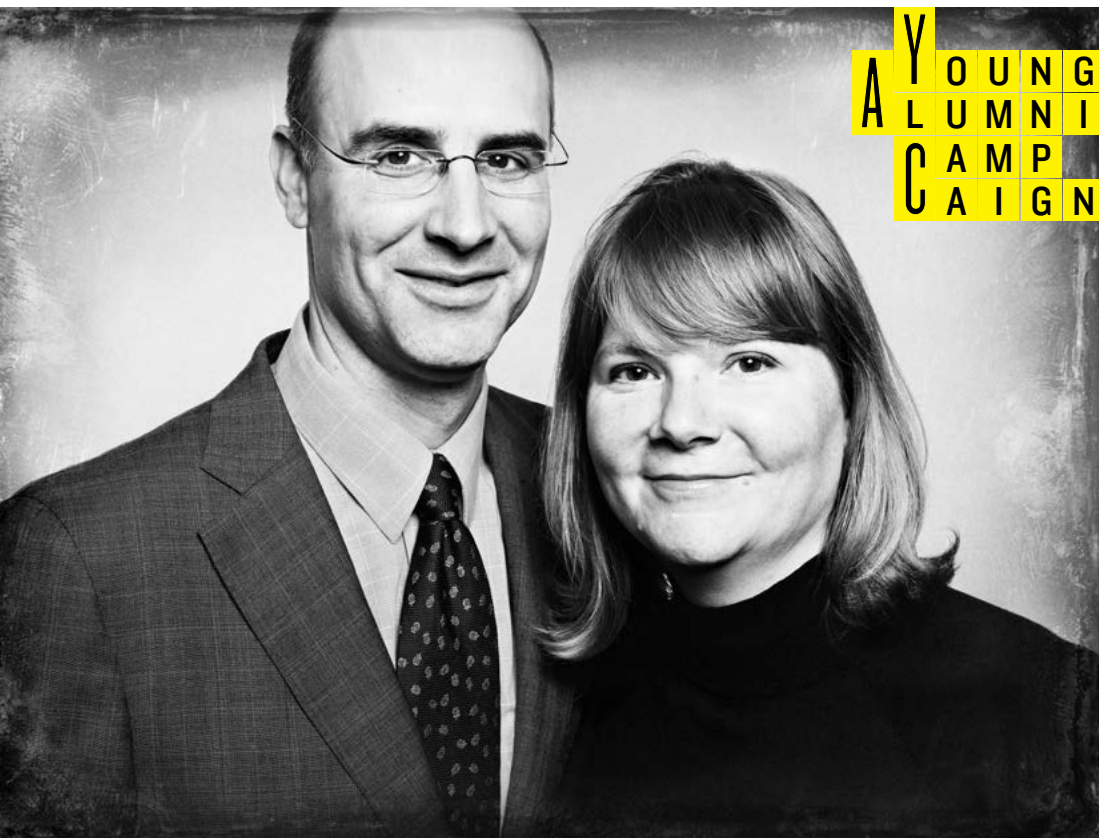
"Toronto is a large legal centre and I think its prominence is enhanced by having good law schools in the city," says Jeffrey Cohen, the firm's managing partner. "Our lawyers can continue their own education; they can teach, sharpen their skills and interact with students on a regular basis."

Almost a fifth of the lawyers at Torkin Manes are graduates of the Faculty of Law. A number of them teach at the school, and law students cycle through the firm on a regular basis.

"We're very impressed with the U of T graduates," Cohen says. "They get a great education, from some of the best academic legal minds and from top-notch working lawyers."

The new building, he says, is the obvious next step.

"Every institution, if it's to continue and grow and recruit top candidates, needs to have good physical premises," Cohen says. "A new building will allow the law school to refresh itself, update its technology, and continue to attract great minds."



#### YOUNG ALUMNI CAMPAIGN

You could say Chief Justice Bora Laskin brought Jeremy Fraiberg, LLB 1998, and Martha Hundert, LLB 1999, together. They met as law students in the Laskin Library. Jeremy, a second-year student at the time, was preparing for the Laskin Moot. Martha was a first year, working on a civil procedure paper in the study room next door.

"We had late nights in the library and we got to know each other and we'd hang out," recalls Jeremy, now a partner at Osler LLP and co-chair of the mining group. "So I'd have to say meeting my wife is definitely a memory that stands out from law school."

