

nexus

THE UNIVERSITY OF TORONTO FACULTY OF LAW ALUMNI MAGAZINE
SPRING / SUMMER 2016

Doors Open:

We can't wait to show
you around and tell you all
about the remarkable
Jackman Law Building

Inclusion or
over-inclusion?
Protecting the
most vulnerable
in the assisted
dying debate

Do human rights
need to be enshrined
in international
law to exist?

PLUS

Q & A WITH
MAUREEN SABIA

DIRECTORS' DUTIES
UNDER SCRUTINY

CONVOCATION 2016



UNIVERSITY OF TORONTO
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FACULTY OF LAW

ALVIN YAU IS WRITING THE NEXT CHAPTER OF HIS FAMILY'S STORY.

Alvin's grandmother wanted him to have the opportunities she never had. Today she is a proud woman. Her grandson is the first university graduate in the family. When he received his bachelor's degree, his father gave him a pen and some words of advice: "The next chapter is yours to write." Thanks to our generous alumni, Alvin is doing just that—pursuing a life-long dream of going to law school.

Your support helps us fulfill the Faculty's promise that no deserving student will be denied a legal education for financial reasons. Almost half of Alvin's class receives student aid and they all have stories.

Watch some of them at law.utoronto.ca/studentaid

BOUNDLESS



nexus

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PHOTO BY MICHELLE YEE

Moving into our future

By the time you read this issue, the last of our faculty and staff will be ensconced in the state-of-the-art Jackman Law Building, ready to greet the next cohort of law students and kick off another exciting academic year from their new home. We started the smooth transition with the opening of the Bora Laskin Law Library in February, and watched spectacular snowfalls from the magnificent Torys Hall reading room. Faculty and student services staff moved over the subsequent months, and we hosted our first conference in the beautiful Osler Hoskin and Harcourt LLP Atrium. There's still some window cleaning to do, and a bit of dust to wipe up, but all in all, we're happy in our beautiful space.

The transition, of course, didn't stop us from our usual plethora of conferences, workshops and panels. And with the Jackman Law Building as our innovative home base, expect to be dazzled with even more activity in the future—we finally have a contemporary facility to match our world-class teaching and research. We owe a debt of gratitude to the many alumni who made this a reality.

Our students were also busy, like those in the Structural Genomics Clinic, who worked with faculty and alumni to reinvent IP law in a bid to accelerate medical breakthroughs, p. 10.

In addition, we launched the latest book by Prof. Patrick Macklem, *The Sovereignty of Human Rights*, with a one-day symposium and stimulating discussion, p. 14.

And we took a closer look at directors' duties with a panel discussion in the spring, p. 19. Not surprisingly, our scholars made headlines this year once again for their thought-leadership on the issues of the day. In this edition, we highlight Prof. Trudo Lemmens' work on the assisted dying debate, "Inclusion or over-inclusion?", p.16.

We glimpsed behind the scenes and learned of the family bonds that drive a global business, led by alumnus Mark Falbo, in *Nota Bene*, spent an hour interviewing the incomparable Maureen Sabia, head of the board at Canadian Tire Corporation, for our Q & A, and finally we celebrated the first event in the Jackman Law Building with a small tribute dinner to the Hon. Hal Jackman, "An evening to thank the Hon. Hal Jackman".

We'll be holding small group tours in the fall, so I do hope you'll come to visit. Enjoy the rest of your summer. Happy reading!

ED IACOBUCCI
DEAN OF THE FACULTY OF LAW

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It was a small event to say a big and heartfelt 'Thank you!' to the distinguished alumnus who helped to make the new law building a reality



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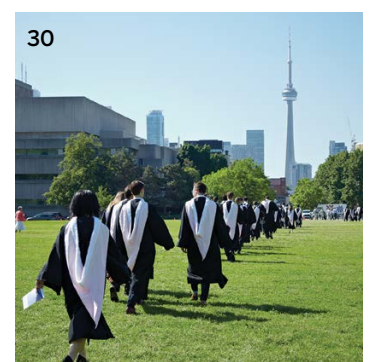
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DOORS OPEN

We look forward to taking you around for a visit, and pointing out the remarkable features of the Jackman Law Building



2016 Alumni Communications Survey results

Thanks to everyone who took the time to provide valuable feedback in our 2016 Alumni Communications Survey. This was the third survey we've conducted since 2010, when the law school had only a Twitter presence in addition to its online and print news, and we'd like to share some of the highlights with our alumni.

We now know that, in the social media world, the majority of you actually prefer to read our updates on LinkedIn, followed by Twitter then Facebook. When you receive our monthly Enews, more than two-thirds click through to the news items that interest you most, an incredible rate that is much higher than the industry standard of about 25 per cent.

More than half read every issue of *Nexus* magazine, 86 per cent read some or most of the articles, and almost three-quarters said the alumni publication keeps them connected to their law school. In fact, 81 per cent are pleased the law school sends them *Nexus*. You enjoy reading our cover and feature stories, alumni profiles, and hearing from the dean.

We know you love Class Notes, and several remarked that you wanted more. But we can't publish more if we don't receive them. So please, send them in! Here's our online form: <http://uoft.me/lawclassnotes>

Furthermore, more than two-thirds still want to receive their alumni publication in print. We know this number could change in the future, so we're going to keep an eye on it in subsequent surveys. We should also mention the paper used in *Nexus* is FSC certified (products from responsibly managed forests), contains 10 per cent post-consumer content, is certified ISO 14001 (a top environmental management system) and is elemental chlorine free. In addition, our printer uses low volatile organic compound (VOC) inks and is powered by Bullfrog, a Canadian green energy supplier.

The number one event you like to attend at the Faculty of Law? Reunion, followed by legal panels and professional development events.

Now that the Jackman Law Building is open, our events will be better than ever, with spectacular space available to catch up with your classmates, or take in a panel discussion.

We are grateful for all the responses, and extend our congratulations to alumnus Alan Treleven, of Vancouver, who won the Starbucks gift certificate for his survey participation.

contributors



ANDREW STOBO SNIDERMAN
WRITER, "INCLUSION OR OVER-INCLUSION?"

Andrew Stobo Sniderman, JD 2014, has been published in *The New York Times*, London's *Sunday Times*, *Maclean's* magazine, Toronto's *Globe and Mail*, and more. He articulated at Olthuis Klerer Townshend LLP, an Aboriginal law firm in Toronto, and clerked for Justice Edwin Cameron at South Africa's Constitutional Court.



SANDRA DIONISI
ILLUSTRATOR, "INCLUSION OR OVER-INCLUSION?"

A graduate of the Ontario College of Art and the School of Visual Arts in NYC, Sandra Dionisi is based in Toronto and teaches illustration at Sheridan College, and in the Faculty of Design at OCAD University.

Her images have appeared in magazines and on book covers, and in a wide range of publications in the US, Canada and Europe. She also created a Labour Day 2000 Stamp for Canadian Post. Sandra has been recognized by The Society of Illustrators, The Art Directors Club of Toronto and the National Magazine Awards.

come visit

**PUBLIC TOURS
TO BEGIN
IN NOVEMBER**

All alumni are invited to take part in one of our small group tours of the state-of-the-art Jackman Law Building.

After an introduction by Dean Ed Iacobucci, enjoy a guided tour along with fellow classmates, and meet other alumni.

Detailed information on dates and times will be sent out soon, with online registration.

DON'T MISS IT!



HERE'S WHAT MADE YOU CLICK:

SOME OF THE TOP SOCIAL
MEDIA POSTS FROM
JANUARY - JUNE 2016



With a record voter turnout for this election, lawyer, educator and UofT Faculty of Law alumna Margaret Froh, Class of 1996, is the new and first female president of the Métis Nation of Ontario.



Congratulations to our alumna Justice Rosalie Silberman Abella, LLB 1970, (first row, left) on her honorary doctor of laws degree from Yale University — first Canadian woman to receive such a prestigious honour!



@UTLaw: Prof. **@TrudoLemmens** co-authors "Pharmaceutical transparency in Canada: Tired of talk" on **@bmj_latest** <https://t.co/whh6UtYDq5>



Prof. Macklem and Sanderson have edited a new book on the constitutional entrenchment of Aboriginal rights: <https://t.co/3W5fcEF26B>



@UTLaw: **@UTLaw** students redefining #IP laws to accelerate critical drug discoveries **@thesgconline**. <https://t.co/loIXI2Sipu> <https://t.co/SaHfnD7dpA>



@UTLaw Class of '64: former PM Paul Martin's official portrait unveiled on Parliament Hill <https://t.co/g2xllsFr9V> <https://t.co/BN1k2Miigx>



@UTLaw 360 view - **@UTLaw** reception moves into the new #UofT Jackman Law Building <https://t.co/SMFpXDnMKO> via **@YouTube**



In the new issue of Nexus, writer Karen Gross looks at the law school's new admissions process and talks to some of the students who've been admitted under it. www.law.utoronto.ca/news/nexus/nexus-archives/nexus-fallwinter-2015/evolution-admissions



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six first-place finishes



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**REDEFINING
PATENT LAW TO**

ACCELERATE

**MEDICAL
BREAK-
THROUGHS**

Students in the Structural Genomics Consortium clinic devise a new material transfer agreement to ensure research is shared

By Peter Boisseau

Ingenious legal concepts created by University of Toronto law students, faculty and alumni are unleashing the power of the world's leading open-access drug discovery institution to accelerate medical breakthroughs for the public good.

The Structural Genomics Consortium (SGC) is a public-private partnership based at U of T and Oxford University that aims to catalyze drug discovery by freely sharing the results of its research on the human genome, with no patent protection.

Faculty of Law students participating in the groundbreaking institution's externship clinic may have found a way to deal with the SGC's thorniest problem: How to ensure the thousands of scientists making free use of the unique "chemical probes" the consortium distributes also share what they themselves discover, based on the molecules they received.

Recently, students at the clinic teamed with adjunct professor Max Morgan, JD 2005, to create a "completely novel" material transfer agreement for the probes.

"The agreement itself provides that when the molecules are shared, the recipient becomes a trustee," says Simon Stern, a U of T law professor and co-director of the Centre for Innovation Law and Policy, which offers the clinic. "That is a novel way of framing it, and I think it is a fascinating idea, with a lot of potential."

Law student Jenny Yunjeong Lee, who worked on the trust agreement, says the SGC's unconventional mission to promote open-access research makes the clinic experience very special.

"I like the way the SGC externship program grabs the negative side effects the patent-based incentive system creates and finds entirely new legal relationships to promote faster scientific development," says Lee.

With its university roots and altruistic vision of creating a "drug discovery ecosystem" where science and the public interest trump institutional and commercial gain, the SGC's network now includes eight global pharmaceutical companies that help fund the consortium.

The SGC is "truly changing the innovation paradigm in drug discovery," says Morgan, who helped start the clinic two years ago along with Stern and Aled Edwards, the consortium's director and CEO.

"And the clinic externship program has made significant contributions to the SGC's mandate," adds Morgan, an intellectual property lawyer at Grand Challenges Canada.

Stern says the material-transfer agreement students helped craft to safeguard the SGC's open-access mission is one example of how they are being exposed to a whole new perspective on patent law.

"We tend to teach from the perspective of using the law to protect intellectual property," he notes. "This clinic is so appealing to us because students get to see how the alternatives work, which is a great thing to expose them to while they are on their way to becoming lawyers."

Besides the role they played in developing the novel material-transfer agreement, students have been instrumental in other key legal work for the SGC, such as helping the consortium negotiate a new funding agreement with its pharmaceutical industry and non-profit partners.

They also assisted the SGC to incorporate a Canadian not-for-profit entity and registered charity, to help the organization secure additional sources of funding.

"It's a really interesting nexus of opportunities," says Edwards, the U of T molecular geneticist seconded to the SGC to manage the international consortium. "These students and their supervisors have helped us negotiate with pharmaceutical lawyers to codify what we're trying to put in place, and I think the students have, in turn, learned a lot of practical stuff," he says.

"At the same time, the Faculty of Medicine and the Faculty of Law have been able to combine to do something truly innovative in

addressing a problem that is unique on both sides."

Clinic law student Ahmed ElDessouki says the natural human inclination to share information has been restricted by otherwise well-intentioned patent laws, and pharmaceutical companies now realize the negative impact that can have on the time and cost involved in developing new medicines.

"What's really unique about the clinic is learning how to align the interests of different stakeholders by coming up with creative solutions that benefit everyone," says ElDessouki, who will be joining Smart and Biggar, a firm heavily involved in pharmaceutical patent work.

Fellow law student Kerry Andrusiak agrees, adding that without her experience at the clinic, she would never have considered different ways of pursuing protection for intellectual property.

"I think this is definitely the way that pharmaceutical industry research is moving," says Andrusiak, who plans to work in the IP sector.

A growing body of evidence supports the SGC's contention that patents encumber the speed of progress and discovery in drug research, especially when it comes to the less well-studied areas of the human genome, which the consortium focuses on explicitly.

Approximately 70 per cent of the world's drug and biology research is done on just 10 per cent of the genes in the human body.

For his part, Edwards says one of the best experiences with the law students, alumni and faculty involved in the clinic has been the opportunity to not only brainstorm with scholars and practicing lawyers, but also young people, because of the different perspectives they bring.

Former clinic student Damian Rolfe, JD 2015, says those discussions challenged him to "dig deep" and think about the different contexts where the SGC could best use open innovation outside of the patent law system.

"We were thinking about the patent system in a very different way at the SGC," says Rolfe, who is now articling with patent firm PCK IP. Alumna Zarya Cynader, JD 2013, an intellectual property lawyer at Gilbert's LLP, says one of the great things about working at the clinic was being able to engage with faculty members who share her interest in the intersection of biotechnology and law. It also brought back fond memories of her days as a law student.

Says Cynader: "Getting hands-on experience in a law clinic was my favourite part of law school when I was a student, so I find it very rewarding to be able to help expand the experiential learning opportunities for students coming through the faculty today." ↩



PUSHING THE BOUNDARIES OF PATENT LAW: (LEFT) KERRY ANDRUSIAK, DAMIAN ROLFE, ADJUNCT PROFESSOR AND ALUMNUS MAX MORGAN, JENNY YUNJEONG LEE AND AHMED ELDESSOUKI ARE SOME OF THE RECENT CLINIC PARTICIPANTS.




PHOTO BY LUCIANA CICCIOPIPPA

By Christopher R. Graham, JD 2007
Illustration by Alex Nabaum



DIRECTORS' DUTIES UNDER SCRUTINY

Program on Ethics in Law and Business
panel dissected the Supreme Court's 2008
decision on fiduciary duty



IN 2008, the Supreme Court of Canada decided that boards of directors owe a fiduciary duty to the corporation rather than to its shareholders. The case was *BCE Inc. v. 1976 Debentureholders*, [2008] 3 SCR 560, and for eight years, lawyers and academics have struggled with the decision. In particular, two broad questions: How can a corporation—a legal fiction, a non-entity—have its own interests, separate and distinct from those of its owners? And if directors get to decide those interests, what protection do investors really have under Canadian corporate law?

Beneath uncertain April skies, a panel of the city's mergers and acquisitions specialists took up these questions. The panel featured Anita Anand (U of T), James C. Tory (Torys LLP), Naizam Kanji (Ontario Securities Commission), John Tuer (Scotiabank), Howard Wetston (C.D. Howe Institute and past chair of the OSC) and Robert Yalden (Oslers LLP). Quipped one audience member, "It's like Bay Street took the afternoon off from doing any M&A."

Professor Anand, J.M. Kimber Chair in Investor Protection and Corporate Governance, organized and chaired the discussion, and began by reviewing the key findings of the BCE case. She explained the Court's view that directors have a duty to act in the best interests of the corporation but that does not mean simply maximizing shareholder value. In assessing whether directors had discharged their duty, courts must consider the effect of their decision on the corporation but could also consider, where appropriate, the effects of that decision on "shareholders or particular groups of stakeholders." Anand suggested that one result of the BCE case was a renewed emphasis on the process boards of directors adopt when reaching their decisions. She also argued that the corporation is an entity comprised of numerous contractual relationships.

The panelists debated the issues vigorously. Yalden flatly rejected any view of the corporation as an "inchoate legal fiction" or as something "nebulous and intangible."

"That's not how boards think about corporations. It's more tangible. What [directors] are worrying about is very real: the business, employees... Those are very real," said Yalden. Anand responded that these relationships are real but they are at the bottom all contractual arrangements.

Tory, drawing on his litigation experience, said: "BCE complicates the content of directors' duties because the interests of the corporation can't be defined in reference to any one stakeholder group." The net result of this indeterminacy, in Tory's view, is that "there is no meaningful standard to which directors can be held accountable." The right process can, in theory, justify any result.

Tuer, an investment banker, agreed but saw it in a different light. "The BCE decision gives directors comfort that they have leeway to come up with what they think is the right answer." Boards, in other words, know best, and the Court in BCE simply demanded evidence of a rigorous process in deploying the board's (preeminent) business judgment.

The panel disagreed on whether, and in what direction, the BCE decision had moved Canadian corporate law. Tory lamented the move away from shareholder primacy (i.e., the American and UK view that the best interests of the corporation are synonymous with the best interests of its shareholders); Yalden reminded everyone that the law in Canada has never been shareholder primacy; and Tuer thought boards were getting on in much the same way they were before, albeit with an increased emphasis on documenting their decision-making process.

Spirited debate with the audience provided little resolution on any of the issues before the roundtable. At one point Anand suggested to Yalden that in her review of

the literature, academic discussions and conversations with practitioners, "I've never heard anyone take your view." Yalden suggested that was because people prefer simplistic statements and clear lines, but that doesn't change the fact that what directors need is "space to balance varied interests."

The roundtable then moved on to consider the policy considerations underlying securities regulation: specifically, securities regulators focus on protecting investors—a version of shareholder primacy—which seems at odds with the Court's holding in BCE that shareholder interests are only one type of interest relevant to directors' in discharging their duty to act in the best interests of the corporation.

Kanji, director of mergers and acquisitions at the OSC, suggested that concerns about a serious conflict were misplaced. The BCE decision is not a statement of policy, said Kanji, but rather "the Court commenting on how to apply existing law to specific circumstances".

"Securities regulators have never said that boards have a duty to maximize shareholder value," said Kanji. "What they say is we will supervise takeover conduct to ensure that boards have a role... but not [to the point] that shareholders lose their right to [vote on a proposed transaction]".

The last word was given to Wetston, past chair of the OSC, who took something of the long view. "Whether its shareholder primacy or not, we all recognize the important role of shareholders." Intensive parsing of the Court's language notwithstanding, Wetston stated what was otherwise implicit the afternoon's discussions: "The system that we have works fairly well but that doesn't mean it can't be improved."