Fraiberg continues to teach there and serves as a council member of the Law Alumni Association. Hundert—a senior counsel at the Bank of Nova Scotia—says many of the couple's closest friendships were formed in the storied buildings that served as their academic and social hub.

"Spending three years practically living and working with a huge number of super smart, very motivated, generally kind and lovely people was a great experience," she says.

Fraiberg has fond memories of the cozy old mansions, but says there's no question the law school needs a new and modern space.

"This is going to be a striking new addition to the campus architecture," he says. "It's going to be a beautiful new building. The university is important to the life of the city, and it's a great architectural contribution."

#### MOLLY NABER-SYKES, LLB 1983

After Molly Naber-Sykes participated in the law school's Convocation ceremonies last June, she had a quick tour of the Faculty of Law. She was shocked to see water-stained ceilings and peeling paint.

"There's a real disconnect between the quality of the faculty and student body, and the quality of the physical plant."

And as a parent of three children who may one day study at the Faculty of Law, she does have a vested interest in the future of her law school. But more importantly, Naber-Sykes stresses she grew up in a family whose ingrained culture was to give back to its educational institutions.

"My father to this day continues to support Canisius College in Buffalo, NY. He was so grateful for his education there. He made a point of letting us know each time he pulled out his cheque book to make a donation."

Appreciative of her legal education, Naber-Sykes says it equipped her with the "flexible toolkit" that forged a varied and interesting career: she's practiced civil litigation, taught advocacy at the University of Calgary and Notre Dame Law School, and is currently a prosecutor at the Law Society of Alberta. She also met her husband Henry Sykes, LLB 1983, at the Faculty of Law.

"Those three years are an exceedingly important part of an aspiring lawyer's life, a time to expand horizons, and form lifelong friendships with classmates and professors," she says. "A state-of-the-art building can first of all let some sunshine in, and support greater collaboration and more activities, not just for faculty and students but for the legal profession as well."

MOLLY NABER-SYKES PHOTO BY DAN BANNISTER



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# Coming up in the next issue of *Nexus*

## Clicks and stones:

*Nexus* looks at the complex issue of cyberbullying, as the Faculty of Law and the Factor-Inwentash Faculty of Social Work examine the constitutional, criminal and international human rights law implications of this growing issue at a conference in May 2013.

## Story call:

We're always interested in your suggestions of alumni to profile for our regular departments, such as *Nota Bene* and *On the Stand*. Stay in touch and let us know where you and your former classmates have landed after law school. Email us at [nexus.magazine@utoronto.ca](mailto:nexus.magazine@utoronto.ca)

## Letters to the Editor:

Like what you read in *Nexus*? Have a comment to make? Send us your feedback at: [nexus.magazine@utoronto.ca](mailto:nexus.magazine@utoronto.ca). Letters may be edited for length and clarity.



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BY LUCIANNA CIGCOCIOPPO  
PHOTOGRAPHY BY MICHELLE YEE

# THE SOUNDS OF SERENDIPITY



**Y**ou've heard of lawyers who play keyboards, guitars or drums in their 'wannabe' rock bands. Meet a lawyer-musician of a different kind: Roy Lee, JD 2004. He plays the carillon in the University of Toronto's Soldiers' Tower. That's the set of 51 bells, spanning four octaves, housed at Canada's only university with a carillon tower.

The litigator for the Department of Justice says it was a stop during a campus clubs fair, while an undergrad at Yale University in 1997, that proved serendipitous.

"I had been moving away from playing piano and organ, and was thinking of doing something else. The carillon club was recruiting new students." And so he became one of them, taking lessons and soon playing recitals weekly.

"It's the performance aspect about playing the carillon that I like the most. And almost everything we do is about performance." Indeed, you can't practice playing some four-ton bells without others hearing you. And how they're hearing them is a concern as well.

"You're constantly thinking about what sounds good on the ground, and balancing sounds between the notes. From the playing console inside the tower, I can barely hear the little bells at the top of the carillon but people 200 feet away will perceive the balance differently."

His dedication led to professional certification with the Guild of Carillonneurs in North America, and he continued to play even after commencing law school at the University of Toronto. It was September 2001.

"I called the U of T president's office, after 9/11, to offer to play the carillon before the memorial service the university was planning." His offer was accepted, and he's been playing at this university ever since for Convocations, for special events such as World Aids Day, and in a special recital to celebrate the Queen's Diamond Jubilee last September. He's currently teaching five students.