"If you think about BCE in the context of a boardroom," said Wetston, "people will figure it out." ↖

Human rights need to be enshrined by international law to exist: *discuss*

Scholar Patrick Macklem, author of *The Sovereignty of Human Rights*, says the law “...is agnostic in terms of what becomes a new human right or not”

By Peter Boisseau
Photography by Nick Wong



Macklem starts from the premise that international law, not moral theory or political practice, determines the existence of a human right.

International human rights exist only to the extent that the law says they do, and the cold hard fact is that, technically, morality and politics have little to do with them, says University of Toronto Law Professor Patrick Macklem.

“Moral and political accounts say human rights reflect what it means to be human, and so they are universal,” Macklem said in an interview following an April 19th symposium on *The Sovereignty of Human Rights*, named after the title of his latest book on the subject.

“Those moral and political accounts say a Syrian has a human right to life because life is essential to what it means to be human, as a feature of our common humanity,” Macklem explained.

“I say he’s got a human right to life or security of the person because the law gives him that right through international legal instruments and various treaties that recognize human rights in international law,” said Macklem.

“It may well reflect something that relates to our common humanity, but it’s not essential that it does. What is essential is that it exists in law.”

Macklem starts from the premise that international law, not moral theory or political practice, determines the existence of a human right. An international human right to food, for example, exists because the International Covenant on Economic, Social and Cultural Rights enshrines it, Macklem wrote in a recent blog post about his book.

Similarly, the right to development is a human right in international law because the UN General Assembly has declared its legal existence.

In Syria and elsewhere, the true role of human rights from the legal perspective is to mitigate some of the adverse consequences that flow from international legal recognition of state sovereignty, said Macklem.

That’s because the prime focus of international law is to organize global politics into a legal order that distributes and authorizes sovereign power.

While the “standard moral account” of human rights says that those rights reflect interests and values that we all share, “they operate in a very different way as a matter of law as defined in the international legal arena,” he explained.

When moral considerations enter into the debate about the nature and scope of human rights, “they are tethered to legal concepts about the purpose of those rights.”

In that sense, moral questions are part of a legal discourse, and not the other way around.

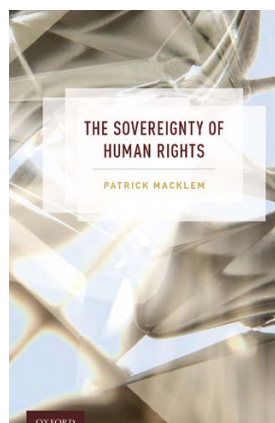
Similarly, while the law can guide us on the methods and procedures for enshrining legal rights, “it’s agnostic in terms of what becomes a new human right or not,” added Macklem.

It’s up to political actors to decide what human rights are translated into international legal rights. But once something does become a legal human right, the law takes over, and its nature and scope are determined by legal interpretation.

Theoretical debates and concepts may seem to matter little compared to the tragic reality of human rights abuses, but there is a practical benefit to his theory, argued Macklem.

“It makes sense of the structure and operation of international law, and with an explanatory force that moral and political accounts don’t have. The obvious practical benefits are that we understand what’s happening with greater clarity and conceptual cohesion, so we have a better sense of what is going on and what should be going on.”

With Macklem’s book as its focal point, the conference drew top legal thinkers



from U of T and scholars from around the world to exchange ideas and publish their reflections in the *University of Toronto’s Law Journal* (UTLJ).

First published in 1935 by the founder and former dean of

U of T’s law school, renowned legal scholar W.P.M. Kennedy, the journal’s goal is to provide a forum for discourse where moral and political arguments matter, but only on the law’s terms, said Faculty of Law dean, Professor Edward Iacobucci, in his introduction at the conference.

Macklem’s latest work is part of an

ongoing effort to define what it means to say “on the law’s terms,” Iacobucci explained.

The book also contributes to the law journal’s legacy of going beyond a vocational approach to the study of law, added Professor Mayo Moran, provost of Trinity College and former law school dean.

In her introductory remarks to the conference, U of T Law’s Professor Karen Knop said Macklem’s book helps us understand the extent to which the international legal order is centred on state sovereignty.

While human rights may be broadly understood to be part and parcel of the way the law allocates sovereignty, that doesn’t mean that the international legal order is built on the idea of universal human rights, said Knop.

Human rights cover a broad range of issues, she noted, including self-determination, development, life, liberty and work.

Macklem’s concepts challenge contemporary thought and bring a new perspective to the human rights sphere. At the conference, scholars weighed in with their critiques.

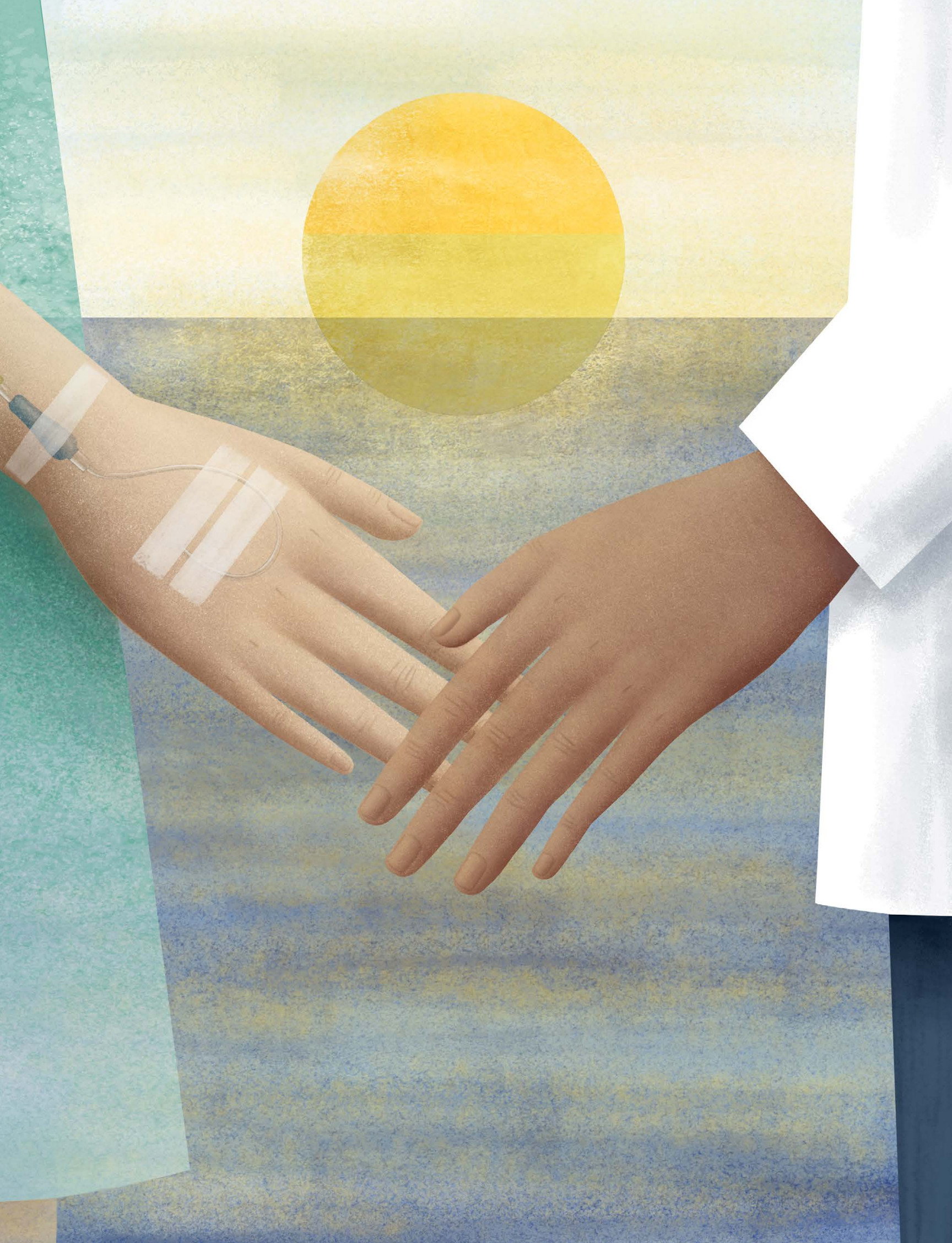
In a joint presentation, U of T Law’s Professor Jutta Brunnée and Munk School of Global Affairs Director Stephen Toope agreed that one of the unique contributions of Macklem’s book was to defend and promote the aspirations of individuals and groups, such as Indigenous peoples and minorities within international law.

Brunnée said she and Toope were also sympathetic to Macklem’s goals of achieving a greater understanding of the wide range of human rights issues “in a distinctly legal way.”

But Toope said they wondered if the real role of human rights was not to fundamentally challenge the operation of state sovereignty within the international order, but rather to simply balance and modify it whenever possible.

“Human dignity is not tethered to international law,” added Christopher McCrudden, a Queen’s University Belfast law professor, who also praised the book for sparking debate, but questioned if its premise went too far.

The complete reactions and views of the conference participants to Macklem’s book will be published in a forthcoming edition of the *University of Toronto Law Journal*. ↩



Inclusion or over-inclusion?


Scholars and alumni debate the assisted dying issue—and how to protect society’s most vulnerable

Trudo Lemmens, U of T’s Belgian-bred professor and Scholl Chair of Health Law and Policy, has in the last year emerged as a voice of caution while Parliament debated how doctors should help people die. This spring, he testified in Ottawa before House and Senate committees and urged Canadian lawmakers to learn the right lessons from more than a decade of legalized assisted dying in Belgium and the Netherlands.

“I speak Dutch and French, I return to Belgium almost every year, and I’ve heard about the families of people killed prematurely by sloppy physicians,” he says. “I have been troubled that in Canada we hear overly enthusiastic accounts of how well Belgium and Netherlands were dealing with euthanasia. Canadians shouldn’t expect the legalization approach taken in these countries will resolve so easily the challenges of dealing with end of life care in Canada.”

Back in 2001, while completing his doctorate at McGill, Lemmens participated in a conference organized by the Belgian Bioethics Advisory Committee as Belgium drafted its own assisted dying legislation, which has since become his case study in how something so narrow can grow into something so problematic. Over time, the number of recorded assisted deaths has risen dramatically to 2,021 in 2015, up from 347 in 2004. The access has been extended to minors and is used by those with psychiatric illnesses like depression. Invariably, some doctors have interpreted vague legal criteria more permissively than others.

In Canada, the Criminal Code long outlawed the practice of so-called “physician-assisted dying” (or “euthanasia” or “assisted suicide,” depending on the era of debate or premises of the speaker) and the Supreme Court upheld this prohibition in 1993 by a 5-4 margin in the case of *Rodriguez v British Columbia*. Generations of law students learned about section 7 of the *Charter* through the searing story of Sue Rodriguez, who was suffering from ALS (amyotrophic lateral sclerosis, a neurodegenerative disease) and came to a courtroom seeking a more dignified way to die. She lost her appeal, and subsequently broke the law in getting help to end her life.



Twenty-two final exams of 1L constitutional law later, in the 2015 case of *Carter v Canada*, the Supreme Court unanimously overturned the *Rodriguez* precedent. The Court recognized in the first paragraph of the judgment that a person should not be forced to make a “cruel” choice between suffering and suicide. That which cannot be done legally with a doctor is often done alone and dangerously. The Court held that physician-assisted dying is permissible for competent adults where “the person affected clearly consents to the termination of life” and “the person has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual...”

David Baker, LLB 1975, served as counsel for the Council of Canadians with Disabilities for both the *Rodriguez* and *Carter* cases. He also represented the Canadian Association for Community Living in *Rodriguez*. When the *Rodriguez* decision went the way it did, Baker “anticipated the issue would arise again,” he says. “It just wasn’t going away.”

In *Carter*, the Supreme Court punted the issue to Parliament to draft an appropriate law and navigate the veritable minefield of details. For example: should minors have a right to assisted death, such as in cases where they would never live to be adults? Should there be a waiting period between a person’s request and their death, in case they change their mind? Should a person diagnosed with a predictably degenerative disease like dementia be allowed to make an advanced request, before they lose their capacity to provide consent? Who should approve a patient request: individual doctors, or an administrative panel? Should suffering from psychiatric conditions like depression make someone eligible? Should it be sufficient that the insufferable condition be irremediable, or also that it be terminal?

After *Carter* but before Parliament passed a new law, a person could obtain assisted dying via court order. This process became most of the legal practice of Emma Carver, JD 2014, at Polley Faith LLP. She brought eight of the total of 12 physician-assisted dying cases in Ontario. “It has been deeply rewarding and enriching to meet the courageous individuals who sought the right to die with dignity,” she says. “I witnessed how important the right to die is to patients who are suffering intolerably—who often face the prospect

of a painful, ugly death—and went from being a strong supporter of legalized physician-assisted dying to a staunch advocate for it.”

Lemmens keenly followed the debate before and since *Carter*, and observed that what becomes law results from a competition between narratives. Lemmens insists on the danger of surrendering to the most powerful emotional narrative, which tends to belong to mentally competent persons who are gravely suffering near the end of their lives and want to die. But there are other narratives. There are stories of traumatized families who think careless doctors oversaw the premature death of people in their most difficult moments. There are stories of troubled doctors who object to overzealous colleagues who are too quick to conclude a patient is competent and a case is irremediable. These are stories being told in Belgium, and Lemmens wants Canadians to hear them to make clear that the autonomy of a suffering individual should be balanced against the protection of the vulnerable. (The Supreme Court agrees that protection of the vulnerable is a legitimate goal in assisted dying legislation).

Lemmens experienced these issues as a grandson before studying them as an academic. In the 1980s, he lost his grandmother to cancer, but not before doctors made an aggressive medical intervention to unnecessarily prolong her life—without her consent. Lemmens remembers a proud woman who wanted to die quickly in her own home, which informs his enduring belief in the importance of patient involvement in medical decision-making.

Yet this has not prevented Lemmens from detecting a paradox in the way the discourse about patient autonomy relates to the power of physicians. Since the *Carter* decision, Lemmens has watched the ascendance of a public narrative about the autonomy of patients to end their lives as they see fit. In practice, however, broader access to assisted dying is linked to increasing the power of physicians. In Belgium, for example, it is individual physicians who assess the eligibility of a patient for assisted death, and their competency in making that request. A second physician assessment is required, but, surprisingly, agreement with the first doctor is not a requirement. “In any profession there are zealots, people who are irresponsible, who are sloppy,” says Lemmens. “We are giving more power to individual doctors to end the life of people, and giving that power should concern us.”

“In any profession there are zealots, people who are irresponsible, who are sloppy,” says Lemmens. “We are giving more power to individual doctors to end the life of people, and giving that power should concern us.”

That is why Lemmens recommends that some kind of judicial process, like a specialized tribunal, oversee final approvals of patient requests, so that general norms could be enforced. He opposes advanced directives and access for people with psychiatric conditions, and supports a narrower definition of “grievous and irremediable medical condition.” On the whole, he worries that more “open-ended access” increases the threat to the vulnerable. He is troubled that Belgium’s vague law has led to assisted dying for “isolated, lonely people” and those experiencing “existential suffering”.

The Liberal government did not take all of Lemmens’ advice, but its proposed legislation introduced in April adopted a similarly narrow view of assisted dying. Notably, the draft legislation required that death be “reasonably foreseeable” for a patient to be eligible for assisted dying. This followed the approach of Quebec’s own legislation passed in 2015, but many observers have argued that it creates a restriction that is inconsistent with the Supreme Court’s ruling. Notably, it is not clear that Kay Carter, one of the successful plaintiffs before the Supreme Court, would have been eligible under this criterion. She suffered from spinal stenosis, where open spaces shrink and put pressure on the spinal cord—paralyzing and painful but not terminal. (In 2010 she ended her life with the assistance of a physician in Switzerland). Ms. Carter’s children immediately criticized the bill on the grounds that her mother would not have qualified. “I just don’t get it,” said her daughter.

After the Liberals’ draft bill was released, but before becoming law, the Alberta Court of Appeal ruled that the 2015 *Carter* judgment was not limited to terminal conditions. An Ontario Superior Court agreed. (The applicant in this Ontario case was represented by Carver).

Murray Rankin, LLB 1975, the NDP justice critic, argued that the new bill “would revoke the right to choose from an entire class of competent and suffering adults.”¹ The venerable Peter Hogg, he of the constitutional law textbook, agreed with Rankin that the law was unconstitutional.

In June, the Senate dramatically removed the restriction that a person be suffering from a terminal condition, which set up a showdown with the House of Commons. However, the Liberal

government and the Minister of Justice, Jody Wilson-Raybould, stood their ground, and the final version of the law maintained the restriction that eligibility required a reasonably foreseeable death.

For Elizabeth Kurz, incoming 3L and research assistant to Lemmens, the media coverage throughout the process lacked subtlety because of its focus on the extreme positions on either side of the debate. Working with Lemmens changed her views on the nuances, if not her basic position. “I wouldn’t say I’ve changed my mind, but I hadn’t considered the issue in some contexts. I have learned that with statutory interpretation, you can have dramatic impacts if you aren’t careful, and legislation about physician-assisted dying can have powerful consequences.”

Ubaka Ogbogu, SJD 2014, an assistant professor at the University of Alberta’s law school and its Faculty of Pharmacy and Pharmaceutical Sciences, also played a prominent role in the assisted dying debate. He considers the scope of an exemption for conscientious objectors to the practice to be a thorny issue.

“Most public palliative healthcare beds are operated by Catholic owned- and operated- institutions,” he notes. “The province has suggested there is a right to conscientious objection, even extending to referrals.” Ogbogu has argued for debate as to whether public funds should support institutions that state a broad objection to assisted dying.

Lemmens, like Ogbogu, remains focused on what legal words come to mean in people’s lives. “Sometimes you have to look at abstract philosophical problems, and theoretically there may not be differences between this and that,” he says. “But sometimes you have to look at practicalities of death and dying. For example, it is easy to make a theoretical argument that mental health sufferers are competent to choose assisted dying. They can be competent, but people also recover from depression when they have quality care.”

In the end, Lemmens sees caution as the only responsible route. “In this debate people have focused on under-inclusion. I would say should be much more concerned about over-inclusion. This is about life and death. This is an area where we want to move prudently.” ↩

¹ <http://murrayrankin.ndp.ca/speech-on-bill-c-14-at-report-stage>



—AN EVENING TO THANK THE HON. HAL JACKMAN—

IT WAS A SMALL EVENT TO SAY A BIG AND HEARTFELT

‘THANK YOU!’