"That's a pretty good number. It's not a dying art. In fact, it's growing around the world," says Lee. "The carillon adds a lot to campus life. Historically, bells were the centre of town life, and a part of religious and university communities." He's keen to help grow a more active training program on campus.

Says Lee, with a smile: "I feel like I never really left." ↵

Watch Roy Lee on YouTube: <http://bit.ly/VFWV7s>

If you are interested in supporting the Soldiers' Tower Carillon, to fund more recitals and bursaries to teach students, please contact: Kathy Parks at [soldiers.tower@utoronto.ca](mailto:soldiers.tower@utoronto.ca), 416-978-3485.



## CIVIL ACTION, REDRESS AND MEMORY

Lessons from the Canadian residential schools context

BY MAYO MORAN, SJD 1999, DEAN OF THE FACULTY OF LAW  
ILLUSTRATION BY SÉBASTIEN THIBAUT

When we think of countries with troubled pasts, it is not Canada but places like Germany and South Africa that generally come to mind. Yet established democracies have their own difficult histories of widespread wrongdoing. How ought we to respond to these legacies? There are lessons to be learned from Canada's Indian Residential Schools Settlement Agreement (IRSSA), arguably the most comprehensive effort yet to respond to widespread historic injustice. It came into effect five years ago and its deadlines are beginning to pass. On January 18, 2013, the Faculty brought together key parties to reflect on what has been accomplished and what challenges lie ahead.

Until recently most Canadians were unaware of residential schools. Yet more than 150,000 Aboriginal children were taken from their families and placed into Indian Residential Schools in this country. Once in the schools, children were often punished for speaking their languages and for their beliefs. Malnutrition, neglect, physical and sexual abuse were widespread. Mortality rates were high. The effects of the schools remained long after they closed but were rarely discussed.

By the late 1980s, the Charter's influence was being felt throughout our legal system. And so when the residential schools legacy began to be litigated, there was more openness to removing procedural barriers such as limitations periods, immunities, vicarious liability rules and the like. As the barriers fell, the litigation increased. In 1998 the federal government responded with a multi-part strategy but it did little to stem the tide. By 2002, more than 12,000 legal claims had been filed against the federal government and the churches, and the numbers continued to mount.

Then in May of 2005, the federal government undertook negotiations aimed at producing a comprehensive settlement to address the legacy of residential schools. The process was led by The Honourable Frank Iacobucci, LL.D. 1989 Hon., acting as Canada's representative, who worked closely with Chief Phil Fontaine, National Chief of the Assembly of First Nations (AFN) at that time. The negotiations included counsel for former students, churches and government, the AFN and the other national Aboriginal organizations. They produced an agreement that many had viewed as impossible to achieve given the diversity of interests. The Indian Residential Schools Settlement Agreement (IRSSA) was signed by all of the many parties in May of 2006, approved by courts that had certified class actions throughout Canada, and came into effect on September 19, 2007.

As the largest class action settlement in Canadian history, the IRSSA is daunting in its complexity. Nine judges from across the country approved it. Under a Court Administration Protocol, two administrative judges, Madam Justice Brown from BC and Chief Justice Winkler from Ontario, maintain ongoing supervisory jurisdiction and have issued a number of important rulings. A National Administration Committee (NAC) composed of representatives of the parties is charged with a number of tasks, including overseeing the agreement.

The IRSSA mandated a Common Experience Payment (CEP). Eligible former students receive \$10,000 for the first school year and \$3,000 for each subsequent year. More than 105,000 applications were received and more than 78,000 were found eligible. The average payout per recipient was a little more than \$20,000. The total payout under the CEP to date is \$1.664B. The remainder of the \$1.9B allocated to the CEP in the IRSSA is to be distributed for educational purposes.

The IRSSA also provided for healing funds in the amount of \$120 million to be assigned to the Aboriginal Healing Foundation for survivors and their relatives who were affiliated with the residential schools system. Funds were also provided for lawyers' fees.

The Truth and Reconciliation Commission (TRC) is perhaps the most widely known element of the IRSSA. It was created

to promote public education and awareness about the Indian Residential Schools system and its legacy, as well as to provide former students, their families and communities an opportunity to share their Indian Residential Schools experiences. The TRC has held national and community events and issued an interim report. It is also charged with establishing a research centre, and will issue its final report detailing the history and legacy of the schools and the prospect for reconciliation in 2014. Professor Kent Roach of our Faculty serves as a special adviser to the TRC.

The IRSSA also created an Independent Assessment Process (IAP). Administered by an independent Adjudication Secretariat, the IAP was designed to be a fair and impartial claimant-centered adjudication process for awarding compensation for serious harms, including physical and sexual abuse. The original projection was for 12,000 to 15,000 claims. In fact, as of the September 19, 2012 deadline, more than 30,000 applications had been received. More than 17,000 claims have been resolved through hearings and negotiated settlement, and over \$1.6B in compensation awarded. The Oversight Committee advises the chief adjudicator, and I have served as independent chair of the Oversight Committee since 2007.

On June 11, 2008, Prime Minister Stephen Harper, speaking on behalf of all Canadians in the House of Commons, issued a full apology for the residential schools system.

The fifth anniversary of the coming into force of the IRSSA provides an opportune moment to reflect on the progress to date, what has been accomplished by this remarkable agreement, and what challenges lie ahead. The Faculty of Law has long been involved with the issues. In 2000, with litigation mounting and pressure rising, my colleague Professor John Borrows and I organized an intensive week for the entire first-year law class on the subject of redressing historic injustice. Opened by National Chief Phil Fontaine, the week featured all of the key parties as well as colleagues and alumni. Over the years, Professors Darlene Johnston, Douglas Sanderson, Patrick Macklem, Kent Roach and I, along with many others, have raised these issues into the classroom and have organized roundtables and colloquia with leading players to help support the process with research and comparative lessons. But undoubtedly our law school's most important contribution to the process was The Honourable Justice (and former Faculty of Law Dean) Frank Iacobucci. Along with National Chief Fontaine, he arrived at an agreement that many thought impossible. The historic settlement was inked in the last days of the minority Liberal government led by another distinguished U of T Law graduate, the Right Honourable Paul Martin, LL.B. 1964, LL.D. 2011 Hon.

As a Faculty, we bring rigorous academic thinking to bear on the most pressing issues of our day. So last summer, when my colleague Professor Kent Roach and I were discussing some of the larger issues associated with the IRSSA, we realized that it was an opportune moment to host an event on January 18, 2013 to reflect on what has been accomplished and what lies ahead. The Honourable Frank Iacobucci, Chief Fontaine, The Honourable Justice Murray Sinclair of the TRC, and many others involved in this historic agreement, joined us for this important occasion. You can view our website to read coverage of the event. ↖





with Mark Wiseman, LLB/MBA 1996, president and CEO of the Canada Pension Plan Investment Board, on taking risks, tough lessons, and why he stays at the CPPIB.

BY LUCIANNA CICCOCIOPPO  
PHOTOGRAPHY BY MICHELLE YEE

**LC:** Given our increasingly aging population, provincial finance ministers are talking about pension reform again. What do you think these reforms should include?

**MW:** From a structural point of view, Canada has one of the best pensions systems in the world, if you look across each pillar of the system and how they are envisioned to work together. Still, the long-term view of retirement income for many Canadians exposes significant gaps that can largely be attributable to trends in longevity, demographics, shrinking workplace pension coverage, a high household debt-to-income ratios, and, most alarmingly, insufficient personal savings rates. Federal and provincial governments have noted the need to take action to deal with pension-related public policy objectives and their continuing discussions are important for the country. The expansion of the CPP is one of several options open to policy makers. The CPPIB has been, and will continue to be, available to provide insights to these policy makers as their discussions evolve.

**LC:** The Canada Pension Plan Investment Board (CPPIB) posted a 1.9 per cent return for Q2 of fiscal 2013. What happens in the board room when you send out a 'good news' press release?

**MW:** We really don't focus on quarterly results. It's one of the things that sets our organization apart from most other investors and, quite frankly, most other corporations. We are managing assets on behalf of 18 million Canadians for generations and so our focus is really on the next quarter century, not the next quarter. Even annual results for us are non-events, relatively speaking. We are really focused on our long term strategy and trying to add value in the long run to the CPP's reserve fund.

**LC:** So a slightly negative result wouldn't really faze you?

**MW:** It's par for the course. We are trying to make long term decisions. Bear in mind that, by and large, our results are predominately driven by things that are outside of our control, which is the general return of global financial markets. So our job as managers is to try to out-perform those global financial markets. In some circumstances, that may mean losing less money than the benchmark markets would have lost over the same period. Losing less in a bear market is just as important, in the long run, as out-performing in a time when markets are positive.

**LC:** Given the current global financial market situation, is there a sense of obligation to try to focus on Canadian equities at all?