TO THE DISTINGUISHED ALUMNUS WHO HELPED
TO MAKE THE NEW LAW BUILDING A REALITY:
THE HON. HENRY (HAL) N. R. JACKMAN, CLASS OF 1956.

By Lucianna Ciccocioppo // Photos by Salathiel Wesser





About 50 guests, including the Jackman family, faculty, alumni and friends, gathered for an intimate dinner in late June in Torys Hall, the cathedral-height reading room of the newly renovated Bora Laskin Library, to hear about the visionary philanthropy that connected the Faculty of Law’s storied past with its bright future. Indeed Dean Ed Iacobucci, LLB 1996, and U of T President Meric Gertler expressed their gratitude to all alumni who made the building a reality.

After meeting in the Osler Hoskin and Harcourt LLP Atrium and participating in guided Jackman Law Building tours, guests reveled in the stunning view in the light-filled Torys Hall, which overlooks Philosopher’s Walk in all this summer’s green glory.

Echoing throughout the Jackman Law Building were animated guest comments, such as: “A spectacular space”, “Student-friendly building”, “A perfect reading room”, and “Thrilling.”

“Welcome to the Jackman Law Building,” said a beaming Iacobucci to warm applause. “We’re here for the first dinner in this wonderful space to celebrate and thank our

visionary benefactor and loyal alumnus—indeed the hero of the Faculty of Law renewal story.”

Iacobucci lauded Hal Jackman for his remarkable generosity around the entire Faculty of Law, “from the renovations in the much-loved Rowell Room, to supporting the Justice Rosalie Silberman Abella Moot Court Classroom, to the Newton Rowell Fellowships for graduate students, and most recently, the innovative J. R. Kimber Chair in Investor Protection and Corporate Governance.”

He praised Hal Jackman’s active presence at numerous academic events around the law school. “You are a valuable contributor to the intellectual life of the law school.” The dean recalled when, as a new assistant professor, he met the law school’s largest benefactor for the first time.

“I was subject to a grilling by the university’s chancellor over something I had written in our alumni magazine, *Nexus*, on corporate governance. I was of course correct in what I had written, though for some reason Hal was skeptical and was perfectly willing to share his doubts with me!” said the dean. He also shared the time

Jackman gave him a well-worn book on the history of dissent and the US Supreme Court, noting “how marked up it was, with underlined passages and notes to himself everywhere.”

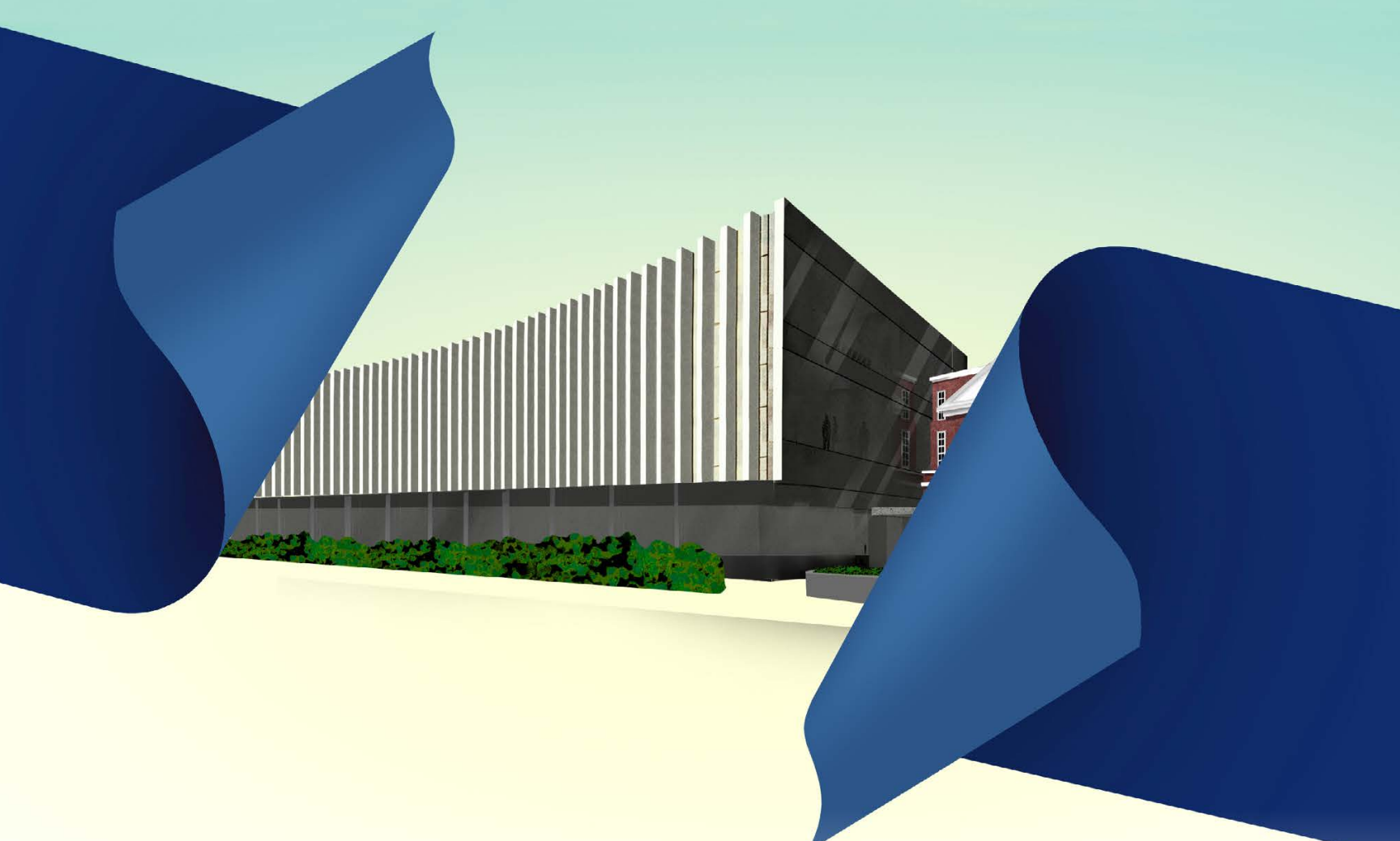
“You are a leading citizen of Canada and also an extraordinary citizen of the University of Toronto,” said President Gertler.

Gertler highlighted the award-winning design of the state-of-the-art Jackman Law Building, calling it “a brilliant new addition to our architectural patrimony supported by many in this room and beyond.”

He spoke enthusiastically about Hal Jackman’s “many, many other contributions to this institution—as our advocate, counsellor, benefactor, and friend— [and] we see that the word ‘extraordinary’ is completely inadequate.”

Added Gertler: “We are grateful that you have made your alma mater a high priority as part of your and your family’s brilliant record of philanthropy in our city and our country.”

Dean Iacobucci confirmed that this distinguished alumnus “will forever be part of the U of T Faculty of Law family.”



DOORS OPEN

Illustration by Brian Stauffer

We absolutely love the Jackman Law Building—its impressive magnificence, thoughtful and airy design, and abundance of space for teaching, learning, collaborating and socializing. We look forward to taking you around for a visit, and highlighting some of its remarkable features:

Winner of a national Canadian Architect Magazine Award of Excellence for design

Designed to LEED Silver levels energy standards

Significantly day lit, three multi-storey spaces with large glazing and/or skylights

183 – total number of limestone fins on the outside of the Jackman Law Building and Bora Laskin Law Library

Landscaping contains 49 plant species to increase bio-diversity

18 plant species are attractive to birds, hummingbirds, bees and butterflies

Eramosa limestone on the facades of the Osler Hoskin and Harcourt LLP Atrium and Torys Hall fireplaces, and the exterior solar shade fins is uniquely found in Owen Sound, Ontario

Accessibility includes heated walkway near entrances to melt snow, and poured-in-place concrete to maximize the smoothness of walkway surfaces for wheelchairs or walkers

Landscape and entrance areas maximize socializing, resting and learning

The walls were designed for R20 thermal performance

South garden can survive a large range of micro-climates: dry, wet, shade and sunny conditions

Green roof is an extensive type with sedum plantings and self-irrigating trays

Low impact design includes rain gardens, seasonal storm detention pond and dry well to handle storm runoff and to improve urban water qualities

Heritage landscape: natural landscape connecting Philosopher's Walk romantic landscape with the Queen's Park

Heritage wrought iron gate and fence relocated to a more meaningful place at the east entrance

Conserves the heritage Flavelle House

Plantings include native, native hybrids, native cultivars or adaptive species including deciduous trees, deciduous shrubs, broadleaf evergreen shrubs, coniferous shrubs and perennials

By Karen Gross

FAMILY TIES: GALLANT AND BETTY HO

The Ho legacy lives on at the Faculty of Law



PHOTO BY TAFFI ROSEN

When a fresh crop of law students gathers in The Betty Ho Classroom for the first time this fall, it's unlikely any of them will be immediately familiar with its namesake. That's because Prof. Ho, LLB 1977, died suddenly six years ago—leaving not only an extremely generous financial legacy, but a deep and rich personal and professional legacy among all who knew her.

“She was a perfectionist and always aimed for excellence in everything she did,” recalled her brother Gallant Ho, a respected lawyer and philanthropist who has been settling



her estate in Hong Kong. “She was very dedicated to the job and her students.” Those legions of lucky students existed on opposite sides of the world. Prof. Ho lived and worked in

Beijing and Toronto, intent on nurturing the next generation of legal minds in China and Canada. She held dual appointments at U of T and Tsinghua University School of Law,

spending the bulk of her time commuting between the two cities, much to her brother's frustration.