**MW:** On the contrary, one thing we have been doing since we undertook active management of the fund in 2006 is to try to diversify the portfolio globally. Currently, about 10 per cent of the portfolio is allocated to Canadian equity. In addition we have a substantial portfolio of Canadian government bonds, bringing total Canadian exposure of the fund to about 40 per cent, but Canada represents only about 2-3 per cent of global capital markets. This would suggest that we are already overweight in Canada, so we're continuing to try to diversify.

**LC:** How unique is the CPPIB structure in the world? Do people from other countries call you for advice?

**MW:** The CPPIB model is a relatively new one. I don't think it would be too strong to say it's revered around the world. We've testified at the U.S. Congress. We've spoken to state and federal leaders in the U.S. We've spoken at the OECD. We've spoken to various governments around the world, publicly and privately, about the structure of the CPPIB and our investment strategy. And really, our success is driven from our governance structure. It's unique in that there is a strong recognition that the CPPIB operates at arm's-length from government. Although the federal and provincial governments have joint responsibility over the Canada Pension Plan, our mandate is singular and very clear, as set out in our CPPIB Act. It's to maximize returns without undue risk of loss. It's a very unambiguous mandate for us to fulfill. It means that we are not an instrument of government policy. We are an active management firm, with an independent and expert board of directors, a board that is not made up of political appointees. It is made up of business and financial experts and, as a result, we can really focus on investing the money wisely.

**LC:** As you were climbing your career in the investment world, what would you say were some of the tough lessons learned?

**MW:** I never planned my career. It sort of just happened. But in the investment world, which is quite a bit different than law at some level, you have to take risk. You want to take risk in an intelligent way; you want to understand the risks you are taking, but at the end of the day, you get paid for taking risks. That's what we are doing at CPPIB—taking risks every day and we hope that we are appropriately rewarded for the risks that we are taking. Taking risks means that you make mistakes, and certainly in my investment career I've made mistakes, and learned lessons from taking risks that didn't pay off or that we weren't appropriately compensated for. My mantra is: if you are not making mistakes, you are not taking enough risk. What's really inexcusable, however, is making the same mistake twice.

**LC:** What keeps you at the CPPIB?

**MW:** I think I have one of the best jobs in the country. Think about a job where, first of all, you have an incredible amount of responsibility investing money on behalf of your fellow citizens. You get to operate globally. You work on some of the most important transactions going on around the world with a tremendous amount of scale—and you can do all of that for a public good. You are not just operating at CPPIB to make some nameless, faceless shareholder a little bit more money, or some rich guy richer. Here, we actually help to secure the retirement of 18 million fellow Canadians and they've entrusted us with their very, very hard earned money. It's a tremendous amount of responsibility but it's also exciting and I feel really good about what I do. I love to go to work every day. ↩

Read the Q & A with Mark Wiseman in its entirety online:  
[www.law.utoronto.ca/nexus/wiseman.html](http://www.law.utoronto.ca/nexus/wiseman.html)



## RECONNECTING AT REUNION 2012

On a spectacular fall evening in downtown Toronto, an energy was reverberating from the Faculty of Law where more than 300 alumni gathered to catch up with classmates for Reunion 2012. Celebrating years ending in '2' and '7', a stand-up reception kicked off the class year dinners on October 19-20, 2012, which were spread across the city's fine dining venues. A special congratulatory shout-out goes to the Class of 1957, which celebrated its 55th anniversary.

1957 .....

**TED RACHLIN** – Unusual for our class, I'm still practicing—still trying to get it right! However, I don't work nearly as hard as I used to and spend a lot of time in the winter in Sarasota, Florida. I enjoy my work and I'm glad I'm a lawyer.

1962 .....

**BERT BAKKER** – I am doing well and still practicing law on a limited basis in St. Catharines, with the assistance of one registered law clerk and a legal assistant. I'm still serving as a director on one community agency and at a post-graduate learning institution. Ruth and I will be celebrating our 50<sup>th</sup> wedding anniversary with our four children and 14 grandchildren.

**LESLIE DUNCAN** – I have practiced commercial law in Calgary since graduation, mainly for entrepreneurial companies in the airline, coal and pipeline businesses. Initially, during the 1960s, my practice was principally commercial litigation but, in the 1970s and 1980s, I had substantial commercial transactions business and travelled extensively. Following the sale of Wardair in 1989, I converted to commercial litigation and arbitration. I am gradually downsizing and go into the office three days a week unless otherwise required. I have some outstanding arbitrations and litigation which will keep me busy on this basis at least through 2013. Fortunately my health has been good throughout. I have a beautiful ranch property outside of Calgary where I reside. Some of my classmates have visited. I have about 125 pure bred Simmental cows that I look after from Easter until Christmas. I board out the cows for calving from Christmas to Easter. I have four daughters, all of whom are doing well.