“At one point I told her, ‘You're always flying between Beijing and Toronto and for what? You don't have any time to rest,’” Ho said. “I asked her why she made her life so difficult. And she said, ‘I miss the students.’” Prof. Ho, who remained single all her life, never had children of her own. Her law students became her children and her townhouse in Toronto served as a second home for many of them. Gallant Ho remembers that family who visited would wonder why she had so much space, and specifically such a large dining room table, since she lived by herself.

“She said she needed the space because she would welcome the students to visit, and sometimes cooked for them. She took the students very much to heart. When friends or relatives would ask her if she had any children, she would refer to them. ‘Oh, I have a number of children. My students are my children.’”

Prof. Ho's \$1 million estate gift reflected her profound devotion to her charges. Half covered the renovations and updating of the classroom. The other half established the Ho Chak-Wan Scholarship to fund law students from mainland China admitted to study in the JD program at the Faculty of Law.

Although he never attended U of T, Gallant Ho developed strong ties of his own to the university. He established the Gallant Ho Prize and the Walter R. Stevenson Bursary at the law school, as well as two separate scholarships at the Scarborough campus.

This year, he pledged more than \$1.83 million to support students from Tsinghua University attending the Faculty of Law's graduate program, through the Gallant and Betty Ho University of Toronto—Tsinghua University Fellowship.

The Ho family's connection to U of T endures well beyond Betty and Gallant's philanthropy. Two of their nephews are graduates of the law school and the medical school (Ian and Warren Lee). Ian Lee, JD 1994, is an associate professor at the Faculty of Law, and a former associate dean. Dr. Lee is an assistant professor at U of T's Faculty of Medicine.

So when young law students take their seats in The Betty Ho Classroom, they might want to spend a moment thinking about the person and the family behind the name.

“I think she would have said that without U of T, she would not have become herself,” Mr. Ho said after a thoughtful pause. “So, basically, it was really U of T which equipped her for her devotion to law, and to her students.”

“

Is there something law students can do?

PRO BONO STUDENTS CANADA @

20

At the time it was established at the U of T Faculty of Law in 1996 by then-Dean Ron Daniels and the Law Foundation of Ontario, Pro Bono Students Canada (PBSC) was the first and only pro bono organization in Canada. Twenty years later, PBSC has expanded to 21 chapters across the country. Here are some alumni reflections on PBSC's milestone year:

LLB 1979

Kirby Chown

Former Managing Partner,
McCarthy Tetrault LLP

Law students have endless energy; they're very smart and they're eager to apply the theory and knowledge they learn in law school to real life issues. Through their work, they have helped many people who otherwise would have been denied access to the justice system. For the lawyers who work with these students, it is profoundly energizing to see what some of the best and brightest students across the country can achieve.

LLB 1996

Edward Iacobucci

Dean, Faculty of Law

Each year, PBSC trains a small army of law students to provide thousands of vulnerable Canadians with vital legal assistance in almost every area of law. There is no other student organization in the world of this size, and with this kind of impact on access to justice. The Faculty of Law is proud to have founded this unique program, to continue to offer it a home at our law school, and to work with PBSC to help meet the challenges and potential of the next 20 years.

LLB 1970

Justice Rosalie Silberman Abella

Supreme Court of Canada

Pro Bono Students Canada is one of the most important undertakings I have seen in my years at the bar. Today, because of the efforts of the PBSC students, thousands of Canadians are better off, and believe in justice.

LLB 2000

Nikki Gershbain

National Director, PBSC

A number of reports have called for the expansion of student pro bono programs, yet last year PBSC turned away 900 students, for no other reason than lack of capacity to run more placements. Leveraging the skills and talents of the next generation of lawyers, placing pro bono at the core of the legal profession—these things require more than reports and good intentions. They require resources. As we mark PBSC's 20th anniversary, let us all come together—governments, the bar, law schools—and commit to making a plan for moving this remarkable and vital organization forward.

JD 2014

Ashvin Singh

Associate, Dentons and Former PBSC Coordinator, Tax Advocacy Project

PBSC's Tax Advocacy Project has shown me that pro bono can be part of a mainstream legal practice. Even though my skills may seem rather niche, I can help vulnerable taxpayers who don't have the means to pay for counsel. Thanks to PBSC, I know I have something to give back.

LLB 1995

Joanna Birenbaum

Lawyer, Ursel Phillips Fellows Hopkinson
LLP and Inaugural Director, PBSC

As PBSC's first national director, one of the things I'm proud of is the reciprocal opportunity for learning the program offers. Through PBSC, law students learn that clients are experts in their own experience. Legal solutions are often limited at best. In exposing law students to the systemic barriers faced by clients, PBSC helps build the competence of students to serve underrepresented populations. This skill simply can't be taught in a classroom.

LLB 1986

Ron Daniels

President, John Hopkins
University and Founder, PBSC

We started PBSC because, at that time, there was no formal organization in Canada to champion the profession's commitment to pro bono service. I'm proud that PBSC became one of the key galvanizing organizations for pro bono practice in Canada.



FLAGGED FOR SUCCESS

ALUMNUS MARK FALBO LEADS THE FAMILY BUSINESS INTO NEW MARKETS AROUND THE GLOBE

By Lucianna Ciccocioppo
Photography by Jim Ryce

In the boardroom of the executive suites on the south mezzanine of a 105,000-square foot global headquarters in Vaughan, Ontario, lies a generous round, oak table. This is where Mark Falbo, JD/MBA 1995, president of Mircom Group, holds court for the family business.

For four consecutive years, Mircom has been named one of Canada's Best Managed Companies, recognized with the Gold Standard Award earlier this year because of its consistent placement.

Mircom is one of those rare companies proudly manufacturing the majority of its products in Canada, while distributing its tech products that ensure the safety of life and property (think high-tech alarm and communications systems of all kinds) around the world.

One of the most important things Mircom protects? Family business governance.

"Our strength is around this table," says Mark. "We have our ideas; we fight hard for them but when we leave this room, we have family and board solidarity on what our strategies and initiatives are. Most people aren't aware of any divergent opinion. But if the family fabric, or if the board fabric, starts to disintegrate, then you've got bigger problems."

These days, one of the 'problems' is finding time to add to its international flag display, hung up high off the production floor, 80 of them to date, each representing a Mircom authorized distribution partnership.

His involvement in the business, unlike perhaps other legacies, was not a given. After graduating from the Faculty of Law and articling at a Bay street law firm, he cut his teeth in the business world of high finance: CIBC World Markets, then Orenda Corporate Finance, now part of E & Y, where he rose to partner and worked directly with C-suite clients on deals, M&A transactions and more.

"I found those interactions really stimulating."

Ten years later, his father Tony Falbo, who founded Mircom (his second success story), was starting to contemplate more golf and warmer climes.

The trifecta of Falbo sons, Mark and his brothers Rick (also a lawyer and banker) and Jason (a software engineer), decided to take a hard look at the family business and give it a go. One by one, they came into the fold.

"We loved that this business was, first and foremost, a life safety business. Our systems protect people and property. It was technology. It had international scope. It had great people. We were competing and continue to compete with the world's biggest companies like Tyco, Siemens, Honeywell and United Technologies...We said: 'Let's do it.'"

Business, law and engineering acumen from the three helped to support phenomenal growth for the company. "From 2002 to 2012, we more than quadrupled the business."

Today, Mircom houses 300 employees at its headquarters, 600 throughout the world. "I try to know most of them by name. It gets harder as we continue to grow but we are a family business, and we need to connect at a human level."

It's a long way from the Central Tech high school night classes in electronics Tony Falbo took after emigrating from Calabria, in southern Italy. And his lifelong lessons are never forgotten.

"His theory is: If you are swimming in the middle of the lake, you can go backwards or forwards to shore, but you cannot tread water for very long. We have this perpetual feeling that we're in the middle of the lake, and there are only two choices: backwards or forwards. We keep trekking forwards," says Mark.

And make time to buy more flags. ↩



Red, White, and
Kind of Blue?
Reflections on Canadian
Constitutional Culture

By David Schneiderman, Professor of Law

Canadians have long had a complex relationship with the United States. For the men who framed the Canadian constitution, the American Civil War generated fresh evidence of the dangers of popular sovereignty. Learning from that distinctive American experience, the Canadian framers preferred to contain democratic impulses by building upon institutions, like a powerful executive and an appointed upper house, inherited from British parliamentary traditions. Though these institutions and practices continue to endure—features I associate with Canadian ‘constitutional culture’—by the late-20th century, our gaze is directed more southward. Now, more than ever, Canadians are bound up in the cultural, economic, and political life of the United States, the cumulative effect of, to mention only a few things, CNN, NAFTA, and the Presidential primaries. Are we under threat of being absorbed into a larger North American polity under the sway of the most powerful state actor in the world today? If there remain differences between our two constitutional cultures, what is worth preserving in the face of the pressures to assimilate? Providing an answer to this last question is the task undertaken in my new book, *Red, White and Kind of Blue? The Conservatives and the Americanization of Canadian Constitutional Culture* (University of Toronto Press). In order to identify aspects of Canadian constitutional culture worth preserving in response to the forces propelling integration, the book triangulates between the constitutional traditions of Canada, the United States, and Great Britain. Before turning to an answer to the question posed, I should explain what prompted the writing of this book.

In the fall of 2008, I returned to Canada after having had the privilege of teaching U.S. constitutional law to first-year students at Georgetown University law school in Washington D.C. My family’s sojourn there happened to coincide with the second term of the presidency of George W. Bush. After the debacle in Iraq and the failed emergency response to Hurricane Katrina, confidence in the President had reached all time lows. The advantages of the parliamentary system over the presidential one were increasingly apparent. Yet, upon returning to Canada, I could hear arguments being made by the Conservative government then in power that were reminiscent of those that had issued out of the Bush II White House. During the course of two controversial prorogations, the Conservatives suggested that the people directly elect the Prime Minister and that the executive branch was not accountable to the House of Commons, propositions entirely at odds with British parliamentary traditions. Then there were initiatives like establishing an elected Senate, and revamping the Supreme Court of Canada appointment process by having nominees appear before a special committee of the House of Commons. All of this appeared to mimic U.S. constitutional rules and practices. It appeared to me that the Harper Conservatives were succumbing to the force of America’s gravitational pull. The book was born out of this intuition.

These strategies, it turns out, did not have much staying power. The Prime Minister abandoned holding public hearings for his last two Supreme Court appointments, returning to the secretive method of executive prerogative. Yet there are calls for returning to the Harper practice that, as I argue in the book, did little to

illuminate judicial philosophies or generate constitutional literacy. The Supreme Court of Canada intervened to constitutionally forbid the pursuit of Senate reform via unilateral federal legislation. Prime Minister Trudeau is now seeking to change the composition of the Senate by appointing independent senators. Yet, as we have seen in the case of assisted dying legislation, it is perilous to lend greater legitimacy to a chamber filled with appointed senators, all having life tenure, without also attending to the balance of power between the two Houses—something, I argue, that Harper’s Senate reforms similarly failed to attend to. Then there is the problem of largely unchecked executive authority, which persists as a defining feature of Canadian politics at both federal and provincial levels. Each of these institutions and practices continue, in my view, to be in need of reform.

It was this powerful executive authority that the Harper government skillfully exploited. The Prime Minister was disinclined to entrench change via the Constitution’s amending formulae, mechanisms that have proven too unwieldy and perilous. Instead, he had recourse to powers that could, with the passage of time, shift constitutional culture but without formal amendment. Yet exercises of executive power are vulnerable to reversal by the next government. For this reason, few of these innovations were likely to have outlasted the Prime Minister. We should worry, nevertheless, that the topics canvassed in the book will continue to dog Canadian constitutional politics for years to come.

Executive dominance is not the distinctive thing that is worth preserving vis-à-vis the United States. Rather, it is our capacious constitutional capacity to get things done—the constitution as a framework for self-government—that renders Canadian constitutional culture distinctive from the U.S. one. Despite worries about democratic excess, in 1867 subject matters were divided between the federal and provincial governments but, between them, nothing was left out. Rather than being severely hampered by limitations and checks at every turn—though there are checks (e.g. bicameralism) and some limitations (e.g. federalism and, later, the Charter)—Canadians can more easily translate their preferences into law. It is this ability to be responsive to expressions of the popular will that remains a distinctive feature of Canadian constitutional culture in contrast to American preoccupation with limited government. Which is to say that an aspect of Canadian constitutional culture worth preserving, in the face of integrationist pressures, is the idea of openness to change. Instead of agonizing over the content of Canadian identity, Canadians should seize on this constitutional culture of openness and imagine alternative futures that are inclusive and more democratic than ones we may have experienced in the past.

It is that openness, paradoxically, that remains a principal source of vulnerability—it renders Canadians susceptible to the ongoing influence of the U.S. constitutional project. These integrationist pressures continue apace and make their appearance in subtle ways in our legal and political life. The object of the book is to expose readers to Canada’s constitutional traditions in order to both alert them to these pressures and to inform debate about the direction future reforms might take. It is meant to be a modest contribution to Canada’s ongoing project of self-government. ↩



with
Maureen Sabia,
JD 1965
Chairman [sic] of
Canadian Tire
Corporation

*On digital innovation in retail,
going to law school in the '60s,
and the must-have CT
product for the summer*

Interview by Lucianna Ciccocioppo
Photography by Cameron Jenkins



LC: Your *Wow Guide*, which reintroduced Canadian Tire's paper catalogue, came out recently and it had the marketing and consumer worlds abuzz. It isn't just a paper product. Its pages turn digital when you hover your mobile over them, opening up new content that contributed to a lift in online sales. What was the thought process behind this, and how did this idea come to fruition?

MS: It's all about innovation. Canadian Tire has a 94-year history of being innovative.

The whole retail world is being disrupted by technology. We hired Eugene Roman, who is world class, as our chief technology officer. Once you say 'We're doing this', you hire the best because people are so important. Eugene brought in a whole new team. We were the first retailer in Communitel, a technology incubator, in Kitchener-Waterloo. We have our own Digital Garage, where our top digital innovators are now developing new in-store and online technologies at a faster pace, to support our journey of becoming a leader in the digitizing of retail. It's like a laboratory and they think about things like: 'Where can we come up with an app that shows people who live in a certain district where the best fishing is?'

We built a cloud computing centre in Winnipeg, which is absolutely state-of-the-art. I have visited it. It's an amazing place, modeled on the Perimeter Institute for Theoretical Physics. Many of the walls are white boards. There's a control booth to monitor our cybersecurity that looks like an air traffic control centre, and everybody has a chance to sit in a well-designed area and collaborate with their fellow technologists. Their creative work allows all of our businesses to use the power of technology to offer innovative digital services to our customers.

We built the South Edmonton Commons store which is significantly digital. There is a patio builder in store that uses Oculus Rift technology. It allows customers to design their own patio and see it laid out—before they purchase the items. We built on the technology that Eugene helped develop for SportChek, including holograms and RFID [radio frequency identification] technology, where you can learn about the design features of the shoes on interactive digital screens.

Hiring a creative mind and putting the right team together can really jump start an initiative like the *Wow Guide*. It takes leadership and commitment to both human resources and financial capital to do that, obviously. We're committed to digital technology but we're not going to abandon bricks and mortar. We're going to marry bricks and mortar with digital technology, so that it becomes clicks and mortar.

LC: Let's talk about law school. What was it like to go to the Faculty of Law in the early 1960s under Dean Cecil Wright? Do you remember your first day?

MS: I can remember the first day. There were only three women in the entire University of Toronto Law School when I attended. On the first day, Dean Wright assembled the first year class, and he said: 'Look to the right. Look to the left. Only one of you will be here next year.' That was the message. In his view there was no entitlement to a law degree. You had to work hard to get it. The dean was absolutely right.

LC: How did your male classmates treat you?

MS: I was never treated any differently by my professors—or by my classmates. At the law school I was accepted. I didn't realize that I was different until I went out into the working world. At that time you were made to feel different because there weren't many

women lawyers around. I was brought up to believe that I could do anything I wanted as long as I had the smarts and the education and the training to do it. I've been at the forefront of change for quite a long time.

Early on, I was once told by someone for whom I worked that I shouldn't dress as well as I did because it was clear that I couldn't do it on the salary they were paying me. In his mind it gave rise to a suspicion that I had a Sugar Daddy. Can you imagine? This was in 1968 at my first job..

A little later at another job, the CEO said to me: 'If you were a real woman, you wouldn't want this job.'

LC: How did you respond?

MS: In the first incident, I went into a long explanation about how my parents were subsidizing me. I wouldn't do that today. Now I would know exactly what to say! In the second case, I just told myself that he was more insecure than he looked. He and I have met over the years, and I still think he's a Neanderthal but other people don't.

LC: I understand *Mad Men* is one of your favorite shows.

MS: I loved *Mad Men* because I can relate to it. I lived through that, and the show was so well written.

LC: I am watching it now and I get angry.

MS: Don't get angry. That is a huge mistake that women are making. Traditional feminism fought for equality of opportunity, not equality of results. Quotas and affirmative action imply that women aren't capable of being successful on their own. It puts us in the ghetto of the unequal. We struggled so hard to be perceived as equals. I don't want to get anywhere because of a quota. If I succeed it's because I'm a successful, experienced, educated, skilled person. It's interesting that Angela Merkel, Margaret Thatcher or Sheryl Sandberg didn't need quotas and neither do I.

LC: You're one of a handful of women at the very top.

MS: I didn't need affirmative action to get myself here.

LC: It's 2016 and there should be more women at the top.

MS: There will be because we now have a critical mass of experienced, skilled women. This is evolution, not revolution. The revolution was equal opportunity.

We have a number of women in senior management at Canadian Tire. We have huge numbers of talented women in the junior positions. Our goal is to develop the best and the brightest of those, to prepare them for senior positions.

The worst thing we can do is to promote a woman who isn't ready to be promoted and who fails on the job. That allows men to say, 'See, women can't hack it.' You have to promote the right people. It takes a talent strategy; it takes a developmental strategy. We're going to give this a lot of attention at Canadian Tire.

LC: What's the *must-have* Canadian Tire product for the summer?

MS: Anything from our private label Canvas line. The outdoor furniture, pillows, the couches, the gazebos, it's endless. We're really exploring the future of our private label brands. We think those can differentiate us. Canvas has been a huge success. Everybody I know has Canvas on their patios.

Read the full Q & A online at: <http://uoft.me/MSABIA>

CONVOCATION



@melissaroyle: Seeing @UTLaw graduates at their convocation today reminds me of our day 4 years ago. Time flies!