**AL HARRIS** – I retired in 2006 and our older son, Gregory, took over the firm. Our younger son, Jeffrey, has a computer firm and is thriving. Erika and I are doing a lot of travelling to exotic locations such as Myanmar, Bhutan, Thailand, Bulgaria, Turkey, South Africa, East Africa (safari), Zanzibar, Argentina, Brazil, Scotland, Croatia, Slovenia, Slovakia, and a trip up the Amazon. Of course we've taken multiple trips to Austria, as well as to Portugal and California to visit Erika's family. As far as my

daily routine, I now have lots of time to play the stock market, and do so with delight.

**JEREMY JOHNSTON** – I successfully defended my DJur dissertation at Osgoode Hall Law School on August 17, 2010.

**JAMES MCNAIR** – I enjoy reading, travelling with wife Norma and trying to keep active around the house. Daughter Susan obtained her MD from Western in 2010 and is now on her way to qualifying as a psychiatrist. She recently had some dealings with lawyers and she tells me lawyers are much nicer than doctors.

**DON WAKEFIELD** – Since our reunion in 2007, I have remained in complete retirement in Prince Edward County but have moved from North Beach Road on the west side of the county to the town of Picton. My son, David, is a commercial lender with BMO in Picton, so we see him often. My other son, who lives in Toronto with our three grandsons, is the vice-president of marketing at Ferrero Rocher. We see Mark and the grandsons at least once a month in the winter months and have the grandsons for the Wellington Dukes hockey school in August. We have recently taken our first cruise and are planning a three-week trip to Betty's birth place, Scotland.

**PAUL WESSENGER** – I have been continuing to practise law as a sole practitioner in Barrie on a fulltime basis. My wife Mary Lou and I now have four grandchildren who fortunately live in Barrie and Toronto. We enjoy our cottage in the summer, travelling and skiing with my sons in the winter. Mary Lou and I still both sing in a choir and are still active in politics. I still enjoy my long lunches and keeping in touch with some of my law classmates and legal colleagues.

**MILTON ZYSMAN** – On graduation I joined the family business for 40 eventful years. Seven years ago, I founded a not-for-profit to develop a portable GPS device to answer the ever-present question for a blind person, "Where am I?" Our research shows that an answer is tantalizingly close by combining the ubiquity of mobile phones with the increasing enthusiasm for robotics. To support the research, I am now the executive director of a not-for-profit foundation, International Mobility Challenge Foundation, guided by a board of directors

including my law mates, James Baillie and Robert Kaplan. The foundation has chosen as its prime vehicle an international competition, the International Mobility Challenge, to bring a solution to the world's quarter of a billion visually impaired. <http://internationalmobilitychallenge.wordpress.com/> And I delight in my children: my daughter Leslie in Toronto and my son Joe in Vancouver.

1967 .....

**THOMAS HICKEY** – I was unable to attend our reunion five years ago because my wife, Leslie, was terminally ill at that time. She died shortly thereafter. I retired from Lazier Hickey in Hamilton and the practice of law in December 2008. Since that time, I have been travelling extensively. The only continent that I have not visited is Australia. I am satisfied with the legal career that I had in Hamilton. I am also pleased to be retired and I am enjoying this stage of my life. I am doing the many things that I dreamed about when I was so busy in the office.

**MEL MUROFF** – In 2004 I retired from law, sold my house in Windsor, and also bought a house in the Polo Club in Boca Raton Florida, where I play tennis and cards daily for the winter season. In 2005 our first grandchild was born in Toronto, and we moved, because all three of our children were married and living in Toronto. We have a lawyer, banker and doctor. Since then we are blessed with seven grandchildren between the ages of four to nine. Roz and I recently celebrated our 47th wedding anniversary. Two years ago my wife threatened to kick me out of the house during the summer months, so I went and obtained my real estate license, and am now associated with Harvey Kalles Real Estate. My first big deal was a listing and sale of a 151 unit apartment building in Windsor for \$7.2 million to a Toronto buyer client—a hell of a lot better than practicing law.

**FRED WEBBER** – I am no longer practicing law per se. For the last five years I have been acting as an arbitrator on registration and disciplinary matters for the Investment Industry Regulatory Dealers Association of Canada. My wife and I have purchased a condo in Florida where we spend most of the winters. We both play a lot of golf. We now have five granddaughters and we are in good health.

1977 .....

**BONNIE CROLL** – It is hard to believe that 35 years have passed! In addition to celebrating our law school graduation, I am also celebrating my 35th wedding anniversary to Robert Henry, my 'law school boyfriend.' We have two daughters, both of whom were married within the last year. Our older daughter Lesley is a lawyer and has just relocated to Chicago, and our younger daughter Brett has her MBA and is with CIBC. They can now take care of the old folks! Robbie recently has retired, after many years in the clothing business. We try to travel as much as we can, and usually have our golf clubs in tow. I have been on the Superior Court of Ontario since 2000, and continue to enjoy it very much. I especially like the criminal work.

**WILLIAM ROBERTS** – I continue to practise as a sole practitioner with an emphasis on administrative law before the Ontario Municipal Board. I have been somewhat successful before the board, and in 2010 was named the 10th most successful law firm before the OMB by Novae Res Urbis. I put that down to a unique set of factors. I am currently acting as chair of the Confederation of Resident and Ratepayer Associations in Toronto, and have been helping to rebuild it into a city-wide organization. Due to the disappearance of the PC Party of Canada I am now a member of the Federal Liberal Party. I am still actively involved with community groups. Recently I coordinated the Ontario Horticultural Association's volunteer table at the CNE.

1982 .....

**PHIL CAMPBELL** – I have managed to become a criminal lawyer as I'd hoped during law school. Over the years my cases have become more serious and I now get to work mainly on murder prosecutions. In recent years I have been concentrating on appellate matters but I have not been able to shake my taste for jury trials and am scheduled to begin one in January. I remained immersed in legal work for 15 years after the Call to the Bar but when I surfaced in 1999, I was fortunate enough to meet my wife Vicki. We were blessed in 2005 with Monica. My main recreation, when I am free of domestic and legal responsibilities, is taking long motorcycle trips, most recently to Albania from my home in Greece.

**KEN CROFOOT** – In October 2011, I was appointed general counsel to Goodmans LLP and will continue in that role indefinitely while still practicing some litigation. My children are finishing university this year. I have a daughter graduating with a master's in mechanical engineering and a son finishing his last year of commerce, both at Queen's. My wife and I have travelled widely in recent years including doing charity work in Rwanda (teaching mediation) and vacations to various points in Europe, Tanzania, Vietnam, Cambodia and Laos.

1987 .....

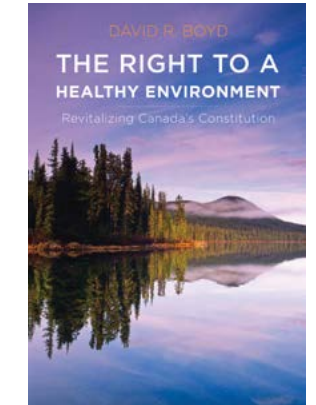
**ELIZABETH JOLLIMORE** – I left practice at Stewart McKelvey in 2007, after 20 years, and have been working in the Family Division of the Nova Scotia Supreme Court, while working my way through the extended studies department at the Nova Scotia College of Art and Design. Printing (with a press), book-binding and rug hooking are healthy antidotes to a thought-full day.

**ANN PEEL** – I'm a founding director of the Institute of Havergal with the mandate to educate and engage students (JK-12) in the world. I enjoyed several years as a member of the board of the University of Toronto Alumni Association, and my tenure on the U of T Moss Scholarship Committee. I continue to run and race, especially as age categories rise. Having vowed to try a new sport a year since turning 40, I've discovered surfing, kite-boarding and tennis, among others (it's been a long time!). In 2011, I travelled to Turkey, Ghana, Nicaragua and Costa Rica on work assignments. And I have just founded SportsCorps Canada and the Athletic Fund to support Canada's athletes.

**BARRY WEINTRAUB** – Life's been good so far. My wife Jennifer and I have three wonderful children: Alexandra 15, Matthew 12, and Jordan 9, who are all active in musical theatre and keep us busy and happy. I am in my fifth year at Rueter Scargall and Bennett in Toronto and am really enjoying it. My practice includes commercial litigation, environmental law and employment litigation. I have also been teaching a course at U of T Law called Perspectives on Civil Litigation, Procedure and Professionalism for several years.