@howemj: Graduated @utlaw today. Big thanks to these two.





@lisana91: I graduated today!!! #UofTGrad16
#UTLaw #lawschoolcomplete



Photography by Jeff Kirk

CONVOCATION 2016

More than 200 graduates from the Class of 2016 received their degrees on Convocation Day, June 3, and celebrated with family and friends. Remarkable businessman and magnanimous philanthropist Gerry Schwartz, the founder of private equity firm Onex Corporation, a global success story whose impact has been astounding, was the honorary degree recipient.

Read more about Convocation Day here: <http://uoft.me/con16>

1976

RALPH SIMMONDS, LL.M.: As of July 1, 2016 I will be retired from my position as a Puisne Justice of the Supreme Court of Western Australia. I will have served for more than 12 years in that position, after a 28-year career as a legal academic at the University of Windsor, McGill University and Murdoch University. My wife and I are looking forward to spending the northern summers in Montreal, where we hope to buy an apartment. Prices there are a fraction of the ones ruling where we will be living the rest of the time, in Perth, Western Australia. We are looking forward to checking out the new Jackman Law Building at U of T.

1981

DAVID HARRIS, J.D.: After working for Irwin-Mitchell in Glasgow as in-house adviser to its client insurance group, I took a year off and qualified as a Scottish solicitor and took a position as a Procurator Fiscal at Glasgow Sheriff Court. I worked there for three years and then decided to retire to Cyprus where I now live. I've been here for three years now with my wife and our 13-year-old son who attends a private English college.

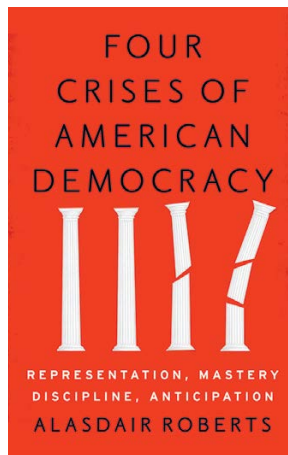
I am now the legal adviser to the British Residents Society and on their governing committee. I recently drafted and published a new contract for use in the purchase of properties here by foreigners who need special permission to buy land and are being sold properties without proper title searches or enquiries being made. I am working as a consultant to a local law practice and am handling a number of property mediations, restructuring of failed housing projects and some probate work. I am also working with local businessmen on setting up a medical tourism hub to promote cosmetic and elective surgery on the island.

I wrote a paper on alcoholism and the law which was discussed at an addictology conference in Paris in April. I have an

informal association with the Olivier Ameisen Organization. The ideas in the paper were put forward by Samuel Blaise of the OAO. Apart from that I keep busy by getting the pool ready for the summer season and looking after our five dogs. I have never been so busy doing things I enjoy. I recommend early retirement for everyone who wants a complete change.

1984

ALASDAIR ROBERTS, J.D.: My book *Four Crises of American Democracy* will be published by Oxford University Press later this year. I'm presently a professor in the Truman School of Public Affairs at the University of Missouri.



1990

JEFF KIRSH, J.D.: The Kirsh Family is on the road again. I have left Toronto and taken on another new role with Coca-Cola in Atlanta, and my family will be relocating (again) to the US South this summer. We are excited about the move, but sad to leave the Blue Jays for the "bad news" Braves.

@RenuMandhane: Two powerhouse #accesstojustice stars! Congrats @NikkiGershain @PBSCNational & Sarah Pole @LAWSProgram



1991

CATHERINE AND WARD BRANCH, LL.B.: Rather than face the drudge of practicing law, my wife Catherine (1991) has been very active on the volunteer front, recently being selected president of the Federal Liberal Riding Association for Burnaby North Seymour, as well as chair of the council at Mount Seymour United Church. She leaves the drudge work to me. I continue to run our class action and insurance firm Branch MacMaster LLP, and was honoured to recently receive a Queen's Counsel designation. We have three teenage girls, none of whom are yet signaling an intention to follow in the family business.

1994

JUDY COTTE, LL.B.: I am VP & Head of Corporate Governance & Responsible Investment for RBC Global Asset Management ("RBC GAM"), which manages approximately \$380 billion in assets on behalf of institutional and retail clients. I am also a member of the firm's Executive Committee. I work with all of



our global investment teams to ensure that environmental, social and governance ("ESG") factors are integrated into the investment process for all of our funds. I also run our ESG-focused engagement program, through which we reach out to our investee companies to discuss their approach to ESG risks and opportunities. My group also oversees all of the proxy voting for all of our funds.

1995

JENNIFER SHUBER, LLB/MSW: I am a partner in the family law group at Basman Smith LLP. I have been using my law and my social work degrees to provide service to clients going through emotionally challenging separations and divorces. I am so very glad I did both. I am certified as a family law specialist by the Law Society. I represent individual clients in complex financial and custody cases. I also represent children who are the focus of contested custody disputes. I have recently obtained my mediation accreditation from the Ontario Association for Family Mediation and so I mediate and arbitrate family law cases as well. I blog regularly at torontofamilylawblog.ca. Please say hello. I am always happy to speak to a fellow U of T alumna.

@adamwagmanlaw: Congratulations to the graduating class of 2016. I'm a proud alum of @UofT @UTLaw, now senior partner at @hshlawyers.



1997

JOHN PITFIELD, LLB: Earlier this year, I was named co-chair of the Business and Technology Group at the Boston-based law firm Choate, Hall & Stewart LLP. The group includes lawyers with expertise in life sciences and technology, venture capital, mergers and acquisitions, and securities. My practice focuses on a mixture of public/private U.S. and Canadian corporate transactions, mergers, acquisitions, leveraged buyouts, and going private



transactions. Also this year I was named the 2016 Boston "Lawyer of the Year" for Securities Regulation by Best Lawyers, and a "2016 Client Service All-Star" by the BTI Consulting Group in the M&A and Securities and Capital Markets categories. I look forward to continuing to stay in touch with former classmates and can be reached at jpitfield@choate.com.

@MayoMoran: Wonderful @UTLaw Alum! Supreme Court judge first Canadian woman to receive honorary Yale degree - The Globe and Mail



2000

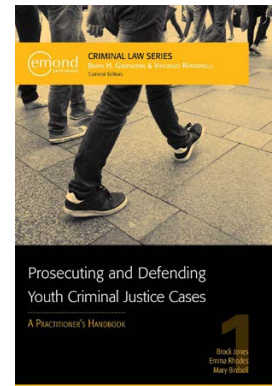
RICHARD WARREN, LLB: I have been promoted to partner at Hunton & Williams LLP, in Richmond, Virginia, where I advise clients in connection with M&A, corporate finance, corporate governance and general commercial matters. I also received my LLM from University of Virginia School of Law in 2007.

2002

MIKE ROSS, JD: After practicing for five years at Bingham McCutchen, I ran an Israel-Palestine peace-negotiations project from Ramallah. Then I returned to Canada for an MBA at McGill. Post-MBA I worked at McKinsey for five years and have just recently left to start my own boutique consulting firm called Juniper (www.jnper.com). We help organizations with questions related to innovation, culture, and strategy. Right now we're focusing on law firms and just published a piece for the CBA on how they can adapt to a disrupted legal services market. Please reach out if you'd be interested in learning more or in reconnecting! mike@jnper.com

2004

BROCK JONES, JD: This year I was awarded the 2016 Heather McArthur Memorial Award from the Ontario Bar Association for my contributions to legal education and professional development. Read more here: <http://bit.ly/29siVm1> I also published my first book, *Prosecution and Defending Youth Criminal Justice Cases*, from Emond Publishing.



2012

DANIEL BERTRAND, JD: After law school I practiced labour, employment and human rights law in Vancouver for several years. Recently, my wife and I had our first child and we moved to her hometown, Bella Bella. The town is only accessible by boat and plane. To my knowledge I am the only lawyer living on British Columbia's Central Coast and so I have aptly named my firm Central Coast Law Corporation. Thus far the matters I have been retained for have mostly involved Aboriginal, maritime, family and small business issues.

@NikkiGersh bain: Ontario has a new @LSUCTreasurer - Paul Schabas. An inspired choice! @LawSocietyLSUC @LawFoundationOn @UTLaw #A2J



Send your Class Notes to:
nexus.magazine@utoronto.ca
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<http://uoft.me/lawclassnotes>

family ALBUM

Alumna Anne-Marie Sorrenti, Class of 1999, scaled Vinson Massif in January this year to raise funds for the charity, True Patriot Love. Read the story: <http://uoft.me/TPL>



Bertrand/Housty Family: Daniel Bertrand, Class of 2012 (far right) with wife Jessie Housty and son Noen Housty



The Kirsh Family: (Clockwise from left) Natalie, Sam, Jonathan, Jeffrey, Class of 1990, and Miles



@viraniarif: Awesome to connect with @McGillU & @UTLaw buddy Matt Meagher in #Ottawa this evening! Great to see you brother!



The Branch Family: Ward, Sarah, Anna, Olivia and Catherine (Ward and Catherine, Class of 1991)



Send your Class Notes photos to: nexus.magazine@utoronto.ca or submit online <http://uoft.me/lawclassnotes>

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Rob Centa's studies at the Faculty of Law helped broaden his horizons. He credits outstanding professors with introducing him to many new and fascinating areas of law and he wants future students to experience the same opportunity for personal and professional growth. That's why he has included the law school in his will. By planning your bequest now, you will ensure that the Faculty continues to inspire, enlighten and empower—for generations to come.

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