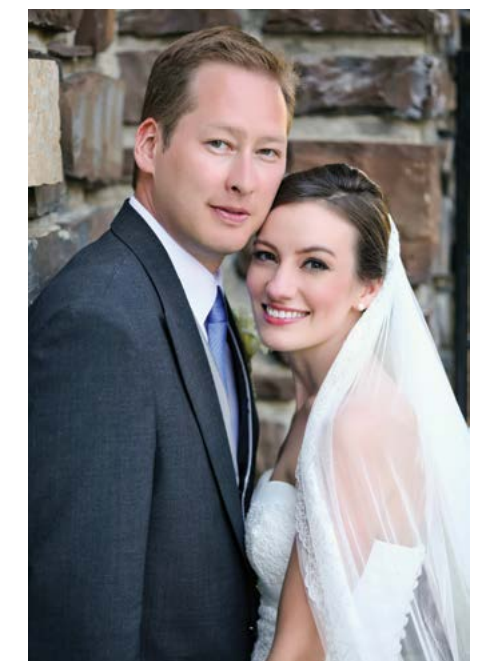
1989 .....

**DAVID R. BOYD** – I just wanted to let you know about my latest book *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (UBC Press, 2012), which is a sequel to *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, 2012). I'm an adjunct professor in resource and environmental management at Simon Fraser University.



2003 .....

**LEELA GOULD** (nee Hemmings), LLB: I married Jason Gould last August in beautiful Banff, Alberta. Beth Gleeson (nee Given), JD 2003, was my maid of honour. Jason and I live in London, England, where I practice with Lawrence Graham LLP. I'm a member of its tax and private capital group and provide trust and estate planning advice to high-net worth clients with multi-jurisdictional assets and interests. Prior to moving to London four years ago, I worked at Stikeman Elliott and Miller Thomson in Toronto.



Send your Class Notes to: [nexus.magazine@utoronto.ca](mailto:nexus.magazine@utoronto.ca)

# A peek at 'OZ'

BY MICHELLE YEE, PHOTOGRAPHER

I was excited when I was asked to photograph Roy Lee in the Solders' Tower! One of the best things about my job is the opportunity it gives me to see and experience places that I would never normally have access to.

Since I have a fear of heights, I just kept my focus on taking the next step, whether it was up or down. It took a lot of willpower to ignore the ground that was far, far away in my periphery.

My favourite is the shot of Roy sitting at the controls of the carillon. I played the piano when I was younger and was always fascinated by the sight of all those strings & hammers, each one individually responsible for a different note.

I had the pleasure of hearing that majestic instrument both inside and outside the tower that day. As I watched all the students going about their business while the chords and chimes rung out across the campus, I felt like I had just peeked behind the curtain and saw the Wizard of Oz. ↖



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"I BELIEVE WE MUST FURTHER OUR COLLECTIVE UNDERSTANDING OF EFFECTIVE FINANCIAL REGULATION TO UNDERSTAND HOW BEST TO PROTECT CONSUMERS IN TURBULENT FINANCIAL TIMES."



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Faculty of Law

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JUSTICE ROSALIE ABELLA '67, '70  
Supreme Court Justice

"MY LIFE STARTED IN A COUNTRY WHERE THERE HAD BEEN NO DEMOCRACY, NO RIGHTS, NO JUSTICE. IT CREATED AN UNQUENCHABLE THIRST IN ME FOR ALL THREE."

# BOUNDLESS



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## DEVELOPMENT

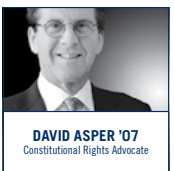
"THE ROLE OF LAW AND LEGAL INSTITUTIONS IN PROMOTING DEVELOPMENT IN THE WORLD'S POOREST COUNTRIES IS ONE OF THE GREATEST CHALLENGES THAT LAWYERS EVERYWHERE MUST GRAPPLE WITH AS OUR PROFESSION'S CONTRIBUTION TO MAKING TOMORROW'S WORLD A BETTER PLACE."



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# A WEEKEND WITHOUT LAWSUITS OR SUITS OF ANY KIND

Join us for **Fall Reunion 2013** and spend time with other lawyers—not working for a change. A variety of non-billable activities are on the agenda.



If you graduated in a year ending in 3 or 8, save the dates for Law Reunion 2013, October 25-27. We have a lot planned, including Sunday brunch.

To volunteer on your class committee, please contact [heather.thornton@utoronto.ca](mailto:heather.thornton@utoronto.ca) or 416.946.0888.

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